View of the state of Europe during the middle ages, by Henry Hallam.
Hallam, Henry, 1777-1859.
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Page I

PREFA
'C is the object of the present work to exhibit, in a series of historical dissertations, a comprehensive survey of the chief circumstances that can interest a philosophical inquirer during the period usually denominated the Middle Ages. Such an undertaking must necessarily fall under the class of historical abridgments: yet there will perhaps be found enough to distinguish it from such as have already appeared. Many considerable portions of time, especially before the twelfth century, may justly be deemed so barren of events worthy of remembrance, that a single sentence or paragraph is often sufficient to give the character of entire generations, and of long dynasties of obscure kings. "Nec rationem di lor, ma guarda e passa." And even in the more pleasing and instructive parts of this middle period, it has been my object to avoid the dry composition of annals, and aiming, with what spirit and freedom I could, at a just outline rather than a miniature, to suppress all events that did not appear essentially concatenated with others' illustrative of important conclusions. But as the modes of government and constitutional laws which prevailed in various countries of Europe, and especially in England, seemed to have been less fully dwelt upon in former works of this description than military or civil transactions, while they were deserving of far more attention, I have taken pains to give a true representation of them, and in every instance to point out the sources from which the reader may derive more complete and original information. Nothing can be farther from my wishes than that the following pages should be judged according to the critical laws of historical composition. Tried in such a balance, they would be eminently defective. The limited extent of this work, compared with the subjects it embraces, as well as its partaking more of the character of political dissertation than of narrative, must necessarily preclude that circumstantial delineation of events and of characters upon which the beauty as well as usefulness of a regular history so mainly depends. Nor can I venture to assert that it will be found altogether perspicuous to those who are
destitute of any previous acquaintance with the period to which it relates; though I have only presupposed, strictly speaking, a knowledge of the common facts of English history, and have endeavoured to avoid, in treating of other countries, those allusive references, which imply more information in the reader than the author designs to comm. municate. But the arrangement which I have adopted has sometimes rendered it necessary to anticipate both names and facts, which are to find a nove definite place in a subsequent part of the work. This arrangement is probably different from that of any former his.-vrical retrospect. Every chapter of the following volumes completes its pari:culai subject, and may be considered in some degree as independent of thr. rest. The order, consequently, in which they are read, will not be very ma.erial thoumnh of course I should rather prefer that in which they are at present dis.

Page IV IV PREFA LE, pose-. A solicitude to avoid continual transitions, and to give free scope to the natural association of connected facts, has dictated this arrangement, to which I confess myself partial. And I have found its inconveniences so trifling in composition, that I cannot believe they will occasion much trouble to the cader. The first chapter comprises the history of France from the invasion of Clovis to the expedition, exclusively, of Charles VIII. against Naples. It is not possible to fix accurate limits to the Middle Ages: but though the ten centuries from the fifth to the fifteenth seem, in a general point of view, to constitute that period, a less arbitrary division was necessary to render the commencement and conclusion of an historical narrative satisfactory. The continuous chain of transactions on the stage of human society is ill divided by mere lines of chronological demarcation. But as the subversion of the western empire is manifestly the natural termination of ancient history, so the establishment of the Franks in Gaul appears the most convenient epoch for the commencement of a new period. Less difficulty occurred in finding the other limit. The invasion of Naples by Charles VIII. was the event that first engaged the principal states of Europe in relations of alliance or hostility which may be deduced to the present day, and is the point at which every man who traces backward its political history will be obliged to pause It furnishes a determinate epoch in the annals of Italy and France, and nearly coincides with events which naturally terminate the history of the Middle Ages in other countries. The feudal system is treated in the second chapter, which I have subjoined: C the history of France, with which it has a near connexion. Inquiries into the antiquities of that jurisprudence occupied more attention in the last age thanr at present, and their dryness may prove repulsive to many readers. Bult there is no royal road to the knowledge of law; nor can any man render an obscure and intricate disquisition either perspicuous or entertaining. Trihat the feudal system is an important branch of historical knowledge will not be disputed, when we consider not only its influence upon our own constitution, but that one of the parties which at present divide a neighbouring kingdom professes to appeal to the original principles of its monarchy, as they subsisted before the subversion of that polity. The four succeeding chapters contain a sketch, more or less rapid and general, of the histories of Italy, of Spain, of Germany, and of the Greek and Saracenic empires. In the seventh I have endeavoured to develop the progress of ecclesiastical power, a subject eminently distinguishing the Middle Ages, and of which a concise and impartial delineation has long been desirable. The English constitution furnishes materials for the eighth chapter. 1 tannot hope to have done sufficient justice to this theme, which has cost me considerable labour; but it is worthy of remark, that since the treatise of Nathaniel Bacon, itself open to much exception, there has been no historica development of our constitution, founded upon extensive researches, or calcu lated to give a just notion of its character. For those parts of Henry's his tory which profess to trace the progress of government are still more jejune than the rest of his volumes; and the work of Professor Millar, of Glasgow, however pleasing from
its liberal spirit, displays a fault too common among the philosophers of his country, that of theorizing upon an imperfect induction, and very often upon a total misapprehension of particular facts.

PREFACE. The ninth and ast chapter relates to the general state of society in Europe during the Middle Ages, and comprehends the history of commerce, of manners and of literature. None however of these are treated in detail, and the whole chapter is chiefly designed as supplemental to the rest, in order to vary the relations under which events may be viewed, and to give a more adequate sense of the spirit and character of the Middle Ages. in the execution of a plan far more comprehensive than what, with a clue consideratio. either of my abilities or opportunities, I ought to have under. taken, it would be strangely presumptuous to hope that I can have rendered myself invulnerable to criticism. Even if flagrant errors should not be fre. quently detected, yet I am aware that a desire of conciseness has prevented the sense of some passages from appearing sufficiently distinct; and though I cannot hold myself generally responsible for omissions, in a work which ccld only be brought within a reasonable compass by the severe retrench ment of superfluous matter, it is highly probable that defective information, forgetfulness, or too great a regard for brevity, has caused me to pass over many things which would have materially illustrated the various subjects of these inquiries. I dare not, therefore, appeal with confidence to the tribunal of those super rior judges, who, having bestowed a more undivided attention on the particu. lar objects that have interested them, may justly deem such general sketches imperfect and superficial; but my labours will not have proved fruitless, if they shall conduce to stimulate the reflection, to guide the researches, to cor -~ct the prejudices, or to animate the liberal and virtuous sentiments of in -'tive youth'n "Mi satis arrpla Mereu. et riai Cuexade decu, Dirm igno:'s r aovum Tam -lor, ejte,. _L3,-tnuqi i..lorisp...k.'

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Roman empire, and governed by ~ or if the Pvpman Empire. —Invasion of Clovis. — S F -at
race of French Kings.-Accession of Pe- a certain Syagrius, rather with an indep. -Sta'e of Italy.-
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Crusades.-Philip III. terly penetrated as far as Tournay and -Philip IV.-Aggrandizement of
French Mon- Cambray,* invad Gaul, and defeated Syarchy under his Reign. —Reigns of his
Children. agrius at Soissons. The result of this vic-Question of Salique-Law.-Claim of Edward
tory was the subjugation of those provinces which had previously been considBSvonE the
conclusion of the fifth cen- ered as Roman. But as their allegiance &:,y, the mighty fabric of
empire, which had not been very strict, so their loss was vu:our and policy had founded upon
the not very severely felt; since the empeSubversion of seven hills.of Rome, was final- rors of
Constantinople were not too proud the Roman ly overthrown, in all the west to confer upon
Clovis the titles of consul Empire. Of Europe, by the barbarous and patrician, which he was tco
prudent nations from the north, whose martial to refuse.f energy and whose numbers were
irresistible. A race of men, formerly un- ent cities under the rule of their respective bish known
or despised, had not only dismem- ops, which Du Bos has with great ingenuity raised New
settle- bered that proud sovereignty, upon very slight historical evidence, and in defiance ments
of the but permanently settled them- of the silence of Gregory, whose see of Tours bor
barbarous na- selves in its fairest provinces, dered upon their supposed territory. But his hy
tions. ro e pothesis is not to be absolutely rejected, because it and imposed their yoke upon is
by no means deficient in internal probability, and the ancient possessors. The Vandals the early
part of Gregory's history is brief and nec, were masters of Africa; the Suevi held ligent. Du
Bos, Hist. Critique de l'EtablissemeN, part of Spain; the Visigoths possessed des Francais
dansles Gaules, t. i.,p. 253. Gibbon, pthe remainder, with a large portion ofc. 38, after
following Du Bos in his text, whispers the remainder, with a large portion of as usual, his
suspicions in a note. Gaul; the Burgundians occupied the * The system of Pare Daniel, who
denies any provinces watrired by the Rhone and Sa- permanent settlement of the Franks on the
left one; the Ostlogoths almost all Italy. bank of the Rhins before Clovis, seems incapable The
northwest of Gaul, between the of being supported. It is difficult to resist the pro sumption that
arises from the discovery of the Seine and the Loire, some writers have tomb and skeleton of
Childeric, father bf Clovis, at filled with an Armorican republic,* while Tournay, in 1653. See
Montfaucnon, Monumens de la Monarchie Franqaise, tome i., p. 10. * It is impossible not to
speak skeptically as to t The theory of Du Bos, who considers Clovis u republic, or rather
confederation of independ- as a sort of lieutenant of the empe -ors, and as tot
pretence of religion, he attacked the engagement,* and at the instigation of his wife Clotilda, a princess of the Visigoths, and, by the force of their empire in Gaul, reduced him. The pretence of religion was made by Alaric, king of the Visigoths, and, by the force of his own tribe and family, the reduction of certain independent chiefs of his own tribe and family, the expediency of a vow, as it is said, made Alaric, king of the Visigoths, and, by the force of their empire in Gaul, reduced him.

Burgundy, he became a convert to Christianity. [A.D. 496.] It would be a fruitless inquiry whether he was sincere in this change; but it is certain, at least, that the reduction of certain independent chiefs of his own tribe and family, the expediency of a vow, as it is said, made Alaric, king of the Visigoths, and, by the force of their empire in Gaul, reduced him to the maritime province of Septimania, to the establishment of a convert to Christianity.

Alaric, king of the Visigoths, and, by the force of their empire in Gaul, reduced him to the maritime province of Septimania, to the establishment of a convert to Christianity. [A.D. 496.] It would be a fruitless inquiry whether he was sincere in this change; but it is certain, at least, that no policy could have been more successful than the reduction of certain independent chiefs of his own tribe and family, the expediency of a vow, as it is said, made Alaric, king of the Visigoths, and, by the force of their empire in Gaul, reduced him to the maritime province of Septimania, to the establishment of a convert to Christianity.
or sedition. But, be the respective capitals. I apprehend, in fact, in answer to this, it may be observed: 1. That the that Gregory's expression is not very precise.' The system of persecution adopted by the Vandals in kingdom of Soissons seems to have been the "east Africa succeeded no better; the Catholics of that of the four, and that of Austrasia the greatest. province having risen against them upon the land- But the partitions made by these princes were ex mg of Belisarius: 2. That we do not know what ceedingly complex; insulated fragments of term Insults and discouragements the Catholics of Gaul tory, and even undivided shares of cities, being aand Italy may have endured, especially from the lotted to the worse provided brothers, by way of Arian bishops, in that age of bigotry; although the compensation, out of the larger kingdoms. It administrations of Alaric and The- doric were liber- would be very difficult to ascertain the limits of al and tolerant: 3. That the distinction of Arian these minor monachies. But the French empire and Catholic was intimately connected with that was always considered as one, whatever might be of Goth and Roman, of conqueror and conquered; the number of its inheritors; and from accidental so that it is difficult to separate the effects 4f na-
circumstancesit was so frequently reunited as fuliy /anasl, from those of sectariar, animosity. to keep up this notion

Page 19 | Table 1.1 FRANCE. Il alire, the young...c brother, ultimately re- Grimoald, mayors of Neastria and Ausl united all the kingdoms: but upon his trasia, the western and eastern divisions death they were again divided among his of the French monarchy.* Thes.e, howfour sons, and brought together a second ever, met with violent ends; but a more time by another Clotalre [A. D. 613], the successful usurper of the royal authority grandson to the first. It is a weary and was Pepin Heristal, first mayor, and afunprofitable task to follow these changes terward duke, of Austrasia; who united. in detail, through scenes of tumult and with almost an avowed sovereignty overl bloodshed, in which the eye meets with that division, a paramount command over no sunshine, nor can rest upon any inter- the French or Neustrian provinces, where estlng spot. It would be difficult, as nominal kings of the Merovingian family Gibbon has justly observed, to find any- were still permitted to exist. This auhere more vice or less virtue. The thority he transmitted to a more renounnames of two queens are distinguished ed hero, his son, Charles Martel, who, even at that age for the magnitude of after some less important exploits, was;heir crimes: Fredegonde, the wife of called upon to encounter a new and terChilperic, of whose atrocities none have rible enemy. The Saracens, after subdoubted; and Brunehaut, queen of Aus- jugating Spain, had penetrated into the trasia, who has met with advocates in very heart of France. Charles Martel modern times, less, perhaps, from any gained a complete victory over them befair presumptions of her innocence, than tween Tours and Poitierst [A. D. 732], from compassion for the cruel death in which 300,000 Mahometans are hyperwhich she, underwvent.* bolically asserted to have fallen. The [A. D. 628-638.] But after Dagobert, reward of this victory was the province son of Clotaire II., the kings of France of Septimania, which the Saracens ha( Their degen- dwindled into personal insig- conquered from the Visigoths.4 eracy, nificance, and are generally Such powerful subjects were not like. treated by later historians as insensati, ly to remain long contended Change in the or idiots.t The whole power of the king- without the crown; but the royal ftamily. Mayors of the dom devolved upon the maypalace. ors of the palace, originally * The original kingdoms of Soissons, Paris, and officers of the household, through whom Orleans, were consolidated into that denominated petitions or representations were laid be- Neustria, to which Burgundy was generally appenfore the king. The weakness of sover- dant, though distinctly governed by a mayor of its eigns rendered this office important, and own election. But Aquitaine, the exact bounds of eigns rendered this one important, and which I do not know, was, from the time of
Dago still greater weakness suffered it to be- bert I., separated from the rest of the monarchy) come elective; men of energetic talents under a ducal dynasty, sprung from Aribert, brother and ambition united it with military col- of that monarch. mand; and the history of France, for t Tours is above seventy miles distant from Poi tiers; but I do not find that any French antiquary half a century, presents no names more has been able to ascertain the place of this great conspicuous than those of Ebroin and battle with more precision; which is remarkable, since, after so immense a slaughter,'we should ex * Every history will give a sufficient epitome of pect the testimony of " grandia effossis ossa sethe Merovingian dynasty. The facts of these times pulcris," are of little other importance than as they impress The victory of Charles Martel has immortalized Oan the mind a thorough notion of the extreme his name, and may justly be reckoned among those wickedness of almost every person concerned in few battles of which a contrary event would have them, and consequently of the state to which soci- essentially varied the drama of the world in all ety was reduced. But there is no advantage in its subsequent scenes; with Marathon, Arbelia, crowding the memory with barbarian wars and as- the Metaurus, ChAlons, and Leipsic. Yet do we lassinations. For the question about Brunehaut's not judge a little too much by the event, and folcharacter, who has had partisans almost as enthu- low, as usual, in the wake of fortune? Has not siastic as those of Mary of Scotland, the reader more frequent experience condemned those who may consult Pasquier, Recherches de la France, 1. set the fate of empires upon a single cast, and risk viii., orVelly, Hist. de France, tome i., on one side, a general battle with invaders, whose greater peril and a dissertation by Gaillard, in the Memoirs of is in delay? Wasnothis the fatal error by which the Academy of Inscriptions, tome xxx., on the Roderic had lost his kingdom? Was it possible other. The last is unfavourable to Brur.ehaut, that the Saracens could have retained any permaand perfectly satisfactory to my judgment. nent possession of France, except by means of a t An ingenious attempt is made by the Abb6 victory? And did not the contest upon the broad Vertot, M6m. de l'Acad6mie, tome vi., to rescue campaign of Poitou afford them a considerable these monarchs from this lon.-established imputa- prospect of success, which a more cautious policy tion. But the leading fact is irresistible, that all the would have withheld? royal authority was lost during their reigns. How. t This conquest was completed by Pepin in 75'. ever, the best apology seems to be, that, after the The inhabitants preserved their liberties by treaty victories of Pepin Heristal, the Merovingian kings and Vaissette deduces from this solemn. a3suranc.r* were, in effect, conquered, and their inefficiency the privileges of Lanpliedoc. Hist. de Larg, toxu.ara a matter of eo:essary submission to a master. i, p 412 R 2
Romagna and the vent, and the Franks, with one consent, March of Ancona.t raised Pepin to the throne, the founder [A. D. 768.] The state of Italy, which of a more illustrious dynasty. In order had undergone no change for to judge of theimportance of this revo- nearly two centuries, was Charlemagne lution to the see of Rome, as well as to now rapidly verging to a great revoluFrance, we must turn our eyes upon the tion. Under the'shadow of a mighty affairs of Italy, name, the Greek empire had concealed The dominion of the Ostrogoths was the extent of its decline. That charm annihilated by the arms of Belisarius was now broken: and the Lombard The Lombard. and Narses in the sixth cen- kingdom, which had hitherto appeared tury. But not long after- the only competitor in the lists, proved ward, the Lombards, a people for some to have lost its own energy in awaiting time settled in Pannonia, not only sub- the occasion for its display. France dued that northern part of Italy which was far more than a match for the powhas retained their name, but, extending er of Italy, even if she had not been themselves southward, formed the pow- guided by the towering ambition and erful dutchies of Spoleto and Benevento. restless activity of the son of Pepin. The residence of their kings was in Pa- It was almost the first exploit of Charle. via; but the hereditary vassals, who held magne, after the death of his brotnel those two dutchics, might be deemed al- Carloman had reunited the Frankish em most independent sovereigns.* The rest pire under his dominionJ [A. D. 772], of Italy was governed by exarchs, depu- to subjugate the kingdom of Ile conquers ted by the Greek emperors, and fixed at Lombardy. [A. D. 774.] Nei- Lombardy; Ravenna. In Rome itself, neither the ther Pavia nor Verona, its most con. people, nor the bishops, who had already siderable cities, interposed any mateconceived in part their schemes of am- rial delay to his arms; and the chief rebition, were much inclined to endure the instance he encountered was from the superiority of Constantinople; yet their dukes of Friuli and Benevento, the latter disaffection was counterbalanced by the of whom could never be brought into inveterate hatred, as well as jealousy, thorough subjection to the conqueror. with which they regarded the Lombards. Italy, however, be the cause what it But an impolitic and intemperate perse- might, seems to have tempted Charlecution, carried on by two or three Greek magne far less than the dark forests of emperors against a favourite superstition, * There had been some previous overtures to the worship of images, excited commo- Charles Martel, as well as to Pepin himself; the tions throughout Italy, of which the habitual sagacity of the court of Rome perceiving bombards took advantage, -and easily the growth of a new western monarchy, which They reduce wrested the exarchate of Ra- would be, in faith and arms, their surest ally. — Té reduce wrested th exarchate of Ra- Muratori, Ann. d'Ital., A. D. 741. the exarchate venna from the eastern em- f Giannone, 1. v., c. 2. of Ravenna, pire. [A. D. 752.] It was: Carloman, younger brother of Cha,*s, toolt far from the design of the popes to the Austrasian or German provinces of the emsee their nearest enemies so much ag- pire. The custom of partition was so fully estab lished, that those wise and ambitious princes, Charles Martel, P'epin, and Charlemagne himself, * The history, character, and policy of the Lom- did not venture to thwart the public opinion by bards are well treated by Gibbon, c. 45. See, too, introducing primogeniture. Carloman would not tle fourth and fifth books of Giannone, and some long have stood against his brother; who, aftel Dapers by Gaillard in the Memoirs of the Academy his death, usurped the illheritance of his twno i if Inscriptibns, tomes xxxii.. xxxv., xlv. fant children.
Sclavonians of Bohemia, and Huns or of his attention, as the splendour of the Avars of Pannonia, though obtained with prize might naturally have excited. He less cost, were hardly less eminent. In gained, however, a very important ac- cession o his empire, by conquering tions, or those whom fe; r had made de. from the Saracens the territory contain- tions, or those whom fe; r had made de. from the Saracens the territory contain- pendent allies, were enl oyed to subju.  
A between the Pyrenees and the Ebro. gate their neighbours; and the incessant This was formed into the Spanish March, waste of fatigue and the sword was supgoverned by the Count of Barcelona, part plied by a fresh population of which, at least, must be considered as that swelled the expanding ExtentO–hi apertaining to France till the twelfth circle of dominion. I do not century. * know that the limits of the new western But the most tedious and difficult empire are very exactly defined by conand Saxony. achievement of Charlemagne temporary writers, nor would it be easy was the reduction of the Sax- to appreciate the degree )f subjection in ons. The wars with this nation, who which the Sclavonian troes were held, occupied nearly the modern circles of As an organized mass of provinces. regu Westphalia and Lower Saxony, lasted for larly governed by imperial offic-, s, it thirty years. Whenever the conqueror seems to have been nearly bounded, in withdrew his armies, or even his person, Germany, by the Elbe, the Saale, the Bothe Saxons broke into fresh rebellion; hemian mountains, and a line drawn from which his unparalleled rapidity of move- thence crossing the Danube above Vien ient seldom failed to crush without de- na, and prolonged to the Gulf of Istria * ay. From such perseverance on either Part of Dalmatia was comprised in the side, destruction of the weaker could dutchy of Friuli. In Italy, the empire alone result. A large colony of Saxons extended not much beyond the modern were finally transplanted into Flanders frontier of Naples, if we exclude, as was and Brabant, countries hitherto ill-peo- the fact, the dutchy of Benevento from, led, in which their descendants pre- any thing more than a titular subjection. 3erved the same un conquerable spirit of The Spanish boundary, as has been said resistance to oppression. Many fled to already, was the Ebro.* the kingdoms of Scandinavia, and, rmn- [A. D. 800.] A seal was put to the glo gling with the Northmen, who were just ry of Charlemagne, when Leo His Coronapreparing to run their memorable career, III., in the name of the Ro- tionas empe revenged upon the children and subjects man people, placed upon his re., of Charlemagne the devastation of Sax- head the imperial crown. His fathei, ony. The remnant embraced Christi- Pepin, had borne the title of patrician, anity, their aversion to which had been and he had himself exercised, with that the chief cause of their rebellions, and title, a regular sovereignty over Rome.t acknowledged the sovereignty of Charlemagne; a submission, which even Witi- * I follow in this the map of Koch, in his Ta kind, the second Arminius of Germany, bleau des Révolutions de l'Europe, tome i. That', of Vaugondy, Paris, 1752, includes the dependant after such irresistible conviction of her Sclavonic tribes, and carries the limit of the elndestiny, did not disdain to make. But pire to the Oder and frontiers of Poland, The au they retained, in the main, their own thors of L'Art de vérifier les Dates extend it to the laws;* they were governed by a duke of iRaab. It would require a long examination to give their own nation, if not of their own t The patricians of the lower empire were govelection; and for many ages they were errors sent from Constantinople to the provinces. Rome had long been accustomed to their name and power. The subjection of the Romans, both * The counts of Barcelona always acknowl- clergy and laity, to.Charlemagne, as well before as edged the feudal superiority of the kings of France, after he bore the imperial name, seems to be estab till some time after their own title had been mer- lished.-See Dissertation Historique, par Le Blanc ged in that of kings of Aragon. In 1180, legal in- subjoined to his Traité des Monnoyes de France, struments executed in Catalonia ceased to be da- p. 18, and St. Marc, Abrfg6 Chronologique de ted by the year of the King of France; and as l'Histoire de l'Italie, t. i. The first of these wri. here certainly remained no other mark of depend- ters does not allow that Pepin exercised any authorance, the separation of the
principality may be ity at Rome. A good deal of obscurity rests over events referred to that year. But the rights of the French internal government for near fifty years; but there crown over it were finally ceded by Louis IX. in is some reason to believe that the nominal sover 1258.-De Marca, Marca Hispanica, p. 514. Art eignty of the Greek emperors was not entirely ab' e vérifier les Dates t. ii., p. 291. rogat.-d.-Muritori. Annali d’Italia ad anin, 172

Page 22 22 EUROPE DURING THE MIDDLE AGES. [tUHAP. Proney was coil ed in his name, and an gathering about him the learned of every oath of fidelity was taken by the clergy country; founding schools, and collect and people, But the appellation of em- ing libraries; interfering, but with the peror seemed to place his authority over tone of a king, in religious controversie; all his subjects on anew footing. It was aiming, though prematurely, at the {or full of high and indefinite pretension, motion of a naval force; attempting, for ending to overshadow the free election the sake of commerce, the magnificent of the Franks by a fictitious descent from enterprise of uniting the Rhine and DanAugustus. A fresh oath of fidelity to him ube;* and meditating to mould the disas emperor was demanded from his sub- cordant codes of Roman and barbarian jects. His own discretion, however, pre- laws into.a uniform system. vented him from affecting those more The great qualities of Charlemagl e despotic prerogatives, which the imperial were indeed alloyed by the vices of a name might stil be supposed to convey. barbarian and a conqueror. Nine wives In analyzing the characters of he- whom he divorced with very little cere roes, it is hardly possible to separate mony, attest the license of his private His character. altogether the share of for- life, which his temperament and frugality tune from their own. The can hardly be said to redeem.t Unspaepoch made by Charlemagne in the his- ring of blood, though not constitutiontory of the world, the illustrious families ally cruel, and wholly indifferent to the which prided themselves in him as their means which his ambition prescribed, he progenitor, the very legions of romance, beheaded in one day four thousand Saxwhich are full of his fabulous exploits, ons; an act of atrocious butchery, after have cast a lustre around his head, and which his persecuting edicts, pronoun testify the greatness that has imbodied cing the pain of death against those who itself in his name. None indeed of Char- refused baptism, or even who ate flesh lemagne's wars can be compared with during Lent, seem scarcely worthy of the Saracenic victory of Charles Martel; notice. This union of barbarous ferocit3 but that was a contest for freedom, his with elevated views of national improve. for conquest; and fame is more partial ment, might suggest the parallel of Petel to successful aggression than to patriotic the Great. But the degrading habits and resistance. As a scholar, his acquisitions brute violence of the Muscovite place were probably little superior to those of him at an immense distance from the re his unrespected son; and in several points storer of the empire. of view the glory of Charlemagne might A strong sympathy for intellectual ex. be extenuated by an analytical dissec- cellence was the leading characteristic o' Jion.* But, rejecting a mode of judging Charlemagne, and this undoubtedly bias equally uncandid and fallacious, we shall ed him in the chief political error of his find that he possessed in every thing conduct, that of encouraging the power that grandeur of conception which dis- and pretensions of the hierarchy. But, tinguishes extraordinary minds. Like perhaps, his greatest eulogy is written in Alexander, he seemed born for universal the disgraces of succeeding times, and innovation: in a life restlessly active, the miseries of Europe. He stands alone we see him reforming the coinage, and like a beacon upon a waste, or a rock in establishing the legal divisions of money; the broad ocean. His sceptre was as the bow of Ulysses, which could not be St. Marc, t. i., p. 356, 372. A mosaic, still extant drawn by aqy weaker hand. In the dark in the Lateran palace, represents our Saviour giv- ages of European history, the reign of ing the keys to St. Peter with onle hand, and with Chalemane affords a
solitary resting the other a standard to a crowned prince, bearing the inscription, Constantine V. But Constantine place between two long periods of turbulence did not begin to reign till 780; and if this piece of license and ignominy, deriving the advancement of workmanship was made under Leo III., as the authors of L'Art de vérifier les Dates imagine, it * See an essay upon this project in the Memoirs could not be earlier than 795.-T. i., p. 262. Mura- of the Academy of Inscriptions, tome xviii. The tori, ad ann. 798. However this may be, there can rivers which were designed to form the links of he no question that a considerable share of juris- this junction were the Altmühle, the Regnitz, and diction and authority was practically exercised by the Maine; but their want of depth, and the spon. the popes during this period.-Vid. Murat., ad ann. giness of the soil, appear to present insuperable 789. ~ impediments to its completion. * Eginhard attests his ready eloquence, his per- t I apprehend that there is no foundation for the feet mastery of Latin, his knowledge of Greek, so charge of an incestuous passion for his daughterM far as to read it, his acquisitions in logic, grammar, which Voltaire calls une foiblesse. The erroi heletic, and astronomy. But the anonymous au- seems to have originated in a misinterpreted pas. hor of the life of Louis the Debonair attributes sage of Eginhard. These ladies, indeed, were fat of these accomplishments to that infortu- from being models of virtue, and their lives bronlgb prince scandal upon the roys palace.

Page 23 IART I.j L tANCI' 2 tags of contras, both from that of the pire should have been spee lily dissolved. preceding dynasty-, and of a posterity for a succession of such men as Charles Mar. whom he had formed an empire which tel, Pepin, and Charlemagne, could alone they were unworthy and unequal to main- have preserved its integrity; but the misLain.* fortunes of Louis and his people were [A. D. 814.] Pepin, the eldest son of immediately owing to the following erLouis the Charlemagne, died before him, rors of his conduct. Debonair. leaving a natural son, named [A. D. 817.] Soon after his accez Bernard.t Even if he had been legit- sion, Louis thought fit to asso- IIis misfor imate, the right of representation was ciate his eldest son Lothaire to tunes and not at all established during these ages; the empire, and to confer the errors indeed, the general prejudice seems to provinces of Bavaria and Aquitaine, a, have inclined against it. Bernard, there- subordinate kingdoms, upon the two fore, kept only the kingdom of Italy, younger, Louis and Pepin. The step which had been transferred to his father; was, in appearance, conformable to his while Louis, the younger son of Charle- father's policy, who had acted towards magne, inherited the empire. [A. D. himself in a similar manner. But such 817.] But, in a short time, Bernard, hav- measures are not subject to general rules, ing attempted a rebellion against his un- and exact a careful regard to characters cle, was sentenced to lose his eyes, which and circumstances. The principle, howoccasioned his death; a cruelty more ever, which regulated this division, was agreeable to the prevailing tone of man- learned from Charlemagne,* and could ners, than to the character of Louis, who alone, if strictly pursued, have given unibitterly reproached himself for the sever- ty and permanence to the empire. The ity he had been persuaded to use. elder brother was to preserve his superiUnder this prince, called by the Italians ority over the others, so that they should the Pious, and by the French the Debonair, neither make peace nor war, nor even or Good-natured,t the mighty structure give answer to ambassadors, without his of his father's power began rapidly to de- consent. Upon the death of either, no cay. I do not know that Louis deserves further partition was to be made; but so much contempt as he has undergone; whichever of his children might become but historians have in general more in- the popular choice, was to inherit the dulgence for splendid crimes, than for whole kingdom, under the same superiorthe weaknesses of virtue. There was no ity of the head of the family.t This comdefect in Louis's understanding or cour- pact was, from the beginning, disliked by age.; he was accomplished in martial ex- the
younger brothers; and an event, upon exercises, and in all the learning which an which Louis does not seem to have called education, excellent for that age, could culminated, soon disgusted his colleague Losupply. No one was ever more anxious thaire. Judith of Bavaria, the emperor's to reform the abuses of administration; second wife, an ambitious woman, bore and whoever compares his capitularies him a son, by name Charles, whom both with those of Charlemagne, will perceive parents were naturally anxious to place that, as a legislator, he was even superior on an equal footing with his brothers to his father. The fault lay entirely in But this could only be done at the exhis heart; and this fault was nothing but pense of Lothaire, who was ill-
disposed a temper too soft, and a conscience too to see his empire still further
dismembered.~ It is not wonderful that the em- ed for this child of a second bed. Louis passed his life in a struggle with three * The life of Charlemagne, by Gaillard, without
undutiful sons, who abused his paternal oeing made perhaps so interesting as it ought to undutiful sons, who abused hs pternal have been, presents an adequate view both of his kindness by constant rebellions. actions and character.-Schmidt, Hist. des Alle- These were rendered more formidable mands, tome ii., appears to me a superior writer. by the concurrence of a different class of t A contemporary author, Thegan, ap. Muratori, A. D. 810, asserts that Bernard was born of a concubine. I do not know why modern historians character. Vaissette attests the goodness of his mepresent it otherwise. government in Aquitaine, which he held as a subt These names, as a French writer observes, ordinate kingdom during his father's life. It exmeant the same thing. Pius had, even in good tended from the Loire to the Ebro, so that the trust Latin, the sanse of mitis meek, forbearing, or what was not contemptible.-Hist. de Languedoc, tome the French call debonair. — Synonymes de Rouband, i., p. 476. tome i., p. 257. Our English word debonair is * Charlemagne had made a prospective arrangehardly used in the same sense, if indeed it can be ment in 806, the conditions of which are nearly the called an English word; but I have not altered same as those of Louis; but the death cf his two Louis's appellation, by which he is so well known. elder sons, Charles and Pepirt, prevented its takiYn ~ Schmidt, Hist. des Allemands, tome ii., has effect.-Baluz. Capitularia, p. 441. done more iustice t'ian other historians to Louis's t Baluzii CaPitularia, tomne t, p 575.
Charlemagne had sunk into insignificance on his death, most part of France and Germany fell to the city of Laon. The rest of the Lothaire, Louis, and the share of Louis, and the kingdom had been seized by the powerful Charles the rest of the imperial dominions, nobles, who, with the nominal fidelity of Bald. with the title, to the eldest, the feudal system, maintained its practice. [A. D. 847.] This partition cal independence and rebellious spirit. was the result of a sanguinary, though These were times of great misery to short, contest; and it gave a fatal blow the people, and the worst, pertorthe empire of the Franks.' For the haps, that Europe has ever present of a treaty of Mersen, in 847, abrogated the known. Even under Charles' sovereignty that had been attached to magne, we have abundant proofs of the eldest brother and to the imperial calamities which the people suffered. name in former partitions; each held his The light which shone around him. was respective kingdom as an independent that of a consuming fire. The free proright.* prietors, who had once considered them. The subsequent partitions made among selves as only called upon to resist for. the children of these brothers eign invasion, were harassed with endthe Carlovin- are of too rapid succession to less expeditions, and dragged away to the giant family. be here related. In about Baltic Sea or the banks of the Drave. Charles the forty years, the empire was Many of them, as we learn from his caFat, emperor 381. King of nearly reunited under Charles pitularies, became ecclesiastics to avoid France 885. the Fat, son of Louis of Ger- military conscription.t But far worse Deposed857. -many; but his short and inglorious reign ended in his deposition. from 933 to 1032, when Rodolph III. bequeathed glorious reig endihideps his dominions to the Emperor Conrad II.-Art de From this time the possession of Italy vrfier les Dates, tome ri., p. 427-432. was contested among her native prin- * The family of Capet is generally admitted to ces; Germany fell at first to an illegit- possess the most ancient pedigree of any sovereign imate descendant of Charlemagne, and line in Europe. Its succession through males is Dismember- in a short time was entirely unequivocally deduced from Robert the Brave, Dismember- i shor timemade governo of Anjou in 854, and father of Eu ment of the lost by his family; two king- des, king of France, and of Robert, who was cho. empire. doms, afterward united, t were sen by a party in 922, though, as Charles the Simple was still acknowledged in some provinces, it is uncertain whether he ought to be counted in the * Baluzfi Capitularia, tome ii., p. 42. Velly, royal list. It is, moreover, highly probable that tome ii., p. 75. The expressions of this treaty are Robert the Brave was descended, equally through perhaps equivocal; but the subsequent conduct of males, from St. Arnoul, who died in 640, and con! the brothers and their family justifies the construc- sequently nearly allied to the Carlovingian fami, e tion of Velly, which I have followed. who derive their pedigree from the same head.t These kingdoms were denominated Provence See Preuves de la Genalogie de Hughes Capet, in and Transjurane Burgundy. The latter was very l'Art de vrfier les Dates, tome i., p. 566. small, comprising only part of Switzerland; but its f Capitularia, A. D. 805. Whoever possessed second sovereign, Rodolph II., acquired by treaty three mansi of allodial property, was ctirle'd RPln almost the wh)le of the %ormer; and the twd uni- for personal service, or at least t? fnlrh a sul rsti telt were c--lle; the kingdom of Arles. This lasted tute. Nigellus. author of A p-t;l a.iLif nf tsr.4is
wave, brought a The poorer landholders accordingly were dreadful reverse upon Germany. Their forced to bow their necks to the yoke; numbers were great, their ferocity undaunted by compulsion, or through tamed. They fought with light cavalry hope of being better protected, submitted and light armour, trusting to their show their independent patrimonies to the feu- ers of arrows, against which the swords dal tenure. and lances of the European armies could. But evils still more terrible than these not avail. The memory of Attila was pitiful. abuses were the lot of those na- renewed in the devastations of these tions who had been subject to Charle- savages, who, if they were not his commagne. They, indeed, may appear to patriots, resembled them both in their us little better than ferocious barbari- c Countenances and customs. [A. D. 934: but they were exposed to the as- 954.] All Italy, all Germany, and the saults of tribes, in comparison of whom south of France, felt this scourge; till they must be deemed humane and pol- Henry the Fowler and Otho the Great. Each frontier of the empire had drove them back by successive victor- d the attack of an enemy. The ries within their own limits, where, in a The Saracens. coasts of Italy were continu- short time, they learned peaceful arts, ally alarmed by the Saracens adopted the religion, and followed the of Africa, who possessed themselves of policy, of Christendom. Sicily and Sardinia, and became masters. If any enemies could be more def of the Mediterranean Sea.* [A. D. 846: than these Hungarians, The Nor -849.] Though the Greek dominions in they were the pirates of the mans. She south of Italy were chiefly exposed north, known commonly by the name to them, they twice insulted and ravaged of Normans. Sicily was first invaded in 827; but the city of Syra- only by maritime piracy, but continual invasions, the northern coasts both The Hun- by whom Germany was assailed of France and Germany. The causes of garians. ed. The Scclavonians, a widely- their sudden appearance are inexplicable, extended people, whose language is still or at least could only be sought in the spoken upon half the surface of Europe, ancient traditions of Scandinavia. For, had occupied the countries of Bohemia, undoubtedly, the coasts of France and Poland, and Panhonia, $ on the eastern England were as little protected from depredations under the Merovingian kings I., seems to implicate Charlemagne himself in some and those of the Heptarchy, as in subse. of the oppressions of his reign. It was the first care of the former to redress those who had been quent times. Yet only one instance of injured in his father's time.-Recueil des Histo- an attack from this side is recorded, and riens, tome vi. N. B. I quote by this title the that before the middle of the sixth cen- great collection of French historians, charters, and other documents illustrative of the middle ages, ducing this name from a more anciefit geography more commonly known by the name of its first but it saves a circumlocution still mci', awkward editor, the Benedictine Bouquet. But as several Austria would convey an imperfect idea, and th learned men of that order were successively con- Austrian dominions could not be named without a cerned in this work, not one half of which has yet tremendous anachronism. been published, it seemed better to follow its own * In 924 they overran Languedoc. Raynaondtitle-page. Pons, count of Toulouse, cut their army to pieces. * These African Saracens belonged to the Agla- but they had previously committed such ravages, bites, a dynasty that reigned at Tunis for the whole that the bishops of that province, writing soon atof the ninth century, after throwing off the yoke terward to Pope John X., assert that scarcely allny of the Abbassite Khalifs. They were overthrown eminent ecclesiastics, out of a great number, were themselves in the next age by the Fatimites. Si- left alive.-Hist. de Languedoc, tome ii., p. 60. city was first invaded in 878; but the city of Syra- They penetrated into Gnienne as late as 951. case was only reduced in 878. Flodoardic Chronwcon, in Recueil des Historieis, t Muratori, Annali d'Italia, ad ann. 906, et alibi. tome viii. In ItE ly they inspired such terror, that
These Saracens of Frassineto, supposed to be a mass was composed expressly deprecating this twixt Nice and Monaco, were extirpated by a calamity: Ab Ungarorum nos defendas jaculis' Count of Provence in 972. In 937 they ravaged the country as far as Benevento and Capua. —Muratori. Ann. d Italia

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26 EUROPE DURING THE MIDDLE AGES. LCHtP. L turty,* till the age-of Charlemagne In Denis redeemed its abbot from captivit) 787. the Danes, as we call those nلماجنlar six hundred and eighty-five pounds plunderers, uogan to infest England, of gold. All the chief abbeys were strip which lay most immediately open to ped about the same time, either by the their incursions. Soon afterward they enemy, or for contributions to the pulblhc ravaged the coasts of France. Charle- necessity. So empoveryed was the magne repulsed them by means of his kingdom, that in 860 Charles the Bald fleets; yet they pillaged a few places had great difficulty in collecting three during his reign. It is said that, perceiv-thousand pounds of silver, to subsidize a ing one day, from a port in the Mediter- body of Normans against their countryanean, some Norman vessels which had men. The kings of France, too feeble penetrated into that sea, he shed tears, to prevent or repel these invaders, had in anticipation of the miseries which recourse to the palliative of buying peace awaited his empire.t In Louis's reign at their hands, or rather precarious armistheir depredations upon the coasts were tices, to which revived thirst of plunder more incessant,t but they did not pene-soon put an end. At length Charles the trate into the inland country till that of Simple, in 918, ceded a great province Charles the Bald. The wars between which they had already partly occupied, that prince and his family, which exhaust- partly rendered desolate, and which has ed France of her noblest blood, the in- derived from them the name of Normandy subordination of the provincial govern- Ignominious as this appears, it proved no ors, even the instigation of some of impolitic step. Rollo, the Norman chief, Charles's enemies, laid all open to their with all his subjects, became Christians inroads. They adopted a uniform plan and Frenchmen; and the kingdom was of warfare both in France and England; at once relieved from a terrible enemy, sailing up navigable rivers in their vessels and strengthened by a race of hardy color small burden, and fortifying the islands onists.* which they occasionally found, they made The accession of Hugh Capet had not these intrenchments at once an asylum the immediate effect of resto- Accession of for their women and children, a reposito- ring the royal authority over Hugh Capet. ry for their plunder, and a place of retreat France. His own very extensive fief from superior force. After pillaging a was now indeed united to the crown; town, they retired to these strongholds but a few great vassals occupied the reor to-their ships; and it was not till 872 mainder of the kingdom. [A. D. 987.] that they ventured to keep possession Six of these obtained, at a sub- State of of Angers, which, however. they were sequent time, the exclusive ap- France -t compelled to evacuate. Sixteen years pellation of peers of France; the that time. afterward they laid siege to Paris, and Count of Flanders, whose fief stretched committed the most ruinous devastations from the Scheldt to the Somme; the on the neighbouring country. As these Count of Champagne; the Duke of NorNormans were unchecked by religious mandy, to whom Britany did homage; awe, the rich monasteries, which had the Duke of Burgundy, on whom the stood harmless amid the havoc of Chris- Count of Nivernois seems to have detian war, were overwhelmed in the storm. pended; the Duke of Aquitaine, whose Perhaps they may have endured some ir- territory, though less than the ancient recoverable losses of ancient learning; kingdom of that name, comprehended but their complaints are of monuments Poitou, Limousin, and most of Guienne, disfigured, bones of saints and kings dis- with the feudal superiority over the Anpersed, treasures carried away. St. goumois, and some other central districts; and, lastly, the Count of Toulouse, *Greg. Turon, 1. iii., c. 3. who possessed
Languedoc, with the small t. In the ninth century the Norman pirates not who possessed Languedoc, with the small anly ravaged the Balearic isles, and nearer coasts countries of Quercy and Rouergue, and of the Mediterranean, but even Greece.-DeMarca, the superiority over Auvergne.t Besides Marca Hispanica, p. 327. t Nigelluas, the poetical biographer of Louis, gives the following description of the Norman.s:- n exceedingly good sketch of the se iorman incursions, and of the political situation of Franco Nort quoque Francisco diculitur nomine maloi. during that period, may be found in two Memoirs Veloces, agiles, armigerique nimis; by M. Bonamy, Mem. de l'Acad. des Inscrip., tomes Ipse quidem populus lath pernotus habetur, xv. and xvii. These I have chiefly followed in the Lintre dapes quaurit, incolitatque mare. text. Pulcher ad est facie, vull uque statoque deco- t Auvergne changed its feudal superior twice. rus.-l. iv. It had been subject to the Duke of Aquitaine till He goes on to tell us that they worshippec Nep-. about the middle of the tenth century. The counts tune. Was it a similarity o name, or of attr rutes, of Toulouse then got possession of it; but early in that deceived him? the twelfth century the counts of Alnregne again
that the provinces south of the Loire contributed their assistance to the king in war, unless the did homage to Guienne. It is very difficult to follow the passage of Gulielmus Pictavtrnsis be low the history of these fiefs. considered as matter of fact, and not rather as a * The immediacy of vassals, in times so ancient, rhetorical flourish. He tells us that a vast army is open to much controversy. I have followed the was collected by Henry I. against the Duke of authority of those industrious Benedictines, the Normandy: Burgundiam, Arverniam, atque Vaseditors of l’Art de vérifier les Dates. coniam properare videres horribiles ferro; immo t The south of France not only took no part in vires tanti regni quantum in climata quatuor mundi Hugh's elevation, but long refused to pay him any patent cunctas.-Recueil des Historiens, t. xi., p. obedience, or rather to acknowledge his title, for 83. But we have the roll of the army which Louis obedience was wholly out of the question. The VI. led against the Emperor HEInry V., A. D. 1120, style of charters ran, instead of the king's name, in a national war: and it was entirely composed Deo r-gnante. rege expectante, or absente rege terreno. of troops from Champagne, the Tsle of France, the He forced Guienne to submit about 990. But in Orleannois, and other provinces,orth of the Loire Limousin they continued to acknowledge the sons - Velly, t. iii., p. 62. Yet this was a sort of convoy of Charles of Lorraine till 1009.-Vaissette, Hist. cation of the ban: R-x ut eusm tota Francia sequade Lang., t. ii., p. 120, 150- Before this, Toulouse tur, invitat. Even so late as the reign of Philip had refused to recognise Eudes and Raoul, two Augustus, in a list of the knights bannerets of kings of France, who were not of the Carolingian France, though those of Brittany, Flanders, Chain family, and even hesitated about Louis IV. and pagne, and Burgundy, besides the royal domains Lothaire, who had an hereditary right.-Idem. are enumerated, no mention is made of the prov These proofs of Hugh Capet's usurpation seem inces beyond the Loire.-Du Chesne, Script. Re not to be materially invalidated by a dissertation in rum Gallicarum, t. v., p. 262. the 50th volume of the Academy of Inscriptions, * In a subsequent chapter, I shall illustrate, at p. 553. It is not. of course, to be denied, that the much greater length, the circumstances of the northern parts of France acquiesced in his assump- French monarchy with respect to its feudal vassal tion of the royal title, if they did not give an express sals. It would be inconvenient to anticipate the consent to it. subject at present, which i? rather of a legal thai 1: have not found any authority for supposing narrative character.

Page 28 28 EUROPE DURING THE MIDDLE AGES LHp. matie rivalry of the French and Eng- France and Ch-a-mpagne),* and subse. lish monarchies. Hostilities had sever- quently, the county of Artois. But the. al times occurred between Philip I. and most important conquests of Philip were the two Williams; but the wars that be. obtained against the kings of England. gan under Louis VI. lasted, with no long Even Richard I., with all his prowess, interruption, for three centuries and a lost ground in struggling against an adhalf, and form, indeed, the most leading versary, not less active, and more polfeature of French history during the mid- itic than himself. [A. D. 1203.] But when die ages.* Of all the royal vassals, the John not only took possession Conquest io dukes of Normandy were the proudest of his brother's dominions, but Normandy and most powerful. Though they had confirmed his usurpation by the mur submitted to do homage, they could not der, as was very probably surmised, of forget that they came in originally by the heir, Philip, artfully taking advantage force, and that in real strength they were of the general indignation, summoned fully equal to their sovereign. Nor had him as his vassal to the court of his the conquest of England any tendency peers. John demanded a safe conduct. to diminish their pretensions.t Willingly, said Philip; let him come unLouis VII. ascended the throne with molested. And return I inquired the EngLouis VII. better prospects than his father. lish envoy. If the judgment of his peers [A. D. 1137.] He had married permit
him, replied the king. By all the Eienor, heiress of the great duchy of saints of France, he exclaimed, when Guienne. But this union, which prom- farther pressed, he shall not return unUsed an immense accession of strength less acquitted. The Bishop of Ely stili to the crown, was rendered unhappy remonstrated, that the Duke of Norby the levities of that princess. Re- mandy could not come without the King pudiated by Louis, who felt rather as a of England; nor would the barons of husband than a king, Eleanor immedi- that country permit their sovereign to ately married Henry II. of England; run the risk of death or imprisonment. who, already inheriting Normandy from What of that, my lord bishopS cried his mother, and Anjou from his father, Philip. It is well known that my vasbecame possessed of more than one half sal, the Duke of Normandy, acquired of France, and an overmatch for Louis, England by force. But, if a subject even if the great vassals of the crown obtains any accession of dignity, shall nad been always ready to maintain its his paramount lord therefore lose his supremacy. One might venture perhaps rights It to conjecture that the sceptre of France It may be doubted whether, in this would eventually have passed from the citing John before his court, the King of Capets to the Plantagenets, if the vexa- France did not stretch his feudal sovertious quarrel with Becket at one time, eignty beyond its acknowledged limits. and the successive rebellions fomented Arthur was certainly no immediate vasby Louis at a later period, had not em- sal of the crown for Britany; and though barrassed the great talents and ambitious he had done homage to Philip for Anjon spirit of Henry. and Maine, yet a subsequent treaty had [A. D. 1180.] But the scene quite chan- abrogated his investiture, and confirmed Philip Au- ged when Philip Aulastus, son his uncle in the possession of those provgustus. of Louis VII., came upon the inces.t But the vigour of Philip, and the stage. No prince comparable to him in meanness of his adversary, cast a shade ~systematic ambition and military enter- over all that might be novel or irregular prise had reigned in France since Char- il these proceedings. John, not appearlemagne. From his reign the French ing at his summons, was declared guilty monarchy dates the recovery of its lus- of felony, and his fiefs confiscated. The tre. He wrested from the Count of execution of this sentence was not inFlanders the Vermandois (that part of Picardy which borders on the Isle of * The original counts of Vermandois were de scended from Bernard, king of Italy, grandson of Charlemagne: but their fief passed by the dona * Velly, t. iii., p. 40. tion of Isabel, the last countess, to her husband, t The Norman historians maintain that their the Earl of Flanders, after her death in 1183. The dukes did not owe any service to the King of principal towns of the Vermandois are St. Quentin France, but only simple homage, or, as it was and Peronne.-Art de v6rifier ies Dates, t. ii. talled, per paragium.-Recueil des Historiens, p. 700. t. xi.. pref., p. 161. They certainly acted upon this + Mat. Paris, p. 238, edit. 1684. principle; and the manner in which they first S The illegality of Philip's proceedings is we. came into the country is no very consistent with argued by Mably, Observations sur l'Histoie da dependaneeo. France. 1. iii.. c. 6.
drawing near, when the upon the assassination of one of the inarms of Louis were diverted to differ- quisitors, in which Raymond had no consent, but scarcely less advantageous ob- cern, Innocent published a crusade both jects. against the count and his subjects, calling The country of ILanguedoc, subject to upon the King of France, and the nobilAffairs of the counts of Toulouse, had ity of that kingdom, to take up the cross, Languedoc. been unconnected, beyond any with all the indulgences usually held other part of France, with the kings out as allurements to religious warfare. of the house of Capet. Louis VII. hav- Though Philip would not interfere, a ing married his sister to the reigning prodigious number of knights undertook count, and travelled himself through the this enterprise, led partly by ecclesiascountry, began to exercise some de- tics, and partly by some of the firstgree of authority, chiefly in confirming barons in France. It was prosecuted the rights of ecclesiastical bodies, who with every atrocious barbarity which suwere vain, perhaps, of this additional perstition, the mother of crimes, could sanction to the privileges which they al- inspire. Languedoc, a country, for that ready possessed.* But the remoteness age, flourishing and civilized, was laid of their situation, with a difference in waste by these desolaters; her cities language and legal usages, still kept the burnt; her inhabitants swept away by people of this province apart from those fire and the sword. And this was to of the north of France, punish a fanaticism ten thousand times About the middle of the twelfth centu- more innocent than their own, and erry, certain religious opinions, which it is rors which, according to the worstiemnot easy, nor, for our present purpose, putations, left the laws of humanity and material to define, but, upon every suppo- the peace of social life unimpaired.* sition, exceedingly adverse to those of The crusaders were commanded by the church,t began to spread over Lan- Simon de Montfort, a man, like Crusade guedoc. Those who imbibed them have Cromwell, whose intrepidity, against the borne the name of Albigeois, though they hypocrisy, and ambition, mark- Albigeois. were in no degree peculiar to the district ed him for the hero of a holy war. of Albi. In despite of much preaching The energy of such a mind, at the and some persecution, these errors made head of an army of enthusiastic wara continual progress; till Innocent III., rors, may well account for successes in 1198, despatched commissaries, the which then appeared miraculous. But Montfort was cut off before he could * According to the Benedictine historians, Vich realize his ultimate object, an independand Vaissette, there is no trace of any act of sover- ent principality; and Raymond was able eignty exercised by the kings of France in Languedoc from 955, when Lothaire confirmed a char- to bequeath the inheritance of his anter of his predecessor Raoul, in favour of the Bish-cestors to his son. [A. D. 1222.] Rome, cp of Puy, till the reign of Louis VII.-(Hist. de however, was not yet appeased; upon Languedoc, tome ii.,p. 88.) Theyhavepublished, some new pretence, she raised up a however, an instrument of Louis VI. in favour of the same church, confirming those of former still more formidable enemy against the princes.- (Appendix, p. 473.) Neither the counts of younger Raymond. Louis VIII. sufferToulouse, nor any lord of the province, were present in a very numerous national assembly, at the * The Albigensian war commenced with the coronation of Philip I.-(Id., p. 200.)- I do not re- storming of Bezieres, and a massacre, wherein ollct to have ever met with the name of the Count 15,000 persons, or, according to some nairations. of Toulouse as a subscribing witness to the char- 60,000, were put to the sword. Not a living soul ters of the first Capetian kings in the Recueil des escaped, as witnesses assure us. It. was here that Historiens, where many are published: though a Cisterian monk, who led on the crusaders, an that of the Duke of Guienne sometimes occurs. swered the inquiry, how the Catholics were to be t For the real tenets of the Languedocian secta- distinguished from heretics. Kill them all! God nes, I refer to the last chapter of the present work, will know his own. Besides Vaissette, see Sismoi where the subject will be t Iken up again. di, Litterature du Midi, t. i., p. 201.
0 EUROPE DURING THE MIDDLE AGES. [CgaP. ed himself to be diverted from the con- that aid from England, which, if; iz quest of Guienne, to take the cross grandfather or son had then reigned, against the supposed patron of heresy, might probably have lengthened these. After a short and successful war, Louis, civil wars. dying prematurely, left the crown of But Louis IX. had methods of preserve France to a son only twelve years old. ing his ascendency very dif- His characBut the Count of Toulouse was still ferent from military prowess. ter. Itsexpursed, till, hopeless of safety in so That excellent-prince was per- cellences unequal a struggle, he concluded a trea- haps the most eminent pattern of any upon very hard terms. [A. D. 1229.] swerving probity and Christian strictBy this he ceded the greater part of ness of conscience, that ever held the Languedoc; and giving his daughter in sceptre in any country. There is a pemarriage to Alphonso, brother of Louis culiar beauty in the reign of St. Louis, IX., confirmed to them, and to the king because it shows the inestimable ben-. n failure of their descendants, the rever- ef which a virtuous king may confer sion of the rest, in exclusion of any other on his people, without possessing any children whom he might have. Thus fell distinguished genius. For nearly half a the ancient house of Toulouse, through century that he governed France, there one of those strange combinations of for- is not the smallest want of moderation which thwart the natural course of or disinterestedness in his actions; and human prosperity, and disappoint the yet he raised the influence of the monplans of wise policy and beneficent gov- archy to a much higher point than the ernment.* most ambitious of his predecessors. [A. D. 1226.] The rapid progress of D. 1259.] To the surprise of his own and Louis IX. royal power under Philip Au- later times, he restored great part of his gustus and his son had scarce- conquests to Henry III., whom he might ly given the great vassals time to re- naturally hope to have expelled. from fleet upon the change which it produ- France. It would indeed have been a ced in their situation. The crown, with tedious work to conquer Guienne, which some might singly have measured was full of strong places, and the subjutheir forces, was now an equipoise to gation of such a province might have their united weight. And such a union alarmed the other vassals of his crown. was hard to be accomplished among men But it is the privilege only of virtuous not always very sagacious in policy, and minds to perceive that wisdom resides in divided by separate interests and animos- moderate counsels; no sagacity ever ities. They were not, however, insensi- taught a selfish and ambitious sovereign ble to the crisis of their feudal liberties; to forego the sweetness of immediate and the minority of Louis IX., guided power. An ordinary king, in the circumlo- by his mother, the regent Blanche stances of the French monarchy, would of Castile, seemed to offer a favourable have fomented, or, at least, have rejoiced opportunity for recovering their former in the dissensions which broke out among situation. Some of the most considera- the principal vassals; Louis constantly ble barons, the counts of Brittany, Cham- employed himself to reconcile them. In pagne, and la Marche, had, during the this, too, his benevolence had all the ef-. time of Louis VIII., shown an unwilling- fects of far-sighted policy. It had been ness to push the Count of Toulouse too the practice of his three last predecessors far, if they did not even keep up a se- to interpose their mediation in behalf of cret understanding with him. They now the less powerful classes; the clergy, the broke out into open rebellion; but the inferior nobility, and the inhabitants of address of Blanche detached some from chartered towns. Thus the supremacy the league, and her firmness subdued the of the crown became a familiar idea; but rest. For the first fifteen years of Louis's the perfect integrity of St. Louis wore reign, the struggle was frequently renew- away all distrust, and accustomed even ed; till repeated humiliations convinced the most jealous feudatories to look upon the refractory that the throne was no him as their judge and legislator. And longer to be shaken. A prince so feeble as the royal authority was hitherto shown as Henry III. was unable to afford them only in its most
amiable prerogatives, the dispensation of favour, and the re+[he best account of this crusade against the dress of wrong, few were watchful enough Albigeois is to be found in the thid volume of to remark the transition of the French Vaissatte's History of Languedoc: the Benedictine constitution from a feudal league to an spirit of mildness and veracity tolerably counterbalancing the prejudices of orthodoxy. Velly, absolute monarchy. ITist, de France, t. iii., has abridged this work. It was perhaps fortunate %or the dis

Page 31 PART I. FRANCE. a] play of St Louis's virtues, that the arbitrary conduct, and sufficiently derog throne had already been strengthened atory to Louis.* by the less innocent exertions of Philip But the principal weakness of this king, Augustus and Louis VIII. A century which almost effaced all the good effects earlier, his mild and scrupulous character, of his virtues, was superstition. It would unsustained by great actual power, might be idle to sneer at those habits of abstenot have inspired sufficient awe. But the miousness and mortification which were crown was now grown so formidable, and part of the religion of his age; and, at Louis was so eminent for his firmness the worst, were only injurious to his own and bravery, qualities, without which comfort. But he had other prejudices, every other virtue would have been in- which, though they may be forgiven, effectual, that no one thought it safe to must never be defended. No one was run wantonly into rebellion, while his ever more impressed than St. Louis with disinterested administration gave no one a belief in the duty of exterminating all a pretext for it. Hence the latter part enemies to his own faith. With these, of his reign was altogether tranquil, and he thought no layman ought to risk hinemployed in watching over the public self in the perilous ways of reasoning, peace and the security of travellers; but to make answer with his sword as administering justice personally or by stoutly as a strong arm and a fiery zeal the best counsellors; and compiling that could carry that argument.t Though, code of feudal customs, called the Estab- fortunately for his fame, the perseculations of St. Louis, which is the first tjon against the Albigeois, which had monument of legislation after the acces- been the disgrace of his father's short sion, of the house of Capet. Not satisfi- reign, was at an end before he reached with the justice of his own conduct, ed manhood, he suffered a hypocritical Louis aimed at that act of virtue which monk to establish a tribunal at Paris for is rarely practised by private men, and the suppression of heresy, where many had perhaps no example among kings, innocent persons suffered death. restitution. Commissaries were appoint- But no events in Louis's life were more ed to inquire what possessions had memorable than his two crusades, which been unjustly annexed to the royal do- lead us to look back on the nature and main during the two last reigns. These circumstances of that most singular phewere restored to the proprietors, or, nomenon in European history Though where length of time had made it diffic- the crusades involved all the western cult to ascertain the claimant, their value nations of Europe, without belonging was distributed among the poor.* peculiarly to any one, yet as France was It has been hinted already that all this more distinguished than the rest in most and defects., excellence of heart in Lou- of those enterprises, I shall introduce the is IX. was not attended with subject as a sort of digression from the that strength of understanding which is main course of French history. necessary, we must allow, to complete Even before the violation of Pales.. the usefulness of a sovereign. During tine by the Saracen arms, it had been his minority, Blanche of Castile, his mo- a prevailing custom among the The cruther, had filled the office of regent with Christians of Europe to visit sadles. great courage and firmness. But, after he those scenes rendered interesting by grew up to manhood, her influence seems religion, partly through delight in the to have passed the limit which gratitude effects of local association, partly ill and piety would have assigned to it; and, obedience to the prejudices or comas her temper was not very meek or
popular exposed the king to some degree of * Collection des Memoires, tome ii., p. 241.
contempt. He submitted even to be re-
Aussi vous dis je, me dist le roy, que nul, si strained
duc de la foy chr6tienne, defendre la chose, of Provence, a princess of great virtue I
from the society of his wife n'est grant clerc, et theologien parfait, ne doit dis My argaret,
untputer aux Juifs; mais doit l'homme lay, quant il olt Margaret, daughter of Raymond,
count inesdire de la foy chr6tienne, defendre la chose, of Provence, a princess of great virtue I
non pas seulement des paroles, mais h bone esp6e and conjugal affection. Joinville relates a
tranchant, et en firapper les m6disans et mescreans curious story, characteristic of Blanche's a
travers le corps, tant qu'elle y pourra entrer. — Joinville, in Collection des Mdmoires, tome i., p. 23. This passage, which shows a tolerable degree * Velty, tome v., p. 150. This historian has
ver3 of bigotry, did not require to be strained farther properly dwelt for almost a volume on St.
Louis', still by Mosheihm, vol. iii., p. 273 (edit. 1803). 1 internal administration; it is ond of the
most valu- may observe by the way, that this writer, who able parts of his work. Joinville is a
real witness, sees nothing in Louis IX. except his intolerance, on whom, when we listen, it is
impossible'not to ought not to have charged him with issuing air rely.-Collection des M6moires
140-156. had not assumed the government.

Page 32 S2 E UROPE DURING THE MIDDLE AGES. mands of supers.ition. These pilgrim-
I mont, the deliverance o. Jerusalem was ages became more frequent in later times, eloquently
recommended and exultingly in spite, perhaps in consequence, of the undertaken. It is the w.l
of God! was danger and hardships which attended the tumultuous cry that broke from the them.
For a while the Mahometan heart and lips of the assembly at Clerpossessors of Jerusalem
permitted or mont; and these words afford at once even encouraged a devotion which they the
most obvious and most certain exfound lucrative; but this was interrupted planation of the
leading principle of the whenever the ferocious insolence with crusades. Later writers,
incapable of which they regarded all infidels got the sympathizing with the blind fervour of
better of their rapacity. During the zeal, or anxious to find a pretext for its eleventh century,
when, from increasing effect somewhat more congenial to the superstition, and some particular
fancies, spirit of our times, have sought political the pilgrims were more numerous than reasons
for that which resulted only from ever, a change took place in the govern- predominant
affections. No suggestion ment of Palestine, which was overrun of these will, I believe, be
found in conby the Turkish hordes from the north. temporary historians. To rescue the These
barbarians treated the visitors of Greek empire from its imminent peril, Jerusalem with still
greater contumely, and thus to secure Christendom from mingling with their Mahometan
bigotry enemies who professed towards it eter~ consciousness of strength and cour- nal
hostility, might have been a legitiage, and a scorn of the Christians, whom mate and
magnanimous ground of interfejthey knew only by the debased natives rence; but it operated
scarce~ or not a' of Greece and Syria, or by these humble all, upon those who took the cross.
Inand defenceless palmers. When such deed, it argues strange ignorance of the insults became
known throughout Eu- eleventh century to ascribe such refineropy, they excited a keen
sensation of ments of later times even to the princes resentment among nations equally cour- of
that age. The Turks were no doubt ageous and devout; which, though want- repelled from the
neighborhood of Coning as yet any definite means of satisfy- statinople by the crusaders; but
this ing itself, was ripe for whatever favou~ was a collateral. effect of their enterprise. ble
conjuncture might arise. Nor had they any disposition to serve the rTwenty years before the
first crusade, interest of the Greeks, whom they soon Gregory VII. had projected the scheme
came to hate, and not entirely without of imbodying Europe in arms against provocation, with
almost as much aniAsia; a scheme worthy of his daring mosity as the Moslems themselves.
mind, and which, perhaps, was never for- Every means was used to excite an epgotten by
Urban II., who in every thing idemical phrensy; the remission of penloved to imitate his great
predecessor.* ance, the dispensation from those pracThis design of Gregory was founded upon
tices of self-denial which superstition im. the supplication of the Greek Emperor posed or
suspended at pleasure, the abMichael, which was renewed by Alexius solution of all sins, and
the assurance of Comnenus to Urban with increased im- eternal felicity. None doubted that
such portunity. The Turks had now taken as perished in the war received immediNice, and
threatened, from the opposite ately the reward of martyrdom.* False shore, the very walls of
Constantinople. miracles and fanatical prophecies, which Every one knows whose hand held a
were never so frequent, wrought up the torch to that inflammable mass of enthu- enthusiasm to
a still higher pitch. And siasm that pervaded Europe; the hermit these devotional feelings,
which are usuof Picardy, who, roused by witnessed ally thwarted and balanced by other pas.
wrongs and imagined visions, journeyed sions, fell in with e- ery motive that could from land
to land, the apostle of a holy influence the men of that time; with cuwar. The preaching of Peter
was pow- riosity, restlessness, the love of license, erfully seconded by Urban. [A. D. 1095.]
thirst for war, emulation, ambition. Of In the councils of Piacenza and of Cler- the princes who
assumed the cross, some, probably, from the beginning speculated * Gregory addressed, in
1074, a sort of encvclic upon forming independent establishments terter to all who would
defend the Christian faith, in the East. In later periods, the tempo enforcing upon them the duty
of taking up arms against the Saracens, who had almost come up to' Nam qui pro Christi
nomine decertantes, Ji khe walls of Constantinople. No mention of Pal- acie fidelium et
Christi;anf militia dicuntur occumn estine is made in this letter.-Lab6, Concilia, t. x., here,
non solum infamiae, verumrn et peccaminum S p. 44. St. Marc, Abr6g6 Chron. de lHist. de
delictornm omnimodam credimus ubolitionem or"Italie, t iii., p 614. mereri. —Will. Tyr., 1.
x., c. 20.

Page 33 ART 1.] FItAN' E. id ral benefits of undertaking a crusade un- Nice returned to
gladden their friends in doubtedly blended themselves with less Europe with. the story of their
triumph selfish considerations. Men resorted to at Jerusalem. Besieging alternately and
Palestine as in modern times they have besieged in Antioch, they drained to the done to the
colonies, in order to redeem lees the cup of misery: three hundred their time or repair their
fortune. Thus thousand sat down before that place; Gui de Lusignan, after flying from France
next year there remained but a sixth part for murder, was ultimately raised to the to pursue the
enterprise. But their lossthorne of Jerusalem. To the more vul- es were least in the field of
battle; the gar class were held out inducements intrinsic superiority of European prowwhich,
though absorbed in the overruling ess was constantly displayed; the angel fanaticism of the first
crusade, might be of Asia, to apply the bold language of exceedingly efficacious when it began
our poet, high and unmatchable, where rather to flag. During the time that a her rival was not,
became a fear; and the crusader bore the cross, he was free from Christian lances bore all
before them in suit for his debts, and the interest of them their shock from Nice to Antioch.
Edeswas entirely abolished; he was exempt- sa and Jerusalem. [A. D. 1099.] It was ed, in some
instances at least, from tax- here, where their triumph was consumes, and placed under the
protection of the mated, that it was stained with the most church, so that he could not be im-
 atrocious massacre; not limited to the pleaded in any civil court, except on hour of resistance,
but renewed delibercriminal charges, or disputes relating to ately even after that famous
penitential land.* procession to the holy sepulchre, which None of the sovereigns of Europe
took might have calmed their ferocious dispoa part in the first crusade; but many of sitions, if,
through the misguided enthuthier chief vassals, great part of the in- siasm of the enterprise, it
had not been ferior nobility, and a countless multitude rather calculated to excite them.* of the common people. The priests left The conquests obtained at such a price their parishes, and the monks their cells; by the first crusade were chiefly comand, though the peasantry were then in prised in the maritime parts Latin con general bound to the soil, we find no of Syria. Except the state of questsin check given to their emigration for this Edessa beyond the Euphrates,t Syria. cause. Numbers of women and children which, in its best days, extended over swelled the crowd; it appeared a sort of great part of Mesopotamia, thle Latin sacrilege to repel any one from a work possessions never reached more than which was considered as the manifest a few leagues from the sea. Within design of Providence. But if it were the barrier of Mount Libanus, their arms lawful to interpret the will of Providence might be feared, but their power was by events, few undertakings have been never established; and the prophet was more branded by its disapprobation than still invoked in the mosques of Aleppo the crusades. So many crimes and so and Damascus. The principality of Anmuch misery have seldom been accumu- tioch to the north, the kingdom of Jerulated in so short a space as in the three salem, with its feudal dependances of years of the first expedition. We should Tripoli and Tiberias, to the south, were be warranted-by contemporary writers in assigned, the one to Boemond, a brother stating the loss of the Christians alone of Robert Guiscard, count of Apulia, the during this period at nearly a million; other to Godfrey of Boulogne,T whose ex. but, at the least computation, it must have The work of Mailly, entitled L'Esprit de exceeded half that number.t To engage Croisades, is deserving of considerable praise for in the crusade, and to perish in it, were its diligence and impartiality. It carries the his. almost synonymous. Few of those myr- Tony, however, no farther than the first expedition iads who were mustered in the plains of Gibbon's two chapters on the crusades, though not without inaccuracies, are a brilliant portion of his great work. The original writers are chiefly colOtho of Frisingen, c. 35, has inserted a bull lected in two folio volumes, entitled Gesta Dei per f Eugenius III., in 1146, containing some of these Francos. Hanover, 1611. privileges. Others are granted by Philip Augustus t Edessa was a little Christian principality, aurm 1214.-Ordonnances des Rois de France, tome i. rounded by, and tributary to, the Turks. The inSee also Du Cange, voc. Crucis Privilegia. habitants invited Baldwin, on his progress in thie t William of Tyre says, that at the review be- first crusade, and he made no great scruple of sup.ore Nice there were found 600,000 of both sexes, planting, the reigning prince, who indeed is repre exclusive of 100,000 cavalry armed in mail.-L. ii., sented as a tyrant and usurpe'. Esprit des Croi c. 23. But Fulc of Chartres reckons the same sades, t. iv., p. 62. De Guignes, Hist. des Huns number, besides women, children, and priests. An t. ii., pp. 135-162. tmense slaughter had previously been made in $ Godfiey never took the title of King of Jern'aiagary of the rabble under Gaultier Sans-.voir. salem, not choksing, he said, to wear a crown o
of Christendom, by conducted. This was a little before with no respite and few resources. [A. D. the irruption of Saladin. In the last Second crus-1147.] A second crusade, in fatal battle Lusignan seems to have had sad. which the Emperor Conrad III. somewhat a larger force. 4 Nothing can and- Louis VII. of France were engaged, more strikingly evince the ascendancy each with seventy thousand cavalry, of Europe, than the resistance of these sad scarce any diversion; and that Frankish acquisitions in Syria during vast army wasted away in the passage nearly two hundred years. Several of Qf Natolia. t their victories over the Moslems were The decline of the Christian establish- obtained against such disparity of numments in the East is ascribed by William bers, that they may be compared with D)ecine of of Tyre to the extreme vi- whatever is most illustrious in history the Latin ciouness of their. manners, to or romance. Q These perhaps were less principalities the adoption of European arms due to the descendants of the first crusain the East. by the orientals, and to the ders, settled in the Holy Land, lj than to union of the Mahometan principalities those volunteers from Europe, whom under a single chief. Q Without denying martial ardour and religious zeal impel the operation of these causes, and espe- led to the service. It was the penance cially the last, it is easy to perceive one commonly imposed upon men of rank more radical than all the three, the ill- for the most heinous crimes, to serve a adequacy of their means of self-defence. number of years under the banner of the The kingdom of Jerusalem was guarded cross. Thus a perpetual supply of warriors was poured in from Europe; and in gold in that city where his Saviour had been i crowned with thorns. Baldwin, Godfrey's brother, there were ten pictures in stained glass, reprewho succeeded him within two years, entitles senting sieges and battles in the first crusade. nimself, Rex Hierusalem, Latinorum primus.- These were made by order of Suger, the minister Will. Tyr., l. ii., c. 12. of Louis VI., and consequently in the early part * The heroes of the crusade are just like those of the twelfth century. In many of them the of romance. Godfrey is not only the wisest, but Turks are painted in coats of mail, sometimes the strongest man in the army. Perhaps Tasso even in a plated cuiras. In others they are quite has lost some part of this physical superiority for unarmed, and in flowing robes.-Montfacon, Mon the sake of contrasting him with the imaginary u- men de la Monarchie Franqaise, t. i., pl. 50. Rinaldo. He cleaves a Turk in twain from the * Gibbon, c. 98, note 125. Jerusalem itself was shoulder to the haunch. A noble Arab, after the very thinly inhabited. For all the heathens, says taking of Jerusalem, requests him to try his sword William of Tyre, had perished in the massacre upon a camel, when Godfrey with ease cuts off when the city was taken; or, if any escaped, they the head. The Arab, suspecting there might be were not allowed to return: no heathen being something peculiar in the blade, desires him to do thought fit to dwell in the holy city. Baldwin in the same with his sword; and the hero obliges vited some Arabian Christians to settle in it. him by demolishing a second camel.-Will. Tyr., l. t L. xxii., c. 27. ix., c. 22. T A primo introitu Latinorum in terram sanc t Vertot puts the destruction in the second cru- tam, says John de Vitry, nostri tot milites In uno sade at two hundred thousand men.-Hist. de prcelio congregare nequiverunt. Erant enim mille Malthe, p. 129: and from William of Tyre's lan- ducenti milites or weapons by the Saracent in imitation of -Du Cange; Gloss. v., Pullani; and 27. I may add
to this a testimony of another kind Observations sur Joinville, in Collection des MA not
less, lecuisive In the Abbey of St. Denis, mloires relatifs a'histoire de Fm tree, t ii., D.. 193

Page 35 ART I; FRANCE 3~, his sense, the crusades may be said to princes of Syria were
unable to defend have lasted without intermission during it, and their possessions were
gradually the whole period of the Latin settle- reduced to the maritime to Tns. Acre, mients. Of
these defenders, the most re- the last of these, was finally taken by nowned were the military
orders of the storm in 1291; and its ruin closes the Knights of the Temple and of the Hos-
history of the Latin dominion in Syria, pital of St. John,* instituted, the one in which Europe
had already ceased to 1124, the other in 1118. for the sole pur- protect. pose of protecting the
Holy Land. The The two last crusades were underTeutonic order, established in 1190, when
taken by St. Louis. [A. D. Crusades of the kingdom of Jerusalem was falling, 1248.] In the first
he was at- St. Louis. soon diverted its schemes of holy war- tended by, 2800 knights
and. 50,000 or fare to a very different quarter of the dinary troops.* He landed at Damiet world.
Lairge estates, as well in Pales- ta in Egypt, for that country was now tine as throughout
Europe, enriched the devided the key of the Holy Land, and two former institutions; but the
pride, easily made himself master of the city. rapaciousness, and misconduct of both, But,
advancing up the country, he found especially of the Templars, seem to have natural
impediments, as well as enemies, balanced the advantages derived from in his way; the Turks
assailed him with their valour.t [A. D. 1187]. At length, Greek fire, an instrument of warfare
altitude the famous Saladin, usurping the throne most as surprising and terrible as gun of a feeble
dynasty which had reigned in powder; he lost his brother, the Count or Egypt, broke in upon
the Christians of Artois, with many knights, at Massoura, Jerusalem; the king and the kingdom
near Cairo; and began too late a retreat fell into his hands; nothing remained but towards
Damietta. Such calamities now i few strong towns upon the, seacoast. fell upon this devoted
army, as have [A. D. 1189.] These misfortunes ross scarce ever been surpassed; hunger and
rhd cru- ed once more the princes of want of every kind, aggrivated by an unAade. Europe,
and the third crusade sparing pestilence. At length the king was undertaken by three of her
sover- was made prisoner, and very few of the eigns, the greatest in personal estima- army
escaped the Turkish cimeter in tion as well as dignity; by the Empe- battle or in captivity. Four
hundred ror Frederick Barbarossa, Philip Au- thousand livres were paid as a ransom gustus of
France, and our own Richard for Louis. He returned to France, and Cdeur de Lion. But this,
like the pre- passed near twenty years in the exercise ceding enterprise, failed of permanent ef-
of those virtues which are his best title feet; and those feats of romantic prow- to canonization.
But the fatal illusions ess, which made the name of Richard of superstition were still always at
his so famous both in Europe and Asia,‘ heart; nor did it fail to be painfully ob.. proved only
the total inefficacy of all served by his subjects, that he still kept exertions in an attempt so
iipractica- the cross upon his garment. [A. D. 1270.] ble. Palestine was never the scene of His
last expedition was originally designanother crusade. [A. D. 1204.] One ed for Jerusalem. But he
had received great armament was diverted to the siege some intimation that the King of
Tunis of Constantinople; and another [A. D. was desirous of embracing Christianity. 1218]
wasted in fruitless attempts upon That these intentions might be carried Egypt. The Emperor
Frederick II. after- into effect, he sailed out of his way to ward procured the restoration of
Jerusa- the coast of Africa, and laid siege to that lem by the Saracens; but the Christian city. A
fever here put an end to his life, sacrificed to that ruling passion which * The St. John of
Jerusalem was neither the never would have forsaken him. But he Evangelist, nor yet the
Baptist, but a certain Cyp- had survived the spirit of the crusades riot, surnamed the Charitable,
who had been pa- the disastrous expedition to Egypt h triarch of Alexandria. disastrous
expedition to Egypt. See a curious instance of the misconduct and cured his subjects, though not himself, of insolence of the Templars, in William of Tyre, I. their folly; t his son, after making terms lx., c. 32. The Templars possessed nine thousand manors, and the knights of St. John nineteen thousand, in Europe. The latter were almost as * The Arabian writers give him 9500 knight, much reproached as the Templars for their pride and 130,000 common soldiers. But I greatly pre. and avarice.-L. xviii., c. 6. fer the authority of Joinville, who has twice men $ When a Turk's horse started at a bush, he tioned the number of knights in the text. On Gib would chide him, Joinville says, with, Cuides tu bon's authority, I put the main body at 50,000; bui gu'y soit le roi Richard? Women kept their chil - if Joinville has stated this, I have missed the Das dren quiet with the threat of bringing Richard to sage. Their vessels amounted to 1800. them. 't he refusal of Joinville to accompany the knj *j s-ca

*gregious in the sovereigns of France into contact capacity of Edmund, brother of Edward with new neighbours, the kings of Aragon I., contrived to obtain, and to keep for arnd the powers of Italy. [A. D. 1285.] several years, the possession of this great The first great and lasting foreign war province. [A. D. 1292.] A quarrel among which they carried on was that of Phil- some French and English sailors having ip III. and Philip IV. against the former provoked retaliation, till a sort of pirati kingdom, excited by the insurrection of cal war commenced between the two Sicily. Though effecting no change in countries, Edward, as Duke of Guivonne, the boundaries of their dominions, this was summoned into the king's court to war may be deemed a sort of epoch in answer for the trespasses of his subjects. the history of France and Spain, as well Upon this he despatched his brother to as in that of Italy, to which it more pe settle terms of reconciliation, with fuller cuiliary belongs. powers th an should have been intrusted There still remained five great and to so credulous a negotiator. Philip so ancient fiefs of the French crown; outwitted this prince, through a fictitious Philip the Champagne, Guivonne, Flanders, treaty, as to procure from him the surrenFair. Burgundy, and Britany. [A. D. der of all the fortresses in Guivonne He 1285.] But Philip IV., usually called the then threw off the mask, and
after again Fair, married the heiress of the first, a little before his father's death; and, al-
poem by Rutubleu, a writer of St. Louis's age, in a dialogue between a crusader and a nonin
this second crusade is very memorable, and gives crusader, wherein, though he gives the last
word us an insight into the bad effects of both expedi- to the former, it is plain that he designed
oppositions. Le Roy de France et le Roy de Na-rarre site scale to preponderate.-T. ii., p. 163.
neat
me pressoient fort de me croiser, et entreprendre * Philip was highly offended that instruments
le chemin du pelerinage de la croix. Mais je leur made in Guienne should be dated by the year
of respondi, que tandis que j'avoie est6 outre-mer au Edward's reign, and not of his own. This
almost service de Dieu, que les gens et officers du Roy de sole badge of sovereignty had been
preserved by France, avoient. trop greve6 et foull6 mes subjets, the kings of France during all
the feudal ages. A iant qu'ils en estoient apovris; tellement que james struggle took place about
it, which is recorded in ii ne seroit, que eulx et moy ne nous en sortissons. a curious letter from
Johlr de Greilli to Edward. Et veoie clerement, si je me mectoie au pelerinage The French court
at last consented to let dates be de la croix, que ce seroit la totale destruction de thus
expressed:-Actum fuit, regnante P. rege mesdz povres subjets. Depuis ouy-je dire a plu.
Franciae, E. rege AngliTe tenente ducatum Aquita. sieurs, que ceux qui luy conseillerent
l'enterprinse niae. Several precedents were shown by the Eng de la croix, firent un trez grand
mal, et peche- lish, where the counts of Toulouse had used the rent mortellement. Car tandis
qu'il fust au roy- form, Regnante A. corr ite Tolosae. —Rymer, t. ii., aume de France, tout son
royaume vivoit en paix, p. 1083. As this is the first time that I quote Ry at regnoit justice. Et
incontinent qu'il en fust mer, it may be proper to observe that my referen ors, tout commenqa h
declider, et a empirer.-T. ii., ces are to the London edition, the paging of which.158. is
preserved on the rr argin (if that printed at the In the Filt3/xx of Le Grand d'Aussy, we have
Hague.

Page 37 Ai RT I. FRANCE. summoning Edward to appear, pronoun- the city, with the title of
Imperial Vicar ced the confiscation of his fief.* This France seems to have had no concerne
business is the greatest blemish in the with it, till St. Louis was called in as a political character
of Edward. But his mediator in disputes between the chapter eagerness about the acquisition of
Scot- and the city, during a vacancy of the see, land rendered him less sensible to the and took
the exercise of jurisdiction upon danger of a possession in many respects himself for the time.
Philip III. having more valuable; and the spirit of resist- been chosen arbitrator in similar
circumiance among the English nobility, which stances, insisted, before he would restore his
arbitrary measures had provoked: the jurisdiction, upon aL oath of fealty broke out very
opportunely for Philip [A. from the new archbishop. This oath, Dt. 13031, to thwart every
effort for the which could be demanded, it seems, iby recovery of Guienne by arms. But after
no right but that of force, continued to rbe repeated suspensions of hostilities, a trea- taken, till,
in 1310, an archbishop resist.ty was finally concluded, by which Phil- ing what he had thought
a usurpation, the ip restored the province, on the agree- city was besieged by Philip IV., and the
ment of a marriage between his daughter inhabitants not being unwilling to submil Isabel and
the heir of England. was finally united to the French crown' To this restitution he was chiefly
in- Philip the Fair left three sons, w]it duced by the ill success that attended his successively
reigned in Yrance; Louis 1 arms in Flanders, another of the great Louis, surnamed Hutin, Philip
the 1314. fiefs which this ambitious monarch had Long, and Charles the Fair; with u
endeavoured to confiscate. We have not daughter, Isabel, married to Edward It perhaps as clear
evidence of the original of England. Louis, the eldest, survive*, injustice of his proceedings
towards the his father little more than a year, lea>* Count of Flanders as in the case of Gui- ing
one daughter, and his queen prep enne; but he certainly twice detained his nant. The
circumstances that ensue(' person, once after drawing him on some require to be accurately sta-
geetio pretext to his court, and again, in viola- ted. Louis had possessed, in salique-l iV t ion of
the faith pledged by his generals. right of his mother, the king- Phili1 V. The Flemings made,
however, so vigor- dom of Navarre, with the counous a reslstance, that Philip was unable to
ties of Champagne and Brie. Upon hi reduce that small country [A. D. 1302]; death, Philip, his
next brother, assumed and in one famous battle at Courtray, they the regency both of France
and Na discomfited a powerful army with that varre; and, not long afterward, entered utter loss
and ignominy to which the un- into a treaty with Eudes, duke of Burdisciplined impetuosity of
the French gundy, uncle of the princess Jane, Louis's nobles was pre-enlinently exposed.t
daughter, by which her eventful rights to Two other acquisitions of Philip the the succession
were to be regulated. It Fair deserve notice; that of the counties was agreed that, in case the
queen should of Angouleme and la Marche, upon a sen- be delivered of a daughter, these two
tence of forfeiture (and, as it seems, a princesses, or the survivor of them, very harsh one)
passed against the reign- should take the grandmother's inheriting count; and that of the city of
Lyons ance, Navarre and Champagne, on reand its adjacent territory, which had not leasing'all
claim to the throne of France. even feudally been subject to the crown But this was not to take
place till their of France for more than three hundred age of consent, when, if they should
reyears. Lyons was the dowry of Matilda, fuse to make such renunciation, their daughter of
Louis IV., on her marriage claim was to remain,, and right to be done with Conrad, king of
Burgundy, and was to them therein; but, in return, the release bequeathed with the rest of that
kingdom made by Philip of Navarre and Chamby Rodolph, in 1032, to the empire. Fred- pagne
was to be null. In the meantime erick Barbarossa conferred upon the arch- he was to hold the
government of France, bishop of 1 yons all regalian rights over Navarre, and Champagne,
receiving homage of vassals in all these countries as In he view I have taken of this transaction,
I governor; saving the right of a male heir In he view I have taken of this transaction, I to the
late king, in the event of whose have been guided by several instruments in Rymer, which
leave no doubt on my mind. Velly, of birth the treaty was not to take effect.t course, represents
the matter more favourably for Philip. * Velly, t. vii., p. 404. For a more precise act The
Flemings took at Courtray 4000 pair of count of the political dependance of Lyons and itE gilt
spurs, which were only worn by knights. district, see l'Art de verifier les Dates, t. ii., r. 469
These Velly, happily enough, compares to I anni. t Hist. de Charles le Mauvais, pa-
8.y.YS.SQ,al' three bushels of gold rings at Cannm. vol. ii., 2,
leFt brother Charles, it was thought prudent daughters, who might, if not rendere2, to shut the
gates during the ceremony, incapable by their sex, have shared wit} and to dispose guards
throughout the their brothers in partitions then com town. Upon his return to Paris, an as-
monly made.* But, on the other hand Jan., 1317. sembly, composed of prelates, these times
were gone quite out ol barons, and burgesses of that memory, and France had much in the city,
crowned upon the analogy of her existing usages to recon ifim as their lawful
sovereign, and, if we cile her to a female reign. The crowr may believe an historian, expressly
de- resembled a great fief; and the great fieficiared, that a woman was incapable of were
universally capable of descending succeeding to the crown of France.* to women. Even at the
consecration of The Duke of Burgundy, however, made Philip himself, Maud, countess of
Artois a show of supporting his niece's interests, held the crown over his head among thi till,
tempted by the prospect of a marriage other peers.t And it was scarcely be with the daughter of
Philip, he shamefully yond the recollection of persone living betrayed her cause, and gave up
in her that Blanche had been legitimate regent name, for an inconsiderable pension, not of
France during the minority of St only her disputed claim to the whole Louis. monarchy, but
her unquestionable right For these reasons, and much more from to Navarre and Champagne.t I
have the provisional treaty concluded between been rather minute in stating these de- Philip and
the Duke of Burgundy, it mal tails, because the transaction is misrepresented fairly inferred, that
the Salique-law, a.n sended by every historian, not excepting it was called, was not so fixed a
principle those who have written since the publica- at that time as has been contended. But,
tion of the documents which illustrate it.t however this may be, it received at the In this contest,
every way memorable, accession of Philip the Long a sanction but especially on account of that
which which subsequent events more thoroughly sprung out of it, the exclusion of females ly
confirmed. Philip himself leaving only from the throne of France was first publicly discussed.
The French writers * The treaty of Andely, in 587, will be found to almost unanimously concur
in asserting, afford a very strong presumption that females were in asserting, at that time
excluded from reigning in France. — Greg. Turon., Ilx. Tune etiam declaratum fuit, quod in
regno t The continuator of Nangis says indeed of this: Franciae mulier non succedit.-Contin.
Gul. Nan- de quo aliqui indignati fuerunt. But these were gis, in Spicilegio d'Achery, tome iii.
This monk, probably the partisans of her nephew Robert, vhc without talents, and probably
without private infor- had been excluded by a judicial sentence of P. ilip motion, is the sole
contemporary historian of this IV., on the ground that the right of representation Important
period. He describes the assembly did not take place in Artois; a decision considered which
confirmed Philip's possession of the crown; by many as unjust. Robert subsequently renewed
quamplures proceres et regni nobiles ac magnates his appeal to the court of Philip of Valois:
but, n. una curr plerisque praelatis et burgensibus Parisi- happily for himse.:f, yielded to the
temptation of ensis civitatis. forging documents in support of a claim which t His'; de Charles
le Mauvais, t. ii., p. 6. Jane seems to have been at least plausible without such and her husband,
the Count of Evreux, recovered aid. This unwise dishonesty, which is not without Navarre after
the death of Charles the Fair. parallel in more private causes, not only ruined his v Velly, who
gives several proofs of disingenu- pretensions to the county of Artois, but produced ousness in
this part of history, mutilates tile treaty a sentence of forfeiture, and even of capital punish
of the 17th of duly, 1316, in order to conceal Philip ment, against himself.-See a pretty good
account the Lnpg't v each of faith towards his niece. of Robert's process in Velly t. viii.. p. 62.
that tion, gave no sign of meditating a more ptr- only daughter was excluded by the magnificent enterprise. As he advanced Lt.ipof Count of Valois, grandson of in manhood, and felt the consciousness Veois. Philip the Bold. [A. D. 1328.] of his strength, his early designs grew I his prince first took the regency, the mature, and produced a series of the most ~!ueen dowager being pregnant, and, up- important and interesting revolutions in her giving birth to a daughter, was the fortunes of France. These will form:rowned king. No competitor or op- the subject of the ensuing pages ponent appeared in France; but one tuore formidable than any whom France could have produced, was awaiting the jecson to prosecute his Imagined right PART 11. with all the resources of valour and agemus, and to carry desolation over that War of Edward III. in France. — Causes of hm reat kingdom with as little scruple as if success. —Civil Disturbances of France.-Peace he vras Ipreferring a suit before a civil tri- of Bretigni —its Interpretation considered. —:eini.1. From the moment of Charles IV.'s resolution.-Rymer, vol. iv., p. 344, et seq. But an instrument, dated at Northampton, on the 16th of.Tl.In of death, Edward III. of Eng- May, is decisive: This is a procuracion to the bishs v-Ird III. land buoyed himself up with ops of Worcester and Litchfield, to demand and i emotion of his title to the crown of take possession of the kingdom of France, " in our i'rancee, in right of his mother, Isabel, name, which kingdom has devolved and appertains,listera the three last h ings. o We can to us as to the right heir." —P. 354. To this mris sion Archbishop Stratford refers, in his vindication have no hesitation in condeming the in- of himself from Edward's accusation of treason in justice of this pretension. Whether the 1340; and informs us that the two bishops actually S-alique-law were or were not valid, no proceeded to France, though without mentioning idvantage could be gained by Edward. anyfurther particulars. Novit enim qui nihil ignorat, quod cumn quaestio de regno Francie post morriven if we could forget the express or tem regis Caroli, fratris serenissimae matrisvestrao, act it decision of all France, there stood in parliamento tune apud Northampton celebrato, *n his way Jane, the daughter of Louis tractata discussaque fuisset; quodque idemregnum ( three of Philip the Long, and one of Franciae ad vos haereditario jure extiterat legitim6 {I) trles the Fair. Aware of this, Edward devolutum; et super hoc fuit ordinatum, quod duo.3h trles the Fair. Aware f this, Edward episcopi, Wigorniensis tune, nunc autern Wintoniiot, up a distinction, that, although females ensis, ac Coventriensis et Lichfeldensis in Fran. were excluded from succession, the samne ciam dirigerent gressus suos, nomineque vestro 1ule did Inot apply to their male issue; and regnun Francian vindicarent et praedicti Philippi thus, though her mother Isabel could not de Valesio coronationema pro viribus impedirent; ~ersef become &Queen of France, she qui juxta ordinacionem praedictam legationem iis herself become Queen of France, she injunctam tune assumentes, gressus suos versus aight transmit a title to him. But this Franciam direxerunt; qua) quidem legatio maximwsr crJ.Ltary to the commonest rules of am guerrea praesentis materiam ministravit.-Wil однойInheritance: and if It could have been re- ins.-Concilia, t. i., p. 664. - tir-ined at all, Jane had a son, afterward There is no evidence in Rymer's Feedera to cor red at all, J ane had a son, afterwa roborate Edward's supposed claim to the regency 4te famous King of Navarre, who stood of France upon the death of Charles IV.; and it if,ine degree nearer to the crown than Ed- certainly suspicious,. that no appointment of am vward. bassacors or procurators for this purpose should [t is asserted in some French authori- appear in so complete a collection of documents. Ithsasarte d poeFeraela othe The French historians generally assert this, upon i.tes, that Edward preferred a claim to the authority of the continuator of William of Nan-regency immediately after the decease gis, a nearly contemporary, but not always well.-)t Charles the Fair, and that the States informed writer. It is curious to compare the four (General, or at least the peers of France, chief English historians. Rapin affirms both the adj udged that dignity to Philip de Valois. claim to the regency, on Charles I V.'s death, and adjudged that dignity to Philip de Valois. that to the kingdom, after the birth of his daughWhether this be
true. or not, it is clear ter. Carte, the most exact historian we have, that he entertained projects of recovering mentions the latter, and is silent as to the former. his right as early, though his youth and Hume passes over both, and intimates that Ed. the embarrassed circumstances of his ward did not take any steps in support of his pre. tensions in 1328. Henry gives the supposed trial government threw insuperable obstacles of Edward's claim to the regency before the States in the way of their execution.* He did General at great length, and makes no allusion to the other, so-indisputably authenticated in Rymer.' Letters of Edward III., addressed to certain It is, I think, most probable, that the two bishops Jbles and towns in the south of France, dated never made the formal demand of the throne as.Aarch 28, 1328, four diys before the birth of they were directed by their instructions. StratCharles IV.'s posthumous daughter: intimate this ford's exp',esslons seem to imply that they did not.

Page 40 to EUROPE DURING THE MIDDLE AGES [LUgAAe. (Charles V.-Renewal of the War.-Charles VI. combina ion of political causes which -his Minority and Insanity.-Civil Dissensions brought about so strange d rev,iution, of the Parties of Orleans and Burgundy.-A.ssassination of both these Princes. - Intrigues of and, though not realizing Edward's hopes their Parties with England under Henry IV.- to their extent, redeemed them from the ]-enrv V. invades France.-Treaty of Troyes.- imputation of rashness in the judgmenW State of France in the l.;st Years of Charles VII. of his own and succeeding ages. — Progress and sasequent Decline of the Eng- The first advantage which Edward lish Arms - their Expulsion from France. — Change in the Politica.l Constitution.-Louis XI. II[, possessed in this contest, Character oi -his Character.-Leagues formed against him. was derived from the splen- Edward II. -Charles, Duke of Burgundy-his Prosperity dour of his personal charac- and is son and Fall.-Louis obtains Possession of Burgun- ter and from the still more eminent vie dy-his Death.-Charles VIII.-Acquisition of tues of his son. Besi Britany. tues of his son. Besides prudence ano military skill, these great princes were Nlo war had broken out in Europe, since endowed with qualities peculiarly fitted W.ar of Ed- the fall of the Roman Empire, for the times in which they lived. Chiv var III. in SO memorable as that of Ed- alry was then in its zenith; and in all the France. ward III. and his successors virtues which adorned the knightly charagainst France, whether we consider its acter, in courtesy, munificence, gallantry. duration, its object, or the magnitude and in all delicate and magnanimous feelings, variety of its events. It was a strug- none were so conspicuous as Edward III. ale of one hundred and twenty years, and the Black Prince. As later princeE interrupted but once by a regular paci- have boasted of being the best gentle. fication, where the most ancient and ex- men, they might claim to be the prouwest tenseive dominion in the civilized world knights in Europe; a character not quite was the prize, twice lost and twice re- dissimilar, yet of more high pretension. covered in the conflict, while individual TTheir court was, as it were, the sun of courage was wrought up to that high that system which embraced the valour pitch which it can seldom display since and nobility of the Christian world; and the regularity of modern tactics has chas- the respect which was felt for their extised its enthusiasm, and levelled its dis-cellences, while it drew many to their tincti-ons. There can be no occasion to side, mitigated in all the rancour and fedwell upon the events of this war, which rocioussness of hostility. This war was are familiar to almost every reader; it is like a great tournament, where the comrather my aim to develop and arrange batants fought indeed d outrance, but with those circumstances which. when rightly all the courtesy and fair play of such an understood, give the clew to its various entertainment, and almost as much for uchanges of fortune. clew to its various the honour of their ladies. In the school France was even in the fourte enth of the Edwards were formed men not inCauses of his century, a kingdom of such ferior in any nobeness of disposition to success. extent and
compactness of their masters; Manni, and the Capitul de figure, such population and resources, Buch, Felton, Knollys. and Calverley, and filled with so spirited a nobility, Chandos, and Lancaster. On the French that the very idea of subjugating it by side, especially after Di Gueselin came a foreign force must have seemed the on the stage, these had rivals almost most extravagant dream of ambition.* equally deserving of renown. If we could Yet, in the course of about twenty years forget, what never hod be forgotten, of war, this mighty nation was reduced the wretchedness and devastation that to the lowest state of exhaustion, and dis upon a great kingdom, too dear a membered of considerable provinces by price for the display of any heroism, we an ignominious peace. What was the might count these English wars in France among the brightest periods in history. *The pope (Benedict XII.) wrote a strong letter Philip of Valois and John his son show to Edward (March, 1340), dissuading him from ta ed but poorly in comparison Character ai king the title and arms of France, and pointing out with their illustrious enemies. Philip V the impossibility of his ever succeeding. I have no doubt but that this was the common opinion. Yet they had both considerable and John But the Avignon popes were very subservient to virtues; they were brave,* just, liberal France. Clement VI., as well as his predecessor, Benedict XII., threatened Edward with spiritual * The bravery of Philip is not questioned. Bui arms.-Rymer, t. v., p. 88 and 465. It required Ed a French historian, in order, I suppose, to enhance wvard's spirit and steadiness to despise these men this quality, has presumed to violate truth in ar aces. But the time when they were terrible to extraordinary manner. The challenge sent by Ed. princes was rather passed by; and the Holy See ward, offering to decide his claim to the kingdom never venturead to provoke the king, who treated by single combat, is well known. Certainly it con the church, thronghout his reign, with admirable veys no imputation on the King of Fr'nce to have Lnniess arli temper. declined this unfair proposal. But Velly ha ep
England. ken into the account. It was centuries the injustice and folly of the after long
hesitation that he assumed enterprise do not seem to have struck the title and arms of France,
from the gravest of our countrymen. which, unless upon the best terms, he There is, indeed,
ample room foi na.. could not recede without loss of honour.* tional. exultation at the names
Excellence of of Crecy, Poitiers, and Az- the English resented him as accepting it, on condition
that Ed- incourt. So great was the ares ward would stake the crown of. England against
disparity of numbers among those famous that of France; an interpolation which may be truly
called audacious, since not a word of this is days, that we cannot, with the French in Philip's
letter, preserved in Rymer, which the historians, attribute the discomfiture of historian had
before his eyes, and actually quotes their hosts merely to mistaken tactics upon the occasion.
—Hist. de France, t. viii., p. 382. and too impetuous valur. hey yield* The first instrument in
which Edward disal- impetuous valour. [hey yieldsow the title of Philip, is his convention with
the ed rather to that intrepid steadiness in Emperor Louis of Bavaria, wherein he calls him
danger, which had already become the nunc pro rege Francorum se gerentem. The date
characteristic of our English soldiers, and of this is August 26, 1337, yet on the 28th of the
which, during four centuries, has ensured same month, another instrument gives him the their
suueriority, whenever ignorance or title of king; and the same occurs in subsequent infatuation
has not led them into the instances. At length we have an instrument of infatuation has not led
them into the procuration to the Duke of Brabant, October 7, field. But these victories, and the
quali1337, empowering him to take possession of the ties that secured them, must chiefly be
crown of France in the name of Edward: atten- ascribed to the freedom of our constitudentes
inclitum regnum Francine ad nos fore jure tion, and to the superior condition of the
successionis legitimrd devolutum. Another of the same date appoints the said duke his vicar-
general people. Not the nobility of England, not and lieutenant of France. The king assumed
in the feudal tenants, won the battles of this commission the title Rex Francia et Angliam; Crecy
and Poitiers; for these were fu'lly in other instruments he calls himself Rex AngliT matched in
the ranks of France; but tie et Franciae. It was necessary to obviate the jealousy of the English,
who did not, in that age, yeomen, who drew the bow with strong admit the precedence of
France. Accordingly, and steady arms, accustomed to its use Edward had two great seals, on
which the two in their native fields, and rendered fearkingdoms were named in a different
order. But, in less by personal competence and civil the royal arms, those of France were
always in the freedom. It is well known that each of first quarter, as they continued to be until
the accession of the house of Brunswick. the three great victories was due to our Probably
Edward III. would not have entered archers, who were chiefly of the middle into the war me
rely on account of his claim to the. class, and attached, according to the sys. crown. He had
disputes with Phil p about Gui- _ enne; and that prince had, rather unjustifiably, clined to lay
any material st ess upon ti-e instigs abetted Robert Bruce m Scotland I am not in- tion of
Robert of Artois.

Page 42 42 EUROPE DURINU THIE MIDDLE AGES [CMAP A Lent of tiuat age, to the
knights and multuous scenes which passed in the squires who fought in heavy armour with
capital, sometime s heightened into cdvi the lance. Even at the battle of Poitiers, war,
necessarily distracted men from the of which our country seems to have the common defence
against Edward. These least right to boast, since the greater tumults were excited, and the
distraction part of the Black Prince's small army increased, by Charles, king of Navarre was
composed of Gascons, the merit of surnamed the bad, to whom the French the English bowmen
is strongly attested writers have, not perhaps unjustly, at by Froissart.*. tributed a character of
unmixed and inYet the glorious termination to which veteated malignity. He was grandson of
Edward was enabled, at least for a Louis Hutin, by his daughter Jane, and, Condition time, to bring the contest, was if Edward's pretence of claiming through of France rather the work of fortune than females could be admitted, was a nearer after the battle of of valour and prudence. Until heir to the crown; the consciousness of Poitiers. the battle of Poitiers, he had which seems to have suggested itself to make no progress towards the conquest his depraved mind as an excuse for his of France. That country was too vast, treacheries, though he could entertain and his army too small, for such a revo- very little prospect of asserting the claim lution. The victory of Crecy gave him against either contending party. John nothing but Calais; a post of considera- had bestowed his daughter in marriage ble importance in war and peace, but on the King of Navarre; but he verysoon rather adapted to annoy than to subjugate gave a proof of his character, by procute the kingdom. But at Poitiers he obtain- ring the assassination of the king's favoured the greatest of prizes, by taking pris- ite, Charles de la Cerda. An irreconcioner the King of France. Not only the lable enmity was the natural result of this love of freedom tempted that prince to crime. Charles became aware that he ransom himself by the utmost sacrifices, had offended beyond the possibility of but his captivity left France defenceless, forgiveness, and that no letters of pardon, and seemed to annihilate the monarchy nor pretended reconciliation, could secure itself. The government was already him from the king's resentment. Thus, odious; a spirit was awakened in the impelled by guilt into deeper guilt, people, which might seem hardly to be- entered into alliances with Edward, and long to the fourteenth century; and the fomented the seditious spirit of Paris. convulsions of our own time are some- Eloquent and insinuating, he was the times strongly paralleled by those which favourite of the people, whose grievansucceeded the battle of Poitiers. AL ces he affected to pity, and with whose ready the States General had established leaders he intrigued. As his paternal a fundamental principle, that no resolution inheritance, he possessed the county of could be passed as the opinion of the Evreux in Normandy. The proximity'whole, unless each of the three orders of this to Paris created a formidable diconcurred in its adoption.t The right of version in favour of Edward III.; and levying and of regulating the collection connected the English garrisons of the af taxes was recognised. But that as- north with those of Poitou and Guienne. sembly which met at Paris immediately There is no affliction which did not after the battle, went far greater lengths fall upon France during this miserable in the reform and control of government. period. A foreign enemy was in the From the time of Philip the Fair, the heart of the kingdom, the king a prisoner, abuses natural to arbitrary power had the -capital in sedition, a treacherous harassed the people. There now seem- prince of the blood in arms against the ed an opportunity of redress; and how- sovereign authority. Famine, the sure ever seditious, or even treasonable, may and terrible companion of war, for sevhave been the motives of those who eral years desolated the country. In guided this assembly of the States, espe- 1348, a pestilence, the most extensive cially the famous Marcel, it is clear that and unsparing of which we have any many of their reformations tended to lib- memorial, visited France as well as the ery and the public good.t But the tu- rest of Europe, and consummated the work of hunger and the sword.* The * Au vray dire, les archers d'Angleterre faisoient leurs gens grant avantage.' Car ils tiroyent tant espessement, que les' Franqois ne sqavoyent dequel chapter for more information on this subject. This cost6 entendre, qu'ils ne fussent consuyvis de trayt; separation is inconvenient, but it arose indispensa. et s'avancoyent toujours c Angobis, et petit X bly out of my arrangement, and prevented greater petit enqueroyent terre.-Part I., c. 162 inconveniences. t Ordonnances des. Rois de France, t. ii. * A full account of the ravages made by this t I must refer the reader onward to thb next memorable plague may be found in Matieo VillB
In the service of John or Edward, the mercenary troops of these misfortunes, though in the service of John or Edward, find. Edward had made but slight progress in no immediate occupation after the towards the conquest of the country, the truce of 1357, scattered themselves over regent of France, afterward Charles V., the country in search of pillage. No submitted to the peace of Bre- Peace of force existed sufficiently powerful to tigni. [A.D.1360.] By this treaty, were ceded in full sovereignty victim of their license, even after the to Edward; a price abundantly remuneration of the title of some were diverted into Italy, and others France, which was the sole concession. led by Du Guesclin to the war of Castile. stipulated in return. Every care seems Impatient of this wretchedness, and stung to have been taken to make the cession of by the insolence and luxury of their lords, these provinces complete. The first six the peasantry of several districts broke out articles of the treaty expressly surreninto a dreadful insurrection. [A.D. 1358.] der them to the King of England. By the This was called the Jacquerie, from the seventh, John and his son engage to concant phrase Jacques bon homme, applied vey within a year from the ensuing to men of that class; and was marked by Michaelmas all their rights over them, all the circumstances of horror incident and especially those of sovereignty and to the rising of an exasperated and unen- feudal appeal. The same words are relightened populace.t peated still more emphatically in the eleventh. and some other articles. The ni, the second of that family who wrote the histo- twelfth stipulates the change of mutual rery of Florence. His brother and predecessor, John nunciations; by John, of all right over the Villani, was himself a victim to it. The disease ceded countries; by Edward, of his claim began in the Lev-ant about 1346; from whence to the throne of France. At Calais, the Italian traders brought it to Sicily, Pisa, and Genoa. In 1348 it passed the Alps and spread over treaty of Bretigni was renewed by John, France and Spain; in the next year it reached who, as a prisoner, had been no party to Britain, and in 1350 laid waste Germany and other the former compact, with the omission northern states; lasting generally about five months only of the twelfth article, respecting the in each country. At Florence, more than three out, of five died.-Muratori, Script. Rerum Italiexchange of renunciations. But that it carum, t. xiv., p. 12. The stories of Boccaccio's was not intended to waive them bly this Decamerone, as is well known, are supposed to be omission, is abundantly manifest by inrelated by a society of Florentine ladies and gen- sti uments of both the kings, in which tlemen retired to the country during this pestilence. * Froissart, p. 187. This troop of banditti was on the authority of an ordinance which he has seen commanded by Arnaud de Cervole, surnamed in their favour. But that was not a time when l'Archiprdtre, from a benefice which, although a ordinances were very sure of executidn.-Vill., t. layman, he possessed, according to the irregularity ix., p. 470. I must add, that the celebrated story of those ages. See a memoir on the life of Arnaud of the six citizens of Calais, which has of late been de Cervole, in the twenty-fifth volume of the Acad- called in question, receives strong confirmation emy of Inscriptions. from John Villani, who died very soon afterward. t The second continuator of Nangis, a monk of -L. xii., c. 96. Froissart of course wrought up the no great abilities, but entitled to notice as our most circumstances after his manner. In all the colour contemporary historian, charges the nobility with ing of his history, he is as great a master as Livy; spending the money raised upon the people by op- and as little observant of particular truth. M. de pressive taxes, in playing at dice "et alios inde- Bréquigny, almost the latest of those excellent centes jocos."-D'Achery, Spicilegium, t. iii., p. antiquaries whose
memoirs so much illustrate the 114 (folio edition). All the miseries that followed French Academy of Inscriptions, has discussed the the battle of Poitiers he ascribes to bad govern-

history of Calais, and particularly this remarkable ment and neglect of the common weal; but espe- portion of it. —Mm. de l'Acad. des Inscriptionssa, cially to the pride and luxury of the nobles. I am t. 1. aware that this writer is biased in favour of the Petrarch has drawn a lamentable picture of the King of Navarre; but he was an eyewitness of the state of France in 1360, when he paid a visit to people's misery, and perhaps a less exceptionable Paris. I could not believe, he says, that this was authority than Froissart, whose love of pageantry the same kingdom which I had once seen so rich and habits of feasting in the castles of the great, and flourishing. Nothing presented itself to my seem to have produced some insensibility towards eyes but a fearful solitude, an extreme poverty, the sufferings of the lower classes. It is a painful lands uncultivated, houses in ruins. Even the circumstance, which Froissart and the continuator neighbourhood of Paris manifested everywhere of Nangis attest, that the citizens of Calais, more marks of destruction and conflagration. The interesting than the common heroes of history, streets are deserted; the roads overgrown withl were unrewarded, and begged their bread in mis- weeds: the whole is a vast!soitude. —Mern. d ery throughout France. Villaret contradicts this, PEtrarque, t. iii., p. 541.

Page 44 44 EUROPE DURING THE MIDDLE AGES. ICHAP. i refe.ence is made to their future inter- French commissioners attended at Brlu. chalges at Bruges, on the feast of St; ges, and that those of Edward made Andrew, 1361. And, until that time default, this is certainly rendered imp.ror, should a:-rive, Edward promises to lay able, by the actual appointment. of col-raise the title and arms of France (an missioners made by the King of England engagement which he strictly kept),* and on the 15th of November, by the silence lohn to act in no respect as king or su- of Charles V. after the recommencement zerain over the edded provinces. Finally, of hostilities, who would have rejoiced in on November 15, 1361, two commission- so good a ground of excuse, and by the ers are appointed by Edward to receive language of some English instruments, the renunciations of the King of France complaining that the French renuncia. at Bruges on the ensuing feast of St. An- tions were withheld.* It is suggested by drew,t and to do whatever might be mu- the French authors, that Edward M as untually required by virtue of the treaty. willing to execute a formal renunciation These, however, seem to have been of his claim to the crown. But we can withheld, and the twelfth article of the hardly suppose that, in order to evade treaty of Bretigni was never expressly this condition, which he had voluntarily completed. By mutual instruments, exe- imposed upon himself by the treaties of cuted at Calais, October 24, it had been Bretigni and Calais, he would have left declared, that the sovereignty of the his title to the provinces ceded by those ceded provinces, as well as Edward's conventions imperfect. He certainly right to the crown of France, should re- deemed it indefeisible, and acted with main as before, although suspended as to out any complaint* from the Frenc., its exercise, until the exchange of renunciations. notwithstanding any words of * It appears that, among other alleged infrac present conveyance or release in the. tions of the treaty, the King of France had re treaties of Bretigni and Calais. And ceived appeals from Armagnac, Albret, and other another pair of letters patent, dated nobles of Aquitaine, not long after the peace. For, October 26, contains the form of renun- in February.,1362, a French envoy; the Count do Tancarville, being in England, the privy council ciations, which, it is mutually declared, presented to Edward their bill of remonstrances should have effect by virtue of the pres- against this conduct of France; et semble au con ent letters, in case one party should be seil le roy d'Angleterre que considér6 la fourme de ready' to exchange such renunciations la ditte paix, qui tant estoit honourable et profitaat the ue and place
appointed, and ble an royaume de France et h tout chretien6, que at the tihere anld place appo inted, an. la reception desdittes appellacions, n'a mie est6 the other should make default therein. bien faite, ne pass6e si ordenement, ne a si bon af These instruments, executed at Calais, fection et amour comme il droit avoir est6 faite de are so prolix, and so studiously envelop- raison parmi l'effet et l'intention de la paix, et ailoped, as it seems, in the obscurity of liances affermees et entr'eux semble estre moult prejudiciables et contraires' l'onner et l'estat technical language, that it is difficult to du roy et de son fils le prince et de toute la maison extract their precise intention. It ap- d'Angleterre, et pourra estre evidente matiere de pears, nevertheless, that whichever par- rebellion des subgiez, et aussi donner tres-grant t:y was prepared to perform what was occasion d'enfraindre la paix, si bon remede sur required ofw him at Binges on November ce n'y soit mis plus hastivement. Upon the whole, they conclude that, if the King of France would re30, 1361, the other, then and there making pair this trespass, and send his renunciation of default, would acquire not only what our sovereignty, the king should send his of the title lawyers might call an equitable title, but of France.-Martenne, Thes. Anec., t. i., p. 1487. an actual vested right, by virtue of the Four princes of the blood, or, as they are termed, Seigneurs des Fleurdelays, were detained as hos provision in the letters patent of October tages for the due execution of the treaty of Bre26, 1360. The appointment above men- tigni, which, from whatever pretence, was delayed tionedz of Edward's commissioners on for a considerable time. Anxious to obtain their November 15, 1361, seems to throw upon liberty, they signed a treaty at London in Novemthe French the burden of proving that ber, 1362, by which, among other provisions, it was the French the burden of proving that stipulated that the King of France should send John sent his envoys with equally full fresh letters, under his seal, conveying and releas powers to the place of meeting, and that ing the territories ceded by the peace, without the the non-interchange of renunciations was clause contained in the former letters, retaining the owing to the English government. But ressort: et que en ycelles lettres soit expressement compris transport de la souverainet6 et du ressort, though aln historian; sixty years late r &c. Et le roi d'Engleterre et ses enfans ferront (Juvenal des Ursins), asserts that the semblablement autiels renonciations, sur ce q'il doit faire de sa partie.-Rymer, t. vi., p. 396. This * Edward gives John the title of King of France, treaty of London was never ratified by the French in an instrument bearii g date at Calais, October. government; but I use it as a proof that Edward 22, 1360.-Rymer, t. vi., p. 217. The treaty was imputed the want of mutual renunciations to aigned October 24.-Id., ~ 219. France, and was himself reary to perform his Dvt I Rymer, t. vi., p. 338. of the treaty.

Page 45 PAtr 11 FRANCE. 44 court, as the perfect master of those intrinsic difficnlty of preserving such ac countries. He created his son Prince quisitions. The French. were already of Aquitaine, with the fullest powers knit together as one people; and even over that new principality, holding it in those whose feudal duties sometimes fief of the crown of England by the led them into the field against thei yearly rent of an ounce of gold.* And sovereign, could not endure the feeling the court of that great prince was kept of dismemberment from the monarchy. for several years at Bordeaux. When the peace of Bretigni was to be I have gone something more than usual carried into effect, the nobility of the into detail as to these circumstances, be- south remonstrated against the loss of cause a very specious account is given by the king's sovereignty, and showed, it is some French historians and antiquaries, said, in their charters granted by Charlewhich tends to throw the blame of the magne, a promise never to transfer the rupture in 1368 upon Edward III.1 Un- right of protecting them to another. The founded as was his pretension to the citizens of Rochelle implored the king crown of France, and actuated as we not to desert them, and protested. their must consider him by the
most ruinous readiness to pay half their estates in ambition, his character was unblemished
taxes rather than fall under the power by ill faith. There is no apparent cause of England. John,
with heaviness of to impute the ravages made in France by heart, persuaded these faithful
people to soldiers formerly in the English service comply with that destiny which he had to his
instigation, nor any proof of a con- not been able to surmount. At length nexion with the King
of Navarre subse- they sullenly submitted: we will obey. quently to the peace of Bretigni. But a
they said, the English with our lips, but good lesson may be drawn by conquerors our hearts
shall never forget their allegifrom the change of fortune that befell Ed- ance.* Such unwilling
subjects might war III. A long warfare, and unex- perhaps have been won by a prudent
govamled success, had procured for him erment:* but the temper of the Prince some of the
richest provinces of France. of Wales, which was rather stern and ar
Within a short time he was entirely strip- bitrary, did not conciliate their hearts to ped of them, less through any particular
his cause. t After the expedition into tuisconduct, than in consequence of the Castile, a most
injudicious and fatal en terprise, he attempted to impose a heavy m., t, p. 385-389. One clause
is re- tax upon Guienne. This was extended markable; Edward reserves to himself the right of
creating the province of Aquitaine into a kingdom. to the lands of the nobility, who claimed So
high were the notions of this great monarch, in an immunity from all impositions. Mainy an
age when the privilege of creating new king- of the chief lords in Guienne and Gascony doms
was deemed to belong only to the pope and carried their complaints to the throne of the
emperor. Etiam si per nos hujusmodi pro- Charles vincise ad regalis honoris titulum et
gastigium im. Charles V. posterum sublimentur; quam erectionem facien. his father in 1364,
appealing to Rupture of dam per r.os ex tunc specialier reservamus. him as the prince's
sovereign the peace o. t Besides Villaret, and other historians, the and judge. After a year's
delay, Bretigri teader who feels any curiosity on this subject the king vent mmay consult three
memoirs in the 15th volume of u the Academy of Inscriptions by MM. S6cousse, Prince to
answer these charges before the Salier, and Bonamy. These distinguished anti- peers of France
[A. D. 1368], and the wal quaries unite, but the third with much less confi- immlediately
recommenced between the dence and passion than the other two, in charging two countries.t
the omission upon Edward. The observations in the text will serve, I hope, to repel their argu-
houghl it is impossible to reconcile the nents, which, I may be permitted to observe, no conduct
of Charles upon this occasion to English writer has hitherto undertaken to answer. those stern
principles of rectitude wtifich This is not said in order to assume any praise to myself; in fact, I
have been guided, in a great * Froissart, part i., chap. 214. degree, by one of the adverse
counsel, M. Bonamy. t See an anecdote of his difference with the whose statement of facts is
very fair, and makes Seigneur d'Albret, one of the principal barons in me suspect a little that he
saw the weakness of G(ascony, to which Froissart, who was then at his own cause. Bordeaux,
ascribes the alienation of the southern The authority of Christine de Pisan, a contem- nobility,
chap. 244. Edward III., soon after the porary panegyrist of the French king, is not per- peace of
Bretigni, revoked all his grants in Gui haps very material in such a question: but she enne.-
Rymer, t. vi., p. 21. seems wholly ignorant of this supposed omission f On November 20,
1368, tome before the on Edward's side, and puts the justice of Charles summons of the
Prince of Wales, a treaty was con. V.'s war on a very different basis; namely, that eluded
between Charles, and Henry, king of Cas. treaties not conduci-e to the public interest, ought
tile, wherein the latter expressly stipulates. that not to ble kept.-Collection des Memoires, t. i.,
whatever parts of Guienne or England he migh p. 137 a n principle more often scted:on tLn
conquer, he would give up to the Kirg of Fance,,wr, — Rymer, t. vi., p. 598.
I ought always to be obeyed, yet the exdeed very strictly observed, and which ceding injustice of Edward in the former the animosity of the English would not war, and the miseries which he inflicted permit to settle in any regular treaty. upon an unoffending people in the prose- Nothing less than the terms obtained at cution of his claim, will go far towards Bretigni, emphatically called the Great extenuating this breach of the treaty of Peace, would satisfy a frank and courBretigni. It is observed, indeed, with ageous people, who deemed themselves some truth, by Rapin, that we judge of cheated by the manner of its infraction. Charles's prudence by the event; and The war was therefore always popular that, if he had been unfortunate in the in England, and the credit which an amwar,-he would have brought on himself bitious prince, Thomas, duke of Gloucesthe reproaches of all mankind, and even ter, obtained in that country, was chiefly of those writers who are now most ready owing to the determined opposition which to extol him. But his measures had been he showed to all French connexions. so sagaciously taken, that except through But the politics of Richard II. were of a that perverseness of fortune, against different cast; and Henry IV. was equal which, especially in war, there is no se- ly anxious to avoid hostilities with France;;urity, he could hardly fail of success. so that, before the unhappy condition of The elder Edward was declining through that kingdom tempted his son to revive age, and the younger through disease; the claims of Edward in still more favourite provinces were eager to return able circumstances, there had been thirty to their native king, and their garrisons, years of respite, and even some intervals as we may infer by their easy reduction, of friendly intercourse between the two feeble and ill supplied. France, on the nations. Both, indeed, were weakened by other hand, had recovered breath after internal discord; but France more fatally her losses: the sons of those who had than England. But for the calamities of fallen or fled at Poitiers were in the field; Charles VI.'s reign, she would probably a king, not personally warlike, but emi- have expelled her enemies from the kinggently -wise and popular, occupied the dom. The strength of that fertile- and throne of the rash and intemperate John. populous country was recruited with surShe was restored bythe policy of Charles prising rapidity. Sir Hugh Calverley, a V. and the valour of Du Guesclin., This famous captain in the wars of Edward hero, a Breton gentleman without for- III., while serving in Flanders. laughed at tune or exterior graces, was the great- the herald, who assured him that the King est ornament of France during that age. of France's army, then entering the counThough inferior, as it seems, to Lord try, amounted to 26,000 lances; asserting Chandos in military skill, as well as in that he had often seen their largest musthe polished virtues of chivalry, his un- ters, but never so much as a fourth part wearied activity, his talent of inspiring of the number.* The relapse of this confidence, his good fortune, the gen- great kingdom under Charles VI. was eroity and frankness of his character, more painful and perilous than her first have preserved a fresh recollection of his crisis; but she recovered from each name, which has hardly been the case through her intrinsic and inextinguishawith our countryman. ble resources. In a few campaigns, the English were Charles V., surnamed the Wise, after a The English deprived of almost all their con- reign which, if we overlook a little obsole all their quests, and even, in a great de- liquidity in the rupture of the peace of Breconquests. gree, of their original posses- tigni, may be deemed one of the most sions in Guienne. They were still formihonourable in French history, dying pre- dible enemies, not only from their cour- maturely, left the crown to his Accession o, age and alacrity in the war, but on ac- son, a boy of thirteen, under Charles VI. count of the keys of France which they the care of three ambitious un- J380. held in their hands; Bordeaux, Bayonne, cles, the dukes of Anjou, Berry, and Bur and Calais, by inheritance or conquest; gundy. Charles had retrieved the glory Brest and Cherbourg, in mortgage from restored the tranquillity, revived the spirit their allies, the Duke of Britany and
King of his country; the severe trials which of Navarre. But the successor of Edward exercised his regency, after the battle of Poitiers, had disciplined his mind; he beness and sedition gave no opportunity for came a sagacious statesman, an encourprosecuting schemes of ambition. The ager of literature, a beneficent iawgi-ter. war, protracted with few distinguished He erred doubtless, though upon plausible events for several years, was at length _ susnend"d by repea ted armistices, not in. * Froissart p ii., c. 14

PART 11.1 FRANCE. 47 grounds, in accumulating a vast treasure this war;* and after obtain.ng a decisive which the Duke of Anjou seized before victory over the citizens of Ghent, Charles he was cold in the grave. But all the VI. returned to chastise those of Paris.i fruits of his wisdom were lost in the suc- Unable to resist the royal army, the city ceeding reign. In a government essen- was treated as the spoil of conquest; its tially popular. the youth or imbecility of immunities abridged; its most active leadthe sovereign creates no material de-
erers put to death; a fine of uncommon rangemlnt. In a monarchy, where all severity imposed; and the taxes renewthe springs of the system depend upon ed by arbitraryprerogative. Butthe peone central force, these accidents, which ple preserved their indignation for a faare sure in the course of a few genera- vourable moment; and were unfortunatetions to recur, can scarcely fail to dislo- ly led by it, when rendered subservient cate the whole machine. During the for- to the ambition of others, into a series of ty years that Charles VI. bore the name crimes, and a long alienation from the of king, rather than reigned in France, interests of their country. that country was reduced to a state far It is difficult to name a limit beyond more deplorable than during the captivi- which taxes will not be borne without ty of John. impatience, when they appear to be callA great change had occurred in the ed for by necessity, and faithfully ap. political condition of France during the plied; nor is it impracticable for a skiffourteenth century. As the feudal mili- ful minister to deceive the people in both tia became unserviceable, the expenses of these respects. But the sting of taxation war were increased through the necessi- is wastefulness. What high-spirited man ty of taking troops into constant pay; could see without indignation the earnand while more luxurious refinements of ings of his lab.our, yielded ungrudgingly living heightened the temptations to pro- to the public defence, become the spoil fuseness, the means of enjoying them of parasites and peculators! It is this were lessened by improvident alienations that mortifies the liberal hand of public of the domain. Hence taxes, hitherto al- spirit; and those statesmen who deem most unknown, were levied incessantly, and with all those circumstances of op- * The Flemish rebellion, which originated in a pression which are natural to the fiscal attempt, suggested by bad advisers to the count, to proceedings of an arbitrary government. impose a tax upon the people of Ghent without their consent, is related in a very interesting manThese, as has been said before, gave rise b ner by Froissart, p. ii., c. 37, &c., who equals He. to the unpopularity of the two first Valois, rodotus in simplicity, liveliness, and power over theand were nearly leading to a complete heart. I would advise the historical studento acreration in the convulsions that suc- quaint himself with these transactions, and with theed the battle of Poitiers. The con- the corresponding tumults at Paris. They are among the eternal lessons of history; for the unconfidence reposed in Charles V.'s wisdom just encroachments of courts, the intemperate pas. and economy kept every thing at rest sions of the multitude, the ambition of demagogues, during his reign, though the taxes were the cruelty of vicious factions, will never cease to still very heavy. vBu-t the seizure of his have their parallels and their analogies; while the vast accumulations by the D- uLke of Anjou, military achievements of distant times afford, in general, no instruction, and can hardly occur too and the ill faith with which the new gov- little of our time in historical studies. The preferment imposed subsidies, after promis- aces to the fifth and sixth volumes
of the Ordon ing their abolition, provoked the people nances des Rois de France, contain more
accurate of Paris, and sometimes of other places, information as to the Parisian disturbances
than can be found in Froissart. Seditions to repeated seditions. The States t If Charles VI. had
been defeated by the Flem at Paris- General not only compelled the ings, the insurrection of the
Parisians, Froissart government to revoke these impositions says, would have spread over France; tout gentil. and restore the nation, at least according lesse et noblesse eff 66 morte et
perdue en France; to the language of edicts, to all their lib- nor would the Jacquerie have ever been si grande et si horrible, c. 120. To the example of the Ganeries, but, with less wisdom,
refused to tois he ascribes the tumults which broke out about make any grant of money. Indeed,
a re- the same time in England as well as in France, c, markable spirit of democratical freedom
84. The Flen.ish insurrection would probably was then rising in those classes on whom have
had more important consequences, It It had been cordially supported by the English govern the
crown and nobility had so long tram- ment. But the danger of encouraging that demo. pled. An
example was held out by the cratical spirit which so strongly leavened the corn Flemings, who,
always tenacious of their mons of England, might justly be deemed by Rich privileges, because
conscious of their abil- ard If.’s council much more than a counterbalance ity to maintain them,
were engaged in a to the advantage of distressing France. When tot e ity nto maintainthemwere
engaged i * late, some attempts were made, and the Flemist. furious conflict with Louis, count
of Flan- I towns acknowledged Richard as King of France U;rs The court of France t)ok part
in j 13C4.-Rymer t. vii., p. 448

Page 48 EUROPE DURING THE MIDDLE AGES [W.I.E. 1 the security of government to
depend period, which would laturally be very not on laws and armies, but on the moral short, a
law of Charles V. having fixed sympathies and prejudices of the people, the age of majority at
thirteen, wa s.. 1J will vigilantly guard against even the more abridged by consent; and after the
suspicion of prodigality. In the present young monarch's coronation, he was stage of society it
is impossible to con- considered as reigning with full personal ceive that degrae of
misapplication which authority. Anjou, Berry, and Burgundy, existed in the French treasury
under together with the king's maternal uncle, Charles VI., because the real exigencies the
Duke of Bourbon, divided the actual of the state could never again be so in- exercise of
government. considerable. Scarcely any military force The first of these soon undertook an
w'as kept up; and the produce of the expedition into Italy, to possess himself glvevous
impositions then levied was of the crown of Naples, in which he per chiefly lavished upon the
royal house- ished. Berry was a profuse and voluptu. hold, or plundered by the officers of gov-
ous man, of no great talents; though his enment.* This naturally resulted from rank, and the
middle position which he the peculiar and afflicting circumstances held between struggling
parties, made of this reign. The Duke of Anjou pre- him rather conspicuous throughout the
tended to be entitled by the late king's revolutions of that age. The most reappointment, if not
by the constitution spectacle of the king's uncles, the Duke of France, to exercise the
government of Bourbon, being further removed from as regent during the minority; but this
the royal stem, and of unassumming character, took a less active part than. The expenses of
the royal household, which his three coadjutors. Burgundy, an amnder Charles V. were 94,000
livres, amounted in 1412 to 450,000. —Villaret, t. iii., p. 243. Yet the bitious and able prince,
maintained the king was so ill supplied that his plate had been ascendency, until Charles, weary
of a pawned. When Montagu, minister of the finan- restraint which had been protracted by ces,
was arrested, in 1409, all this plate was found his uncles till he.was in his twenty-first
0oncealed in his house. t It has always been an unsettled point, whether year [A. D. 1387], took
the reins into the presumptive heir is entitled to the regency of his own hands. The dukes of
Burgundy France; and, if he be so to the regency, whether and Berry retired from court, and the th is includes the custody ef the minor's person. administration was committed to a different set of men, at the head of whom ject to a considerable apparent difficulty. Two instruments of Charles V., bearing the same date appeared the Constable de Clisson, a solof October, 1374, as published by Dupuy (Traité d'ier of great fame in the English wars. de Majorité des Rois, p. 161), are plainly irreconc-

The people rejoiced in the fall of thecilable with each other; the former giving the princes by whose exactions they had exclusive regency to the Duka of Anjou, reserving been plundered; but the new ministers the custody of the minor's person to other guar-ners; the latter conferring not only this custody, soon rendered themselves odious by simbut the government of the kingdom, on the queen, ilar conduct. The fortune of Clisson, and on the dukes of Burgundy and Bourbon, with- after a few years' favour, amounted to out mentioning the Duke of Anjou's name. Daniel 1,700 000 livres, equal in weight of silale calls these testaments of Charles V., whereas they 1,700,000 livres, equal in weight of silare in the form of letters patent; and supposay nothing of the depreciation that the king had suppressed both, as neither party of money, to ten times that sum at presseems to have availed itself of their authority in ent.* the discussions that took place after the king's [A. D. 1393.] Charles VI. had reigned death.- (Hist. de France, t. iii., p. 662, edit. 1720.) five years f Villalet, as is too much his custom, slides over the difficulty without notice. But M. de Bréquigny when he was seized with a of CharlesVI. (Mém. de l'Acad. des Inscript., t. 1., p. 533) ob- derangement of intellect, which continuerves that the second of these instruments, as ed, through a series of recoveries and published by M. Sécousse, in the Ordonnances relases to his death. He passed thirty des Rois, t. vi., p. 406, differs most essentially from years in a pitiable state of suering, negthat in Dupuy, and contains no mention whatever years ia pitiable state of suffering, negof the government. It is therefore easily recon- lected by his family, particularly by the cileable with the first, that concerns the regency on most infamous of women, Isabel of Bathe Duke of Anjou. As Dupuy took it from the varia, his queen, to a degree which is same source as Sécousse, namely, the Tressor hardly credible. e ministers we des Chartes, a strong suspicion of wilful interpo- mhard ly credible. the m inisters wele lation falls upon him, or upon the editor of this immediately disgraced; the princes reposthumous work, printed in 1655. This date assumed their stations. For several years will readily suggest a motive for such an interpo- the Duke of Burgundy conducted the lation, to those who recollect the circumstances government. But this was in opposition of France at that time, and for some years before; to a formidable rival, Louis, due of Or Anne of Austria having maintained herself in pos- to a formidable ral, Louis, duke of Or. session of a testamentary regency against the pre- -- luniptve hei- Froissart, p. iv., c. 46

Page 49 leans, the king's brother. It was impos- queen, and dauphin. The duke, apl roach Parties of sible that a prince so near to ing the throne, fell on his knees; when Burgundy the throne, favoured by the a lord, who acted as a sort of course' and Orleans. queen perhaps with criminal for him, addressed the king: 'Sire, the fondness, and by the people on account Duke of Burgundy, your cousin and Ferof his external graces, should not ac- vant, is conie before you, being informed quire a share of power. He succeeded that he has incurred your displea;sure on at length in obtaining the whole manage- account of what he caused to be dolne to ment of affairs; wherein the outrageous the. Duke of Orleans your brother, for dissoluteness of his conduct, and still your good and that of your kingdom, as more the excessive taxes imposed, ren- he is ready to prove when it shall please dered him altogether odious. The Paris- you to hear it; and therefore requests ians compared his administration with you, with all
humility, to dismiss your that of the Duke of Burgundy; and from resentment towards him, and to receive that time ranged themselves on the side him into your favour.** of the latter and his family, throughout This insolent apology was all the long distractions to which the am- atonement that could be extorted for the bition of these princes gave birth assassination of the first prince of the The death of the Duke of Burgundy, blood. [A. D. 1410.] It is not wonderful in 1404, after several fluctuations of suc- that the Duke of Burgundy soon obtained cess between him and the Duke of Or- the management of affairs, and drove his leans, by no means left his party without adversaries from the capital. The prima head. Equally brave and ambitious, ces, headed by the father-in- Civil war but far more audacious and unprincipled, law of the young Duke of Or- between the his son John, surnamed'ans-peur, sus- leans, the Count of Armagnac, parties. tained the same con- A reconciliation from whom their party was now denomenation had been, however, brought about nated, raised their standard against him; with the Duke of Orleans; they had and the north of France was rent to sworn reciprocal friendship, and partici- pieces by a protracted civil war, in which pated, as was the custom, in order to neither party scrupled any extremity of render these obligations more solemn, pillage or massacre. Several times peace in the same communion. In the midst was made; but each faction, conscious Murder of of this outward harmony [A. of their own insincerity, suspected that the Duke of D. 1407], the Duke of Orleans of their adversaries. The king, of whose Orleans. Was assassinated in the streets name both availed themselves, was only of Paris. After a slight attempt at con- in some doubtful intervals of reason cacealment, Burgundy avowed and boasted pable of rendering legitimate the acts of of the crime, to which he had been in- either. The dauphin, aware of the tyrstigated, it is said, by somewhat more anny which the two parties alternately than politicas jealousy.* From this fatal exercised, was forced, even at the exlmoment the dissensions of the royal fam- pence of perpetuating a civil war, to illy began to assume the complexion of balance one against the other, and per civil war. The queen, the sons of the mit neither to be wholly subdued. He Duke of Orleans, with the dukes of Ber- gave peace to the Armagnacs at Auxry and Bourbon, united against the assas- erre, in despite of the Duke of Burgundy; sin. But h, X possessed, in addition to his and having afterward united with them own appa.nage of Burgundy, the county against this prince [A. D. 1412], and carof Flaxders as his maternal inheritance; ried a successful war into Flanders, he and the people of Paris, who hated the disappointed their revenge by concluding L,ike of Orleans, readily forgave, or rath- with him a treaty at Arras. [A. D. 1414.1 s.r exulted in, his murder. This dauphin, and his next brother, died It is easy to estimate the weakness of within sixteen months of each other, by bAe government from the terms upon which the rank devolved upon Charles which the Duke of Burgundy was per- youngest son of the king. The Count mitted to obtain pardon at Chartres, a of Armagnac, now Constable of France, year after the perpetration of the crime, retained possession of the government. As soon as he entered the royal pres- But his severity and the weight of tax. ence, every one rose, except the king, es revived the Burgundian party in Paris [A.. D. 1417], which a rigid April * Orleans is said to have boasted of the Dutchess proscription had endeavoured to destroy. of Burgundly's favours. —Vill., t. xii., p. 474. Amel- He brought on his head the implacablele gard, who wrote about eighty years after the tir.e, says, vim etiam inferre attentare praesumpsit.-No- -- t. i., p. 411. * Monetrelet, part i, I 12. -[. 

Page 50 EUROPE DURING THE MII)DLE' AGES LCHAS. i., hatred of the queen, whom he had not From whomsoever the crime proceeded, only shut out from public affairs, but dis- it was a deed of infatuation, and plunged graced by the detection of her gallant- France afresi into a sea of perils, from ries. [A. D. 1417.] Notwithstanding her which the union of these factions
had ancient enmity to the Duke of Burgundy, just afforded a hope of extricating her. She made
overtures to him, and, being it has been mentioned already that delivered by his troops from
confinement, the English war had almost Intrigues of declared herself openly on his side. A
cess during the reigns of French prince few obscure persons stole the city keys, Richard II.
and Henry IV. with England, and admitted the Burgundians into Paris. The former of these was
attached by The tumult which arose showed in a clination, and latterly by marriage, to the
moment the disposition of the inhabi- court of France: and though the French tants; but this
was more horribly dis- government showed at first some dispoplayed a few days afterward,
when the sition to revenge his dethronement, yet June 12. populace, rushing to the prisons the
new king's success, as ell as domes[A. D. 1418], massacred, the Con- tic quarrels, deterred it
from any serious stable d'Armagnac and his partisans. Be- renewal of the war. A long
commercial tween three and four thousand persons connexion had subsisted between Engwere
murdered on this day, which has land and Flanders, which the dukes of no parallel but what our
own age has Burgundy, when they became sovereigns witnessed, in the massacre perpetrated
of the latter country upon the death of by the same ferocious populace of Paris, Count Louis, in
1384, were studious to under circumstances nearly similar. [A. preserve by separate truces.*
They actD. 1419.] Not long afterward an agree- ed upon the same pacific policy when ment
took place between the Duke of their interest predominated in the councils Burgundy, who had
now the king's per- of France. Henry had even a negotias on, as well as the capital, in his hands,
tion pending for the marriage of his eldand the dauphin, whose party was enfee- est son with a
princess of Burgundy, f bled by the loss of almost all its lead- when an unexpected proposal
from the ers. This reconciliation, which mutual opposite side set more tempting views interest
should have rendered permanent, before his eyes. The Armagnacs, press had lasted a very short
time, when the ed hard by the Duke of Burgundy, offerAssassination Duke of Burgundy was
assas- ed, in consideration of only 4000 troops, of the Duke of sinated at an interview with the
pay of which they would themselves Burgundy. Charles, in his presence, and defray, to assist
him in the recovery of by the hands of his friends, though not Guienne and Poitou. Four princes
of perhaps with his previous knowledge.* the blood, Berry, Bourbon, Orleans, * There are
three suppositions conceivable to and Alenaon, disgraced their names May. explain this
important passage in history, the as- by signing this treaty. T [A. D. 1412.] sassination of John
Sans-peur. 1. It was pyetcn.d- Henry broke off his alliance with Bur.. ed by the dauphin's
friends at thle time, and has gundy, and sent a force into France, been maintained more lately
(S. Foix, Essais sur which found, on its arrival, that the puin Paris, t. iii., p. 209, edit. 1767),
that he had pre- ces had mae a separate treaty without meditated the murder of Charles, and
that his own ces had made a separate treaty, without was an act of self-defence. This is, I think,
quite the least concern for their English allies. improbable; the dauphin had a great army near
After his death, Henry V. engaged for the spot, while the duke was only attended by five some
time in a series of negotiations hundred men. Villaret indeed, and St. Foix, in with the Frenh
court, where the Ororder to throw suspicion upon the Duke of Bur- with the French court,
where the Orgundy's motives, assert that Henry V. accused leans party now prevailed, and with
the him of having made proposals to him which he Duke of Burgundy. He even secretly could
not accept without offending God; and con- treated at the same time for a marriage jecture that
this might mean the assassination of thorine of France (which seem the dauphin. But the
expressions of Henry do with Catance seems not relate to any private proposals of the duke,
but to demands made by him and the queen, as proxies justly regarded the duke as an infamous
assassin, for Charles VI., in conference for peace, which he and might question his sincerity or
their own says he could not accept without offending God Safety if he should regain the
ascendant, took ad and contravening his own letters patent.- (Ryler, vantage of this opportunity
to commit an act of re t. ix., p. 790.) It is not, however, very clear what taliation, less criminal,
but not less ruinous in it this means. 2. The next hypothesis is, that it consequences, than that which had provoked it /was the deliberate act of Charles. But his youth, Charles, however, by his subsequent conduct, re his feebleness of spirit, and especially the conser- cognised their deed, and naturally exposed himr nation into which, by all testimonies, he was self to the resentment of the young Duke of Bur thrown by the event, are rather adverse to this ex- gundy. lanation. 3. It remains only to conclude that i Rymer, t. viii., p. 511. Villaret, t. x.i., t 174 Tanegui de Chastel, and other favourites of the t Idem, t. viii., p. 721. dauphin, long attqe9c.'l ta.ad Orleans faction, r-!: 4.,-, i G. viii., pp. 726, 737, 738.

PART IL! FRANCE. Id to has e been his favourite, as it was ulti- though labouring under some difficulties, mately his successful, project), and with seems to have been nearly completed, a daughter of the duke; a duplicity not when the Duke of Burgundy [A. creditable to his memory.* But Henry's n. 1419], for reasons unexplain- July 1, ambition, which aimed at the highest ed, suddenly came to a reconciliation quarry, was not long fettered by nego- with the dauphin. This event, which tiation; and indeed his proposals of mar- must have been intended adversely to rying Cdtharine were coupled with such Henry, would probably have broken off exorbitan.~ demands, as France, notwith- all parley on the subject of peace, if it standing all her weakness, could not ad- had not been speedily followed by one mit; though she would have ceded Gui- still more surprising, the assassienne, and given a vast dowry with the nation of the Duke of Burgundy pt 10 Invasion of princess.t [A. D. 1415.] He at Montereau. France by invaded Normandy, took Har- An act of treachery so apparently un Henry V. fleur, and won the great battle provoked, inflamed the minds of that of Azincourt on his march to Calais.t powerful party which had looked up to The flower of French chivalry was the duke as their leader and patron. mowed down in this fatal day, but espe- The city of Paris especially abjured at cially the chiefs of the Orleans party, once its respect for the supposed author and the princes of the royal blood, met of the murder, though the legitimate heir with death or captivity. Burgundy had of the crown. A solemn oath was taken still suffered nothing; but a clandestine by all ranks to revenge the crime; the negotiation had secured the duke's neu- nobility, the clergy, the parliament, vytrality, though he seems not to have en- ing with the populace in their invectered into a regular alliance till a year tives against Charles, whom they now after the battle of Azincourt: when, by a styled only pretended (soi-disant) dausecret treaty at Calais, he acknowledged phin. Philip, son of the assassinated the right of Henry to the crown of duke, who, with all the popularity and France, and his own obligation to do much of the ability of his father, did not him homage, though its performance was inherit his depravity, was instigated by a to be suspended till Henry should be- pardonable excess of filial resentment to come master of a considerable part of ally himself with the King of England. the kingdom.~ In a second invasion These passions of the people and the the English achieved the conquest of Duke of Burgundy, concurring with the Normandy; and this, in all subsequent imbecility of Charles VI., and the rannegotiations for peace during the life cour of Isabel towards her son, Treaty of of Henry, he would never consent to ledto the treaty of Troyes. This Troyes. relinquish. After several conferences, compact, signed by the queen May, 1420. which his demands rendered abortive, and duke, as proxies of the king, who the French court at length consented to had fallen into a state of unconscious idadd Normandy to the cessions made in iocy, stipulated that Henry V., upon his the peace at Bretigni;ll and the treaty, maricagre wh Cath rine, should become immediately regent of France, and, after * Rymer, t. ix., p. 136. the death of Charles, succeed to the t The terms required by Henry's ambassadors in kingdom, in exclusion not only of the 1415, were the crown of France; or, at least, re- dauphin, but of all the royal family.* It serving Henry's rights to that, Normandy, Tou- is unnecessary to remark that
these flaraine, Maine, Guienne, with the homage of Brit- gitious provisions were absolutely invaany and Flanders. The French offered Guienne gitious provisions were absolutely iva and Saintonge, and a dowry of 800,000 gold crowns id. But they had at the time the strong for Catharine. The English demanded 2,000,000. -Rymer, t. ix., p. 218. insolent than the tone of Henry's instructions to $ The English army at Azincourt was probably his commissioners, p. 628. of not more than 15,000 men; the French were, at * As if through shame on account of what was tu the least, 50,000, and by some computations much follow, the first articles contain petty stipulations more numerous. They lost 10,000 killed, of whom about the dower of Catharine. The sixth gives 9000 were knights or gentlemen. Almost as many the kingdom of France, after Charles's decease, to were made prisoners. The English, according to Henry and his heirs. The seventh concedes the Monstrelet, lost 1600 men; but their own his- immediate regency. Henry kept Normandy by torians reduce this to a very small number. It is right of conquest, not in virtue of any stipulation curious that the Duke of Berry, who advised the in the treaty,:which he was too proud to admit. French to avoid an action, had been in the battle The treaty of Troyes was confirmed by the States of Poitiers fifty-nine years before.-Vill., t. xiii., General, or rather by a partial convention which p. 355. assumed the name, in December, 1420.-Ryn., t. x., ~ Compare Rymer, t. ix., p. 34, 138, 304, 394. p. 30. The parliament of England did the same Vhe last reference is to the treaty of Calais. -Id., p. 110. It is printed at full length by Villa II Rym., t. ix., p. 628, 763. Nothing can be more ret, t. xv., p. 84. 1) 2

Page 52 | CE52 EUROPE DURING THE MIDDLE AGES. rT'CAP. sanction of force; and Henry might plau- easy to pick the best an i stoutest re sibly flatter himself with a hope of estab- cruits,* and their high pay allured me; lishing his own usurpation as firmly in of respectable condition to the service. France as his father's had been in Eng- We find in Rymer a contract of the Ear land. What neither the comprehensive of Salisbury to supply a body of troops policy of Edward III., the energy of the receiving a shilling a day for every man Black Prince, the valour of their Knolly- at arms, and sixpence for each archer.i ses and Chandoses, nor his own victories This is perhaps equal to fifteen times the could attain, now seemed, by a strange sum at our present value of money. vicissitude of fortune, to court his ambi- They were bound indeed to furnish their tion. During two years that Henry lived own equipments and horses. But France after the treaty of Troyes, he governed was totally exhausted by her civil and the north of France with unlimited au- foreign war, and incompetent to defray thority in the name of Charles VI. The the expenses even of the small force latter survived his son-in-law but a few which defended the wreck of the monarweeks; and the infant Henry VI. was chy. Charles VII. lived in the utmost immediately proclaimed King of France poverty at Bourges.: The nobility had and England, under the regency of his scarcely recovered from the fatal slaughuncle the Duke of Bedford. ter of Azincourt, and the infantry, comNotwithstanding the disadvantage of a posed of peasants or burgesses, which State of minority,'the English cause had made their army so numerous upon France at the was less weakened by the that day, whether from inability to comaccession of death of Henry than might pel their services, or experience of their Charles VII. have been expected. [A. D. inefficacy, were never called into the 1422.] The Duke of Bedford partook of field. It became almost entirely a war the same character, and resembled his of partisans. Every town in Picardy, brother in faults as well as virtues; in his Champagne, Maine, or wherever the conhaughtiness and arbitrarytemper, as in his test might be carried on, was a fortress; energy and address. At the accession of and in the attack or defence of these gar-, Charles VII., the usurper was acknowl- risons, the valour of both nations w s edged by all the northern provinces of called into constant exercise. This mode France, except a few fortresses, by most of warfare was undoubtedly the best in of
Guienne, and the dominions of Bur- the actual state of France, as it gradually gundy. [A. D. 1423.] The Duke of Brit-

improved her troops, and flushed then any soon afterward acceded to the treaty with petty successes. But what prin
col Troyes, but changed his party again.sev-
pally led to its adoption was the license eral times within a few years. The cen- and insubordination of the royalists, who, tral provinces, with Languedoc, Poitou, receiving no pay, owned no control, and and Dauphin, were faithful to the king. thought that, provided they acted against For some years the war continued without the English and Burgundians, they were any decisive result; but the balance was free to choose their own points of attack. clearly swaved in favour of England. Nothing can more evidently show the Causes of For this it is not difficult to as- weakness of France, than the high terms the success sign several causes. The ani-
by which Charles VII. was content to of the Eng- mosity of the Parisians and the purchase the assistance of some Scotlish. Duke of Burgundy against their auxial1nes. The Earl of Buchan Armagnac party still continued, mingled was made constable; the Earl of Dougin the former with dread of the king's re-

sawed in favour of England. Nothing can more evidently show the Causes of For this it is not difficult to as- weakness of France, than the high terms the success sign several causes. The ani- by which Charles VII. was content to of the Eng- mosity of the Parisians and the purchase the assistance of some Scotlish. Duke of Burgundy against their auxial1nes. The Earl of Buchan Armagnac party still continued, mingled was made constable; the Earl of Dougin the former with dread of the king's re-
las had the duchy of Touraine, with a turn, whom they judged themselves to new title, lieutenant-general of the kinghave inexpiably offended. The war had dom. At a subsequent time, Charles of- brought forward some accomplished com-
fered the province of Saintonge to James manders in the English army; surpras- I. for an aid of 6000 men. These Scots sing, not indeed in valour and enterprise, fought bravely for France, though unsuc but in military skill, any whom France could oppose to them. Of these the * Monstrelet, part i., f. 303. most distinguished, besides the Duke of t Rym., t. x., p. 392. This contract was for 600 men at arms, including six bannerets, and thirty. Bedford himself, were Warwick, Salis- four bachelors; and for 1700 archers; bien et bury, and Talbot. Their troops, too, suffisamment montez, armez, et arraiez comme a were still very superior to the French. leurs estats appartient. The pay v as, for the earl, JBut this, we must in candour allow, pro- 6s. 8d. a day; for a banneret, 4s.; for a bachelor ceeded in a great idegree from the mode 2s.; for every other man at arms, Is.; anc. fo each archer, 6d. Artillery-men were paid highe mn which they were raised. The -war than mlenat -sins. was so popular in England, that it was. Villaret xiv., p 302.
tide of war, which from that moment ity. During the calamitous morning of flowed without interruption in Charles's reign, he shrank from fronting the favour. A superstitious awe enfeebled storm, and strove to forget himself in the sinews of the English. They hung pleasure. Though brave, he was never back in their own country, or deserted seen in war; though intelligent, he was from the army, through fear of the incangoverned by flatterers. Those who had tations, by which alone they conceived so committed the assassination at Montextraordinary a person to succeed.* As reau under his eyes were his first favour- men always make sure of Providence ites; as if he had determined to avoid for an ally, whatever untoward fortune he only measure through which he could appeared to result from preternatural hope for better success, a reconciliation causes was at once ascribed to infernal with the Duke of Burgundy. The Count enemies; and such bigotry may be pleadde Richemont, brother of the Duke of ed as an excuse, though a very miserable Britany, who became afterward one of,one, for the detestable murder of this the chief pillars of his throne, consented heroine.t to renounce the English alliance, and ac- The spirit which Joan of Arc had roused cept the rank of constable,'on condition did not subside. France recovered contht these favourites should quit the fidence in her own strength, which had court. [A. D. 1424.] Two others, who been chilled by a long course of adverse successively gained a similar influence fortune. The king, too, shook off his inover Charles, Richemont publicly caused to be assassinated, assuring the king that * Rym., t. x., p. 458-472. This, however, is confit it was for his own and the public good. jecture; for the cause of their desertion is not men Such was the debasement of morals and tioned in these proclamations, though Rymere has government which twenty years of civil printed it in their title. But the Duke of Bedford speaks of the turn of success as astonishing, and war had produced! Another favourite, due only to the superstitious fear which the Eng La Tremouille, took the dangerous office, lish had conceived of a female magician.-Rymer, and, as might be expected, employed his t. x., p. 408. influence against Richemont, who for t M. de l'Averdy, to whom we owe the copious account of the proceedings against Joan of Arc, as some years lived on his own domains, well as those which Charles VII. instituted in orrather as an armed neutral than a friend, der to rescind the former, contained in the third though he never lost his attachment to volume of Notices des Manuscrits du Roi, has just the royal cause. ly made this remark, which is founded on the ealt cannot therefore surprise us, that with gerness shown by the university of Paris in the It cannot therefore surprise us, that with prosecution, and on its being conducted before an all these advantages the regent Duke of inquisitor; a circumstance exceedingly remarkable Bedford had almost completed the cap- intheecclesiastical historyof France. Butanother ture of the fortresses north of the Loire, er material observation arises out of this. The siege of when he invested Orleans in 14128. maid was pursued with peculiar bitterness by her countrymen of the English, or rather Butgundian. Orleans. If this city had fallen, the central faction; a proof that, in 1430, their animo s j provincines. which wave less furnished with against Charles VII. was still ardent.
house of Capet French against their old allies of England. could not willingly see the
inheritance. It was now time for the latter to abandon his ancestors transferred to a stranger. don
those magnificent projects. Impolicy of And he had met with provocation both of conquering
France, which the English, from the regent and the Duke of Glouchester, temporary circumstances
alone had seemed. cester, who, in contempt of all policy and ed to render feasible. But as it is a nat.
justice, had endeavoured, by an invalid ural effect of good fortune in the game of
marriage with Jacqueline, countess of war to render a people insensible to its Hainault and
Holland, to obtain provinces gradual change, the English could not which Burgundy designed
for himself. persuade themselves that their affairs. Yet the union of his sister with Bedford,
were irretrievably declining. Hence the obligations by which he was bound, they rejected the
offer of Normandy and and, most of all, the favour shown by Guienne, subject to the feudal
superiority and is requited. Charles VII. to the assassins of of France, which was made to them at
the time when Orleans was besieged in 1428. ward enlaidit sa vie de tenir malles femmes en Mezeray, Daniel, Villaret, and, I believe, every son hostel, &c., fol. 86. er
modern historian, have mentioned this circum- It is for the reader to judge how far these. passa
stance; and some of them, among whom is Hume, ges render it improbable that Agnes Sorel
was with the addition, that Agnes threatened to leave the mistress of Charles VII. at the siege
of Orleans the court of Charles for that of Henry, affirming in 1428, and, consequently,
whether she is entitled that she was born to be the mistress of a great to the praise which she
has received, of being inking. The latter part of this tale is evidently a strumental in the
deriverance of France. The trafabrication, Henry VI. being at the time a child of dition,
however, is as ancient as Francis I., who seven years old. But I have, to say the least, great
made in her honour a quatrain which: is well known. doubts of the main story. It is not
mentioned by This probably may have brought the story more contemporary writers. On the
contrary, what they into vogue, and led Mezeray, who was not very say of Agnes leads me to
think the dates incompat- critical, to insert it in his history, from which it has ible. Agnes died
in childbed, as some say) in passed to his followers. Its origin was apparently 1450; twenty-
two years after the siege of Orleans. the popular cha acter of Agnes. She was the Nell
Monstrelet says that she had been about five years in Gwyn of France; and justly beloved, not
only for the service of the queen; and the king taking pleas- her charity and courtesy, but for
bringing forward ure in her liveliness and wit, common fame had men of merit, and turning her
influence, a virtue spread abroad that she lived in concubinage with very rare in her class,
towards the public interest. him. She certainly had a child, and was willing. From thence it was
natural to bestow upon her, in that it should be thought the king's; but he always after-times,
a merit not ill suited to her character, denied it, et le pouvoit bien avoir emprunt6 ailleurs. but
which an accurate observation of dates seems -Pt. iii., f. 25. Olivier de la Marche, another to
render impossible. But whatever honour I am contemporary, who lived in the court of
Burgundy, compelled to detract from Agnes Sorel, I am wil says, about the year 1444, le Roy
avoir nouvelle ling to transfer undiminished to a more unblemish ment esleve une pauvre
demoiselle, gentifeinme, ed female, the injured queen of Charles VII., Mary nomm6e Agnes
Sorel, et mis en tel triumpe et tel de Anjou, who has hitherto only shared with the pouvoir, que
son estat estoit a comparer aux grandes usurper of her rights the credit of awakening Charles
princesses de Royaume, et certes c'estoit une des from his lethargy. Though I do not know on
what plus belles femmes que je vey oncques, et fit en sa foundation even this rests, it is not
unlikely to be qualit6 beaucoup au Royaume de France. Elle true, and, in deference to the sex,
let it pass undis. avancoit devers le Roy. Junes gens d'armes, et gen- puted. tils compaignons, et
dont le Roy depuis fut bien. Villaret says, Les plenipotentialres de Chatleg servy.-La Marche.
MWm. Hist., t. viii., p. 145. offrirent la cession de la Normandie et de la Gui.
Du Clercq, whose memoirs were first published in enne en toute proprietyt, sous la clause de l'hommage a the
same collection, says, that Agnes mourut par la couronne, t. xv., p. 174. But he does not quote
poison m;oult Jeune.-Ib., t. viii., p. 410. And the his authority, and I do not like to rely on an
histo continuator of Monstrelet, probably John Chartier, rian not eminent for accuracy in fact,
or precision in speaks of the youth and beauty of Agnes, which language. If his expression is
correct, the French exceeded that of any other woman in France, and must have given up the
feudal appeal, or ressort, of the favour shown her by the king, which so much which had been
the great poi:lt in dispute between excited the displeasure of the dauphin, on his moth-
Edward III. and Charles V., preserving only e r'saccount, that he, was suspected of having caused
homage per paragium, as't was called, which inl

Page 55 P FRANC E. 5 afterward, when Paris, with the adjacent Even those laws of war,
which the courprovinces, had been lost, the English am- teous sympathies of chiv alry had
enjoinbassadors, though empowered by their ed, were disregarded by a merciless fury. private
instructions to relax, stood upon Garrisons surrendering after a brave de. demands quite
disproportionate to the ac- fence were put to death. Instances o, tual position of affairs.* As
foreign ene- this are very frequent. Henry V. ex mies, they were odious even in that part cepts
Alain Blanchard, a citizen who II;ld of France which had acknowledged to distiguished himself
during the siege, He.nry;t and when the Duke of Burgundy from the capitulation of Rouen, and
ordeserted their side, Paris and every other ders him to execution. At the taking of city were
impatient to throw off the yoke. a town of Champagne, John of LuxemA feeble monarchy and
a selfish council burg, the Burgundian general, stipulates They lose completed their ruin: the
neces- that every fourth and sixth man should all their sary subsidies were raised with be at his
discretion; which he exercises conquests. difficulty [A. D. 1449], and, when by causing them
all to be hanged.* Four raised, misapplied. It is a proof of hundred English from Pontoise,
stormed the exhaustion of France, that Charles by Charles VII., in 1441, are paraded in was
unable, for several years, to reduce chains and naked through the streets of Normandy or
Guienne, which were so Paris, and thrown afterward into the ill provided for defence.t At last
he Seine. This infamous action cannot but came with collected strength to the con- be ascribed
to the king.t test, and, breaking an armistice upon At the expulsion of the English, France slight
pretences, within two years over- emerged from the chaos with whelmed the English garrisons
in each an altered character and new events in of these provinces. All the inheritance features
of government. The the reign of of Henry II. and Eleanor, all the con- royal authority and
supreme Charles VII. quests of Edward III. and Henry V., ex- jurisdiction of the parliament
were unicept Calais and a small adjacent district, versally recognised. Yet there was a were
irrecoverably torn from the crown tendency towards insubordination left of England. A barren
title, that idle trophy of disappointed ambition, was pre- plaint of the people of France, curious
as a speci served, with strange obstinacy, to our men of versification, as well as a testimony to
the own age. misfortunes of the time, may be fouled in this his. in these second English wars,
we find torian. — Part i., fol. 321. Notwithstanding the Condition little left of that generous
feel- treaty of Arras, the French and Burgundians made ~~~~~of Franit~ce *continual
incursions upon each other's frontiers, offrance ing which had, ii general, dis- especially about
Laon and in the Vermandois. seend En- tinguished the contemporaries So that the people had
no help, says Monstrelet, glish wars. of Edward III. The very vir- si non de crier miserablement
a Dieu leur creator tues which a state of hostility promotes vengeance; et que pis estoit, quand
ils obtenoient its long continuance, aucun sauf-conduit d'aucuns capitaines peu en esare not proof against its longcontinuance, toi entretenu, mesmement tout d'un parti.-Pt. ii., and sink at last into brutal fierceness. fi: 139. These pillagers were called Ecorcheurs, Revenge and fear excited the two fac- because they stripped the people of their shirts, tions of Orleans and Burgundy to ati And this name superseded that of Armagnacs, by which one side had hitherto been known. Even atrocious actions. The troops serving Xaintraillès and La Hire, two of the bravest cham under partisans on detached expeditions, pions of France, were disgraced by these habits according to the system of the war, lived of outrage.-Ibid., fol. 144, 150. 175. Oliv. de la at free quarters on the people. The his- Marche, in Collect. des Memoires, t. viii., p. 25; t. stories of the time are full of their outrages, v., j 323. from which, as is the common case, the onPoure la plupart, says Villaret, se faire guerrier, from which, as is the common case, the ou voleur de grands chemins, signifioit la mmet unprotected peasantry most suffered.~ chose. * Monstrelet, part ii., f. 79. This John of Lux. plied no actual supremacy. Monstrelet says only, emburg, count de Ligny, was a distinguished capque per certaines conditions luy seroient accord6es tain on the Burgundian side, and for a long time les seigneuries de Gu`enne et Normandie. would not acquiesce in the treaty of Arras. He * See the instruct ins given to the English ne-. disgraced himself by giving up to the Duke of gotiators in 1439, at length, in Rymer, t. x., p. 724. Bedford his prisoner Joan of Arc for 10,000 francs. t Villaret, t. xiv., p. 448. The famous Count of St. Pol was his nephew, and: Amelgard, from whose unpublished memoirs inherited his great possessions in the county of of Charles VII. and Louis XI. some valuable ex- Vermandois. Monstrelet relates a singular proof tracts are made in the Notices des Manuscrits, t. i., of the good education which his uncle gave him. p. 403, attributes the delay in recovering Norman- Some prisoners having been made in an engage dy solely to the king’s slothfulness and sen- ment, si fut le jeune Comte de St. Pol mis en voyg In fact, the people of that province rose upon the de guerre; zcar le Comte de Ligny son oncle luy English, and almost emancipated themselves, with en feit occire aucuns, le quel y prenoit grand plei little aid from Charles. sir, part ii., fol. 95. 6 Monstrelet, passim. A long metrical com- s Villaret, t. xv., n. 327.

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56 EUROPE DURING THE MIDDLE AGES. [CrAp. among the great nobility, arising in part but the first, except mee tabody guards, from the remains of old feudal privileges, which (had been raised in any part of but still more from that lax administra- Europe as a national standing army." tion, which, in the convulsive struggles These troops were paid out of the proof the war, had been suffered to prevail. duce of a permanent tax, called the taille: In the south were some considerable vas- an innovation still more important than sals, the houses of Foix, Albret, and Ar- the former. But the present benefit magnac, who, on account of their dis- cheating the people, now prone to sub. tance from the seat of empire, had al- missive habits, little or no opposition was ways maintained a very independent con- made; except in Guienne, the inhabiuct. The dukes of Brittany and Bur- tants of which had speedy i ason to re. gundy were of a more formidable charac- gret the mild government of England, ter, and might rather be ranked among and vainly endeavoured to return to its foreign powers than privileged subjects. protection.t The princes, too, of the royal blood, who, [A. D. 1461.] It was not long before the during the late reign, had learned to par- new despotism exhibited itself in Louis X1 take or contend for the management, were its harshest character. Louis XI., ill inclined towards Charles VII., himself son of Charles VII., who, during his fa. jealous, from old recollections, of their ther's reign, had been connected N ith the ascendancy. They saw that the consti- discontented princes, came to the throne tution was verging rapidly towards an greatly endowed with those virtues and absolute monarchy, from the direction of vices which conspire
to the success of which they would studiously be excluded. Laborious vigilance in the chsra—This apprehension gave rise to several business, contempt of pomp, attempts at rebellion during the reign of fability to inferiors, were his excellence Charles VII., and to the war, commonly ces; qualities especially praiseworthy in entitled, for the Public Weal (du bien pub- an age characterized by idleness, love of lic), under Louis XI. Among the pretense's alleged by the revolters ill each of Olivier de la Marche speaks very much in fa these, the injuries of the people were vour of the companies of ordonnance, as having [hese, the injuries of the people were repressed the plunderers, and restored internal not forgotten,* but from the people they police.—Collection des Mmnoires, t. viii., p. 148. received small support. Weary of civil Amelgard pronounces a vehement philipic against dissonant, and anxious for a strong gov- them; but it is probable that his observation of the ernment to secure them from deprevation, abuses they had fallen into was confined to the reign of Louis XI.-Notices des Manuscrits, ubi the French had no inducement to intrust supra. even their real grievances to a few male- t The insurrection of Guienne in 1452, which content princes, whose regard for the for a few months restored that province to the Eng common good they had much reason to lish crown, is accounted for in the curious one distrust. Every circumstance favoured moirs of Amelgard. above mentioned. It proceeded solely from the arbitrary taxes imposed by Charles VII. and his son in the attainment Charles VII. in order to defray the expenses of his of arbitrary power. The country was regular aimy. The people of Bordeaux complainpillaged by military ruffians. Some of ed of exactions not only contrary to their ancient these had been led by the dauphin to a privilege-, bat to the positive conditions of their s in Ger eny, bu the r auhindr sti capitulation.. But the king was deaf to such re war in Germany, but the remainder still cmonstrancas. The province of Guienne, he says, infested the high roads and villages. then perceived that it was meant to subject it to Charles established his companies of or- the same servitude as the rest of France, where donnance, the basis of the French regular the leeches of the state boldly maintain, as a fundamental maxim, that the king has a right to tax army, in order to protecty all his subjects, how and when he pleases; which from such depredators. They consisted is to advance that in France no man has any thing of about nine thousand soldiers, all cav- that he can call his own, and that the king can alry, of whom fifteen hundred were heatake all at his pleasure; the proper condition of vy-armed; a force not very considerable, slaves, whose peculium, enjoyed by their master's permission, belongs to him, like their persons, and may be taken away whenever he chooses. Thus * The confederacy formed at Nevers in 1441, situated, the people of Guinnee, especially those by the dukes of Orleans and Bourbon, with many of Bordeaux, alarmed themselves, and excited by other princes, made a variety of demands, all rela- some of the nobility, secretly sought about for ting to the grievances which different classes of means to regain their ancient freedom; and hay the state, or individuals among themselves, sufter- ing still many connexions with persons of rank ai ed under the administration of Charles. These Eagland, they negotiated with them, &c. —No may be found at length in Monstrelet, p. ii., f. 193; tices des Manuscrits, p. 433. The same cause is and are a curious document of the change which assigned to this revolution by Du Clercq, also a con was then working in the French constitution. In temporary writer, living in the dominions of Bur his answer, the kng claims the right, in urgent gundy.—Collection des Mrmoires, t. ix., p. 400 cases, of levyng taxes with ut waiting for the con- Villarp has not known, or not chosen to know sent of the - tates General. any Lting of tlJie matter

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in the countries with which he was con- they failed in the great object of reducing nected, and a well-judged bounty, that Paris, which would have obliged Louis to thought no expense wasted to draw them fly from his dominions. It was his policy into his service or interest. In the fif- to promise every thing, in trust that fourteenth century this political art had hard- tune would affurd some opening to repair ly been known, except perhaps in Italy; his losses, and give scope to his superior the princes of Europe had contended with prudence. Accordingly, by the treaty of each other by arms, sometimes by treach- Conflans, he not only surrendered afresh ery, but invested his brother with the 1o perfection, Louis XI. may be deemed dutchy of Normandy as his appanage not absolutely the inventor, but the most i The term appanage denotes the provis eminent improrver; and its success has ion made for the younger chilled perhaps to too high an estimate of his dren of a king of France. This Appanages. abilities. Like most bad men, he some- always consisted of lands and feudal sutimes fell into his own snare, and was be- peerities held of the throne by the te.. trayed by his confidential ministers, be- nure of peerage. It is evident that this cause his confidence was generally repo- usage, as it produced a new class of sed in the wicked. And his dissimulation powerful feudatories, was hostile to the was so notorious, his tyranny so oppres- interests and policy of the sovereign, and sive, that he naturally surrounded retarded the subjugation of the ancient by enemies, and had occasion for all his aristocracy. But a usage coeval with the craft to elude those rebellions and con- monarchy was not to be abrogated, and federacies which might perhaps not have the scarcity of money rendered it imposbeen raised against a more upright sov- sible to provide for the younger branches ereign. At one time the monarchy was of the royal family by any other means. on the point of sinking before a combina- It was restrained, however, as far as cition, which would have ended in dismem- cumstances would permit. Philip IV bering France. [A. D. 1461.] declared that the county of Poitiers, be. nominated This was the league denomina- stowed by him on his son, should revert of;he Pub- ted of the Public Weal, in which to the crown on the extinction of male lie Weal, all the princes and great vassals heirs. But this, though an important proef thw French crown were concerned: cedent, was not, as has often been assertthe dukes of Britany, Burgundy, Alen- ed, a general law. Charles V. limited gons Bourbon, the Count of Dunois, so the appanages of his own sons to twelve renowned for his valour in the English thousand livres of annual value in land. wars, the families of Foix and Armagnac; By means of their appanages, and through and, at the head of all, Charles, duke of the operation of the Salique-law, which Berry, the king's brother and presumptive made their inheritance of the crown a heir So unanimous a combination was less remote contingency, the princes of not iormed without a strong provocation the blood royal in France were at all frol 1 the king, or at least without weighty times (for the remark is applicable long grounds for distrusting his intentions; but after Louis XI.) a distinct and formidable the more remote cause of this confeder- class of men, whose influence was always ac5y, as of those which had been raised disadvantageous to the reigning monarch, ag;list Charles VII., was the critical po- and, in general, to the people. sit-on of the feudal aristocracy from the No appanage had ever been granted ill increasing power of the crown. This France so enormous as the dutchy of Norw-r of the Public Weal was in fact a mandy. One third of the whole nationstwyuggle to preserve their independence; al revenue, it is declared, was derived and from the wea- character of the Duke from that rich province. Louis could not o' Berry, whom they would, if successful, therefore sit down under such terms as. lhve placed upon the throne, it is possi- with his usual insincerity, he had acceptable that France might have been in a ed at Conflans. In a very short time he mrieranner partitioned among them, in the attacked Normandy, and easily compellevent of their success, or at least that Bur- ed his brother to take refuge in Britany; gundy and Britany would
have thrown nor were his enemies ever able to proft the sovereignty that galled them. cure the restitution of Charles's appanage. The strength of the confederates ir. During the rest of his reign, Louis had

Page 58 8 ETKUROPE DURING TIIE MIDDLE AGES. ChAi. 1 powerful coalitions to withstand; but his the feudal system, when the house of prudence and compliance with circum-
Capet had almost achieved the subjuga. stances, joined to some mixture of good tion of those proud vassals among whom fortune, brought him safely through his it had been originally number- Its succop)erils. The Duke of Brittany, a prince of ed, a new antagonist sprung up sive acquisi moderate talents, was unable to make to dispute the field against the tions..ny formidable impression, though gen- crown. John, king of France, granted erally leagued with the enemies of the the dutchy of Burgundy by way of appaking. The less powerful vassals were nage to his third son, Philip. By his successfully crushed by Louis with deci- marriage with Margaret, heiress of Louis, sive vigour: the dutchy of Alengon was count of Flanders, Philip
acquired tihat confiscated; the Count of Armagnac was province, Artols, the county of Burgundy assassinated; the Duke of Nemours, and (or Franche-comte), and the Nivernois the Constable of St. Pol, a politician as Philip the Good, his grandson, who car treacherous as Louis, who had long be- ried the prosperity of this family to Its trayed both him and the Duke of Burgun- height, possessed himself, by various tidy, suffered upon the scaffold. The king's ties, of the several other provinces whichll brother, Charles, after disquieting him composed the Netherlands. These were for many years, died suddenly in Guienne fiefs of the empire, but latterly not much [A. D. 1472], which had finally been grant- dependant upon it, and alienated by their ed as his appanage, with strong suspicions owners without its consent. At the peace of having been poisoned by the king's of Arras, the districts of Macon and Auxconstrivance.
Edward IV. of England erre were absolutely ceded to Philip, and was too dissipated and too indolent to be great part of Picardy conditionally made fond of war; and, though he once en-
er to him, redeemable on the paytered France [A. D. 1475] with an army ment of four hundred thousand crowns.* more considerable than could have been These extensive, though not compact doexpected after such civil bloodshed as minions, were abundant in population and England had witnessed, he was induced, wealth, fertile in corn, wine, and salt, and by the stipulation of a large pension, to full of commercial activity. Thirty years give up the enterprise.* So terrible was of peace which followed the treaty of Arstil in France the apprehension of an ras, with a mild and free government English war, that Louis prided himself raised the subjects of Burgundy to a deuon no part of his policy so much as the gree of prosperity quite unparalleled in warding this blow. Edward showed a these times of disorder; and this was disdesire to visit Paris; but the king gave played in general sumptuousness of dress him no invitation, lest, he said, his broth- and feasting. The court of Philip and his er should find some handsome women son Charles was distinguished for its there, who might tempt him to return in pomp and riches, for pageants and toura different manner. Hastings, Howard, naments; the trappings of chivalry, perand others of Edward's ministers, were haps without its spirit: for the military secured by bribes in the interest of Louis, which the first of these did not scruple to * The Duke of Burgundy was personally excused receive at the same time from the Duke from all homage and service to Charles VII.; but. if either died, it was to be paid by the heir, or tc of Burgundyt the heir. Accordingly, on Charles's death; Philip This was the most powerful enemy did homage to Louis. This exemption can hardly House of whom the craft of Louis had to therefore have been inserted to gratify the pride of Burgundy. counteract. In the last days of Philip, as historians suppose. Is it not probable that, during his resentment against Charles, he might have made some vow never to do him hum ~ The army of Edward consisted
of 1500 men at age, which this reservation in the treaty was in a.rms, and 14,000 archers; the
whole very well ap- tended to preserve? pointed.-Comines, t. xi., p. 238. There seems to It is
remarkable that Villaret says, the Duke of have been a great expectation of what the English
Burgundy was positively excused by the 25th ar would do, and great fears entertained by Louis,
tide of the peace of Arras from. doing homage to who grudged no expense to get rid of them.
Charles, or his successors kings of France, t. xvi., p. j Comines, 1. vi., c. 2. Ha3tings had the
mean 404. For this assertion too he seems to quote the running to refuse to give his receipt for
the pen- Trksor des Chartes, where probably the original sion he took from Louis XI. " This
present," he treaty is preserved. Nevertheless, it appears other. said to the king's agent, " comes
from your mas- wise, as published by Monstrelet at full length, ter's good pleasure, and not at
my request; and if who could have no motive to falsify it; and Phil you mean I should receive
it, you may put it here ip's conduct in doing homage to Louis is hardly into my sleeve, but you
shall have no discharge compatible with Villaret's assertion. Daniel copfrom me; for I will not
have it said that the Great ies Monstrelet without any observation. In the Chamberlain of
England is a pensioner of the King same treaty, Philip is entitled Duke by the grace of of
France, nor have my name appear in the crts Goi; which was reckoned a mark of independ. Df
the Chambre des Comptes."-Itid. ence, and not usually permitted to a vassal.

Page 59] PNAP 11.} t rRANCE 59 character of Burl5gundy had been impaired far less an
adopt in these mysteries of by long tranquillity.* politics than the king. During the lives of
Philip and Charles Notwithstanding the power of Bur. Character VII., eachunderstoodthe
other's gundy, there were some dis- Insubordin& of Charles, rank, and their amity was little
advantages in its situation. tion of the Duke of' interrupted. But their succes- It presented (I
speak of all Flemish Burundy. sors, the most opposite of hu- Charles's dominions under the c
man kind in character, had one common common name, Burgundy) a very ex quality,
ambition, to render their antipa- posed frontier on the side of Germany thy more powerful.
Louis was eminently and Switzerland, as well as France; and timid and suspicious in policy;
Charles Louis exerted a considerable influence intrepid beyond all men, and blindly pre- over
the adjacent princes of the empire sumptuous: Louis stooped to any humili- as well as the
united cantons. The po. ation to reach his aim; Charles was too ple of Liege, a very populous
city, had haughty to seek the fairest means of for a long time been continually rebelling
strengthening his party. An alliance of against their bishops, who were the allies his daughter
with the Duke of Guienne, of Burgundy; Louis was of course not brother of Louis, was what
the malecon- backward to foment their insurrections; tent French princes most desired, and
which sometimes gave the dukes a good the king most dreaded; but Charles, deal of trouble.
The Flemings, and either averse to any French connexion, especially the people of Ghent, had
been or willing to keep his daughter's suit- during a century noted for their repubers in
dependance, would never directly lican spirit and contumacious defiance of accede to that, or
any other proposition their sovereign. Liberty never wore a for her marriage. On Philip's death,
in more unamiable countenance than among 1467, he inherited a great treasure, which these
burghers; who abused the strength he soon wasted in the prosecution of his she gave them by
cruelty and insolence. schemes. These were so numerous and Ghent, when Froissart wrote,
about the vast, that he hadl not time to live, says year 1400, was one of the strongest cities
Comines, to complete them, nor would in Europe, and would have required, he one half of
Europe have contended him. says, an army of two hundred thousand It was his intention to
assume the title men to besiege it on every side, so as to of king; and the Emperor Frederick III.
shut up all access by the Lys and Scheldt. was at one time actually on his road to It contained
eighty thousand men of age; confer this dignity, when some suspicion to bear arms;* a
calculation which, al. caused him to retire; an d the project was though, as I presume, much exaggerated, never renewed.t It is evident that, if is evidence of great actual populousness. Charles's capacity had borne any propor- Such a city was absolutely impregnable, tion to his pride and courage, or if a prince at a time when artillery was very imperless politic than Louis XI. had been his feet both in its construction and managecontemporary in France, the province of ment. Hence, though the citizens of Burgundy must have been lost to the Ghent were generally beaten in the field monarchy. For several years these with great slaughter, they obtained tolgreat rivals were engaged, sometimes in able terms from their masters, who knew open hostility, sometimes in endeavours the danger of forcing them to a desperate to overreach each other; but Charles, defence. though not much more scrupulous, was No taxes were raised in Flanders, or indeed throughout the dominions of Bui* P. de Comines l. i., c. 2 and 3; 1. v., c. 9. Du gundy, without consent of the three Clercq, in Collecti n des Memoires, t. ix., p. 389. estates. In the time of Philip, not a In the investiture granted by John to the first Phil- great deal of money was levied upon the ip of Burgundy, a reservation is made, that the roy- people; but Charles obtained every year al taxes shall be evied throughout that appanage. But during the long hostility between the kingdom a pretty large subsidy, which he exendand dutchl, this could not have been enforced. ed in the hire of Italian and Engishl nier and by the treaty of Arras, Charles surrendered all cenaries.t An almost uninterrupted sue. right to tax the duke's dominions.-Monstrelet, f. 114. * Froissart, part ii., c. 67. t Garnier, t. xviii., p. 62. It is observable that t Comines, l. iv., c. 13. It was very reluctantly Comines says not a word of this; for which Gar. that the Flemings granted any money. Philip once nier seems to quote Belcarius, a writer of the six- begged for a tax on salt, promising never to ask any teenth age. But even Philip, when Morvilliers, thing more; but the people of Ghent, and, in imm'. Louis's chancellor, used menaces towards him, in- tation of them, the whole county, refused it. —Du terrupted the orator with these words: Je veux Clercq, p. 389. Upon his pretence of taking the aue chacan scache que, si j'eusse voulu, je fusse cross, they granted him a subsidy, though less koi -Villaret t. xvii. o. ~4. than he had requested, on toDdition that it shanoild

Page 60 Go EUROPE DURING THE MIDDLE AGES..GCsP. a cess had attended his enterprises for a left an only daughter, undoubted heiress length of time, and rendered his dispo- of Flanders and Artois, as well as of his sition still more overweening. [A. D. dominions out of France; but whose 1474.] I-his first failure was before Nuz, right of succession to the dutchy of Bur a little town near Cologne, the possession gundy was more questionable. Origi 9f which would have made him nearly nally, the great fiefs of the crown de. mma;ter of the whole course of the Rhine, scended to females; and this was the for he had already obtained the landgravi- case with respect to the two first menite of Alsace. Though compelled to raise tioned. But John had granted Burgundy the siege, he succeeded in occupying, next to his son Philip by way of appanage; year, the dutchy of Lorraine. But his and it was contended that appanages re. overthrow was reserved for an enemy verted to the crown in default of male whom he despised, and whom none could heirs. In the form of Philip's investihave thought equal to the contest. [A. D. ture, the dutchy was granted to him and 1476.] The Swiss had given him some his lawful heirs, without designation of slight provocation, for which they were sex. The construction, therefore, must ready to atone; but Charles was unused be left to the established course of law. to forbear; and perhaps Switzerland This, however, was by no means accame within his projects of conquest. knowledged by Mary, Charles's daughter, Defeats of At Granson, in the Pays de who maintained, both that no general law Charles at Vaud, he was entirely routed, restricted appanages to male heirs, and Granson with more disgrace than slaugh- that Burgundy had always been considerandMorat. ter.* But, having reassembled ed as
a feminine fief, John himself having his troops, and met the confederate army possessed it, not by reversion as king (for of Swiss and Germans at Morat, near Fri- descendant of the first dukes were then burg, he was again defeated with vast living), but by inheritance derived through loss. On this day the power of Bur- females.* Such was this question of sucgundy was dissipated: deserted by his cession between Louis XI. and Mary of allies, betrayed by his mercenaries, he Burgundy, upon the merits of whose preset his life upon another cast at Nancy, tensions I will not pretend altogether to desperately giving battle to the Duke of decide; but shall only observe, that if -lis death. Lorraine with a small dispirited Charles had conceived his daughter to army, and perished in the en- be excluded from this part of his inherit. lagement. [A. D. 1477.] ance, he would probably, at Conflans Now was the moment when Louis, or Peronne, where he treated upon the'taim of who had held back while his vantage-ground, have attempted at least Louis XI. to enemy was breaking his force to obtain a renunciation of Louis's claim. the succession of Bur- against the rocks of Switzer- There was one obvious mode of pre- gundy. land, came to gather a harvest venting all further contests, and of Conduct which his labour had not reaped. Charles aggrandizing the French monar- oflouis chy far more than by the reunion of Burnot be levied if the crusade did not take place, gundy. This was the marriage of Mary which put an end to the attempt. The states with the dauphin, which was ardently knew well that the duke would employ any money they gave him in keeping up a body of gens d'armes like his neighbour, the King of France; and though it became the first Jewel in the French crown.the want of such a force exposed their country to Garnier, t. xviii., p. 361. pillage, they were too good patriots to place the * It is advanced with too much confidence by means of enslaving it in the hands of their sover- several French historians, either that the ordinan. eign. Grand doute faisoient les sujets, et pour ces of Philip IV. and Charles V. constituted a plusieurs raisons, de se mettre en cette sujection, ou general law against the descent of appanages to ils voyoient le royaume de France, a cause de ses female heirs, or that this was a fundamental law gens d'arines. A la verit6, leur grand doute n'es- of the monarchy.-Du Clos, Hist. de Louis XI., toit pas sans cause: car quand il se trouva cinq t. ii., p. 252. Garnier, Hist. de France, t. xviii., cens hommes d'armes, la volont6 luy vint d'en p. 258. The latter position is refuted by frequent avoir plus, et de plus hardiment entreprendre con- instances of female succession; thus Artois had tre tous ses voisins.-Comines, l. iii., c. 4, 9. passed by a daughter of Louis le Male into the Du Clercq, a contemporary writer of very good house of Burgundy. As to the above-mentioned authority, mentioning the story of a certain widow ordinances, the first applies only to the county of who had remarried the day after her husband's Poitiers; the second does not contain a syllable death. says that she was in -some degree excusa- that relates to succession.-(Ordonnances des Roie, ble, because it was the practice of the duke and t. vi., p. 54.) The doctrine of excluding female he officers to force rich widows into marrying heirs was more consonant to the pretended Salique their soldiers or other servants, t. ix., p. 418. law, and the recent principles as to inalienability of * A famous diarmond, belonging to Charles of domain, than to the analogy of feudal rules and Burgundy, was taken in the plunder of his tent by precedents. M. Gaillard, in his Observations sut,ne Swiss at Granson. After several changes of l'Histoire do Velly, Villaret, et 13arnier, has a ju(h wners, most of whom were ignorant of its value, cious now on this subject, t. iii., p. 304.
of being incor- pree, full of terror and suspicion, and deep- porated with a country worse
governed consciousness of universal hatred. All than their own. The arts of Louis would ranks,
he well knew, had their several have been well employed in smoothing injuries to remember:
the clergy, whose these impediments.* But he chose to liberties he had sacrificed to the see of
seize upon as many towns as, in those Rome, by revoking the Pragmatic Sanccritical
circumstances, lay exposed to tion of Charles VII.; the princes, whose him, and stripped the
young dutchess of blood he had poured upon the scaffold: Artois and Franche Comte. Expecta-
the parliament, whose course of justice tions of the marriage he sometimes held he had turned
aside; the commons, who out, but, as it seems, without sincerity. groaned under his extortion,
and were Indeed, he contrived irreconcilably to plundered by his soldiery.t The palace alienate
Mary by a shameful perfidy, be- fenced with portcullises and spikes of traying the ministers
whom she had in- iron, was guarded by archers and cross trusted upon a secret mission to the
peo- bow men, who shot at any that approach ple of Ghent, who put them to the torture, ed by
night. Few entered this den; but and afterward to death, in the presence to them he showed
himself in magnifi and amid the tears and supplications of cent apparel, contrary to his former
cust their mistress. [A. D. 1477.] Thus the tom, hoping thus to disguise the change French
alliance becoming odious in of his meager body. He distrusted his France, this princess married
Maximilian friends and kindred, his daughter and his of Austria, son of the Emperor Frederick;
son, the last of whom he had not suffered a connexion which Louis strove to pre- even to read
or write, lest he should too vent, though it was impossible then to soon become his rival. No
man ever so foresee that it was ordained to retard the much feared death, to avert which ho
growth of France, and to bias the fate stooped to every meanness, and sought of Europe during
three hundred years. every remedy. His physician had sworn This war lasted till after the death of
that, if he were dismissed, the king would Mary, who left one son, Philip, and one not
survive a week; and Louis, enfee. daughter, Margaret. By a treaty of peace bled by sickness
and terror, bore the concluded at Arras in 1482, it was agreed rudest usage from this man, and
endeav-.. that this daughter should become the oured to secure his services by vast dauphin's
wife, with Franche Comte and rewards. Always credulous in relics, Artois, which Louis held
already for her though seldom restrained by superstition dowry, to be restored in case the
marriage from any crime,T he eagerly bought up should not take effect. The homage of
Flanders, and appellant jurisdiction of ~ For Louis's illness and death, see Comines, the
parliament over it, were reserved to 1. vi., c. 7-12, an Garnier, t. xix., p. 112, &c. Plessis, his
last residence, about an English mils the crown. from Tours, is now a dilapidated farmhouse,
and Meanwhile Louis was lingering in dis- can never have been a very large building. The
Sickness ease and torments of mind, the vestiges of royalty about it are few; but the prin and
death of retribution of fraud and tyranny. cipal apartments have been destroyed, either in Louis
XI. Two years before his death he the course of ages or at the revolution. tw See a remarkable
chapter in Philip de Co was struck with an apoplexy, from which mines, 1. iv., c. 19, wherein
he tells us that Charles VII. had never raised more than 1,800,000 franc? a *Robertson, as well
as some other moderns, year in taxes; but Louis XI., at the time of his have maintained, on the
authority of Comines, that death, raised 4,700,000, exclusive of some military Louis XI. ought
in policy to have married the impositions; et surement c'estoit compassion de young princess to
the Count of Angouleme, father voir et scavor la pauvrety du peuple. In this of Francis I.,a
connexion which she would not have chapter he declares his opinion that no king can disliked.
But certainly nothing could have been justly levy- money. on his subjects without their more
adverse to the interests of the French mon- consent, and repels all common arguments lo the
archy than such a marriage, which would have contrary. put a new house of Burgundy at the
head of those: An exception to this was when he swore by princes whose confederacies had so
often endan- the cross of St. Lo, after which he feared to viogered the crown. Comines is one
of the most juvenile, late his oath. The Constable of St. Pol, whom dicious of historians; but his sincerity may be rather his oath. Louis invited with many assurances to court, be. er doubtful in the opinion above mentioned; for he thought himself of requiring this oath before he wrote in the reign of Charles VIII., when the Count trusted his promises, which the king refused; and of Angroulenme was engaged in the same faction as St. Pol prudently stayed away. Garn., t. xviii., p 72 Some report that he had a similar resuect.

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EUROPE DURING THE MIDDLE AGES. tCHAr....

Treasures of this sort, and even procured during the Saxon invasion, had not on. A Calabrian hermit, of noted sanctity, to ginally belonged to the body of the French journey as far as Tours in order to re- monarchy. They were governed by their store his health. Philip de Comines, own princes and laws; though tributary, who attended him during this inforrnity, perhaps, as the weaker to the stronger draws a parallel between the tortments to the Merovingian kings.* In the ninth he then endut. and those he had for- century, the dukes of Britany did hommerly inflicted on others. Indeed, the age to Charles the Bald, the right of which whole of his life was vexation of spirit. was transferred afterward to the dukes "I have known him (says Comines), and of Normandy. This formality, at that been his servant in the flower of his age, time no token of real subjection, led to and in the time of his greatest prosperi- consequences beyond the views of either ty; but never did I see him without un- party. For when the feudal chains, that easiness and care. Of all amusements had hung so loosely upon the shoulders he loved only the chase, and hawking in of the great vassals, began to be strainets season And in this he had almost ed by the dexterity of the court, Britany as much uneasiness as pleasure; for he found itself drawn among the rest to the rode hard, and got up early, and some- same centre. The old privileges of in. Ames went a great way, and regarded no dependence were treated as usurpation; weather: so that he used to return very the dukes were menaced with confiscation weary, and almost ever in wrath with of their fief, their right of coining money some one. I think that from his child- disputed, theirjurisdiction impaired by aphood he never had any respite of labour peals to the parliament of Paris. Howand trouble to his death. And I am cer- ever, they stood boldly upon their right, tain that if all the happy days of his and always refused to pay liege homage, life, in which he had more enjoyment which implied an obligation of service to than uneasiness, were numbered, they the lord, in contradistinction to simple would be found very few; and at least homage, which was a mere symbol of that they would be twenty of sorrow for feudal dependance. t every one of pleasure." About the time that Edward III. made Charles VIII. was about thirteen years pretensions to the crown of France, a Charles old when he succeeded his father controversy somewhat resembling it arose VI1. Louis. [A. D. 1483.] Though the in the dutchy of Britany, between the fam. law of France fixed the majority of her ilies of Blois and Montfort. This led to kings at that age, yet it seems not to have a long and obstinate war, connected all been strictly regarded on this occasion, along as a sort of underplot with the great and at least Charles was a minor by nature, drama of France and England. At last, if not by law. A contest arose, therefore, Montfort, Edward's ally, by the defeat and for the regency, which Louis had intrusted death of his antagonist, obtained the to his daughter Anne, wife of the Lord de dutchy, of which Charles V. soon after Beaujeu, one of the Bourbon family. The gave him the investiture. This prince and Duke of Orleans, afterward Louis XII., his family were generally inclined to Engclaimed it as presumptive heir of the lish connexions; but the Bretons would crown, and was seconded by most of the seldom permit them to be effectual. Two princes. Anne, however, maintained her cardinal feelings guided the conduct of ground, and ruled France for severalyears this brave and faithful people; the one, in her brother's name with singular spirit an attachment to the French nation and and address, in spite of the rebellions
monarchy in opposition to foreign ene which the Orleans party raised up against her. These were supported by the Duke * Gregory of Tours says, that the Bretons were of Britany, the last of the great vassals of subject to France from the death of Clovis, and the crown, whose daughter, as he had no that their chiefs were styled counts, not kings, 1. male issue, was the object of as many iv., c. 4. However, it seems clear from Nigellus, a writer of the life of Louis the Debonair, that they suiters as Mary of Burgundy. were almost independent in his time. There was The dutchy of Britany was peculiarly even a march of the Britannic frontier which sepAflairs of circumstanced. The inhabitants, arated it from France; and they had a king of their ritaCy. whether sprung from the ancient own. It is hinted, indeed, that they had been for Britany. whether sprung from the ancient merly subject; for, after a victory of Louis over republicans of Armorica, or, as some have them, Nigellus says, Imperio sociat perdita regna thought, from an emigration of Britons die. In the next reign of Charles the Bald, Hinc mar tells us, regnum undique a Paganis, et falsi0 a leaden image of the Virgin, which he wore in his Christianis, scilicet Britonibus, est circumscriptum, nat; as alluded to by Pope: "A perjured prince a -Epist. 18. See, too, Capitularia Car. Calvi., A leaden saint revere." D. 877, tit. 23. Comines, 1. vi., c. 13. + Villaret, t. xii., tp. 82 t. xv., p. 199
embarrassments, she marriage of Douce, heiress of the first line of sover. was ultimately
compelled to accept the eigncounts, with Raymond Berenger, count of Barcelona, in 1112, it
passed into that distinguishMarriage f hand of Charles VIII. He ed family. In 1167 it was
occupied or usurped by Charles VIII. had long been engaged by the Alfonso II., king of
Arragon, a relation, but not to the Dutchess treaty of Arras to marry the heir, of the house of
Berenger. Alfonso bequeath of Britaivy. daughter of Maximilian, and ed Provence to his second
son, of the same name, and from whom it descended to Raymond Beren that princess was
educated at the French ger IV. This count dying without male issue in court. But this
engagement had not pre- 1245, his youngest daughter Beatrice took possesevented several years
of hostilities, and sion by virtue of her father's testament. But this continual intrigues with the
towns of succession being disputed by other claimants, and Flanders against Maximilian. T he
double especially by Louis 1X., who had married her eldjury which the latter sustained in.
est sister, she compromised differences by marjury which thelatter sustained in the rying
Charles of Anjou, the king's brother. The marriage of Charles with the heiress of family of
Anjou reigned in Provence, as well as in Britany seemed likely to excite a pro- Naples, till the
death of Joan in 1382, who, having tracted contest; but the King of France, no children,
adopted Louis of Anjou, brother of who ad other objects in vie and per- Charles V., as her
successor. This second Angewho had other objects iln view, and per- vin line ended in 1481 by
the death of Charles III., haps was conscious that he had not acted though Renier, duke of
Lorraine, who was dea fair part, soon came to an accommoda- scended through a female, had a
claim which it tions, by which he restored Artois and does not seem easy to repel by argument.
It was Franche Comte. very easy, however, for Louis XI., to whom Charles III. had bequeathed
his rights, to repel it by force. [A. D. 1492.] France was now consol- and accordingly he took
possession of Provence, idated into a great kingdom; the feudal which was permanently united
to the crown by let system was at an end. The vigour of ters patent of Charles VIII. in 1486.1
Philip Augustus, the paternal wisdom of t The principal authority, exclusive of original St.
Louis, the policy of Philip the Fair, writers, on which I have relied for this chapter, is the
history of France by Velly, Villaret, and Gar had laid the foundations of a powerful nier; a
work which, notwithstanding several demonarchy, which neither the arms of Eng- facts, has
absolutely superseded those of Mezeray land, nor seditions of Paris, nor rebellions and Daniel.
The part of the Abbé Velly comes of the princes, were able to shake. Be- down to the middle
of the eighth volunoe (12mo edition), and of the reign of Philip de Vt. His sides the
original fiefs of the French continuator Villaret was interrupted by death ir crown, it had
acquired two countries be- the seventeenth volume, and in the reign of Loul Vyoid the Rhone
which properly depend- Art de verifierles Dates, t.:i., 445. Garnier, t. xix.. pp. 57 4'4
conciliated, by such importance. Their country, overspread presents as a leader of barbarians could with forests and morasses, afforded little confer. These were the institutions of Political state arable land, and the cultivation the people who overthrew the empire of of ancient of that little was inconstant. Rome, congenial to the spirit of infant Germany. Their occupations were prin- societies, and such as travellers have cipally the chase and pasturage; without found among nations in the same stage cities, or even any contiguous dwellings. of manners throughout the world. And, They had kings, elected out of particu-although in the lapse of four centuries lar families, and other chiefs, both for between the ages of Tacitus and Clovis, war and administration of justice, whom some change may have been t vrought by merit alone recommended to the public long intercourse with the Romans, yet choice. But the power of each was the foundations of their political system greatly limited; and the derision of all were unshaken. When these tribes from Germany and XI. Ir. my references to this history, which for the neighbouring countries poured down common facts I have not thought it necessary to upon the empire, and began to Partition ol make, I have merely named the author of the par- form permanent settlements, lands in c"i ticular volume which I quote. This has made the they made a artition of the quered pro above explanation convenient, as the reader might h ey made a partition of the qered s. imagine that I referred to three distinct works. lands in the conquered prov- inces. Of these three historians, Garnier, Ache last, is the inces between themselves and the origimost judicious, and, I believe, the most accurate. nal possessors. The Burgundians and His prolixity, though a material defect, and one Visigoths took two thirds of their rew hich has occasioned the work itself to become an immeasurable undertaking, which could never be spective conquests, leaving the remaincompleted on the same scale, is chiefly occasioned der to the Roman proprietor. Each Burby too great a regard to details, and is more tolera- gundian was quartered, under the gentle ble than a similar fault in Villaret, proceeding from name of guest, upon one of the former a love of idle declamation and sentiment. Villaret, tenants, whose reluctant hospitality conhowever, is not without merits. He embraces, perhaps, more fully than his predecessor Velly, fined him to the smaller portion of his those collateral branches of history which an en- estate.t The Vandals in Africa, a more lightened reader requires almost in preference to furious race of plunderers, seized all the civil transactions, the laws, manners, literature, best lands.t The Lombards of Italy took a and, in general, the whole domestic records of a na- third part of the produce. We cannot dis tion. These subjects are not always well treated; third part of the produce. We cannot disbut the book itself, to which there is a remarkably cover any mention of a similar arrangefull index, forms upon the whole a great repository ment in the laws or history of the Franks. of useful knowledge. Villaret had the advantage of official access to the French archives, by which * De minoribus rebus principes consultant, de he has no doubt enriched his history; but his ref- majoribus omnes; ita tamen, ut ea quoque, quo. encesare indistinct, and his composition breathes rum penes plebem arbitrium est, apud principes an air of rapidity and want of exactness. Velly's vertractentur.- Tac. de Mor. Germ., c. xi. Acida characteristics are not very dissimilar. The style'ius and Grotius contend for prectractentur; whict of both is exceedingly bad, as has been severely - would be neater, but the same sense appears to | I noticed, along with their other defects, by Gaillard; onveyed by the common reading. in Observations sur l'Histoire de Velly, Villaret, et t Leg. Burgund., c. 54, 55. Garnier.- (4 vols. 12mo., Paris, 1806.) t Procopius De Bello Vandal., I. i... 5.

Page 65 [PAu 1.1 FEUDA.~ SYSTEM. 65 It is, however, clear that they're occupied, it serves to illustrate, it is said, that a by public allotment or individual pillage, woman cannot inherit her grandfather's a great portion of the lands of France. estate (haereditas aviatica), distinguish The
estates possessed by the Franks, as ing such family property from what the Aloolal and their property, were termed. al- father might have acquired.* And 3Iaa Salique lands. Iodiol; a word which is some- culfus uses expressions to the same eftimes restricted to such as had descended fact. There existed, however, a right by inheritance.* These were subject to I of setting aside the law, and admitting no burden except that of public defence. females to succession by testament. I They passed to all the children equally, is rather probable, from some passaget or, in their failure, to the nearest kin- in the Burgundian code, that even the dred.' But of these allodial possessions, lands of partition (sortes Burgundionum) there was a particular species, denomi- were not restricted to male heirs. t And nated Salique, from which females were the Visigoths admitted women on equal expressly excluded. What these lands terms to the whole inheritance. were, and what was the cause of the ex- A controversy has been maintained in elusion, has been much disputed. No France, as to the condition of the Ruoman solution seems more probable, than that Romans, or, rather, the provincial natives of the ancient lawgivers of the Salian inhabitants of Gaul, after the in-Gaul. Franks prohibited females from inheritance. But neither those whole. ing the lands assigned to the nation upon have considered the Franks as barbarian its conquest of Gaul, both in compliance conquerors, enslaving the former pos. with their ancient usages, and in order sessors, nor the Abb6 du Bos, in whose to secure the military service of every theory they appear as allies and friendproprietor. But lands subsequently ac- ly inmates, are warranted by historical quired, by purchase or other means, facts. On the one hand, we find the Rothough equally bound to the public de- mans not only possessed of property, fence, were relieved from the severity and governed by their own laws, but ad of this rule, and presumed not to belong mitted to the royal favour, and the high. to the class of Salique.~ Hence, in the est offices; while the bishops and clei Ripuary law, the code of a tribe of gy, who were generally of that nationl, Franks settled upon the banks of the scendants to collateral heirs. One of the prece Rhine, and differing rather in words than dents in Marcufus (1. ii., form 12) calls the excul. substance from the Salique- law, which sion of females diuturna et impia consuetudo. In another, a father addresses his daughter: Omnibus * Alodial lands are commonly opposed to bene- non habetur incognitum, quod, sicut lex Salica conficiary or feudal; the former being strictly pro- tinet, de rebus meis, quod mihi e aleode parentum prietary, while the latter depended upon a superi- meorum obvenit, apud germanos tuos filhos meos or. In this sense the word is of continual recur- minirme in haereditate succedere poteras.-Formulas rence in ancient histories, laws, and instruments. Marcufo adjectae, 49. These precedents are supIt sometimes, however, bears the sense of inherit- posed to have been compiled about the latter end ance; arid this seems to be its meaning in the of the seventh century. famous 62d chapter of the Salique-law: de Alodis. * C. 56. Alodium interdum opponitur comparato, says Du t I had in former editions asserted the contrary Cange, in formulis veteribus. Hence, in the char- of this, on the authority of Leg. Burgund., c. 78, ters of the eleventh century, hereditary fiefs are which seemed to limit the succession of estates, frequently termed alodia.-Recueil des Historiens called sortes, to mnale heirs. But the expressions de France, t. xi., pr6face. Vaissette, Hist. de are too obscure t9 warrant this inference; and M. Languedoc, t. ii., p. 109. Guizot (Essais Sur l'Hist. de France, vol. i., p t Leg. Salice, c. 62. 95) refers to the 14th chapter of the same code: The Salique-laws appear to have been framed for the opposite proposition. But this, too, is not by a Christian prince, and after the conquest of absolutely clear, as a general rule. Gaul. Thly are therefore not older than Clovis. T Daniel conjectures that Clotaire 1. vas the Nor can tivey be much later, since they were altered first who admitted Romans into the army, which by one of his sons. had previously been composed of Franks. From 4 By the German customs, women, though this time we find many in high military command treated with much respect and delicacy, were not -(Hist. de _a Milice Francoise, t. i., p. 11.) It endowed at their marriage. Dotem non uxor ma-
seems by a passage in Gregory of Tours, by Du rito, sed maritus uxori confert.-Tacitus, c. 18. A Bos (t. iii., p. 547), that some Romans affected the similar principle might debar them of inheritance barbarian character by letting their hair grow. If in fixed possessions. Certain it is, that the exclusión was generally permitted, it would be a strong expansion of females was not unfrequent among the er evidence of approximation between the two Teutonic nations. We find it in the laws of the races than any that Du Bos has adduced. Meon Thuringians and of the Saxons; both ancient resquéieu certainly takes it for granted that a Rocodes, though not free from interpolation.-Leib- man might change his law, and. thus become to all nitz, Scriptores Rerum Brunswicensium, t. i., pp. material intents a Frank.-Esprit des Loix, 1. 81 and 83. But this usage was repugnant to the xxviii., c. 4.) But the passage on which he relies principles of Roman law, which the Franks found is read differently in the manuscripts. prevailing in their new country, and to the natural Q Some bishops, if we may judge from their bar. feeling which leads a man to prefer his own de- baroas names, and other circumstances, were 110.;

Page  66 d6 ETTROPE DURING THE MIDDLE AGES. l61An. It grew up continually in popular estiaa- I lique or theRipuary col; the Gaulfolow, tion, in riches, and in temporal sway. ed that of Theodosius.* This grand dis. Yet it is undeniable that a marked line tinction of Roman and barbarian, acco;was drawn at the outset between the ing to the law which each followed, was conquerors and the conquered. Though common to the Frank, Burgundian, and one class of Romans retained estates of Lombard kingdoms. But the Ostrogoths, their own, yet there was another, called whose settlement in the empire and ad tributary, who seem to have cultivated vance in civility of manners were earlier, those of the Franks, and were scarcely inclined to desert their old usages, and raised above the condition of predial ser- adopt the Roman jurisprudence.t The vitude. But no distinction can be more laws of the Visigoths too were compiled unequivocal than that which was estab- by bishops upon a Roman foundation, lished between the two nations in the and designed as a uniform code, by which weregild, or composition for homicide. both nations should be governed.T'The Capital punishment for murder was con- name of Gaul or Roman was not entirely trary to the spirit of the Franks, who, lost in that of Frenchman, nor had the. like most barbarbous nations, would have separation of their laws ceased, even in thought the loss of one citizen ill repair- the provinces north of the Loire, till after ed by that of another. The weregild the time of Charlemagne.~ Ultimately, was paid to the relations of the slain, ac- however, the feudal customs of succescording to a legal rate. This was fixed by sion, which depended upon principles the Salique-law at six hundred solidi for quite remote from those of the civil law, an Antrustion of the king; at three hun- and the rights of territorial justice which dred for a Roman conviva regis (meaning the barons came to possess, contributed a man of sufficient rank to be admitted to extirpate the Roman jurisprudence in to the royal table); at two hundred for a that part of France. But in the south, common Frank; at one hundred for a from whatever cause, it survived the Roman possessor of lands; and at forty- revolutions of the middle ages.;and thus five for a tributary, or cultivator of anothe- arose a leading division of that kingdom er's property. In Burgundy, where re- into pays coutumiers and pays du droil ligion and length of settlement had intro- Icrit; the former regulated by a vast vaduced different ideas, murder was pun- riety of ancient usages, the latter bay the ished with death. But other personal civil law.l[I injuries were compensated, as among the Pranks, by a fine, graduated according to g Inter Romanos negotia causarum Romanis Le - the ~.n an nto oft agibus pracipimus terminari.-Edict. Clotair. L, the rank and nation of the aggrieved circ. 560. Baluz. Capitul., t. i., p. 7. party.* t Giannone, 1. iii., c. 2.'I he barbarous conquerors of Gaul and T Hist. de Languedoc, t. i., p. 242. Heinecius, Distine- Italy were guided by notions Hist. Juris German., c. i, s. 15. tion of laws. very different from those of QS
Suger, in his life of Louis VI., uses the exRom, who l ydi n fomphosed her own laws pression lex Salica (Recueil des Historiens, t. xii., Rome, who had imposed her own laws P. 24); and I have some recollection of having met upon all the subjects of her empire. Ad- with the like words in other writings of as modern Ibering in general to their ancient cus- a date. But I am not convinced that the original toms without desire of improvement, Salique code was meant by this phrase, which may te lhave been applied to the local feudal customs. they left the former habitations in unmo- The capitularies of Charlemagne are frequently lest enjoyment of their civil institu- termed lex Salica. Many of these are copied from tions. The Frank was judged by the Sa- the Theodosian code. II This division is very ancient, beirut found in the edict of Pistes, under Charles the Bald, in Romans. See, for instance, Gregory of Tours, 1. 864; where we read, in illis regionibus, qua legem vi., c. 9. But no distinction was made among Romanam sequuntur.- (Recueil des I-istoriens, t.!.em on this account. The composition for the vii., p. 664.) Montesquieu thinks that the Roman.murder of a bishop was nine hundred solidi; for law fell into disuse in the north of France on acth.at of a priest, six hundred of the same coin.- count of the superior advan- tions, particularly in Leges Salicae, c. 58. point of composition for offences, annexed to the * Leges Salicee, c. 43. Leges Burgundionum, Salique-law; while that of the Visigoths being more tit. 2. Murder and robbery wer. made capital by equal, the Romans under their government had Childebert, king of Paris; but Francus was to be no inducement to quit their own code.( Esprit des sent for trial in the roya.l court, debilior persona in Loix, 1. xxviii., c. 4.) But it does not appear that loco pendatur.-Baluz., t. i., p. 17. I am inclined the Visigoths had any peculiar code of laws till to think that the word Francus does not absolutely after their expulsion from the kingdom of Tourefer to the nation of the party; but rather to his louse. They then retained only a small strip of rank, as opposed to debilior persona; and, conse- territory in France, about Narbonne and IIort'.Pequently, that it had already acquired the sense of hler. freeman, or freeborn (ingenuus), which is perhaps However, the distinction of men according to its strict meaning. Du Cange, voc. Francus, their laws was preserved for many centuries, hothl nlotes the pasi,le in this serse- in France and Italy. A judicial oroceedmln, of the

Page 67 t AT. I FEUDAL SYSTEM. 67 The kingdom of Clovis was divided originally conferred during pleasulle; but into a number of districts, each under the the claim of a son to succeed his father government of a count, a name familiar would often be found too plgusible or too to Roman subjects, by which they ren- formidable to be rejected, and i1+ is highly dered the graf of the Germans. The probable that, even under the AMerovinProvincial authority of this officer extend- gian kings, these provincial governors government ed over all the inhabitants, as had laid the foundations of that independ. of the French well Franks as natives. It was ence which was destined to change the Empire. his duty to administer justice, countenance of Europe.* The Lombard( to preserve tranquillity, to collect the dukes, those especially of Spoletto and royal revenues, and to lead, when requi- Benevento, acquired very early an hered. red, the free proprietors into the field.* itary right of governing their provinces The title of a duke implied a higher dig- and that kingdom became a sort of fed. nity, and commonly gave authority over eral aristocracy.j several counties.t These offices were The throne of France was always filb led by the royal house of Meroveus year 918, published by the historians of Languedoc However complete we may imna(t..ii., Appendix, p. 56), proves that the Roman, the elective of the to te Gothic, and Salique codes were then kept perfectly gine tright separate, and that there were distinct judges for Franks, it is clear that a funda- French mo the three nations. The Gothic law is referred to mental law restrained them to narchy. as an existing authority in a charter of 1070.- this family. Such indeed had been the
Every man, both in France (Hist. de Languedoc, t. ii., Appendix, p. 69) and in Italy, seems to have had the right of choosing by what law he of Spain, of England, and perhaps of all would be governed. Volumus, says Lothaire I. in European nations. The reigning family 924, when cunctus populus Romanus interrogetur, was immutable; but at every vacancy quali iege vult vivere, ut tali, quali professi fuerint the heir awaited the confirmation of a givere velle, vivant. Quod si offensionem contra 3andem legem fecerint, eidem legi quum profiten- popular election, whether that were a ur, subjacebunt. Women upon marriage usually substantial privilege, or a mere cerernothatheen their law, and adopted that of their hus- ny. Exceptions, however, to the lineal.and, returning to their own in widowhood; but succession, are rare in the history of any o) this there are exceptions. Charters are found, is late as the twelfth century, with the expression, country, unless where an infant heir was;ui professus sum lege Longobardica [aut] lege thought unfit to rule a nation of freemen. SalicA [aut] lege Alemannorum vivere. But soon But in fact it is vain to expect a system afterward the distinctions were entirely lost, partly through the prevalence of the Roman law, and artly through the multitude of local statutes in - the Roman empire, from the time of Constantitie, he Italian cities.-Muratori, Antiquitates Italie, and we know how much the Franks themselves, Dissertat. 22. Du Cange, v. Lex. Heineccius, and still more their Gaulish subjects, affected th: -historia Juris Germanici, c. ii., s. 51. imitate the style of the imperial court. * Maleculfi Formula, 1. i., 32. * That the offices of count and duke were o gi t Houard, the learned translator of Littleton nally but temporary, may be inf rred from several jAnciens Loix des Framnois, t. i.. p. E6), supposes passages in Gregory of Tours; as I. v., c. 37; 1. vii., these titles to have been applied indifferently. But c. 18. But it seems by the laws of the Alemanni, he contrary is easily proved, and especially by a c. 35, that the hereditary succession of their dukes inn of Fortunatus, quoted by Du Cange and others: was tolerably established at the beginning of the seventh century, when their code was promulgated, " Qui modo dat Comitis, det tibi jura Ducls." The Bavarians chose their own dukes out of one The cause of M. Houard's error may perhaps be family, as is declared in their laws; tit. ii., c. 1 and worth noticing. In the above cited form of Mar- c. 20.-(Lindebrog, Codex Legum antiquarum.) culfus, a precedent (in law language) is given for This the Emperor Henry It. confirms in Ditmar; he appointment of a duke, count, or patrician. Nonne scitis (he says), Bajuarios ab initio ducem The material part being the same, it was only ne- eligendi liberam habere potestatem? — (Schmidt, Sessay tofill up the blanks, as we should call it, by Hist. des Allemands, t. ii., p. 404.) Indeed, the.serting the proper deslgnation of office. It is ex- consent of these German provincial nations, if I uressed therefore, actionem comitatius, ducatus, ant may use the expression, seems to have been always oatriciatus in pago illo, quam antecessor tues ille usque required, as in an independent monarchy. Ditmar, nunc visus est egisse, tibi agendum regendumque a chronicler of the tenth century, says, that Eckard,ommisimus. Montesquieu has fallen into a sim- was made Duke of Thuringia totius populi consen uar mistake (1. xxx., c. 16), forgetting for a mo-. su.-Pfeffel, Abrbge Chronologique, t. i., p. 184. nent, like Houard, that these instruments in Mar- With respect to France properly so called, or the culfus were not records of real transactions, but kingdoms of Neustria and Burgundy, it niay be general forms for future occasion. less easy to prove the existence of hereditary offices The office of patrician is rather more obscure. under the sMerovingians. But the feebleness of it seems to have nearly corresponded with what their government makes it probable that so natural was afterward called mayor of the palace, and to a symptom of disorganization had not failed to en have implied the command of all the royal forces. sue. The Helvetian counts appear to have been Such at least were Celsus, and his successor Mum- nearly independent, as early as this period.
EUROPE DURING THE MIDDLE AGES CHA., of constitutional laws rigidly observed well as to exhibit a muster of military images of anarchy and ignorance. Those strength. After some time, it appears antiquaries who have maintained the that these meetings drew together only most opposite theories upon such points the bishops, and those invested with civil are seldom in want of particular instan- offices.* The ancient inhabitants of ces to support their respective conclu- Gaul, having little notion of political lib. sions.* erty, were unlikely to resist the m Dst ty Clovis was a leader of barbarians, who rannical conduct. Many of them became Limited au- respected his valour, and the officers of state and advisers of the sov, hority of rank which they had given him, ereign, whose ingenuity might teach ulovis. but were incapable of servile maxims of despotism unknown in the feelings, and jealous of their common as forests of Germany. We shall scarcely well as individual rights. In order to wrong the bishops by suspecting them of appreciate the power which he possessed, more pliable courtliness than was natural we have only to look at the well-known to the long-haired warriors of Clovis. Vase of story of the vase of Soissons. Yet it is probable that some of the Soissons. When the plunder taken in Clo- Franks were themselves instrumental in vis's invasion of Gaul was set out in this this change of their government. The place for distribution, he begged for him- court of the Merovingian kings was self a precious vessel, belonging to the crowded with followers, who have been church of Rheims. The army having plausibly derived from those of the expressed their willingness to consent, German chiefs described by Tacitus: "You shall have nothing here," exclain- men, forming a distinct and elevated ed a soldier, striking it with his battle- class in the state, and known by the ti axe, "but what falls to your share by ties of Fideles, Leudes, and Antrustiones. lot." Clovis took the vessel, without They took an oath of fidelity to the king marking any resentment; but found an upon their admission into that rank, ano opportunity, next year, of revenging him- were commonly remunerated with giftr self by the death of the soldier. It is im- of land. Under different appellations w - possible to resist the inference which. is find, as some antiquaries think, this clas& supplied by this story. The whole be- of courtiers ill the early records of Lom haviour of Clovis is that of a barbarian bardy and England. The general name chief, not daring to withdraw any thing of vassals (from Gwas, a Celtic word for from the rapacity, or to chastise the a servant) is. applied to them in every rudeness, of his followers. country. I By the assistance of these But if such was the liberty of the faithful supporters, it has been thought Power of Franks when they first became that the regal authority of Clovis's succe kings conquerors of Gaul, we have cessors was ensured.} However this increases. good reason to believe that they * Du Bos, t. ii., p. 327. Mably, Observ. sm did not long preserve it. A people not l'Histoire de France, 1. i., c. 3. very numerous spread over the spacious t Gregory of Tours, throughout his history, provinces of Gaul. wherever lands were talks of the royal power in the tone of Louis XIV.'s assigned to, or seized by them.t It be- court. If we were obliged to believe all we read, even the vase of Soissons would bear witness to came a burden to attend thl latter general the obedience of the Franks. assemblies of the nation, which were an- $ The Gasindi of Italy, and the Anglo-Saxon royal nually convened in the month of March, Thane, appear to correspond, more or less, to the to deliberate upon public business, as Antrustions of France. The word Thane, however, was used in a very extensive sense, and comprehended all free proprietors of land. That of * Hottoman (Franco-Gallia, c. vi.) and Boulain- Leudes seems to imply only subjection, and is fre villiers (Etat de la France) seem to consider the quently applied to the whole body of a nation, as crown as absolutely elective.'The Abbé Vertot well as, in a stricter sense, to the
king's person (Mmoires de l'Acad. des Inscriptions, t. iv.) main- vassals. This name they did not acquire originaltains a limited right of election within the reigning ly by possessing benefices, but rather, by being family. M. de Foncemagne (t. vi. and t. viii. of vassals or servants, became the object of benefi. the same collection) asserts a strict hereditary de- ciary donations. In one of Marculfus's precedents scent. Neither perhaps sufficiently distinguishes 1. i., f. 18, we have the form by which an Antrusacts of violence from those of right, nor observes tion was created. See Du Cange, under these sev. the changes in the French constitution between eral words, and Muratori's thirteenth dissertation Clovis and Childeric III. on Italian antiquities. The Gardingi, sometimes t Du Bos, Hist. Critique, t. ii., p. 301, maintains mentioned in the laws of the Visigoths, do not ap that Clovis had not more than 3000 or 4000 Franks pear to be of the same description. m his army, for which he produces some, though 0 Boantus * * vallatus in domo sua, ab ho ot very ancient, authorities. The smallness of minibus regis interfectus est.-Greg. Tur., 1. viii.. c e number of Salians may account for our finding 11. A few spirited retainers were sufficient to ex mention of the partitions made in their favour. ecute the mandates of arbitrary power among ee, however, Du Bos, t. iii., p. 466 barbarous, disunited people.

Page 69 PART I. FEUDAL SYSTEM. 06 may be, the annals of his more immedi- and by royal munificence. Thus arose descendants exhibit a course of op- that landed aristocracy, wh ch became pression, not merely displayed, as will the most striking feature in the political often happen among uncivilized people, system of Europe during many centuries, though free, in acts of private injustice, and is in fact its great distinction, both in such general tyranny as is incom- from the despotism.of Asia, and the patible with the existence of any real equality of republican governments. checks upon the sovereign.* There has been some dispute about But before the middle of the seventh the origin of nobility ill France century, the kings of this line had fallen which might perhaps be settled, Nobilty into that contemptible state which has or at least better understood, by fixing Degeneracy been described in the last chap- our conception of the term. In our modof the royal ter. The mayors of the palace, ern acceptance, it is usually taken to imfamily. Mayors of who, from mere officers of the ply certain distinctive privileges in the the palace. court, had now become masters political order, inherent in the blood of of the kingdom, were elected by the the possessor, and consequently not Franks, not indeed the whole body of transferable like those which property that nation, but the provincial governors, confers. Limited to this sense, nobility, and considerable proprietors of land.t I conceive, was unknkt n to the conSome inequality there probably existed querors of Gaul till long after the downfrom the beginning in the partition of fall of the Roman empire. They felt, no estates, and this had been greatly in- doubt, the common prejudice of mankind creased by the common changes of prop- in favour of those whose ancestry is conerty, by the rapine of those savage times, spicuous, when compared with persons of obscure birth. This is the primary * The proofs of this may be found in almost meaning of nobility, and perfectly distin every page of Gregory: among other places, see 1. guishable from the possession of excluiv., c. 1; 1. vi., c. 29; 1. ix., c. 30. In all edicts pro- sive civil rights. Those who are acceding from the first kings, they are careful to exzirss the consent of their subjects. Clovis's language runs-Populus noster petit. His son Chil- Roman republic, will recollect all indebert expresses himself: una cum nostris optima. stance of the difference between these tibus pertractamus- convenit una cum leudis two species of hereditary distinction, in nostris. But in the famous treaty of Andeley, Aii and the obiles. Though I do D. 587, no national assent seems to have been ask- not think that the tribes of German or ied or given to its provisions, which were very important. And an edict of one of the Clotaires (it is gin paid so much regard to genealogy
as uncertain whether the first or second of that name, some Scandinavian and Celtic nations though Montesquieu has given good reasons for (else the beginnings of the greatest the latter) assumes a more magisterial tone, with houses would not have been so envelop out any mention of the Leudes. t The revolution which ruined Brunehaut was ed in doubt as we find them), there are brought about by the defection of her chief nobles, abundant traces of the respect in which especially Warnachar, mayor of Austrasia. Upon families of known antiquity were held Clotaire II.'s victory over her, he was compelled to among them.* reward these adherents at the expense of the mon- But the essential distinction of ranks in archy. Warnachar was made mayor of Burgundy, with an oath from the king never to dispossess him. France, perhaps also in Spain and Len--(Fredegarius, c. 42.) In 626, the nobility of Bur- bardy, was founded upon the possession gundy declined to elect a mayor, which seems to of land, or upon civil employment. The have been considered as their right. From this aristocracy of wealth preceded at of time nothing was done without the consent of the aristocracy. Unless we ascribe all to the different ways of thinking in Gregory and Fredegarius, the * The antiquity of French nobility is maintained one a Roman bishop, the other a Frank or Bur- temperately by Schmidt, Hist. des Allemands, t. i., gundian, the government was altogether changed. p. 361, and with acrimony by Montesquieu, Esprit It might even be surmised, that the crown was des Loix, 1. xxx., c. 25. Neither of them proves considered as more elective than before. The au- any more than I have admitted. The expression thor of Gesta Regum Francorum, an old chronicler of Ludovicus Pius to his freedman, Rex fecit te who lived in those times, changes his form of ex- liberum, non nobilem: quod impossibile est post pressing a king's accession from that of Clotaire libertatem, is very intelligible, without imagining a 1i. Of the earlier kings he says only, regnum privilegiated class. Of the practical regard paid to recepit. But of Clotaire, Franci quoque praedic- birth, indeed, there are many proofs. It seems to turn Clotairium legem parvulum supra se in reg- have been a recommendation in the choice of num statuerunt. Again, of the accession of Dago- bishops.-(Marculfi Formulwa, 1. i., c. 4, cum notis bert I.: Austrasii Franci superiores congregati in Bignonii, in Baluzii Capitularibus.) It was proba. unum, Dagobertum supra se in regnum statuunt. bly much considered in conferring dignities. Fre In another place, Decedente praefato rege Clodo- degarius says of Protadius, mayor of the palace ta veo, Francf. -Jolairium seniorem puerum ex tribus Brunehaut, Quoscunque genere nobiles reperiebat, sibi regem statuunt. Several other instances totos humiliare conabatur, ut nullus reperiretur qu. night be quoted gradum, quem arrtpuerat, potuisset assumero
upon tion, except in favour of the king's vas- for personal service. Where there were sals. It seems, however, by some of the three possessors of single mansi, one barbaric codes, those namely of the Bur- went to the army, and the others congundians, Visigoths, Saxons, and the Eng- tributed to his equipment.* Such at least lish colony of the latter nation,* that the were the regulations of Charlemagne, free men were ranged by them into two whom I cannot believe, wsh Mably, to or three classes, and a difference made have relaxed the obligations of military in the price at which their lives were attendance. After the peace of Coblentz valued: so that there certainly existed in 860, Charles the Bald restored all allo the elements of aristocratic privileges, if dial property belonging to his subjects. were cannot in strictness admit their com- who had taken part against him, but no; pletion at so early a period. The Antrus- his own beneficiary grants, which the3 tions of the kings of the Franks were also were considered as having forfeited. noble, and a composition was paid for their Most of those who have written upon murder treble of that for an ordinary citi- the feudal system, lay it down that The*i zen: but this was a personal, not an benefices were originally precar- ext-in hereditary distinction. A link was want- ous, and revoked at pleasure by the. ing to connect their eminent privileges sovereign; that they were afterward with their posterity; and this link was to granted for life; and, at a subsequent pebe supplied by hereditary benefices. riad, became hereditary. No satisfactory Besides the lands distributed among proof, however, appears to have been Fiscal the nation, others were reserved to brought of the first stage in this progr lands. the crown, partly for the support of resst At least, I am not convinced. its dignity, and partly for the exercise of its munificence. These were called fis- * Capitul. Car. Mag., ann. 807 and 812. I can cal lands; they were dispersed over dif- not define the precise area of a mansus. It con ferent parts of the kingdom, and formed ist whed according to aange, of twelve jugera; but what he meant by a juger I know not. The the most regular source of revenue. ancient Roman juger was about five eighths of all But the greater portion of them were acre; the Parisian arpent was a fourth more than granted out to favoured subjects, under one. This would make a difference as two to one. the name of benefices, the nature of t The position which I have taken upon me to controvert, is laid down in almost every writer on which is one of the most important the feudal system. Besides Sir James Craig, Spel points in the policy of these ages. man, and other older authors, Houard, in his Ancienne Loix des Franquois, t. i., p. 5, and the edi tors of the Benedictine Collection, t. xi., p. 163, * Leg. Burgund., tit. 26. Leg. Visigoth., 1. ii., take the same point for granted. Mably, Observar. 2, c. 4 (in Lindebrög). Du Cange, voc. Adalingus, tions sur l'Histoire de France, 1. i., c. 3, calls it, Nobilis. Wilkins, Leg. Ang. Sax., passim. i think une v6rit6 que M. de Montesquieu a tr--bien prouit cannot be denied that nobilty founded either vee. And Robertson affirms with unusual posiupon birth or property, and distinguished from mere tiveness, "These benefices were granted origipersonal freedom, entered into the Anglo-Saxon nally only during pleasure. No circumstancerela system. Thus the eorl and ceorl are opposed to ting to the customs of the middle ages is better aseach other, like the noble and roturier in France. certained than this; and innumerable proofs of it t The demesne lands of the crown are continu- might be added to those produced in L'Esprit des ally mentioned in the early writers; the kings, in Loix, and by Du Cange."-Hist. Charles V., vol. i., journeying to different parts of their dominions, not. 8. took up their abode in them. Charlemagne is vw-y These testimonies, which Robertson has not full in his directions as to their management.-Csa- chosen tc bring forward, we cannot conjecture pittlaria. A. D. 797. et alibi. I nor is it easy to comprehend by what felicity he
benefices under the first race of French kings to the vassal. It is possible, though The codes of the Burgundians and of the I am not aware of any documents which Visigoths, which advert to them, are, by prove it, that benefices may, in some in- analogy, witnesses to the contrary. The stances, have been granted for a term of precedents given in the forms of Marculyear, since even fiefs, in much later fus (about 660) for the grant of a benetales, were occasionally of no greater flee, contain very full terms, extending it extent. Their ordinary duration, how- to the heirs of the beneficiary. And ever, was at least the life of the posses- Mably has plausibly inferred the perpetu sor, after which they reverted to the ity of benefices, at least in some instan has discovered, in the penury of historical records to feudal estates subsists at present, though the ten during the sixth and seventh centuries, innumera- ure of the latter is any thing rather than precarious ble proofs of a* usage which, by the confession of 5. As to the Libri Feudorum, which are a compila all, did not exist at any later period. But as the tion by some Milanese lawyers in the twelfth cen authorities quoted by Montesquieu have appeared tury, they cannot be deemed of much authority for conclusive both to Mably and Robertson, it may the earlier history of the feudal system in France. be proper to examine them separately. The fol- There is certainly reason to think, that even in the lowing is the passage in the L'Esprit des Loix on eleventh century, the tenure of fiefs in some parts which they rely. of Lombardy was rather precarious; but whether On ne peut pas douter que d'abord les fiefs ne this were by any other law than that of the strong fussent amovibles. On voit, dans Gr4goire de er, it would be hard to determine. Tours, que l'on 6te a Sun6gisile et a Galloman Du Cange, to whom Robertson also refers, gives tout ce qu'ils teneoient du fisc, et qu'on ne leur this definition of a benefice; praedium fiscale, quoro laisse que ce qu'ils avoient en propri6t6. Gontran, a rege vel principie, vel ab alio quolibet ad vitam elevat au tr6ne son neveu Childebert, eut une viro nobili utendum conceditur. In a subsequent conference secrecte avec lui, et lui indiqua ceux a place, indeed, he says: nec tantum erant ad viqui il devoit donner des fiefs, et ceux h qui il devoit tam, sed pro libitu auferebantur. For this he only eos 6ter. Dans une formule de Marculle, le roi cites a letter of the bishops to Louis the Debonair; donne en 6change, non seulement des b6n6fices Ecclesiae nobis a Deo commissae non talia sunt que son -sc tenoit, mais encore ceux qu'un autre beneficia, et hujusmodi regis proprietas, ut pro lib avoit tenus. La loi des Lombards oppose les b6n- itu suoi inconsult6 illas possit dare, aut auferre 6fices'a la propriete. Leshistoriens, les formules, But how slight a foundation does this afford for les codes des differens peuples barbares, tous les les inference that lay benefices were actually liamonumens qui nous restent, sont unanimes. En- ble to be resumed at pleasure! Suppose even this fin, ceux qui ont 6crit le Livre des Fiefs, nousons ap- to be a necessary application in the argument of piennent que d'abord les seigneurs purent les 6ter those bishops, is it certain that they stated the law a leur volon6, qu'enseute ils les assurent pour un of their country with accuracy? Do we not find an, et apres les donnarent pour toujours, l.xxx., c.16. greater errors than this every day in men's speech The first of Montesquieu's authorities is from and writings, relative to points with which they Gregory of Tours, I. ix., c. 38. Sunegisilus and are not immediately concerned? In fact, there is Gallomagnus, two courtiers of Childebert, having no manner of doubt that benefices were granted been accused of a treasonable conspiracy, fled to not only for life, but as inheritances, in the reign of sanctuary, and refused to stand their trial. Their Louis. In the next sentence Du Cange adds a beneficiary lands were upon this very justly taken qualification which puts an end to the controversy, away by a judicial sentence. What argument can so far as his authority is concerned; Non temere be drawn from a case of forfeiture for treason or tamen, nec sine legali judicio auferebantur. That outlawry, that benefices were granted only during those two sentences contradict each other is manpleasure? 2. Gontran is said by Gregory to have ifest; the latter, in my opinion, is the more correct advised his nephew Childebert, quos honoraret position. muneribus, quos ab honore
The following passage from Gregory of Tours: But honour is more commonly used in the earliest seems to prove, that although sons were occasionwriters for an office of dignity than for a landed es- ally permitted to succeed their fathers, an indul tate; and even were the word to bear in this place gence which easily grew up into a right, the crown the latter meaning, we could not fairly depend on had, in his time, an unquestionable reversion aftet an authority, drawn from times of peculiar tyranny the death of its original beneficiary. 

Hoc tempore and civil convulsion. I am not contending that et Wandelinus, nutritor Childeberti regis, obiit; men were secure in their beneficiary, since they sed in locum ejus nullus est subrogatus, eo quod certainly were not so in their allodial estates: the regina mater curam velit propriam habere de filio sole question is as to the right they were supposed Quacunque de fisco meruit, fisci juribus sunt relata to possess in respect of them. 3. In the precedent Obiit his diebus Bodecesilus dux plenus dierum of Marculfus, quoted by Montesquieu, the king is sed nihil de facultate eius filiiis minutum est, 1. viii supposed to grant lands which some other person c. 22. Gregory's work, however, does not go far had lately held. But this is meant as a designation ther than 595. of the premises, and would be perfectly applicable, t Leges Burgundionum, tit i. Leges Wisigoth though the late possessor were dead. 4. It is cer- 1. v., tit. 2. tainly true that the Lombard laws (that is, laws 1 Marculf., form. xii. and xiv., 1. i. This prect enacted by the successors of Charlemagne in Lom- century; its oardy), and the general tenour of ancient records, expressions recur in almost every charter. The with a few exceptions, oppose benefices to propri- earliest instance I have seen of an actual grant to ety: but it does not follow that the former were a private person, is of Charlemagne to one Jobnm, in -evocable at lease. This opposition of'allodial 795.-Baluzii Capitularia, t ii., p. 100
they exacted from his posterity! That great prince seldom their own vassals. To render military
gave more than one county to the same service became the essential obligation person; and, as
they were generally of which the tenant of a benefice under- moderate size, co-extensive with episcotook.; and out of those ancient grants, pal diocesses, there was less danger.'t now become
for the most part hereditary, this policy had been followed, of their there grew up in the tenth
century, both becoming independent.t But Louis the in name and reality, the system of feudal Debonair, and, in a still greater degree tenures.t Charles the Bald, allowed several counties to
be enjoyed by the same person. * Quicquid antefati reges ecclesiis aut fidelibus The possessors
constantly aimed at acsuis contulerunt, aut adhuc conferre cum justitia quiring private estates
within the limits Deo propitiante voluerint, stabiliter conservetur; of their charge, and thus both
rendered et quicquid unicuique fidelium in utriusque regno per legem et justitiam redhibetur,
nulum ei pray- themselves formidable, and assumed a judicium ponatur, sed liceat res debitas
possidere kind of patrimonial right to their digniatque recipere. Et si aliquid unicuique per inter-
ties. By a capitulary r(f Charles the regna sine culpi sublatum est, audientia habita Bald,
A. D. 877, the suir,-ssion of a son restauretur. Et de eo quod per munificentias pre- to the
father's county sur s to be reccedentium regum unususquisque usque ad transitum gloria3
memorime domini Chlothacharii regis pos- ognised as a known uaare.tj In the next sedit, cum
securitate possideat; et quod exinde century there followed al entire prostrafidlelibus personis
ablatum est, de praesenti recipiat. tion of the royal authority, and the counts Foedus
Andeliacum, in Gregor. Turon., 1. ix., c. 20. their governments as little soverQuawcuntue
ecclesiae veol clerici veol quibuslibet usurped personis a gloriosaa memoriae prawfatis
principibus eignties, with the domains and all regamunificentiao largitate collatas sunt, omni
firmitate 11 an rights, subject only to the feudal superdurent.-Edict. Chlotachar. I. vel potius II.
in periority of the king.} They now added Recueil des Historiens, I. iv., p. 116. t Somner says,
that he has not found the word * Capitularia Car. Mag. et Lud. Pii., passim. feudum anterior to
the year 1000; and Muratori, a Schmidt, Hist. des Allemands, t. ii., p. 158. Gail still greater
authority, doubts whether it was used lard, Vie de Charlem., t. iii., p. 118. so early. I have,
however, observed the words t Vaissette, Hist. de Languedoc, t. i., p. 587, feum and fevum,
which are manifestly corruptions 700, ard not. 87. of feudum, in several charters about 960. —
107, This is a questionable point, and moso French an. 128, et alibi. Some of these fiefs appear
not to tiquaries consider this famous capilllary as thti have been hereditary. But, independently
of pos- foundatiin of an hereditary right in counties.'I itive instances, can it be doubted that
some word am incl:ned to think that there was at least a of barbarous original must have
answered, in the practice of succession, which is implied and guar vernacularlanguages, to the
Latin beneficium? See antied b'h this provision. Ij Cange v. Feudum. 6 Tt aoDears. by the
record of a orcess in 918$
perustn Change of who had hitherto formed the though so analogous to it, that it commend allodial into strength of the state, fell into a seems to have nearly. escaped ation. feudal te-
much worse condition. They the notice of antiquaries. From this si* were exposed to the 
racacity of lence of other writers, and the great obthe counts, who, whether as magistrates 
secuity of the subject, I am almost afraid and governors, or as overbearing lords, to notice, what 
several passages in anhad it always in their power to harass cient laws and instruments concur 
to them. Every district was exposed to prove, that, besides the relation establishcontinual 
hostilities; sometimes from a ed between lord and.vassal by beneficiary foreign enemy, more 
often from the own- grants, there was another species more ers of castles and fastnesses, which 
in the personal, and more closely resembling tenth century, under pretence of resisting that of 
patron and client in the Roman the Normans and Hungarians, served the republic. This was 
usually called compurposes of private war. Against such a mendation; and appears to have 
been system of rapine, the military compact founded on two very general principles, of lord 
and vassal was the only effectual both of which the distracted state of soshield; its essence was 
the reciprocity ciety inculcated. The weak needed the of service and protection. But an insula-
tection of the powerful; and the gov ted alodialist had no support: his for- erishment needed 
some security for public tunes were strangely changed, since he order. Even before the 
invasion of the claimed, at least in right, a share in the Franks, Salvian, a writer of the fifth 
cenlegislation of his country, and could com- tury, mentions the custom of obtaining pare with 
pride his patrimonial fields with the temporary benefices of the crown. erty to the king, and 
receiving it back as his belie lice, appears even in Marculfus, i. i., form. 13. The Without law to 
redress his injuries, with- county of Cominges, between the Pyrenees, Tounout the royal power 
to support his right, louse, and Bigorre, was alodial till 1244, when it he had no course left but 
to compromise was put under the feudal protection of the Coun. with oppression, and subject 
himself, in of Toulouse. It devolvedbyescheatto the crown return for protection, to a feudal 
lord, in 1443.-Villaret, t. xv., p. 346. In many early charters, the khlng confirms the During the 
tenth and eleventh centuries possession even of allodial property, for greater seif appears that 
alodial lands-in France had curity in lawless times; and, on the other hand, in chiefly become 
feudal: that is, they had those of the tenth and eleventh centuries, the word been surrendered by 
their proprietors, -allodium is continually used for a feud, or heredita. ry benefice, which 
renders this subject still more and received back again upon the feudal obscure. conditions; or, 
more frequently, perhaps, * The maxim, Nulle terre sans seigneur, was so the owner had been 
compelled to ac- far from being universally received in France, tht knowledge himself thei man 
or vassal of a min almost all southern provinces, or pays du droit suzerain, and thus to confess 
an original ecrit, lands were presumed to be allodial, unless the contrary was shown, or, as it 
was called, francgrant which had never existed.t Changes aleux sans titre. The parliaments, 
however, seem latterly to have inclined against this presumption, that the counts of Toulouse 
had already so far and have thrown the burden of proof on the party usurped the rights of their 
sovereign, as to claim claiming allodiality. For this see Denisart, Die an estate on the ground of 
its being a royal bene-. tionnaire des D6cisions, art. Franc-aleu. And thie fice.-H-ist. de 
Languedoc, t. ii., Appen., p. 56. famous maxim of the Chancellor Duprat, nulls * Vaissette, 
Hist. de Languedoc, t. i., p. 588, and terre sans seigneur, was true, as I learn from the infri, t. ii., 
p. 38, 109, and Appendix, p. 56. dictionary of Houard, with respect to jurisdiction, t Hist. de 
Languedoc, t. ii., p. 109. It must be though false as to tenure; allodial lands insulated confessed, 
that there do not occur so many specific (enclav6s) within the fief of a lord, being subject 
instances of this conversion of allodial tenure into to his territorial justice.-Dict. de Houard, art 
feudal, as might be expected, in order to warrant Aleu. the supposition in the text. Several 
records, how- In Germany, according to Du Cange, voc. Barc, ever, are quoted by Robertson. 
Hist. Charles V., there is a distinction between Barones and Sem note 8; and others may be
fourn in diplomatic col- per-Barones; the latter lWlding their lands al]c,'Lctions A precedent for surrendering allodial prop- diallv

Page 74 74 EUR P E DURINGTHE MIDDLE AGES. [(r.AF. L the protection of the great by money, and is strongly supported by t e analogy ol blames their rapacity, though he allows our Anglo-Saxon laws, where it is fre. the natural reasonableness of the Drac- quently repeated, that no man should con tice.' The disadvantageous condition of tinue without a lord. There are, too, as the less powerful freemen, which ended it seems to me, a great number of pas-:n the servitude of one part, and in the sages in Domesday-book which confirm eudal vassalage of another, led such as this distinction between personal com- ortunately still preserved their allodial mendation and the beneficiary tenure of pi'ne";y to ensure its defence by a stipu- land. Perhaps I may be thought to dwell.ated r Ayment of money. Such pay- too prolixly on this obscure custom; but ments, called Salvamenta, may be traced as it tends to illustrate those mutual rein extant charters, chiefly indeed of mon- lations of lord and vassal which supplied asteries.t In the case of private persons, the place of regular government in the it may be presumed that this voluntary polity of Europe, and has seldom or never contract was frequently changed by the been explicitly noticed, its introduction stronger party into a perfect feudal de- seemed not improper. pendence. From this, however, as I It has been sometimes said that feuds imagine, it properly differed in being ca- were first rendered hereditary in Ger pable of dissolution at the inferior's pleas- many by Conrad II., surnamed Edict of Con ure, without incurring a forfeiture, as well the Salic. This opinion is per- rad the Salic as in having no relation to land. Hom- haps erroneous. But there is a famous age, however, seems to have been inci- edict of that emperor at Milan, in the year dent to commendation, as well as to vas- 1037, which, though immediately relating salage. Military service was sometimes only to Lombardy, marks the full matuthe condition of this engagement. It was rity of the system, and the last stage of the law of France, so late at least as the its progress.* I have remarked already commencement of the third race of kings, the custom of sub-infeudation, or grants that no man could take a part in private of lands by vassals to be held of themwars except in defence of his own lord. selves, which had grown up with the This we learn from an historian about the growth of these tenures. There had ocend of the tenth century, who relates that curred, however, some disagreement. for one Erminfrid, having been released from want of settled usage, between these inhis homage to Count Burchard, on ceding ferior vassals and their immediate lords, the fief he had held of him to a monas- which this edict was expressly designed tery, renewed the ceremony on a war to remove. Four regulations of. great breaking out between Burchard and an- importance are established therein; that other nobleman, wherein he was desirous no man should be deprived of his fief, to give assistance; since, the author ob- whether held of the emperor or a mesne serves, it is not, nor has been the prac- lord, but by the laws of the empire, and tice in France, for any man to be con- the judgment of his peers;t that from cerned in war, except in the presence or by the command of his lord.T Indeed, day, or pay a fine. In some places, he even be there is reason to infer, from the capitu- came the serf or villein of the lord.-Ordonnances *arie~s of Charles the Bald, that every man des Rois, p. 187. Upon this jealousy of unknown aries of Charles the Bald, that every man settlers, which pervades the policy of the middle was bound to attach himself to some lord; ages, was founded the droit d'aubaine, or right to though it was the privilege of a freeman their moveables after their decease. —See preface to choose his own superior.h And this to Ordonnances des Rois, t. i., p. 15. The article Commendatio, in Du Cange's Glossary, furnishes some hints upon this subject, which * Du Cange, v. Salvamentum. however that author does not seem to have fully t Id., Ibid. apprehended. Carpentier, in his Supplement to t Recueil des Historiens, t. x., p. 355.
the Glossary, under the word Vassaticum, gives. Unusquisque liber homo, post mortem domini the clearest notice of it that I have anywhere sui, licentiam habeat se communicandi inter hae

found. Since writing the above note, I have found tria regna ad quemcuneae voluerit. Similiter et the subject touched by M. de Montlosier, Hist. de ille qui nondum alicui commendatus est.-

Baluzii la Monarchie Franqaise, t. i., p. 854. Capitularia, tome i., p. 443. A. D. 806. Volumus * Spelman tells us, in his Treatise of Feuds, etiam ut unusquisque liber homo in nostro regno chap. ii., that Conradus Salicus, a French emperor, seniore qualem voluerit in nobis et in nostris but of German descent [what can this mean?], wen' fidelibus recipiat.-Capit. Car. Calvi. A. D. 877. to Rome about 915 to fetch his crown from Pope Et valumus ut cujuscunque nostrum homo, in cu- John X., when, according to him, the succession jusque regno siti, cum seniore suo in hostem, of a son to his father's fief was first conceded. An vel, alii suis utilitatus perga.-Ibid. See too almost unparalleled blunder in so learned a writer t Baluze, t. i., p. 536, 537. Conrad the Salic was elected at Wornis in 1024, By the Establishments of St. Louis, c. 87, every crowned at Rome by John XIX. in 1027, and made stranger coming to settle within a barony was to this edict at Milan in 1037. -A knowledge the baron as lord within a year and a t Nisi secundum constitutioem antessorum

Page 75] FEUDAL SYSTEMI. such judgment an immn, diate vassal might one forfeited his land, the oth.cr Ihs appeal to his sovereign; that fiefs should seigniory, or rights over it. Nor wlera ne inherited by sons and their children; motives of interest left alone to operate or, in their failure, by brothers, provided in securing the feudal connexion. Thi they were feuda paterna, such as had de- associations founded upon ancient custom scended from the father;* and that the and friendly attachment, the impulses ot lord should not alienate the fief of his gratitude and honour, the dread of infamy, vassal without his consent.t the sanctions of religion, were all em'Such was the progress of these feudalployed to strengthen these ties, and to tenures, which determined the political render them equally powerful With the character of every European monarchy relations of nature, and far more so than where they prevailed, as well as formed those of political society. It is a questhe foundations of its jurisprudence. It tion agitated among the feudal lawyers, is certainly inaccurate to refer this sys- whether a vassal is bound to follow the tem, as is frequently done, to the destruc- standard of his lord against his own tion of the-Roman empire by the northern kindred.* It was one more important nations, though in the beneficiary grants whether he must do so against the king of those conquerors we trace its begin- In the works of those who wrote whet ning. Five centuries, however, elapsed the feudal system was declining, or whr before the allodial tenures, which had were anxious to maintain the roya' been incomparably the more general, authority, this is commonly decided ir gave way, and before the reciprocal con- the negative. Littleton gives a formn o0 tract of the feud attained its maturity. It homage, with a reservation of the allegi is now time to describe the legal quali- ance due to the sovereign; and the same. ties and effects of this relation, so far prevailed in Normandy and some other only as may be requisite to understand countries.t A A law of Frederick Barbaits influence upon the political system. rossajnoj, that in every oath of fealty The essential principle of a fief was a t6 an inferior lord, the vassal's duty to the Principles mutual contract of support and emperor should be expressly reserved ofafeudal fidelity. Whatever obligations But it was not so during the height of the relation. it laid upon the vassal of ser- feudal system in France. The vassals vice to his lord, corresponding duties of Henry II. and Richard I. never hesi. of protection were imposed by it on tated to adhere to them against the soverthe lord towards his vassal.t If these eign, nor do they appear to have incurwere transgressed on either side, the red any blame on that account. Even so late as the age of St. Louis, it is laid nostrorum, et judicium pariiLin suorum; the very down in his
establishments, that if justice expressions of Magna Charta is refused by the king to one of his vas* "Gerardus noteth," says Sir H. Spelman, "that solls he might mon his own tenants, this law settled not the feud upon the eldest son, als, he might summon his own tenants, or any other son of the feudatory particularly; but under penalty of forfeiting their fiefs, to left it in the lord's election to please himself with assist him in obtaining redress by arms.~ which he would." But the phrase of the edict runs, filios ejus beneficium tenere: which, when * Crag., 1. ii., tit. 4. t Sect. lxxxv. nothing more is said, can only mean a partition $ Houard, Anc. Loix des Franqois, p. 114. See among the sons. too an instance of this reservation in Recueil des t The last provision may seem strange, at so ad- Historiens, t. xi., 447. vanced a period of the system; yet, according to Q Si le Sire dit a son homme lige; Venez vous Giannone, feuds were still revocable by the lord in en avec moi, je veux guerroyer mon Seignelir, qui some parts of Lombardy.-Istoria di Napoli, 1. xiii., me denie le jugement de sa cour, le vassal doit rec. 3. It seems, however, no more than had been pondre; j'irai scavor, s'il est ainsi que vous me already enacted by the first clause of this edict. dites. Alors ii doit aller trouver le sup6rieur, et Another interpretation is possible; namely, that luy dire: Sire, le gentilhomme de qui je tiens mon the lord should not alienate his own seignory with- fief, se plaint que vous lui refusez justice; je viens out his vassal's consent, which was agreeable to pour en scavor la vérité; car je suis semonce ue the feudal tenures. This indeed would be putting marcher en guerre contre vous. Si la reponse est rather a forced construction on the words, ne do- que volontiers il fera droit en sa cour, l'homme mino feudum militis alienare liceat. n'est point oblige de deferer 8 la requisition du $ Crag., Jus Feudale, 1. ii., tit. 11. Beaumanoir, Sire; mais il doit, ou le sui-re, ou se resoudre a Coutumes de Beauvoisis, c. lxi., p. 311. Ass. de perdre son fief, ci le chef Seigneur persiste dans Jerus., c. 217. Lib. Feud., 1. ii., tit. 26. 47. son refus.-Etablissemens de St. Louis, c. 49. I' Upon the mutual obligation of the lord towards have copied this from Velly, t. vi., p. 213, who has his vassal seems'to be founded the law of warranty, modernized the orthography, which is almost unif which compelled him to make indemnification telligible in the Ordonnances des Rois. One MS. where the tenant was evicted of his land. This gives the reading Roi instead of Seignee:. And the obligation, however unreasonable it may appear to law certainly applies to the king exclusively; for, in us, extended, according to the feudal lawyers, to case of denial of justice by a mesne lord, there was cases of mere donation.-Crag., 1. ii., tit. 4. But- an appeal to the king's court. bhut from his injury thr's Notes on Co, Litt., p, 365. there could be no ap)each but to the sword.

Page 76 76 EUROPE DURING THE MIDDLE AGES. [CrAP..1 The Count of Britany, Pierre de Dreux, stone, a wand, a branch, or whatever else had practically asserted this feudal right might have been made usual by the caduring the minority of St. Louis. In a price of local custom. Du Cange enupublic instrument he announced to the merates not less than ninety-eight varieworld that, having met with repeated in- ties of investitures.* juries from the regent, and denial of jus- Upon investiture, the duties of the vassite, he had let the king know that he no sal commenced. These it is im- Obligations longer considered himself as his vassal, possible to define or enumerate; of a vassal. but renounced his homage and defied because the services of military tenure, him.* - which is chiefly to be considered, were The ceremonies used in conferring a in their nature uncertain, and distinguishfief were principally three: homage, fe- ed as such from those incident to feuds Ceremonies of, alty, and investiture. 1. The of an inferior description.:t was a 1. tHomage. first was designed as a signif- breach of faith to divulge the lord's counciant expression of the submission and sel, to conceal from him the machinations devotedness of the vassal towards his of others, to injure his person or fortune, lord. In performing homage, his head or to violate the sanctity of his roof and was uncovered, his belt
ungirt, his sword the honour of his family. In battle he and spurs removed; he placed his hands, was bound to lend his horse to his lord kneeling, between those of the lord, and when dismounted; to adhere to his side promised to become his man from thence-while fighting; and to go into captivity, forward; to serve him with life and limb as a hostage for him, when taken. His and worldly honour, faithfully and loyaly, in consideration of the lands which he * Du Cange, voc. Investitura. held under him. None but the lord in t Assises de Jerusalem, c. 265. Home ne dolt person could accept homage, which was a la feme de son seigneur, ne a sa fille requerre vilainie de son cors, ne at sa sœur tant com elle est decommonly concluded by a kiss.t 2. An moiselle en son hostel I mention this part of feudal oath of fealty was indispensable duty on account of the light it throws on the stat-. Flty. in every fief; but the ceremony ute of treasons, 25 E. III. One of the treasons aas less peculiar than that of homage, therein specified is, si omne violast la compaigne and it might be received by proxy. It e ou eign itz et heire le roy nen Those who, like Sir was taken by ecclesiastics, but not by E. Coke and the modern lawyers in general, ex minors; and in language differed little plain this provision by the political danger of conIS. inves- from the form of homage.T 3. In- fusing the royal blood, do not apprehend its spirit. Litute. vestiture, or the actual convey- It would be absurd, upon such grounds, to render the violation of the king's eldest daughter treason ance of feudal lands, was of two kinds; able, so long only as she remains unmarried, when, proper and improper. The first was an as is obvious, the danger of a spurious issue inhereactual putting in possession upon the izing could not arise. I consider this provision arouznd, either by the lord or his deputy; therefore as entirely founded upon the feudal pringroundl ciples, which make it a breach of faith (that is, in w-hich is called, in our law, livery of the primary sense of the word, a treason) to sully seisin. The second was symbolical, and the honour of the lord in that of the near relations consisted in the delivery of a turf, a who were immediately protected by residence in his house. If it is asked why this should be re* Du Cange, Observations sur Joinville, in Col- stricted by the statute to' the person of the eldest lection des Memoires, t. i., p. 196. It was always daughter, I can only answer that this, which is not necessary for a vassal to renounce his homage be- more reasonable according to the common politica fore he made war on his lord, if he would avoid interpretation, is analogous to many feudal cus the shame and penalty of feudal treason. After a toms in our own and other countries, which attrib reconciliation, the homage was renewed. And in ute a sort of superiority in dignity to the eldest this no distinction was made between the king and daughter. another superior. Thus Henry II. did homage to It may be objected, that in the reign of Edward the King of France in 1188, having renounced his III. there was little left of the feudal principle in former obligation to him at the commencement of any part of Europe, and least of all in England. the preceding war.- Matt. Paris, p. 126. But the statute of treasons is a declaration of the t Du Cange, Hominium, and Carpentier's Sup- ancient law, and comprehends, undoubtedly, what plement, id. voc. Littleton, s. 85. Assises de Jeru- the judges who drew it could find in records now salemn, c. 204. Crag., l. i., tit. 11. Recueil des His- perished, or in legal traditions of remote antiquity. toriens, t. ii., preface, p. 174. Homagium per pa- Similar causes of forfeiture are enumerated in the ragium was unaccompanied by any feudal obliga- Libri Feudorum, 1. i., tit. 5, and 1. ii., tit. 24. In the tion, and distinguished from homagium ligeum, establishments of St. Louis, c. 51, 52, it is said, which carried with it an obligation of fidelity. The that a lord seducing his vassal's daughter intrust. dukes of Normandy rendered only homage per ed to his custody, lost his seigniory; a vassal paragium to the kings of France, and received the guilty of the same crime towards the family of his like from the dukes of Britany. In liege homage, suzerain, forfeited his land. A proof of the tendency it was usual to make reservations of allegiance which the feudal law had to purify public morals, to the king, or any other lord whom the homager and to
create that sense of indignation and resentment previously acknowledged. The breach with which we now regard such breaches of honor.

FEUDAL SYSTEM's attendance was due to the lord's courts, known in England by the name of sometimes to witness, and sometimes to escuage.* Thus, in Philip III.'s expedition, bear a part in, the administration of justice against the Count de Foix, in 1274, tice.* barons were assessed for their default of The measure, however, of military service, at a hundred sous a day for Limitations vice, was generally settled by the expenses which they had saved, and of military some usage. Forty days was fifty sous as a fine to the king; bannermen's service. the usual term, during which etc., at twenty sous for expenses, and ten the tenant of a knight's fee was bound to as a fine; knights and squires in the same in the field at his own expense.t This proportion. But barons and bannermen was extended by St. Louis to sixty days, were bound to pay an additional assessment except when the charter of infeudation meant for every knight and squire of their expressed a shorter period. But the vassals whom they ought to have brought length of service diminished with the with them into the field.t The regulaquantity of land. For half a knight's fees as to place of service were less unibut twenty days were due; for an eighth form than those which regard time. In part but five; and when this was corn- some places, the vassal was not bound muted for an escuage, or pecuniary as- to go beyond the lord's territory.; or only sessment, the same proportion was ob- so far as he might return the same day. served.t Men turned of sixty, public Other customs compelled him to follow magistrates, and, of course, women, were his chief upon all his expeditions.-- These free from personal service, but obliged inconvenient and varying usages betray to send their substitutes. A failure in the origin of the feudal obligations, not this primary duty incurred perhaps strict- founded upon any national policy, but by a forfeiture of the fief. But it was springing from the chaos of anarchy and usual for the lord to inflict an amerce- intestine war, which they were well calculated to perpetuate. For the public de* Assises de Jerusalem, c. 222. A vassal, at fence, their machinery was totally unser least in many places, was bound to reside upon viceable until such changes were wrou his fief, or not to quit it without the lord's consent. -Du Cange, voc. Reseantia, Remanentia. Recu- as destroyed the character of the fabric eil des Historiens, t. xi., pr6face, p. 172. Independently of the obligations of fet In the kingdom of Jerusalem, feudal service alty and service, which the nature of the extended to a year.-Assises de Jerusalem, c. 230. contract created, other advantages were It is obvious that this was founded on the peculiar derived from it by the lord, which have circumstances of that state. Service of castleguard, which was common in the north of England, been called feudal incidents; these Feuda, was performed without limitation of time.-Lyttle- were, 1. Reliefs. 2. Fines upon incidents. ton's Henry II., vol. ii., p. 184. alienation. 3. Escheats. 4 Aids; to Du Cange, voc. Feudum. militis; Membrum which may be added, though not generalLoricae. Stuart's View of Society, p. 382. This division by knights' fees is perfectly familiar in the ly established, 5. Wardship, and 6. llar feudal law of England. But I must confess my rage. inability to adduce decisive evidence of it in that 1. Some writers have accounted for reof France, with the usual exception of Normandy. liefs in the following manner. Ben- Reliefs. According to the natural principle of fiefs, it might efices, whether depending upon the seem that the same personal service would be required from the tenant, whatever were the extent crown or its vassals, were not originally of his land. William the Conqueror, we know, dis- granted by way of absolute inheritance, tributed this kingdom into about 60,000 parcels of but renewed from time to time upon the nearly equal value, from each of which the service of a soldier was due. He may possibly have been the inventor of this politic arrangement. Some rule ru Littleton, 1. ii., c. 3. Wright's Teures, p. 121. must, however, have been observed in all
countries. Du Chesne, Script. Rerum Gallicarum, t. v., in fixing the amercement for absence, which could p. 553. Daniel, Histoire de la Milice Françoise, p. only be equitable if it bore a just proportion to the 72. The following extracts from the muster-roll of value of the fief. And the principle of the knight's this expedition will illustrate the varieties of feudal fee was so convenient and reasonable, that it is obligation. Johallnes d'Ormoy debet servitium per likely to have been adopted in imitation of England quatuor dies. Johannes Malet debet servitum per nv other feudal countries. In the roll of Philip viginti dies, pro quo servitio misit Richardum Ti Ifl.'s expedition, as will appear by a note immedi- chet. Guido de Laval debet servitium duoruna ately below, there are, I think, several presumptive militum et dimidii. Dominus Sabrandus dictus evidences of it; and though this is rather a late Chabot dicit quod non debet servitium domine regi, authority to establish a feudal principle, yet I have nisi in comitatu Pictaviensi, et ad sumptus regis, ventured to assume it in the text. tainen venit ad preces regis cum tribus militibus et The knight's fee was fixed in England at the an- duodecim scutiferis. Guido de Lusigniaco Dom. nual value of 201. Every estate supposed to be de Pierac dicit, quod non debet aliquid regi prlmte of this value, and eritered as such in the rolls of the homagium. exchequer, was bound to contribute the service of t This was the custom of Beauvoisis.-.Peat: a soldier, or to pay an escuage to the artount as- manoir, c. 2. sessed upon knights' fees. 0 Du Cange et Carpentier, voc. Hoatis

Page 78 78 EUROPE DLTRING THE MIDDLE AGES. [CHAP., death. of the possessor, till long custom fixed reliefs among the old customs of grew up into right. Hence a sum of Normandy and Beauvoisis. By a law of money, something between a price and a St. Louis, in 1245,* the lord was entitled gratuity, would naturally be offered by to enter upon the lands, if the heir could the heir on receiving a fresh investiture not pay the relief, and possess them for of the fief; and length of time might as a year. This right existed unconditionlegitimately turn this present into a due ally in England under the name of primer of the lord, as it rendered the inheritance seisin, but was confined to the king.t of the tenant indefeisible. This is a very 2. Closely connected with reliefs were specious account of the matter. But the fines paid to the lord upon Fines upon those who consider the antiquity to which the alienation of his vassal's anlieatina. hereditary benefit es may be traced, and feud; and indeed we frequently find them the unreserved expressions of those in- called by the same name. The spirit of struments by which they were created, feudal tenure established so intimate a as well as the undoubted fact that a large connexion between the two parties, that proportion of fiefs had been absolute it could be dissolved by neither without allodial inheritances, never really granted requiring the other's consent. If the lord by the superior, will perhaps be led rath- transferred his seigniory, the tenant was er to look for the origin of reliefs in that to testify his concurrence; and this cerrapacity with which the powerful are emony was long kept up in England unever ready to oppress the feeble. When der the name of attornment. The assent a feudal tenant died, the lord, taking ad- of the lord to his vassal's alienation was vantage of his own strength and the constill more essential, and more difficult to fusion of the family, would seize the es- be attained. He had received his sief, it tate into his hands, either by the right of was supposed, for reasons peculiar to force or under some litigious pretext. himself or to his family; at least, his Against this violence the heir could in gen- heart and arm were bound to his supeeral have no resource but a compromise; rior; and his service was not to be ex and we know how readily acts of success- changed for that of a stranger, who might ful injustice change their name, and move be unable or unwilling to render it. A demurely, like the wolf in the fable, under law of Lothaire II. in Italy forbids the the clothing of law. Reliefs and other alienation of fiefs without the lord's confeudal incidents are said to have been es- sent.t This prohibition is repeated in
tablished in France* about the latter part one of Frederick I., and a similar enact of the tenth century, and they certainly ment was made by Roger, king of Sicily.~ appear in the famous edict of Conrad the By the law of France, the lord was entiSalic, in 1037, which recognises the usage tied, upon every alienation made by his of presenting horses and arms to the lord tenant, either to redeem the fief by pay upon a change of tenancy.t But this also ing the purchase-money, or to claim a subsisted under the name of heriot, in certain part of the value, by way of fine, England, as early as the reign of Canute, upon the change of tenancy.ll In EngA relief was a sum of money (unless where charter or custom introduced a dif- Ordonnance, v. Placitum, p. ferent tribute) due from every one of full By many customs a relief was due on every change age taking a fief by descent. This was in of the lord, as well as of the vassal; but this was some countries arbitrary, or ad misericor- not the case in England. Beaumont speaks of rediamn, and the exactions practised under liefs as due only on collateral succession.- Coftumes de Beauvoisis, c. 27. In Anjou and Maine this pretence, both upon superior and in they were not even due upon succession between fierior vassals, ranked among the greatest brothers.-Ordonnances des Rois, t. i., p. 58. And abuses of the feudal policy. Henry I. of M. de Pastoret, in his valuable preface to the sixEngland promises in his charter that they teenth volume of that collection, says it was a rule sha.ll in future be just and reasonable; that the king had nothing upon lineal succession I of a fief, whether in the ascending or descending but the rate does not appear to have been line, but la bouche et les mains; i. e. homage and finally settled, till it was laid down in fealty, p. 20. Magna Charta, at about the fourth of the $ Lib. Feudorum, 1. ii., tit. 9 and 52. This was annua- value of the fief. We find also principally levelling at the practice of alienating feudal property in favour of the church, which was called pro anima judicare. —Radevicus in Gestis ~ Ordonnances des Rois de France, t. i, pre- Frederic. I., 1. iv., c. 7. Lib. Feud., 1. i, lit. 7 16: face, p. 10. 1. ii., tit. 10. t Servato usuavalvassorum majorum intradendis { Giannone, 1. ii., c. 5. irmis equisque suis senioribus. This, among oth- 1 Du Cange, v. Reacapitum, Placitiam, Rachaer reasons, leads me to doubt the received opinion, tum. Pastoret, pr6face au seiziame tome del that Italian fiefs were not hereditary V efore the Ordonnances, p. 20. Houard, D-it. du Droit Nor Iromulgatio- of this edict mand, art. Fief. Argou, Inst. du Droit Francois L

Page 79 Ar. T. I. FEUDALu SYSTEM. ?? land, even the practice of sub infeudation, more rigorous fetters imposed by the Eh which was more conformable to the law glish statute of entails, which precluded of fiefs and the military genius of the sys- all lawful alienation, till, after two centuterm, but injurious to the suzerains, who ries, it was overthrown by the fictitious lost thereby its escheats and other ad- process of a common recovery. Though vantages of seigniory, was checked by these partake in some measure of the feun Magna Charta,* and forbidden by the dal spirit, and would form an important statute 18 Edward I., called Quia Emp- head in the legal history of that system, tores, which at the same time gave the it will be sufficient to allude to them in liberty of alienating lands, to be holden a sketch, which is confined to the develop of the grantor's immediate lord. The opment of its political influence. tenants of the crown were not included A custom very similar'in effect to subin this act; but that of 1 Edward III., c. 12, infeudation, was the tenure by fre'rag'e, enabled them to alienate, upon the pay- which prevailed in many parts of France. ment of a composition into chancery, Primogeniture, in that extreme which which was fixed at one third of the annual our common law has established, was value of the lands.t unknown, I believe, in every country These restraints, placed for the lord's upon the continent. The customs of advantage upon the transfer of feudal France found means to preserve the digproperty, are not to be confounded with nity of families, and the indivisibility oJ those designed for the protection of heirs a feudal homage,
without exposing the and preservation of families. Such were younger sons of a gentleman to absolute the jets protimeseos, in the books of the beggary or dependance. Baronies indeed fiefs, J and retrait lignager of the French were not divided; but the eldest son was law, which gave to the relations of the bound to make a provision in money, by vender a pre-emption upon the sale of way of appanage, for the other children, any fief, and a right of subsequent re- in proportion to his circumstances and demption. Such was the positive pro- their birth.* As to inferior fiefs, in many hibition of alienating a fief held by de- places, an equal partition was made; in scent from the father (feudum pater- others, the eldest took the chief portion, num), without the consent of the kindred generally two thirds, and received the on that line.~ Such, too, were the still hommage of his brothers for the remaining part, which they divided. To the lord of whom the fief was held, himself did homii., c. ii. In Beaumanoir's age and district at least, age for the ie was held, himself did homsub-infeudation without the lord's license incurred a forfeiture of the land; and his reason extends of of the feudal policy, when military sercourse more strongly to alienation. -Cofitumes de vice was the great object of the relation Beauvoisis, c. 2. Velly, t. vi., p. 187. But, by the between lord and vassal, this, like all other general law of feuds, the former was strictly regu- er sub-infeudation, was rather advantalar, while the tenant forfeited his land by the latter. Craig mentions this distinction as one for which he geous to the former. For, when the is perplexed to account.-Jus Feudale, 1. iii., tit. 3, homage of a fief was divided, the service p. 632. It is, however, perfectly intelligible upon was diminished in proportion. Suppose, the original principles of feudal tenure. for example, the obligation of military * Dalrymple seems to suppose that the 32d chap- attendance for an entire manor to have ter of Magna Charta relates to alienation, and not to sub-infeudation.-Essay on Feudal Property, been forty days; if that came to be equaled. 1758, p. 83. See Sir E. Coke, 2 Inst., p. 65 and ly split among two, each would owe but 501; and Wright on Tenures, contra. Mr. Har- a service of twenty. But if, instead of grave observes, that "the history of our law with being homagers to the same suzerain, respect to the powers of alienation, before the statute of Quia emptores terrarum, is very much in- one tenant held immediately of the other, volved in obscurity."-Notes on Co. Litt., 43.,a. In Glanville's time, apparently, a man could only volontate, nisi agnatis consentientibus.-Lib. Feud. alienate (to hold of himself) rationabilem partem apud Wright on Tenures, p. 108 and 156. de terra sua, 1. vii., c. 1. But this may have been * Du Cange, v. Apanamentum, Baro. Baronie in favour of the kindred, as much as of the lord.- ne depart mie entre freres se leur pere ne leur a Dalrymple's Essay, ubi supra. fait partie; mes li ainsnez doit faire avenant bien It is probable that Coke is mistaken in supposing fet au puisné, et si doit les filles marier.-Etablís chat, " at the common law, the tenant might have sem. de St. Louis, c. 24. made a feoffment of the whole tenancy to be hold- t This was also the law of Fianders and Ilai en of the lord." nault.-Martene, Thesaurus Anecdotor., t. i., p 2 Inst., p. 66. Blackstone's Commentaries, 1092. The customs as to succession were exceed vol. ii., c. 5. ingly various, as indeed they continued to be until t Lib. Feud., 1. v., t. 13. There were analogies to the late generalization of French law.-Recuei. this jus xrpore, awsu in the Romah law, and, stil des Histor., t. ii., preface, p. 108 I Hist. de Langue more closely, in the constitutions of the later By- doc, t. ii., p. 111 and 511. In the former work it zantine emperors. is said that primogeniture was introduced by th 5 Alienatio faudi naterni non valet etiam domini Normans from Scandinavia

Page 80 so EUROPE, DURING THE MIDDLE AGES. (.HAP as every feudatory might summon the casionally exacted by the lords, wTere felt Lid of his own vassals, the superior lord as a-severe grievance; and by Magna would in tact obtain the service of both. Charta three only are retained; to make Whatever opposition, therefore. was the lord's eldest son a knight, to
marry made to the rights if sub-infeudation or nis eldest daughter, and to redeem his frerage, would indicate a decay in *he person from prison. They were restrictmilitary character, the living principle of ed to nearly-the same description by a feudal tenure. Accordingly, in the reign law of William I. of Sicily, and by the of Philip Augustus, when the fabric was customs of France.* These feudal aids beginning to shake, we find a confederate are deserving of our attention, as the beagreement of some principal nobles, sanc- ginnings of taxation, of which for a long tioned by the king, to abrogate the mesne time they in a great measure answered the enure of younger brothers, and estab- purpose, till the craving necessities and ish an immediate dependance of each covetous policy of kings substituted for apon the superior lord.* This, however, them more durable and onerous burdens. was not universally adopted, and the ori- I might here, perhaps, close the enuginal frerage subsisted to the last in some meration of feudal incidents, but that of the customs of France.t two remaining, wardship and marriage, 3. As fiefs descended but to the poster- though only partial customs, were those Escheats ity of the first taker, or at the ut- of our own country, and tend to illustrate and forfeits. most to his kindred, they neces- the rapacious character of a feudal arissarily became sometimes vacant for want tocacy. of heirs; especially where, as in England, 5. In England, and in Normandy, which there was no power of devising them by either led the way to or adopted all these will. In this case, it was obvious that English institutions, the lord had Wardship. they ought to revert to the lord, from the wardship of his tenant during whose property they had been derived. minority.t By virtue of this right, he These reversions became more frequent had both the care of his person, and re through the forfeitures occasioned by the ceived to his own use the profits of the vassal's delinquency, either towards his estate. There is something in this cussuperior lord or the state. Various cases tom very conformable to the feudal spire laid down in the Assises de Jérusa- it; since none was so fit as the lord to lem, where the vassal forfeits his land, train up his vassal to arms; and none for a year, for his life, or for ever.j But could put in so good a claim to enjoy the under rapacious kings, such as the Nor- fief, while the military service for which it man line in England, absolute forfeitures had been granted was suspended. This came to prevail, and a new doctrine was privilege of guardianship seems to have introduced, the corruption of blood, by been enjoyed by the lord in some parts which the heir was effectually excluded of Germany; but in the law of France, from deducing his title, at any distant the custody of the land was intrusted to time, through an attainted ancestor. the next heir, and that of the person, as 4. Reliefs, fines upon alienation, and in soccage tenures among us, to the nearsecheats, seem to be natural reser- est kindred of that blood which could not Aids vations in the lord's bounty to his inherit.~ By a gross abuse of this cus vassal. He had rights of another class, which principally arose out of fealty and * Giannone, l. xii., c. 5. Velly, t. vi., p. 200. intime attachment. Such were the Ordonnances des Rois. t. i., p. 138; t. xvi., preface. aids which he was entitled to call for in t Recueil des Historiens, t. xii., préf., p. 162; certain prescribed circumstances. These Argou, Inst. au Droit Franquis, l. i., c. 6; Houard, a great deal, upon local custom, Anciennes Loix des Franquis, t. i., p. 147. depended a great dea! upon local custom, t Schilter, Institutiones Juris Feudalis, p. 85. and were often extorted unreasonably. Du Cange, v. Custodia. Assisesde Jerusalem, Du Cange mentions several as having c. 178; Etablissemens de St. Louis, c. 17; Beauexisted in France; Sutah as an aid for the manoir, c. 15; Argou, l. i., c. 6. The seconda oi lord's expedition to the holy Land, for these uses nearly the same expression as Sir John Fortescue in accounting for the exclusion of the marrying his sisiter or eldest son, and for next heir from guardianship of the person; that paying a relief to his su'zerain on taking mauvaise convoitise li fairoit faire la garde du loup. possession of his land.~ Of these, the I know not any mistake more usual in English last appears to have been the most usual writers who have treated of the feudal law, than in l Etglrnd. Beut this, and other aids oc- that of supposing that guardianship in chivalry wae in ~England. But this, ~a universal
custom. A charter of 1138, in Rymer, t. i., p. 105, seems indeed to imply that the inci*
Ordonnances des Rois, t. i., p. 29. dents of garde noble and of marriage existed in the t Du
nanoir, c. 47. grants that the inhabitants of that island shoule I C. 200, 201. 0 Du Cange, voc. Auxilium. have the wardshiP and mal riage of their heirs with

Page 81 Al r 1.] FEUDAL SYSTEM. tom in England, -he right of guardianship any female
vassal to accept cne Mf three n chivalry, or temporary possession of whom he should propose
as her hus he lands, was assigned over to strangers. oand. No other condition seems to have
rhls was one of the most vexatious parts been imposed on him in selecting these of our feudal
tenures, and was never per- suitels, than that they should be of equal haps more -sorely felt,
than in their last rank with herself. Neither the maiden's stage under the Tudor and Stuart
families. coyness, nor the widow's affliction, nei6. Another right given to the lord by ther
aversion to the proffered candidates, ariae the Norman and English laws nor love to one more
favoured, seem to a was that of marriage, or of ten- have passed as legitimate excuses. One,
ing a husband to his female wards, only one plea, could come from the lady's while under
age, whom they could not mouth, who was resolute to hold her reject without forfeiting the
value of the land in single blessedness. It was, that marriage; that is, as much as any one she
was past sixty years of age; and, afwould give to the guardian for such an ter this unwelcome
confession, it is justalliarce. This was afterward extended by argued by the author of the law-
book to male wards; and became a very lucra- which I quote, that the lord could not de tive
source of extortion to the crown, as cently press her into matrimony.* Howwell as to mesne
lords. This custom ever outrageous such a usage may apseems to have had the same extent as
pear to our ideas, it is to be recollected that of wardships. It is found in the an- that the peculiar
circumstances of that cient books of Germany, but not of little state rendered it indispensable to
France.* The kings, however, and even possess in every fief a proper vassal to inferior lords of
that country, required fulfil the duties of war. their coi? ent to be solicited for the mar-
These feudal servitudes distinguish the riage of their vassals' daughters. Sev- maturity of the system.
No trace of them eral proc fs of this occur in the history, appears in the capitularies of Charleas
well as in the laws of France; and magnie and his family, nor in the instru the sam-, prerogative
existed in Germa- ments by which benefices were granted. ny, Sicily, and England.t A still
more I believe that they did not make part of remarkable law prevailed in the kingdom the
regular feudal law before the eleventh, of Jerusalem. The lord might summon or perhaps the
twelfth century, though doubtless partial usages of this kind had out any interposition, and
expressly abrogates all grown up antecedently to either of those:ne evil customs that her
husband had introduced. periods. * fI am not mistaken, no allusion -P. 112. From hence I
should infer, that Henry perous. If I am not mistaken, no allusion [I. had endeavoured to
impose these feudal bur-occurs to the lucrative rights of seignio-lens (which perhaps were then
new even in Eng- ry in the Assises de Jerusalem, which and) upon his continental dominions.
Radulphus atre a monument of French usages in ie Diceto tells us of a claim made by him to
the the eleventh century Indeed that very wardship of Chateauroux in Berry, which could. *'.
rot legally have been subject to that custom.- general commutation of allodial proprwsden X.
Scriptores, p. 599.' And he set up erty into tenure, which took place beDretensions to the
 custody of the dutchy of Brit- tween the middle of the ninth and elevany, after the death of his
son Geoffrey. This enth centuries, would hardly have been efmight perhaps be justified by the
law of Norman- fected, if fiefs had then been liable to such ly, on which Britany depended. But
Philip Au- burdens and so much extortion. In halfgustus made a similar claim. In fact, these
political assertions of right, prompted by ambition, and barbarous ages, the strong are
constants supported by force, are bad precedents to establish by encroaching upon the weak; a truth of jurisprudence. Both Philip and Henry which, if it needed illustration, might find were abundantly disposed to realize so convenient in the progress a prerogative as that of guardianship in chivalry it ess of the feudal system. over the fiefs of their vassals.-Lyttleton's Henry We have thus far confined our inquiry ft., vol. iii., p. 441. to fiefs holden on terms of mili Proper and * Schilter, ubi supra. Du Cange, voc. Dispara tary service; since those are improper gkre, seems to admit this feudal right in France: the most ancient and regular, as feuds. but the passages he quotes do not support it. See well as the most consonant to the spirit is the word Maritagyium. also the word Maritajuim. + Ordonnances des R.ois, t. i., p. 155; Assises of the system. They alone were called ie JRrus., c. 180, and Thaumassibre's note. Du proper feuds, and all were presumed to Cange, ubisupra. Glanvil.,1. vii.,c. 12. Giannone, be of this description, until the contrary xi., c. 5. Wright on Tenures, p. 94. St. Louis in return declared that he would not marry his was proved by the charter of investiture. own daughter without the consent of his barons. A proper feud was bestowed without Joinville, t. ii., p. 140. Henry I. of England had promised the same. The guardian of a female mi Ass. de Jerus., c. 224. I must observe, tha' or was Wbliged to give security to her lord not to Lauriere says this usage prevailed en plusieurs nar' without his consent.-Etablissemens de lieux, though he quotes no authority.-Ordonnau lts Louis, c 63 ces des Rois, p. 155. F

Page 82 EUROPE DURING THE MIDDLE AGES. AelIP. ii price, without fixed stipulation, upon a lord. What was called in ou dw grand vassax capable of serving personally in sergeantry, affords an instancu of this spe the field. But gradually, with the help cies of fief.* It is, however, an instant of a little legal ingenuity, improper fiefs of the noblest kind; but Muratori has giv. of the most various kinds were intro- en abundance of proofs, that the common duced, retaining little of the character- est mechanical arts were carried on it'tis, and less of the spirit, which distin- the houses of the great, by persons l'eceiv guished the original tenures. Women, if ing lands upon those conditions.t indeed that were an innovation, were These imperfect feuds, however, be admitted to inherit them;* they were long more properly to the history of law, granted for a price, and without refer- and are chiefly noticed in the present ence to military service. The language sketch because they attest the partiality of the feudal law was applied by a kind manifested during the middle ages to the of metaphor to almost every transfer, of name and form of a feudal tenure. In property. Hence, pensions of money, and the regular military fief we.see the real allowances of provisions, however remote principle of the system, which might from right notions of a fief, were some- originally have been defined, an alliance times granted under that nanie; and even of free landholders, arranged in degrees where land was the subject of the dona- of subordination according to their retion, its conditions were often lucrative, spective capacities of affording mutual often honorary, and sometimes ludi support. crous.t The peculiar and varied attributes of there is one extensive species of feu feudal tenures naturally gave Feudal lawFiefs of dal tenure which may be distinctly rise to a new jurisprudence, reg- books. sflice. noticed. blThe pride of wealth in ulating territorial rights in those parts of the middle ages was principally exhibit- Europe which had adopted the system. ed in a multitude. of dependants.-..The For a length of time this rested in tracourt of Charlemagne was crowded with ditionary customs, observed in the doofficers of every rank, some of the most mains of each prince or lord, without eminent of whom exercised, functions much regard to those of his neighbours. about the royal person which would Laws were made occasionally by the have been thought fit only for slaves in emperor in Germany and Italy, which the palace.of Augustus or Antonine. tended to fix the usages of those coun
The free-born. Franks saw nothing. About the year 1170, Girard and nial in the titles of cup-bearer, steward, Obertus, two Milanese lawyers, publishmarshal, and master of the horse, which ed two books of the law of fiefs, which are still: borne by the noblest families il obtained a great authority, and have been every country of Europe, and by sover- regarded as the groundwork of that jurisign princes in the empire.: From the prudence.1 A number of subsequent court of the king, this favourite piece of commentators swelled this code with magnificence descended to those of the their glosses and opinions, to enlighten prelates and barons, who surrounded or obscure the judgment of the imperial themselves with household officers, call- tribunals. These were chiefly civilians ed ministerials; a name equally applied to or canonists, who brought to the interthou of a. servile and of a liberal descr- pretation of old barbaric customs the tion.T The latter of these were reward- principles of a very different school. ed with grants of lands, which they held Hence a manifest change was wrought under a feudal tenure by the condition of in the law of feudal tenure, which they performing some domestic service to the assimilated to the usufruct or the emphyteusis of the Roman:code.' modes of Women did not inherit fiefs in the German property somewhat analogous in appearempire. Whether they were ever excluded from succession in France, I know not; the genius of a "This tenure," says Littleton, "is where a military tenure, and the old Teutonic customs, nan holds his lands or tenements of our sovereign preserved in the Salique-law, seem adverse to Lord the king by such services as he ought to do in their possession of feudal lands; yet the practice, his proper person to the king, as to carry the banner at least from the eleventh century downwards, of the king, or his lance, or to lead his array, or to does not support the theory. be his marshal, or to carry his sword: before him at 14 Crag.; Jus Feudale, 1. i., tit. 10.' Du’ Cange, his coronation, or to be his sewer. at his corona. voc. Feudum de Camera, &c... In the treaty be- tion, or his carver, or. his butler, orto be one of his twee Henry. I. of - England and Robert, count of chamberlains at the receipt of his exc: lequer, or to Flanders, A..D. 1101, the king stipulates to pay doother like services."-Sect. 153. annually 400 marks of silver, in feodo, for the mili- Antiq. Ital., Disselt. 11, ad finem. tlar service of his ally.-Rymer, Fcedera, t. i., p. 2. t Giannone, Ist. di Napoli, 1. xiii., c. 3.. The: Schmidt, Hist. des Allemands'; t iii., p. 92. Libri Peudorum are printed in most editions of the IDc'cange, v. Familia, Ministeriales. (f)runus Juris Civilis.
paramount ods adopted to augment it by depreciation of the courts of justice, and by learned
writings, Coin, &c.-Legislative Power-its state unde from breaking into discordant local usa-
the Merovingian Kins-and Charlemagne in a comparatively small His Councils.-Suspension of
any general Legis ges, except in a comparatively small lative Authority during the prevalence
of Feuda number of places, and has become the Principles.-The King's Council!.-Means adopt
principal source of our common law. ed to supply the Want of a National Assembly But the
independence of the French - Gradual Progress of the King's Legislative nobles produced a
much greater variety Power.-Philip IV. assembles the States'Gen.- eral. - Their Powers limited
to Taxation. - of customs. The whole number collect- States under the Sons of Philip IV.-States
of ed and reduced to certainty in the six- 1355 and 1356.- They nearly effect an entire tenth
century amounted to two hundred Revolution.-The Crown recovers its V.igour. — and eighty-
five, or, omitting those incon- States of 1380, under Charles VII.-Subsequen Assemblies under
Charles VI. and Charles VII siderable for extent or: peculiarity, to -The Crown becomes more
and more absolute sixty. The earliest written customary -Louis XI.-States of Tours in 1484. —
Histori in France is that of Bearn, which is said cal View of Jurisdiction in France.-Its earl.
to have been confirmed by Viscount Gas- est stage under the first Race of Kings, ann ton IV., in
1088.t Many others were Charlemagne.-Territorial Jurisdiction.- Feu dal Courts of Justice.-
Trial by Combat.-Code written in the two subsequent ages, of of St. Louis.-The Territorial
Jurisdictions give which the customs of Beauvoisis, com- way. -Progress of the Judicial Power
of the piled by Beaumanoir under Philip III., Crown. - Parliament of. - Paris. - Peers of are
the most celebrated, and contain a France.-Increased Authority of the Parliament. nmass of
information onl the feudal c–onsti- -Registration of Edicts.-Causes of the Decline of Feudal
System.-Acquisitions of Domain by tuition and manners. Under Charles VII., the Crown.-
Charters of Incoporation granted an ordinance was made for the formation to Towns. - Their
previous Condition. - First of a general code of customary law,- by Charters in the twelfth
Century. -- Privilegsa contained in them.-Military Service of Feuda Tenants commuted for
Money.-Hired Troops * Giannone explicitly contrasts the French and -Change in the Military
System of Europe.Lombard laws respecting fiefs. The latter were General View of the
Advantages and Disadvan:he foundation of the Libri Feudorum, and formed tages attending the
Feudal System. the common law of Italy. The former were introduced by Roger Guiscard into
his dominions, in IT has been very common to seek for three books of constitutions, printed in
Lindebrog's the origin of feuds, or, at least, Analogies ts collection. There were several
material differen- for analogies to them in the the feudal te ces, which Giannone enumerates,
especially the history of various Norman custom of primogeniture.-lst. di Nap., cuntries. 1. xi.,
c. 5. But, though it is of great importance to t There are two editions of this curious old trace
the similarity of customs in diffefr >ode; one at Pau, in 1552, republished with a fresh ent parts
of the world, because it guides title-page and permission of Henry IV., in 1602; us to the
discovery of general theorems the other at Lescars, in 1633. These laws, as we read them, are
subsequent to a revision made in as to human society, yet we should be the middle of the
sixteenth century, in which they on our guard against seeming analogies were more or less
corrected. The basis, however, which vanish away when they are closely is unquestionably
very ancient. We even find the observed. It is easy to find partial re composition for homicide
preserved in them, so semblances to the feudal system. that murder was not a capital offence in
Bearn, though robbery was such.-Rubrica de Homicidis, relation of patron and client in the PI..
Art. xxxi See too Rubrica de Pennis. Art. i. and ii. man republic is not unlike that of lo(rd FtP
extended as far as the Ebro. But in of land, nor military service. Thevetier- Castile* and Portugal they were very an soldiers, and, in later times, some bar- rare, and certainly could produce no pa.;sarian allies of the emperors, received litical effect. Benefices for life weie lands upon condition of public defence; sometimes granted in the kingdoms of but they were bound not to an individual Denmark and Bohemia.t Neither of lord, but to the state. Such a resem- these, however, nor Sweden, nor Hunga. blance to fiefs may be found in the Zemnin- ry, comes under the description of coun daries of Hindostan, and the Timariots of tries influenced by the feudal system I Turkey. The clans of the Highlanders That system, however, after all these and Irish followed their chieftain into the limitations, was so extensively diffused, field; but their tie was that of imagined that it might produce confusion, as well kindred and respect for birth, not the as proximity, to pursue the collateral spontaneous compact ofvassalage. Much branches of its history in all the countless can we extend the name of feud, tries where it prevailed. But this emthough it is sometimes strangely misap- barrassment may be avoided without plied, to the polity of Poland and Russia. any loss, I trust, of important informaAll the Polish nobles were equal in rights, t. The English constitution will find and independent of each other; all who were less than noble were in servitude. emphyteuses without the lord's consent. It is hard No government can be more ioppositue. to say whether regular fiefs are meant by this No government can be more opposite to word. —De Marca, Marca Hispanica, p. 1396. This the long gradations and mutual duties of author says that there were no arriere-fiefs in Cat the feudal system.* alonia. The regular machinery and systematic The Aragonese fiefs appear however to have dif,xtent of establishment of feuds, in fact, fered from those of other countries in some te Extent of establishm ent ent of feuds, in fact, specter. Zurita mentions fiefs according to the ces the feudal may be considered as almos con- tom of Italy, which he explains to be such as were system. fined to the dominions of Charle- liable to the usual feudal aids for marrying thei magne, and to those countries which af- lord's daughter, and other occasions. We may inl terward derived it from thence. In Eng- fer, therefore, that these prestations were not cus land, it can hardly be thought to have ex- tomary in Aragon.- Anales de Aragon, t. ii., p. 62. x What is said of vassalage in Alfbnzo X.'s code, isted in a complete state before the con- Las siete partidas, is short and obscure: nor am I quest. Scotland, it is supposed, borrow- certain that it meant any thing more than voluntary ed it soon after from her neighbour. The commendation, the custom mentioned in the former Lombards of Benevento had introduced part of this chapter, from which the vassal might depart at pleasure.- See, however, Du Cange, v. feudal Custons into the Neapolitan prov- Honour, where authorities are given for the exist inces, which the Norman conquerors af- ence of Castilian fiefs; and I have met with occa terward perfected. Feudal tenures were sional mention of them in history. I believe that so general in the kingdotm of Aragon, that tenures of this kind were introduced in the fourt"reckon it among the monarchies which teenth and fifteenth centuries; but not to any gmeat extent. —Marina, Teoria de las Cortes, t. iii., p. 14. -ere founded upon that basis.t Charle- Tenures of a feudal nature, as I collect fioro Freirii Institut. Juris Lusitani, tome ii., t. 1 and 3, * In civil history many instances might be found existed in Portugal, though the jealousy of the of feudal ceremonies in countries not regulated by crown prevented the system from being establishthe feudal law.'Thus Selden has published an in- ed. There were even territorial jurisdictions in feudation of a vayvod of Moldavia by the King of that kingdom, though not, at least originally, ia Poland, A. D. 1485, in the regular forms, vol. iii., Castile. p. 514. But these political fiefs have hardly any t Daniae regni politicus status.-Elzevir, 1629 connexion with the general system, and merelyde -Stransky, Respublica Bohemica.-Ib. In one note the subordination of one prince or people to of the oldest Danish historians, Sweno, I have no. another. ticed this expression: Waldemar, patris tune t It is probable that feudal tenure was as ancient poitus feodo.-Langebek, Scrip. Rerum Danic., in the north of Spain, as in the
contiguous prov- t. i., p. 62. By this he means the dutchy of Sles. inces of France. But it seems to have chiefly pre- wic, not a fief, but an honour or government posvailed in Aragon about the twelfth and thirteenth sessed -by Waldemar. Saxo Grammaticus calls centuries, when the Moors south of the Ebro were it more classically, paternal prafecturae dignitas. subdued by Waldemar. Saxo Grammaticus calls centuries, when the enterprise of private nobles, who, Sleswic was, in later times, sometimes held as a after conquering estates for themselves, did homage fief; but this does not in the least imply that lands for them to the king. James I., upon the reduction in Denmark proper were feudal, of which I find no of Valencia, granted lands by way of fief, on con- evidence. dition of defending that kingdom against the Moors, $ Though there were no feudal tenures in S we and residing personally upon the estate. Many did den, yet the nobility and others were exempt from not perform this engagement, and were deprived taxes on condition of serving the king with a horse of the lands in consequence. It appears by the tes- and arms at their own expense; and a distinction tamnent of this monarch, that feudal tenures sub- was taken between liber and tributariug. But ani sisted in every part of hit dominions.-Martenne, one f– the latter might become of the former clase Thesaurus Anecdotorum, t. i., p. 1141, 1155. An or vice versa.-Suecie Descriptio. Elzevir, 1631 edlict of Peter II. in 1210 prohibits the alienation of p. 92.

Page 85 PART II.1 FEUDAL YYST’IEM. ~j its place in another portion of this work; sprang out of the feludai system., Every and the political condition of Italy, after possessor of a fief was a gentleman, the eleventh century, was not much af- though he owned but a few acres of land, fec;ted, except in the kingdom of Naples, and furnished his slender contribution an inconsiderable object by the laws of towards the equipment of a knight. In feudal tenure. I shall confine myself, the Libri Feudorum indeed, those who therefore, chiefly to France and Germa- were three degrees removed from the ny; and far more to the former than the emperor in order of tenancy are considlatter country. But it may be expedient ered as ignoble;* but t] is is restrained first to contemplate the state of society to modern investitures; and in France, in its various classes during the preva- where sub-infeudation was carried the lence of feudal principles, before we trace farthest, no such distinction has met my their influence upon the national govern- observation.t merit, There still, however, wanted something It has been laid down already as most to ascertain gentility of blood, where Classes of probable that no proper aristoc- it was not marked by the actual tenure society. racy, except that of wealth, was of land. This was supplied by two inNobility. known under the early kings of novations devised in the eleventh: and France; and itwas hinted that hereditary twelfth centuries: the r loption of surbenefices, or, in other words, fiefs, might names, and of armoria' nearings. The supply the link that was wanting between first are commonly referred to the former personal privileges and those of descent. age, when the nobility began to add the The possessors of beneficiary estates names of their estates to their own, or, were usually the richest and most con- having any way acquired a distinctive apspicuous individuals in the estate. They pellation, transmitted it to their poster were immediately connected with the ity.T As to armorial bearings, there is crown, and partakers in the exercise of no doubt that emblems somewhat similar justice and royal counsels. Their sons have been immemorially used both in war now:ame to inherit this eminence; and, and peace. The shields of ancient waras fiefs were either inalienable, or at least riors, and devices'upon coins or seals, not very frequently'alienated, rich fam- bear no distant resemblance to modern ilies were kept long in sight; and, wheth- blazonry. But the general introductio, er engaged in public affairs, or living with of such bearings, as hereditary distine magnification and hospitality at home, tions, has been sometimes attributed to naturally drew to themselves popular es- tournaments, wherein the champions timation. The dukes and counts, who were distinguished by fanciful devices, had changed their quality of governors sometimes
to the crusades, where a mulinto that of lords over the provinces in- titude of all nations and languages stood trusted to them, were at the head of this in need of some visible token to denote noble class. And in imitation of them, the banners of their respective chiefs. In their own vassals, as well as those of the fact, the peculiar symbols of heraldry crown, and even rich allodialists, assu- point to both these sources, and have mod titles from their towns or castles, and been borrowed in part from each. -- Hethu3 arose a number of petty counts, bar- reditary arms were perhaps scarcely used ons, and viscounts. This distinct class by private families before the beginning of nobility became coextensive with the of the thirteenth century. I From that feudal tenures. For the military tenant, however poor, was subject to no tribute. ii., t. 10. however poor, was subject to no tribu, t The nobility of an allodial possession m France no prestation, but service in the field; he depended upon its right to territorial jurisdiction. was the companion of his lord in the Hence there were franc-aleux nobles, and frianc sports and feasting of his castle, the peer aleux roturiers; the latter of which were subject to of his court; he fought on horseback, he the jurisdiction of the neighbouring lord.-Loiseau, was clad in the coat of mail, while the naire des Scigneuries, p. 76. Denisart, Diction commonly, if summoned at all to war, t Mabillon, Trait6 de Diplomatique, 1. ii., c. 7 came on foot, and with no armour of de- The authors of the Nouveau Trait6 de Diplomat fence. A.s every thing in the habits of ique, t. li., p. 563, trace the use of surnames in a society conspired with that prejudice few instances even to the beginning of the tenth society conspired century; but they did not become general, accord which, in spite of moral philosophers, ing to them, till the thirteenth. will constantly raise the profession of i Mm. del'Acad. des Inscriptions, t. xx., p. 59. arms above all others, it was a natural I should be unwilling to m a s. consequence that a new species of aris- sertion peremptorily in a matter of mere antiqua Locracy, founded upon the mixed cons cian research; but [ am not aware of any decisive tocracy, founded upon the mixed i consia- evidence that hereditary arms were borne in t}uf trations of birth, tenure, and occupation, twelfth century, except by a very few royal or a,
offspring of a his shield. azure, four lions rampant or.-Hist. gentleman by a plebeian mother were Littéraire de la France, t. ix., p. 165. If arms had been considered as hereditary at that time, thiJ: reputed noble for the purposes of inherith should be the bearing of England, which, as we al ance. and of exemption from tribute.¶ know, differs considerably. Louis VII. sprinkle [B3lt they could not be received into any his seal and coin with fleurs-de-lys, a very anc rder of chivalry, thoug capable of sir device, or rather ornament; and the same as what k are sometimes called bees. The golden ornaments ple knighthood; nor were theyconsider found inthe tomb of Childeric I. at Tournay,which ed as any better tlhan a bastard.lass, may be seen in the library of Paris, may pass either deeply tainted with the alloy of their for fleurs-de-lys or bees.. Charles V. reduced the number to three, and thus fixed the arms of France. lenged any one, fought with ignoble arms; but ir The counts of Toulouse used the cross in the all other respects was treated as a gentleman, ibid. twelfth age; but no other arms, Vaissette tells us, Yet a knight was not obliged to do homage to the can be traced in Languedoc so far back, t. iii., p. roturier, who became his superior by the acquisi 514. - - - tion of a fief on which he depended.-Carpentiei; Armorial bearings were in use among the Sara- Supplement. ad Du Cange, voc. Homagium. cens during the later crusades; as appears by a * Etablissemens de St. Louis, c. 143, and note., passage in Joinville, t. i., p. 88 (Collect. des M6- in Ordonnances des Rois, t. i. See also preface moires), and Du Cange's note upon it. Perhaps, to the same volume, p. xii. According to Mably, however, they may have been adopted in imitation the possession of a fief did not cease to confer no.. of the Franks, like the ceremonies of knighthood. bility (analogous to our barony by tenure) till the Villaret ingeniously conjectures, that the separa- Ordonnance de Blois, in 1579.-Observations sur tion of different branches of the same family by l'Hist: de France, 1. iii., c. 1, note 6. But Lauriere, their settlements in Palestine led to the use of he- author of the preface above cited, refers to Bouteil reditary arms, in order to preserve the connexion, ler, a writer of the fourteenth century, to prove t. xi., p. 113. that no one could become noble without the king's M. Sismondi, I observe, seems to entertain no authority. -. The contradiction will not much per doubt that the noble families of Pisa, including that plex us, when we reflect on the disposition of lawwhose name he bears; had their armorial distinc- yers to ascribe all prerogatives to the crown, at the tions in the beginning of the twelfth century.-Hist; expense of territorial proprietors, and of ancient des Rdpubl. Ital., t. 1, p. 373. It is at least proba- customary law. ble that the heraldic devices were as ancient in. t Thle right, originally perhaps usurpation, call Italy as in any part. of Europe. And the authors ed franc-fief, began under Philip the Fair.-Ordon. of Nouveau Traité de Diplomatique, t. iv., p. 388, nances des Rois, t. i., p. 324. Denisart, Art. Franc..ncline to refer hereditary arms even in France to fief.' the. beginning of. the twelfth century, though with- t Houard, Dict. du Droit Normand. Encyclopi a t prouduing any evidence for this. die, Art. Noblesse. Argou, l. ii., c. 2. *. We have no English word that conveys th~e ) Nobility, to a certain degree, was communica full sense of roturier. How glorious is this deficien- cy in our political language, and how different are tom of Champagne, but in all parts of France; thas the ideas suggested by commoner! Roturier, ac- is, the issue were " gentilhommes du fait de leu, cording to Du Cange, is derived from rupturarius, corps," and could possess fiefs; but, says Beauman a peasant, ab agrum rumpendo. oir, "la gentillesse par laquelle on devient chevalier - The Establishments of St. Louis forbid this doit venir de par le pare," c. 45. There was a pro innovation, but Beaumanoir contends that the pro- verbal maxim in the French law, rather emphatic hibition does not extend to descent or marriage, c. than decent, to express the derivation of geatility.48. The roturier who acquired a fief, if he chal. from the father and of freedom from the moother.
Many instances occurred, where they possessed the higher cur where letters of nobility have been territorial jurisdiction, and had the right granted to reinstate them in their rank.* of carrying their own banner into the For several purposes it was necessary to field.* To these corresponded the Va: prove four, eight, sixteen, or a greater vassores majores and Capitanei of the number of quarters, that is, of coats borne empire.: In a subordinate class were by paternal and maternal ancestors, and the vassals of this high nobility, whose same practice still subsists in Ger- upon the continent, were usually termed 'unany. Vavassors; an appellation not unknown, It appears, therefore, that the original though rare, in England.t - The Chate nobility of the continent were what we lains belonged to the order of Vavassors, may call self-created, and did not derive as they held only; arriere fiefs: but havtheir rank from any such concessions of ing fortified houses, from which they detheir respective sovereigns as have been rived their name (a distinction very unnecessary in subsequent ages. In Eng- portant in those. times), and possessing land, the baronies by tenure might belong ampler'rights of territorial justice, they to the same class, if the lands upon which rose above the level of their fellows in they depended had not been granted by the scale of tenure.t - But after the per the crown. But the kings of France, be- sonal nobility of chivalry became the ob fore the end of the thirteenth century, ject of pride, the Vavassors, who obtain began to assume a privilege of creating ed knighthood, were commonly style. nobles by their own authority, and with- bachelors; those who had not receivea out regard to the tenure of land. Philip that honour fell into the class of squires,. the Hardy, in 1271, was the first French or damoiseaux. king who granted letters of nobilityking who granted letters of Pnobilitude * Beaumanoir, c. 34. Du Cange, v. Baro. Etabunder the reigns of Philip the Fair and lessemens de'St.. Louis, 1. i. c. 24; 1. ii., c. 36. his children they gradually became fre- The vassals of inferior lords were however called, quent.t This effected a change in the improperly, barons, both in France and Engla2d. character of the nobility; and had as ob- -Recueil des Historiens, t. xi., p. 300. Madox, vious a moral, as other events of the same BBaronia Anglica, p. 133. In perfect strictness, vius a moral, as other events of the same those only whose immediate tenure of the crown age had a political influence, in diminish- was older than the accession of Hugh Capet, were mg the power and independence of the barons of France; namely, Bourbon, Coucy, and territorial aristocracy. The privileges Beaufue, or Beaujolais. It appears, however, by originally connected with ancient lineage a register in the reign of Philip Augustus, that fidand extensive domains became common ty-nine were reckoned in that class; the feudatoand extensive dorrnains became common ries of the Capetian fiefs, Paris and Orleans, being to the low-born creatures of a court, and confounded with the original vassals of the crown. lost consequently part of their title to -Du Cange, voc. Baro. respect. The lawyers, as I have observed f Du Cange, v. Vavassor. Velley. t. vi., p. 151. above, pretended that nobility could not Madox, Baronia Anglica, p. 135. There is, perhaps, hardly any word more loosely used than Vaexist without a royal concession. They vassor. - Bracton says, Sunt etiamm Vavassores, acquired themselves, in return for their magnae dignitatis viri. In France and Germany exaltation of prerogative, an official no- they are sometimes named with much less honour. bility by the exercise of magistracy. The Je suis un chevalier n6 de cest part, de vavasseurs institutions of chivalryagain gave rise to et de basse gent, enays a romance. This is to be explained by the poverty to which the subdivision of a vast increase of gentlemen; knighthood, fiefs reduced idol gentlemen. on whomsoever conferred by the sover- S Du Cange, v. Castellanus. Cofitumes de Poieign, lbbeing a sufficient passport to noble tou, tit. iii. Loiseaul, Trait6 des Seigneuries, p. 160. privilegexes. It was, usual, perhaps, to Whoever had a right to a castle had la haute jusprivileges. t wusulpehosotice; this being so incident to the castle, that it grant previous letters of nobility to a ple- was transferred along with it. There might, howbeian
for whom the honour of knighthood ever, be a Seigneur haut-justicier below the Chate. was designed. lain; and a ridiculous distinction was made as to In this noble or gentle class there were the number of posts by which their gallows might beseveral gradations. All those in e supported. A baron's instrument of execution Diifferentt or- several gradations. All those in stood on four posts; a ch'telain's on three; while ders ofnobil- France who held lands imme- the inferior lord, who happened to possess la haute ity. diately depending upon the justice, was forced to hang his subjects on a two crown, whatever titles they might bear, legged machine.-Cofitumes de Poitou. Du Cange were comprised in the'order of barons. v. Furca. Lauri~re quotes from an old manuscript the-foi These were, originally, the peers of the lowing short scale of rinks. Duc est la premiere dignit6, puis comtes, puis viscomtes, et puis baron,* Beaumanoir, c. 45. Du Cange, Dissert. 10, et puis chatelain, et puis vavasseur, et puis citaen, sur Joinville. Carpentier, voc. Nobilitatio. et puis villain.-Ordonnances des Rois, t. i., p. 277. t Velly, t. vi., p. 432. Du Cange and Carpen- Q The sons of knights, and gentlemen not yet ler, voce Nobilitaire, &c. Boulainvilliers, Hist. knighted, took the appellation of squires in the de l'anieL. Gouvernement de France, t. i.. pl 317 twelfth century. —Vaisssette, Hist. de Lang., t. ii,
country, have many instances of their accompa-
nying the army, though not mixing in so far as England is concerned, the socca. the conflict; and even
the parish priests gers, whose tenure was free. though not so noble as knight's service, and a

That of Damoiseau came into use in the thirteenth. —Id., t. iii., p. 529. The latter was, I who formed that ancient basis of our think,

more usual in France. Du Cange gives lit- strength, the English yeomanry. But "ApudAnglos," hesays, "

penultima estnobilitatis the mere freemen are not at first sight descriptio, inter Equitem et

mores body of tenants for term of life, Generosum. Quod et so distinguishable in other countries. In alibi in usu fuit." Squire was not

used as a title French records and law-books of feudal of distinction in England till the reign of Edward times, all besides the gentry are usually III., and then but sparingly. Though by Henry VI.'s time it was grown more common, yet none confounded under the names of villeins assumed it but the sons and heirs of knights, and or hommes de pooste (gens potestatis).— some

military men; except officers in courts of justice, who, by patent or prescription, had obtain-


932, 987. ronia Angl., p. 115. Coke on Littleton, ant: other Any bishop, priest, deacon, or

subdeacon bearing English law-books. arms was to be degraded, and not even admitted to t Du

Cange, v. Advocatus; a full and useful lay communion.-ld., p. 932. article. Recueil des

Historiens, t. xi., preface, I One of the latest instances probably of a fight- p. 184. ing bishop is

Jean Montaigu, archbishop of Sens, ~ Homo potestatis, non nobilis-Ita nuncupan who was

killed at Azincourt. Monstrelet says, tur, quod in potestate domini sunt-Olonoountui that he

was "non pas en estat pontifical, car au viris nobilibus; apud Butlierum Consuetudinarii lieu de

mitre il portoit une bacinet, pour dalma- vocantur, Coustumiers, prestationibus scilicet ob. tique

portoit un haubergeon, pour chasuble. la noxii et operis.-Du Cange, v. Potestas. As Pal piece

d'acier; et au lieu de crosse, portoit une these freemen were obliged, by the ancient law,
mache," fol. 132 of France, to live under; he protector of some Das
was not the case, yet, as the labour free mother is himself free, and has free either of artisans or of free husbandmen power to do any thing that is lawful." was but sparingly in demand, they were In every age and country, until times often compelled to exchange their liberSerts or comparatively recent, persdnaiser- ty for bread.~ In seasons also of famvilleins. vitude appears to have been the ine, and they were not unfrequent, many lot of a large, perhaps the greater portion, freemen sold themselves to slavery. A of mankind. We lose a good deal of our capitulary of Charles the Bald. in 864, sympathy with the spirit of freedom in permits their redemption at all equitable Greece and Rome, when the importunate price.[[ Others became slaves, as more recollection occurs to us of the tasks which might be enjoined, and the punish-

* These passages are too numerous for refer ments which might be inflicted, without ence. In a very early charter in Martenne's The control either of law or opinion, by the saurus

Anecdotorum, t. i., p. 20, lands are granted, keenest patriot of the Comitia, or the cum

hominibus ibidempermanenentibus, quos colonaCouncil of Five Thousand. A simila. no ordine vivere constituitimus. Men of this class SsCou feingwill ofieTnd were called in Italy Aldiones. A Lombard capituthough less powerful, feeling will often lary of Charlemagne says: Aldiones ef lege vi. force itself on the mind, when we read vunt in ItalA sub servitute dominorumrr

suorum, the history of the middle ages. The qua Fiscalini, vel Lidi vivunt in Francia.-

MuraGermans, in their primitive settlements, tori, Dissert. 14. were accustomed to the notion of sla- t Originally it was but 45 solidi.-Leges Salici, c. 43; but Charlemagne raised it to 100.-Bavery, incurred not only by captivity, but luzii Capitularia, p. 402. There are several proby crimes, by debt, and especially by visions in the laws of this great and wise monarch loss in gaming. When they invaded the in favour of liberty. If a lord claimed any one eiRoman

empire, they found the same con- ther as his villein or slave (colonus sive servus), who had escaped beyond his territory, he was notdiction established in all its provinces. to be given up till strict inquiry had been made in Hence, from the beginning of the era the place to which hewas asserted to belong, as to now under review, servitude, under some- his condition and that of his family', p. 400. And what different modes, was extremely if the villein showed a charter of enfranchisement, the proof of its forgery was to lie upon the lonl. iommon. There is some difficulty in No man's liberty could be questioned in the Hunascertaining its varieties and stages. In dred-court. the Salique laws, and in the Capitularies, t Montesquieu ascribes the increase of personal we read not only of Servi, but of Tribu- servitude in France to the continual revolts and commotions under the two first dynasties, I. xxx., ficular lord, and found great difficulty in choosing c. 11. a new place of residence, as they were subject to ; Du Cange, v. Obnoxatio. many tributes and oppressive claims on the part of II Baluzii Capitularia. The Greek traders pur their territo;ial superiors, we cannot be surprised chased famished wretches on the coasts of Italy that they are confounded, at this distance, with whom they sold to the Saracens.-Muratori, An men in actual servitude. nali d'italia. A. D. 785. Much more would. per

* Heeren, Essai sur les CroisMdes, p. 122. sons in his extremity sell themselv's toneighhoul t Cofitil as de Beauvoisis, c. 45, p. 256. ing lords.
gently, from whom the lord can take was a fine called Heribamn, with the all nothing but customary payments, though ternative of perpetual servitude.* A at their death all they have escheats to source of loss of liberty which may him."* strike us as more extraordinary was su-
Under every denomination of servitude, perstition; men were infatuated enough the children followed their mother's wasto surrender themselves, as well as their tion; except in England, where the properties, to churches and monasteries, father's state determined that of the chilin return for such benefits as they might dren; on which account, bastards'of fere by the prayers of their new mas- male villeins were born free; the law ters.t presuming the liberty of their father.t The characteristic distinction of a vil-
The -proportion of freemen', therefore, lein was his obligation to remain upon would have been miserably diminished, his lord's estate. He was not only pre-
if there had been no reflux of the tide eluded from selling the lands upon which which ran so strongly towards slavery. he dwelt, but his person was bound, and But the usage of manumission made a the lord might reclaim him at any time, sort of circulation between these two by suit in a court of justice, if he ventured to strayed. But, equally liable to this Villanus. Et sache bien que selon Dieu tu n'as confinement, there were two classes of mie
pleniere poest6 sur ton vilain. - Dont se tu vlleins, whose condition was exceeding-
sien fors les droites redevances, que te ly different.' In England, at least from doit, tu les prens contre Dieu, et sur le peril de t'am et come robienrres. Et ce qu'on dit toutes the reign of Henry II., one only, and les choses que vilains a, sent an Seigneur, c'es that the inferior species, existed; incap-
a- voirs a garder. Car s'il estoient son seigneur pro. ble of property, and destitute of redress, pre, il n'avoi nule difference entre serf et vilain. except against the most outrageous in-
mais par notre usage n'a entre toi et ton vilain juges juries-.T The lord could seize whatever fors Dieu, tant corn il est tes coushans et tes le. vans, s'il n'a antre loi vers toi fors la commune. they acquired or inherited, or convey'This seems to render the distinctioa little more them, apart from the land, to a stranger. than theoretical. Their tenure bound them to what were * Beaumanoir, c. 45. Du Cange, I illanus, Ser called villein services, ignoble in their vus, and several other articles. Schmidt, Hist. nature, and indeterminate in their de- des Allemands, t. ii., p. 171, 435. By a.aw of the natur, and indeterminate in their de- Lombards, a free woman who married a slave gree; the felling of timber, the carrying might be killed by her relations, or sold; if they of manure, the repairing of roads for their neglected to do so, the fisc might claim her as its lord, who seems to have possessed an own.-Muratori. Dissert. 14. In France also, she equally unbounded right over their la- was liable to be treated as a slave.-Marcu
lui, l. ii., 29. Even in the twelfth century, it bour and its fruits. But by the customs was the law of Flanders. that whoever married a of France and Germany, persons in this villein became one himself, after h.e had li.ed with abject state seem to have been called her a twelvemonth.-Recueil des Historiens, t. serfs, and distinguished from villeins, xiii., p. 350. And, by a capitulary of Pepin, if a who were only bound to fixed payments man married a villein believing her to be free, he who were only bound to fixed payments might repudiate her and marry another. —Baluze, and duties in respect of their lord, though, p. 181. as it seems, without any legal redress, Villeins themselves could not marry without if injured by him.~ " The third estate of the lord's license, under penalty' of forfeiting their goods, or at least of a mnlct.-Du Cange, v. Forismaritagium. This seems to be the true origin * Du Cange, Heribannum. A full heribannum of the famous mercheta mulierum, which has been was 60 solidi; but it was sometimes assessed in ascribed to a very different custom.-IDu Cange, v. proportion to the wealth of the party. Mercheta Mulierum. Dalrymple's Annals of Scott Beaumanoir, c. 45. land, vol. i., p. 312. Archeologia, vol. xii., p. 31. t Littleton, 1. ii., c 11. Non potest aliquus t Littleton, s. 188. Bracton indeed holds, that (says Glanvil), in villenagio positus, libertatem the spurious issue of a neif, though by a free fasuain propriis denariis suis quererere-
quia omnia ther, should be a villein, quia sequitur conditionem catailla cuJuslibet nati

intelliguntui esse in potes-matris, quasi vulgo conceptus, 1. i., c. 6. But the fate domini sui, 1. v., c. 5. laws of Henry I. declare that a son should follow ~ This is clearly expressed in a French law- his father's condition; so that this peculiarity is Uook of the thirteenth century, the Conseil of very ancient in our law.-Leges Hen. I., c., 75 Pierre des Fontaines, q oted by Du Cange, voc. I and 77.

PART II. FEUDAL SYSTEM. 91 General states of manreind.: This, as is as defendant in a rea action, or suit abolition df well known, was an exceeding- wherein land was claimed, he might villanage. ly common practice with' the shelter himself under the plea of villanRomans; and is mentioned, with certain age.. The peasants of this condition ceremonies prescribed, in the Frankish were sometimes made use of in war, and and other early lawxv: The clergy, and rewarded with enfranchisement; espe. especially several popes, enforced it as a cially in Italy, where the cities and petty duty upon laymen; and inveighed against states had often occasion tc defend them the scandal of keeping Christians in bond- selves with their. own population; and ia age.*. But they were not, it is said, equal- peace the industry of free abourers must ly ready in performing their own parts; have been found more productive and the villeins: upon church lands were better directed. Hence the eleventh and among the last who were emancipated.t twelfth centuries.saw the \number of As society advanced in Europe, the man- slaves in Italy begin to decrease; early in omission of slaves grew more frequent.1 the fifteenth, a writer quoted by MuratoBy. the indulgence of custom in some ri speaks of them as no longer existing.* places, or perhaps by original convention, The greater part of the peasants in some villeins might possess property, and thus countries of Germany had acquired their purchase their own redemption. Even liberty' before the end of the thirteenth where they had no legal title to property, century; in other parts, as well as in all it was accounted inhuman to divest them the northern and eastern regions of Eu of their little possession (the peculium of rope, they remained in a sort of villan Roman law); nor was their poverty, per- age till the present age. Some very few haps, less tolerable, upon the whole, than instances of predial servitude have been that of the modern peasantry in most discovered in England, so late as the countries of Europe. It was only in re- time of Elizabeth,t and perhaps they spect of his lord, it must be remembered, might be traced still lower. Louis Hutin, that the villein, at least in England, was in France, after innumerable particular without rights; \ he might inherit, pur- instances of manumission had taken chase, sue in the courts of law; though, place, by a general edict in 1315, reciting that his kingdom is denominated the * Enfranchisements by testament're are very com- kingdom of the Franks, that he would mon. Thus, in the will of Seniofred, count of Bar-have the fact to correspond with the celona, in 966, we find the following piece of cor- name, emancipates all persons in the rupt Latin: de ippos servos meos et ancillas, illi oyal domains upon paying a just conquis traditi fuerunt faciatis illos liberos propter r- n s upon paying a ju medium animaa meae; et alii q;i fuerunt de paren- position, as an example for other lords torum meorum remaneant ad frates meos.-Marca possessing villeins to follow.4 Philip Hispanica, p. 887.' the Long renewed. the same edict three t Schmidt, Hist. des All., t. i., p. 361. See, how- years afterward; a proof that it had not ever, a charter of manumission from the chapter been carried into execution Indeed, of Orleans, in 1224, to all their slaves, under certain conditions of service. —Martenne, Thesaurus Anec- there are letters, of, the former prince, dot., t. i., p. 914. Conditional manumissions were wherein, considering that many of his exceedingly common.-Du Cange, v. Manumis- subjects are'not apprized of the extent sio; a long article. of the benefit conferred upon them, he T No one could enfranchise his villein without the superior lord's consent; for this was to dimin- directs his officers to tax them as high; sh the value of his land apeticer le fief.-Beauma- as their fortunes can well bear. | noir, c. 15. Etablissements de St.
Loius, c. 34. - It was necessary, therefore, for the villein to obtain the suzerain's confirmation; otherwise he only I Barrington's Observation on the ancient Stat changed masters and escheated, as it were, to the utes, p. 274. superior; for the lord who had granted the charter t Ordonnances des Rois, t. i., p. 583. of franchise was estopped from claiming him again. { Id., p. 653. t Littleton, s. 189. Perhaps this is not applica- 11 Velly, t. v., p. 38. Philip the Fair had eman ble to other countries. Villeins were incapable of cipated the villeins in the royal domains throughout being received as witnesses against freemen.-Re- Languedoc, retaining only an annual rent for their cueil des Historiens, t. xiv., preface, p. 65. There lands, which thus became censives, or emphyteuses. are some charters of kings of France admitting It does not appear by the charter that he sold this the serfs of particular monasteries to give evidence, enfranchisement, though there can be little doubt or to engage in the judicial combat, against free- about it. He permitted his vassals to follow the men. —Ordonnances des Rois, t. i., p. 3. But I do example.-Vaissette, Hist. de Languedoc, t. iv. not know that their testimony, except against their Appendix, p. 3 and 12. lord, was ever refused in England; their state of It is not generally known, I think, that predial servitude not being absolute, like that of negroes servitude was not abolished in all parts of Francoe in the West Indies, but particular and relative, as till the revolution. In some places, says Pascuel that of an apprentice or hired servant. This sub- the peasants are taillables A volont6, that is, theis;ect, however, is not devoid of obscurity, and I may contribution is not permanent, but assessed by the probably return to it another place lord with the advice of prud' hommes resses. nt
German aristocracy, which reached its height about the middle of the thirteenth century, would be a greater independence, teenth century. During this period the and fuller rights of election in the nobility of Germany. But in the French crown had been insensibly gaining and the other acquired unlimited their authority; while the Germe to have ex- isted, it would be a greater independence, or its sovereignty. No comparison can be man public law during the middle ages: made between the power of Charles the nor are the more important parts of it Simple and Conrad the First, though the easily separable from civil history. In former had the shadow of an hereditary this relation they will find a place in a subsequent chapter of the present work sur les lieux, according to the peasant's ability. Others pay a fixed sum. Some are called serfs de Besançon, the peasants were attached to the soil, poursuite, who cannot leave their habitations, but not being capable of leaving it without the lord's may be followed by the lord into any part of France consent; and that in some places he even inherited for the tailie upon their goods. This was the case their goods in exclusion of the kindred. I recolin part of Champagne, and the Nivernois. Nor lect to have read in some part of Voltaire's correcoold these serfs, or gens de mainmorte, as they spondence, ananecdote of his interference, with that were sometimes called, be manumitted without zeal against oppresdion which is the shining side letters patent of the king, purchased by a fine.- of his moral character, in behalf of some of these Recherches de la France, 1. iv., c. 5. Du Bos in- wretched slaves of Franche-comte. torms us that, in 1651, the Tiers Etat prayed the About the middle of the fifteenth century, some king to cause all serfs (hommes de poote) to be en- Catalonian serfs who had escaped into France franchised on paying a coimposition; but this was being claimed by their lords, the parliament of not complied with, and they existed in many parts Toulouse declared that every man who entered when he wrote.-Histoire Critique, t. iii., p. 298. the kingdom en crian France, should become free. Argou, in his Institutions du Droit Franqois, con- The liberty of our kingdom is such, says Mezeray, firms this, and refers to the customaries of Niver- that its air communicates freedom to those who nois and Vitry, 1. i., c. 1. And M. de lBrequigny, breathe it, and our kings are too august to reigyr in his preface to the twelfth volume of the collec- over any but freemen.-Villaret, t. xv., p. 348. How,ion of Ordonnances, p. 22, says, that throughout much pretence Mezeray had for such a flourish amosL i the wl ole iurisdiction of the parliament of may be decided by the former j ert of this lote

Page 93 PAiR.1., FEUDAL SYSTEM 8a France demands a more mirt:te attention; circulation, enriched themselves at tilelr and in tracing the character of the feudal subjects' expense by high duties (seign. system in that country, we shall find iorages), which they imposed upon every ourselves developing the progress of a new coirage, as well as by debasing its very different polity. standard.* In 1185, Philip Augustus reTo understand in what degree the peers quests the Abbot of Corvey, who had dePrivileges of and barons of France, during sisted from using his own mint, to let the the French the prevalence of feudal prin- royal money of Paris circulate through vassals. ciples, were independent of the his territories; promising that, when it crown, we must look at their leading should please the abbot to coin money privilages. These may be reckoned:- afresh for himself, the king would not 1. The right of coining money; 2. That oppose its circulation.t of waging private war; 3. The exemption Several regulations were made by Lou from all public tributes, except the feudal is IX. to limit, as far as lay in his power, aids; 4. The freedom from legislative the exercise of this baronial
privilege; control; and, 5. The exclusive exercise and, in particular, by enacting that the of original judicature in their dominions. royal money should circulate in the do. Privileges so enormous, and so contrary mains of those barons who had mints, to all principles of sovereignty, might lead concurrently with their own; and exus, in strictness, to account France ratherclusively within the territories of those a collection of states, partially allied to who did not enjoy that right. Philip the each other, than a single monarchy. Fair established royal officers of inspecI. Silver and gold were not very scarce tion in every private mint. It was ascoinina in the first ages of the French mon- serted in his reign, as a general truth, money. archy; but they passed more by that no subject might coin silver money.1 weight than by tale. A lax and ignorant In fact, the adulteration practised in those government, which had not learned the lu- baronial mints had reduced their pretend crative mysteries of a royal mint, was not ed silver to a sort of black metal, as it particularly solicitous to give its subjects was called (moneta nigra), into which the security of a known stamp in their little entered but copper. Silver, howevexchanges.* In some cities of France, er, and even gold, were coined by the honey appears to have been coined by dukes of Brittany so long as that fief conprivate authority before the time of Char- tuned to exist. No subjects ever enjoylemagne; at least one of his capitularies ed the right of coining silver in England forbids the circulation of any that had without the royal stamp and superintend not been stamped in the royal mint. His ence:’a remarkable proof of the restraint successors indulged some of their vassals in which the feudal aristocracy was alwith the privilege of coining money for ways held in this country. the use of their own territories, but not II. The passion of revenge, always without the royal stamp. About the be- among the most ungovernable Right of ginning of the tenth century, however:; in human nature, acts with such private war. the lords, among their other assumptions violence upon barbarians, that it is utterly of independence, issued money with no beyond the control of their imperfect armarks but their own.t At the accession rangements of polity. It seems to then of Hugh Capet, as minany as a hundred and fifty are said to have exercised this * Le Blanc. Traite des Monnoyes, p. 91. power. Even under St. Louis, it was pos- t Du Cange, v. Moneta. Velly, Hist. de France, sessed by about eighty; who, excluding t. ii., p. 93. Villaret, t. xiv., p. 200.. Du Cange, v. Moneta. The right of debasing as far as possible, the royal coin. from the coin was also claimed by this prince as a choice flower of his crown. Item, abaisser et amenuser la * The practice of keeping fine gold and silver monnoye, est privilege especial au roy de son droit uncoined prevailed among private persons, as well royal, si que a luy appartient, et non a autre, et en as in the treasury, down to the time of Philip the core en un seul cas, c'est a seavoir en necessit6, et Fair. Nothing is more common than to find, in the lors ne vient pas le ganeg ne convertit en son pro instruments of earlier times, payments or fines fit especial, mais en profit, et en la defence du com stipulated by weight of gold or silver. Le Blanc mun. This was in a process commenced by the therefore thinks that little money was coined in king's procureur- general against the Comte de NevFrance, and that only for small payments.-Traite ers for defacing his coin.-Le Blanc, Trait6 d--cs des Monnoyes. It is curious, that though there Monnoyes, p. 92. In many places the lord took a are many gold coins extant of the first race of sum from his tenants eve ry three years, under the kings, yet few or none are preserved of the second name of monetagitim or focagium, in lieu of deba or third, before the reign of Philip the Fair.-Du sing his money. This was finally abolishe: i. 1380. Cange, v. Moneta. -Du Cange, v. Monetagium. ~ Vaissette, Hist. de Languedoc, t. ii., p. 110. 6 I do not extend this to the fact; for in the an Rtc des Historians, t. xi., pr6f., p. 180. Du Cange, archy of Stephen's reign, both bishops ani barons. Moveta coined money for themselves.-Hoveden. p 490
XJROPE DURING THE MIDDLE AGES. [CHkr. It no part of the social compact, to sacrifice tem. The payments, the prohi- Rneues the privilege which nature has placed in bitions, the licenses, the watch. of Kingl the arm of valour. Gradually, however, fulness of collection, the eavisons of France, these fiercer feelings are blunted, and an- of fraud, the penalties and forfeitures, that other passion, hardly less powerful than attend a fiscal code of laws, present conresentment, is brought to play in a contra- tually to the mind of the most remote ry direction. The earlier object accord- and humble individual, the notion of a ingly of jurisprudence is to establish a supreme, vigilant, and coercive authority fixed atonement for injuries, as much for But the early European kingdoms knew the preservation of tranquillity as the pre- neither the necessities nor the ingenuity vention of crime. Such were the were- of modern finance. From their demesne gilds of the barbaric codes, which, for a dif- lands, the kings of France and Lombardy ferent purpose, I have already mentiont supplied the common expenses of a bared.* But whether it were that the kindred barous court. Even Charlemagne regudid not always accept, or the criminal lated the economy of his farms with the offer, the legal composition, or that other minuteness of a steward, and a large procuses of quarrel occurred, private feuds portion of his capitularies are directed to (faida) were perpetually breaking out, and this object. Their actual revenue was mlany of Charlemagne's capitularies are chiefly derived from free gifts made, aclirected against them. After his time, cording to an ancient German custom, at all hope of restraining so inveterate a the annual assemblies*. of the nation, practice was at an end; and every man from amercements paid by allodial proprewho owned a castle to shelter him in case etors for default of military service, and of defeat, and a sufficient number of de- from the freda, or fines accruing to the pendants to take the field, was at liberty judge out of compositions for murder.t to retaliate upon his neighbours whenev- These amounted to one third of the whole er he thought himself injured. I It must weregild; one third of this was paid over to every man from amercements paid by Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- s of the sys- Count of Paris and dr payments, called droits de giste et de inmunity ernments, taxation is a chief en- chevauche.t Hugh Capet was nearly infrom tax- gine of the well-compacted ma- digent as King of France; though, as ation. chinery which regulates the sys- Count of Paris and Orleans, he might * The antiquity of compositions for murder is il- take the feudal aids and reliefs of his vaslustrated by Iliad y. 498, where, in the descrip- sals. Several other small emoluments tion of the shield of Achilles, two disputants are of himself and his successors, whatever represented wrangling before the judge forthe wer- they may since have been considered, egild, or price of blood; wvcxa wolv evc'psS aror- were in that age rather seigniorial than The subject of private warfare is treated so ex- The rights of toll, of customs, of actly and perspicuously by Robertson, that I should alienage (aubaine), generally even the reonly waste the reader's time by dwelling so long gale, or enjoyment of the temporalities upon it as its extent and importance would otherwise demand.–See Hist. of Charles V., vol. i., note gladiis allegarent. — Hoveden, p. 741 (in Saville, 21. Few leading passagesin the monuments
of the Script. Anglic.). middle ages, relative to this subject, have escaped * Du Cange, Dissertation quatrième sur Join the penetrating eye of that historian; and they are vile. arranged so well as to form a comprehensive trea- t Mably, 1. i., c. 2, note 3. Du Cange, voc. He tise in small compass. I know not that I could ribannum, Fredum. add any much worthy of notice, unless it be the T Velly, t. ii., p. 329. Villaret, t. xiv., p. 174following. In the treaty between Philip Augustus 195. Recueil des Historiens, t. xiv., preface, p. and Richard Coeur de Lion (1194), the latter re- 37. The last is a perspicuous account of the royal fised to admit the insertion of an article, that none revenue in the twelfth century. But far the most of the barons of either party should molest the oth- luminous view of that subject, for the three next er; lest he should infringe the customs of Poitou ages, is displayed by M. de Pastoret, in his prefa. and his other dominions, in quibus consuetum erat ces to the fifteenth and sixteenth volumes' of tb.: Sh antiquo at magnates causas proprias invicem Ordonnances des Rois

Page 95 PART 11.] FEUDAL SYSTEM.

of vacant episcopal sees and other ec- Jews. A series of alternate perse; nation clesiastical benefices,* were possessed and tolerance was borne by this extraordiniwth within their own domains by the great nary people with an invincible perseve. feudatories of the crown. They, I ap- rance, and a talent of accumulating rich. prehend, contributed nothing to their sov- es which kept pace with their plunderers; creig; not even those aids which the till new schemes of finance supplying the feudal customs enjoined. t turned, they were finally expelled under The history of the royal revenue in Charles VI., and never afterward obtain Exactions France is however too important ed any legal establishment in France. * from the to be slightly passed over. As A much more extensive plan of rapine Jews. the necessities of government in- was carried on by lowering the Debasement creased, partly through the love of mag- standard of coin. Originally the of the coin. nificence and pageantry, introduced by pound, a money of account, was equiv. the crusades and the temper of chivalry, alent to twenty ounces of silver; and partly in consequence of employing hired divided into twenty pieces of coin (sous), troops instead of the feudal militia, it be- each equal consequently to nearly three came impossible to defray its expenses shillings and fourpence of our new Engby the ordinary means. Several devices, lish money. At’ the revolution, the therefore, were tried, in order to replen- money of France had been depreciated in sh the exchequer. One of these was by the proportion of seventy-three to one, extorting. money from the Jews. It is and the sol was about equal to an English almost incredible to what a length this half-penny. This was the effect of a was carried. Usury, forbidden by law long continuance of fraudulent and arbi and superstition to Christians, was, con- trary government. The abuse began unfined to this industrious and covetous peo- der Philip I., in 1103, who alloyed his sil. ver coin with a third of copper. So good unations interfering with the interest of an example -was not lost upon subsemoney render its terms more rigorous quent princes; till under St. Louis, the and burdensome. The children of Israel mark-weight of silver, or eight'ounces, grew rich in despite of insult and oppres- was equivalent to fifty sous of the debasion, and retaliated upon their Christian sed coin. Nevertheless these changes debtors.. If an historian of Philip Au- seem hitherto to have produced no disgustus may be believed, they possessed content; whether it were that a people, almost one half of Paris. Unquestion- neither commercial nor enlightened, did ably they must have had support both at not readily perceive their tendency;, or, the court and in the halls of justice.. The as has been ingeniously conjectured, that policy of the kings of France was to em- these successive diminutions of the standplay them as a sponge to suck their sub- ard were nearly counterbalanced by an acents' money, which they might after- augmentation in the value of silver, ocward express with less odium than direct casioned by the drain of money during taxation would incur. Philip Augustus
the crusades, with which they were about released all Christians in his dominions contemporaneous. But the rapacity of from their debts to the Jews, reserving a Philip the Fair kept no measures with the fifth part to himself.~ He afterward ex-; public; and the mark in his reign had expelled the whole nation from France. come equal to eight livres, or a hundred But they appear to have returned again; and sixty sous of money. Dissatisfaction whether by stealth, or, as is more proba-; and even tumults, arose in conse-; by purchasing permission. St. Louis quence, and he was compelled to restore twice banished and twice recalled the the coin to its standard under St. Louis.~ * The Duke of Burgundy and Count of Chainam- * Villaret, t. ix., p. 433. Metz contained, and pagan did not possess the regale. But it was en- I suppose still contains, a great many Jews; but joyed by all the other peers; by the dukes of Nor- Metz was not part of the ancient kingdom. mandy, Guienne, and Brittany; the counts of Tou- t Besides this silver coin, there was a golden sol louse, Poitou, and Flanders.-Mably, 1. iii., c. 4. worth forty pence. Le Blanc thinks the solidi of Recueil des Historiens, t. ii., p. 229, and t. xiv., p. the Salique-law and capitularies mean the latter 53. Ordonnances des Rois, t. i., p. 621. piece of money. - The denarius, or penny, was f I have never met with any instance of a relief, worth two sous six deniers of modern French coin aid, or other feudal contribution paid by the vassals T Villaret, t. xiv., p. 198. The price of commod of the French crown; but in this negative propo-;ties, he did not rise till the time of St sition it is possible that I may be deceived. Louis. If this be said on good authority, it is a re t The Jews were celebrated for usury as early markable fact; but in England we know very little as the sixth century.-Greg. Turon., 1. iv., c. 12, of prices before that period, and I doubt if their bh and 1. vii., c. 2. story has been better traced in France. 9 Rigo'd. in Du Chesne Grist. Franrl. Script, t. Q It is curious, and not perhaps unimportant, te iii.. o 8 learn t-e course pursued in adjusting payments

Page 96 EUROPE DURING THE MIDDLE AGES [CHAP. i. His successors practised the same arts tant, and published in the general collecof enriching their treasury; under Philip tion of ordinances.* But in the reign of of Valois, the mark was again worth eight this monarch, a great innovation took livres. But the film had now dropped from place in the French constitution, which, the eyes of the people; and these adul- though it principally affected the method terations of money, rendered more vexa- of levying money, may seem to fall more tious by continued coinages of the cur- naturally under the next head of considrent pieces, upon which a fee was extort- by the moneyers, showed in their true IV. There is no part of the French light as mingled fraud and robbery.* feudal policy so remarkable as These resources of government, how- of levying money, may seem to fall more tious by continued coinages of the cur- naturally under the next head of considrent pieces, upon which a fee was extort- by the moneyers, showed in their true IV. There is no part of the French light as mingled fraud and robbery.* feudal policy so remarkable as These resources of government, how- the entire absence of all su- Direct tax- ever, by no means superseded premne legislation. We find it gis-...
discretion of the sovereign. The service discharged them from all pecuniary burdens, France was far too aristocratic a country to bear. It seems of the crown and proprietors of lands not to have been repeated; and his successors generally pursued more legitimate measures, in the presence, and, nominally at least, with the consent, of the multitude. Upon obtaining any contribution, it was usual to grant letters frequent mention is made of similar public patent, declaring that it had been freely assembled in France by the historians, and should not be turned into precedent in time to come. Several of these unequivocally by their statues. These letters patent of Philip the Fair are ex-assemblies have been called parliaments; upon the restoration of good coin, which happen—* Fasons scavoir et recognoissons que la dernied pretty frequently in the fourteenth century, ere subvention que ils nous ont faite (les barons, when the States-General, or popular clamour, for vaguages and nobles d' Auvergne) de pure grace sans ced the court to retract its fraudulent policy. Le ce que ils y fussent tenus que de grace; et voulons Blanc has published several ordinances nearly to et leur octroyons que les autres subventions que the same effect. One of Charles VI. explains the ils nous ont faites ne leur facent nul prejudice, es method adopted rather more fully than the rest. choses esquelles ils n'etoient tenus, ne par ce nul All debts incurred since the depreciated coin began nouveau droit ne nous soit acquis ne amenuisie.to circulate were to be paid in that coin, or accord- Ordonnance de 1304, apud Mably, I. iv., c. 3, note 5. oing to its value. Those incurred previously to its See other authorities in the same place. commencement were to be paid according to the t Luitprand, king of the Lombards, says that value of the money circulating at the time of the his laws sibi placuisse une cum omnis judicibus contract. Item, que tous les vrais emprunts faits de Austrim et Neustria partibus, et de Tusci finen deniers sans fraude, se payeront en telle mon- ibus, cum reliquis fidelibus meis Langobardis, et noye comme l'on aura emprunt6, si elle a plein cours omni populo assistente.-Muratori, Dissert. 22. au temps du payement, et sinon, ils payeront en I Mably, 1. i., c. 1, note 1. Lindebrog., Codex monnoye coursable lors selon la valeur et le prix du I Legum Antiquarum, p. 363, 369. The following nare d'or ou d'argent, p. 32. passage, quoted by Mably (c. ii., n. 6) from the pre* Continuator Gul. de Nangis in Spicilegio, t. ample of the revised Salique law under Clotaire II. di. For the successive changes in the value of is explicit. Temporibus Clotairii regis una cum Trench coins, the reader may consult Le Blanc's principibus suis, id est 33 episcopis et 34 ducibus treatise, or the Ordonnances des Rois; or he may et 79 comitibus, vel coatero populum constituta est. aind a summary view of them in Du Cange, v. Mo- A remarkable instance of the use of vel instead of neta. The bad consequences of these innovations et, which was not uncommon, and is noted by Du are well treated by M. de Pastoret, in his elaborate Cange under the word Vel. Another proof of it preface to the sixteenth volumae of the Ordonnances occurs in the very next quotation of Mably from des Rois, p. 40. the edict of 615, cum pontificibus, vel cum mnagni ~ [Du Chesne, t. v., p. 43 viris optimatibus.
a bini were judicial assessors of the count, remarkable passage of Hincmar, archbishop chosen by the allodial proprietors. The bishop of Rheims, during the time of Charles the Bald, who has preserved, on French empire for several subsequent the authority of a writer contemporary ages were exceedingly adverse to such with Charlemagne, a sketch of the Frankish enlarged schemes of polity. The nobles under that great prince. Contemned the imbecile, descendants of Two assemblies (placita) were annually Charlemagne; and the people, or lesser Assemblies held. In the first, all regulations freeholders, if they escaped absolute vilshed by of importance to the public weal language, lost their immediate relation to Charle- for the ensuing year were en the supreme government in the subormagne. acted; and to this, he says, the dination to their lord established by the whole body of clergy and laity repaired; feudal law. Yet we may trace the shadowi the greater, to deliberate upon what was of ancient popular rights in one constituting to be done; and the less, to con- tional function of high importance, the firm by their voluntary assent, not through choice of a sovereign. Historians who deference to power, or sometimes even relate the election of an emperor or king to discuss, the resolutions of their superi- of France, seldom omit to specify the ors.* In the second annual assembly, consent of the multitude, as well as of the chief men and officers of state were temporal and spiritual aristocracy; and alone admitted to consult upon the most even in solemn instruments that record urgent affairs of government. They de- such transactions, we find a sort of immi bated, in each of these, upon certain ca- portance attached to the popular suf pitularies, or short proposals, laid before frage. T It is surely less probable that a them by the king. The clergy and nobles met in separate chambers, though some- Capitula qua preterito anno legi Salicme cur met in separate chambers, though some- omnium consensu addenda esse censuimus. (A times united for the purposes of delibera- D. 801.) Ut populus interrogetur de capitulis quai tion. In these assemblies, principally, in lege noviter addita sunt, et postquam omnes con I presume, in the more numerous of the senerint, subscriptiones et manufirmationes suam two annually summoned, that extensive in ipsis capitulis faciant. (A. D. 813.) Capitularim twof lannualws, theatet ensiveofCh patris nostri qua Franci pro lege tenenda judica body of laws, the capitularies of Charle- verunt. (A. D. 837.) I have borrowed these quo magne, were enacted. And though it tations from Mably, who remarks that the word would contradict the testimony just ad- populus is never used in the earlier laws. See too duced from Hincmar, to suppose that the Du Cange, vv. Lex, Mallum, Pactum. lesser freeholders took a vey effective t Vult dominus Imperator ut in tale placitum quale ille nunc jussisset, veniat unusquisque comes, share in public counsels, yet their pres- et adducat secum duodecim scabinos si tanti fu ence, and the usage of requiring their erint; sin autem, de melioribus hominibus illius assent, indicate the liberal principles comitatus supplieat numero duodecim illius assent, indicate the liberal principles comitatus suppleat numero duodenarium.-Maupon which the system of Charlemagne bly, 1. ii., c. ii. founded. It has been intimated in another place, p. 67, was founded. It is continually expressed that the French monarchy seems not to have been in his capitularies, and those of his family, strictly hereditary under the later kings of the Me that they were enacted by general con- rovingian race: at least expressions indicating a formal election are frequently employed by histo* Consuetudo tune temporis talis erat, ut non rians. Pepin of course came in by the choice of sapius, sed bis in anno placita duo tenerentur. the nation. At his death he requested the consent IUnum, quando ordinaturus status totius regni ad of the counts and prelates to the succession of his anni vertentis spatium; quod ordinatum nullus sons (Baluzii Capitularia, p. 187); though they had eventus rerum, nisi suru-na necessitas, qua simili- bound themselves by oath at his consecration never tertoti regno ncumbebat, mittabat. In quoplacito to elect a king out of another family. Ut nun generalitas universorum majorumrr, tam clericorum quam de alterius lumbis regem eligere praesumant quam laicorum, conveniebat; seniores, propter con- (Formula Consecrationis Pippini in Recueil des silium ordinandum; minores, propter idem
consil- Historiens, t. v.) In the instrument of partition ium suspiciendum, et interdum pariter tractandum, by Charlemagne among his descendants, he pro et non ex potestate, sed ex proprio
mentis in- vides for their immediate succession in absolute tellectu vel sententiA, confirmandum.-Hincmar, terms, without any mention of consent. But in the Epist. 5, de ordine palatii. I have not translated event of the decease of one of his sons leaving a child the word majorum in the above quotation, not ap- whom the people shall choose, the other princes were
prehending its sense. to permit him to reign.-Baluze, p. 446. This

Page  98 EUROPZ DURING THE MIDDLE AGES. HI UAP.'i recognition of this elective right should warranted by analogy or precedent, to have been introduced as a mere ceremo-
interpret the word people so very narny, than that the form should have sur- rowly as to exclude any alodial proprie. vived after length of time and revolutions tors, among whom, however unequal in of government had almost obliterated the opulence, no legal inequality of rank is recollection of its meaning. supposed to have yet arisen. It must, however, be impossible to as- But by whatever authority laws were certain even the theoretical privileges of enacted, whoever were the constituent the subjects of Charlemagne, much more members of national assemblies, they to decide how far they were substantial or ceased to be held in about seventy years illusory. We can only assert in general, from the death of Charlemagne. The that there continued to be some mixture latest capitularies are of Carloman, in of democracy in the French constitution 882.* From this time there ensues a long during the reign of Charlemagne and his blank in the history of French legislation first successors. The primeval German The kingdom was as a great fief, or rath institutions were not eradicated. In the er as a bundle of fiefs, and the king little Capitularies, the consent of the people is more than one of a number of feudal nofrequently expressed. Fifty years after bles, differing rather in dignity than in Charlemagne, his grandson, Charles the power from some of the rest. The royal Bald, succinctly expresses the theory of council was composed only of barons, or legislative power. A law, he says, is tenants in chief, prelates, and household made by the people's consent and the officers. These now probably deliberating's enactment.* It would hardly be ted in private, as we hear no more of the consenting multitude. Political functions repeated more perspicuously in the partition made were not in that age so clearly separated by Louis I., in 817. Si quis eorum decedens le- as we are taught to fancy they should be; gitimos filios reliquerit, non inter eos potestas ipsa this council advised the king royal ccncrl dividatur, sed potius populus pariter conveniens, in matters of government, con- of the Ihird unum ex ius, quem dominus voluerit, eligat, et firmed and consented to his race hunc senior frater in loco fratris et filii recipiat. — Baluze, p. 577. Proofs of popular consent given grants, and judged in all civil and crimi to the succession of kings during the two next cen- nal cases, where any peers of their court turies are frequent, but of less importance on ac- were concerned.t The great vassals of count of the irregular condition of government, the crown acted for themselves in their Even after Hugh Capet's accession, hereditary own territorie, with the assis ce of right was far from being established. The first six own te orie, with the assistance of kings of this dynasty procured the co-optation of councils similar to that of the king their sons, by having them crowned during their Such indeed was the symmetry of feudal own lives. And this was done without the con- customs, that the manerial court of every sent of the chief vassals.-{Recueil des Hist., t. xi., vavssor represented in miniature that of p. 133.) In the reign of Robert it was a great ques- ass represented in iature that o tion whether the elder son should be thus designa-
which lead * It is generally said, that the capitularies cease one to think that neither hereditary succession with Charles the Simple, who died in 921. But nor primogeniture was settled on any fixed prin- Baluze has published only two under the name of ciple.- (Id., t. x., p. 504.) And a writer in the same that prince; the first, a declaration of his queen's collection, about the year 1000, expresses himself jointure; the second, an arbitration of disputes in in the following manner: Melius est electioni the church of Tongres; neither surely deserving principis non subscribere, quam post subscription- the appellation of a law. em electum contemnere; in altero enim libertatis t Regali potentia in nullo abuti volentes, say} amor laudatur, in altero servilis contumaciam probro Hugh Capet, omnia negotia reipublica in consults datur. Tres namque generales electiones novimus; tione et sententia fidelium nostrorum disponimus quorum una est regis vel imperatoris, altera ponti- -Recueil des Hist., t. x., p. 392. The subscrip fcis, altera abbatis. Et primam quidem facit con- tions of these royal counsellors were necessary fo cordia totius regni; secundam vero unanimitas the confirmation, or, at least, the authentication o cixiurri et cleri; tertiam sanius consilium ccenobi- charters, as was also the case in England, Spain ticae congregationis.-(Id., p.626.) At the corona- and Italy. This practice continued in England titl tlon of Philip I., in 1059, the nobility and people the reign of John. (milites et popull tam majores quam minores) tes- The Curia regis seems to have differed only in tified their consent by crying, Laudamus, volumus, name from the Concilium regium. It is also called fiat, t xi., p. 33. I suppose, if search were made, Curia parium, from the equality of 1 he barons who that similar testimonies might he found still later; composed it, standing in the same feudal degree oi and perhaps hereditary succession cannot be con- relation to the sovereign. But we are not yet ar sidered as a fundamental law till the reign of Philip rived at the subject of jurisdiction, which it is very Augustus, the era of many changes in the French difficult to keep distinct from what is immediately constitution. before us. * Lex consensu populi fit, cor.stitutione regis -: Recueil des Hi't., t. xi., p. 300, and preface, p Recreil des flist, t. vii., p. 656. 179. Vaissette, His.de Languelnc. t. ii., p 503

Page 99 aIT n1.1 EUDAL SYSTeRM; 9S 9eriod, instances occur, in which the certainly by no ineans inconsis.,nt with kings of France appear to have acted probability, though not sufficiently estab. with the concurrence of an assembly, lished by evidence.* Occasional more numerous and more par- Excepting a few instances, most of assemblies ticularly summoned than the which have been mentioned, it does not if barons. royal council. At such a con- appear that the kings of the house of gress, held in 1146, the crusade of Louis Capet acted according to the advice and VII. was undertaken.* We find also an deliberation of any national assembly, ordinance of the same prince in some such as assisted the Norman sovereigns collections, reciting that he had convoked of England; nor was any consent rea general assembly at Soissons, where quired for the validity of their edicts, exmy prelates and barons then present cept that of the ordinary council, chiefly had consented and requested that private formed of their household officers and wars might cease for the term of ten less powerful vassals. This is at first years.t The famous Saladine tithe was sight very remarkable. For there can imposed upon lay as well as ecclesiastical be no doubt that the government of Henrevenues by a similar convention in 1188.Try I. or Henry II. was incomparably And when Innocent IV., during his con- stronger than that of Louis VI. or Louis test with the Emperor Frederick, request- VII. But this apparent absoluteness of ed an asylum in France, St. Louis, though the latter was the result of their real much inclined to favour him, ventured weakness and the disorganization of the only to give a conditional permission, pro- monarchy. The peers of France were vided it were agreeable to his barons, infrequent in their attendance upon the wwhom, he said, a king of France was king's council, because they denied its bound to consult in such circumstances.
coercive authority. It was a Limitations Accordingly he assembled the French fundamental principle, that ev- of royal barons, who unanimously refused their ery feudal tenant was so far power in Io consent.~ sovereign within the limits of gislation It was the ancient custom of the kings his fief, that he could not be bound by of France as well as of England, and in- any law without his consent. The king, Cours Plenieres or Parliaments, at baron without his consent, nor can the the great festivals of the year. These baron do so in that of a vavassor. t Thus, assemblies were principally intended to if legislative power be essential to sovermake a display of magnificence, and to eignty, we cannot in strictness assert keep the feudal tenants in good-humour; the King of France to have been sover.nor is it easy to discover that they passed eign beyond the extent of his domanial in any thing but pageantry.jl Some re- territory. Nothing can more strikingly spectable antiquaries have'however been illustrate the dissimilitude of the French of opinion, that affairs of state were oc- and English constitutions of government, easionally discussed in them; and this is than the sentence above cited from the Velly, t. iii., p. 119. This, he observes, is the code of St. Louis. first instance in which the word parliament is used Upon occasions, when the necessity of for a deliberative assembly. common deliberation, or of giv- Substitutes t Ego Ludovicus Del gratia Francorum rex, ad ing to new provisions more ex- for legislaireprimendum fervorem malignantium, et compe- tensive scope than the limits of tire author scendum violentas pradorum manus, postulationi- a single fief, was too glaring to bus cleri et assensu baronia, toti regno pacem constituimus. Ea causA, anno Incarnati Verbi 1155, be overlooked, congresses of neighbouriv idus Jun. Suessionense concilium celebre ad- ing lords met in order to agree upon resounavirnus, et affuerunt archiepiscopi Remensis, lutions, which each of them undertook to Senonensis et eorum suffraganei; item barones, execute within his own domains. Thecomes Flandrensis, Trecensis, et Nivernensis et king was sometimes a contracting party, quamplures alii, et dux Burgundias. Ex quorum beneplacito ordinavimus a veniente Pascha ad but without any coercive authority over decem annos, ut omnes ecclesiae regni et omnes the rest. Thus we have what is called agricolae etc. pacem habeant et securitateln - an ordinance, but, in reality, an agree: In pacem istam juraverunt Dux Burgundiae, Comes Flandritm, - et reliqui barones qui aderant. This ordinance is published in Du Chesne, * Mdm. de l'Acad. des Inscript., t. xli. Recueil Script. Rerum. Gallicarum, t. iv., and in Recueil des Hist., t. xi., preface, p. 155..les Histor., t. xiv., p. 387; but not in the general t Ne li Rois ne puett mettre ban en la terre as tollection. baron sans son assentment, ne li Bers [Baron] ne: Velly, t. iii., p. 315. Q Ibid., t. iv., p. 306. puett mettre ban en la terre au ravasor.-Ordol It Du Cange, Dissert. 5, sur Joinville. nances des Rois, t. i., p. 126 G2
are declared to be made "pai this defect in the political constitution grand conseil de sages hommes et de rendered their encroachments less ob- bons cleris," but no mention is made of noxious, and almost unavoidable. That any consent given by the barons; nor of Troyes in 878, composed perhaps in does it often, if ever, occur in subsequent part of laymen, imposed a fine upon the ordinances of the French kings. invaders of church property.t And the The nobility did not long continue safe council of Toulouse, in 1229, prohibited in theirimmunity from the king's Legislative the erection of any new fortresses, or the legislative power. In the en- power of entering into any leagues, except against suing reign of Philip the Bold, the crown the enemies of religion; and ordained Beaumanoir lays it down, though increases that judges should administer justice gra- in very moderate and doubtsful terms, tuitous, and publish the decrees of the that "when the king makes any ordicouncil four times in the year.T nance speciality for his own domains, The first unequivocal attempt, for it. the barons do not cease to act in their First meas- was nothing more, at general territories according to the ancient usage oreestofgei- legislation, was under Louis but, when the ordinance is general, it eral legis- VIII., in 1223, in an ordinance, ought to run through the whole kingdom n which, like several of that age, and we ought to believe that it is made relates to the condition and usurious deal- with good advice, and fo r the common ings of the Jews.. It is declared in the benefit."* In another place he says with preamble to have been enacted, per as- more positiveness, that "the king is sensum archiepiscoporum, episcoporum, sovereign above all, and has of right the comitum, baronum, et militum regni general custody of the realm, for which Franciae, qui Judwo's habent, et qui Judaos cause he may make what ordinances he non habent. This recital is probably un- pleases for the common good, and what true, and intended to cloak the bold inno- he ordains ought to be observed; nor is vation contained in the last clause of the there any one so great but may be drawn following provision: Sciendum, quod nos into the king's court for default of right et barones nostri statuimus et ordinavi- or for false judgment, or in matters that mus de statu Judaerorum quod nullus nos- affect the sovereign."t These latter trdm alterius Judweos recipere potest vel words give us a clew to the solution of the problem, by what means an absolute qui stabilimentum juraverint, quam de illis monarchy was established in Causes ol qui non juraverint.. This was renewed France. For though the barons this. with some alteration in 1230, de communi would have been little influenced by the consilio baronum nostrorum.il authority of a lawyer like Beaumanoir, But whatever obedience the vassals of they were much less able to resist the the crown might pay to this ordinance, coercive logic of a judicious tribunal. It their original exemption from legislative was in vain for them to deny the obligacostrol remained, as we have seen, un- tion of royal ordinances within their own impaired at the date of the Establishments domains, when they were compelled to acknowledge the jurisdiction of the parQuousque nos, et comitissa Trecensis, et liament of Paris, which took a very difGuido de Domna petra, qui hoc facimus, per nos, ferent view of their privileges. This e tillosde baronibus nostris, quos ad hoc vocare vo- progress of the royal jurisdiction will lumus, illud difficamu.-Ordonnances des Rois, fa under the next topic of inuiry, and t. i., p. 39. This ordinance bears no date, but it was probably between 1218 and 1223, the year of is only now hinted at, as the probable Philip's death. m.-ans of confirming the absolute legisla t Vaissette, Hist. de Languedoc, t. i., p.6. tive power of the French crown. T Velly, t. iv., p. 132. o 6 r,'rdonn. des Rois, t. i.. -. 47. II Id., p. 53. * Caïtumes de Beauvoisis, c 48.: C 34
France from the reign of Philip ilege which he could not hope Convocation Augustus, and particularly in the annex- to overturn by force, the immu- of the Stateg ation of the two great fiefs of Normandy nity from taxation enjoyed by Philip the' and Toulouse. Though the chatelains his barons. This, it will be re- Fair. and vavassors who had depended upon membered, embraced the whole extent those fiefs before their reunion were, of their fiefs, and their telantry of every agreeably to the text of St. Louis's ordi- description; the king having no more nance, fully sovereign, in respect of le- right to impose a tallage upon the. de gislation, within their territories, yet they mesne towns of his vassals, than upon were little competent, and perhaps little themselves. Thus his resources, in point disposed, to offer any opposition to the of taxation, were limited to his own orroyal edicts; and the same relative su- mains; including certainly, under Philip periority of force, which had given the the Fair, many of the noblest cities in first kings of the house of Capet a tolera- France, but by no means sufficient to bly effective control over the vassals de- I meet his: increasing necessities. We pendanton Paris and Orleans, while they have seen already the xpedients emhardly pretended to any over Normandy played by this rapacious monarch; a and Toulouse, was now extended to the shameless depreciation of the coin, and, greater part of the kingdom.. St. Louis, what was much more justifiable, the in his scrupulous moderation, forbore to levying taxes within the territories of avail himself of all the advantages pre- his vassals by their consent. Of these sented by the circumstances of his reign; measures, the first was odious, the sec and his Establishments bear testimony to oid slow and imperfect. Confiding in a state of political society, which, even his sovereign authority, though recently, at the moment of their promulgation, yt almost, completely established, and was passing away. The next thirty little apprehensive of the feudal princi- years after his death, with no marked ples, already grown obsolete and discrisis, and with little disturbance, silently countenanced, he was bold enough to demolished the feudal system, such as make an extraordinary innovation in the had been established in France during French constitution. This was the conthe dark confusion of the tenth century. vocation of the States General, a reprePhilip the Fair, by help of his lawyers sentative body, composed of the three and his financiers, found himself, at the orders of the nation.* They were first * It is almost unanimously agreed among French Ordonnances, not only shows the existence, in one writers, that Philip the Fair first introduced a rep- instance, of a provincial legislative assembly, but is resentment of the towns into his national assembly the earliest proof perhaps of the tiers 6tat appearof States General. Nevertheless, the Chronicles ing as a constituent part of it. This relates to the of St. Denis, and other historians of rather a late seneschaus6e, or county, of Beaucaire in Laitguedate, assert that the deputies of towns were pres.- doc, and bears date int 1254. It provides, that if th0 ent at a parliament in 1241, to advise the king what seneschal shall think fit to prohibit the export of should be done in consequence of the Count of An- merchandise, he shall summon some of the pregouleme's refusalofohomage.-Boulainvilliers, Hist. lates, barons, knights, and inhabitants of the chief de l'Ancien Gouvernement de France, t. ii., p. 20. towns, by whose advice he shall issue such prohiVillaret, t. ix., p. 125. The latter pretends even bition, and not recall it, when made, without like that they may be traced a century farther back: advice. But though it is interesting to see the proon voit d6ja les gens de bonnes villes assister aux gressive importance of the citizens of towns, yet 4tats de 1145, ibid. But he quotes no authority this temporary and insulated ordinance is not of for this; and his vague language does not justify itself sufficient to establish a constitutional right. us in supposing that any representation of the Neither do we find therein any evidence of repre.. three estates, properly so understood, did, or in- sentation; it rather appears that the persons asdeed could, take place in 1145, while the power of sitting in this assembly were notables, selected by the aristocracy was unbroken, and very few towns the seneschal. had been incorporated. If it be true that the depu- I am not aware of any instance of
regular proties of some royal towns were summoned to the vincial estates being summoned with such full parliamnt of 1241, the conclusion must not be in powers, although it was very common in the fourferrea, that they possessed any deliberative voice, teenth century to ask their consent to grants of nor perhaps that they formed, strictly speaking, an money, when the court was unwilling to convoke,negrant portion of the assembly. There iseason the States General. Yet there is a passage in a to believe, that deputies from the royal burghs of book of considerable credit, the Grand Customary, Scotland occasionally appeared at the bar of par- or Somme Rurale of Bouteiller, which seems to liament long oefore they had any deliberative voice. render general the particular case of the seneschaus. -Pinkerton's Hist. of Scotland, vol. i., p. 371. s6e of Beaucaire. Bouteiller wrote about'the ena An ordinance of St. Louis, quoted in a very re- of the fourteenth century. The great courts sum fpectable book, Vaissette's History of Languedoc, moned from time to time by the baillis and senesiiii., p. 480, but Jot oulished in the Recueil dc- chals were called assizes. Their usual furction.

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EUROPE DURING THE MIDDLE AGES. Lt HAY. Ui conveyed In 1302, in order to give more and the application of that ancient maximr weight to the king's cause, in his great of the northern monarchies, that wvht. auarrel with Boniface VIII.; but their ever was elevated to the perfect dignity earliest grant of a subsidy is in 1314. of a freeman, acquired a claim to Dartici. Thus the nobility surrendered to the pate in the imposition of public tributes zrown their last privilege of territorial It is very difficult to ascertain the con.'ndependence; and having first submit- stitutional rights of the States'ed to its appellant jurisdiction over their General, claimed or admitted, the States tribunals, next to its legislative suprem- during forty years after their General as acy. now suffering their own-dependants first convocation. If indeed we totaxation. to become, as it were, immediate, and a could implicitly confide in an historian of third estate to rise up almost co-ordinate the sixteenth century, who asserts that with themselves, endowed with new fran- Louis Hutin bound himself and his succhises, and bearing a new relation to the censors not to levy any tax without the monarchy. consent of the three estates, the problem It is impossible not to perceive the mo- would find its solution.* This ample tives of Philip in imbodying the deputies charter does not appear in the French ar of towns as a separate estate in the na- chives; and though by no means to be tional representation. He might, no ques- rejected on that account, when we con tion, have convoked a parliament of his sider the strong motives for its destruct barons, and obtained a pecuniary contri- tion, cannot fairly be adduced as an all bution, which they would have levied thentic fact. Nor can we altogether in upon their burgesses and other tenants. fer, perhaps, from the collection of ordi But besides the ulterior policy of dimin- nances, that the crown had ever intershing the control of the barons over tionally divested itself of the right to im. their dependants, he had good reason to pose tallages on its domanial tenants. expect more liberal aid from the immedi- All others, however, were certainly ex ate representatives of the people, than emptied from that prerogative; and there through the concession of a dissatisfied seems to have been a general sentiment, aristocracy. He must be blind indeed, that no tax whatever could be levied wihsays Pasquier, who does not see that the out free consent of the estates.t Louis roturier was expressly summoned to this Hutin, in a charter granted to the nobles assembly, contrary to the ancient insti- and burgesses of Picardy, promises to tutions of France, for no other reason abolish the unjust taxes (maltotes) impothan that, inasmuch as the burden was sed by his father;T and in another instruintended to fall principally upon him, he ment, called the charter of Normandy, might engage himself so far by promise, declares that he renounces for himself that he could not afterward murmur or and his successors all undue tallages and become refractory.* Nor would I deny exactions, except in case of evident utilthe influence of more generous princi-
ity. (This exception is doubtless of perplexity; yet, as the charter was tried, the respect due to the progressive literally wrested from the king by an incivilization and opulence of the towns, it might be expected that the same spirit would rebel against was to administer justice, especially by way of his royal interpretation of state-necessity and perhaps to redress abuses of inferior offices. His successor, Philip the Long, tried cers. But he seems to give them a more extended experiment of a gabelle, or excise authority. En assise, he says, appel6s les sages upon salt. But it produced so much dis et seigneurs du pais, peuvent estre mises sus nouvelles constitutions, et ordonnances sur le pais et content, that he was compelled to assemble the States General, and to publish an ordinance declaring that the impost was les pueust ignorer, et lors ne les peut ne doit ja- not designed to be perpetual, and that, if mais nul redarguer.-1viem. de l'Acad. des Inscriptions, t. xxx., p. 606. * Boulainvilliers (Hist. de l'Anc. Gouvernement The taille was assessed by respectable persons t. ii., p. 128) refers for this to Nicholas Gilles, s chosen by the advice of the parish priests and others chronicler of no great repute. ers, which gave the people a sort of share in the t Mably (Observat. sur l'Hist. de France, 1. v., repartition, to use a French term, of public burdens; c. 1) is positive against the right of Philip the Fai a matter of no small importance, where a tax is and his successors to impose taxes. Montlosiei levied on visible property.-Ordonnances des Rois, (Monarchie Francaise, t. i., p. 202) is of the same p. 291. Beaumanoir, p. 269. This however con-opinion. In fact, there is reason to believe, that tinued, I believe, to be the practice in later times; the kings in general did not claim that prerogative f know it is so in the present system of France; absolutely, whatever pretext they might set up foA and is perfectly distinguishable from a popular con. occasional stretches of power. sent to taxation. $ Ordonnances des Rois, t. i., p. 566. * Recherches de la France, 1. ii.. 7. Idem, t. i., u. 589.
assemblies deserves particular notice. The kingdom was reduced to the utmost dan-Not that they
pretended to restore the ger and exhaustion, as much by malverancient constitution of the
northern na- sation of its government as by the ar tions, still flourishing in Spain and Eng- mies
of Edward III., who shall deny to land,' the participation of legislative pow- its representatives
the rights of ultimate er with the crown. Five hundred years sovereignty, and of suspending' at
least of anonymity and ignorance had swept away the royal prerogatives, by the abuse of all
remembrance of those general diets, which they were falling into destrucin which the
capitularies of the Carlovin- tion?t I confess that it is exceedingly gian dynasty had been
established by difficult, or perhaps impracticable, with common consent. Charlemagne himself
such information as we possess, to dews hardly known to the French of the cide upon the
motives and conduct of the fourteenth century, except as the hero States General, in their
several meetings of some silly romance or ballad. The before and after the battle of Poitiers.
States General remonstrated, indeed, Arbitrary power prevailed; and its opagainst abuses, and
especially the most ponents became, of course, the theme of flagrant of all, the adulteration of
money; obloquy with modern historians. Froisbut the ordinance granting redress ema- sart,
however, does not seem to impute nated altogether from the king, and with- any fault to these
famous assemblies of out the least reference to their consent, the States General; and still less a
more which sometimes appears to be studiously contemporary historian, the anonymous
omitted.t But the privilege upon which continuator of Nangis. Their notices, the states under
John solely relied for however, are very slight; and our chief knowledge of the parliamentary history Ordonnances des ois, t. i., p. 679. of France, if I may
employ the expresChap. i., p. 42. must be collected from the royal $ The proceedings of States
General held under sion, must be collected from the royal Philip IV. and his sons have left no
trace in the ordinances made upon these occasions, French statute-book. Two ordinances alone,
out or from unpublished accounts of their of some hundred enacted by Philip of Valois, appear
to have been founded upon their suggestions. It is absolutely certain that the States General*
Ordonnances des Rois, t. iii., p. 21, and pr6face, of France had at no period, an? tno instance,
a p. 42. This preface.by NI. S6cousse, the editor, coordinate legislative author? ty with the
crown, gives a very clear view of the general and provinm or even a consenting voice Mably,
Boulainvil- cial assemblies held in the reign of John. Boulainliers, and Montlosier, are as
ucessive on this sub- villiers, Hist. de l'Anc. Gouvernement de Franc-3, 3ect as the most courtly
writers of that country. t. ii., or Villaret, t. ix., may be perused with advan It follows as a just
consequence, that France never tage. possesaed a free constitution; nor had the monar- 4 The
secor Id continuator of Nangis in the Spl chy ary limitations in respect of enacting laws,
Itgeium dwells on the heavy taxes, diminution of save those which, until the reign of Philip the
Fair, money, and general oppressiveness of goveunme.' the feudal D-rinciDles had imposed in
this age, t. iii., p. 108.
expedien'ed dauphin) is full of loyal respect; their of debasing the coin. This led to seditious complaints of bad administration, though tions at Paris, by which his authority and bold and pointed, not outrageous; their even his life were endangered. In Febboffers of subsidy liberal. The necessity ruary, 1357, three months after the last of restoring the coin is strongly repre- meeting had been dissolved, he was sented, as the grand condition upon which obliged to convoke the states again, and they consented to tax the people, who to enact an ordinance conformable to the had been long defrauded by the base petitions tendered by the former assem. money of Philip the Fair and his succes- bly.* This contained many excellent sors.t. provisions, both for the redress of abases, * Cotton MSS. Titus, t. xii., fol. 58-74. This and the vigorous prosecution of the war, manuscript is noticed, as an important document, against Edwrd; and it is difficult to conin the preface to the third volume of Ordonnances, ceive, that men who advised measures so p. 48, by M. S6cousse, who had found it mention- conducive to the public weal, could have ed in the Bibliot~que Historique of Le Long, No. been the' blind instruments of the King 11,242. No French antiquary appears, at least be- of Navarre. But this, as I have already fore that time, to have seen it; but Boulainvilliers conjectured that it related to the assembly of states observed, is a problem in history that in February, 1356 (1357), and M. S6cousse suppo- we cannot hope to resolve. It appears, sed it rather to be the original journal of the pre- however, that in a few weeks after. the ceding meeting in' October, 1356, from which a promulgation of this ordinance, the pro copy, found among the manuscripts of Dupuy, and frequently referred to by S6cousse himself in his ceedings of the reformers fell into dispreface, had been taken. M. Secousse was per- credit, and their commission of thirty-six, feoctly right in supposing the manuscript in ques- to whom the collection of the new subtion to relate to the proceedings of October, and not sidy, the redress of grievances, and, in of February; but it is not an original instrument., the whole administ It forms part of a small volume written on vellum, and containing several other treatises., It seems, ment, had been intrusted, became unpophowever, as far as I can judge, to be another copy ular. The subsidy produced much less of the account which Dupuy possessed, and which than they had led the people to expect; S6cousse so often quotes, under the name of Pro- briefly, the usual consequence of demot Et estoit et est l'entente de ceulx qui a la ditte cratical emotions in a monarchy took convocation estoient quequelconque ottroyou ayde place. Disappointed by the failure of qu'ils feissent, ils eussent bonne monnoye et esta- hopes unreasonably entertained, and imble selon l'advis des trois estats-et que les char- providently encouraged, and disgusted by tres et lettres faites pour the reformations du roy- the excesses of the violent demaogues, aume par le roy Philippe le bel, et toutes celles qlll furent faites par le roy notre seigneur qui est a la nation, especially its privileged classpresent fussent confirm6es enterinf6es tenues et es, who seem to have concurred in the gard6es de point en point; et toutes les aides quel- original proceedings of the States Gen conques qui faites soient fussent recues et distri- eral, attached themselves to the party of budes par ceulx qui soient ace commis par les trois Charles and enabled him to quell oppo. estats, et autoris6es par M. le Duc et sur certainesCharles, and enabled him to quell oppo autres conditions et modifications justes et raison- sition by force.t Marcel, provost of the ables et prouffitables et semble que ceste aide eust traders, a municipal magistrate of Paris, et/ moult grant et moult prouffitable, et trop plus detected in the overt execution of a traique aides de fait de monnoye. Car elle se feroit de volonte du peuple et consentement commun selon Dieu et selon conscience: Et le prouffit que varre, was put to death by a private hand. on prent et veulAt on prendre sur le fait de la mon- Whatever there had been of real patriotnoye duquel on veult faire le fait de la guerre, et ism in the States General, artfully conceit a la destruction et a est6 au temps passe du founded, according to the practice of xoy et du royaume et des sujets; Et si se destruit le billion tant par fontures et blanchis comme autrement, ne le fait ne peust durer longuement qu'il ne * Ordinances des Rois, t. iii., p. 121. vienne i destruction si on
continue longuement; t Discordia mota, illi tres status ab incepto pro Et si est tout certain que
les gens d'armes ne posito cessaverunt. Ex tune enim regni negotis voulroient e tre contens de
leurs gaiges par foible male ire, &c.-Continuator Gul. de Nangis in Svi %a3nrnove, &C
cilegio, t. iii., p. 115.

Page 105 A.it Ri.] L FEUDAL SYSTEM. 10A courts, with these schemes of disaffected ed
out favourably foi the cause of liberty men, shared in the common obloquy; this ordinance
might have been the basis whatever substantial reforms had been of a free constitution, in
respect at least projected, the government thrw aside as of immunity from arbitrary taxation
sedious innovations. Charles, who had But the coercive measures of the cour: a sumed the
title of regent, found in the and tumultuous spirit of the Parisians States General assembled at
Paris in produced an open quarrel, in which the 1359, a very different disposition from popular
party met with a decisive failure. that which their predecessors had dis- It seems indeed
impossible, that a played, and publicly restored all counsel- number of deputies, elected merely
for lors whom in the former troubles he had the purpose of granting money, can pos. been
compelled to discard. Thus the sess that weight, or be invested in the monarchy resettled itself
on its ancient eyes of their constituents with tha' basis; or, more properly, acquired addi-
awfulness of station, which is required tional stability.* to withstand the royal authority. The
Both John, after the peace of Bre- States General had no right of redressing raxes im-
tigni, and Charles V. imposed abuses, except by petition; no share in posed by taxes without consent of
the the exercise of sovereignty, which is John and States General.t The latter in- inseparable
from the legislative power. CharlesV. deed hardly ever convoked that Hence, even in their
proper department assembly. [A. D. 1380.] Upon his death of imposing taxes, they were
supposed Remedial the contention between the incapable of binding their constituents
ordinance of crown and representative body without their specific assent. Whether Charles VI.
was renewed, and in the first it were the timidity of the deputies, or meeting held after the
accession of false notions of freedom, which produced Charles VI. the government was com-
this doctrine, it was evidently repugnant delled to revoke all taxes illegally im- to the stability
and dignity of a representative assembly. Nor was it less ruin is the most remedial ordinance, perhaps, ous in practice than mistaken in theory in the
history of French legislation. " We For as the necessary subsidies, after be. will, ordain, and
grant," says the king, ing provisionally granted by the states, that the aids, subsidies, and
impositions, were often rejected by their electors, the of whatever kind, and however imposed,
kimg found a reasonable pretence for disthat have had course in the realm since pensing with
the concurrence of his subthe reign of our predecessor Philip the jects when he levied
contributions upon Fair, shall be repealed and abolished; them. and we will and decree, that by
the course The States General were convoked but which the said impositions have had, we
rarely under Charles VI. and States Genera' or our successors shall not have acquired VII., both
of whom levied under Charles any right, nor shall any prejudice be money without their
concur- Vi. wrought to our people, nor to their privi- rence. Yet there are remarkable testi.
leges and liberties, which shall be re- monies under the latter of these princes. established in as
full a manner as they that the sanction of national representa enjoyed them in the reign of
Philip the tives was still esteemed strictly requisiti Fair, or at any time since; and we will to any
ordinance imposing a general tax, and decree, that if any thing has been however the
emergency of circumstances done contrary to them since that time might excuse a more
arbitrary procedure. to the present hour, neither we nor our Thus Charles VII., in 1436, declares
that successors shall take any advantage he has set up again the aids which had therefrom."t If
circumstances had turn- been previously abolished by the consent of the three estates.* And in
the importan * A very full account of these transactions is edict establishing the companies of orgiven by Secousse, in his History of Charles the donnance, which is recited to be done by Bad, p. 107, and in his preface to the third volume the advice and counsel of the States Genof the Ordonn. des Rois. The reader must make eral assembled at Orleans, the forty-first allowance for the usual partialities of a French his- section appears to bear a necessary con torian, where an opposition to the reigning prince struction, that no tallage could la llv is his subject. A contrary bias is manifested by ruction, that no tallage could lawfully Boulainvilliers and Mably, whom, however, it is be imposed without such consent.t Itis well worth while to hear. maintained indeed by some writers, that t Mably, l. v., c. 5, note 5. t Ordonnances des Rois, t. vi., p. 564. The * Ordonnances des Rois, t. xiii., p. 211. ordinance is long, containing frequent repetitions, t Ibid., p. 312. Boulainvilliers mentions other and a great redundance of words, intended t: give instances, where the states granted money during more force r at least solemnity, this reign, t. iii., p. 70.
England, and the last struggle of the French nation by arose out of the original disease of the its legal representatives for immunity former monarchy, the distraction and from arbitrary taxation. want of unity consequent upon the de- A warm contention arose for the recline of Charlemagne's family, which gency upon the accession of Charles separated the different provinces in re- VIII., between his aunt, Anne de Beaujueu, spect of their interests and domestic gov- whom the late king had appointed by teserment from each other. tament, and the princes of the blood, at But the formality of consent, whether the head of whom stood the Duke of by general or provincial states, now ceas- Orleans, afterward Louis XII. The lated to be reckoned indispensable. The ter combined to demand a convocation lawyers had rarely seconded any efforts to restrain arbitrary power: in their ha- * The preface to the sixteenth volume of Ordontredtrofn f alrbinyplwe e i thoer nances, before quoted, displays a lamentable pictred of feudal principles, especially those ture of the internal situation of France in conseof territorial jurisdiction, every generous quence of excessive taxation, and other abuses. sentiment of freedom was proscribed; or These evils, in a less aggravated degree, continued if they admitted that absolute prerogative ever since to retard the improvement, and diminish might require some checks, it was such the intrinsic prosperity, of a country so extraordifthemseleves, not the national rep- narily endowed with natural advantages. Philip only as themselves, not the nationalrep- de Comines was fbricibly struck witn the different resentatives, should impose. Charles situatior. o1 England and the Netherlands. And Sir John Fortescue has a remarkable passage (oi * Brequigny, preface au treizidme tome des Or- the poverty and servitude of the French commors, ionnances.-Boulainvilliers, t. iii., p. 109 contrasted with English freemen.- l)ifference of t Villaret, t. xi., p. 270. limited and absolute monarchy, p. 17. Ordannances des Rois. t. iii., pr6faco + Mdm. de Comines, 1. iv., c. 1o
man's private right, out of the princes. the hands of his neighbours and his A firmer and more
unanimous spirit equals. Every ten families are supposed vas displayed upon the subject of
public to have had a magistrate of their own reformation. The tyranny of Louis XI. election: the
tithing-man of England, the had been so unbounded, that all ranks decanusof France
andLombardy:i Next agreed in calling for redress, and the new in order was the centenarius or
hundredgovernors were desirous, at least by pun- ary, whose name expresses the extent ishing
his favourites, to show their incli- of his jurisdiction, and who, like the denation towards a
change of system. canus, was chosen by those subject to They were very far, however, from
ap- it.t But the authority of these petty proving the propositions of the States magistrates was
gradually confined to the General. These went to points which less important subjects of legal
inquiry. no court can bear to feel touched, though No man, by a capitolary of Charlemagne.
there is seldom any other mode of re- could be empleaded for his life, or liberty dressing public
abuses; the profuse ex- or lands, or servants, in the hundred pense of the royal household, the
num- court.~ In such weighty matters, or by ber of pensions and improvident grants, the
excessive establishment of troops. * I am altogether indebted to Garnier for the The states
explicitly demanded that the proceedings of the States of Tours. His account, Hist. de France, t.
xviii., p. 154-348, is extremely taillle and all other arbitrary imposts copious, and derived from
a manuscript journal. should be abolished; and that from Cornines alludes t: them sometimes,
but with little thenceforward, " according to the natural particularity. liberty of France," no tax
should be lev- 1 ' The decanus is mentioned by a writer of the ied in the kingdom without the
consent ninth age as the lowest species of judge, imms oed ately under the centenarius. The
latter is comm of the states. It was with great difficul- pared to the plebanus, or priest of a
church, where ty, and through the skilful management baptism was performed, and the former
to an inof the court, that they consented to the ferior presbyter.-Du Cange, v. Decanus; and
collection of the taxes payable in the time Muratori, Antiq. Ital., Dissert. x. o e It is evident
from the Capitularies of Charle. of Charles VII., with the addition of one magne, Baluze, t. i.,
p. 426 and 466, that the cen fourth, as a gift to the king upon his ac- tenarii were elected by the
people; that is, I sup cession. This subsidy they declare to be pose, the freeholders. granted "by
way of gift and concession, ~ Ut nullus homo in placito centenarii nhec ad and not otherwise,
and so as no one mortem, neque ad libertatem suam amittendam, aut ad res redendas vel
mancipia judicentur.-Capit, A. D. 812.
Baluz., p.49'

Page 108 Ibe% EUROPE DJRING THE MIDDLE AGES. LCHAP..J way ol appeal fromm the
lower jurisdic- entrance of the ordinary judges: eithel t] stlos, the count of the district was
judge. hear causes, or to exact certain dues acHe indeed was appointed by the sover- cruizing
to the king and to themselves eign; but his power was checked by as- These charters indeed relate
to churcl sessors, called Scabini, who held their lands, which, as it seems implied by a law
office by the election, or at least the con- of Charlemagne, universally possessed currence, of
the people.* These Scabini an exemption from ordinary jurisdiction may be considered as a
sort of jury. A precedent, however, in Marculfus, leads though bearing a closer analogy to the
us to infer a similar immunity to- have.ludices Selecti, who sat with the pretor been usually in
gifts to private persons.* iln the tribunals of Rome. An ultimate ap- These rights of justice in
the beneficiary peal seems to have lain to the count pal- tenants of the crown are attested in
sevatine, an officer of the royal household; eral passages of the capitularies. And a and
sometimes causes were decided by charter of Louis I. to a private individual he sovereign
himself.t Such was the contains a full and exclusive concession original model of judicature;
but as com- of jurisdiction over all persons resident plaintiffs of injustice and neglect were fre-
within the territory, though subject to the;...ently made against the counts, Charle-
appellant control of. the royal tribunals. It magne, desirous on every. account to It is obvious, indeed, that
an exemption control them, appointed special judges, from the regular judicial authorities
imcalled Missi Regii, who held assizes from pplied or naturally led to a right of admin-
place, inquired into abuses and istering justice in their place. But this r.aleadministration of
justice, enforced could at first hardly extend beyond the Its execution, and expelled inferior
judges tributaries or villeins who cultivated their from their offices for misconduct. t master's
soil, or, at most, to free persons This judicial system was gradually su-
resident in the terri...sisted upon totally op-
tory. To determine their quarrels, or posite principles, those of feudal privi-
chastise their offences; was no very illus-
le. It is difficult to ascertain trious privilege. An alodial freeholder jurisdictl;-
progress of territorial juris-
could own no jurisdiction but that of the diction. In many early charters of
the king. It was the general prevalence cf French kings, beginning with one of sub-
which gave importance to Dagobert I., in 630, we find inserted in the territorial jurisdictions of
the nobility their grants of land an immunity from the For now the military tenants, instead of
repairing to the county-court, sought * Baluzii Capitularia, p. 466. Muratori, Dissert. repairin
to the county-court, sought 10. Diu Cange, v. Scabini. These Scabini may be justice in that of
their immediate lord; traced by the light of charters down to the eleventh or rather the; count
himself, become the century. —Recueil des Historiens, t. vi., pr6face, p. suzerain instead of the
tribunal their existence in 918, in a record which I have al-
occasion to quote.—Vaissette, Hist. de upon the feudal model. A system of Languedoc, t. ii.,
Appendix, p. 56. Du Cange, procedure so congenial to the spiritof the Baluze, and other
antiquaries, have confounded the age spread universally over France and Scabini with the
Rachimburgii, of whom we read in the oldest laws. But M. Guizot has proved the * Marculfi
Formulae, 1. i., c. 17. latter were landowners, acting in the county t Et nullus comes, nec
vicarius, nec Juniorei courts as judges under the presidency of the count, eorum, nec ullus
judex publicus illorum homirns, but wholly independent of him. The Scabini in qui super
illorum aprisione habitant, aut in illorum Charlemagne's age superseded them. —Essai sur
propri, distringere nec judicare prasumant; sed l'Histoire de France, p. 259, 272. Johannes et
filii sui, et posteritas illorum, illi eos t Du Cange, Dissertation 14, sur Joinville; and judicent et
distingrant. Et quicquid per legem Glossary, v. Comites Palatini; MWM. de l'Acad.
judicaverint, stabilispermaneat. Etsiextralegem des Inscrip., t. xxx., p. 590. Louis the
Debonair fecerint; per legem emendent.-Baluzii Capitularia, gave one a-y in every week for
hearing causes; t. ii., p. 1405. but his subject3 were required not to have recourse This
appellant control was preserved by the to him, unless where the Missi or the counts had
capitulary of Charles the Bald, quoted already, not done justice.-Baluze, t. i., p. 668. Charles
over the territorial, as well as royal tribunals. Si the Bald expressly reserves an appeal to
himself aliquis episcopus, vel comes ac vassus noster suo from the inferior tribunals.—Capit.
869, t. ii., p. 215. homini contra rectum et justitiam fecerit, et si inde In his reign, there was at
least a claim to sover- ad nos reclamaverit, sciat qula, sicut ratio et lex eignty preserved. est,
hoc emendare faciemus. $ For the jurisdiction of the Missi Regii, besides. We may perhaps
infer, from a capitulary of e'he Capitularies themselves, see Muratori's eighth Charlemagne in
809; that the feudal tenants were t)issertation. They went their circuits four times already
employed as assessors in the administr.a year.—Capitul., A. D. 812. A. D. 823. A ves-
tion of justice, concurrently with the Scabini men. tlige of this institution long continued in the prov-
tioned above. JUt nullus ad placitum venire cJga ince of Auvergne, under the name of Grands
Jours tur, nisi qui causam habet ad quwerendum, exceptis d'Auvergne; which Louis XI. revised
Germany

The tribunals of the king lay lords were similar ministers, though were forgten like his laws; the one re-not in general of so permanent a right in aineing as little authority to correct, as their offices, or of such eminent station, aw the other to regulate, the decisions of the advocates of monasteries. It seems territorial judge. The rules of evidence to have been an established maxim, at were superseded by that monstrous birth least in later times, that the lord could of ferocity and superstition, the judicial not sit personally in judgment, but must combat, and the maxims of law reduced intrust that function to his bailiff and vasto a few capricious customs, which varied sals.* According to the feudal rules, the in almost every barony. lord's vassals or peers of his court were These rights of administering justice to assist at all its proceedings. "There were possessed by the owners of fiefs in are some places," says IBeaumanoir, very different degrees; and, in France, ",where the plaintiff ecides in judgment, Its divisions. were divided into the high, the and others, where tl.-vassals of the lord middle, and the low jurisdict- decide. But even where the bailiff is the tion.* The first species alone (la haute justice) conveyed the power of life and prudent, and determine by their advice; death; it was inherent in the baron and since thus he shall be most secure if at the chatelain, and sometimes enjoyed by appeal is made from his judgment."t the simple vassavor. The lower jurisdict- And indeed the presence of these asses. tions were not competent to judge in sors was so essential to all territorial capital cases, and consequently forced to jurisdiction, that no lord, to whatever send such criminals to the court of the rights of justice his fief might entitle him, superior. But in some places, a thief was qualified to exercise them, unless he taken in the fact might be punished with had at least two vassals to sit as peers death by a lord who had only the low ju-in his court.1 risdiction. In England, this privilege was These courts of a feudal barony or known by the uncouth terms of Infangthef manor required neither the knowledge of and Outfangthef. The high jurisdiction, positive law, nor the dictates of natural however, was not very common in this sagacity. In all doubtful cases, and es. country, except in the chartered towns.t pecially where a crime not capable cf Several customs rendered these rights notorious proof was charged, the Trial b Its adminis- of jurisdiction far less instru- combat was awarded; and God, as combat tration. mental to tyranny than we might they deemed, was the judge. { The nolInfer from their extent. While the counts were yet officers of the crown, they fre-* Boutillier, in his Somme Rurale, written neam quently appointed a deputy, or viscount, to the end of the fourteenth century, asserts this pos administrator justice. Ecclesiastical lords, itively. 11 convient quivz facent jugier par aultre que par eulx, cest a savoir par leurs hommes fen who were prohibited by the canons from daux a leurseomence et conjugare? on de leur bailiff inflicting capital punishment, and sup- or lieutenant, et ont ressort a leur souverain, fol. 3. posed to be unacquainted with the law of Foiitumes de Beauvoisis, p. 11. followed in civil courts, or unable to en-t It was lawful, in such case, to borrow the vasforce, it, had an officer by name of adivo-sals of the superior lord. —Thaumassiere sur Beau force it, had an officer by name of adVo- manoir, p. 375. See Du Cange, v. Pares; an ex cate or vidame, whose tenure was often cellent article, and Placitum. feudal and hereditary. The viguiers (vi- In England a manor is extinguished, at least as carii), bailiffs, provosts, and seneschals of to jurisdiction, when there are not two freeholders subject to escheat left as suiters to the court-baron. * Velly t. vi., p. 131. Denisart, Houard, and Their tenancy must therefore have been created other law- books. before the statute of Quia emptores, 18 Edw. I. t A strangely cruel privilege was possessed in (1290), since which no new estate in fee simple can Aragon by the lords who had
not the higher jurisdiction be held of the lord, nor, consequently, be liable to execution, and consequently could not publicly exe- esicate to him. cute a criminal; that of starving him to death in. ~ Trial by combat does not seem to have estab prison. This was established by law in 1247. Si lished itself completely in France till ordeals went vassallus domini non habentis merum nec mixtum into disuse, which Charlemagne rather encouraged, imperium, in loco occiderit vassallum, dominus loci and which, in his age, the clergy for the most part potest eum occidere fame, frigore et siti. Etquili- approved. The former species of decision may, bet dominus loci habet haeficjurisdictionem necandi however, be met with under the first Merovingian fame, frigore et siti in suo loco, licet nullam aliam kings (Greog. Turon., 1. viii., c. 19; 1. x., c. 10), and jurisdictionem criminalem habeat.-Du Cange, seems to have prevailed in Burgundy. It is estab. voc. Fame necare. lished by the laws of the Alemanni or Swabians. It is remarkable, that the Neapolitan barons had Baluz., t. i., p. 80. It was always popular in Low, io criminal jurisdiction, at least of the higher kind, bardy. Luitprand, king of the Lombards, says in till the reign of Alfonso, in 1443, who sold this de- one of his laws: Incerti sumus de judicio Dei, el structive privilege, at a time when it was almost quosdam audivimus per pugnam sine just& cause abolishel in other kingdoms. —Giannone. I. xxii., c. suam causam perdere. Sed propter constetudlneln 5, and 1. xxvi. c 6 gentis nostraw ILangobardorum legem impiam -etard
appeals for denial of justice were not older than of appeal was to call the first judge who the reign of Philip Augustus.—(Observations sum 1’Hist. de F., i. iii., c. 3.) Before this time the vaspornounced a hostile sentence into the sal’s remedy, he thinks, was to make war upon his field. If the appellant came off victorious lord. And this may probably have been frequently in this challenge, the decision was re- practise. Indeed it is permitted, as we have seen, versed, but the court was not impeached.9 by the code of St. Louis. But those who were not v ti—strong enough to adopt this dangerous means of But for denial of justice, that is, for a re- redress, would surely avail themselves of the asfusal to try his' stit, the plaintiff repaired distance of the suzerain, which in general would be to the court of the next superior lord, and readily afforded. We find several instances of the supported his appeal by testimony. || Yet, king's interference for the redress of injuries, in supported—__his__appeal__by __testimony._ YetSuger's life of Louis VI. That active and spirited. prince, with the assistance of his illustrious biogranon possusmus.-Muratori, Script. Rerum Italica- pher, recovered a great part of the royal authority, rum, t. ii., p. 65. Otho II. established it in all dis- which had been reduced to the lowest ebb in the putes concerning real property; and there is a fa- long and slothful reign of his father, Philip I. One mous case, where the right of representation, or passage, especially, contains a clear evidence of preference of the son of a deceased elder child to the appeal for denial of justice, and consequently his uncle in succession to his grandfather's estate, refutes Mably's opinion. In 1105, the inhabitants was settled by this test. of St. Sev--re, in Berri, complain of their lord * For the ceremonies of trial by combat, see Humbald, and request the king aut ad exequendam Houard, Anciennes Loix Franqoises, t. i., p. 264. justitiatam cogere, aut jure pro injuria castrum legé Velly, t. vi., p. 106. Recueil des Historiens, t. xi., Salica amittere. I quote from the preface to the preface, p. 189. Du Cange, v. Duellum. The fourteenth volume of the Recueil des Historiens, p. great original authorities are the Assises de Jdru- 44. It may be noticed by the way, that lex Salica salem, c. 104, and Beaumanoir, c. 31. is here used for the feudal customs;; in which t Beaumanoir, p. 315. sense I believe it not uiffrequently occurs. Many t Idem, c. 61. In England the appeal for false proofs might be brought of the interpsition of both judgment to the king's court was not tried by battle. Louis VI. and VII. in the disputes between their - Glanvil, 1. xii., c. 7. barons and arrihre vassals. Thus the war between Q Idem, c. 61. the latter and Henry II. of England, in 116.6, was 1! Id., p. 315. The practice was to challenge the occasioned by his entertaining a complaint from the second witness, since the testimony of one was in- Count of Auvergne, without waiting for the decis stfficient.’ B'ut this must be done before he com- ion of Henry, as Duke of Guienne. —Velly, t iii., p. etes his oath, says Beaumanoir, for after he has 190. Lyttleton's Henry II., vo. ii. p.'448. Recn. Is sworn, he must be heard and believed, p. 316. eil des Historiens, ubi sura., 49

Page 111] PART 1.] FELDAL SYSTEM. and lie would ask aloud if there were any which had originally led to the latter lost present who had suits; and when they its weight through experience and the appeared, would bid two of his bailiffs I uniform opposition of the clergy. The determine their cause upon the spot."

same superiority of just and settled rules The influence of this new jurisprudence over fortune and violence, which had forestablished by St. Louis, combined with warded the encroachments of the ecclethe great enhancements of the royal pre- siastical courts, was now manifested ir rogatives in every other respect, produ- those of the king. Philip Augustus, by a ced a rapid change in the legal adminis- famous ordinance in 1190, first establishtration of France. Though trial by com- ed royal courts of justice, held by the bat occupies a considerable space in the officers called bailiffs or seneschals, who work of Beaumanoir, written under Phil- acted as the king's lieutenants in his doip the Bold, it was already much limited. mains.* Every barony, as it became reAppeals for false judgment might
some- united to the crown, was subjected to the timles be tried, as he expresses it, par erre.-
jurisdiction of one of these officers, and mens de plait, that is, I presume, where took the name
of a baillage or a seneste alleged error of the court below was chaussee; the former name
prevailing in matter of law. For wager of battle most in the northern, the latter in the was
chiefly intended to ascertain contro- southern provinces. The vassals whose verted facts.t So
where the suzerain lands depended upon, or, in feudal lansaw clearly that the judgment of the
in- guage, moved from the superiority of this ferior court was right, he ought not to fief, were
obliged to submit to the ressort permit the combat. Or if the plaintiff, or supreme appellant
jurisdiction of the even in the first instance, could produce royal court established in it.t This
bea record or a written obligation; or if the gan rapidly.to encroach upon the feudal fact before
the court was notorious, there rights of justice. in a variety of cases, was no room for battle.t It
would be a termed royal, the territorial court was card thing, says Beaumanoir, that if one
pronounced incompeten; they were reah killed my near relation in open day, served for the
judges of the before many credible persons, I should be crowned; and, in every case, un-
Yal
atidu compelled to fight in order to prove his less the defendant excepted to progress of death.
This reflection is the dictate of the jurisdiction, the royal court their iuriscommon sense, and
shows that the pre- might take cognizance of a suit, diction. judice in favour of judicial combat
was and decide it in exclusion of the feuda dying away. In the Assises de Jerusa- judicature.;
The nature of casesreservlem, a monument of customs two hun- ed under the name of royal
was kept in drie years earlier than the age of Beau- studied ambiguity, under cover of which
manoir, we find little mention of any the judges of the crown perpetually strove other mode of
decision. The compiler to multiply them. Louis X., when reof that book thinks it would be very
in- quested by the barons of Champagne to jurious, if no wager of battle were to be explain
what was meant by royal causes allowed against witnesses in causes af- gave this mysterious
definition: Every fecting succession; since otherwise ev- thing which by right or custom ought
ex ery right heir might be disinherit, as it elusively to come under the cognizance would be
easy to find two persons who of a sovereign prince.~ Vassals were would perjure themselves
for money, if permitted to complain in the first instance they had no fear of being challenged
for to the king's court, of injuries committed their testimony.~ This passage indicates by their
lords. These rapid and violent the real cause of preserving the judicial encroachments left the
nobility no alter..combat; systematic perjury in witness- native but armed combinations to
support es, and want of legal discrimination in their remonstrances. Philip the Fair be judges.
queathed to his successor the task of ap It was, in all civil suits, at the discre- poasmng a storm
which his own adminis. tration had excited. Leagues were form. law of the Establishments instead of re-
ed in most of the northern provinces foi
	 summarizes the redress of grievances, in which the prevailed,
especially among those who third estate, oppressed by taxation, uni. did not make arms their
profession, the' wisdom and equity of the new code were * Ordonnances des Rois, t. i., p 18.
naturally preferred. The superstition t Du Cange, v. Ballivi. Me. de l'Acad. des In
U Beaumanoir, p. 309. | Ordonnances des Rts, p. 606

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the grosser violations of ancient rights, tions of justice, and reserved their atten- though the crown persisted in restrain- * Appeals be- own orders were implicated in a criminal came more common for false judgment, process. St Louis, anxious for regular as well as denial of right; and in neither ity and enlightened decisions, Cours Pl1 was the combat permitted. It was still, made a considerable alteration nitres. however, preserved in accusations of hei- by introducing some counsellors of infenous crimes, unsupported by any testi- rior rank, chiefly ecclesiastics, as advimony but that of the prosecutor, and was sers of the court, though, as is supposed, never abolished by any positive law, ei- without any decisive suffrage. The court ther in France or England. But instan- now became known by the name of parces of its occurrence are lot frequent liament. Registers of its proceedings even in the fourteenth centt'ry; and one were kept, of which the earliest extant of these, rather remarkable in its circum- are of the year 1254. It was still per. stances, must have had a t-ndency to ex- haps in some degree ambulatory; but by oloede the remaining superstition which far the greater part of its sessions in the had preserved this mode of decision.t thirteenth century were at Paris. The The supreme council, sr court of peers, counsellors nominated by the king, some Royal coun- to whose del;herative functions of them clerks, others of noble rank, but cil,or court I have already adverted, was not peers of the ancient baronage, acospeers. also the great judicial tribu- quired insensibly a right of suffrage.* nal of the French crown from the acces- An ordinance of Philip the Fair in 1302 sion of Hugh Capet. By this alone the is generally supposed to have Parliament barons of France, or tenants in chief of fixed the seat of parliament at opParis. the king, could be judged. To this court Paris, as well as altered its constituent appeals for denials of justice were refer- parts.t Perhaps a series of progressive red. It was originally composed, as has changes has been referred to a single been observed, of the feudal vassals, co- epoch. But whether by virtue of this equals of those who were to be tried by ordinance, or of more gradual events, the It; aind also of the household officers, character of the whole feudal court was whose right of concurrence, however nearly obliterated in that of the parliaanomalous, was extremely ancient.t But ment of Paris. A systematic tribunal after the business of the court came to took the place of a loose aristocratic asoc perpetuo prohibimus dicto, ne subdi sembly. It was to hold two sittings in s* Hon erpeo;un prohibemus ctdon nost, the year, each of two months' duration; rum ant aliorum subjectorum nostrorum, trahan- it was composed of two prelates, two tur in causam coram nostris officialibus, nec eorum counts, thirteen clerks, and as many laycausse, nisi in casu ressorti, in nostris curiis audian- men. Great changes were made aftertur, vel in alio casu ad nos pertinenti.-Ordonnan- ward in this constitution. The nobility, ces des Rois, t. i., p. 362. This ordinance is of Philip the Fair, in 1302; but those passed under who originally sat there, grew weary of Louis Hutin are to the same effect. They may be an attendance which detained them from read at length in the Ordonnances des Rois; or war and firom their favourite pursuits at abridged by Boulainvilliers, t. ii., p. 94. home. The bishops were dismissed to t Philip IV. restricted trial by combat to caseshoe T osidence upon Obiagaias where four conditions were united. The crime must be capital: Its commission certain: The ac- their sees.4 As they withdrew, of a vassal. cused greatly suspected: And no proof to be ob- that class of regular lawyers, original tained by witnesses. Under these limitations, jr at least some of them, for it appears that they were * Boulainvilliers, t. ii., p. 29, 44. Mably, 1. iv., not all regarded, instances occur for some cen- c. 2. Encyclopedie, Art. Parlement. M6m. de turies. l'Acad. des Inscript., t. xxx., p. 603. The great See the singular story of Carouges and Le Gris, difficulty I have found in this investigation will to which I allude in the text. —Villaret, t. xi., p. 412. plead my excuse if errors are detected. Trial by combat was allowed in Scotland exactly t Pasquier (Recherches de la France, 1. ii., c. 3'. under the same conditions as in France.—Pinker — published this ordinance, which, indeed, as the ed ton's Hist. of Scotl., vol. i., p. 66. itor of
Ordonnances des Rois, t. i., p. 547, observes, X This court had always, it must be owned, a is no ordinance, but a regulation for the execution of pretty considerable authority over some of the of one previously made; nor does it establish the royal vassals. Even in Robert's reign, the Count residence of the Parliament of Par's. if Anjou and another nobleman of less importance $ Velly, Hist. de France, t. vii., p. 303, and En. were summo ed before it. —Recueil des H.,toriens. cyclop6die, Art. Parlement, are the best authorities *. z.. p. 473. 477f I have found. There may very possibly be aupto

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PART il.. FEUDAL SYSTEM..ty employed, as it appears, in the pre- Britany and the Count of Artois. 0thparatory business without any decisive er creations took place subsequently; but voice, came forward to the higher places, they were confined, during the period and established a complicated and tedi- comprised in this work, to princes of thos, system of procedure, which was al- royal blood. The peers were constant ways characteristic of French jurispru- members of the parliament, from which dence. They introduced at the same other vassals holding in chief were nev.time a new theory of absolute power or perhaps excluded by law, but their at and unlimited obediance. All feudal tendance was rare in the fourteenth cenl Decline of privileges were treated as en- tury, and soon afterward ceased altogeth. the feudal croachments on the imprescrip- er.* system. tile rights of monarchy. With A judicial body composed of the great the natural bias of lawyers in favour of est nobles in France, as well as Progress of prerogative conspired that of the clergy, of learned and eminvent law- the jurisdiewho fled to the king for refuge against yers, must naturally have soon tion of the the tyranny of the barons. In the civil become politically important. parliament. and canon laws a system of political Notwithstanding their disposition to enmaxims was found, very uncongenial to hance every royal prerogative, as optlthe feudal customs. The French law- posed to feudal privileges, the parliament yers of the fourteenth and fifteenth cen- was not disinclined to see its own proturies frequently gave their king the title tection invoked by the subject. It apof emperor, and treated disobedience to peers by an ordinance of Charles V., in him as sacrilege.* 1371, that the nobility of Languedoc had But among these lawyers, although the appealed to the parliament of Paris general tenants of the crown by barony against a tax imposed by the king's acuased to appear, there still continued to thority; and this, at a time when the sit a more eminent body, the lay and French constitution didnot recognise the Peers of spiritual peers of France, repre- levyng of money without consent of the France. sentatives, as it were, of that an States General, must have been a just cien baronial aristocracy. It is avery con- ground of appeal, though the present orditroverted question at what time this exclu- nance annuls and overturns it.t During sive dignity of peerage a word obviously the tempests of Charles VI.'s unhappy applicable by the feudal law to all persons reign, the parliament acquired a more coequal in degree of tenure, was reserv- decided authority, and held, in some deed to twelve vassals. At the coronation gree, the balance between the contending of Philip Augustus, in 1179, we first per- factions of Orleans and Burgundy. This ceive the six great feudatories, dukes of influence was partly owing to one reBurgundy, Normandy, Guienne, counts of markable function attributed to the par Toulouse, Flanders, Champagne, distin- liament, which raised it much above the guished by the offices they performed in level of a merely political tribunal, and that ceremony. It was natural indeed has at various times wrought striking that, by their princely splendour and im- effects in the French monarchy. portance, they should eclipse such petty The few ordinances enacted by kings lords as Bourbon and Coucy, however of France in the twelfth and Royal edicts equal in quality of tenure. During the thirteenth centuries were gen- enregistered reign of Philip Augustus, six ecclesiasti- rally by the advice of their in parliacal peers, the duke-bishops of Rheims, royal council, in which prob- ment. Laon, and
Langres, the count-bishops of ably they were solemnly declared as well Beauvais, Chalons, and Noyon, were as agreed upon. But after the gradual added, as a sort of parallel or counter-revolution of government, which took poise. Their precedence does not, how-away from the feudal aristocracy all conever, appear to have carried with it any tral over the king's edicts, and substiother privilege, at least in judicature, tuted a new magistracy for the ancient than other barons enjoyed. But their baronial court, these legislative ordipre-eminence being fully confirmed, Phil- nances were commonly drawn up by the ip the Fair set the precedent of augment- interior council, or what we may call the ing their original number, by conferring ministry. They were in some instances the dignity of peerage on the Duke of promulgated by the king in parliament. Others were sent thither for registration, *or works on this branch of the French constitut- or entry upon their records. This for. mably, which have not fallen into my hands. mality was by degrees, if not from the * Mably, 1. iv., c. 2, note 10. t Velly, t. ii., p. 287; t. iii., p. 221; t. iv., p. 41. * Encycl'p6die, Art. Parlement, I. 6 t Ibid., t. vii., p. 97. t Mably... v., c. 5, note 5 It

Page 114 14 EUROPE DURING THE MIDDLE AGES. ir-dAP. lj beginning, deemed essential to render dependent power not emanating from the them authentic and notorious, and there- royal wil., nor liable, except through fore indirectly gave them the sanction force, to be destroyed by it; which, in and validity of a law.* Such, at least, later times, became almost the sole deappears to have been the received doc- positary, if not of what we should call trine before the end of the fourteenth the love of freedom, yet of public spirit century. It has been contends by and attachment to justice. lralnce, so Mably among other writers, that at so fertile of great men in the sixteenth and early an epoch, the parliament of Paris seventeenth centuries. might bettc. spare, did not enjoy, nor even claim to itself, that perhaps, from her anials any class and anomalous right of judging the exped- description of them than her lawyers. ency of edicts proceeding from the king. Doubtless the parliament of Paris, with which afterward so remarkably modified its prejudices and narrow views, its high the absoluteness of his power. In the notions of loyal obedience, so strangely fifteenth century, however, it certainly mixed up with remonstrances and resist manifested pretensions of this nature: ance, its anomalous privilege of objecting first, by registering ordinances in such a to edicts, hardly approved by the nation manner as to testify its own unwilling- who did not participate in it, and overness and disapprobation, of which one in- turned with facility by the king, when stance occurs as early as 1418, and an- ever he thought fit to exert the sinews ol other in 1443; and, afterward, by remon- his prerogative, was but an inadequate strating against, and delaying the regis- substitute for that- co-ordinate sovertration of laws, which it deemed inimical eignyt, that equal concurrence of natural to the public interest. A conspicuous representatives in legislation, which has proof of this spirit was given in their op- long been the exclusive pride of our govposition to Louis XI. when repealing the ernrent, and to which the States GenPragmatic Sanction of his father; an or- eral of France, in their best days, had dinance essential, in their opinion, to the never aspired. No man of sane undeiliberties of the Gallican church. In this standing would desire to revive institu instance they ultimately yielded; but at tions both unaccommoelection. stances. Charles V. made dating sincerity, individual
disinterested the first alteration, by permitting them to ness and consistency. Whether indeed fill up vacancies by election; which usage these qualities have been so generally continued during the next reign. Charles characteristic of the French people as to VII. resumed the nomination of fresh afford no peculiar commendation to the members upon vacancies. Louis XI. parliament of Paris, it is rather for the even displaced actual counsellors. But observer of the present day than the hisin 1468, from whatever motive, he pub- torians of past times to decide.*lished a most important ordinance, de- -i- * The province of Languedoc, with its dependenclaring the presidents and counsellors of ances of Quercy and Rouergue, having belonged parliament immoveable, except in case almost in full sovereignty to the counts of Tou of legal forfeiture. This extraordinary louse, was not perhaps subject to the feudal resort, measure of conferring independence on or appellant jurisdiction of any tribunal at Paris. Philip the Bold, after its reunion to the crown, es. a body, which had already displayed a established the parliament of Toulouse, a tribunual consciousness of its eminent privilege without appeal, in 1280: This was however su- posing the registration of his edicts, pended from 1291 to 1443, during which interval is perhaps to be deemed a proof of that; the parliament of Paris exercised an appellant short-sightedness as to points of substan- jurisdiction over Languedoc.-Vaissette, Hist. de Lort-sightedness as to points of substan ang., t. iv., p. 60, 71, 524. Sovereign courts of tial interest so usually found in crafty parliaments were established by Charles VII. at men. But, be this as it may, there was Grenoble for Dauphin6, and by Louis XI. at Bor formed in the parliament of Paris an in- deaux and Dijon for Guienne and Burgundy. The parliament of Rouen is not so ancient. These in stitutions rather Diminished the resort of the par L nyclopedie, Art. Parlement. liament of Paris, which had extended over 1ur t Matby, l. vi., c. 5, note 19 and 21. Garnier, gundy, and, in time of peace, over Guienne. utit. de France, t. xvii., p. 219, 380. A work has appeared within a very few years, T Villaret, t. xiv., p. 231

Page 115 P.RT 11.] FEUDAL SYSTEM. 119 The principal causes that operated in part of their policy to obtain possession Pauses of subverting the feudal system I of arriere-fiefs, and thus to become tenll lhe decline may be comprehended under ants of their own barons. In such cases fl the feu- three distinct heads; the in- the king was obliged, by the feudal dual. system. increasing power of the crown, ties, to perform hommage, by proxy, to his the elevation of the lower ranks, and the subjects, and engage himself to the serdecay of the feudal principle. vice of his fief. But, for every; political It has been my object in the last pages purpose, it is evident that the lord could Acquisi- to point out the acquisitions of have no command over so formidable a lions of power by the crown of France vassal.* power by in respect of legislative and ju- The reunion of so many fiefs was atdicial authority. The principal tempted to be secured by a legal princi augmentations of its domain have been ple, that the domain was inalienable and Augmenta- historically mentioned in the imprescriptible. This became at lengtha lion ofthe last chapter; but the subject fundamentalmaxim in the law of France. domain. may here require further notice. But it does not seem to be much older The French kings naturally acted upon a than the reign of Philip V., who, in 1318, system, in order to recover those pos- revoked the alienations of his predeces. sessions which the improvidence or ne- sors, nor was it thoroughly established...cessities of the Carlovingian race had even in theory, till the fifteenth century.f suffered almost to fall away from the Alienations, however, were certainlyvery monarchy. This course, pursued with repugnant to the policy of Philip Augustotolerable steadiness for two or three cen, tus and St. Louis. But:there was one turies, restored their effective power. species of infeudation, so consonant to By escheat or forfeiture,
by bequest or ancient usage and prejudice, that it. could succession, a number of fiefs were
mer- not be avoided upon any suggestions of ged in their increasing domain.* It was policy;
this was the investiture of younger princes of the blood with considerate France, as well as other
countries, during the mid-ble territorial appanages. It is remarka-able ages. I allude to L'Esprit,
Origine et Progres ble that the epoch of appanages on so des Institutions judiciaires des
principaux Pays de great a scale was the reign of St. Louis,Europe, by M. Meyer, of
Amsterdam; especially the first and third volumes. It would have been whose efforts were
constantly directed that nature had its publication preceded that of the against feudal
independence. Yet lie in first edition of the present work; as I might have vested his brothers
with the counties of rendered this chapter on the feudal system in many Poitou, Anjou, and
Artois, and his sons respects more perspicuous and correct. As it is, with those of Clermont and
len without availing myself of M. Meyer's learning and those of Clermont and Alen acuteness
to illustrate the obscurity of these researches, or discussing the few questions upon to convey
" in dominico quod est in dominico, et i: i which I might venture, with deference, to adhere feodo
quod est in feodo." Since, therefore, fief', another opinion, neither of which could con-
even those of the vassals or inferior tenantry, veniently be done on the present occasion, I shall
were not part of the lord's domain, there is,-as content myself with this general reference to a
per- said, an apparent ambiguity in the language of his formance of singular diligence and
ability, which torians who speak of the reunion of provinces to a student of these antiquities
should neglect. In the royal domain. This ambiguity, however, is all essential points I am happy
not to perceive that rather apparent than real. When the dutchy of VI. Meyer's views of the
middle ages are far differ- Normandy, for example, is said to have been unient from my own.
—Note to the fourth edit. ted by Philip Augustus to his domain, we are not. * The word domain
is calculated, by a seeming of course, to suppose that the soil of that province ambiguity, to
perplex the reader of French history. became the private estate of the crown. It conIn its
primary sense, the domain or demesne (do- tinued, as before, in the possession of the Norman
miinicum) of any proprietor was confined to the barons and their sub-vassals, who had held
their lands in his immediate occupation; excluding estates of the dukes. But it is meant only
that those of which his tenants, whether in fief or vil-
language, whether for a certain estate or at will, had the Duke of Normandy, with the
same rights of an actual possession, or, in our law-language, per-
absolutely in demesne, of nancy of the profits. Thus the compilers of rents and customary
payments from the burgesse, Domesday-Book distinguish, in every manor, the of towns
and tenants in roture or villanage, and of ards held by the lord in demesne from those occu-
feudal services from the military vassals. The im pied by his villeins or other tenants. And in Eng-
mediate superiority, and the immediate resort or land, the word, if not technically, yet in use is
still jurisdiction over these, devolved to the crown, confined to this sense. But in a secondary
accep- and thus the dutchy of Normandy, considered as tation, more usual in France, the
domain compre- a fief, was reunited, or, more properly, merged in hended all lands for which
rent was paid (censives), the royal domain, though a very small part of the and which
contributed to the regular annual rev- territory might become truly domanial. enue of the
propriotor. The great distinction was * See a memorial on the acquisition of arrierebetween
lands in demesne and those in fief. A fiefs by the kings of France, in Mem. de l'Acad. grant of
territory, whether by the king or another des Inscript., t. 1, by M. Dacier. lord, comprising as
well domanian estates and tribu- t Preface au 15me tome des Ordon, Lnces, pa tary towns as
feudal superiorities, was expressed M. de Pastoret. H 2
This practice, in later times, produced the twelfth age, which was able to equip powerful navies, and to share in the wars of Under a second class of events that Genoa and Pisa against the Saracens contributed to destroy the spirit of the Sardinia. leudal system, we may reckon the aboli- The earliest charters of community tion of villanage; the increase of com- granted to towns in France have Earliest merce, and consequent opulence of mer- been commonly referred to the charters chants and artisans; and especially the time of Louis the Sixth; though it is not institutions of free cities and boroughs. improbable that some cities in the south This is one of the most important and had a municipal government by custom, if interesting steps in the progress of soci- not by grant, at an earlier period.* Noynn, ety during the middle ages, and deserves St. Quentin, Laon. and Amiens appeared particular consideration. to have been the - rat that received emanThe provincial cities under the Roman cipation at the manus of this prince.t The Free and empire enjoyed, as is well known, chartered a municipal magistracy and the preserved their municipal government. I hav towns. right of internal regulation. It borrowed this quotation from Heeren, Essai sur l'Influence des Croisades, p. 122, to whom I am in would not have been repugnant, perhaps, dreaded for other assistance. Vaisselle also thinks to the spirit of the Frank and Gothic con- that the inhabitants of towns in Languedoc were querors, to have left them in possession personally free in the tenth century; though those of these privileges. But there seems no of the country:were in servitude.-Hist. de Lansatisfactory proof that they were pre- guedoc, t. ii., p. 111. * Ordonnances des Rois, ubi supra, p. 7. These served either in France or in Italy;* or, charters are as old as 1110, but the precise date is if they existed at all, they were swept unknown. away, in the former world, during the t The Benedictine historians of Languedoc are conf-usion of the ninth century, w~ich of opinion that the city of Nismes had municipal eondedsin te the s listh centu of t, fea l magistrates even in the middle of the tenth centu ended in the establishment of the feudal ry, t. ii., p. 111. However this may be, the citizens system. Every town, except within the of Narbonne are expressly mentioned in i 080.- Ap royal domains, was subject to some lord. pendix, p. 208. The burgesses ofCarcassone appear In episcopal cities the bishop possessed by name in a charter of 1107, p. 515. In one ot a considerable authority; and in many 1311, the consuls of Beziers are mentioned; they a. cosierblathriy;animmyexist therefore previously, p. 409, and Appen there was a class of resident nobility. dix, p. 959. The magistrates of St. Antonin en It is probable that the proportion of free- Rouergue are named in 1136; those oi Montpeliel men was always greater than in the in 1142; of Narbonne in 1148; and of St. Gilles i: country; some sort of retail trade, and 1149, pp. 515, 432, 442, 464. The capitouls of Toulouse pretend to an extravagant antiquity; but ~ven of manufacture, must have existed were in fact established by Alfonso, count of Tou in the rudest of the middle ages, and con- louse, who died in 1148. In 1152, Raymond V. con sequently some little capital was required firmed the regulations made by the common coun for their exercise. Nor was it so easy to cil of Toulouse, which became the foundation of oppress a collected body, as the scatter- the customs of that city, p. 472. If we may trust altogether to the Assises de Je ed& and dispirited cultivators of the soil. nusalem in their present shape, the court of bur. Probably therefore the condition of the gesses having jurisdiction over persons of that rank towns was at all times by far the more was instituted by Godfrey of Bouillon, who died tolerable servitude; and they might en- 1100.-Ass. de Jbrus., c. 2. This would be even ear lier than the charter of London, granted by Henry joy several immunities by usage, before I. Lord Lyttleton goes so fdr as to call it "certain, the date of those charters which gave that in England many cities and towns were bodthem sanction. In Provence, where the ies corporate and communities long before the alter. feudal star shone with a less powerful ation introduced into France by the charters of ray, the cities, thoufgh not
independently Louis le Gros."-Hist. of Henry II., vol. iv., p. 29. ray, the cities, though not independently But this position, as I shall more particularly show governed, were more flourishing than the in another place, is not borne out by any good French. Marseilles, in the beginning of authority, if it extends to any internal jurisdiction, and management of their own police; whereof, except in the instance of London, we have no M. de Brbquigny says that Lyons and Reims proof before the reign of Henry II. can trace their own municipal government some But the incorporation of communities seems to centuries higher than the establishment of com- have been decidedly earlier in Spain than in in any munies by Louis VI. The former city, which indeed other country. Alfonso V., in 1020, granted a charter was not French at that time, never had a charter ter to Leon, which is said to mention the common of incorporation.-Ordonnances des Rois, t. xi., council of that city in terms that show it to be an preface, p. 4. This preface contains an excellent established institution. During the latter part of account of the origin and privileges of chartered the eleventh century, as well as in subsequent towns in France. times, such charters are very frequent.-Marina, t There were more freemen in Provence, says Ensayo Historico-Critico sobre las siete partidas an historian of the country, than in any other part In several instances, we find concessions of smalle of France; and the revolutions of the monarchy privileges to towns without any political power being less felt than elsewhere. our towns naturally Thus Berenger, count of Barcelona, in 109s cot

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LU FEUDAL SYSTEM. 117 chief towns in the royal domains were "in order to create some power that successively admitted to the same privi- might counterbalance those potent vasleges during the reigns of Louis VI., Louis sals who controlled or gave law to the vlii., and Philip Augustus. This exam- crown, first adopted the plan of confer ple was gradually followed by the peers ring new privileges on the towns situaand other barons; so that by the end of ted within his own domain." Yet one the thirteenth century, the custom had does not immediately perceive what causes of prevailed over all France. It strength the king could acquire by grantKrantn to has been sometimes imagined, ing these extensive privil 1ges within his be found in that the crusades had a mate- own domains, if the great vassals were the crusades, rial influence in promoting the only weakened, as he asserts afterward. erection of communities. Those expedi- by following his example. In what tions would have repaid Europe for the sense, besides, can it be meant, that prodigality of crimes and miseries which Noyon or Amiens, by obtaining certain attended them, if this notion were found- franchises, became a power that could ed in reality. But I confess that in this, counterbalance the Duke of Normandy as in most other respects, their beneficial or Count of Champagne. It is more consequences appear to me very much natural to impute this measure, both in exaggerated. The cities of Italy obtain- the king and his barons, to their pecuniaed their internal liberties by gradual en- y exigencies; for we could hardly doubt; croachments, and by the concessions of "that their concessions were sold at the the Franconian emperors. Those upon highest price, even if the existing charthe Rhine owed many of their privile- ters did not exhibit the fullest proof of ges to the same monarchs, whose cause it.* It is obvious, however, that the they had espoused in the rebellions of coarser methods of rapine nmust have Germany. In France, the charters grant- grown obsolete, and the rights of the in ed by Louis the Fat could hardly be con- habitants of towns to property establish nected with the first crusade, in which ed, before they could enter into any comm. the crown had taken no part, and were pact with their lord for the purchase of oog prior to the second. It was not liberty. Guibert, abbot of St. No- Circumtill fifty years afterward that the barons gent, near Laon, relates the estab- stances seem to have tord in his steps by granting lishment of a community in that ing the charters to their vassals, and these do city with circumstances that, in the treatyof not appear to have been particularly
re-main, might probably occur in any Laon. lated in time to any of the crusades. other place.

Continual acts of violence Still less can the corporations, erected and robbery having been committed, by Henry II. in England, be ascribed to which there was no police adequate to these holy wars, in which our country prevent, the clergy and principal inhabihad hitherto taken no considerable share. tants agreed to enfranchise the populace The establishment of chartered towns for a sum of money, and to bind the nor in delib- in France has also been ascri- whole society by regulations for general ute pol- bed to deliberate policy. "Lou- security. These conditions were gladly teY. is the Gross," says Robertson, accepted; the money was paid, and the leading men swore to maintain the priv firms to the inhabitants of that city all the franchisea which they already possess. These seem how- munes, or corporate towas, and boroughs (bourgeever to be confined to exemption from paying rent, osies). The main difference was, that in the latand from any jurisdiction below that of an officer de- ter there was no elective government, the magis puted by the count. - De Marca,Marca Hispanica, trates being appointed by the king or other supe p. 1038. Another grant occurs in the same volume, rior In the possession of fixed privileges and ex p. 909, from the Bishop of Barcelona in favour of emptions, in the personal liberty of their inhabitants, a town of his diocess. By some inattention, Rob- and in the certainty of their legal usages, there ertsonhasquoted these charters as granted to" two was no distinction between corporate towns and villages in the county of Roussillon."-Hist. Charles mere boroughs; and indeed it is agreed that every V., note 16. The charters of Tortosa and Lerida corporate town was a borough, though every bor in 1149 do not contain any grant of jurisdiction, p. ough was not a corporation. The French anti1303. X quary quoted above does not trace these inferior The corporate towns in France and Eladcommunities or boroughs higher than the charters aways enjoyed tille privileges than these Cata of Louis VI. But we find- the name, and a good londcharter imparts. The essential chritreal of the substance, in England under William istics of a commune, according to M. BreQueirny, the Conqueror, as is manifest from Domesday-Book. were:-n association confirmed by charter aqny, * Ordonnances des Rois, t. xi., pr6face, p. 18 et 50. wode of fixed sanctioned customs; and a set of t The preface to the twelfth volume of Ordonnances dse, privileges, always including municipal or elective Rois contains a full account of boureoisies, as that to government. —Ordonnances, ubi supra, p. 3. A the eleventh does of communes. A great part of it!low tr~~overunment.-Ordonnances, uever, is applicable tt both species, or rather to the genis distinction otght however to be pointed out, which and the species.-See toothat to the fouteconb,of'kine *;a rather liabl.i to e l observation, between corn Recuei' des Historiens, p. 74.
the jealousy tion, it was, like that of feudal tenants, al of a feudal abbot, and blames the Bishop
the cost of their superior. Their cus f Amiens for consenting to such an es- toms, as to
succession and other matters,ablishment in his city, from which, ac- of private right, were
reduced to certaintording to Guibert, many evils resulted. ty, and, for the most part, laid down
In his sermons, we are told, this abbot the charter of incorporation. And the used to descant on "
those execrable com-r observation of these was secured by the munities, where serfs,
against law and most valuable privilege which the charJustice, withdraw themselves from the
tered towns obtained: that of exemption power of their lords."* from the jurisdiction, as well of
the royIn some cases they were indebted for al as the territorial judges. They were success to
their own courage and love of subject only to that of magistrates, either liberty. Oppressed by
the exactions of wholly elected by themselves, or in some their superiors, they had recourse to
places, with a greater or less participarims, and united themselves in a com- tion of choice in
the lord. They were mon league confirmed by oath, for the empowered to make special rules,
or, as -ake of redress. One of these associa- we call them, by-laws, so as not to con[ions took
place at Mans as early as travene the provisions of their charter or 1067, and, though it did not
produce any the ordinances of the king.* charter of privileges, is a proof of the It was
undoubtedly far from the intenspirit to which ultimately the superior tion of those barons who
confer- onnexion classes were obliged to submit.t Sev- red such immunities upon their of free
eral charters bear witness that this spir- subjects to relinquish their own townswith it of
resistance was justified by oppres- superiority and rights not ex- the king. sion. Louis VII.
frequently declares pressly conceded. But a remarkable the tyranny exercised over the towns to
change took place in the beginning of the be his motive for enfranchising them. thirteenth
century, which affected, in a Thus the charter of Mantes in 1150 is high degree, the feudal
constitution of said to be given pro nimi oppressione France. Towns, distrustful of theirlord's
pauperurn: that of Compiegne in 1153, fidelity, sometimes called in the king as propter
enormitates clericorum: that of guarantee of his engagements. The first Dourlens, granted by
the Count of Pon- stage of royal interference led to a more thieu in 1202, propter injurias et
moles- extensive measure. Philip Augustus tias a potentibus terra burgensibus fre- granted
letters of safeguard to communiquenter illatas.t ties dependant upon the barons, assuring The
privileges which these towns of to them his own protection and patron The extent France
derived from their char- age.t And this was followed up so quickof their ters were surprisingly
exten- ly by the court, if we believe some wriprivileges. sive; especially if we do not ters, that
in the next reign, Louis VIII. suspect some of them to be merely in pretended to the immediate
soverignty confirmation of previous usages. They over all chartered towns, in exclusion of
were made capable of possessing com- their original lords.t Nothing, perhaps, mon property,
and authorized to use a common propertyal and auth the symbol of their in- * Ordonnances des
Rois, prôfaces aux tomes xi. common seal as the symbol of their in- et xii. Du Cange, voc.
448. Du t Mably, ibid. 2ange, voc. Communia. t Reputa:-at clvitates omnes suas esse, in quitus
t Recuejel des Historiens, t. xiv., prefate, p. 66. communiae essent. I mention this in deference r,
t Ordonnancas des Rois, t. xi., prôface, u 17 Du Cange, Mably, and othe:sh, who assume the
be diverted, and the Languedoc, gave to any who would denerves of their strength to be
severed. clare on oath that he was aggrieved by The government prudently respected the the
lord or his officers, the right of being privileges secured by charter. Philip the admitted a
burgess of the next town, upon Long established an officer in all large paying one mark of
silver to the king, towns to preserve peace by an armed po- and purchasing a tenement of a
definite lice; but, though subject to the orders value. But the neglect of this condition, of the
crown, he was elected by the bur- and several other abuses, are enumerated gesses; and they
took a mutual oath of in an instrument of Charles V., redressing fidelity to each other. Thus
shields of the complaints made by the nobility and der the king's mantle, they ventured to
rich ecclesiastics of the neighbourhood.* every citizen was gan to give in to a new policy, which was
bound by oath to stand by the common ever after pursued; that of maintaining cause against all
aggressors, and this ob- the dignity and privileges of the noble ligation was abundantly
fulfilled. In or- class against those attacks which wealth der to swell their numbers, it became
the and liberty encouraged the pleheians to practice to admit all who came to reside make upon
them. within their walls to the rights of burgh- The maritime towns of the south of ership, even
though they were villeins, France entered into separate Maritime appertenant to the soil of a
master, from alliances with foreign states; towns pecu whom they had escaped.t Others, hav- as
Narbonne with Genoa in liarily inde1166, and Montpelier in the next pedent. fact as
incontrovertible; but the passage is only in century. At the death of Raymond VII. a monkish
chronicler, whose authority, were it vignon, Ares, and arseilles affected to even more explicit,
would not weigh much in a Avignon, Ares, and Marseilles affected to matter of law.
Beaumanoir, however, sixty years set up republican governments; but they afterward, lays it
down, that no one can erect a were soon brought into subjection.t The commune without the
king's consent, c. 50, p. 268. independent character of maritime towns And this was an
unquestionable maxim in the four- was not peculiar to those of the southern teenth century.-
Ordonnances, t. xi., p. 29. i In the charter of Philip Augustus to the town provinces. Edward II.
and Edward III. of Roye in Picardy, we read: If any stranger, negotiated, and entered into
alliances whether noble or villein, commits a wrong against with the towns of Flanders, to
which the town, the mayor shall summon him to answer neither their count, nor the King of for
it; and, if he does not obey the summons, the France were parties. Even so late as the mayor
and inhabitants may go and destroy his parties.t Even so late as the house, in which we (the
king) will lend them our reign of Louis XI., the Duke of Burgundy assistance, if the house be
too strong for the bur- did not hesitate to address the citizens of gesses to pull down: except the
case of one of our Rouen, in consequence of the capture of vassals, whose house shall not be
destroyed; but some ships, as if they had formed an inde he shall not be allowed to enter the
town, till he has made amends at the discretion of the mayor pendent state.0 - This evidently
arose out and jurats.-Ordonnances des Rois, t. xi., p. 228. of the ancient customs of private
warThis summary process could only, as I conceive, fare, which, long after they were rebe
employed, if the house was situated within the pressed by a s jurisdiction of the commune.See
ha rte pressed by a stricter police at home, conCrespy, id., p. 253. In other cases, the
application timed with lawless violence on the ocean, for redress was to be made in the first
instance to and gave a character of piracy to the the lord of the territory wherein the delinquent
re- commercial enterprise of the nfiddle ages sided. But, upon his failing to enforce
satisfaction, the mayor and jurats might satisfy themselves; li- num et unum diem in aliqua
villa privilegiata man. ceat lustitiam hr,--rere, prout poternt; that is, serit, ita quod in eorum
communem gyldam tan might pull down his house, provided they could. quam civis receptus
fuerit, eo ipso X villenagio libMably positively maintains the communes to have erabitur.. —
The cities of Lat had the right of levying war, i. iii., c. 7. And Bruguédoc had the same privilege. —Vaissette, t. iii. Quigny seems to coincide with him. —Ordonnances, p. 528; 530. And the editor of the Ordonnances prèface, p. 46. See also Hist. de Languedoc, t. 528; 530. And the editor of the Ordonnances prèface, p. 46. See also Hist. de Languedoc, t. 3. viii.

One of the most remarkable privileges of char- than a year and a day. —Pfeffel, t. i., p. 294. Ered towns was that of conferring freedom on run.* Martenne, Thesaur. Anecd., t. i., p. 1515. way serfs, if they were not reclaimed by their f

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120 EUROPE DURING"THE MIDDLE AGES. [cdAP.. Notwithstanding the forces which in to be devised more adequate to the enm opposite directions assailed the feuda
gency, though less suitable to the feuda Military system, from the enhancement spirit. By the feudal law, the fief was, service of royal prerogative, and the in strictness, forfeited by neglect of at. feudal elevation of the chartered towns, tendance upon the lord's expedition. A tenants commu- its resistance would have been milder usage introduced a fine, which ted fbr much longer but for an intrinsic however, was generally rather heavy m"oney. decay. No political institution and assessed at discretion. An instance can endure, which does not rivet itself to of this kind has been noticed in an ear the hearts of men by ancient prejudice lier part of the present chapter, from the or acknowledged interest. The feudal muster-roll of Philip the Bold's expedi
compact had originally much of this tion against the Count de Foix. The character. Its princ;

* Accordiny, one of the in proportion to the keenness of their most important provisions contained in emnity towards others. It was not the the Magna Charta of John, secures the object of a baron to disgust and empover- assessment of escuage in parliament. ish his vassalors by enhancing the profits This is not renewed in the character of of seigniory; for there was no rent of Henry Ill., but the practice during his such price as blood, nor any labour so reign was conformable to its spirit. serviceable as that of the sword. The feudal military tenures had super

But the nature of feudal obligation seded that earlier system of public dews far better adapted to the partial fence, which called upon every man, and quarrels of neighbouring lords than to especially upon every landholder, to pro-. the wars of kingdoms. Customs, found-tect his country. t The relations of a vased upon the poverty of the smaller gentry, had limited their martial duties to a broke up, at the expiration of their limited term of period never exceeding forty days, and service, in consequence of disagreement with the diminished according to the subdivisions sovereign. Thus, at the siege of Avignon in 1226 Theobald, count of Champagne, retired with hi. of the fief. They could undertake an ex- troops, that he might not promote the king's de pedition, but not a campaign; they could signs upon Languedoc. At that of Angers in 1230 burn an open town, but had seldom leis- nearly the same thing occurred.-M. Paris, p. 308 ure to besiege a fortress. Hence, when * Madox, Hist. of Exchequer, c. 16, conceives the kings of France and England were that escuage may have been levied by Henry I.; the earliest mention of it, however, in a record, is engaged in wars, which,
on our side at under Henry II. in 1159.—Lyttleton’s Hist. of least, might be termed national, the inefficiency of the feudal militia became evi-

t. Every citizen, however extensive may be his dent. It was not easy to employ the privileges, is naturally bound
to repel invasion. A common rising of the people in arms, though not military tenants of
England upon the always the most convenient mode of resistance frontiers of Normandy and
the Isle of is one to which all governments have a right to re France, within the limits of their
term of sort. Volumus, says Charles the Bald, ut cujus service. When, under Henry II. and
cunque nostrum homo, in cujuscunque regno sit, Rvichard I., the scene of war was fre-
cum seniore suo in hostem, vel alis suis utilitati Richard I., the scene of war was fre-
bus pergat: nisi talis regni invasio, quam Lantweri quinctly transferred to the Garonne or the dicunt (quod
absit), acciderit, ut omnis populus illi Charente, this was still more impractica-
tis regniad eam repellendam communiter pergat.ble. The first remedy to which sover-
eigns had recourse, was to keep their mention of the Landwehr, or
insurrectional militia, eigns had recourse to was so signally called forth in the present age, will
vassals in service after the expiration of strike the reader. The obligation of bearing arms their
forty days, at a stipulated rate of in defensive war was peculiarly incumbent on the pay.* But
this was frequently neither freeholder, or alodialist. It made part of the trim convenient to the
tenant, anxious to re- oda r3cessitas, in England, erroneously confound turn back to his
household, nor to the ed bysome writers with a feudal military tenure But when these latter
tenures became nearly unifying, who could not readily defray the versal, the original principles
of public defence charges of an army. Something was was almost obliterated; and I know not
how fat I alodial proprietors, where they existed, were called * Du Cange, et Carpel tier, voc.
Hostis. upon for servr e. Kings did not, however, alwate t There ate several is an. z where
armies dispense witL such aid as the lower people coat

Page 121 PART II.] FEUDAL SYSTEM. 121 sal came in place of those of a subject Harold
II. is i. so said to have had Danish ndi a citizen. This was the revolution soldiers in pay. But the
most eminent of the ninth century. In the welfth and example in that age of a mercenary army.
thirteenth, another innovation rather is that by whose assistance William more gradually
prevailed, and marks the achieved the conquest of England. His third period in the military
history of torians concur in representing this force Europe Mercenary troops were substi-
to have consisted of sixty thousand men. Employmen, tuted for the feudal militia. He afterward
hired soldiers from variof mercenary Undoubtedly there could never ons regions to resist an
invasion from troops. have been a time when valour Norway. William Rufus pursued the was
not to be purchased with money; nor same course. Hired troops did not, how. could any
employment of surplus wealth ever, in general form a considerable porbe more natural either to
the ambitious tion of armies, till the wars of Henry II. or the weak; but we cannot expect to and
Philip Augustus. Each of these find numerous testimonies of facts of monarchs took into pay
large bodies of this description.* In public national his- mercenaries, chiefly, as we may infer-
tory, I am aware of no instance of what from their appellation of Brabangons, en may be called
a regular army (unless we listed from the Netherlands. These were consider the Antrustions of
the Merovin- always disbanded on cessation of hostiligian kings as such), more ancient than
ties: and unfit for any habits but of idle the body-guards, or huscarles, of Canute ness and
license, oppressed the peasant. the Great. These select troops amount-
ry and ravaged the
country without coned to six thousand men, on whom he trol. But their soldier-like principles
of probably relied to ensure the subjection indiscriminate obedience, still more than of
England. A code of martial law, com-
their courage and field-discipline, renderpiled for their
regulation, is extant in sub-
ed them dear to kings, who dreaded the stance; and they are
reported to have dis- free spirit of a feudal army. It was by played a military spirit of mutual union, such a foreign force that John saw him of which their master stood in awe. self on the point of abrogating the Great Charter, and reduced his barons to the rapply. Louis the Fat called out the militia of towns necessity of tendering his kingdom to a and parishes under their priests, who marched at prince of France.* heir head, though they did not actually command It now became manifest, that the prob them in battle. In the charters of incorporation abilities of war inclined to the party which towns received, the number of troops required the field with selected was usually expressed. These formed the infantry who could take the field with selected of the French amies, perhaps more numerous than and experienced soldiers. The command formidable to an enemy. In the war of the same of money was the command of armed prince with the Emperor Henry V., all the popula- hirelings, more sure and steady in battle, tion of the frontier provinces was called out; forh shame, tha the militia of the counties of Rheims and Chalons as we must confess with shame, than is said to have amounted to sixty thousand men. the patriot citizen. Though the nobility Philip IV. summoned one foot-soldier for every still composed in a great degree the twenty hearths to take the field after the battle of strength of an army, yet they served in Courtrai.- (Daniel, Hist. de la Milice Francaise. Velly, t. iii., p. 62; t. vii., p. 287.) Commissions of array, either to call out the whole population, or, as not in their original statutory form, they proceed was more common, to select the most serviceable from the pen of Sweno, the earliest Danish history forced impressment, occur in English records rian, who lived under Waldemar I., less than a from the reign of Edward I.-(Stuart's View of So- century and a half after Canute. I apply the word ciety, p. 400.) And there are even several writs huscarle, familiar in Anglo-Saxon documents, to directed to the bishops, enjoining them to cause all these military retainers, on the authority of Lange ecclesiastical persons to be arrayed and armed on bek in another place, t. ii., p. 454. The object of account of an expected invasion.-Rymer, t. vi., p. Canute's institutions was to produce a uniformity 726 (46 E. III.); t. vii., p. 1.62 (1 R. II.); and t. of discipline and conduct among his soldiers, and thus to separate them more decidedly from the po * The preface to the eleventh volume of Recueil ple. They were distinguished by their dress and des Historiens, p. 232, notices the word solidarii, golden ornaments. Their manners towards each for hired soldiers, as early as 1030. It was proba- other were regulated; quarrels and abusive words bly unusual at that time; though in Roger Hove- subjected to a penalty. All disputes, even respect den, Ordericus Vitalis, and other w -iters of the ing lands, were settled among, themselves at heih twelfth century, it occurs not very frequently. generalparliament. A singularstory istold,which We may perhaps conjecture the abbots, as both the if false, may still illustrate the traditionary charac richest and most defenceless, to have been the first ter of these guards: that Canute having killed one who availed themselves of mercenary valour. of their body in a fit of anger, it was debated wheth t For these facts, of which I remember no men- er the king should incur the legal penalty of death in military retainers, I am indebted to the Danish and this was only compromise" by his kneeling e} collection of Langebek, Scriptores Rerum Danica- a cushion before the assembly, and await in th' rum Medii Evi. Though the Leges Castrenses permission to rise, t. iii., p. 1foP Canuti Magni, published by him, t iii., p. 1, are * Matt. Paris
by substituting what was inevitable ties, however, in this war employed merin those expeditions, a voluntary stipen- cenary troops. Philip had 15,000 Italdiary service for one of absolute obliga- ian crossbowmen at Crecy. It had for tion.* It is the opinion of Daniel, that some time before become the trade of inl the thirteenth century all feudal ten- soldiers of fortune, to enlist under leadants received pay, even during their pre- ers of the same description as theirscribed term of service. This does not selves in companies of adventure, pasappear consonant to the law of fiefs; yet sing from one service to another, uncontheir poverty may often have rendered cerned as to the ctuse in which they it impossible to defray the cost of equip- were retained. These military adventmen on distant expeditions. A large turners played a more remarkable part proportion of: the expense must in all in Italy than in France, though not a litcases have fallen upon the lord; and tle troublesome to the latter country. hence that perpetually increasing taxa- The feudal tenures had at least furnishtion, the effects whereof we have lately ed a royal native militia, whose duties, been investigating. though much limited in the extent, were A feudal army, however, composed of defined by usage, and enforced by princi. all tenants in chief and their vassals, still ple. They gave place in an evil hour for presented a formidable array. It is very the people, and eventually for sovereigns, long before the paradox is generally ad- to contracts with mutinous hirelings, fremitted, that numbers do not necessarily quently strangers, whose valour in the contribute to the intrinsic efficiency of day of battle inadequately redeemed their armies. Philip IV. assembled a great bad faith and vexatious rapacity. France, force, by publishing the arriere-ban, or in her calamitous period under Charles feudal surnmons, for his unhappy expe- VI. and Charles VII., experienced the dition against the Flemings. A small full effects of military licentiousness. and more disciplined body of troops Al Irme expulsion of the English, robbery would not, probably, have met with the and disorder were substituted for the discomfiture of Courtray. Edward I, more specious plundering of Establishand Edward II. frequently called upon war. Perhaps few measures ment.of a regular force those who owed military service, in their have ever been more popular, by Charles invasions of Scotland. But inthe French as few certainly have been vII. wars of Edward III., the whole, I think, more politic, than the establishment ol of his army served for pay, and was rais- regular companies of troops by an ordi. ed by contract with men of rank and in- nance of Charles VII., in 1444. These fluence, who received wages for every may justly pass for the first example of soldier according to his station and the a standing army in Europe; though some arms he bore. The rate of pay was so Italian princes had retained troops conremarkably high, that unless we Imagine stantly in their pay, but prospectively to a vast profit to have been intended for hostilities. which were seldom long interthe contractors, the private lancers and mitted. Fifteen companies were comeven archers must have been chiefly posed, each of a hundred men at arms, taken from the middling classes, the smaller gentry, or rich yeomanry, of * Many proofs of this may be adduced from Ry mrner's Collection. The following is from Brady's * Joinville, in several passages, intimates that History of England, vol. ii., Appendix, p. 86. The most of the knights serving in St. Louis's crusade wages allowed by contract, in 1346, were for an received pay, either from their superior lord, if he earl, 6s. 8d. per day; for barons and bannerets, 4s.; were on the expedition, or from some other, into for knights, 2s.; for squires, is.; for archers and whose service they entered for the time. He set hobelers (light cavalry), 6d.; for archers on foot, out himself with ten knights, whom he afterward 3d.; for Welshmen, 2d. These sums, multiplied found it difficult enough to maintain.-Collection by about 24, to bring them on a level with the des MMwoires, t. i., p. 49, and t. ii., p. 53. present value of money, will show the pay to have t Hist. de la Milice Franqaise, p. 84. been extremely high. The cavalry, of course, furThe use of mercenary troops prevailed much in hished themselves with horses and equipments, as Germany during the thirteenth century.-Schmidt, well as arms, which were very expensive.-See
t. iv., p. 89. In Italy, it was also very common; too Chap. I., p. 52 of this work. though its
general adoption is to be referred to the t The estates at Orleans in 1439 had advised
somencement of the succeeding age. this meaw ure, as is recited in the preamble of;ta t
31 a

Page 123 VER'I tL. PFEULAL SYSTEM or lancers; and, in the language of that they made
for civil irritbry, especially il age, the whole body was one thousand that Great Charter, the.
basement, at five hundred lances. But each lancer least, if not the foundation, of our free
three archers, a coutiller, or soldier constitution, have met with a kindred armed with a knife,
and a page or valet sympathy in the bosoms of Englishmen; attached to him, all serving on
horse- while, from an opposite feeling, the back; so that the fifteen companies French have
been shocked at that arisamounted to nine thousand cavalry.* tocratic independence, which
cramped From these small beginnings, as they the prerogatives, and obscured the lustre, must
appear in modern times, arose the of their crown. Yet it is precisely to regular army of France,
which every suc- this feudal policy that France is indebt ceeding king was solicitous to
augment. i ed for that which is ever dearest to her The ban was sometimes convoked, that
children, their national splendour and is, the possessors of fiefs were called power. That
kingdom would have been upon for military service in subsequent irretrievably dismembered
in the tenth ages;; but with more of ostentation than century, if the laws of feudal dependance.
real efficiency. had not preserved its integrity. Empires The feudal compact, thus deprived of
of unwieldy bulk, like that of CharleDecay of feu- its original efficacy, soon lost magne, have
several times been dissolv dlal principles. the respect and attachment ed by the usurpation of
provincial gov which had attended it. Homage and in- emors, as is recorded both in ancient
vestiture became unmeaning ceremonies; history and in that of the Mahometan the incidents of
relief and aid were felt dynasties in the East. What question as burdensome exactions. And
indeed can there be, that the powerful dukes off the rapacity with which these were lev-
Guienne or counts. of Toulouse would, especially by our Norman sovereigns have thrown
off all connexion with theand their barons, was of itself sufficient crown of France. when
usurped by one to extinguish all the generous feelings of their equals. if the slight dependance
of vassalage. Thus galled, as it were, of vassalage had not been substituted for by the armour
which he was compelled legitimate subjection to a sovereign. to wear, but not to use, the
military ten- It is the previous state of society ant of England looked no longer with under the
grandchildren of Charlemagne contempt upon the owner of land in soc- which we must always
keep in mined, iP cage, who held his estate with almost we would appreciate the effects of tho
the immunities of an allodial proprietor. feudal system upon the welfare of manr But the profits
which the crown reaped kind. The institutions of -the eleventh, from wardships, and perhaps
the preju- century must be compared with those ot 8dices of lawyers, prevented the abolition
the ninth, not with the advanced civilizaof military tenures, till the restoration of tion of
modem times. If the view that Charles II. In France, the fiefs of no- I have taken of those dark
ages is corblemen were very unjustly exempted rect, the state of anarchy, which we usufrom all
territorial taxation; though the ally term feudal, was the natural result tailles of later times had,
strictly speak- of a vast and barbarous empire feebly ad ing, only superseded the aids to which
ministered, and the cause, rather than they had been always liable. This dis- effect, of the
general establishment of tinction, it is well known, was not an- feudal tenures. These, by
preserving the nihilated till that event which anrihilated mutual relations of the whole, kept
alive all distinctions, the French revolution. the feeling of a common country and It is
remarkable, that, although the common duties; and settled, after the feudal sytem established in
England upon lapse of ages, into the free constitution the conquest broke in very much upon of England, the firm monarchy of France. our ancient Saxon liberties; though it and the federal union of Germany. was attended with harsher servitudes The utility of any form of polity may than in any other country, particularly be estimated, by its effect upon General es those two intolerable burdens, wardship national greatness and security, timate of and marriage; yet it has in general been upon civil liberty and private the advanl tages and treated with more favour by English than rights, upon the tranquillity and evils result French writers. The hardiness with order of society, upon the in- ing from the which the ancient barons resisted their crease and diffusion of wealth, feudal syssonereign, and the noble struggles which or upon the general tone of moral sentiment and energy. The feu* Daniel, Hist. de la Milice FranCaise, p. 266. dal constitution was certainly, as has Fillaret, Hist. de France, t. xv., p. 394. been observed already, little adapted for

Page 124;trROPE DUtRING TrH MIDDLE AGE3. CHAFl. I, the defr.nce of a mighty kingdom, far less ble with those of industry, not melely for schemes of conquest. But as it pre-
by the immediate works of destruction vailed alike in several adjacent countries, which render its efforts unavailing, but none had any thing to fear from the mil- through that contempt of peaceful occuitary superiority of its neighbours. It pations which they produce, the feudal was this inefficiency of the feudal militia, systeml must have been intrinsically ad perhaps, that saved Europe during the verse to the accumulation of wealth, and middle ages from the danger of universal the improvement of those arts, which monarchy. In times when princes had mitigate the evils or abridge the labours little notion of confederacies for mutual of mankind. protection, it is hard to say what might But as the school of moral discipline, not have been the successes of an Otho the feudal institutions were perhaps most the Great, a Frederick Barbarossa, or a to be valued. Society had sunk, fbi sevPhilip Augustus, if they could have wield- eral centuries after the dissolution of the ed the whole force of their subjects Roman empire, into a condition of utter whenever their ambition required. If an depravity; where, if any vices could be empire equally extensive with that of selected as more eminently characteris. Charlemagne, and supported by military tic than others, they were falsehood despotism, had been formed about the treachery, and ingratitude. In slowly twelfth or thirteenth centuries, the seeds purging off the lees of this extreme corof commerce and liberty, just then begin- ruption, the feudal spirit exerted its amening to shoot, would have perished: and liorating influence. Violation of faith Europe, reduced to a barbarous servi- stood first in the catalogue of crimes, tude, might have fallen before the free most repugnant to the very essence of X. barbarians of Tartary. feudal tenure, most severely and prompt If we look at the feudal polity as a ly avenged, most branded by general inl sleemne of civil freedom, it bears a noble famy. The feudal law-books breathe countenance. To the feudal law it is throughout a spirit of honourable obligaowing, that the very names of right and tion. The feudal course of jurisdiction privilege were not swept away, as in promoted, what trial by peers is pecuAsia, by the desolating hand of power. larily calculated to promote, a keener The tyranny which, on every favourable feeling and reader perception of moral moment, was breaking through all bar- as well as of leading distinctions. And riers, would have rioted without control, as the judgment and sympathy of manif, when the people were poor and dis- kind are seldom mistaken in these great united, the nobility had not been brave points of veracity and justice, except and free. So far as the sphere of feudal- through the temporary success of crimes, ity extended, it diffused the spirit of lib- or the want of a definite standard of right, erty, and the notions of private right. they gradually recovered themselves, Every one, I think, will acknowledge when law precluded the one and sup this, who considers the limitations of the
plied the other. In the reciprocal services of vassalage, so cautiously mark- vices of lord and vassal, there was ample ed in those law-books which are the scope for every magnanimous and disinrecords of customs, the reciprocity of ob- terested energy. The heart of man, ligation between the lord and his tenant, when placed in circumstances which the consent required in every measure of have a tendency to excite them, will sel a legislative or a general nature, the se- dom be deficient in such sentiments. No curity, above all, which every vassal occasions could be more favourable than found in the administration of justice by the protection of a faithful supporter, ol, his peers, and even (we may in this sense the defence of a beneficent suzerain, say) in the trial by combat. The bulk of against such powerful aggression, as left the people, it is true, were degraded by little prospect except of sharing in his servitude, but this had no connexion with ruin. the feudal tenures. From these feelings, engendered by the The peace and good order of society feudal relation, has sprung up the peculiar were not promoted by this system. sentiment of personal reverence and atThough private wars did not originate in tachment towards a sovereign which we the feudal customs, it is impossible to denominate loyalty; alike distinguishadoubt that they were perpetuated by so ble from the stupid devotion of eastern convenient an institution, which indeed slaves, and from the abstract resr:ect with owed its universal establishment to no which free citizens regard their chief:)ther cause. And as Iredominant hab- magistrate. Men who had been used to* of warfare are totally irreconcila- swear fealty, to profess sujektion, to foa

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ITALY. 125 low, at home and i the fieid, a feudal su- eral or even subservient to more enlarperior and his family, easily transferred ged principles, it is still indispensable te the same allegiance to the monarch. It the tranquillity and permanence of every was a very powerful feeling, which could monarchy. In a moral view, loyalty has make the bravest men put up with slights scarcely perhaps less tendency to refine and ill treatment at the hands of their and elevate the heart than patriotism it. sovereign; or call forth all the energies self; and holds a middle place in tht of disinterested exertion for one whom scale of human motives, as they ascend they never saw, and in whose character from the grosser inducements of self-inthere was nothing to esteem. In ages terest, to the furtherance of generval hap. when the rights of the community were piness and conformity to the purposes oi unfelt, this sentiment was one great pre- infinite Wisdom. scvvative of society; and, though collatCHAPTER III. I HE H1STORY OF ITALY, FROM THE EXTINCTION OF THE CARLOVINGIAN EM PERORS TO THE INVASION OF NAPLES BY CHARLES VIII. PART I. among a few powerful vassals, hereditary tate of Italy after the death of Charles the Fat.- governors of provinces. The principal Coronation of Otho the Great.-State of Rome. of these were the dukes of Spoleto and -Conrad II.-Union of the Kingdom of Italy with the Empire.-Establishment of the Nor- skeleton devoid of Juices; and besides its intolera mans in Naples and Sicily.-Roger Guiscard.- ble aridity, it labours under that confusion which a Rise of the Lombard Cities.-They gradually merely chronological arrangement of concurrelt become more independent of the Empire.-Their and independent events must always produce. 2. Internal Wars. - Frederick Barbarossa. —De- The dissertations on Italian Antiquities, by the stuction of Milan.-Lombard League.-Battle same writer, may be considered either as one wo of Legnano.-Peace of Constance.-Temporal two works. In Latin, they form six volumes in Principality of the Popes.-Guelf and Ghibelin folio, enriched with a great number of original doc Factions.-Otho IV.-Frederick II. —Arrange- uments. In Italian, they are freely translated by ment of the Italian Republics. —Second Lombard Muratori himself, abridged, no doubt, and without War.-Extinction of the House of Swabia.- most of the original instruments, but well furnishCauses of the Success of Lombard Republics. — ed with quotations, and abundantly
sufficient for Their prosperity—and Forms of Government.—most purposes. They form three volumes in quar. Contentions between the Nobility and People. to. I have in general quoted only the number of — Civil Wars.—Story of Giovanni di Vicenza.* the dissertation, on account of the variance between the Latin and Italian works: in cases where AT the death of Charles the Fat in 888, the page is referred to, I have indicated, by the AT the death of Charles the Fat in 888 title, which of the two I intend to vouch. 3. S' StateofItaly that part of Italy which ac- Marc, a learned and laborious Frenchman, has at the end of acknowledged the supremacy of written a chronological abridgment of Italian his the ninth the western empire was divi- tory, somewhat in the manner of H6nault, but sc century, ded like France and Germany strangely divided by several parallel columns in ev ery page, that I could hardly name a book more inconvenient to the reader. His knowledge, like * The authorities upon which this chapter is Muratori's, lay a good deal in points of minute in founded, and which do not always appear at the quiry; and he is chiefly to be valued in ecclesiastical root of the page, are chiefly the following. 1. Mu-
Pope John XII. the imperial dignity her native chiefs. One of these, Beren- which had been suspended for nearly fo - ger, originally Marquis of Friuli, or the ty years. March of Treviso, reigned for thirty-six Every ancient prejudice, every recolyears, but with continually disputed pre- lection, whether of Augustus or of Chlar tensions; and, after his death, the calam- lemagne, had led the Italians to annex ities of Italy were sometimes aggravated the notion of sovereignty to the name by tyranny, and sometimes by intestine of Roman emperor; nor were Otho, or his two immediate descendants, by any ion of M. Sismondi in this respect more strongly means inclined to waive these supposed, han by saying that his work has almost superseded prerogatives, which they were well able, he annals of Muratori; 1 mean from the twelfth prerogatives, which they were well able century, before which period his labour hardly be- to enforce. Most of the Lombard princes gins. Though doubtless not more accurate than acquiesced without apparent repugnance Muratori, he has consulted a much more extensive in the new German government, which List of authors; and, considered as a register of was conducted by Otho the Great with facts alone, his history is incompaorially more use- was co to te Great with ful. These are combined in so skilful a manner, much prudence and vigour, and occasional as to diminish, in a great degree, that inevitable ally with severity. The citizens of Loinconfusion which arises from frequency of transi- bardy were still better satisfied with a tion and want of general unity. It is much to be change, that ensured a more tranquil and regretted, that from too redundant details of unne g q cessary circumstances, and sometimes, if I may regular administration than they had extake the liberty of saving so, from unnecessary re- perienced under the preceding kings. flections, M. Sismondi has run into a prolixity which But in one, and that the chief of Italian will probably intimidate the languid students of our cities very different sentiments were age. It is the more to be regretted, because the prevalent. e find, indeed, a con- I History of Italian Republics is calculated to pro- prevalent. e find, ndeed, a con- Interna - duce a good far more important than storig the siderable obscurity spread over the state of memory with historical facts, that of communica- internal history of Rome, during nome ting to the reader's bosom some sparks of the dig- the long period from the recovery of Italy nilied philosophy, the love for truth aid virtue, by Belisarius to the end of the eleventh which live along its eloquent pages. 6. To MMuratori's collection of originalwriters, the Scriptores century. The popes appear to have poserum Italicarum, in twenty-four volumes in folio, sessed some measure of temporal power, I have paid considerable attention; perhaps there even while the city was professedly gov no volume of it which I have not more or less erned by the exarchs of Ravenna, in the consulted. But, after the annals of the same wri- name of the eastern empire. This power ter, and the work of M. Sismondi, I have not thought myself bound to repeat a laborious search became more extensive after her separainto all the authorities upon which those writers tion from Constantinople. It was, howdepend. The utility, for the most part, of perusing ever, subordinate to the undeniable sovereign and contemporary authors, consists less eignty of the new imperial family, who in ascertaining mere facts, than in acquiring that were sm insight into the spirit and temper of their times, pposed to enter upon all the ights -hich it is utterly impracticable for ally compiler of their predecessors. There was alto impart. It would be impossible for me to dis- ways an imperial officer, or prefect, in tiiguish what information I have derived from that city, to render criminal justice; an the latter, as the substratum of the following ular election of a pope, a circumstanc6 chapter.. by no means unusual, the emperors held * Giannone, Istoria Civile di Napoli, 1. via't nondi, list. des Rdu liqueis ItalianNeS! * Muratori, A. D. 951. Denina, Rivoluzioni 24 ii.1.i.
PA.T! IALY 125 themselves entitled to interpose. But at the death of Otho III.
without chil spirit and even the institutions of the dren, in 1002, the compact be-Henry II.
Romans were republican. Amid the tween Italy and the emperors andlardoin darkness of the
tenth century, which no of the house of Saxony was determined contemporary historian
dissipates, we Her engagement of fidelity was certainly faintly distinguish the awful names of
not applicable to every sovereign whom senate, consuls, and tribunes, the domes- the princes
of Germany might raise t( tic magistracy of Rome. These shadows their throne. Accordingly
Ardoin, mar of past glory strike us at first with sur- quis of Ivrea, was elected king of Italy
prise; yet there is no improbability in But a German party existed among the the supposition,
that a city so renowned Lombard princes and bishops, to which and populous, and so happily
sheltered his insolent demeanour soon gave a prefrom the usurpation of the Lombards, text for
inviting Henry II., the new king might have preserved, or might afterward of Germany,
collaterally related to their establish, a kind of municipal govern- late sovereign. Ardoin was
deserted by ment, which it would be natural o dig- most of the Italians, but retained his fornify
with those august titles of antiquity.* mer subjects in Piedmont, and disputed During that
anarchy which ensued upon the crown for many years with Henry, the fall of the Carolvingian
dynasty, the who passed very little time in Italy. DuRomans acquired an independence which
ring this period there was hardly any they did not deserve. The city became recognised
governmentj and the Loma prey to the most terrible disorders; the bards became more and
more accustom papal chair was sought for at best by ed, through necessity, to protect
thembribery, or controlling influence, often by selves, and to provide for their own
interviolence and assassination; it was filled nal police. Meanwhile the German naby such men
as naturally rise by such tion had become odious to the Italians. means, whose sway was
precarious, and The rude soldiery, insolent and addicted generally ended either in their murder
or to intoxication, were engaged in frequent degradation. For many years the su- disputes with
the citizens, wherein the preme pontiffs were forced upon the latter, as is usual in similar cases,
were church by two women of high rank, but exposed first to the summary vengeance
infamous reputation, Theodora and her of the troops, and afterward to pena) daughter Marozia.
The kings of Italy, chastisement for sedition.* In one of whose election in a diet of Lombard
these tumults, at the entry of Henry II, princes and bishops at Roncaglia was not in 1004, the
city of Pavia was burnt to conceived to convey any pretension to the the ground, which
inspired its inhabitants sovereignty of Rome, could never obtain with a constant animosity
against that. any decided influence in papal elections, emperor. Upon his death in 1024, the
which were the object of struggling fac- Italians were disposed to break once lions among the
resident nobility. In more their connexion with Germany. this temper of the Romans, they were
ill which had elected as sovereign Conrad, disposed to resume habits of obedience duke of
Franconia. They offered their to a foreign sovereign. The next year crown to Robert, king of
France, and to after Otho's coronation [A. D. 972], they William, duke of Guienne; but neither
rebelled, the pope at their head; but were of them was imprudent enough to involve of course
subdued without difficulty. himself in the difficult and faithless polThe same republican spirit
broke out itics of Italy. It may surprise us that no whenever the emperors were absent in
candidate appeared from among her naGermany, especially during the minority tive princes.
But it had been the dexof Otho III., and directed itself against terous policy of the Othos to
weaken the the temporal superiority of the pope. great Italian fiefs, which were still rathei But
when that emperor attained man- considered as. hereditary governmenti hood, he besieged and
took the city, than as absolute patrimonies, by separa. crushing all resistance by measures of
ting districts from their jurisdiction, undei severity; and especially by the execu- inferior
marquises and rural counts.j tion of the consul Crescentius, a leader The bishops were
incapable of becoming of the popular faction, to whose instiga- competitors, and generally attached to the tumultuous license of Rome was principally ascribed. It seems better to follow the common tenour of history, without vouching for the accuracy of its representations. Muratori, A. D. 967, 987, 1015, 1087. Sismondi, t. i., p. 155. * Muratori, A. D. 1027, 1037. t Sismondi, t. i., p. 164, makes a patriot hero of Denina, i. ix., c. 11. Muratori, Anti. Ital qresetnius. But we know so little of the man Dissert 8 Annali d'Italia, A. D. 989.

Page 128  8 ROPE DURING THE MIDDLE AGES. C iA P. L the Garn.aparty. The cities already cities of Lombardy. The first of these opossessed material influence, but were will find a more appropriate place in a disunited by mutual jealousies. [A. D. subsequent chapter, where I shan trace 1024.] Since ancient prejudices, the progress of ecclesiastical power. But Election rfore, precluded a federate league it produced a long and almost incessant Conrad II. of independent principalities and state of disturbance in Italy; and should republics, for which perhaps the actual be mentioned at present as one of the condition of Italy unfitted her, Eribert, main causes which excited in that counarchbishop of Milan, accompanied by try a systematic opposition to the irsome other chief men of Lombaracy, re-perial authority. paired to Constance, and tendered the The southern provinces of Italy, in the crown to Conrad, which he was already beginning of the eleventh cen-Greek prov disposed to claim as a sort of dependance tury, were chiefly subject to inc.,,es of upon Germany. It does not appear that the Greek empire, which had southern either Conrad or his successors were latterly recovered part of its Italy. ever regularly elected to reign over It-losses, and exhibited some ambition and aly;* but whether this ceremony took enterprise, though without any intrinsic place or not, we may certainly date from vigour. They were governed by a lieuthat time the subjection of Italy to the tenant, styled Catapan,* who resided at Germanic body. It became an unques- Bari in Apulia. On the Mediterranean tionable maxim, that the votes of a few coast, three dutchies, or rather republics, German princes conferred a right to the of Naples, Gaeta, and Amalfi, had for sovereignty of a country which had never several ages preserved their connexion been conquered, and which had never for- with the Greek empire, and acknowledgally recognised this superiority. But edged its nominal sovereignty. The it was an equally fundamental rule, that Lombard principalitires of Benevento, the elected king of Germany could not Salerno, and Capua, had much declined assume the title of Roman emperor, until from their ancient splendour. The Greeks his coronation by the pope. The middle were, however, not likely to attempt any appellation of King of the Romans was further conquests: the court of Constantinvent as a sort of approximation to the tinople had relapsed into its usual indoinperial dignity. But it was not till the lence; nor had they much right to boast reign of Maximilian that the actual coro- of successes, rather due to the Saracel nation at Rome was dispersed with, and auxiliaries, whom they hired from Sicily the title of emperor taken immediately No momentous revolution apparently after the election. threatened the south of Italy, and least The period between Conrad of Fran-of all could it be anticipated from what conia and Frederick Barbarossa, or from quarter the storm was about to gather. about the middle of the eleventh to that The followers of Rollo, who rested of the twelfth century, is marked by from plunder and piracy in the Settlement three great events in Italian history; the quiet possession of Normandy, of the Nor struggle between the empire and the pa- became devout professors of the mans at pacy for ecclesiastical investitures, the Christian faith, and particularly Aversa. establishment of the Norman kingdom in addicted to the custom of pilgrimage. Naples, and the formation of distinct and which gratified their curiosity and spirit nearly independent republics among the of adventure. In small bodies, well armed, on account
of the lawless charac* Mratori, A. D. 1026. It is said afterward, p. ter of the countries through
which they 367, that he was a Romanis ad Imperatorem elec-;us. The people of Rome therefore
preserved passed, the Norman pilgrims visited the their nominal right of concurring in the
election of shrines of Italy and even the Holy Land. an emperor. Muratori, in another place, A.
D. Some of these, very early in the eleventh 1040, supposes that IHenry III. was chosen king of
century, were engaged by a Lombard Italy, though he allows that no proof of it exists; prince of
Salerno against the Saracens, and there seems no reason for the supposition. who had invaded
his territory; and t Gunther, the poet of Frederick Barbarossa, exlresses this not inelegantly —
through that superiority of valour, and Romani gloria regni perhaps of corporal strength, which
this Nros penes est; quemcunque sibi Germania regem singular people seem to have
possessPraeficit, hunc dives submlsso vertice Roma 7 Ac.;:pit, et verso Tiberim regit ordine
Rhenus. ed above all other Europeans, they Gunther, Ligurinusap. StruviumCorpus Hist. made
surprising havoc among the eneGerman., p. 266. my.t This exploit led to fresh engageYet it
appears from Otho of Frisingen, an unquestionable authority; that some Italian nobles con- *
Catapanus, from Kard rav, one employed in the Lurred, or at least were present and assisting,
in general administration of affairs. -e ejection of Fre leric himself, l. ii., c. i. t Gianmame, t.
ii, p. 7 [edit. 17531. 1 should na

Page 129 t'ART I.j TALY. ments, and these engagements drew new mere enaiies, but, l as
beatehn and ma,.e adventurer from Normandy; they found- prisoner in this unwise enterprise,
tle, ed the little city of Aversa near Capua, scandal of which nothing but good fo, and were
employed by the Greeks against tune could have lightened. He fell, how the Saracens of Sicily.
But, though per- ever, into the hands of a devrout pe,pe., forming splendid services in this war,
who implored his absolution for the they were ill repaid by their ungrateful crime of defending
themselves; and employers; and being by no means of a whether through gratitude, or an the.
temper to bear with injury, they revenged price of his liberation, invested them themselves by a
sudden invasion of Apu- with their recent conquests in Apulia as lia. This province was
speedily sub- fiefs of the Holy See. This investiture dued, and divided among twelve Norman
was repeated and enlarged, ao,e popes, Conquests counts [A. D. 1042]; but soon af- especially
in their contention A5th Henry of Robert terward Robert Guiscard, one of IV. and Henry V.,
found th\ advantage 9uiscard. twelve brothers, many of whom of using the Normans as faithful
auxiliare were renowned in' these Italian wars, ries. Finally, Innocent II., in 1139, conacquired the
sovereignty; and adding ferred upon Roger the title of King of Calabria to his conquests [A. D.
1057]. Sicily. It is difficult to understand by put an end to the long dominion of the what
pretence these countries could be Eastern emperors in Italy.* He reduced claimed by the see of
Rome in soverthe principalities of Salerno and Bene- eignty, unless by virtue of the pretended
vento, in the latter instance sharing the donation of Constantine, or that of Louis spoil with the
pope, who took the city to the Debonair, which is hardly less suspihismeself, while Robert
retained the terri- cious;* and, least of all, how Innocent tory. His conquests in Greece, which
II. could surrender the liberties of the he invaded with the magnificent design city of Naples,
whether that was considof overthrowing the Eastern empire, ered as an independent republic,
or as a were at least equally splendid, though portion of the Greek empire. But the less durable.
[A. D. 1061.] Roger, his Normans, who had no title but their younger brother, undertook
meanwhile swords, were naturally glad to give an the romantic enterprise, as it appeared,
appearance of legitimacy to their conof conquering the Island of Sicily, with quest; and the
kingdom of Naples, even a small body of Norman volunteers. in the hands of the most
powerful princes But the Saracens were broken into petty in Europe, never ceased to pay a
feudal states, and discouraged by the bad suc- acknowledgment to the chair of St. Peter. cess of
their brethren in Spain and Sar- The revolutions which time brought dinia. After many years of war, Roger forth on the opposite side of Italy were became sole master of Sicily, and took still more interesting. Under the Lom9osterity, united the two Norman sover- subject to the government and bard cities. eignies, and subjugating the free repub- jurisdiction of a count, who was himself -ics of Naples and Amalfi, and the prinrci- subordinate to the duke or marquis of 4ality of Capua [A. D. 1127], established the province. From these counties it a boundary which has hardly been changed was the practice of the first German ems since his time. perors to dismember particular towns or The first successes of these Norman tracts of country, granting them upon a Papal inves- leaders were viewed unfavoura- feudal tenure to rural lords, by many titures of bly by the popes. Leo IX. whom also the same title was assumed, Naples. marched in person against Rob- Thus by degrees the authority of the orient Guiscard with an army of German ginal officers was confined almost to the walls of their own cities; and in many serve, that St. Marc, a more critical writer in ex- cases the bishops obtained a grant of the amination of facts than Giannone, treats this first temporal government, and exercised the adventure of the Normans as unauthenticated. d’Abregé Chronologique, p. 990. functions which had belonged to the count. The final blow was given to the Greek domination over Italy by the capture of Barl, in 1071, Muratori presumes to suppose, that the inter after a siege of four years. It had for some time polated, if not spurious, grants of Louis the Debo been confined to this single city.-Muratori, St. nair, Otho I., and Henry II., to the see of Rome, Marc. were promulgated about the time of the first con t M. Sismondi has excelled himself in descri- cessions to the Normans, in order to give the popes ning the conquest of Amalfi and Naples by Roger a colourable pretext to dispose of the southern Guiscard (t. i., c. 4); warming his imagination provinces of Italy. A. D 1059..with visions of liberty and virtue in those obscure t Muratori, Antiquit. Italia, Dissert. 8. Aminali republics, which no real history slrv;ves to dispel. d’Italia, A. D. 989. Anti hita Estensi, p. 26

1303 EUROPE DURING THE MIDDLE AGES. It is impossible to ascertain the time at emancipation.' This circumstance. In thit which the cities of Lombardy began to state of Lombardy I consider as highly assume a republican form of government, important towards explaining the subser to trace with precision the gradations quent revolution. Notwithstanding sevof their progress. The last historian of oral exceptions, a churchman was Jess Italy asserts, that Otho the First erected likely to be bold and active in command them into municipal communities, and than a soldier; and the sort of election permitted the election of their magis- which was always necessary, and some crates; but of this he produces no evi- times more than nominal on a vacant dence; and Muratori, from whose author- of the see, kept up among the ciitizens a ity it is rash to depart without strong notion that the authority of their bishop reasons, is not only silent about any and chief magistrate emanated in some charters, but discovers no express une- degree from themselves. In many inquivocal testimonies of a popular govern- stances, especially in the church of Milan, im for the whole eleventh century.* the earliest, perhaps, and certainly the The first appearance of the citizens act- most famous of Lombard republics, there ing for themselves, is in a tumult at Mi- occurred a disputed election; two, or Ian, in 991, when the archbishop was ex- even three competitors, claimed the pelled from the city.t But this was an archiepiscopal functions, and were contransitory ebullition, and we must descend pelled, in the absence of the emperors, lower for more specific proofs. It is pos- to obtain the exercise of them by means sible that the disputed succession of Ar- of their own faction among the citizens.t doin and Henry, at the
These were the general causes, which, eleventh age, and the kind of interregnum operating at various times during the which then took:place, gave the inhabi-
eleventh century, seem gradually to have tants an opportunity of choosing magistrates, and of
sharing in public delibera- * The bishops seem to have become counts, tions. A
similar relaxation indeed ofgov- or temporal governors of their sees, about the end of the tenth,
or before the middle of the elev. ple to greater servitude, and established enth century-
In Ara feudal aristocracy. But the feudal te- nulf's History of Milan, written before the close oB
tiures seem not to have produced in Italy the latter age, we have a contemporary evidence. that
systematic and regular subordination And from the perusal of that work I should infer, which
 existed in France during the same that the archbishop was, in the middle of the 11th period; nor
were the mutual duties of century, the chief magistrate of the city. But, at period; nor were the
mutual the same time, it appears highly probable, that an the relation between lord and vassal
so assembly of the citizens, or at least a part of the we well understood or observed. Hence we
citizens, partook in the administration of public af find not only disputes, but actual civil fairs.-
Muratori, Scriptores Iterum Italicarum,. war between the lesser gentry or vavas- iv., p. 16, 22,
23, and particularly the last. In most'war, beteenth lesegetryor cities to the eastward of
the.Tesino, the bishopi sors, and the higher nobility, their imme- lost their temporal authority in
the twelfth centu dite superior. These differences were ry, though the archbishop of Milan
had no smal, adjusted by Conrad the Salic, who pub- prerogratives while that city was governed
as are lished a remarkable edict in 1037, by public. But in Piedmont they continued longer in
the enjoyment of power. Vercelli and even Turin which the feudal' law of Italy was re- were
almost subject to their respective prelates till duced to more certainty.T From this the thirteenth
century. For this reason among disunion among the members of the feu- others, the
Piedmontese cities are hardly to be dal confederacy, it was more easy for the reckoned among
the republics of Lombardy.-De. citizens to render themselves secure nina, Istoria dell'Italia
Occidentale, t. i., p. 191. t Muratori, A. D. 1345. Sometimes the inhab. against its dominion.
The cities, too, of itants of a city refused to acknowledge a bishop Lombardy, were far more
populous and named by the emperor, as happened at Pavia and better defended than those of
France; Asti about 1057.-Arnulf, p. 22. This was, in oth they had learned to stand sieges in the
er words, settingup themselves as republics. Bul the most remarkable instance of this kind
occurred Ungarian invasions of the tenth century, in 1070, when the Milanese absolutely
rejected and had acquired the right of protect- Godfrey, appointed by Henry IV., and after a re
nings themselves by strong fortifications. sistance of several years, obliged the emperor te Those
which had been placed under the fix upon another person. The city had been pre viously
involved in long and violent tumults, which, tempora government of their bishops though
rather belonging to ecclesiastical than civil nad peculiar advantages in struggling for history, as
they arose out of the endeavours made to reform the conduct and enforce the celibacy (> the
clergy, had a considerable tendency to diminish Sismondi, t. i., p. 97, 384. Muratori, Disseit.
the archbishop's authority, and to give a republican 49. character to the inhabitants. These
proceedings are t Muratori, Annali d'Italia. told at great length by St. Marc, t. iii., A. D. 1056t
Ibid. St Marc. 1077. Arnulf and Landul fare the original sourcor

[Page 131] PaR'.,' ITALY. produced. a republican form of govern- V., in 1125, almost all the
cities af Lormmernt in the Italian cities. But this part bardy, and many among those of Ttuscauf
history is very obscure. The archives ny, were accustomed to elect their owri of all cities before
the reign of Frederick magistrates, and to act as independent Barbarossa have perished. For
many communities, in waging war and in doyears there is a great deficiency of con- mestic
government.* temporary Lombard historians, and those The territory subjected originally to of a later age, who endeavoured to search the count or bishop of these Their acquo. into the antiquities of their country, have cities had been reduced, as I sititones of found only some barren and insulated mentioned above, by numerous territory events to record. We perceive, however concessions to the rural nobility. But er, throughout the eleventh century, that the new republics, deeming themselves the cities were continually in warfare entitled to all which their former govwith each other. This, indeed, was ac- erors had once possessed, began to cording to the manners of that age, and attack their nearest neighid)rs, and to no inference can absolutely be drawn recover the sovereignty of al their anfmit as to their internal freedom. But cient territory. They besieged the castl is observable, that their chronicles tles of the rural counts, and successively speak, in recording these transactions, reduced them into subjection. They of the people, and not of their leaders, suppressed some minor communities which is the true republican tone of his- which had been formed, in imitation of tory. Thus, in the Annals of Pisa, we themselves, by little towns belonging read under the years 100U and 1004, of to their district. Sometimes they purvictories gained by the Pisans over the chased feudal superiorities or territorial people of Lucca; in 1606, that the Pisans jurisdictions, and, according to a policy and Genoese conquered Sardinia.* These not unusual with the stronger party, conannals indeed are not by a contemporary verted the rights of property into those writer, nor perhaps of much authority. of government.t Hence, at the middle But we have an original account of a of the twelfth century, we are assured war that broke out in 1057, between Pa- by a contemporary writer, that hardly via and Milan, in which the citizens are any nobleman could be found except the said to have raised armies, made allian- Marquis of Montferrat, who had not subces, hired foreign troops, and in every mitted to some city.T We may except respect acted like independent states.t also, I should presume, the families of There was, in fact, no power left in the Este and Malaspina, as well as that of er;2tie to control them. The two Hen- Savoy. MoratoriproducesmanycharterstvTe LV and V. were so much embar- of mutual compact between the nobles ra,:'.d during the quarrel concerning in- and.the neighbouring cities; whereof velvitures, and the continual troubles of one invariable article is, that the former Gel- iany, that they were less likely to should reside within the walls a certain nne-fere with the rising freedom of the number of months in the year.~ The Italian cities, than to purchase their as- rural nobility, thus deprived of the indeslance by large concessions. Henry pendence which had endeared their cas the said IV. granted a charter to Pisa, in 1081, ties, imbibed a new ambition of directing full of the most important privileges, the municipal government of the cities, promising even not to name any mar- which, during the first period of the requis of Tuscany without the people's publics, was chiefly in the hands of the consent;T and it is possible, that al- superior families. It was the sagacious though the instruments have perished, policy of the Lombards to invite settlers other places might obtain similar ad- by throwing open to them the privileges vantages. However this may be, it is of citizenship, and sometimes they even certain that, before the death of Henry bestowed them by compulsion. Somel Murat., Diss. 45. Arnulfus, the historian of Milan, makes no mention of any temporal counts, * Murat., Annali d'Ital., A. D. 1107. which seems to be a proof that there were none in t I1 dominio utile delle citta e de' villaggi era tal any authority. He speaks always of Mediolanen- volta diviso fra due-o pi padroni, ossia che s'as ses, Papienses, Ravenates, &c. This history was segnassero a ciascuno diversi quartieri, o si divi written about 1085, but relates to the earlier part desero i proventi della gabelle, ovvero che luno of that century. That of Landulfus corroborates signore godesse d'una specie della giurisdizione, this supposition, which indeed is capable of proof e l'altro d'un' altra.-Denina, 1. xii., c. 3. I'h'i as to Milan and several other cities in which the produced a vast intricacy of titles, which w temporal government had been legally vested in course advantageous to those who wantedA'he bishops. text for robbing their neighbours. ~'
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EUROPE DURING THE MIDDLE AGES. The rise times a city, imitating the wisdom of a war of ten years' duration with the ancient Rome, granted these privileges little city of Como; but the surprising to all the inhabitants of another.* Thus perseverance of its inhabitants procured the principal cities, and especially Milan, for them better terms of capitulation, reached, before the middle of the twelfth though they lost their original independence, a degree of population very far ence. The Cremonese treated so harsh, beyond that of the capitals of the great ly the town of Crema, that it revolted kingdoms. Within their strong walls and from them, and put itself under the pro. deep trenches, and in the midst of their tection of Milan. Cities of more equal well-peopled streets, the industrious dwelt forces carried on interminable hostilities secure from the license of armed pilla- by wasting each other's territory, degers and the oppression of feudal tyrants. stroying the harvests, and burning the vilArtisans, whom the military landholders lages. contemned, acquired and deserved the The sovereignty of the empere-rs, right of bearing arms for their own and meanwhile, though not very ef- Sovereignty the public defence.t Their occupations fective, was in theory always of the em became liberal, because they were the admitted. Their name was perors. foundation of their political franchises; used in public acts, and appeared upoil the citizens were classed in companies the coin. When they came into Italy, according to their respective crafts; each they had certain customary supplies of of which had its tribune or standard-bearer provisions called fodrum regale, at the (gonfalonier), at whose command, when expense of the city where they resided; any tumult arose or enemy threatened, during their presence, all inferior magisthey rushed in arms to muster in the tracies were suspended, and the right of market-place. jurisdiction devolved upon them alone But, unhappily, we cannot extend the But such was the jealousy of the Lom. Theirmutual sympathy, which institutions bards, that they built the royal palaces animosities. SO full of liberty create, to the without their gates; a precaution to national conduct of these little republics. which the emperors were compelled to Their love of freedom was alloyed by submit. This was at a very early time that restless spirit, from which a democ- a subject of contention between the inracy is seldom exempt, of tyrannising habitants of Pavia and Conrad II., whose. over weaker neighbours. They played palace, seated in the heart of the city, they over again the tragedy of ancient Greece, had demolished in a sedition, and were with all its circumstances of inveterate unwilling to rebuild in that situation.* hatred, unjust ambition, and atrocious Such was the condition of Italy wheel retaliation, though with less consummate Frederick Barbarossa, dl ke of Frederick actors upon the scene. Among all the Swabia, and nephew of the last Barbarossa. Lombard cities, Milan was the most con- emperor, Conrad III., ascended the throne spicuous, as well for power and popula- of Germany. His accession forms the tion, as for the abuse of those resour- commencement of a new period, the duces by arbitrary and ambitious conduct. ration of which is about one hundred Thus, in 1111, they razed the town of years, and which is terminated by the Lodi to the ground, distributing the in- death of Conrad IV., the last emperor ot habitants among six villages, and sub- the house of Swabia. It is characteriertjecting them to an unrelenting despo- zed, like the former, by three distinguishtism.j1 Thus, in 1118, they commenced ing features in Italian history; the victorious struggle of the Lombard and othOtho Frisingensis ap. Murat. Scr. Rer. Ital., er cities for independence, the final est. vi., p. 708. Ut etiam ad comprimendos vicinos tablishment of a temporal sovereignty materia non careant, inferioris ordinis juvenes, vel over the middle provinces by the popes, quoslibet contemptibilium etiam mechanicarum ar- and the union of the kingdom of Naples tium opifices, quos coeterae gentes ab honestioribus to the dominions
of the house of Swabia. et liberiorius studiis tanquam pestem propellunt, ad militiam cingulum, vel dignitatum gradus assu- In Frederick Barbarossa the Italians mere non de dignantur. Ex quo factum est, ut found a very different sovereign from caeteris orbis civitatibus, divitiiis et potentia pra- the two last emperors, Lothaire and Conemineart. rad III., who had seldom apeared in $ The animosity between Milan and Lodi was of very old standing. It originated, according to Aroulf, in the resistsrance made by the inhabitants of Rerum Italic., t. iv., p. 16. And this is the testi the latter city to an attempt made by Archbishop mony of a writer who did not liv3 beyond 1085 Eribert to force a bishop of his own nomination Seventy years more, either of hostility or servitude upon them. The bloodshed, plunder, and, confla- elapsed, before Lodi was permitted to respire. rations which had ensued, would, he says, fill a * Otho Frisingensis. p. 710. Muratori, A. P,rlume if they were related at length.-Scriptores 1327

Page 133] PART 1.] ITALY. 133 Italy, and with forces quite inadequate to which almost every city of Lombardy to control such insubordinate subjects. willingly or by force, contributed its mi The distinguished valour and ability of litia. It is said to have exceeded a hun this prince rendered a severe and arbi- dred thousand men. The Milanese shut traiy temper, and a haughty conceit of themselves up within their walls; and his imperial rights, more formidable. He perhaps might have defied the imperial believed, or professsed to believe, the forces, if their immense population, which magnificent absurdity, that, as successor gave them confidence in arms, had not 3f Augustus, he inherited the kingdoms exposed them to a different enemy. Miof the world. In the same right he lan was obliged by hunger to capitulate, more powerfully, if not more rationally, upon conditionsr of very severe, if a vanlaid claim to the entire prerogatives of quished people could ever safely rely the Roman emperors over their own sub- upon the convention that testifies their jects; and in this the professors of the submission. civil law, which was now diligently stud-[A. D. 1158.] Frederick, after the suried, lent him their aid with the utmost renderofMilan, held adiet atRon- Diet of servility. To such a disposition the self- caglia, where the effect of his vic- Roncaglia. government of the Lombard cities ap- tories was fatally perceived. The bishops, peared mere rebuellion. Milan, especial- the higher nobility, the lawyers, vied with ly, the most renowned of them all, drew one another in exalting his prerogatives. down upon herself his inveterate re- He defined the regalian rights, as they sentment. HHe found, unfortunately, too were called, in such a manner as to exgood a pretence in her behaviour towards clude the cities and private proprietors Lodi. Two natives of that ruined city from coining money, and from tolls or terthrew themselves at the emperor's feet, ritorial dues, which they had for many imploring him, as the ultimate source of years possessed. These,however, he perjustice, to redress the wrongs of their mitted them to retain for apecuniary stipcountry. It is a striking proof of the ulation. A more important innovation terror inspired by Milan, that the consuls was the appointment of magistrates, with of Lodi disavowed the complaints of their the title of podesta, to administer justice, countrymen, and the inhabitants trembled concurrently with the consuls; but he at the danger of provoking a summary soon proceeded to abolish the latter ofvengeance, against which the imperial fice in many cities, and to throw the arms seemed no protection.* The Mi- whole government into the hands of his lanese, however, abstained from attack- own magistrates. He prohibited the citing the people of Lodi, though they treat- ies from levying war against each other. ed with contempt the emperor's order to It may be presumed., that he showed no leave them at liberty. Frederick,' mean- favour to Milan. The capitulation was while, came into Italy, and held a diet at set at naught in its most express provisRoncaglia, where complaints poured in ions; a podest was sent to supersede the from many quarters against the Milanese. consuls, and part of the territory taken Pavia and Cremona, their ancient enle- away. Whatever might be the risk. of
mies, were impatient to renew hostilities resistance, and the Milanese had experienced the imperial auspices. Brescia, en- ced enough not to undervalue it, they Tortona, and Crema were allies, or rather were determined rather to see their liberer dependants, of Milan. Frederick soon ties at once overthrown, than gradually took occasion to attack the latter confed- destroyed by a faithless tyrant. They eracy. Tortona was compelled to surrender- availed themselves of the absence of his der, and levelled to the ground. But a army to renew the war. Its issue was feudal army was soon dissolved; the more calamitous than that of the last. emperor had much to demand his atten- Almost all Lombardy lay patient under tion at Rome, where he was on ill terms subjection. The small town of Crema, with Adrian IV.; and when the imperial always the faithful ally of Milan, stood a troops were withdrawn from Lombardy, memorable siege against the imperial the Milanese rebuilt Tortona, and expell- army; but the inhabitants were ultimated the citizens of Lodi from their dwell- ly compelled to capitulate for their lives, lings. Frederick assembled a fresh army, and the vindictive Cremonese razed their * See an interesting account of these circum- dwellings to the bound.* But all smaller stances in the; narrative of Otho Morena, a citizen of Lodi.-Script. Rer. Ital., t. vi., p. 966. M. Sis- * The siege of Cremona is told at great length by nondi, who reproaches Morena for partiality to- Otto Morena; it is interesting, not only as a display wards Frede ick in the Milanese war, should have of extraordinary, though unsuccessful, perseverance remented the provocations of Lodi.-Hist. des rance and intrepidity, but as the most detailed ac tJuab1. Ital, t ii.. p. 102. count of the methods used in ti attack and de.

Page 134 134 EUROPE DURING THE MIDDLE AGES. At PA'. ill Capture andl callamities were forgotten, when Those whom private anlimosities had led destruction the great city of Milan, worn to assistance the German conqueror, blushed f Milan. out by famine rather than sub- at the degradation of their country, and dued by force, was reduced to surrender at the share they had taken in it. [A. D at discretion. Lombardy stood in anx- 1167.] A league was secretly Leagueo! ious suspense to know the determination formed, in which Cremona, one Loinbard) of Frederick respecting this ancient me- of the chief cities on the imperi- against tropolis, the seat of the early Christian al side, took a prominent part. Frederick. emperors, and second only to Rome in Those beyond the Adige, hitherto no the hierarchy of the Latin church. A much engaged in the disputes of centra delay of three weeks excited fallacious Lombardy, had already formed a separate hopes; but, at the end of that time, an confederacy, to secure themselves from order was given to the Milanese to evac- encroachments, which appeared the more uate their habitations. The deserted unjust as they had never borne arms streets were instantly occupied by the against the emperor. [A. D. 1164.] Their imperial army; the people of Pavia and first successes corresponded to the jusCremona, of Lodi and-Como, were com- tice of their cause; Frederick was remissioned to revenge themselves on the pulsed from the territory of Verona, a respective quarters of the city assigned fortunate augury for the rest of Lombarto them; and in a few days the pillaged dy. These two clusters of cities, on the.;urches stood alone amid the ruins of east and west of the Adige, now uni what had been Milan. ted themselves into the famous Lombard [A.. D. 1162.] There was now little left League, the terms of which were settled of that freedom to which Lombardy had in a general diet. Their alliance was to aspired: it was gone like a pleasant last twenty years; during which they dream, and she awoke to the fears and pledged themselves to mutual assistance miseries of servitude. Frederick obeyed against any one who should exact more the dictates of his vindictive temper, and from them than they had been used to of the policy usual among statesmen. perform from the time of Henry, to the He abrogated the consular reginlen in first coming of Frederick into Italy; imsome even of the cities which had sup- plying in this the recovery of their electported
him, and established his podestà's magistracies, their rights of war and in their place. This magistrate was al- peace, and those lucrative privileges, ways a stranger, frequently not even an which, under the name of regalian, had Italian; and he came to his office with been wrested from them in the diet of all those prejudices against the people he Roncaglia.* was to govern, which cut off every hope This union of the Lombard cities was *of justice and humanity. The citizens of formed at a very favourable juncture. Lombardy, especially the Milanese, who Frederick had, almost ever since his achad been dispersed in the villages ad- cession, been engaged in open hostility joining their ruined capital, were unable with the see of Rome, and was pursuing to meet the perpetual demands of tribute. the fruitless policy of Henry IV., whe In some parts, it is said, two thirds of the had endeavoured to substitute an antiproduce of their lands, the only wealth pope of his own faction for the legitimate that remained, were extorted from them pontiff. In the prosecution of this scheme by the imperial officers. It was in vain he had besieged Rome with a great army that they prostrated themselves at the which, the citizens resisting longer than feet of Frederick. He gave at the best he expected, fell a prey to the autumnal only vague promises of redress; they pestilence that visits the neighbourhood were in his eyes rebels, his delegates had acted as faithful officers, whom, even if - For the nature and conditions of the Lombard they had gone a little beyond his inten- league, besides the usual authorities, see Muratoris tions, he could not be expected to punish. 48th dissertation. The words, a tempore HenBut there still remained, at the heart rici Regis usque ad introitum imperatoris Frederi ci, leave it ambiguous which of the Henries was in, of Lombardy, the strong principle of na- tended. Muratori thinks it was Henry IV., be. ional liberty, imperishable among the cause the cities then began to be independent. It perishable armies of her patriots, incon- seems, however, natural, when a king is mentionsaniable in the conflagration of her cities. * ed without any numerical d?signation, to interpret it of the last bearing that name; as we say King William for William the Third. And certainly fence of fortified places, before the introduction of the liberties of Lombardy were more perfect under artillery.-Scrip. Rer. Ital., t. vi., p. 1032-1052. Henry V. than his father; besides which, the one * Quae neque Dardanils campis potuere perire, reign might still be remembered, and the other Nec cum capta capi, nec cum combusta cremari. rested in tradition. The question, ho vever, is o/.Ennius, little momrnf'
construction, Alessandria was, even in confirmed, and the cities were permitted that age, deemed rude in appearance, it to renew it at their own discretion; but rapidly became a thriving and populous they were to take every ten years an city.* The intrinsic energy and resour- oath of fidelity to the emperor. This, just ces of Lombardy were now made mani- compact preserved, along with every sefest. Frederick, who had triumphed by curity for the liberties and welfare of the their disunion, was unequal to contend cities, as much of the imperial prerogaagainst their league. After several years tives as could be exercised by a foreign of indecisive war, the emperor invaded sovereign, consistently with the people's the Milanese territory, but the confeder- happiness.* ates gave him battle, and gained a com- The successful insurrection of Loin Battle of plete victory at Legnano. [A. D. bardy is a memorable refutation of that Legnano. 1176.] Frederick escaped alone system of policy to which its advocates and disguised from the field, with little gave the appellation of vigorous, and hope of raising a fresh army, though still which they perpetually hold forth as the reluctant from shame to acquiesce in the only means through which a disaffected freedom of Lombardy. He was at length people are to be restrained. By a certain persuaded, through the mediation of the c-lass of statesmen, and by all men of harsh republic of Venice, to consent to a truce and violent disposition, measures of conof six years, the provisional terms of ciliation, adherence to the spirit of trewhich were all favourable to the league. ties, regard to ancient privileges, or to It was weakened., however, by the de- those rules of moral justice which are fection of some of its own members; paramount to all positive right, are alCremona, which had never cordially uni- ways treated with derision. Terror is ted with her ancient enemies, made sep- their only specific, and the physical inaarate conditions with Frederick, and suf- bility to rebel their only security for alle fered herself to be named among the cit- siance. But if the razing of cities, the ies on the imperial side in the armistice. abrogation of privileges, the empoverishTortona, and even Alessandria, followed ment and oppression of a nation, could the same course during the six years of assure its constant submission, Frederick its duration; a fatal testimony of unsub- Barbarossa would never have seen the dued animosities, and omen of the calarn- militia of Lombardy arrayed against him ities of Italy. At the expiration of the at Legnano. Whatever may be the prestruce, Frederick's anxiety to secure the sure upon a conquered people, there will crown for his son overcame his pride, come a moment of their recoil. Nor is it material to allege, in answer to the

* Muratori, Antiquitates Italim, Diss 50
unwhole- ambition was diverted to a new scheme: some marshes of Rome, or stiffen with for aggrandizing the house of Swabia, by frost in a Russian winter. the marriage of his eldest son, Henry, The peace of Constance presented a with Constance, the aunt and heiress of noble opportunity to the Lombards of William II., king of Sicily. That king establishing a permanent federal union dom, which the first monarch, Roger, of small republics; a form of government had elevated to a high pitch of renown congenial from the earliest ages to Italy, and power, fell into decay through the and that, perhaps, under which she is misconduct of his son William, surnamed again destined one day to flourish. They the Bad, and did not recover much of its were entitled by the provisions of that lustre under the second William, though, treaty to preserve their league, the basis styled the Good. His death without of a more perfect confederacy, which the issue was apparently no remote event, course of events would have emancipated and Constance was the sole legitimate from every kind of subjection to German survivor of the royal family. It is a cuny.* But dark, long-cherished hatreds, rious circumstance, that no hereditary and that implacable vindictiveness which, kingdom appears absolutely to have exat least in former ages, distinguished the eluded females from its throne, except private manners of Italy, deformed her that which, from its magnitude, was of national character, which can only be the all the most secure from falling into the aggregate of individual passions. For condition of a province. The Sicilians revenge she threw away the pearl of felt too late the defect of their consti great price, and sacrificed even the rec- tion, which permitted an independent collection of that liberty, which had people to be transferred, as the dowry oi stalked like a majestic spirit among the a woman, to a foreign prince, by whose ruins of Milan.t It passed away, that ministers they might justly expect to be high disdain of absolute power, that steady insulted and oppressed. Henry, whose iness and self-devotion, which raised the marriage with Constance took place in half-civilized Lombards of the twelfth 1186, and who succeeded in her right to century to the level of those ancient re- the throne of Sicily three years afterward, publics, from whose history our first no- was exasperated by a courageous, but un tions of freedom and virtue are derived. successful effort of the Norman barons, The victim by turns of selfish and san- to preserve the crown for an illegitimate guinary factions, of petty tyrants, and of branch of the royal family; and his reign foreign invaders, Italy has fallen like a is disgraced by a series of atrocious crueties. The power of the house of Swa* Though there was no permanent diet of the elite. The power of the house of Swa Lombard league, the consuls and podestas of the bia was now at its zenith on each siid respective cities composing it occasionally met in of the Alps; Henry received the Imperial crown the year after his father's safety. Thus assembled, they were called Rec- death in the third crusade, and even pretores Societatis Lomnbardia. It is evident that, if vailed upon the princes of Germany to Lombardy had continued in any degree to preserve the spirit of union, this congress might readily elect his infant son Frederick as his successor. But his own premature decease diet, with as extensive powers as are necessary in clouded the prospects of his family: Cona federal constitution.-Muratori, AntichitaITALY., and which! the leaders of German mercer- alodial or patrimonial property; yet it naries in his service desolated and dispu- is not easy to see how, being herself a

Page 137 Pr&A R.j ITALY., and which! the leaders of German merce- alodial or patrimonial property; yet it naries in his service desolated and dispu- is not easy to see how, being herself a
ted. subject of the empire, she could transfer During the minority of Frederick II., even her allodial estates from its soverInnocent from 1198 to 1216, theo papalchair eignty. Nor, on the other hand, can it i a. was filled by Innocent III.; a apparently be maintained, that she was name second only, and hardly second, to lawful sovereign of countries which had that of Gregory VII. Young, noble, and not long since been imperial fiefs, and intrepid, he united with the accustomed the suzerainty over which had never spirit of ecclesiastical usurpation, which been renounced. The original title of no one had ever carried to so high a the Holy See, therefore, does not seem point, the more worldly ambition of con- incontestable, even as to this part of Masolidating a separate principality for the tilda's donation. But I state with hesitaHoly See in the centre of Italy. The tion a difficulty, to which the authors I real or spurious donations of Constantine, have consulted do not advert.* It is cerPepin, Charlemagne, and Louis, had given tain, however, that the emperors kept rise to a perpetual claim, on the part of possession of the whole during the the popes, to very extensive dominions: twelfth century; and treated both Spolebut little of this had been effectuated, and to and Ancona as parts of the empire, in Rome itself they were thwarted by notwithstanding continual remonstrances the prefect, an officer who swore fidelity from the Roman pontiffs. Frederick Dar to the emperor, and by the insubordinate barossa, at the negotiations of Venice in spirit of the people. In the very neigh-1177, promised to restore the patrimony bourhood, the small cities owned no sub- of Matilda in fifteen years: but, at the jection to the capital, and were probably close of that period, Henry VI. was no as much self-governed as those of Lom- disposed to execute this arrangement, bardy. One is transported back to the and granted the county In fief to some earliest times of the republic, in reading of his German followers. Upon his of the desperate wars between Rome death, the circumstances were favourable and Tibur or Tusculum, neither of which to Innocent III. The infant king of Si.. was subjugated till the latter part of the city had been intrusted by Constance to twelfth century. At a further distance his guardianship. A double election of were the dutchy of Spoleto, the march Philip, brother of Henry VI., and of Otho. of Ancona, and what had been the exar- duke of Brunswick, engaged the princes chate of Ravenna, to all of which the of Germany, who had entirely overlooked popes had more or less grounded pre- the claims of young Frederick, in a doubttensions. Early in the last-mentioned ful civil war. Neither party was in a age, the famous Countess Matilda, to condition to enter Italy; and the impewhose zealous protection Gregory VII. rial dignity was vacant for several years, had been eminently indebted during his till, the death of Philip removing one long dispute with the emperor, granted competitor, Otho IV., whom the pope the reversion of all her possessions to had constantly favoured, was crowned the Holy See, first in the lifetime of emperor. During this interval, the ItalGregory, and again under the pontificate ians had no superior; and Innocent Bequestof of Paschal III. These were availed himself of it to maintain the prethe Countess very extensive, and held by dif- tensions of the see. These he backed Matilda. feren titles. Of her vastimpe- by the production of rather a questionarial fiefs, Mantua, Modena, and Tus- ble document, the will of Henry VI., said cany, she certainly could not dispose. to have been found among the baggage The dutchy of Spoleto and march of A.n- of Marquard, one of the German soldiers, cona were supposed to rest upon a differ- who had been invested with fiefs ent footing. I confess myself not dis- by the late emperor. The citEclesiasticstinctly to comprehend the nature of this ies of what we now call the ec- reduced b part of her succession. These had been clesiastical state had in the Innocent formerly among the great fiefs of the twelfth century their own muni- m. kingdom of Italy. But if I understand it rightly, they had tacitly ceased to be sub- * It is almost hopeless to look for explicit infor ject to the emperors, some years before mation upon the rights and pretensions of the Ro;hey were Godfrey of Lorraine, man see in Italian writers even of the eighteenth father-in-law and stepfather of Matilda. century. Mtratori, the most learned, and, upon To his son, her
husband, she succeeded the whole, the fairest of them all, moves cautiously To his son, her husband, she succeeded over this ground; except when the claims of;I the possession of those countries. Rome happen to clash with those of the house ol They are commonly considered as her E ste. But I have not been able to satisfy myself'

Page 138!38. EUROPE DURING THE MIDDLE AG'ES. LCHUA ti, tipal government, like those of Lo- bar- the possessions and rights of the church ty; but they were far less able to assert and not to acknowledge any king or em. a complete independence. They gladly, peror without the approbation of the therefore, put themselves under the pro- supreme pontiff.* The Tuscans, accor- tation of the Holy See, which held out ingly, were more thoroughly attached to some prospect of securing them from the church party than the Lombards, Marquard, and other rapacious partisans, whose principle was animosity towards %without disturbing their internal regula- the house of Swabia. Hence, when Intions. Thus the dutchy of Spoleto and nocent III., some time after, supported march of Ancona submitted to Innocent Frederick II. against the Emperor Otho III.; but he was not strong enough to IV., the Milanese and their allies were keep constant possession of such exten- arranged on the imperial side; but the sive territories, and some years after- Tuscans continued to adhere to the pope. ward adopted the prudent course of In the wars of Frederick Barbarossa granting Ancona in fief to the Marquis of against Milan and their allies, Factions of Este. He did not, as may be supposed, we have seen the cities of Lom- Guelfs and neglect his authority at home; the pre- bardy divided, and a considera- Ghibelins fect of Rome was now compelled to ble number of them firmly attached to swear allegiance to the pope, which put the imperial interest. It does not appear, an end to the regular imperial supremacy I believe, from history, though it is by no over that city; and the privileges of the means improbable, that the citizens were citizens were abridged. This is the at so early a time divided among them proper era of that temporal sovereignty selves, as to their line of public policy, which the bishops of Rome possess over and that the adherence of a particular their own city, though still prevented by city to the emperor, or to the Lombard various causes, for nearly three centu- league, was only, as proved afterward ries, from becoming unquestioned and the case, that one faction or another acunlimited. quired an ascendency in its councils. The policy of Rome was now more But jealousies long existing between the clearly defined than ever. In order to different classes, and only suspended by preserve what she had thus suddenly the national struggle which terminated gained rather by opportunity than at Constance, gave rise to new modificastrength, it was her interest to enfeeble tions of interests, and new relations to the imperial power, and consequently to wards the empire. About the year 1200, maintain the freedom of the Italian re- or perhaps a little later, the two leading League of publics. Tuscany had hitherto parties which divided the cities of LomTuscany. been ruled by a marquis of the bardy, and whose mutual animosity, hayemperor's appointment, though her cities ing no general subject of contention, rewere flourishing, and, within themselves, quired the association of a name to diindependent. In imitation of the Lon- rect as well as invigorate its prejudices, bard confederacy, and impelled by Inno- became distinguished by the celebrated cent III., they now (with the exception appellations of Guelfs and Ghibelins; the of Pisa, which was always strongly at- former adhering to the papal side, the tached to the empire) formed a similar latter to that of the emperor. These league for the preservation of their rights. names were derived from Germany, and In this league the influence of the pope had been the rallying word of faction for was far more strongly manifested than more than half a century in that country, an that of Lombardy. Although the lat- before they were transported to a still ter had been in alliance with Alexander more favourable soil. The Guelfs took III., and was formed during the height their name from a
very illustrious family, of his dispute with Frederick, this eccle- several of whom had successively been siastical quarrel mingled so little in their dukes of Bavaria in the tenth and eleventh struggle for liberty, that no allusion to it centuries. The heiress of the last of is found in the act of their confederacy. these intermarried with a younger son ot But the Tuscan union was expressly es- the house of Este, a noble family settled established "for the honour and aggran- near Padua, and possessed of great es dizement of the apostolic see." The tates on each bank of the lower Po. members bound themselves to defend They gave birth to a second line of by the perusal of some dry and tedious disserta- * Quod possessiones et jura sacrosancta ecclesima tions in St. Marc (Abregé Chronologique de l'Hist. bona fide defenderent; et quod nullum n regem de 1'Italie, t. iv.), who, with learning scarcely infe- aut imperatorem reciperent, nisi quem Romanus rior to that of Muratori, possessed more opportu- pontifex approbaret.- Muratori, Dissert 48 (Latin aitv and inclination to speak out. t. iv., p. 320; Italian, t. iii.. p. 112'

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t AhT I. ITALY. 13.S Guelfs, from whom the royal house of to hate and injure each other. From this Brunswick is descended. The name of time, every city, and almost every citif Ghibel in is derived from a village in zen, gloriad in one of these barbarous Franconia, whence Conrad the Salic denominations. In several ci. ies the irm came, the progenitor, through females, perial party predominated the ugh hatred ot the Swabian emperors. At the elec- of their neighbours, who espoused that tion of Lothaire, in 1125, the Swabian of the church. Thus the inveterate feuds family were disappointed of what they between Pisa and Florence, Modena and considered almost an hereditary posses- Bologna, Cremona and Milan, threw them sion; and at this time an hostility appears into opposite factions. But there was in to have commenced between them and every one of these a strong party against the house of Guelf, who were nearly re- that which prevailed, and consequently a.ated to Lothaire. Henry the Proud, and Guelf city frequently became Ghibel in his son, Henry the Lion, representatives or conversely, according to the fluctun of the latter family, were frequently per- tions of the time.*

secuted by the Swabian emperors: but The change to which we have advert their fortunes belong to the history of ed in the politics of the Guelf party last Germany.* Meanwhilethe elderbranch, ed only during the reign of Otho IV, though not reserved for such glorious When the heir of the house of Frederick II, destinies as the Guelfs, continued to Swabia grew up to manhood, flourish in Italy; the marquises of Este Innocent, who, though his guardian, had were by far the most powerful nobles in taken little care of his interests, as long eastern Lombardy, and about the end of as he flattered himself with the hope of the twelfth century began to be consider- finding a Guelf emperor obedient, placed ed as heads of the church party in their the young Frederick at the head of an neighbourhood. They were frequently opposition composed of cities always atchosed to the office of podesta, or chief tached to his family, and of such as irmmagistrate, by the cities of Romagna; plicitly followed the see of Rome. He and in 1208, the people of Ferrara set the met with considerable success both in fatal example of sacrificing their free- Italy and Germany, and, after the death dom for tranquillity, by electing Azzo of Otho, received the imperial crown. VII., marquis of Este, as their lord or But he had no longer to expect any assovereign.t sistance from the pope who conferred it. Otho IV. was son of Henry the Lion, Innocent was dead, and Honorius III., OtholV. and consequently head of the his successor, could not behold without Guelfs. On his obtaining the im- apprehension the vast power of Fredeperial crown, the prejudices of Italian rick, supported in Lombardy by a faction factions were diverted out of their usual channel He was soon engaged in a quchannrrel with the wa s soon engaged in a For the Guelf and Ghibelin factions, besides quarrel with the pope, whose hostility to the historians, the 51st dissertation of Muratori the empire was certain, into whatever should be read. There is some degree of inaccu hands it might fall. In Milan,
However, racy in his language, where he speaks of these dis and generally in the cities which had be- tractions expiring at the beginning of the fifteenth longed to the Lombard le'ague against century. Quel secolo, e vero, abbond6 anch' esso FredericknI red o the homuse o t di molte guerre, ma nulla si oper6 sotto nonne o Frederick I., hatred of the house of Swa- pretesto delle fazioni suddette. Solamente ritenbia prevailed more than jealousy of the nero esse piede in alcune private famiglie.-Antimperial prerogatives; they adhered to chita Italiane, t. iii., p. 148. But certainly the names rather than to principles, and sup- names of Guelf and Ghibelin, as party distinctions, ported a Guelf emperor even against the may be traced all through the fifteenth century. po rted a Guelf t demper or even against the former faction showed itself distinctly in the pope. Terms of this description, having insurrection of the cities subject to Milan, upon the no definite relation to principles which it death of Galeazzo Visconti, in 1404. It appeared might be troublesome to learn and defend, again in the attempt of the Milanese to re-establish are always acceptable to mankind, and their republic in 1447.-Sismondi, t. ix., p. 334. So in 1477, Ludovico Sforza made use of Ghibelin have the peculiar advantage of precluding prejudices to exclude the regent Bonne of Savbe asl altogether that spirit of compromise and a Guelf.- Sismondi, t. xi., p. 79. In the ecclesias accommodation, by which it is sometimes tical state, the same distinctions appear to have endevoured to obstruct their tendency been preserved still later. Stefano Infessura, is 1487, speaks familiarly of them.- Script. Rer. Ital. t. iii., p. 1221. And even in the conquest of Milan * The German origin of these celebrated fac by Louis XII., in 1500, the Guelfs of that city are tions is clearly proved by a passage in Otho of represented as attached to the French party, while Frisingen, who lived half a century before we find the Ghibelins abetted Ludovico Sforza and Maxi the denominations transferred to Italy.-Struvius, milian.-Guicciardini, p. 399. Other passages is Corpus Hist. German., p. 378, and Muratori, A. D the same historian show these factions to have bee.152. t Sismondi, t, ii., p. 329. al ve in varicus parts of Italy.
Fred- so disadvantageous as under all the cirerick when he was not obliged to act on
cumstances might have been expected, his defence against the aggression of oth- served as a
pretext for new calumnies ers. But if he had been a model of vir- against him in Europe. The
charge of tues, such men as Honorius III., Gregory irreligion, eagerly and successfully proplX.,
and Innocent IV., the popes with agated, he repelled by persecuting edicts whom he had
successively to contend, against heresy, that do no great honour would not have given him
respite, while to his memory, and availed him little at he remained master of Naples, as well as
the time. Over his Neapolitan dominions the empire.* he exercised a rigorous government, ren.
It was the custom of every pope to dered perhaps necessary by the levy urge princes into a
crusade, which the and insubordination characteristic of the condition of Palestine rendered
indispen- inhabitants, but which tended, through the sable, or, more properly, desperate. But
artful representations of Honorius and this great piece of supererogatory devo- Gregory, to
alarm and alienate the Italian tion had never yet been raised into an ab- republics. solute duty of
their station, nor had even A new gene ration had risen up in Lontprivate persons been ever
required to bardy since the peace of Con- His wars take up the cross by compulsion. Ho-
stance, and the prerogatives re- with the norius III., however, exacted a vow from served by
that treaty to the emr- Lombards Frederick, before he conferred upon him the imperial crown,
that he would under- * the second wife of Frederick was Iolante, or take a crusade for the
deliverance of Je- Viotante, daughter of John, count of Brienne, by rusalemn. Frederick
submitted to this en- Matia, eldest daughter and heiress of Isabella, wife of Conrad, marquis of
Montferrat. This Isabelle * The iancour of bigoted Catholics against was the youngest daughter
of Almaric or Amaury. Frederick has hardly subsided at the present day. king of Jerusalem, and
by the deaths of her brothÂ­A very moderate commendation of him in Tirabos- er Baldwin IV., of
her eldest sister Sibilla, wife ol chi, vol. iv., t. 7, was not suffered to pass uncon- Gay de
Lusignan, and that sister's child Baldwin V., tradicted by the Roman editor. And though Mu-
succeeded to a claim upon Jerusalem, which, since ratori Ehows quite enough prejudice against
that the victories ofSaladin, was not very profitable. It emperor's character, a fierce Roman
bigot, whose is said that the kings of Naples deduce their title animadversions are printed in the
17th volume of to that sounding inheritance from this marriage of his annals (8vo edition), flies
into paroxysms of fury Frederick (Giannone, 1. xvi., c. 2), but the extincat every syllable that
looks like moderation. It is tion of Frederick's posterity must have, strictly well known that,
although the public policy of speaking, put an end to any right derived from Rome has long
displayed the pacific temper of him; and Giannone himself indicates abeter title weakness, the
thermometer of ecclesiastical senti- by the cession of Maria, a princess of Antioch, alld nent in
that city stands very nearly as high as in legitimate heiress cf Jerusalem, to Charles of An:he
thirteenth century. Giannone, who suffered jou, in 1272. How far indeed this may have been
for his boldness, has drawn Frederick II. very fa- regularly transmited to the present King of
Naplet vourably, perhaps too favourably, in the 16th and I do not know, tnd arn sure that it is
nDot Wa.'h 17th books of the Istoria Civile di Napoli, while to inquire

once wele so seldom called into action, tinguished. These were the eilina seats that
few cities were disposed to recol- of Italian liberty, the great marvert In the'ect their existence.
They denominated wars of the elder Frederick. Milan was Themselves Guelfs or Ghibelins,
accord- at the head of this cluster of cities, and ing to habit, and out of their mutual op- her
influence gave an ascendency to the position, but without much reference to Guelf party; she
had, since the treaty of the empire. Those however of the for- Constance, rendered Lodi and
Pavia al. tuer party, and especially Milan, retained most her subjects, and was in strict their
antipathy to the house of Swabia. union with Brescia and Piacenza. Par Though Frederick II.
was entitled, as far ma, however, and Cremona, were unshaas established usage can create a right, to ken defenders of the empire. In the sec. the sovereignty of Italy, the Milanese ond class we may place the cities of the would never acknowledge him, nor per- March of Verona, between the Adige and mit his coronation at Monza, according the frontiers of Germany. Of these there to ancient ceremony, with the iron crown were but four worth mentioning: Vero of the Lombard kings. The pope foment- na, Vicenza, Padua, and Treviso. The ed, to the utmost of his power, this dis- citizens of all the four were inclined to affected spirit, and encouraged the Lom- the Guelf interests; but a powerful body bard cities to renew their former league. of rural nobility, who had never been This, although conformable to a provis- compelled, like those upon the upper Po, ion in the treaty of Constance, was man- to quit their fortresses in the hilly counifestly hostile to Frederick, and may be try, or reside within the walls, attached considered as the commencement of a themselves to the opposite denominasecond contest between the republican tion.* Some of them obtained very great cities of Lombardy and the empire. But authority in the civil feuds of these four there was a striking difference between republics; and especially two brothers, this and the former confederacy against Eccelin and Alberic da Romano, of a rich Frederick Barbarossa. In the league of and distinguished family, known for its 1167, almost every city, forgetting all devotion to the empire. By extraordinasmaller animosities in the great cause of ry vigour and decision of character, by defending the national privileges, contrib- dissimulation and breach of oaths, by the uted its share of exertion to sustain that intimidating effects of almost unparalleled perilous conflict; and this transient una- cruelty, Eccelin da Romano became aftel nimity in the people so distracted by in- some years the absolute master of three ternal faction as the Lombards, is the su- cities, Padua, Verona, and Vicenza; and rest witness to the justice of their under- the Guelf party, in consequence, was entaking. Sixty years afterward, their war tirely subverted beyond the Adige during against the second Frederick had less of the continuance of his tyranny.t Anprovocation and less of public spirit. It other cluster was composed of the cities was in fact a party struggle of Guelf and in Romagna; Bologna, Imola, Faenza, Ghibel cities, to which the names of the Ferrara, and several others. Of these church and the empire gave more of dig- Bologna was far the most powerful, and, nity and consistence. as no city was more steadily for the inThe republics of Italy in the thirteenth terests of the church, the Guelfs usually A century were so numerous and predominated in this class; to which also ment ora independent, and their revolutions the influence of the house of Este not a Lombard so frequent, that it is a difficult little contributed. Modena, though not Cities, matter to avoid confusion in fol- geographically within the limits of this lowing their history. It will give more division, may be classed along with it. arrangement to our ideas, and at the same from her constant wars with Bologna time illustrate the changes that took place in these little states, if we consider them * Sismondi, t. ii., p. 222. t The cruelties of Eccelin excited universal hox as divided into four clusters or constella- ror, in an age when inhumanity towards enemies tions, not indeed another, yet each having its own centre It was a usual trick of beggars, all over Italy, to of motion, and its own boundaries. The pretend that they had been deprived of their eyes or limbs by the Veronese tyrant. There is hardly first of these we may suppose formed of an instance in European history of so sanguinary the cities in central Lormbardy, between a government subsisting for more than twenty the Sessia and the Adige, the Alps and years. The crimes of Eccelin are remarkably well the Ligurian mountains; it comprehends authenticated by the testimony of several contem. Milan, Cremona, Pavia, Brescia, Berga- porary write:, who enter into great details. MV” of these are found in the seventh volume of ScriD mo, Parma., Piacenza, Mantua, Lodi, tores Rerum Italicarum. Sismondi, t. iii., p. sa Alessandria, and several others less dis- 111, 203, is more fi 11 than any of the moderns
EUROPE DURING THE MIDDLE AGES. [ CIAPr. ii A, fourth class will comprehend the whole constant support of Gregory IX. and his of Tuscany, separated almost entirely successor, Innocent IV.; and the Guelf, from the politics of Lombardy and Ro- or the church party, were used as symagna. Florence headed the Guelf cit- nonymous terms. These pontiffs bore ies in this province, Pisa the Ghibelin. an unquenchable hatred to the house of The Tuscan union was formed, as has Swabia. No concessions mitigated their been said above, by Innocent III., and animosity; no reconciliation was sincere. was strongly inclined to the popes; but Whatever faults may be imputed to Fred. gradually the Ghibelin party acquired its erick, it is impossible for any one, not share of influence; and the cities of Sie- blindly devoted to the court of Rome, to na, Arezzo, and Lucca, shifted their poli- deny, that he was iniquitously proscribed cy, according to external circumstances by her unprincipled ambition. His real or the fluctuations of their internal fac- crime was the inheritance of his ancestons. The petty cities in the region of tors, and the name of the house of Swa Spoleto and Ancona hardly perhaps de- bia. In 1239, he was excommunicated serve the name of republics; and Genoa by Gregory IX. To this he was tolerated does not readily fall into any of our four bly accustomed by former experience; classes, unless her wars with Pisa may but the sentence was attended by an abbe thought to connect her with Tuscany.* solution of his subjects from their alleAfter several years of transient hostil- giance, and a formal deposition. These ity and precarious truce, the Guelf cities sentences were not very effective upon of Lombardy engaged in a regular and men of vigorous minds, or upon those protracted war with Frederick II., or, whose passions were engaged in their more properly, with their Ghibelin adver- cause; but they influenced both those saries. Few events of this contest de- who feared the threatenings of the clerse particular notice. Neither party gy, and those who wavered already as ever obtained such decisive advantages to their line of political conduct. In the as had alternately belonged to Frederick fluctuating state of Lombardy, the ex 3arbarossa and the Lombard confedera-communication of Frederick undermined cy, during the war of the preceding cen- his interests even in cities, like Parma, Iury. A defeat of the Milanese by the that had been friendly, and seemed to emperor, at Corte Nuova, in 1237, was identify the cause of his enemies with balanced by his unsuccessful siege of that of religion; a prejudice, artfully fo Brescia the next year. The Pisans as- mented by means of calumnies propaga sisted Frederick to gain a great navalvic- ted against himself, and which the contory over the Genoese fleet in 1241; but duct of such leading Ghibelins as Eccehe was obliged to rise from the blockade lin, who lived in an open defiance of Gotd of Parma, which had left the standard of and man, did not contribute to lessen. Ghibelinism in 1248. Ultimately, how- In 1240, Gregory proceeded to publish a ever, the strength of the house of Swabia crusade against Frederick, as if he had was exhausted by so tedious a struggle; been an open enemy to religion; which the Ghibelins of Italy had their vicissi- he revenged by putting to death all the tudes of success; but their country, and prisoners he made who wore the cross. even themselves, lost more and more of There was one thing wanting to make the -ancient connexion with Germany. the expulsion of the emperor from the In this resistance to Frederick II., the Christian commonwealth more complete. Lombards were much indebted to the Gregory IX. accordingly projected, and Innocent 1V. carried into effect, the conl have taken no notice of Piedmont in this divis- vocation of a general council. Council of ion. The history of that country is far less eluci- This was held at Lyons [A. D. Lyons. dated by ancient or modern writers than that of 1245], an imperial city, but over which other parts of Italy. It was at this time divided between the counts of Savoy and marquises of Frederick could no longer retain his suMontferrat. ButAsti, Chieri, and Turin, especial- premacy. In this assembly, where one ly the two former, appear to have had a republican hundred and forty prelates appeared, the form of government. They were however not ab- question whether
Frederick ought to be solutely independent. The only Piedmontese city deposed was solemnly discussed; he subthat can properly be cConsidered as a separate state, in the thirteenth century, was Vercelli; and even mitted to defend himself by his advothere the bishop seems to have possessed a sort of cates; and the pope, in the presence, tempcral sovereignty. Denina, author of the Ri- though without formally collecting the voluzionid'Italia, first printed in 1769, livedtopub- suffrages of the council, pronounced a lish in his old age a history of western Italy, or sentence, by which Frederick's excomPiedmont, from which I have gleaned a few facts. sentence, by which Frederick's excom— Istorica dell' Italia Occidentale; Torino, 1809, 6 munication was renewed, the empire utms SaVO. and all his kingd-oms taken away, and

Page 143 PART I.' ITALY. i41 nis sul jects absolved from their fidelity. always in. agitation, yield any material This is the most pompous act of usurpa- aid to the second Frederick. The main tition in all the records of the church of cause, however, of that triumph which Rome; and the tacit approbation of a attended Lombardy was the intrinsic engeneral council seemed to incorporate ergy of a free government. From the the pretended right of deposing kings, eleventh century, when the cities bewhich might have passed as a mad vaunt came virtually republican, they put out of Gregory VII. and his successors, with those vigorous shoots which are the tile established faith of Christendom. growth of freedom alone. Their domesUpon the death of Frederick II., in tic feuds, their mutualwars, the fierce asConrad IV. 1250, he left to his son Conrad saults of their national enemies, checked a contest to maintain for every not their strength, their wealth, or their part of his inheritance, as well as for the population; but rather, as the limbs are imperial crown. But the vigour of the nerved by labour and hardship, the rehouse of Swabia was gone; Conrad was publics of Italy grew in vigour and courreduced to fight for the kingdom of Na- age through the conflicts they sustained pies, the only succession which he If we but remember what savage license could hope to secure against the troops prevailed during the ages that preceded of Innocent IV., who still pursued his their rise, the rapine of public robbers, family with implacable hatred, and claim- or of feudal nobles little differing from ed that kingdom as forfeited to its feudal robbers, the contempt of industrious arts, superior, the Holy' See. After Conrad's the inadequacy of penal laws, and the impremature death, which happened in 1254, possibility of carrying them into effect, the throne was filled by his legitimate we shall form some notion of the change brother Manfred, who retained it by his which was wrought in the condition of bravery and address, in despite of the Italy by the growth of its cities. In popes, till they were compelled to call comparison with the blessings of indusin the assistance of a. more powerful try protected, injustice controlled, emuarm. lation awakened, the disorders which The death of Conrad brings to a ter- ruffled their surface appear slight and mmination that period in Italian history momentary. I speak only of this first which we have described as nearly co- stage of their independence, and chiefly extensive with the greatness of the house of the twelfth century, before those civi_ of Swabia. It is perhaps upon the whole dissensions had reached their height, by the most honourable to Italy; that in which the glory and prosperity of Lornwhich she displayed the most of national bardy were soon to be subverted. energy and patriotism. A Florentine or We have few authentic testimonies as Venetian may dwell with pleasure upon to the domestic improvement of the free later times; but a Lombard will cast back Italian cities, while they still deserved the his eye across the desert of centuries, till name. But we may perceive by history, it reposes on the field of Legnano. Great that their power and population, accordchanges followed in the foreign and ining to their extent of territory, were alternal policy, in the moral and military most incredible. In Galvaneus Flamma, character of Italy. But before we de- a Milanese writer, we find a curious sta scend to the next period, it will be neces- tistical account of that city in 1288,
which, sary to remark some material circum- though of a date about thirty years after stances in that which has just passed its liberties had been overthrown by under our review. usurpation,必须 be considered as implyThe successful resistance of the Lombardy. tonish a reader who brings to tion. The inhabitants are reckoned at the story of these middle ages notions 200,000; the private houses 13,000; the derived from modern times. But when nobility alone dwelt in sixty streets; we consider not only the ineffectual con- 8000 gentlemen, or heavy caivalry (milli trol which could be exerted over a feu- tes) might be mustered from;he city and dal army, bound only to a short term of its district, and 240,000 men. capable of service, and reluctantly kept in the field arms; a force sufficient, the writer obat its own cost, but the peculiar distrust serves, to crush all th- Saracens. There and disaffection with which many Ger- were in Milan six huv.;dred notaries, two man princes regarded the house of Swa- hundred physician., eighty schoolmas nia, less reason will appear for surprise. ters, and fifty transcribers of manusuc ipts Nior did the kingdom of Naples, almost In the district werte one hundr>l:nd SfS

Page 144 rJUROPE DURING THE MIDDLE AGES. LCHAU. I. castle.,with adjoiningvillages. Such was the amnle engines of offence, the cum. the state of Milan, Flamma concludes, in brous towers, from which arrows were t288; it is not for me to say whether it shot at the besieged, the machines from has gained or lost ground since that time.* which stones were discharged, the bat. A.t this period, the territory of Milan was tering-rams which assailed the walls, and not perhaps more extensive than the the basket-work covering (the vinea or county of Surrey; it was bounded at a. testudo of the ancients, and the gattus or little distance, on almost every side, by chatchateil of the middle ages) under Lodi, or Pavia, or Bergamo, or Como. which those who pushed the battering It is possible, however, that Flamma may engines were protected from the enemy. have meant to include some of these as On the other hand, a city was fortified dependances of Milan, though not strictly with a strong wall of brick or marble, united with it. low flourishing must the with towers raised upon it at intervals, state of cultivation have been in such a and a deep moat in front. Sometimes country, which not only drew no sup- the ante-mural or barbacan was added; plies from any foreign land, but exported a rampart of less height, which impeded part of her own produce! It was in the the approach of the hostile engines. The best age of their liberties, immediately gates were guarded with a portcullis; an after the battle of Legnano, that the Mi- invention which, as well as the barbacan, lanese commenced the great canal which was borrowed from the Saracens.* With conducts the waters of the Tesino to such advantages for defence, a numerous their capital, a work very extraordinary and intrepid body of burghers might not for that time. During the same period unreasonably stand at bay against a powthe cities gave proots of internal pros- erful army; and as the consequences of perity that in many instances have de- capture were most terrible, while resistscdenced to our own observation, in the ane was seldom hopeless, we cannot solidity and magnificence of their archi- wonder at the desperate bravery of so tecture. Ecclesiastical structures were many besieged towns. Indeed, it seldom perhaps more splendid in France and happened that one of considerable size England; but neither country could pre- was taken, except by famine or treachterd to match the palaces and public ery. Tortona did not submit to Fredertuildings, the streets flagged with stone, ick Barbarossa till the besiegers had the bridges of the same material, or the corrupted with sulphur the only fountain commodious private houses of Italy.j that supplied the citizens; nor Crema, till The courage of these cities was her walls were overtopped by the batterwrought sometimes to a to!L.e of insolent ing engines.
Ancona held out a noble defiance, through the security inspired example of sustaining the pressure of by their means-of defence. From the extreme famine. Brescia tried all the time of the Romans to that when the resources of a skilful engineer against use of gunpowder came to prevail, little the second Frederick; and swerved not change was made, or perhaps could be from her steadiness, when that prince, made, in that part of military science imitating an atrocious precedent of his which relates to the attack and defence grandfather at the siege of Crema, exof fortified places. We find precisely posed his prisoners upon his battering engines to the stones that were hurled by * Muratori, Script. Rerumn Italic., t. xi. This their fellow-citizens upon the walls. t expression of Flammna may seem to intimate that Of the government which existed in Milan had declined in his time, which was about the republics of Italy during the Their inter 1340. Yet, as she had been continually advancing twelfth and thirteenth centuries, nal govern in power, and had not yet experienced any tyran- and thirteenth centuries, novern nical govern ment, I cannot imagine this to have no definite sketch can be traced. ment. been the case; and the same Flamma, who is a The chroniclers of those times are few great flatterer of the Visconti, and has dedicated a and jejune; and, as is usual with contemporar- work to the praises of Azzo, asserts oraries, rather intimate than describe therein that he had greatly improved the beauty ie and convenience of the city; though Brescia, Cre- the civil polity of their respective counmnona, and other places had declined. Azarius, tries. It would indeed be a weary task,.oo, a writer of the same age, makes a similar rep- if it were even possible, to delineate the resentment.-Script. Rer. Ital., t. xvi., p. 314 and constitutions of thirty or forty little states 317. Of Luchino Visconti he says i Statum Meliolani reintegravit in tantum, quod non civitas, whichwereinypetualfluctuation. The sed oromvicia videbatur. t-Sismondi, t. iv., p. 176. Tiraboschi, t. iv., p. * Muratori, Antiquit. Ital., Dissertation. 26. 1-26. See also the observations of Denina on the t See these sieges in the second ard third vol population and agriculture of Italy, I. xiv., c. 9, umes of Sismondi. That of Ancona, t ii., p. 145 10. chiefly indeed applicable to a period rather later 206, is told with remarkable elegance and svrpa tln that of her free republics. interesting circule stances

Page 145
participating, and ministers of the state. But the decision whose memory they strive to forget. Im upon matters of general importance, trea- putting his sentence to iniquity, or glories of alliance or declarations of war, ing in an act which the laws of his felthe choice of consuls or ambassadors, low-citizens, but not their sentiments, belonged to the general council. This condemned, he stood upon his defence appears not to have been uniformly con- amid a circle of friends. The law was to stituted in every city; and, according to be enforced not against an individual, baus its composition, the government was a family; not against a family, but a facmore or less democratical. An ultimate tion; not perhaps against a local faction, sovereignty, however, was reserved to but the whole Guelf or Ghibelin name the mass of the people; and a parliament which might become interested in the. or general assembly was held to deliber-quarrel. The podesta was to arm the tte on any change in the form of consti- republic against the refractory citizen; tuition t his house was to be besieged and razed About the end of the twelfth century, to the ground, his defenders to be quelled a new and singular species of magistracy by violence: and thus the people, become was introduced into the Lombard cities. familiar with outrage and homicide un- During the tyranny of Frederick I. he the command of their magistrates, were had appointed officers of his own, called more disposed to repeat such scenes at podestas, instead of the elective consuls. the instigation of their passions,* It is remarkable that this memorial of the podesta was sometimes chosen in despotic power should not have excited a general assembly, sometimes by a insuperable alarm and disgust in the free select number of citizens. His office republics. But, on the contrary, they al- was annual, though prolonged in peculiar most universally, after the peace of Con-emergencies. He was invariably a man stance, revived an office which had been of noble family, even in those cities which abrogated when they first rose in rebell- excluded their own nobility from any ion against Frederick. From experi- share in the government. He received ence, as we must presume, of the partial- a fixed salary, and was compelled to reity which their domestic factions carried main in the city, after the expiration of into the administration of justice,;t be- his office, for the purpose of answering came a general practice to elect, by the such charges as might be adduced against name :f podesta, a citizen of some neigh- his conduct. He could neither marry a native of the city, nor have any relation * Landullf the younger, whose history of Milan ent within the district, nor even, so extends from 1094 to 1133, calls himself publico-resident within the district, nor even, so -um eqiciorum particeps et consulum epistolarum great was their jealousy, oat or drink in dictator.-Scrrot Rer. Ital., t. v., p. 486. This is, beliheve, the enliest mention of those magistrates. * Sismondi, t. iii., p. 258, from whom the sub-Mvatorii, Annali d'Italia, A. D. 1107. stance of these observations is borowed. They t Muratori, Disaert, 46 and 52. Sismondi, t. i., may be coriously illustrated by Villani's histolr .. s cf Florence. and Stella's annals of (qnas K

Page 146 EUROPE DURING THE MIDDLE AGES. [UHAP. III the house of any citizen. The authority nation against tyranny, t Lt himself at the of these foreign magistrates was not by head of the people. any means alike in all cities. In some From this time we scarcely find any he seems to have superseded the consuls, mention of dissensions among the two and commanded the armies in war. In orders, till after the peace of Constancei others, as Milan and Florence, his authori- a proof, however defective the contain ty was merely judicial. WVe find, in some porary annals may be, that such disturb.of the old annals, the years headed by the ances had neither been frequent nor eeri. names of the podestas, as by those of the ous. A schism between the nobles antd consuls in the history of Rome.* people is noticed to have occurred at Fa. The effects of the evil spirit of discord, enza in 1185. A serious civil war of And dissen- that had so fatally breathed some duration broke out between them sions.
upon the republics of Lombar- at Brescia in 1200. From this time mudy, were by no means
confined to nation- tual jealousies interrupted the domestic al interests, or to the grand
distinction of tranquillity of other cities, but it is about Guelf and Ghibelin. Dissensions glowed
1220 that they appear to have taken a dein the heart of every city, and as the dan- cided aspect
of civil war; within a few ger of foreign war became distant, these years of that epoch, the
question of arisgrew more fierce and unappeasable. The tocratical or popular command was
tried feudal system had been established upon by arms in Milan, Piacmnza, 1Modena, Cre the
principle of territorial aristocracy; it mona, and Bologna.* maintained the authority, it
encouraged It would be vain to enter upon the mer the pride of rank. Hence, when the ru- its of
these feuds, which the meager his ral nobility were compelled to take up torians of the time are
seldom much di their residence in cities, they preserved posed to elucidate, and which they sax
the ascendency of birth and riches. From with their own prejudices. A writer o the natural
respect which is shown to the present age would show little philos these advantages,.all offices
of trust and ophy, if he were to heat his passions by command were shared among them; it the
reflection, as it were, of those forgot. is not material whether this were by pos- ten animosities,
and aggravate, like a par. itive right or continual usage. A limited tial contemporary, the
failings of one o: aristocracy of this description, where the another faction. We have no need of
inferior citizens possess the right of se- positive testimony to acquaint us with lecting their
magistrates by free suffrage the general tenour of their history. We from a numerous body of
nobles, is not know that a nobility is always insolent, among the worst forms of government,
that a populace is always intemperate, and afforda no contemptible security and may safely
resume that the former against oppression and anarchy. This re- began as the latter ended, by
injustice gimen appears to have prevailed in most and abuse of power. At one timle the of the
Lombard cities during the eleventh aristocracy, not content with seeing the and twelfth
centuries; though, in so great ar aual magistrates selected from their a deficiency of authentic
materials, it body, would endeavour by usurpation to would be too peremptory to assert this
exclude the bulk of the citizens from sufas an unequivocal truth. There is one frage. At another,
the merchants, growv very early instance, in the year 1041, of proud by riches, and confident of
their a civil war at Milan between the capita- strength, would aim at obtaining the honnei, or
vassals of the empire, and the ours of the state, which had been reserv plebeian burgesses,
which was appealed ed to the nobility. This is the inevitable by the mediation of Henry III.
This is consequence of commercial wealth, and ascribed to the ill treatment which the indeed
of freedom and social order, which latter experienced; as was usual indeed are the parents of
wealth. There is in in all parts of Europe, but which was en- the progress of civilization a term
at dured with inevitable submission every- which exclusive privileges must be relaxwhere else.
In this civil war, which ed, or the possessors must perish along tasted three years, the nobility
were obli- with them. In one or two cities a temged to leave Milan, and carry on the con-
porary compromise was made through.est in the adjacent plains; and one of the intervention of
the pope, whereby of. their class, by name Lanzon, whether fices of public trust, from the
highest -I moved by ambition or by virtuous indig- the lowest, were divided, in equal propce
or otherwise, between the noblem * Muratori, Dissert. 46. and the people. This also is nio
Annall * Sismondi, t.ii.,p.444. Murato kn:,alid'lt d'italia. A. D 1041 St Marc. t. iii. p. 94 lia, A.
D 1185 &e
in the popular scale, which, in a thus pursued into banishment. When fair trial, invariably gains on that of the the Ghibelins were returning to Florless numerous class. The artisans, who once, after a defeat given to the prevail composed the bulk of the population, were I ing party in 1260, it was proposed among arranged in companies according to their them to demolish the city itself which occupations. Sometimes, as at Milan, had cast them out; and, but for the perthey formed sep rate associations, with suasion of one man, Farinata deg' Uberti, rules for their internal government.* their revenge would have thus extinguish. The clubs, called at Milan la Motta and ed all patriotism.* It is to this that we a Credenza, obtained a degree of weight must ascribe their proneness to call in not at all surprising to those who consid- assistance from every side, and to invite the spirit of mutual attachment which any servitude for the sake of retaliating belongs to such fraternities; and we shall upon their adversaries. The simple love see a more strikinginstance of this here- of public liberty is in general, I fear, too after in the republic of Florence. To so abstract a passion to glow warmly in the formidable and organized a democracy, human breast; and, though often invigothe nobles opposed their numerous fam- rated as well as determined by personal ilies, the generous spirit that belongs to animosities and predilections, is as frehigh birth, the influence of wealth and quently extinguished by the same cause. established name. The members of each Independently of the two leading differ distinguished family appear to have lived ences which embattled the citizens of an in the same street; their houses were Italian state, their form of government fortified with square massive towers of and their relation to the empire, there commanding height, and wore the sem- were others more contemptible, though blance of castles within the walls of a not less mischievous. In every city the city. Brancaleon, the famous senator of quarrels of private families became the Rome, destroyed one hundred and forty foundation of general schism, sedition, of these domestic intrenchments, which and proscription. Sometimes these blend were constantly serving the purpose of ed themselves with the grand distinctions civilbroils and outrage. Expelled, as fre- of Guelf and Ghibelin; sometimes they quently happened, from the city, it was more were more nakedly conspicuous. This in the power of the nobles to avail them- may be illustrated by one or two promiselves of their superiority in the use of nent examples. Imilda de Lambertazzi, cavalry, and to lay waste the district, till a noble young lady at Bologna, was surweariness of an unprofitable contention prised by her brothers in a secret interred the citizens to terms of com- view with Boniface Gieremei, whose fain compromise. But, when all these resources ily had long been separated by the most were ineffectual, they were tempted or inveterate enmity from. her own. She forced to sacrifice the public liberty to had just time to escape: while the Lamtheir own welfare, and lent their aid to a bertazzi despatched her lover with their foreign master or a domestic usurper. poisoned daggers. On her return she In all these scenes of turbulence, wheth- found his body still warm, and a faint ir the contest was between the nobles hope suggested the remedy of sucking the and people, or the Guelf and Ghibelin venom from his wounds. But it only factions, no mercy was shown by the communicated itself to her own veins; conquerors. The vanquished lost their and they were found by her attendants homes and fortunes, and, retiring to other stretched lifeless by each other's side. cities of their own party, waited for the So cruel an outrage wrought the Giereopportunity of revenge. In a popular mei to madness; they formed alliances tumult the houses of the beaten side were with some neighbouring republics; the irequently levelled to the ground; not Lambertazzi took the same measures; perhaps from a sort of senseless fury and after a fight in the streets of Bologna which Muratori inveighs against, but on of forty days' duration, the latter were account. of the injury which these forti- driven out of the city, with all the Ghibefled houses inflicted upon the lower citizerts. The most deadly hatred is that * G. Villani, 1. vi., c. 82. Sismondi. I canna which men, exasperated by proscription forgive Dante for placing this patriot tra l'anime -mad forfeiture, bear to their country; nor pih nere, in one of
the worst regions of his Inferno. The conversation of the poet with Farinata, cant 10, is very fine, and illustrative of Florentine his' Muratori, Dissert 52 Sismondi, t. iii., p. 262. tory. K 2

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ELFPOPE DURING THE MIDDLE AGEL. [CHAP. li. lins, thei political associates. Twelve far less elevated in station than iovanni ~t thousand citizens were condemned to popes or emperors, Fra Giovin- Vicenza. banishrant; theirhouses razed, and their ni di Vicenza, belongs to these times and estates confiscated.* Florence was at to this subject. This Dominican friar rest till, in 1215, the assassination of an began his career at Bologna, in 1233. individual produced a mortal feud between preaching the cessation of war and forthe families Boundelmonti and Uberti, in giveness of injuries. Hie repaired frolim which all the city took a part. An out- thence to Padua, to Verona, and the rage committed at Pistoja, in 1300, split neighbouring cities. At his command the inhabitants into the parties of Bian- men laid down their instruments of war, chi and Neri; and these, spreading to and embraced their enemies. With that Florence, created one of the most virulent susceptibility of transient impulse natdivisions which annoyed that republic. ural to popular governments, several reIn one of the changes which attended publics implored him to reform their laws this little ramification of faction, Florence and to settle their differences. A genexpelled a young citizen who had borne eral meeting was summoned in the plain offices of magistracy, and espoused the of Paquara, upon the banks of the Adige. cause of the Bianchi. Dante Alighieri The Lombards poured themselves forth retired to the courts of some Ghibelin from Romagna and the cities of the princes, where his sublime and inventive March; Guelfs and Ghibelins, nobles mind, in the gloom of exile, completed and burghers, free citizens and tenantry that original combination of vast and ex- of feudal lords, marshalled around their extravagant conceptions with keen political carroccios, caught from the lips of the satire, which has given immortality to preacher the illusive promise of universal his name, and even lustre to the petty peace. They submitted to agreements contests of his time. dictated by Fra Giovanni, which contain In the earlier stages of the Lombard little else than amutual amnesty; whethrepublics, their differences, as well muer it were that their quarrels had been tual as domestic, had been frequently ap- really without object, or that he had dex. peased by the mediation of the emperors: terously avoided to determine the:ei. and the loss of this salutary influence point of contention. But power and repmay be considered as no slight evil at- utation suddenly acquired are transitory. tached to that absolute emancipation Not satisfied with being the legislator which Italy attained in the thirteenth and arbiter of Italian cities, he aimed at century. The popes sometimes endeav- becoming their master; and abused the oured to interpose an authority, which, enthusiasm of Vicenza and Verona, to though not quite so direct, was held in obtain a grant of absolute sovereignty. greater veneration; and, if their own Changed from an apostle to an usurper, temps had been always pure from the the fate of Fra Giovanni might be preselfish and vindictive passions of those dictated; and he speedily gave place to whom they influenced, might have pro- those who, though they made a worse duced more general and permanent good. use of their power, had, in the eyes oe But they considered the Ghibelins as mankind, more natural pretensions to their own peculiar enemies, and the tri- possess it.* umph of the opposite faction as the church's best security. Gregory X. and Nicholas III., whether from benevolent motives, or because their jealousy of Charles of Anjou, while at the head of the Guelfs, suggested the revival of a PART 11. Ghibeihn party as a counterpoise to his State of Italy after the Extinction oi tile House of power, distinguished their pontificate by Swabia.-Conquest of Naples by Charles ot enforcing measures of reconciliation in Anjou.-The Lombard Republics become sever all Italian cities; but their successors re- ally subject to Princes or Usurpers.-The Vis turned to the ancient policy and prejudi- conti ofMilan-their Aggrindizement. —Decline clbes

Page 149 PART 11i.] ITALY 149 ice.—Wv.: of Chioggia.—Government of Genoa. was for a little time able to maintall —Venice —her Origin and Prosperity.—Vene—itself, and even to gain ground in the tian Government—its Vices.—Territorial Conquests of Venice.—Military System of Italy.—north of Italy, yet two events that ocCompanys of Adventure. —. foreign; Guarni-curred not long afterward restored the eri Hawkwood—and 2 native; Braccio, Sforza. ascendency of their adversaries. The mprovements in Military Service.—Arms, offen—first of these was the fall of Eccelin da sive and defensive.—Invention of Gunpowder.—id Naples.—First Line of Anjou. —Joanna I. —Ladislaus.—Joanna II. —Francs Sforza becomes cesses in Lombardy appeared to threaten Duke of Milan.—Alfonso, king of Naples.—the establishment of a tremendous desState of Italy during the fifteenth Century.—potism, and induced a temporary union Florence.—Rise of the Medi, and Ruin of their of Guelf and Ghibelin states, by which Adversaries.—Pretensions of Charles VIII. to, Naples. —he was overthrown. The next, and far more important, was the change of Fn.M the death of Frederick II., in 1250, dynasty in Naples. This king—affairs of th. th: invasion of Charles VIII., in 1494, dom had been occupied, after the Naples. i long and undistinguished period occurs, death of Conrad, by his illegitimate brothwhich it is impossible to break into any er. Manfred, in the behalf, as he at first natural divisions. It is an age in many pretended, of young Conradin the heir, respects highly brilliant; the age of poe— but in fact as his own acquisition. [A. try and letters, of art, and of continual D. 1254.] He was a pr—in ce of an active improvement. Italy displayed an intel- and firm mind, well fitted for his difficult lectual superioAty in this period over the post, to whom the Ghibelins looked up Transalpine nations, which certainly had as their head, and as the representative not appeared since the destruction of the of his father. It was a natural objec; Roman empire. But her political history with the popes, independently of their illpresents a labyrinth of petty facts, so ob-will towards a son of Frederick II., tD scure and of so little influence as not to see a sovereign on whom they could arrest the attention; so intricate and in-better rely placed upon so neighbouring capable of classification as to leave only a throne. Charles, count of An—Charles of confusion in the memory. The general jou. brother of St. Louis, was Anjou. events that are worthy of notice, and tempted by them to lead a crusade (for give al character to this long period, are as such all wars for the interest of the establishment of small tyrannies upon Rome were now considered) against the the ruins of republican government in Neapolitan usurper. [A. D. 1266.] The most of the cities, the gradual rise of chance of a battle decided the fate of three considerable states, Milan, Flor—Naples, and had a striking influence upon ence, and Venice, the naval and commer—the history of Europe for several centucial rivalry between the last city and ries. Manfred was killed in the field; Genoa, the final acquisition by the popes but there remained the legitimate heir of their present territorial sovereignty. of the Fredericks, a boy of seventeen and the revolutions in the kingdom of years old, Conradin, son of Conrad, who Naples under the lines of Anjou and Ar— rashly, as we say at least after the event, agon. attempted to regain his inheritance. He After the death of Frederick II., the fell into the hands of Charles; and the distinctions of Guelf and Ghibelin became voice of those rude ages, as well as of a destitute of all rational meaning. The more
enlightened posterity, has united most odious crimes were constantly per- in branding with everlasting infamy the petrated, and the utmost miseries endur- name of that prince, who did not hesitate. ed, for an echo and a shade, that mocked to purchase the security of his own title the deluded enthusiasts of faction. None by the public execution of an honourable of the Guelfs denied the nominal, but in- competitor, or rather a rightful claimant definite sovereignty of the empire; and of the throne he had usurped. [A. D. 1268.1 beyond a name the Ghibelins themselves With Conradin the house of Swabia was would have been little disposed to carry extinguished; bit Constance, the daught. But the virulent hatreds attached to ter of Manfred, had transportedhis right to these words grew continually more im- Sicily and Naples into the house of Araplacaole, till ages of ignominy and tyran- by her marriage with Peter III. nical government had extinguished every This success of a monarch, selected energetic passion in the bosoms of a de- by the Roman pontiffs as their Decline of graded people. particular champion, turned the the Ghibelii In the fall of the house of Swabia, tide of faction over all Italy. party Rome appeared to have consummated her He expelled the Ghibelins from Florence ariuJmph; and although the Ghibelin party of which they had a few yea.- before

Page  150 0(0 EUROPE DURING THE MIDDLE AGES. rCHAP. lu obtain.led a complete command by means and such experience ought naturally to, of their memorable victory upon the river have inspired the Italians with more Arbia. After the fall of Conradian, that universal abhorrence of despotism. But party was everywhere discouraged. Ger- every danger appeared trivial in the eyes many held out small hopes of support, of exasperated factions, when compared even when the imperial throne, which with the ascendancy of their adversaries. had long been vacant, should be filled by Weary of unceasing and useless contests, one of her princes. The populace were, in which ruin fell with an alternate but in almost every city, attached to the equal hand upon either party, liberty church and to the name of Guelf; the withdrew from a people who disgraced kings of Naples employed their arms, and her name; and the tumultuous, the brave, the popes their excommunications, so the intractable Lombards, became eager that for the remainder of the thirteenth to submit themselves to a master, and century the name of Ghibelin was a term patient under the heaviest oppression. of proscription in the majority of Lom- Or, if tyranny sometimes overstepped bard and Tuscan republics. Charles was the limits of forbearance, and a sedi-.onstituted by the pope vicar-general in tious rising expelled the reigning prince, Tuscany. This was a new pretension it was only to produce a change of hands, of the Roman pontiffs, to name the lieu- and transfer the impotent people to a diftenants of the empire during its vacancy, ferent, and perhaps a worse, despotism.* which indeed could not be completely In many cities, not a conspiracy was filled up without their consent. It soon, planned., not a sigh was breathed in fahowever, became evident, that he aimed your of republican government, after once at the sovereignty of Italy. Some of the they had passed under the sway of a sillpopes themselves, Gregory X. and Nich- gle person. The progress indeed was olas IV., grew jealous of their own crea- gradual, though sure, from limited to ture. At the Congress of Cremona, in absolute, from temporary to hereditary 1269, it was proposed to confer upon power, from a just and conciliating rule, Charles the seigniory of all the Guelf to extortion and cruelty. But, before the cities; but the greater part were prudent middle of the fourteenth century, at the enough to choose him rather as a friend latest, all those cities which had spurned than a master.* at the faintest mark of submission to the The cities of Lombardy, however, of emperors, lost even the recollection of The Lomn- either, dedqmination, were no self-government, and were bequeathed, bard cities longer influenced by that gen- like an undoubted patrimony, among the Decomne sub erous disdain of one nan's will, children of their new lords. Such is ect to lords, which is to republican govern- the
progress of usurpation; and such nents what chastity is to women; a the vengeance that Heaven reserves for conservative principle, never to be rea- those who waste in license and faction soned upon, or subjected to calculations its first of social blessings, liberty.t of utility. By force, or stratagem, or * See an instance of the manner in which one free consent, almost all the Lombard re- tyrant was exchanged for another, in the fate of publics had already fallen under the yoke Passerino Bonaccorsi, lord of Mantua, in 1328. of some leading citizen, who became the Luigi di Gonzaga surprised him, rode the city lord (signore), or, in the Grecian sense, (corse la citta) with a troop of horse, crying Viva ii popolo, e muoja Messer Passerino e le sue gatyrant of his country. The first instance belle! killed Passerino upon the spot, put his son of a voluntary delegation of sovereignty to death in cold blood, e poi si fece signore della was that above mentioned of Ferrara, terra. Villani, 1. x., c. 99, observes, like a good which placed itself under the Lord of republican, that God had fulfilled in this the words Este. Eccelin made himself truly the of his Gospel (query, what Gospel?), I will slay my enemy by my enemy! abattendo l'uno tiranno tyrant of the cities beyond the Adige; per l'altro. t See the observations of Sismondi, t. iv., p. 212, on the conduct of the Lombard signori (I know not * Sismondi, t. iii., p. 417. Several, however, of any English word that characterizes them, ex including Milan, took an oath of fidelity to Charles cept tyrant in its primitive sense), during the firft. the same year.-Ibid. In 1273, hewas lord of Ales- period of their dominion. They were generally sandria and Piacenza, and received tribute from Mi- chosen in an assembly of the people, sometimes fox lan, Bologna, and most Lombard cities.-Muratori. a short term, prolonged in the same manner. The It was evidently his intention to avail himself of people was consulted upon several occasions. At the vacancy of the empire, and either to acquire Milan there was a council of 900 nobles, not per that title himself, or at least to stand in the same manent or representative, but selected and con relation as the emperors had done to the Italian vened at the discretion of the government, through states; which, according to the usage of the twelfth and thirteenth centuries, left them ini possession Thus, as Sismondi remarks, they respected tlhe of every thing that we call independence, with the sovereignty of the people, while they destraoyed itq aservation of a nominal allegiance. liberty.

Page 151 YART 11. ITALY. The city most distinguished in both Castruccio Castrucani. an adrcnturer ot The Torriani wvars against the house of Siwa- remarkable ability, rendered himseli and Visconti bia, for an unconquerable at- prince of Lucca, and drew over a formi. at Milan, tachment to republican institu- dable accession to the imperial side from tions, was the first to sacrifice them in a the heart of the church- arty in Tuscany, tw years after the death of Frederick II. though his death restored the ancient orMilan had for a considerable time been der of things. The inferior tyrants were agitated by civil dissensions between the partly Guelf, partly Ghibelin, according nobility asvh inferior citizens. These par- to local revolutions; but, upon the whole ties were Xretty equally balanced, and the latter acquired a gradual ascendency. their success was consequently alternate. Those indeed who cared for the independEach had its own podesta, as a party- ence of Italy, or for their own power, leader, distinct from the legitimate ma- had far less to fear from the phantom of gistrate of the city. At the head of the imperial prerogatives, long intermitted, nobility was their archbishop, Fra Leon and incapable of being enforced, than Perego; the people chose Martin della from the new race of foreign princes, Torre, one of a noble family which had whom the church had substituted for the ambitiously sided with the democratic house of Swabia. The Angevin Kings of faction. In consequence of the crime of kings of Naples were sovereigns Naples aim a nobleman, who had murdered one of of Provence, and from thence at command his creditors, the two parties took
up easily encroached upon Pied-of-Italy arms in 1257. A civil war of various mont, and threatened the Milanese. Rob.. success, and interrupted by several pa- ert, the third of this line, almost openly cifications, which, in that unhappy temper, aspired, like his grandfather, Charles I., could not be durable, was terminated in to a real sovereignty over Italy. His ofabout two years by the entire discomfit- fers of assistance to Guelf cities in war ure of the aristocracy, and by the elec- were always coupled with a demand of tion of Martin della Torre as chief and the sovereignty. Many yielded to his lord (capitano e signore) of the people. ambition; and even Florence twice beThough the Milanese did not probably in- stowed upon him a temporary dictatortsend to renounce the sovereignty resident ship. In 1314 he was acknowledged in their general assemblies, yet they soon lord of Lucca, Florence, Pavia, Alesson. lost the republican spirit; five in succes- dria, Bergamo, and the cities of Romagna. sion of the family Della Torre might be In 1318 the Guelfs of Genoa found no said to reign in Milan; each indeed by a other resource against the Ghibelini emiformal election, but with an implied re- grants who were under their walls, than cognition of a sort of hereditary title. to resign their liberties to the King of Twenty years afterward, the Visconti, a Naples for the term of ten years, which family of opposite interests, supplanted he procured to be renewed for six more. the Torriani at Milan; and the rivalry The Avignon popes, especially John between these great houses was not at XXII., out of blind hatred to the Empen end till the final establishment of orr Louis of Bavaria and the Visconti Matteo Visconti, in 1313; but the people family, abetted all these measures of were not otherwise considered than as ambition. But they were rendered aborEaiding by force the one or other party, tive by Robert's death, and the subseand at most deciding between the preten- quent disturbances of his kingdom. sions of their masters. At the latter end of the thirteenth cenThe vigour and concert infused into tury, there were almost as many princes the Guelf party by the successes of in the north of Italy as there had been Charles of Anjou, were not very durable. free cities in the preceding age. Their f'hat prince was soon involved in a pro- equality, and the frequent domestic revotracted and unfortunate quarrel with the lutions which made their seat unsteady, kings of Aragon, to whose protection his kept them for a while from encroaching revolted subjects in Italy had recurred. on each other. Gradually, however, they On the other hand, several men of ener- became less numerous; a quantity of obRevival of getic character retrieved the Ghi- secure tyrants were swept away from the the Ghibe- belin interests in Lombardy, and smaller cities; and the people, careless tin party. even in the Tuscan cities. The or hopeless of liberty, were glad to exVisconti were acknowledged heads of change the rule of despicable petty usurp-that faction. A family early established ers for that of more distinguished and as lords of Verona, the Della Scala, main- powerful families. About the State of tamned the credit of the same denomina- year 1350, the central parts of Lombardy tion between the' Adige and the Adriatic. Lombardy had fallen under the de of thi
for that reason, to reign undisturbed till after this marriage [A. D. 1395], the Visconti of the eighteenth
century. But these uni-conti were tacitly admitted among the ted were hardly a match, as they some-
reigning princes, by the erection of Milan Power of the times experienced, for the Vis-
into a dutchy under letters patent of the Visconti. conti. That family, the object Emperor
Wenceslaus.* of every league formed in Italy for more The imperial authority over Italy was
than fifty years, in constant hostility to almost entirely suspended after Relations of the church,
and well inured to interdicts the death of Frederick II. A the empire and excommunications,
producing no long interregnum followed in with Italy. one man of military talents, but fertile
Germany; and when the vacancy was of tyrants detested -for their perfidious- supplied by
Rodolph of Hapsburg [A. D. ness and cruelty, was nevertheless ena-
1272], he was too prudent
to dissipate bled, with almost uninterrupted success, his moderate resources, where the great to
add city after city to the dominion of house of Swabia had failed. About forty Milan, till it
absorbed all the north of years afterward [A. D. 1309], the emperor Italy. Under Gian
Galeazzo, whose reign Henry of Luxemburg, a prince, like Ro. began in 1385, the viper (their
armorial dolph, of small hereditary posbealing) assumed indeed a -menacing at- sessions, but
active and discreet, Heny VII titute:* he overturned the great family availed himself of the
ancierto respect of Scala, and annexed their extensive borne to the imperialname, anldthe mutual
possessions to his own; no power inter- jealousies of the Italians, to recover for a vened from
Vercelli in Piedmont to Fel- very short time a remarkable influence. tre and Bentuno; while the
free cities of But, though professing neutrality, and deTuscany, Pisa, Siena, Perugia, and even
sire of union between the Guelfs and Bologna, as if by a kind of witchcraft, Ghibelins, he could
not succeed in revoluntarily called in a dissembling tyrant moving the distrust of the former;
his as their master. exigences impelled him to large demands Powerful as the Viscontiwere in
Italy, of money; and the Italians, when they they were long in washing out the tinge counted
his scanty German cavalry, perof recent usurpation, which humbled ceived that obedience was
altogether a them before the legitimate dynasties of matter of their own choice. Henry died;
Europe. At the siege of Genoa, in 1318, however, in time to save himself from Robert, king of
Naples, rejected with con- any decisive reverse. His successors, tempt the challenge of Marco
Visconti to Louis of Bavaria and Charles IV., de decide their quarrel in single combat.-
scended from the Alps with similar moBut the pride of sovereigns, like that of tives, but after
some temporary good forprivate men, is easily set aside for their tune were obliged to return,
not without interest. Galeazzo Visconti purchased discredit. Yet the Italians never broke with
100,000 florins a daughter of France that almost invisible thread which confor his son, which
the French historians nected them with Germany; the faln mention as a deplorable humiliation
for lacious name of Roman emperor still their crown. A few years afte -ward, challenged their
allegiance, though conferred by seven Teutonic electors withl It Allusions to heraldry are very
common in the out their concurrence. Even Florence, Italian writers. All the historians of the
fourteenth tentury habitually use the viper, il biscione, as a the most independent and high spir
eronymne for the power of Milan. ited of republics, was induced to make t Della qual cosa il
R6 molto sdegno ne prese. a reaty with Charles IV. in 1355 Villani, 1. ix., c. 93. It was
reckoned a misalliance, which, while it confirmed all her actual as Dante tells us, in the widow
of Nine di Gallura, a nobleman of Pisa, though a sort of prince in Saran.a, to mat -y one of the
owing to granted without diminution of the empire ealousy of French or Neapolitan inter- (sine demembratione imperil); and his ference, partly to the national hatred of chancellor received an oath of fidelity the popes who had seceded to Avignon, from the cities of Romagna. But the and in some degree to a misplaced re- pope insisting firmly on his own claim, spect for antiquity, to which the revival Rodolph discreetly avoided involving him of letters had given birth. The great ci- self in a fatal quarrel, and, in 1278, abso vilians, and the much greater poets of lusty released the imperial supremacy the fourteenth century, taught Italy to over all the dominions already granted consider her emperor as a dormant sov- to the Holy See.* erign, to whom her various principal- This is a leading epoch in the tempoties and republics were subordinate, and ral monarchy of Rome. But she stood during whose absence alone they had le- only in the place of the emperor; and gitimate authority. her ultimate sovereignty was compatible In one part, however, of that country, with the practical independence of the Cession of Ro- the had, soon after the free cities, or of the usurpers who had magna to the commencement of this peri- risen up among them. Bologna, Faenza, Popes. od, spontaneously renounced Rimini, and Ravenna, with many others its sovereignty. From the era of Pe- less considerable, took an oath indeed to pin's donation, confirmed and extended the pope, but continued to regulate both by many subsequent charters, the Holy their internal concerns and foreign relaSee had tolerably just pretensions to the tions at their own discretion. The first province entitled Romagna, or the exar- of these cities was far pre-eminent above chate of Ravenna. But the popes, whose the rest for population and renown, and, menaces were dreaded at the extremities though not without several intermissions, of Europe, were still very weak as tem- preserved a republican character till the poral princes. Even Innocent III. had end of the fourteenth century. The rest never been able to obtain possession of were soon enslaved by petty tyrants, this part of St. Peter's patrimony. The more obscure than those of Lombardy. circumstances of Rodolph's accessionin- It was not easy for the pontiffs of Avigspited Nicholas III. with more confidence. non to reinstate themselves in a dominThat emperor granted a confirmation of ion which they seemed to have abandon. every thing included in the donations of ed; but they made several attempts to re, cover it, sometimes with spiritual arms., The republic of Florence was at this time in sometimes with the more efficacious aid considerable peril from a coalition of the Tuscan of mercenary troops. The annals of cities against her, which rendered the protection part of It of the emperor convenient. But it was very re.this a a y are peculiarly uninterluctantly that she acquiesced in even a nominal esting. submission to his authority. The Florentine en- Rome itself was, throughout the middle voys, in their first address, would only use the ages, very little disposed to ac- Internal words, Santa Corona, or Serenissimo Principe; e in the government of her sta sanza ricordarlo imperadore, o tdimostrargli alcuna Rome. reverenza di suggezione, domandando che il cormm- bishop. His rights were indefinite, munedi Firenze volea, essendogliubbidiente, le co- and unconfirmed by positive law; the tali e le cotali franchigie per mantenere il suo popolo emperor was long sovereign, the people nell'usata libertade. —Mat. Villani, p. 274. (Script always meant to be free. Besides the Rer. Ital., t. xiv.) This style made Charles angry; common causes of insubordination and and the city soon atoned for it by accepting his comm causes of ins privilege. In this, it must be owned, he assumes anarchy among the Italians, which applia decided tone of sovereignty. The gonfalonier ed equally to the capital city, other sentiand priors are declared to be his vicars. The dep- ments more peculiar to Rome preserved uties of the city did homage and swore obedience. Circumstances induced the principal citizens to There still remain. make this submission, which they knew to be for many centuries. There still remain. merely nominal. But the high-spirited people, not ed enough, in the wreck of that vast inso indifferent about names, came into it very un- heritance, to swell the bosolms of her ctwillingly. The treaty was seven times proposed, izens with a consciousness of their own and
as often rejected in the consiglio del popolo, before their feelings were subdued. Its publics dignity. They bore the venerable name. before their feelings were subdued. Its publication was received with no marks of joy. The pub- they contemplated the monuments of arT lic buildings alone were illuminated: but a sad si- and empire, and forgot, in the illusions of lence indicated the wounded pride of every private - citizen. -M. Villani, p. 286 290 Sismondi, t. vi. *-

Muatori, ad ann. 1274, 1275, 1278. SismoV p 238.' di. t. iii., p. 461.

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034 EUROPE DURING THE MIDDLE AGES. LCHAP. 11 national pride, that the tutelar gods of the bute of sovereignty that of coining gol. buildings were departed for ever. About and silver money. Some of their coins the middle of the twelfth century, these StillL. exist, with legends in a very repubrecollections were heightened by the elo- lican tone.* Doubtless the temporal aequence of Arnold of Brescia, a political theori of the popes varied according to heretic, who preached against the ter- their personal character. Innocent III. poral jurisdiction of the hierarchy. In a had much more than his predecessors for emporary intoxication of fancy, they almost a century, or than some of his sucwere led to make a ridiculous show of censors. He made the senator'lake an self-importance towards-Frederick Barba- oath of fealty to him, which, though not rossa, when he came to receive the impe- very comprehensive, must have passed in rial crown; but the German sternly chi- those times as a recognition of his supe ded their ostentation, and chastised their riority.t resistance.* With the popes they could Though there was much less obedience del.1 more securely. Several of them to any legitimate power at Rome than were expelled from Rome during that age anywhere else in Italy, even during the by the seditious citizens. Lucius II. died thirteenth century, yet after the secess of hurts received in a tumult. The go- sion of the popes to Avignon, their own ernment was vested in fifty-six senators, city was left in a far worse condition annually chosen by the people, through than before. Disorders of every kind, the intervention of an electoral body, ten tumult and robbery, prevailed in 1ile delegates from each of the thirteen dis- streets. The Roman nobility were entricks of the city.t This constitution gaged in perpetual war with each other. lasted not quite fifty years. In 1192, Not content with their own fortified pal Rome imitated the prevailing fashion by aces, they turned the sacred monuments the appointment of an annual foreign ma- of antiquity into strongholds, and congistrate.A Except in name, the senator summathe destruction of time and of Rome appears to have perfectly re- conquest. At no period has the city ensemble the podesth of other cities. This dured such irreparable injuries; nor was magistrate superseded the representative the downfall of the western empire so senate, who had proved by no means ade- fatal to its capital, as the contemptible puate to control the most lawless aris- feuds of the Orsini and Colonna familocracy of Italy. I shall not repeat the lies. Whatever there was of governstory of Brancaleon's rigorous and inflex- ment, whether administered by a legato ible justice, which a great historian has from Avignon, or by the municipal aualready drawn from obscurity. It illus- thorities, had lost all hold on these powtrates not the annals of Rome alone, but erful barons. [A. D. 1347.] In the midst the general state of Italian society, the na- of this degradation and wretchedness, an ture of a podesta's duty, and the difficult- obscure man, Nicola di Rienzi, The Tribune ties of its execution. The office of sena- conceived the project of resto- Rienzi. tor survives after more than six hundred ring Rome not only to good order, but years; a foreign magistrate still resides even to her ancient greatness. He had in the capitol; but he no longer wields received an education beyond his birth, the " iron flail" of Brancaleon, and his and nourished his mind with the study of nomination proceeds of course from the the best writers. After many harangues supreme pontiff, not from the people. In to the people, which the nobility, blinded the twelfth and thirteenth centuries, the by their self-confidence, did not attempt senate, and the senator who
succeeded to repress, Rienzi suddenly excited an inthem, exercised one distinguishing attri-
surrection, and obtained complete success. He was placed at the head of a * The impertinent
dress of a Roman orator to new government, with the title of tribune, Frederick, and his
answer, are preserved in Otho and with almost unlimited power. The of Frisingen, 1. ii., c. 22,
but so much at length first effects of this revolution were won that we may suspect some
exaggeration. Otho is rather rhetorical. Thley Nay be read in Gibbon, derful. All the nobles
ubmitted, though c.69. with great reluctance; the roads were t Sismonli, t. ii., p. 36. Besides
Sismondi and cleared of robbers; tranquillity was remuiatori, I would refer for the history of
Rome stored at home; some severe examples during the middle ages to the last chapters of Gib-
of justice intimidated offenders; and the ben s Decline and Fall. § Sismondi, t. ii., p. 308.
tribune was regarded by all the people as The reaers Spenser will recollect the iron the
destined restorer of Rome and Italy flail of Talus, tk 3 attendant of Airthegal, emblematic of
the severe ustice of the lord deputy of Ire- * Gibbon, vol. xii., p. 289. Miuratofi, Antiquit. land,
Sismondi, t. ii., p. 309.

Page 155 t hough the court of Avignon could not citizens at their cclnmand, wera place'
approve of such a usurpation, it tempo- at the head of this c lmmrnonwealth The rized enough
not directly to oppose it. great object of this new organization was lMost of the Italian
republics, and some to intimidate the Roman nobility, whose of the princes, sent ambassadors,
and outrages, in the total absence of govern seemed to recognise pretensions which ment, had
grown intolerable. Severa. ere tolerably ostentatious. The King of them were hanged the first
year by of Hungary and Queen of Naples sub- order of the bannerets. The citizen. mitted their
quarrel to the arbitration of however, had no serious intention oi Rienzi, who did not, however,
undertake throwing off their subjection to the to decide upon it. But this sudden exal-
popes. They provided for their own setation intoxicated his understanding, and cuiry, on account of
the lamentable seexhibited failings entirely incompatible cession and neglect of those who
claimed with his elevated condition. If Rienzi allegiance while they denied protection. had
lived in our own age, his talents, But they were ready to acknowledge which were really great,
would have and welcome back their bishop as their found their proper orbit. For his char-
sovereign. Even without this, they suracter was one not unusual among litera- rendered their
republican constitution in ry politicians; a combination of knowl- 1362, it does not appear for
what reason, edge, eloquence, and enthusiasm for ideal and permitted the legate of Innocent VI
excellence, with vanity, inexperience of to assume the government.*- WTe find, mankind,
unsteadiness, and physical ti- however, the institution of bannerets remidity. As these latter
qualities be- vived, and in full authority, some years came conspicuous, they eclipsed his vir-
afterward. But the internal history of tues, and caused his benefits to be forgot- Rome appears
to be obscure, and I have ten; he was compelled to abdicate his not had opportunities of
examining it government, and retire into exile. After minutely. Some degree of political
free several years, some of which he passed dom the city probably enjoyed during in the prisons
of Avignon, Rienzi was the schism of the church; but it is not brought back to Rome, with the
title of easy to discriminate the assertion of le. senator, and under the command of the gitimate
privileges from the licentioue. legate. It was supposed that the Ro- tumults of the barons or
populace. In mans, who had returned to their habits of 1435, the Romans formally took away
insubordination, would, gladly submit to the government front Eugenius IV., and their
favourite tribune. And this proved elected seven signiors or chief magisthe case for a few
months; but: after that trates, like the priors of Florence.t But time they ceased altogether to
respect a this revolution was not of long continuum, who so little respected himself in ance.
On the death of Eugenius, the citaccepting a station where he could no izens deliberated upon
proposing a conlonger be free, and Rienzi was killed in a stitutional charter to the future pope. sedition.* Stephen Porcaro, a man of good family, Once more, not long after the death of and inflamed by a strong spirit of liberty, Subsequent Rienzi, the freedom of Rome was one of their principal instigators. affairs of seems to have revived in repub- But the people did not sufficiently par Rome. lican institutions, though with take of that spirit. No measures were names less calculated to inspire peculiar taken upon this occasion; and Porcaro, recollections. Magistrates called ban- whose ardent imagination disguised the ierets, chosen from the thirteen districts hopelessness of his enterprise, tampering of the city, with a militia of three thousand in a fresh conspiracy, was put to death under the pontificate of Nicholas V.1 Sismondi, t. v., c. 37; t. vi., p. 201. Gibbon, The province of Tuscany continued c. 70. De Sade, Vie de Petrarque, t. ii., passim. Tiraboschi, t. vi., p. 339. It is difficult to resist Petrarch. La detta impresa del tribuno era um. the admiration which all the romantic circum- opera fantastica, e di poco durare, l. xii., c. 90. Ar stances of Rienzi's history tend to excite, and to illustrious female writer has drawn with a single which Petrarch so blindly gave way. That great stroke the character of Rienzi, Crescentius, an I man's characteristic excellence was not good com. Arnold of Brescia. the fond restorers of Roman lib mton sense. He had imbibed two notions, of which e, qui ont pris les souvenirs pour les esprances. — it is hard to say which was the more absurd; Corinne, t. i., p. 159. Could Tacitus have ezce!l that Rome had a legitimate right to all her an- ed this? cient authority over the rest of the world; and * Matt. Villani, p. 576, 604, 70(9. Slsmondi, X that she was likely to recover this authority in con- v., p. 92. He seems to have overlooked the forms sequence of the revolution produced by Rienzi. period of government by bannerets, andt refers tlhii &iovanni Villani, living at Florence, and a stanch institution to 1375. republican, formed a very different estimate, which t Script. Rert m Italic., t. iii., pars 2, p. 1128 weighs more than the enthusiastic panegyrics of S Id., p. 31, 1134. Sismondi, t. a., p. 18.
families, which oc-
century. But it was fully established, casionally predominated through the
as- and- ctndered essential to the constitu sistance of the emperor. It seems, how-
tion, in 1266.
By the provisions made in ever, to have existed chiefly among the that year, each of the seven
greater arts nobility; the spirit of the people was had a council of its own, a chief magis.
troughly Guelf. After several revolu-
trate or consul, who administered justice tions, accompanied by alternate proscrin- in civil causes to all members of his comdion arid
demolition of houses, the Guelf pany, and a banneret (gonfaloniere) or party, through the
assistance of Charles military officer, to whose standard they of Anjou, obtained a final
ascendency in repaired when any attempt was made to 1266; and after one or two unavailing
disturb the peace of the city. schentes of accommodation, it was estab-
The administration of
criminal justice lishec as a fundamental law in the Flor-
belonged at Florence, as at other cities, entine constitution, that no person of to a foreign podesta, or rather to two Ghibelin ancestry
could be admitted to foreign magistrates, the podesta and the offices of public trust; which, in
such a capitano del popolo, whose jurisdiction, governm3nt, was in effect an exclusion so far
as I can trace it, appears to have from the privileges of citizenship. been concurrent.t In the first
part of The changes of internal government the thirteenth century, the authority of Govern-
and vicissitudes of success among the podesta may have been more extenm of factions were so
frequent at Flor- sive than afterward. These offices were Florence. ence, for many years after
this preserved till the innovations of the Medtime, that she is compared by her great ici. The
domestic magistracies underbanished poet to a sick man, who, unable went more changes.
Instead of consuls, to rest, gives himself momentary ease, which had been the first
denomination of by continual change of posture in his the chief magistrates of Florence, a
colbed.- They did not become much less numerous after the age of Dante. Yet * I have found
considerable difficulties in this part of my task; no author with whom I am ac the revolutions of
Florence should per- quainted giving a tolerable view of the Florentin haps be considered as no
more than a government, except M. Sismondi, wvho is hirmself necessary price of her liberty.
It was not always satisfactory. her boast and her happiness to have es-
t Ammirato ad ann. 1204 et 1235. Villani inti mates, 1. vii., c. 13, that the arts existed as commer cial companies before
1266. Machiavelli and Sis * Villani, 1. v., c. 12. mondi express themselves rather inaccurc
tly as f E se ben ti ricordi, e vedi il lume, if they had been erected at that time, which indeej Ve,'rai
te sornigliante a quella inferma, is the era of their political importantarne. Che non puo trovar
posa in sa le piume,: Matteo Villani, p. 194. G. Villarti places the ta con da; volta suo dolore
scherna institution of the podesti in 1207; we fiEnd it how Purgatorio, cant. vi ever as early as
1184 — Ammirato

Page 157 rAT II.: ITA JY. lad,age of twelve oi fourteen persons, called the scrutiny was
renewed, and fresh Anziani or Buonuomini, but varying in names were mingled with those
which name as well as number according to still continued undrawn; so that accidents
revolutions of party, was established might deprive a man for life of his por about the middle of
the thirteenth centu- tion of sovereignty.* ry, to direct public affairs.* This order Four councils
had been established by was entirely changed in 1282, and gave the constitution of 1266, for
the decision place to a new form of supreme magis- of all propositions laid before them by
tracy, which lasted till the extinction of the executive magistrates, whether ofa the republic.
Six priors, elected every legislative nature or relating to plblic two months, from each of the six
quar- policy. These were now abrogated, and ters of the city, and from each of the in their
places were substituted one of greater arts, except that of lawyers, con- 300 members, all
plebeians, called constituted an executive magistracy. They siglio di popolo, and one of 250,
called conlived, during their continuance in office, siglio di commune, into which the nobles in
a palace belonging to the city, and might enter. These were changed by the public cost. The same rotation as the magistracies, every actual priors, jointly with the chiefs and four months. A parliament, or general councils (usually called la capitidine) of assembly of the Florentine people, was the seven greater arts, and with certain rarely convoked; but the leading principi adjuncts (arroti) named by themselves, ple of a democratical republic, the ultielected by ballot their successors. Such mate sovereignty of the multitude, was was the practice for about forty years not forgotten. This constitution of 1324 after this government was established. was fixed by the citizens at large in - But an innovation, begun in 1324, and parliament; and the same sanction was perfected four years afterward, gave a given to those temporary delegations of peculiar character to the constitution of the signiory to a prince, which occasion Florence. A lively and ambitious people took place. What is technically ple, not merely jealous of their public called by their historians farsi popolo, sovereignty, but deeming its exercise a was the assembly of a parliament, or a matter of personal enjoyment; aware, at resolution of all derivative powers into the same time, that the will of the whole the immediate operation of the popular body could neither be immediately ex- will. pressed on all occasions, nor even through The ancient government of this republic chosen representatives, without the risk lic appears to have been chiefly in the of violi nce and partiality, fell upon the hands of its nobility. These were very singular: idea of admitting all citizens, numerous, and possessed large estates not unworthy by their station or conduct, in the district. But by the constitution to offices of magistracy by rotation. of 1266, which was nearly coincident Lists were separately made out by the with the triumph of the Guelf faction, priors, the twelve buonuomini, the chiefs the essential powers of magistracy, as and councils of arts, the bannerets and well as of legislation, were thrown into other respectable persons, of all citizens, the scale of the commons. The colleges Guelfs by origin, turned of thirty years of arts, whose functions became so emof age, and, in their judgment, worthy of inent, were altogether commercial. Many public, trust. The lists thus formed were indeed of the nobles enrolled themselves then united, and those who had composed in these companies, and were among the them meeting together, in number nine most conspicuous merchants of Florence. ty-seventeen, proceeded to ballot upon every These were not excluded from the execname. Whoever obtained sixty-eight utive college of the priors, at its first inblack balls was placed upon the reformed stitution in 1282. It was necessary, howlist; and all the names it contained, ever, to belong to one or other of the being put on separate tickets into a bag great arts in order to reach that magisor purse (imborsati), were drawn succes- tracy. The majority, therefore, of the sively as the magistracies were renewed. ancient families, saw themselves pushed As there were above fifty of these, none of which could be held for more than * Villani, l. ix., c. 27; 1. x., c. 110; 1. xi., c. 105. Sismondi, t. v., p. 174. This species of lottery, four months, several hundred citizens recommending itself by an apparent fairness and were called in rotation to bear their share incompatibility with undue influence, was speedily an the government within two years. adopted in all the neighbouring republics, and has But, at the expiration of every two years, always continued, according to Sismondi, in Lucca, and in those cities of the ecclesiastical state which preserved the privilege of choosing their municipal (". Villani, vi, c. 39 officers, p. 95. + Id. Ibid.

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Confident in two months. He was, in fact, the first force beyond the law, they cared less for magistrate of Florence.* If Giano della what the law might provide against them. Bella had trusted to the efficacy of this They still retained the proud spirit of per- new security for justice, his fame would solal independence which had belonged have been beyond reproach. But he foito their ancestors in the fastnesses of the lowed it up by harsher provisions. The Apennines. Though the laws of Flor. nobility were now made absolutely inel ence, and a change in Italian customs, igible to the office of prior. For an ohad transplanted their residence to the fence committed by one of a noble famcity,, it was in strong and lofty houses ily, his relations were declared responsithat they dwelt, among their kindred, and ble in a penalty of 3000 pounds. And, to among the fellows of their rank. Not- obviate the difficulty arising from the frewithstanding the tenour of the constitu- quent intimidation of witnesses, it was tion, Florence was, for some years after provided that common fame, attested by the establishment of priors, incapable of two credible persons, should be sufficient resisting the violence of her nobility. for the condemnation of a noblerman.t Her historians all attest the outrages and These are the famous ordinances of assassinations committed by them on the justice, which passed at Florence for the inferior people. It was in vain that jus great charter of her democracy. They tice was offered by the podesta and the have been reprobated in later times as capitan del popolo. Witnesses dared scandalously unjust, and I have little in not to appear against a noble offender; clination to defend them. The last, esor if, on a complaint, the officer of jusp- pecially, was a violation of those eternal tice arrested the accused, his family principles, which forbid us, for any calmade common cause to rescue their kins- culations of advantage, to risk the sacraman, and the populace rose in defence of fice of innocent blood. But it is imposthe laws, till the city was a scene of tu- sible not to perceive that the same unmult and bloodshed. I have already al- just severity has sometimes, under a like,ued to this insubordination of the higher pretext of necessity, been applied to the classes as general in the Italian repub- weaker classes of the people, which they lies; but the Florentine writers, being were in this instance able to exercise fuller than the rest, are our best specific towards their natural superiors. testimonies.* The nobility were soon aware of the [A. D. 1295.] The dissensionsbetween position in which they stood. For half the patrician and plebeian orders ran a century their great object was to provery high, when Giano della Bella, a man cure the relaxation of the ordinances of of ancient lineage, but attached, without justice. But they had no success with ambitious views, so far as appears, though an elated enemy. In three years' time, not without passion, to the popular side, indeed, Giano della Bella, the author of introduced a series of enactments ex- these institutions, was driven into exile; ceedingly disadvantageous to the ancient a conspicuous, though by no means sinaristocracy. The first of these was the gular, proof of Florentine ingratitude.1 appointment of an executive officer, the gonfalonier of justice; whose duty it was *t is to be regretted, that the accomplished of nforce th jseteceso theosuty iwabiographer of Lorenzo de' Medici should have to enforce the sentences of the podeste taken no pains t.o inform himself of the most ordiand capitano del popolo, in cases where nary particulars in the constitution of Florence. the ordinary officers were insufficient. A Among many other errors, he says, vol. ii., p. 51, thousand citizens, afterward increased 5th edit., that the gonfalonier of justice was sub to four times that snumber, were bound ordinate to the delegated mechanics (a bad expres tO f our tim es that number, were bound sion), or priori dell'arti, whose number too he aug to obey his commands. They wmere dis- ments to ten. The proper style of the republic tr buted into companies, the gonfaloniers seems to run thus: I priori dell' arti e gonfaloniere or captains of which became a sort of di giustizia, il popolo e1 comune della citta di Ficorporation or college, and a constituent renze.-G. Villani, 1. xii., c. 109. t Villani, I. viii., c. 1. Ammirato, p. 88, edit part oi government. [A. D. 1295.] This 1647. A magistrate, called! 1 esecutor dcella gius new militia seems to have superseded tizia, was appointed with authority ecqual to that
The wealth and physical strength of the once introduced a new foreign magistracies. Nobles were however untouched; and irate, with the title of captain of defense, their influence must always have been (della guardia), whom they invested with considerable; in the great feuds of Bian- an almost unbounded criminal jurisdiction and Neri, the ancient families were tiron. [A.D. 1336-1340.] One Gabrielli, most distinguished. No man plays a of Agobbio, was twice fetched for this greater part in the annals of Florence at purpose; and in each case he behaved the beginning of the fourteenth century in so tyrannical a manner as to occa, than Corso Donati, chief of the latter faction a tumult.* His office, however, tiron, who might pass as representative was of short duration, and the title at of the turbulent, intrepid, ambitious citizens least did not import a sovereign com.. zen-noble of an Italian republic.* But mand. But very soon afterward Flore's laws gradually became more sure of ence had to experience one taste of a obedience; the sort of proscription which cup which her neighbours had drunk off attended the ancient nobles lowered their to the dregs, and to animate her magnan spirit; while a new aristocracy began to imous love of freedom by a knowledge raise its head, the aristocracy of families of the calamities of tyranny. who, after filling the highest magistracies A war with Pisa, unsuccessfully, it for two or three generations, obtained an not unskilfully, conducted, gave rise to hereditary importance, which answered such dissatisfaction in the city, that the the purpose of more unequivocal nobili- leading commoners had recourse to ar ty; just as in ancient Rome, plebeian appointment something like that of Ga families, by admission to curule offices, brielli, and from similar motives. Wal acquired the character and appellation of ter de Brienne, duke of Athens, was de nobility, and were only distinguishable scended from one of the French crusaders by their genealogy from the original pa- who had dismembered the Grecian emtricians.t Florence had her plebeian no- pire in the preceding century; but his bles (popolani grandi), as well as Ronme; father, defeated in battle, had lost the the Peruzzi, the Ricci, the Albizi, the principality along with his life, and the Medici, correspond to the Catos, the titular duke was an adventurer in the Pompeys, the Brutuses, and the Anto- court of France. He had been, however, nies. But at Rome the two orders, after slightly known at Florence on a formei in equal partition of the highest offices, occasion. There was a uniform maxiin were content to respect their mutual among the Italian republics, that extraor privileges; at Florence the commoners dinary powers should be conferred upon preserved a rigorous monopoly, and the none but strangers. The Duke of Athen, distinction of high birth was, that it de- was accordingly pitched upon for th( barred men from political franchises and military command, which was united wit} civil justice.4 domestic jurisdiction. This appears tc This second aristocracy did not obtain have been promoted by the governing much more of the popular affection than party, in order to curb the nobility; but that which it superseded. Public out- they were soon undeceived in their exrage and violation of law became less pectations. The first act of the Duke of frequent; but the new leaders of Flor- Athens was to bring four of the most ence are accused of continual mis- eminent commoners to capital punish government at home and abroad, and ment for military offences. These sensometimes of peculation. There was of tences, whether just o' otherwise, gave course a strong antipathy between the much pleasure to the,robles, who had leading commoners and the ancient no- so frequently been exposed to similar bles; both were disliked by the people. severity, and to the populace, who are In order to keep the nobles under more naturally pleased with the humiliation of control, the governing party more than their superiors. Both of these
were caino Compagni. Villani. ressed by the duke, and both conspired. * Dino Compagni. Villani. with blind passion, to second his ambit La nobiltA civile, se bene non in baronaggi, B capace di grandissimihonor, percioko esercitando tious views. It was proposed and car i suprmi magistrati della sua patria, viene spesso ried in a full parliament, or assembly of a commandare a capitani d’eserciti e ella stessa per the people, to bestow upon him the se 6 ih mare, 6 in terra, molte volta i suprmi ca- signiory for life. [A. D. 1342.] The richi adopera. E tale 6 la Fiorentina nobiltl. — Ammirato delle Famiglie Florentine. Firenze, real friends of their country, as well as 1614, p. 25. the oligarchy, shuddered at this ricasure $ Quello, che all' altre cittka suolo recare splen- Throughout all the vic'ssitudes oi party dore, in Firenze era dannoso, o veramente vano e,nutile, says Ammirato a nobility —Storia Fio-enina, p. 1t. * Vil] mi. 1. xl.; an, 117

Page 160 EUROPI DURING THE MIDDLE AGES. [CIA} P. (ti Florence had never yet lost sight of re- any avail. On the other hanld, a body of publican institutions. Not that she had lancers in plate-armour might dissipate never accommodated herself to tempo- any number of a disorderly populace. rary circumstances by naming a signior. Accordingly, if a prince or usurper would Cha;rls of Anjou had been invested with get possession by surprise, he, as it was that dignity for the term of ten years; called, rode the city; that is, galloped with Robert, king of Naples, for five; and his his cavalry along the streets, so as to?on, the Duke of Calabria, was at his prevent the people from collecting to Jeath signior of Florence. These prin- erect barricades. This expression is yes named the podesta, if not the priors; very usual with historians of the fourand were cerlainly pretty absolute in teenth century.* The conspirators at their executive powers, though bound by Florence were too quick for the Duke of oath not to alter the statutes of the city.* Athens. The city was barricaded in But their office had always been tempo- every direction; and, after a contest of rary. Like the dictatorship of Rome, it some duration, he consented to abdicate was a confessed, unavoidable evil; a sus- his signiory. pension, but not extinguishment of rights. Thus Florence recovered her liberty. Like that, too, it was a dangerous prece- Her constitutional laws now seemed to dent, through which crafty ambition and revive of themselves. But the nobility, popular rashness might ultimately sub- who had taken a very active part in the vert the republic. If Walter de Brienne recent liberation of their country, thought had possessed the subtle prudence of a it hard to be still placed under the rigorMatteo Visconti, or a Cane della Scala, ous ordinances of justice. Many of the there appears no reason to suppose that richer commoners acquiesced in an equiFlorence would have escaped the fate of table partition of magistracies, which was other cities; and her history might have established through the influence of the become as useless a record of perfidy bishop. But the populace of Florence, mnd assassination as that of Mantua or with its characteristic forgetfulness of, e rona.t benefits, was tenacious of those proscriptBut, happily for Florence, the reign of ive ordinances. The nobles too, elated tyranny was very short. The Duke of by their success, began again to strike Athens had neither judgment nor activity and injure the inferior citizens. A new for so difficult a station. He launched civil war in the city streets decided their out at once into excesses, which it would quarrel; after a desperate resistance, be desirable that arbitrary power should many of the principal houses were pill always commit at the outset. The taxes laged and burnt; and the perpetual exwere considerably increased; their pro- clusion of the nobility was confirmed by duce was dissipated. The honour of the fresh laws. But the people, now sure state was sacrificed by an inglorious of their triumph, relaxed a little upon this treaty with Pisa; her territory was di- occasion the ordinances of justice; and, minished by some towns throwing off to make some distinction in favour of their dependance. Severe and multiplied merit or innocence, effaced certain fam punishments spread terror through the ilies
from the list of nobility. Five hundred city. The noble families, who had on dred and thirty persons were thus elette the duke's election destroyed the ordi- vated, as we may call it, to the rank of nances of justice, now found themselves commoners. There was beyond the coinexposed to the more partial caprice of a petence of the republic of Florence to despot. He filled the magistracies with change a man's ancestors, this nominal low creatules from the inferior artificers; alteration left all the real advantages of a class which he continued to flatter. birth as they were, and was undoubtedly Ten months passed in this manner, when an enhancement of dignity, though in three separate conspiracies, embracing appearance a very singular one. Con most of the nobility and of the great commoners, were planned for the recovery of justice; at least I do not know what other definition there was.

Nothing was more usual, in sub- At the time when the Guelfs, with thl sequent times, than such an arbitrary assistance of Charles of Anjou, acquired change of rank, as a penalty or a benefit.* an exclusive domination in the republic. Those nobles who were rendered plea- the estates of the Ghibelins were confisbeian by favour were obliged to change cated. One third of these confiscations their name and arms. The constitution was allotted to the state; another went now underwent some change. From six to repair the losses of Guelf citizens; but the priors were increased to eight; and, the remainder became the property of a instead of being chosen from each of the new corporate society, denominated the greater arts, they were taken from the Guelf party (parte Guelfa) with a regular four quarters of the city, the lesser arti- internal organization. The Guelf party sans, as I conceive, being admissible. had two councils, one of fourteen and rrhe gonfaloniers of companies were re- one of sixty members; three, or afterduced to sixteen. And these, along with ward four, captains, elected by scrutiny the signiory, and the twelve buonuomini, every two months, a treasury, and comrnformed the college, where every propo- mon seal; a little republic within the resition was discussed before it could be public of Florence. Their primary duty offered to the councils for their legislative was to watch over the Guelf interests. But it could only originate, and for this purpose they had a particular strictly speaking, in the signiory, that is, officer for the accusation of suspected the gonfalonier of justice and eight Ghibelins.* We hear not much, howpriors, the rest of the college having ever, of the Guelf society for near a merely the function of advice and assist- century after their establishment. The ance.1 Ghibelins hardly ventured to show themSeveral years elapsed before any ma- selves after the fall of the White Guelfs terial disturbance arose at Florence. Her in 1304, with whom they had been concontemporary historian complains in- nected, and confiscation had almost al nideed that mean and ignorant persons hilated that unfortunate faction. But, as obtained the office of prior, and ascribes the oligarchy of Guelf families lost part some errors in her external policy to this of its influence through the divieto and cause. Besides the natural effects of system of lottery, some persons
of Ghib the established rotation, a particular law, elin descent crept into public offices; and called the divieto, tended to throw the this was exaggerated by the zealots of an better families out of public office. By opposite party, as if the fundamental polthis law, two of the same name could icy of the city was put into danger. not be drawn for any magistracy: which, The Guelf society had begun, as early as the ancient families were extremely as 13,16, to manifest some disquietude at numerous, rendered it difficult for their the foreign artisans, who, settling at Flomembers to succeed; especially as a rence, and becoming members of some ticket once drawn was not replaced in of the trading corporations, pretended to the purse, so that ar individual liable to superior offices. They procured accordthe divieto was excluded until the next ingly a law, excluding from public trust biennial revolution.l This created dis- and magistracy all persons not being nasatisfaction among the leading families. tives of the city or its territory. Next They were likewise divided by a new fac- year they advanced a step farther; and, tian, entirely founded, as far as appears, with the view to prevent disorder, a hich on personal animosity between two prom- seemed to threaten the city, a law was inent houses, the Albizi and the Ricci. passed, declaring every one, whose anThe city was however tranquil, when, in cestors at any time since 1300 had been i357, a spring was set in motion, which known Ghibelins, or who had not the reputation of sound Guelf principles, inM lesser Antonio di Baldinaccio degli Adimnari, capable of being drawn or elected to ofcutto che fosse de pit grandi e nobili, per grazia era fices.t It is lanifest, from the language inesso tra’1 popolo.- Villani, 1. xii., c. 108. of the historian who relates these cirt Ammirato, p. 748. There were several ex- cumstances, and whose testimony is more ceptions to this rule in later timeis. The Pazzi r e markable from h is having died severXr were made popolani, plebeians, by {a- our of Cosine remarkable from his having died several le’ Medici.-Machiavelli. years before the politics of the Guelf cor. t Nardi, Storia di Firenze, p. 7, edit. 1584. poration more decidedly showed themnVillani, loc. cit. selves, that the real cause of their jeal 5 Matteo Villani, in Script. Rer. Ita’.. t. xiv., 98-244. * G. Villani, I. vii., c. 16. IJ Sismondi, t vi. p 338. t Ibid 1. xii., c. 72 arld 7s}
influence of make up the politics of vulgar minds. Their aristocracy. They proposed, and, The Guelf society, though it could not notwithstanding the reluctance of the openly resist the popular indignation, was not heartily in preliminary deliberations of the signory, inclined to this war. Its management fell into the hands of eight commissionevery person accepting an office who sioners, some of them not well affected should be convicted of Ghibelinism or of to the society; whose administration was Ghibelin descent, upon testimony of pub- so successful and popular as to excite the lic fame, became liable to punishment, utmost jealousy in the Guelfs. They be. capital or pecuniary, at the discretion of gan to renew their warnings, and in eight the priors. To this law they gave a re- months excluded fourscore citizens.t trospective effect, and indeed it appears The tyranny of a court may endure for to have been little more than a revival of ages; but that of a faction is seldom perthe provisions made in 1347, which had manent. In June, 1378, the gonfalonier probably been disregarded. Many citi- of justice was Salvestro de' Medici, a zens, who had been magistrates within a man of approved patriotism, whose famfew years, were cast in heavy fines on ity had been so notoriously of Guelf printhis indefinite charge. But the more usu- ciples that it was impossible to warn him al practice was to warn (ammonire) men from office. He proposed to mitigate the beforehand against undertaking public severity of the existing law. His propotrust. If they neglected this hint, they sition did not succeed; but its rejection were sure to be treated as convicted provoked an insurrection, the forerunner Ghibelins. Thus a very numerous class, of still more alarming tumults. The popcalled Ammoniti, was formed of prosci- ulace of Florence, like that of other citbed and discontented persons, eager to ies, was terrible in the moment of sedithrow off the intolerable yoke of the tion; and a party so long dreaded shrunk Guelf society. For the imputation of before the physical strength of the multi Ghibelin connexions was generally an tude. Many leaders of the Guelf society unfounded pretext for crushing the ene- had their houses destroyed, and some mies of the governing faction.* Men of fled from the city, But instead of annulling their acts, a middle course was adopt.. * Besides the effect of ancient prejudice, Ghib- ed by the committee of magistrates who linism was considered at Florence, in the four- had been empowered to reform the state; thteenth century, as immediately connected with ty- the Ammoniti were suspended three rannical usurpation.' The Guelf party, says Matteo Villani, is the foundation rock of liberty in Italy; so that, if any Guelf becomes a tyrant, he must And Matteo Villani of the Pepoli at Bologna, Ce of necessity turn to the Ghibelin side'; and of this seundo di natura Guelfi, per la tirannia erano quadA there have been many instances, p. 481. So Gio- alienati della parte, p. 69. vanni Villani says of Passerino, lord of Mantua, * M. Villani, p. 581, 637, 31 PAmnauo.'etnha his ancestors had been Guelfs, ma per essere chiavelli. Sismondi. Igrnnr e tiranno sl fece G-ibellino, 1. x., c. 99. -t Ammirato, -P. 709.

Page 163 PART II. ITALX 163 years longer from office, and the Guelf ed the establishment of two new arts for society preserved with some limitations. the trades hitherto dependant, and one fol This temporizing course d-id not satisfy the lower people; and that three of tht, either the Ammoniti or the populace. priors should be chosein from the greater The greater arts were generally attached arts, three from the fourteen lesser, and to the Guelf society. Between them and two from those just created. Some dthe lesser arts, composed of retail and iay, however, occurring to prevent the mechanical traders, there was a strong sanction of these innovations by the jealousy. The latter were adverse to the councils, a new fury took possession of prevailing oligarchy, and to the Guelf so- the populace; the gates of the palace be. ciety, by whose influence it was main- longing to the signiory were forced open, tained. They were eager to
make Flo- the priors compelled to fly, and no aprence a democracy in fact as well as in pen-
ance of a constitutional magistracy name, by participating in the executive remained to throw
the veil of law over the government. excesses of anarchy. The republic seemBut every political
institutions appears ed to rock from its foundation, and the to rest on too confined a basis, to
those circumstance to which historians ascribe whose point of view is from beneath it. its
salvation is not the least singular in While the lesser arts were murmuring at this critical epoch.
One Michel di Lanthe exclusive privileges of the commner- do, a wool-carder, half dressed and
wlthcial aristocracy, there was yet an inferior out shoes, happened to hold the standard class of
citizens, who thought their own of justice wrested from the proper offi claims to equal
privileges. irrefragable. cer when the populace burst into the palThe arrangement of. twenty-
one trading ace. Whether he was previously concompanies had still left several kinds of
spicuous in the tumult is not recorded; artisans unincorporated, and consequent- but the wild
capricious mob, who had dely unprivileged. These had been attach- stroyed what they had no
conception how ed to the art with which their craft had to rebuild, suddenly cried out that
Lando most connexion, in a sort of dependant should be gonfalonier or signior, and revrelation.
Thus, to the company of dra- form the city at his pleasure. pers, the most wealthy of all the
various A choice, arising probably from wan-. uccupations instrumental in the manufac- ton
folly, could not: have been better ture, as wool-combers, diers, and weav- made by wisdom.
Lando was a man of ers, were appendant.* Besides the sense courage, moderation, and
integration. He of political exclusion, these artisans alle- gave immediate proofs of these qualities
ged, that they were oppressed by their by causing his office to be respecied. employers of the
art, and that when they The eight commissioners of the war, complained to the consul, their
judge in who, though not instigators of the sedivic civil matters, no redress could be procu-
tion, were well pleased to see the Guelf red. A still lower order of the corn. mu- party so entirely
prostrated, now fancied nity was the mere populace, who did not themselves masters, and
began to nomipractise any regular trade, or who only nate prinrs. But Lando sent a message
worked for daily hire. These were call- to them that he was elected by the peoed Ciompi, a
corruption, it is said, of the ple, and that he could dispense with their French compere.
assistance. He then proceeded to the "Let no one," says Machiavel in this choice of priors.
Three were taken place, "who begins an innovation in a from the greater arts; three from the
state, expect that he shall stop it at his lesser; and three from the two new arts pleasure, or
regulate it according to his and the lower people. This eccentric intention." After about a month
from college lost no time in restoring tranquiltthe first sedition, another broke out, in lity, and
compelled the populace by threat which the ciompi, or lowest populace, of punishment to
return to their occupawere alone concerned. Through the sur- tions. But the ciompi were
not'isposed prise, or cowardice, or disaffection of the to give up the pleasures of anarchy so
superior citizens, this was suffered to readily. They were dissatisfied at the get ahead, and for
three days the city was small share allotted to them in the new in the hand of a tumultuous
rabble. It distribution of offices, and murmured at was vain to withstand their propositions,
their gonfalonier as a traitor to the popuhad they even been more unreasonable lar cause. Lando
was aware that an in. than they were. But they only demand- surrection was projected; he took
nmeasures with the most respectable citizens * Before the year 1340, according to Villani's
cal- the insurgents, when they showed them eulation, the woollet, trade occupied 30,000 per-
the insurgents, when they showed them ons, 1. xi., c. 93., selves, were quelled by force, and: th
L 2
arrested, and lost his head on the rence have agreed to perpetuate. Part scaffold; while Strozzi, his colleague, of this has undoubtedly been founded on fled from the city. But this event was a consideration of the mischief which it instantly followed by a reaction, which was in his power to inflict. The ciompi, A.beri perhaps did not anticipate. Armed once checked, were soon defeated. The men filled the streets; the cry of Live the next gonfalonier was, like Lando, a wool- Guelfs was heard. After a three years tomeder; but, wanting the intrinsic merit depression, the aristocratical party reof Lando, his mean station excited uni- gained its ascendant. They did not reversal contempt. None of the arts could Vive the severity practised towards the endure their low coadjutors; a short Ammoniti; but the two new arts, created struggle was made by the populace, but for the small trades, were abolished, and they were entirely overpowered with the lesser arts reduced to a third part, in considerable slaughter, and the govern- stead of something more than one half ment was divided between the seven of public offices. Several persons who greater and sixteen lesser arts in nearly had favoured the plebeians were sen equal proportions. into exile; and among these Michel de The party of the lesser arts, or inferior Lando, whose great services in subduing tradesmen, which had begun this confu- anarchy ought to have secured the prosion, were left winners when it ceased. tection of every government. Benedetto Three men of distinguished families, who Alberti, the enemy by turns of every faction instigated the revolution, became the tion, because every faction was its turn leaders of Florence; Benedetto Alberti, oppressuve experienced some years afterTomaso Strozzi, and Georgio Scali. ward the salne fate. For half a century Their government had at first to contend after this time, no revolution took place with the ciompi, smarting under loss and at Florence. The Guelf aristocracy, disappointment. But a populace which strong in opulence and antiquity, and renis beneath the inferior mechanics may dered prudent by experience, under the with ordinary prudent be kept in sub- guidance of the Albizi family, maintained jection by a government that has a well- a preponderating influence without much organized militia at its command. The departing, the tiles considered, frozw Guet.f aristocracy was far more to be moderation and respect for the laws * dreaded. Some of themr had been ban- It is sufficiently manifest, from this ished, some fined, some ennobled; the usu-sketch of the domestic history of Flo al consequences of revolution, which they rence, how far that famous republican was had too often practised to complain. A from affording a perfect security for civil more iniquitous proceeding disgraces the rights or general tranquillity. They who new administration. Under pretence of hate the name of free constitutions may conspiracy, the chief of the house of Al- exult in her internal dissensions, as in bizi, and several of his most eminent those of Athens or Rome. But the calm associates, were thrown into prison. So philosopher will not take his standard of little evidence of the charge appeared, comparison from ideal excellence, nor that the podesta refused to condemn even from that practical good which has them; but the people were clamorous been reached in our own unequalled confor blood, and half with, half without the stitution, and in some of the republics of forms of justice, these noble citizens modern Europe. The men and the inwere led to execution. Theparthetook stitutions of the fourteenth century are in this murder sullies the fame of Bene- to be measured by their contemporaries. detto Alberti, who, in his general conduct, Who would not rather have been a citihad been more uniformly influenced by zen of Florence than a subject of the honest principles than most of his con- Visconti I In a superficial review of his temporaries. Those who shared with tory, we are sometimes apt to exaggerate him the ascendancy in the existing government, Strozzi and Scali, abused their * For this part of Flo.entine history, besides power by oppression towards their ene- Ammirato, Machiavel, and Sismondi, I have read mniess and insolence towards all. Their an interesting narrative of the sedition of the ci popularity was of course soon at an end. ompi, by Gino Capponi, in the eighteenth volume ol Muratori's collection. It has an air of livehcne. Alberti, a sincere lover of freedom, sepa- and truth which is
very pleasing, but it breaks off fl rmented himself from men who seemed to rather too soon, at the instant of Lando's assuming emiulate the arbitrary government they the office of banneret. Another conte;a.Ip3npry had overthrown. An outrage of Scali, writer, Melchione de Stefani, who seems t have a, furnished the materials of the three hist arians in rescuing a criminal from justice, above mentioned, ha.- rot fallen in my way

Page 165 PAuT JJ.’ 1TAI.Y. 1 6i he vices of free states, and to lose sight To the south, the reLublics of A rzzo, of those inherent in tyrannical power. Perugia, and Siena; to the west, those'the bold censoriousness of republican of Volterra, Pisa, and Lucca; Prato and historians, and the cautious servility of Pistoja to the north, limited the Florenwriters under an absolute monarchy, tine territory. It was late before these conspire to mislead us as to the relative boundaries were removed. IDuring the prosperity of nations. Acts of outrage usurpations of Uguccione at Pisa, and of and tumultuous excesses in a free state Castruccio at Lucca, the republic of Floare blazoned in minute detail, and de- rence was always unsuce sfulinthe field. scend to posterity; the deeds of tyranny After the death of Castruccio she began are studiously and perpetually suppressed. to act more vigorously, and engagel in Even those historians who have no par- several confederacies with the powers of ticular motives for concealment turn Lombardy, especially in a league with away from the monotonous and disgust- Venice against Mastino della Scala. But ing crimes of tyrants. " Deeds of cruel- the republic made no acquisition of ter. ty," it is well observed by Matteo Villani, ritory till 1351, when she annexed the after relating an action of Bernabo Vis- small city of Pratoe, not ten miles from conti," are little worthy of remembrance; her walls.* Pistoja, though still nomiyet let me be excused for having recount- nally independent, received a Florentine ed one out of many, as an example of the garrison about the same time. Several peril to which men are exposed under additions were made to the district, by faie the yoke of an unbounded tyranny."* purchase from the nobility of the ApenThe reign of Bernabo afforded abundant nines, and a few by main force. The instances of a ike kind. Second only to territory was still very little proportionEccelin among the tyrants of Italy, he ed to the fame and power of Florence rested the security of his dominion upon The latter was founded upon her vast tortures and death, and his laws them- commercial opulence. Every Italian selves enact the protraction of capital state employed mercenary troops, and the punishment through forty days of suffer- richest was of course the most powerful. ing.t His nephew, Giovanni Maria, is In the war against Mastino della Scala, said, with a madness like that of Nero or in 1336, the revenues of Florence are Commodus, to have coursed the streets reckoned by Villani at three hundred of Milan by night with bloodhounds, thousand florins; which, as he observes, ready to chase and tear any unlucky pas- is more than the King of Naples or of senger.1 Nor were other Italian princi- Aragon possesses.t The expenditure palities free from similar tyrants, though went at that time very much beyond the none perhaps on the whole so odious as receipt, and was defrayed by loans from the Visconti. The private history of the principal mercantile firms, which many families, such for instance as the were secured by public funds; the earliScala and the Gonzaga, is but a series of est instance, I believe, of that financial assassinations. The ordinary vices of resource.4 Her population was computed mankind assumed a teint of portentous at ninety thousand souls. Villani reckgult in the palaces of Italian princes. ons the district at eighty thousand men. Their revenge was fratricide, and their I presume those only of military age; lust was incest. but this calculation must have been too Though fertile and populous, the prop- large, even though he included, as we Acquisitions er district of Florence was by of territory no means extensive. An inde- confederacy against Florence, was obliged to give ~by Florence. nobility~up his ancient patrimony in 1440. by Florence, pendent nobility occupied the * M. Villani, p. 72. This was
rather a measure Tuscan Apennines with their castles. Of usurpation; but the republic had some reason to these the most conspicuous were the apprehend that Prato might fall into the hands of counts of Guidi, a numerous and power-Visconti. Their conduct towards Pistoja was the family, who possessed a material in- influenced by the same motive; but it was still fur family, who possessed a material in- their removed from absolute justice, p. 91. fluene in the affairs of Florence and of - t G. Villani, 1. xi., c. 90-93. These chapters all Tuscany till the middle of the four- contain a very full and interesting statement of the. tenth century, and some of whom pre- revenues, expenses, population, and internal conserved their independence much longer. ~ dition of Florence at that time. Part of them is extracted by M. Sismondi, t. v., p. 365.

The gold florin was worth about ten shillings of our money. * P. 434. The district of Florence was not then much largel t Sismondi, t. vi., p. 316. Corio, Ist. di Milano, than Middlesex. At present the revenues of the 4. 4S6. whole dutchy of Tuscany are much less than t Corio, p. 595. 150,0001. sterling; though the difference inthe valum ~ ( Villani, 1. v., c. 37, 41, et alibi. The last of of money is very considerable. he counts Guidi, havicng unwisely embarked in a $ O3. Villani, 1. xi., c. 49.

Page 166 166 EUROPE DURING THE MiDDLE AGE S. [ChAE'. III may presume, the city in his estimate.* had defrayed the chief cost of this expe. Tuscany, though Well cultivated and dition, shared the island in districts, flourishing, does not containby any means which they held in fief of the republic. so great a number of inhabitants in that At a later period the Balearic isles were space at present. subjected, but not long retained by Pisa. The first eminent conquest made by Her naval prowess was supported by her Pisa Florence was that of Pisa, early in commerce. A writer of the twelfth centhe fifteenth century. Pisa had been tury reproaches her with the Jews, the listinguished as a commercial city ever Arabians, and other "monsters of the since the age of the Othos. From sea," who thronged in her streets.t The her ports, and those of Genoa, the ear- crusades poured fresh wealth into the lap jest naval armaments of the western of the maritime Italian cities. In some nations were fitted out against the Sara- of those expeditions a great portion of cen corsairs who infested the Mediterra- the armament was conveyed by sea to uean coasts. In the eleventh century Palestine, and freighted the vessels of she undertook, and, after a pretty long Pisa, Genoa, and Venice. When the struggle, completed, the important, or at Christians had bought with their blood least the splendid conquest of Sardinia; the seacoast of Syria, these republics an island long subject to a Moorish chief- procured the most extensive privileges Lain. Several noble families of Pisa, who in the new states that were formed out of their slender conquests, and became the * C. 93.

Troviamodiligentemente, che in questi conduits through which the produce of tempi avea in Firenze circa a 25 mila uomini da the East flowed in upon the ruder natives portare arme da 15 in 70 anni - Istamavasi avere of Europe. Pisa maintained a large in Firenze da 90 mila bocche tra uomini e femine e fanciulli, per 1' avviso del pane bisognava al contin-s commerce, as well as of avo alla citta. These proportions of 25,000 men maritime greatness, till near the end of between fifteen and seventy, and of 90,000 souls, the thirteenth century. In 1282, we are are as nearly as possible consonant to modern cal- told by Villani, she was in great power, culation, of which Villani knew nothing, which possessing Sardinia Corsica and Elba confirms his accuracy; though M. Sismondi asserts, from whence the republic, as well as p p. 369, that the city contained 150,000 inhabitants, whence the republic, as well as pron no better authority, as far as appears, than that vate persons, derived large revenues; of Boccaccio, who says that 100,000 perished in the and almost ruled the sea by their ships great plague of 1348, which was generally suppo- and merchandises, and beyond sea were sed to destroy two out of three. But surely two very powerful in the city of Acre, and vague suppositions are not to be combined, in
order to overthrow such a testimony as that of Vil- much connected with the principal citilani, who seems to have consulted all registers and zens of Acre. The prosperous era of other authentic documents in his reach. The Pisans is marked by their public ediWhat Villani says of the population of the dis-fices She was the first Italian city that trict may lead us to reckon it, perhaps, at about ide in architectural magnificence. 180,000 souls, allowing the baptisms to be one in tookapr thirty of the population. Ragionavasi in questi Her cathedral is of the eleventh century; tempi avere nel contado e distretto di Firenze de the baptistery, the famous inclined tower, 80 mila uomini. Troviamo del piovano, che bat- or belfry, the arcades that surround the tezzava i fanciulli, imperoche per ogni maschio, che Campo Santo, or cemetery of Pisa, are of battezzava San Giovanni, per avere ii novero, the twelfth orat late metea una fava nera, e per ogni feminauna 1bianca, the twelfth, or at latest, of the thirteenth.~ trov6, ch' erano l'anno in questi tempi dalle 5800 It would have been no slight anomaly in sei mila, avanzando la pia volte il sesso mascu- in the annals of Italy, or, we might say, lino da 200 in 500 per anno. Baptisms could only of mankind, if two neighbouring cities, be performed in one public font, at Florence, Pisa, competitors in every mercantile occupaand some other cities. The building that contain- competitors in every mercantile occupa ed this font was called the baptistery. The bapt- tion and every naval enterprise, had not tisteries of Florence and Pisa still remain, and are been, perpetual enemies to each other. well known.-Du Cange, v. Baptistiterium. But One is more surprised, if the fact be true, there were fifty-seven parishes, and one hundred that no war broke out between Pisa and and ten churches within the city.-Villani, ibid. Genoatill 9. Fromthis time at least Mr. Roscoe has published a manuscript, evidently Geoa till 1119.11 From this time at least written after the taking of Pisa, in 1406, though, as I should guess, not long after that event, contain- * Sismondi, t. i., p. 345, 372. ing a proposition for an income tax of ten per cent. t Qui pergit Pisas, videt illic monstra marina, throughout the Florentine dominions. Among its Haec urbs Paganis, Turchis, Libycis qioque other calculations, the population is reckoned at Parthis, 400,000; assuming that to be the proportion to Sordida; Chaldai sua lustrant mcenia tetrn. 80,000 men of military age, though certainly be- Donizo, Vita Comitissro Mlathildis, ached EfA yond the mark. It is singular that the district of ratori, Dissert. 31. Florence, in 1343, is estimated by Villani to contain t Villani, l. vi., c. 83. as great a number, before Pisa, Volterra, or even 0 Sismondi, t. iv., p. 178. Tiraboschi t. ii, Prato and PistoJa had been annexed to it.-Ros- 406. coe's Life of Lorenzo, Appendix. No. 16. 11 Muratori, ad ann. 1116.
Saracens of Africa, Spain, and the state; and this was the last effort, by Mediterranean islands, as co-rivals in private sacrifices, to equip one more fleet. commerce with these very Saracens, or After this defeat it was in vain to con- with the Christians of the East, as co-optend for empire. Eleven thousand Pi- erators in the great expeditions under the sans languished for many years in prison; banner of the cross, or as engaged in it was a current saying, that whoever deadly warfare with each other, the two would see Pisa, should seek her at Ge- republics stand in continual parallel. noa. A treacherous chief, that Count From the beginning of the thirteenth Ugolino, whose guilt was so terribly century, Genoa was, I think, the more avenged, is said to have purposely lost prominent and flourishing of the two. the battle, and prevented the ransom of She had conquered the Island of Corsica the captives, to secure his power; accu- at the same time that Pisa reduced Sarsations that obtain easy credit with an dinia; and her acquisition, though less unsuccessful people. considerable, was longer preserved. Her From the epoch of the battle of Melo- territory at home, the ancient Liguria ria, Pisa ceased to be a maritime power. was much more extensive, and, what Forty years afterward she was stripped was most important, contained a greater of her ancient colony, the Island of Sar- range of seacoast than that of Pisa. dinia. The four Pisan families who had But the commercial and maritime pros. been invested with that conquest had perity of Genoa inay be dated from the been apt to consider it as their absolute recovery of Constantinople by the Greeks property; their appellation of judge in 1261. Jealous of the Venetians, by seemed to indicate deputed power; but whose arms the Latin emperors had been they sometimes assumed that of king; placed, and were still maintained on their and several attempts had been made to throne, the Genoese assisted Palweologus establish an immediate dependance on in overturning that usurpation. They the empire, or even on the pope. A new obtained in consequence the suburb of potentate had now come forward on the Pera or Galata over against Constantinostage. The malecontent feudataries of ple as an exclusive settlement, where Sardinia made overtures to the King of their colony was ruled by a magistrate Aragon, who had no scruples about at- sent from home, and frequently defied tacking the indisputable possession of a the Greek capital with its armed galleys declining republic. Pisa made a few un- and intrepid seamen. From this conveavailing efforts to defend Sardinia; but nient station Genoa extended her comthe nominal superiority was hardly worth merce into the Black Sea, and established a contest, and she surrendered her rights her principal factory at Caffa, in the Crito the crown of Aragon. Her commerce mean peninsula. This commercial monow dwindled with her greatness. Du- monopoly, for such she endeavoured to ren. ring the fourteenth century, Pisa almost der it, aggravated the animosity of Venrenounced the ocean, and directed her ice. As Pisa retired from the And Venice main attention to the politics of Tusca- field of waters, a new enemy ny Ghibelin by invariable predilection, appeared upon the horizon to dispute the she was in constant opposition to the maritime dominion of Genoa. Her first Guelf cities which looked up to Flo- war with Venice was in 1258. The sec. renlce But in the fourteenth century the ond was not till after the victory of Me.
sailors;* a force aston- sides the broader outlets of Brondolo and ishing to those who know the slender re- Fossone, through which the waters of sources of Italy in -modern times, but the Brenta and the Adige are discharged which is rendered credibile by several The lagune itself, as is well known, con analogous facts of good authority. It is of extremely shallow water, unnaw was, however, beyond any other exer- igable for any vessel, except along the lion. The usual fleets of Genoa and Ven- course of artificial and intricate passages ice were of seventy to ninety galleys. Notwithstanding the apparent. difficultiec Perhaps the naval exploits of these of such an enterprise, Pietro Doria, tho two -republics may afford a more inter- Genoese admiral, determined to reduce esting spectacle to some minds than any the city. His first'successes gave him other part of Italian history. i Compared reason to hope. He forced the passage with military transactions of the same and stormed the little town of Chioggia,' age, they are more sanguinary, more built upon the inside of the isle bearing brilliant, and exhibit full as much skill that name, about twenty-five miles soufl and intrepidity. But maritime warfare is of Venice. Nearly four thousand prison scancy in circumstances, and the indefi- ers fell here into his hands: an augury niteness of its locality prevents it from as it seemed, of a more splendid triumph resting in the memory. And though the In the consternation this misfortune in wars of Genoa and Venice were not spiried at Venice, the first impulse wai always so unconnected with territorial to ask for peace. The ambassadors car. politics as those of the former city with 300 Genoese prisoners, Pisa, yet, from the alternation of success as a sort of peace-offering to the admiral, and equality of forces, they did not often and were empowered to make large and produce any decisive effect. One mem- humilitating concessions, reserving nothorable encounter in the:Sea of Marmora, ing but the liberty of Venice. Francis where the Genoese fought and conquered Carrara strongly urged his allies to treat single-handed' against the Venetians, the for peace. But the Genoese were stimmCatalans, and the Greeks, hardly belongs ulated by long hatred, and intoxicated by to Italian history.t this unexpected opportunity of revenge. But the most remarkable war, and that Doria, calling the ambassadors into coun. War of productive of the greatest conse- cil, thus addressed them: —" Ye shall Chioggia. quences, was one that commen- obtain no peace from us, I swear to you, ced in 1378, after several acts of hostility nor from the Lord of Padua, till first we in the' Levant, wherein the Venetians have put a curb in the mouths of those appear to have been the principal ag- wild horses that stand upon the place of gressors. Genoa did not stand alone in St. Mark. When they are bridled, you this war. "A formidable confederacy was shall have enough of peace. Take back exerted against Veiiice, who had given with you your Genoese captives, for I] provocation' to many enemies.: Of this am coming -within a few days to release Francis Carrara, signor of Padua, and both them and their companions from the King of Hungary, were the leaders. your prisons." When this answer was But the principal struggle was, as usual, reported to the senate, they prepared to upon the waves. During the winter of defend themselves with the characteris1378, a Genoese fleet kept the sea, and tic firmness of their government. Every ravaged the shores of Dalmatia. The eye was turned towarda's a great man Venetian armament had been weakened unjustly punished, their admiral, Vittor by an epidemic disease, and when Vittor Pisani. He was called out of prison to Pisani, their admiral, gave battle to the defend his country amid general acclaenemy, he was compelled to fight with a mations; but, equal in magnanimity and hasty conscription of landsmen against simple republican patriotism to the nothe best sailors in the world. Entirely blest characters of antiquity, Pisali re. defeated, aid taking refuge at Venice I _efated aid taking reuge at Venice * Chioggia, known at Venice by the name of Chioza, according to the usage cf the Venetiai Mu ltorl A. D 12%5. t Gibbon, c. 63 lialec, which changes the g into a.
169 pressed the ravouring voices of the mul- was difficult for tile
doge to keep hi; titude. and bade then reserve their enthu- position through the wi:ter; and if
the siasm for St. Mark, the symbol and war- enemy could appear il olpen sea, the risks ciy of
Venice. Under the vigorous comm- of combat were extremely hazardous It mand of Pisani, the
canals were fortified is said that the senate deliberated upon or occupied by large vessels,
armed with transporting the seat of their liberty to artillery; thirty-four galleys were equip-
Candia, and that the doge had announced 1 ld; every citizen contributed according his intention
to raise thle siege of Chiog t, his power; in the entire want of comm- gia, if expected succours
did not arrive by merical resources (for Venice had not a the first of January, 1380. On that
very merchant-ship during this war), private day, Carlo Zeno, an admiral, who, ignoplate was
melt; and the senate held rant of the dangers of his country, had out the promise of ennobling
thirty fami- been supporting the honour of her flag in lies, who should be most forward in this
the Levant and on the coasts of Liguria, strife of patriotism. appeared with a re-enforcement of
eigh The new fleet was so ill provided with teen galleys and a store of provisions. seamen, that
for some months the admi- From that moment the confidence of ral employed them only in
maneuvring Venice revived. The fleet, now superior alongkthe canals. From some
unaccounta- in strength to the enemy, began to V,ttack ble supineness, or more probably from
the them with vivacity. After several ulonths insuperable difficulties of the undertaking, of
obstinate resistance, the Gv.noese, the Genoese made no. assault upon the whom their republic
had ineffectually city. They had, indeed, fair grounds to attempted to relieve by a fresh
armahope its reduction by famine or despair. ment, blocked up in the town of ChiogEvery
access to the continent was cut gia, and pressed by hunger, were obliged off by the troops of
Padua; and the King to surrender. Nineteen galleys only out of Hungary had mastered almost
all the of forty-eight were in good condition; Venetian towns in Istria and along the. and the
crews were equally diminished Dalmatian coast. The Doge Contarini, in the ten months of their
occupation taking the chief command, appeared at of Chioggia. The pride of Genoa was'ength
with his fleet near Chioggia, before deemed to be justly humbled; and even the Genoese were
aware. They were her own historian confesses, that God still less aware of his secret design. He
would not suffer so noble a city as Venlce pushed one of the large round vessels, to become the
spoil of a conqueror.* then called cocche, into the narrow pas- Each of the two republics had
suffi. sage of Chioggia, which connects the cient reason to lament their mutual pre. lagune with
the sea, and mooring her judices, and the selfish cupidty of their athwart the channel,
interrupted that cor- merchants, which usurps in all maritime munication. Attacked with fury
by the countries the name of patriotism. Though enemy, this vessel went down on the spot, the
capture of Chioggia did not terminate and the doge improved his advantage, by the war, both
parties were exhausted, sinking loads of stones, until the passage and willing next year to
accept the mebecame absolutely unnavigable. It was diation of the Duke of Savoy. By the still
possible for the Genoese fleet to peace of Turin, Venice surrendered most follow the principal
canal of the lagune of her territorial possessions to the King towards Venice and the northern
passa- of Hungary. That prince, and Francis ges, or to sail out of it by the harbour of Carrara,
were the only gainers. Genoa Brondolo; but whether from confusion obtained the Isle of
Tenedos, one of the or from miscalculating the dangers of original subjects of dispute; a poor
intheir position, they suffered the Vene- demnity for her losses. Though, upon a tians to close
the canal upon them by the hasty view, the result of this war appears same means they had used
at Chioggia, more unfavourable to Venice, yet in fact and even to place their fleet in the en- it
is the epoch of the decline of Genoa trance of Brondolo, so near to the lagune From this time
she never commanded that the Genoese could not form their the ocean with such navies as
before; ships in line of battle. The circumstan- her commerce gradually wvent into de ces of the
two combatants were thus en-cay; and the fifteenth century, the most tirely changed. But the Genoese fleet, though besieged in Chioggia, was im- * G. Stella, Annales Genuenses; Gataro, Isto pregnable, and their command of the ria Padovana. Both these contemporary works, land secured them from famine. Ven- of which the latter gives the best relation, are it the seventeenth volume of Muratori's collection ice, notwithstanding her unexpected suc- M. Sismondi's narrative is very clear and spirited cess was still very far from secure; it — Hint. des R6publ. Ital d., p. 205-232

Page 170 PuROPE DURING THE MIDDLE AGES. LUitAP. II splendid in the annals of Venice, is, till Grimaldi, the Fiesohi, the Doria, t3he Spi. recent tinmes, the most ignominious in nola; the two former of Guelf politics,.hose of Genoa. But this was partly the latter adherents of the empire.* Per. owing to internal dissensions, by which hap their equality of forces, and a jeal-.her liberty, as well as glory, was for a ousy which even the famrHies of the same while suspended. fat;ion entertained of each other,-pre.. Nt Genoa, as in other cities of Lomn- vented any one from usurping the signioGovern bardy, the principal magistrates of ry at Genoa. Neither the G(uelf nor reont ot the republic were originally styled Ghibelin party obtaining a decisive pre. Genoa. consuls. A chronicle, drawn up ponderance, continual revolutions occurrunder the inspection of the senate, per- red in the city. The most celebrated was petuates the names of these early magis- the expulsion of the Ghibelins under the trates It appears that their number va- Doria and Spinola, in 1318. They had ried from four to six, annually elected by recourse to the Visconti of Milan, and the people in their full parliament. These their own resources were not unequal to consuls presided over the republic, and cope with their country. The Guelfs commanded the forces by land and sea; thought it necessary to call in Robert, while another class of magistrates, bear- king of Naples, always ready to give asing the same title, were annually elected sistance as the price of dominion, and by the several companies into which the conferred upon him the temporary soverpeople were divided, for the administra- eignty of Genoa. A siege of several nion of civil justice.* This was the re- years duration, if we believe an historian ginien of the twelfth century; but in the of that age, produced as many remarkanext, Genoa fell into the fashion of in- ble exploits as that of Troy. They have trusting the executive power to a foreign not proved so interesting to posterity podestit. The podesta was assisted by a The Ghibelins continued for a length of council of eight, chosen by the eight cor- time excluded from the city. but in pospanies of nobility. This institution, if in- session of the seaport of Savona, whence deed it were anything more than a cus- they traded and equipped fleets, as a rival tom or usurpation, originated probably republic, and even entered into a separate not much later than the beginning of the war with Venice.t Experience of the thirteenth century. It gave not only an uselessness of hostility, and the loss to aristocratic, but almost an oligarchical which they exposed their common counr character to the constitution, since many try, produced a reconciliation, or rather a of the nobility were not members of these compromise, in 1331, when the Ghibelins eight societies. Of the senate or coun- returned to Genoa. But the people felt cils we hardly know more than their ex- that many years of misfortune had been istence; they are very little mentioned owing to the private enmities of four by historians. Every thing of a general overbearing families. An opportunity nature, every thing that required the ex- soon offered of reducing their influence pression of public will, was reserved for within very narrow bounds. the entire and unrepresented sovereignty The Ghibelin faction was at the head of the people. In no city was the parlia- of affairs in 1339, a Doria and a Election of ment so often convened; for war, for Spinola being its leaders, when the first peace, for alliance, for change of govern- the discontent of a large fleet in Doge. ment.t These very dissonant elements want of pay broke out in open insurrec were not likely, to harmonize. The
peo- tion. Savona and the neighbouring towns ple, sufficiently accustomed to the forms took arms avowedly against the aristocracy of democracy to imbibe its spirit, repri- critical tyranny; and the capital was itned at the practical influence which was self on the point of joining the insurgents. thrown into the scale of the nobles. Nor There was, by the Genoese constitution, did some of the latter class scruple to a magistrate, named the abbot of the enter that path of ambition, which leads people, acting as a kind of tribune for to power by flattery of the populace. their protection against the oppression. Two or three times within the thirteenth of the nobility. His functions are not. His functions are not. I have seen, very ly overturned the general liberty, like the clearly defined. This office had been Torriani at Milan, through the pretence abolished by the present government, and of defending that of individuals. it was the first demand of the malecon the nobility themselves, four houses were tents that it should be restored. This distinguished beyond all the rest; the was acceded to, and twenty delegates * Sismondi, t. i., p. 353. * Sismondi, t. iii p. 328. * Id. t. ii., p. 319 + Id., p. 324., f Villani, 1. ix., Dassim.

Page 171 iART II.] TALY. 171 were at) pointed to make the choice. could the republic bestow upon their pa. While they delayed and the populace was triotism, or that of those NN hom they comgrown weary of waiting, a nameless ar- manded. Meanwhile two or three new tisan called out from an elevated station fami2,es, a plebeian oligarchy, filled their that he could direct them to a fit person. place in domestic honours; the Adorni, When the people, in jest, bade him speak the Fregosi, the Montalti, contended foi on, he uttered the name of Simon Boc- the ascendant. From their competition canegra. This was a man of noble birth, ensued revolutions too numerous almost and well esteemed, who was then present for a separate history; in four years, from among the crowd. The word was sud- 1390 to 1394, the doge was ten times chandenly taken up; a cry was heard that ged; swept away or brought back in the Boccanegra should be abbot; he was in- fluctuations of popular tumult. Antonistantly brought forward, and the sword otto Adorno, four times doge of Genoa. of justice forced into his hand. As soon had sought the friendship of Gian Galeazas silence could be obtained, he modestly zo Visconti; but that crafty tyrant medi.thanked them for their favour, but decli- tated the subjugation of the republic, and ned an office which his nobility disquali- played her factions against one another to fled him from exercising. At this, a sin- render her fall secure. Adorno perceivgle voice out of the crowd exclaimed ed that there was no hope for ultimate inSgnior! and this title was reverberated dependence, but by making a temporary from every side. Fearful of worse con- sacrifice of it. His own power, ambisequences, the actual magistrates urged tious as he had been, he voluntarily re.. him to comply with the people, and ac- signed; and placed the republic under the cept the office of abbot. But Boccanegra, protection or signiory of the King of addressing the assembly, declared his France. Terms were stipulated very readiness to become their abbot, signior, favourable to her liberties; but with a or whatever they would. The cry of sig- French garrison once received into the nior was now louder than before; while city, they were not always sure of obh others cried out let him be duke. The servance.* latter title was received with greater ap- While Genoa lost even her political in probation; and Boccanegra was conduc- dependence, Venice became more ed to the palace, the first duke, or doge conspicuous and powerful than be- vere of Genoa.* fore. That famous republic deduces its Caprice alone, or an idea of more pomp original, and even its liberty, from an era Subsequent and dignity. led the populace, beyond the commencement of the middle revolutions. we may conjebture, to prefer ages. The Venetians boast of a perpetthis title to that of signior; but it produ- ual emancipation from the yoke of bar. ced important and highly beneficial con- barians. From that ignominious servi. sequences. In all neighbouring cities, an tude some
natives, or, as their historians arbitrary government had been already will have it, nobles of Aquileja and established under their respective signi- ors; the name was associated with indef- ors; the name was associated with indef- cluster of islands that rise amid the infinite power: while that of doge had only shoals at the mouth of the Brenta. Here been taken by the elective and very lim- they built the town of Rivoalto, the modited chief magistrate of another maritime ern Venice, in 421; but their chief settle. republic. Neither Boccanegra nor his ment was, till the beginning of the ninth successors ever rendered their authority century, at Malamocco. A living writer unlimited or hereditary. The —onstitu- has, in a passage of remarkable eloquence, tion of Genoa, from an oppressive aris- described the sovereign republic, immovetocracy, became a mixture of the two upon the bosom of the waters, from other forms, with an exclusion of the which her palaces emerge, contemplating nobles from power. Those four great the successive tides of continental invafamilies who had domineered alternately sion, the rise and fall of empires, the for almost a century, lost their influence change of dynasties, the whole moving at home after the revolution of 1339. scene of human revolution; till, in her Yet, what is remarkable enough, they own turn, the last surviving witness of were still selected in preference for the antiquity, the common link between two highest of trusts; their names are still periods of civilization, she has submitted identified with the glory of Genoa; her to the destroying hand of time.t Some fleets hardly sailed but under a Doria, a Spinola, or a Grimaldi; such confidence * Sismondi, t. vii., p. 237, 367. t Ebbe principio, says Sanuto haughtily, non di * G. Stella, Annal. Genuenses li Script. Rer. pastori, come ebbe Rorma, ma da poteiri, e n)bil Ital., t. xvii., p. 1072 t Sismondi, t. i., p. 309.
Adriatic Sea. Upon the coast of Dalmatia, of the provinces, were allotted to them were several Greek cities, which the in the partition of the spoil, and the doge empire had ceased to protect; and which, took the singular, but accurate title, duke like Venice itself, became republics for of three eighths of the Roman empire. want of a master. Ragusa was one of Their share was increased by purchases theses, and, more fortunate than the rest, from less opulent crusaders, especially Conquest of survived as an independent city one of much importance, the Island of Dalmatia, till our own age. [A. D. 997.] Candia, which they retained till the midIn return for the assistance of Venice, till of the seventeenth century. These these little seaports put themselves under foreign acquisitions were generally granther government; the Sclavonian pirates ed out in fief to private Venetian nobles were repressed; and after acquiring, under the supremacy of the republic.* partly by consent, partly by arms, a large It was thus that the Ionian islands, to'act of maritime territory, the doge took adopt the vocabulary of our day, came under the dominion of Venice, and guar* Nicephorus stipulates with Charlemagne for antied that sovereignty which she now his faithful city of Venice, Qum in devotione impe- began to affect over the Adriatic. Those rii illibatme steterant. —Danduli Chronicon, in Mu- of the Archipelago were lost in the sixratori, Script. Rer. Ital., t. xii., p. 156. In the teenth century. This political greatness tenth century, Constantine Porphyrogenitus, in his book De Administratione Imperii, claims the Ve- was sustained by an increasing comoietians as his subjects, though he admits that they merce. No Christian state preserved so had, for peace' sake, paid tribute to Pepin and his considerable an intercourse with the successors as kings of Italy, p. 71. I have never seen the famous Squittinio della liberta Veneta, Mahometans. While Genoa kept the which gave the republic so much offence in the keys of the Black Sea by her colonies ot seventeenth century; but a very strong' case is Pera and Caffa, Venice directed her vesmade out:against their early independence in Gi- sels to Acre and Alexandria. ~ These annone's history, t. ii., p. 283, edit. Haia, 1753. connexions, as is the natural effec of Muratori informs us, that so late as 1084, the doge trade, deadened the sense of religious obtained the title of Imperialis Protosevastos from trade, deadened the sense of religious an the court of Constantinople; a title which he con- tipathy; and the Venetians -were some tuned always to use.- (Annali d'Italia, ad ann.) times charged with obstructing all efforts But I should lay no stress on this circumstance. towards a new crusade, or even any parn the Greek, like the German emperors in modern imhes, had a Inint of specious titles, which passed...4 rfor ready nonev over Christendom Siumondi, 4i., p. 431
other privilege; that of confirming or re-electing their successors before they reigned over the state of manners was possible, and the power of the successors before they reigned over the nation, were used for the pomp of a monarchy. But he acted signed a council of officers. These usurpation of important matters with the concurrent power of a general assembly, though from nugatory; the same members were used for the want of positive restraint, his executive power renewed, and, though the dignity of the government might be considered as a council was not yet hereditary, it remained. Time, however, demonstrated to the Venetians the imperfections of such a constitution. Limitations were accordingly imposed on the thirteenth century; the people actually doge in 1032; he was prohibited from as-debarred of power, but an hereditary title was in the government, and aristocracy not completely or legally obliged to act with the consent of two confirmed. The right of electing, its elected counsellors, and, on important rather than re-electing, the great council, occasions, to call in some of the principal was transferred in 1297 from the trilunes, citizens. No other change appears to whose office was abolished, to the council have taken place till 1172; long after cil of forty; they balloted upon the names every other Italian city had provided for of the members who already sat; and its liberty by constitutional laws, more whoever obtained twelve favouring balls or less successful, but always manifest- out of forty retained his place. The vaingood deal of contrivance and complication were occasioned by rejection or death plication. Venice was, however, dissatisfied, were filled up by a supplemental list, isfied with her existing institutions. Gen- formed by three electors nominated in eral assemblies were found, in practice, the great council. But they were exinconvenient and unsatisfactory. Yet pressly prohibited, by laws of 1298 and some adequate safeguard against a ma- 1300, from inserting the name of any one gistrate of indefinite powers was requi- whose paternal ancestors had not enjoy red by freemen. A representative coun- ed the same honour. Thus an exclusive cil, as in other republics, justly arpcared hereditary aristocracy was finally established. And the personal, rights of noble duced.* descent were rendered complete in 1319, The great council of Venice, as esta- by the abolition of all elective forms. By lished in 1172, was to consist of four the constitution of Venice, as it was then hundred and eighty citizens, equally settled, every descendant of a member of taken from the six districts of the city, the great council, on attaining twentyand annually renewed. But the election five years of age, entered as of right into that body, which of course became unlimited in its numbers.** Sismondi, t. iii., p. 287. As I have never met with the Storia civile Veneta, by Vettor Sandi, in nine vols. 4to, or even Laugier's History of Venice, * These gradual changes between 1297 and 1319 my reliance has chiefly been placed on M. Sismondi, were first made known by Sandi, from whom M. who has made use of Saudi, the latest and probably Sismondi has introduced the facts into his own nis most accurate historian To avoid frequent refer- tory. I notice this because all former writers, both once, the principal passages in Sismondi relative ancient and modern, fix the complete and final es to the domestic revolutions of Venice are, t. i., p. tablishment of the Venetian aristocracy in 1297. 123; t. iii., p. 28'-300; t. iv., p. 349-370. Twenty-five years complete was the statut;aiLJ
con- restricting their chief magistrate. An btitution would have gained nothing in oath was taken by the doge on his elec stability to compensate for the loss of tion, so comprehensive as to embrace evpopular freedom. The great council had ery possible check upon undue influence. proceeded, very soon after its institution, He was bound not to correspond with to limit the ducal prerogatives. That foreign states, or to open their letters, of exercising criminal justice, a trust of except in the presence of the signiory; vast importance, was transferred, in 1179, to acquire no property beyond the Veneto a council of forty members, annually tian dominions, and to resign what he chosen. The executive government it- might already possess; to interpose, diself was thought too considerable for the rectly or indirectly, in no judicial process doge without some material limitations. and not to permit any citizen to use to Instead of naming his own assistants or kens of subjection in saluting him. As a pregadi, he was only to preside in a coun- further security, they devised a remarkcil of sixty members, to whom the care ably complicated mode of supplying the of the state in all domestic and foreign vacancy of his office. Election by open relations, and the previous deliberation suffrage is always liable to tumult or corupon proposals submitted to the great ruption; nor does the method of secret council, was confided. This council of ballot, while it prevents the one, afford pregadi, generally called in later times in practice any adequate security against the senate, was enlarged in the fourteenth the other. Election by lot incurs the century by sixty additional members; risk of placing incapable persons in situ. and as a great part of the magistrates had ations of arduous trust. The Venetian also seats in it, the whole number amount- scheme was intended to combine the two ed to between two and three hundred. niodes without their evils, by leaving the Though the legislative power, properly absolute choice of their doge to electors speaking, remained with the great coun- taken by lot. It was presumed that, c.i., the senate used to impose taxes, and among a competent number of persons, had the exclusive right of making peace though taken promiscuously, good sense and war. It was annually renewed, like and right principles would gain such an almost all other councils at Venice, by ascendency as to prevent any flagrantly the great council. But since even this improper nomination, if undue influence body was too numerous for the prelimi- could be excluded. For this purpose, nary discussion of business, six counsel- the ballot was rendered exceedingly comlors, forming, along with the doge, the plicated, that no possible ingenuity or signiory, or visible representative of the stratagem might ascertain the electoral republic, were empowered to despatch body before the last moment. A single orders, to correspond with ambassadors, lottery, if fairly conducted, is certainly to treat with foreign states, to convoke sufficient for this end. At Venice, as and preside in the councils, and perform many balls as there were members of other duties of an administration. In the great council present were placed in part of these they were obliged to act an urn. Thirty of these were gilt.. The with the concurrence of what was term- holders of gilt balls were reduced by a ed the college, comprising, besides them- second ballot to nine. The nine elected selves, certain select counsellors from forty, whom lot. reduced to twelve. The different constituted authorities.* twelve chose twenty-five by separate norm ination.* The twenty-five were reduced dge, at which every Venetian noble had a right to bylot to nine; and each of the nine chose take his seat in the great council. But the names of those who had passed the age of twenty were For no single senator, much less any noble of the annually put into an urn, and one fifth drawn out great council, could propose any thing for debate. by lot, who were thereupon admitted. Onanaver- The signiory had the same privilege. Thus the age, therefore, the age of admission was about virtual powers, even of the senate, were far more twenty-three. —Jannotas de Rep. Venet. Contare- limited than they appear at first sight; and no pos ai. Amelot de la Houssaye. sibility remained of innovation in the fundamenta. * The college of Savj consisted of sixteen per- principles of the constitution. sons, and it possessed
the initiative in all public. * Amelot de la Houssaye asserts this: but, ac xmeasures that required
the assent of the sena;e cordine to Contareni, the method was by ballot,
government may have had a slight bias towards that faction, they were in reality neutral, and far enough the suppression of the last, in 1310, the removed from any domestic feuds upon that score. aristocracy sacrificed their own individual t By the modern law of Venice, a nobleman freedom along with that of the people, could not engage in trade without derogatiig from to the preservation of an imaginary priv- his rank; but I am not aware whether so absua d a restriction existed in the fourteenth and fifteenth ilege. They established the famous coun- centuries. I do not find this peculiarly observed cil of ten, that most remarkable part of by Jannotti and Contareni, the oldest writers on the Venetian constitution. This council, the Venetian government. It is noticed by Amcnlot it should be observed, consisted in fact de la Houssaye, who tells us also, that the nobility of seventeen; comprising the signiory, or evaded the law by secret partnership with the priv ofXse enteand his six counsellor, as well ilged merchants, or cittadiini, who formed a sep. the doge and his six counsellors, as well arate class at Venice. This was the cilm ix as the ten properly so called. The coun- modern times. p,t I have nevi"nderst -d ths
the Until almost the middle of the four. corruption of a poor and debased aristocracy, to the license of a people unworthy * See in the Edinburgh Review, vol. xii., p. 379, of freedom, the republic would have soon an account of a book, which is perhaps little lost her territorial possessions, if not her known, though interesting to the history of our own independence. If indeed it be true, own age: a collection of documents illustrating our independence. of the fall of the republic of Venice. The article is as reported, that during the last hundred well written, and, I presume, contains a faithful account of the work; the author of which, Sig. bly relaxed its vigilance, if the Venetian nor Barzoni, is respected as a patriotic writer in government had become less tyrannical Italy. slt, rdeleno ntonl Every one who has been at Venice must have through sloth, or decline of national been struck with the magnificent tombs of the spirit, our conjecture will have acquired doges, most of them in the church of S. Giovanni the confirmation of experience. Expe- e Paolo, in which the republic seems to identify rience has recently shown that a worse herself with her chief magistrate, and to make the calamity than domestic tyranny might decorations and inscriptions on his monument a befalamtye the Adriatic. In record of her own wealth and glory. In the church fell the queen of the Adriatic. In the of the Scalzi, on a single square stone in the pavelplace of St. Mark, among the monuments ment, a very different epitaph from that of Lore. of extinguished greatness, I traveller may dano or Foscari may be read, MANINI CINERES. These two words mark the place of interment of Manini, the last doge, whose own pusillanimity, or principle or common sense of such a restriction, that of those around him, joined to the calamity of especially combined with that other fundamental the times, caused him to survive his own dignity law, which disqualified a Venetian nobleman from the liberties of Venice. To my feelings this possessing a landed estate on the terra firma of the inscription was more striking than the famous republic. The latter, however, did not extend, as I Locus Marini Falieri, pro criminibus decapitati, upon. have been informed, to Dalmatia or the Ionian a vacant canvass among the pictures of the doges islands. in the hall of the Great Council
On the contrary, they lost is thrown into the mouth of the Doge Treviso in the unfortunate war of Chiog. Mocenigo, whom he represents as di:-_ gia, and did not regain it till 1389. Nor suading his country, with his dying words, did they seriously attempt to withstand from undertaking a war against Milan the progress of Gian Galeazzo Visconti; " Through peace our city has every year, who, after overthrowing the family of he said, "ten millions of ducats employ Scala, stretched almost to the Adriatic, ed as mercantile capital in different parts,nd altogether subverted for a time the of the world; the annual profit of our tra balance of power in Lombardy. ders upon this sum amounts to four milK But upon the death of this prince in ions. Our housing is valued at 7,000,000 state of Llon- 1404, a remarkable crisis took ducats, its annual rental at 500,000f bardy at the place in that country. He left Three thousand merchant ships carry on the beginning of two sons, Giovanni Maria and our trade; forty-three galleys, and three century. Filippo Maria, both young, and hundred smaller vessels, manned by under the care of a mother 19,000 sailors, secure our naval power who was little fitted for her situation. Our mint has coined 1,000,000 ducats withThrough her misconduct, and the selfish in theyear. From the Milanese dominions ambition of some military leaders, who alone we draw 1,000,000 ducats in coin, had commanded Gian Galeazzo's merce- and the value of 900,000 more in cloths; naries, that extensive dominion was soon our profit upon this traffic may be reckon broken into fragments. Bergamo, Como, ed at 600,000 ducats. Proceeding as you Lodi, Cremona, and other cities revolt- have done to acquire this wealth, you will ed, submitting themselves in general to become masters of all the gold in Christhe families of their former princes, the tendom; but war, and especially unjust earlier race of usurpers, who had for war, will lead infallibly to ruin. Already nearly a century been crushed by the you have spent 900,000 ducats in the ac. Visconti. A Guelf faction revived, afterquisition of Verona and Padua; yet the the name had long been proscribed in expense of protecting these places abLombardy. Francesco de Carrara, lord sorbs all the revenue which they yield of Padua, availed himself of this revolu- You have many among you, men of probtion to get possession of Verona, and ity and experience; choose one of these seemed likely to unite all the cities be- to succeed me; but beware of Francesec yond the Adige. No family was so odi- Foscari. If he is doge, you will soon ons to the Venetians as that of Carrara. have war, and war will bring poverty and Though they had seemed indifferent to loss of honour."* Mocenigo died, and the more real danger in Gian Galeazzo's hfstime, thley took up arms against this * Sanuto, Vite di Dachi di Venezia, in Script. Rer. Ital., t. xxil, p. 958. Mocenigo's harangue is very long in Sanuto: I have endeavoured to pro * L. xi c. 49 serve the substance U.
covenant among the Jews, had the good fortune to employ Carmagno- was the constant object, that, giving nola, one of the greatest generals of that sort of concentration and uniformity to military age. Most of the revolted cities the army, supplied in some degree the were tired of their new masters, and their want of more regular tactics. This inclinations conspiring with Carmagnolita was of course principally composed of's eminent talents and activity, the of infantry. At the famous battle of the house of Visconti reassumed its former Arbi, in 1260, the Guelf Florentines had ascendency from the Sessia to the Adige. thirty thousand foot and three thousand Its fortunes might have been still more horse; and the usual proportion was prosperous, if Filippo Maria had not five, six, or ten, to one. Gentlemen, rashly, as well as ungratefully, offended however, were always mounted; and Carmagnola. That great captain retired the superiority of a heavy cavalry must to Venice, and inflamed a disposition to have been prodigiously great over an unwards war which the Florentines and disciplined and ill- armed populace. In the Duke of Savoy had already excited. the thirteenth and following centuries, The Venetians had previously gained armies seem to have been considered:s some important advantages in another formidable, nearly in proportion to the quarter, by reducing the country of Fri- number of men-at-arms, or lancers. A uli, with part of Istria, which had for charge of cavalry was irresistible; batlmany centuries depended on the tempo- iles were continually won by inferior ral authority of a neighbouring prelate, numbers, and vast slaughter was made the patriarch of Aquileia. They entered among the fugitives.~ into this new alliance. No undertaking As the comparative inefficiency of foot of the republic had been more successful. soldiers became evident, a greater pro Carmagnola led on their armies, and in portion of cavalry was employed, and about two years [A. D. 1426] Venice armies, though better equipped and disacquired Brescia and Bergamo, and ex- ciplined, were less numerous. This we tended her boundary to the tiver Adda, find in the early part of the fourteenth which she was destined never to pass. century. The main point for a state at Such conquests could only be made, war was to obtain a sufficient Employment Change in by a city so peculiarly mari- force of men-at-arms. As few of foreign the military time as Venice, through the Italian cities could muster a troops system. help of mercenary troops. But large body of cavalry from their own in employing them she merely con- population, the obvious resource was formed to a fashion, which states to whom it was less indispensable had long * Muratorn, Antiq. ital., Diss. 26. Denina, since established. A great revolution Rivoluzioni d'Italia, i. xii., c. 4. had taken place in the system of milita- t. The carroccio was invented by Eribert, a cel ry service through Eh most parts of Europe, ebrated archbishop of Milan, about 1039.-Annla but especially in Italy. During the di Murat., Antiq. Ital., Diss. 26. The carroccio (t Milan was taken by Frederick II., in 1237, and twelfth and thirteenth centuries, wheth- sent to Rome. Parma and Cremona lost their er the Italian cities were engaged in carroccios to each other, and exchanged them their contest with the emperors, or in some years afterward with great exultation In less arduous and general hostilities among the fourteenth century this custom had gone iW ng disuse. —Id. ibid. Denina, 1. xii., c. 4. each other, they seem to have poured Villani. ii., c. 79. out almost their whole population, as an ~ Sismondi, t. iii. p. 263, &c., has some'u armed and loosely organized militia A cious observat; ms on this subject
repelled the impulse of a fourteenth century, chiefly after the ex- lance, or the crushing blow of a battle pedition of the Emperor Henry VII., in axe. Plate armour was substituted in its 1310. Many German soldiers of fortune, place; and the man-at-arms, cased in remaining in Italy upon this occasion, tire steel, the several pieces firmly rivet engaged in the service of Milan, Flor- ed, and proof against every stroke, his ence, or some other state. The subse- charger protected on the face, chest, and quent expeditions of Louis of Bavaria in shoulders, or, as it was called, barded 1326, and of John, king of Bohemia, in with plates of steel, fought with a secu 1331, brought a fresh accession of adven- rity of success against enemies infeturers from the same country. Others rior perhaps only in these adventitious again came from France, and some from sources of courage to himself.t Hungary. All preferred to continue in Nor was the new system of conduct. the richest country and finest climate of ing hostilities less inconvenient. Citizens ex Europe, where their services were anx- to the citizens than the tactics cused from iously solicited and abundantly repaid. of abattle. Instead of rapid and service. An unfortunate prejudice in favour of predatory invasions, terminated instantly strangers prevailed among the Italians of by a single action, and not extending that age. They ceded to them, one more than a few days' march from the knows not why, certainly without having soldier's home, the more skilful combine been vanquished, the palm of military tions usual in the fourteenth century fre skill and valour. The word Transalpine quently protracted an indecisive contest (Oltramontani) is frequently applied to for a whole summer.t As wealth and hired cavalry by the two Villani, as an civilization made evident the advantages epithet of excellence. of agricultural and mercantile industry, The experience of every fresh cam- this loss of productive labour could nRo paign now told more and more against longer be endured. Azzo Visconti, who the ordinary militia. It has been usual died in 1339, dispensed with the personal for modern writers to lament the degen- among the Italians other of his laws," says Galvano Fiamnfof that age. But the contest was too un- ma, " was, that the people should not go equal between an absolutely invulnerable to war, but remain at home for their own body of cuirassiers, and an infantry of business. For they had hitherto been peasants or citizens. The bravest men kept with much danger and expense evhave little appetite for receiving wounds ery year, and especially in time of har-and death without the hope of inflicting vest and vintage, when princes are won any in return. The parochial militia of to go to war, in besieging cities, and in France had proved equally unserviceable; curred numberless losses, and chiefly on though, as the life of a French peasant account of the long time that they were was of much less account in the eyes of so detained."– This law of Azzo Vishis government than that of an Italian cit- conti, taken separately, might be ascribed izen, they were still led forward like sheep to the usual policy of an absolute govern to the slaughter, against the disciplined forces of Edward III. The cavalry had * Muratori, adann. 1226. t The earliest plate armour, engraved in Montfau " Muratori, Dissert. 26. con's Monumens de la Monarchie Franqaise, t. ii., t Ammirato, Istoria Fiorent., p. 159; the same is of the reign of Philip the Long, about 1315; but was done in 1279, p. 200. A lance, in the technical it does not appear generally till that of Philip of language of those ages, included the lighter caval- Valois, or even later. Before the complete harness ry attached to the man-at-arms, as well as himself. of steel was adopted, plated caps were sometimes In France, the full complement of a lance (lance worn on the knees and elbows, and even greavos fournie) was five or six horses; thus the 1500 on the legs. This is represented in a statue:f.ances, who composed the original companies of Charles I., king of Naples, who died in 1285. Posordonnance raised by Charles VII., amounted to sibly the statue may not be quite so ancient.nine thousand cavalry. But in Italy, the number Montfaucon, passim. Daniel, Hist, de la Milica was smaller. We read frequently of barbuti, Franqoise, p. 395. which are defined, lanze de due cavalli.-Corio, p. $ This tedious warfare a' la Fabius is called b! 437. Lances of three
horses were introduced Villani guerra guereggiata, 1. viii., c. 49;' at lcas lhoa the middle ot the fourteenth century.-Id, I can annex no other meaning to the expressi-ov p 46L; Muratori. Antiquit. Ital., Disse".26 M 2

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EUROPE DURING TiIE MIDDLE AGES. LCHAP Ir ment. But we find a similar innovation partisan, whom the Italians call the Duke not long afterward at Florence. In the Guarnieri, engaged these dissatisfied mer war carried on by that republic against cenaries to remain united under his comn Giovanni Visconti, in 1351, the younger mand. His plan was to levy contribuVillani informs us that " the useless and tions on all countries which he entered mischievous personal service of the in- with his company, without aiming at any habitants of the district was commuted conquests. No Italian army, he well into a money payment."* This change knew, could be raised to oppose him; indeed was necessarily accompanied by and he trusted that other mercenariei a vast increase of taxation. The Italian would not be ready to fight against met states. republics as well as principalities, who had devised a scheme so advantage. levied very heavy contributions. Masti- ous to the profession. This was the first no della Scala had a revenue of 700,000 of the companies of adventure, which florins; more, says John Villani, than the continued for many years to be the king of any European country, except scourge and disgrace of Italy. GuarnieFrance, possesses.t Yet this arose from ri, after some time, withdrew his troops, only nine cities of Lombardy. Consid- saturated with plunder, into Germany; ered with reference to economy, almost but he served in the invasion of Naples any taxes must be a cheap commutation by Louis, king of Hungary, in 1348, and, for personal service. But economy may forming a new company, ravaged the ebe regarded too exclusively, and can nev- clesiastical state. A still more formulaer counterbalance that degradation of a ble band of disciplined robbers appeared national character which proceeds from in 1353, under the command of Fra Mo. intrusting the public defence to foreign- ial, and afterward of Conrad Lando ers. This was denominated the Great Com It could hardly be expected that sti- pany, and consisted of several thousand Companies pendiary troops, chiefly compo- regular troops, besides a multitude of of adven- sed of Germans, would conduct half-armed ruffians, who assisted as Epies, fire. themselves without insolence pioneers, and plunderers. The rich. citand contempt of the effeminacy which ies of Tuscany and Romagna paid arge courted their services. Indifferent to the sums, that the great company, which wap cause they supported, the highest pay perpetually in motion, might not marcl: and the richest plunder were their con- through their territory. ience alone stant motives. As Italy was generally magnanimously resolved ilot..e Cffer th's the theatre of war in some of her numer- ignominious tribute. Upon two ocaous states, a soldier of fortune, with his signs, once in 1358, and still more conlance and charger for his inheritance, spicuously the next year, she refused passed from one service to another with- either to give a passage to the company out regret and without discredit. But if or to redeem herself by money; and in peace happened to be pretty universal, he each instance the German robbers were might be thrown out of his only occupa- compelled to retire. At this time they tion, and reduced to a very inferior con- consisted of five thousand cuirassiers, and dition in a country of which he was not their whole body was not less than twena native. It naturally occurred to men ty thousand men; a terrible proof of the of their feelings, that if money and hon- evils which an erroneous system had enour could only be had while they retain- tailed upon Italy. Nor were they re, ed their arms, it was their own fault if pulsed on this occa.;ion by the actual cxthey ever relinquished them. Upon this erotions of Florence. The courage ol principle they first acted in 1343, when that republic was in her councils, not in the republic of Pisa disbanded a large her arms; the resistance made to Lanbody of German cavalry which had been do's demand was a burst of national feeemployed in a war with Florence.
ing, and rather against the advice of the leading Florentines;* but the army em * Matt. Villani, p. 135. ployed was entirely compose! of mercs t L. xi., c. 45. I cannot imagine why M. Sis-
nary troops, and probably, fo. the greater mons对着 asserts, t. iv., p. 432, that the lords of cities part, of foreigners, in Lombardy did not venture to augment the axes imposed while they had been free. Complaints Milan, led a large body of troops who had just been of heavy taxation are certainly often made against disbanded against the city. After some desperate the Visconti and other tyrants in the fourteenth battles, the mercenaries were defeated, and Lodri century.
sio taken, t. v., p. 278. In this instance, however Sismondi, t. v., p. 380. The dangerous aspect they acted for another; Guarnieri was the first whe which these German mercenaries might assume, taught them to preserve the impartiality of gener4 and appeared four years before, when Lodrisio, one robbers of the Visconti, having quarrelled N;h the Lord of * Matt. Villani.

Page 181 Pi K 11 J IT LY. _81 None )f the foreign partisans, wh- en.- not proceed from any predilection for the Air John tered into the service of Italian arts of peace. It arose out of the gener. Hawkwood. states. acquired such renown ils al manners of society, and out of the nathat career as an Englishman, whom con- ture and composition of armies in the:emporary writers call Aucud or Agu- middle ages. The iansubordinate spirit of tus, but to whom we may restore his feudal tenants, and the emulous equality national appellation of Sir John Hawk- of chivalry, were alike hostile to that graywood. This very eminent man had serv- dation of rank, that punctual observance ed in the war of Edward III., and obtain- of irksome duties, that prtmpt obedience ed his knighthood from that sovereign, to a supreme command, through which a though originally, if we may trust corn- single soul is infused into the active mass, mon fame, bred to the trade of a tailor, and the rays of individual merit converge After the peace of Bretigni, France was to the head of the general. ravaged by the disbanded troops, whose In the fourteenth century we begin to devastations Edward was accused, per- perceive something of a more scientific haps unjustly, of secretly instigating. A character in military proceedings, and large body of these, under the name of historians for the first time discover tha, the White Company, passed into the success does not entirely depend upon service of the Marquis of Montferrat. intrepidity and physical Prowess. The They were some time afterward em- victory of Muhldorf over the Austrian ployed by the Pisans against Florence; princes, in 1322, that decided a civil war and, during this latter war, Hawkwood in the empire, is ascribed to the ability appears as their commander. For thir- of the Bavarian commander.* Many disty years he was continually engaged tinguished officers were formed in the in the service of the Visconti, of the school of Edward III. Yet their excel. pope, or of the Florentines, to whom he lences were perhaps rather those of acdevoted himself for the latter part of his tive partisans than of experienced gener.:ife, with more fidelity and steadiness als. Their successes are still due rather.han he had shown in his first campaigns. to daring enthusiasm than to wary and The republic testified her gratitude by calculating combination. Like inexpert a public funeral, and by a monument, chess-players, they surprise us by happy which, I believe, is still extant. sallies against rule, or display their talThe name of Sir John Hawkwood is ents in rescuing themselves from the Want of mil- worthy to be remembered, as consequence of their, own mistakes. itary science that of the first distinguished Thus the admirable arrangements of the tfre his commander who had appear- Black Prince at Poitiers hardly redeem ed in Europe since the de-the temerity which placed him in a situstruction of the Roman empire. It would ation where the egregious folly of his be absurd to suppose that any of the con- adversary alone could have permitted stituent elements of military genius which him to triumph. Hawkwood therefore nature furnishes to energetic characters appears to me the first real general of were wanting to
the leaders of a barbari- modern times; the earliest master, howan or feudal army; untroubled perspica- ever imperfect, in the science of Turenne city in confusion, firm decision, rapid ex-

The Italian historian speaks with admiration of the skillful tactics in battle, his strataare in quality as much required from the gems, his well-conducted retreats. Praise chief of an Indian tribe as from the ac- of this description, as I have observed, is accomplished by habitual skill as to challenge the Hawkwood was not only the greatest, name of generalship. No one at least but the last of the foreign con- Schoofoct is to me previously to the middle of dothier, or captains of mercena- Italian gen the fourteenth century, to whom history ry bands. While he was yet erais. has unequivocally assigned that character. living, a new military school had been It is very rarely that we find even the order formed in Italy, which not only superseof battle specially noticed The monks, ded, but eclipsed all the strangers. This indeed, our only chroniclers, were poor important reform was ascribed to Alberic judges of martial excellence; yet, as war di Barbiano, lord of some petty ten itories is the main topic of all annals, we could * hardly remain ignorant of any distin- Struvius, Corpus Historia German., p. 585 skill in its operations. This Schwepperman, the Bavarian general, is called guished skill in its operations. This by a cuntempor ry writer, clarus mil tri scientih neglect of military science certainly did vir.

Page 182 182 EUROPE DURING THE MIDDLE AGES. tnaP. l[1 near Buiogna. He formed a company achieved, set Italy at rlst for al nost a Ittogether of Italians about the year 1379. century from any apprehensions on the It is not to be supposed that natives of side of her ancient masters. Italy had before been absolutely excluded Whatever evils might be derived, and from service. We find several Italians, they were not trifling, from the employsuch as the Malatesta family, lords of ment of foreign or native mercenaries, it Rimini, and the Rossi of Parma, coma- was impossible to discontinue the system manding the armies of Florence much without general consent; and too many earlier. But this was the first trading states found their own advantage in it company, if I may borrow the analogy, for such an agreement. The condottleri the first regular boly of Italian mercena- were indeed all notorious for contempt of ries, attached only to their commander, engagements. Their rapacity was equal without any consideration of party, like to their bad faith. Besides an enormous the Germans and English of Lando and pay, for every private cuirassier received Hawkwood. Alberic di Barbiano, though much more in value than a subaltern ofhimself no doubt a man of military tal- ficer at present, they exacted gratificaents, is principally distinguished by the tions for every success.* But every thing school of great generals which the com- was enduring by ambitious governments pany of St. George under his command who wanted their aid. Florence and produced, and which may be deduced, by Venice were the two states which owed regular succession, to the sixteenth cen- most to the companies of adventure. The tury. The first in order of time, and one loved war without its perils; the immediate contemporaries of Barbiano, other could never have obtained an inch were Jacopo Verme, Facino Cane, and of territory with a population of sailors. Ottobon Terzo. Among an intelligent But they were both almost inexhaustibly and educated people, little inclined to rich by commercial industry; and, as the servile imitation, the military art made surest paymasters, were best served by great progress. The most eminent con- those they employed. TheViscontimit dottieri being divided, in general, between perhaps have extended their conquest belaigners, each of them had his genius over Lombardy with the militia of Milan; excited and kept in tension by that of a but without a Jacopo del Verme or a Carrival in glory. Every resource of science magnola, the banner of St. Mark would as well as
experience, every improve- never have floated at Verona and Ber ment in tacti4
arrangements and the gamo. use of arms, was required to obtain an The Italian armies of the f
fifteenth cent advantage over such equal enemies. In tury have been remarked for one Defensiv
the first year of the fifteenth century, the striking peculiarity. War has arms of Italians brought
their newly-acquired su- never been conducted at so little that age Deriority to a test. The
Emperor Rob- personal hazard to the soldier. Combats ert, in alliance with Florence, invaded
frequently occur in the annals of that age, Gian Galeazzo's dominions with a con- wherein
success, though warmly considerable army. From old reputation, tested, cost very few lives
even to the which so frequently survives the intrinsic vanquished.t This innocence of blood,
qualities upon which it was founded, an impression appears to have been ex- * Paga doppia, e
mese compiuto, of which we cited in Italy that the native troops were frequently read,
sometimes granted improvidently, still unequal to meet the charge of Ger- and more often
demanded unreasonably. The first man cuirassiers. The Duke of Milan speaks for itself; the
second was the reckoning a month's service as completed when it was begun, gave orders to his
general, Jacopo Verme, in calculating their pay.-Matt. Villani, p. 62. Sis to avoid a combat. But
that able leader mondi, t. v., p. 412. was aware of a great relative change in Gian Galeazzo
Visconti promised constant half. the two armies. The Germans had neg- pay to the condottieri
whom he disbanded in 1396. This perhaps is the first instance of half-pay.- Sis. lected to
improve their discipline; their mondi, t. vii., p. 397. arms were less easily wielded, their t
Instances of this are very frequent. Thus, at horses less obedient to the bit. A single the action
of Zagonara, in 1423, but three persons, skirmish was enough to open their eyes; according to
Machiavel, lost their lives, and thoae they found themselves decidedly inferior; by suffocation
in the mud.-Ist. Fiorent., 1. iv At that of Molinella, in 1467, he says that no one wvas and,
having engaged in the war with the killed l. vii. Ammirato reproves him ior this, as expectation
easy success, were readily all the authors of the time represent it to have been
dit;heartened.* This victory, or rather sanguinary (t. ii., p. 102), and inisir'ates that Ma this
decisive proof that victory might be chiavel ridicules the inoffensiveness of those aimies more
than it deserves, schernendo, come egli suol far, quella milizia. Certainly some few battled of
Siismondi, t. vii., D. 439. the fifteenth century were not only obstinately. on

Page 183 which somre historians turn into ridicule, of the other principal nations adot. it
was no doubt owing in a great degree to so generally or so successfully. The the rapacity of the
companies of adven- crossbow, which brought the strong and ture, who, in expectation of
enriching weak to a level, was more in favour upon themselves by the ransom of prisoners, the
continent. This instrument is said to were anxious to save their lives. Much by some writers to
have been introduced of the humanity of modern warfare was after the first crusade, in the
reign of originally due to this motive. But it was Louis the Fat.* But, if we may trust rendered
more practicable by the nature William of Poitou, it was employed, as of their arms. For once,
and for once well as the long bow, at the battle of only in the history of mankind, the art of
Hastings. Several of the popes prohibdefence had outstripped that of destruc- ited it as a
treacherous weapon; and the lion. In a charge of lancers many fell, restriction was so far
regarded that, in unhorsed by the shock, and might be suf- the time of Philip Augustus, its use
is focated or bruised to death by the pres- said to have been unknown in France.'f sure of their
own armour; but the lance's By degrees it became more general; and point could not penetrate
the breastplate, crossbowmen were considered as a very the sword fell harmless upon the
helmet, necessary part of a well-organized army the.conqueror, in the first impulse of pas- But
both the arrow and the quarrel glansion, could not assail any vital part of a ced away from
plate-armour, such as it prostrate but not exposed enemy. Still became in the fifteenth century,
imperless was to be dreaded from the archers vious in every point, except when the or
crossbowmen, who composed a large visor was raised from the face, or some part of the
infantry. The bow, indeed, as part of the body accidentally exposed drawn by an English foot-
soldier, was the The horse indeed was less completely most formidable of arms before the in-
protected. vention of gunpowder. That ancient Many disadvantages attended the secu-.weapon,
though not perhaps common rity against wounds for which this aramong the Northern nations,
nor for sev- had been devised. The enormous eral centuries after their settlement, was
weight exhausted the force and crippled occasionally in use before the crusades. the limbs. It
rendered the heat of a William employed archers in the battle southern climate insupportable.
In some of Hastings.* Intercourse with the east, circumstances it increased the danger of its
natural soil, during the twelfth and death, as in the passage of a river or thirteenth ages,
rendered the bow better morass. It was impossible to compel an known. But the Europeans
improved on enemy to fight, because the least in the eastern method of confining its use
trenchment or wntural obstacle could stop to cavalry. By employing infantry as such unwieldy
assailants. The troops archers, they gained increased size, more might be kept in constant alarm
at night, steady position, and surer aim for the and either compelled to sleep under arms, bow.
Much, however, depended on the or the run the risk of being surprised before strength and skill of
the archer. It was they could rivet their plates of steel.t a peculiarly English weapon, and none
Neither the Italians, however, nor the Transalpines, would surrender a mode tested, but
attended with considerable loss.-Sis- of defence which they ought to have mondi, t. x., p. 126,
137. But, in general, the deemed inglorious. But, in order to ob slaughter must appear very
trifling. Ammirato viate some of its military inconveniences, himself says, that in an action
between the Neapol- as well as to give a concentration in atian and papal troops in 1486,
which lasted all day, as well as to give a centraction in atg not only no one was killed, but it is
not recorded tack, which lancers impetuously charging that any one was wounded.-Roscoe's
Lorenzo de' in a single line, according to the practice Medici, vol. ii.,p. 37. Guicciardini's
generaltesti- at least of France in the middle ages, mnono to the character of these combats is
unequiv- did not preserve, it became usual,ustom of ocal. He speaks of the battle of Fornova,
between for the cavalr to dismount, and cavalry dithe confederates of Lombardy and the army
of the dis n t Charles VIII. returning from Naples in 1495, as leaving their horses at some dis-
nontin. very remarkable on account of the slaughter, which tance, to combat on foot with the
lance, amounted on the Italian side to 3000men: perch8 This practice, which must have been f4
la prima, che da lunghissimo tempo in qua si combattesse con uccisione e con sangue in talia,h
the plate. perch6 innanzi & questa morivano pochissimiuomo- armour of the fifteen century,
was in. ri in un fatto d'arme, l. ii., p. 175. troduced before it became so ponderous, * Pedites in
fronte locavitt, sagittis armatos et balistis, item pedites in ordine secundo firmiores * Le Grand,
Vie prive6 des Franquis, t. i., p. 349 et loricatos, ultimo turmas equitum.-Gul. Pictavi- t Du
462. (Ital.) represented in the tapestry of Baveux St Simondon, t. ix., p. 158.

Page 184 a84 EUROPE DURING THE MIDDLE AGES. LCHAP. liI It is mentionled by
historians of the about the year 1249.* It seas known nol twelfth century both as a German and
long afterward to our philosopher, Roger an English custom.* We find it in the Bacon, though
he concealed in some de wars of Edward III. Hawkwood, the gree the secret of its composition.
I’ disciple of that school, introduced it mnt, It he first part of the fourteenth century, Italy.t And
it was practised by the Eng.. cannon, or rather mortars, were invented, lish in their second wars
with France, and the applicability of gunpowder to -specially at the battles of Crevant and
purposes of war was understood. Ed. Verneuil.1 ward III. employed some pieces of
Meanwhile, a discovery accidentally made, perhaps in some remote age and but its use was still not very frequent; distant region, and whose importance a circumstance which will surprise us was but slowly perceived by Europe, less, when we consider the unscientific had prepared the way not only for a construction of artillery; the slowness change in her military system, but for with which it could be loaded; its stone Inventionoi political effects still more ex- balls of uncertain aim and imperfect gunpowder tensive. If we consider gun-force, being commonly fired at a considispower as an instrument of human de- erable elevation; and especially the diffistuction, incalculably more powerful culty of removing it from place to place than any that skill had devised or acci- during an action. In sieges, and in naval dent presented before, acquiring, as ex-engagements, as for example in the war perience shows us, a more sanguinary of Chioggia, it was more frequently endominion in every succeeding age, and ployed.1 Gradually, however, the new borrowing all the progressive resources of science and civilization for the exter- * Casiri, Bibl. Arab. Hispan., t. ii., p. 7, thus Innation of mankind, we shall be appall- renders the original description of certain missile, ed at the future prospects of the species, used bythe Moors. Serpunt, susurrantque scor[i and feel perhaps in no other instance so ones circumligati ac pulvere nitrato incensi, unde nuch difficulty in recondicing the myste- explosi fulgurant ac incendunt. Jam videre erat mianganum excussum veluti nubem per aera ex rious dispensation with the benevolent tendi ac tonitrus instar horrendurm edere fragorer, rder of Providence. As the great se- ignemque inadeqaulue womens, omnia dirumpers curity for established governments, the incendere, in cineres redigere. The Arabic pas surest preservation againt popular tu- sage is at the bottom of the page; and one woulo mult, it assumes a more equivocal char- be glad to know whether pulvis nitrus is a fain translation. But I think there can on the wlo'e be acer, depending upon the solution of no doubt that gunpowder is meant. Another Ara a doubtful problem, whether the sum bian writer seems to describe the use ef cannon in of general happiness has lost snore in the years 1312 and 1323.-Id. ibid. And the chronthe last three centuries through arbi- of Alphonso XI., king of Castile, distinctly mentions them, at the siege of Algeziras in 1342. trary power, than it has gained through But, before this. they were sufficiently known ir regular poiice and suppression of dis- France. Gunpowder and cannon are both men order. tioned in registers of accounts under 1338 (DI There seems little reason to doubt that Cange, Bombarda), and in another document of gunpowder was introduced through the 1345.-Hist. du Languedoc, t. iv., p. 204. But the gunpowder was introduced through the strongest evidence is a passage of Petrarch, writ means of the Saracens into Europe. Its ten before 1344, and quoted in Muratori, Antich. use in engines of war, though they may Ital., Dissert. 26, p. 456, where he speaks of the seem to have been rather like our fire- nter, nor rara, nunc communis. works than artillery, is mentioned by an t G. Villani, i. xii., c. 67. Gibbon has thrown Arabic writer in the Escurial collection out a sort of objection to the certainty of this fact, Arabic writer in the Escurial collection on account of Froissart's silence. But the posi tive testimony of Villani, who died within two years * The Emperor Conrad's cavalry in the second afterward, and had manifestly obtained much in. crusade are said by William of Tyre to have dis- formation as to the great events passing in France mounted on one occasion, and fought on foot, de cannot be rejected. He ascribes a material effect equis descendentes, et facti pedites; sicut ros est to the cannon of Edward, colpi delle bombarde, Teutonicis in summisnecessitatibusbellica tractare which I suspect, from his strong expressions, had negotia, 1. xvii., c. 4. And the same was done by not been employed before, except against stone the English in their engagement with the Scotch walls. It seemed, he says, as if God thunderel near North Allerton, commonly called the battle of con grande uccisione di genti, e sfondamento,i the Standard, in 1138.-Twysden, Decem Script., cavalli. p. 342. t Gattaro, Ist. Padovana, in Script. Rer. Ita., t Sismondi, t. vi., p. 429. Azarius, in Script. xvii., p. 360. Several proofs of the employmen Rer. Ital., t. xvi. Matt.
Villani. of artillery in French sieges during the reign of: Monstrelet, t. ii., fol. 7, 14, 76. Villaret, t. Charles V. occur in Villaret. See the word Arti] xvii., p. 89. It was a Burgundian as well as Eng- lerie in the index. lish fashion. Entre les Bourguignons, says Co- Gian Galeazzo had, according to Coria, thirty naines, lors estoient les plus honorez ceux qle four pieces ot cannon, small and great, in the Mills lescendoient avec les archers I i., c. 3. nest army, abo)ut 1311.

Page 185 PAs r 11.1 ITALY 18s artifice of evil gained ground. The our division, indicated the commenceFrench made the principal improve- ment of that military revolution in the ments. They cast their cannon smaller, general employment of pikemen and placed them on lighter carriages, and musketeers. used balls of iron.* They invented port- Soon after the beginning of the fifteenti able arms for a single soldier, which, century, to return from this di- Rivalry of hough clumsy in comparison with their gression, two illustrious cap- Sforza and present state, gave an augury of a pro- tains, educated under Alberic di Braecc', digious revolution in the military art. Barbiano, turned upon themselves the John, duke of Burgundy, in 1411, had eyes of Italy. These were Braccio di 000 hand-cannons, as they were called, Montone, a noble Perugian, and Sforza in h. is army. They are found under Attendolo, originally a peasant in the vildifferent names, and modifications of lage of Cotignuola. Nearly equal in repform, for which I refer the reader to pro- utation, unless perhaps Braccio may be fessed writers on tactics, in most of the reckoned the more consummate general, wars that historians of the fifteenth cen- they were divided by a long rivalry, Jury record, but less in Italy than beyond which descended to the next generation, the Alps. The Milanese, in 1449, are and involved all the distinguished leaders said to have armed their militia with of Italy. The distractions of Naples, and 20,000 muskets, which struck terror into the anarchy of the ecclesiastical state, the old generals.+j But these muskets, gave scope not only to their military, but supported on a rest, and charged with political ambition. Sforza was invested great delay, did less execution than our with extensive fiefs in the kingdom of sanguinary science would require; and, Naples, and with the office of Great Conuncombined with the admirable invention stable. Braccio aimed at independent of the bayonet, could not in any degree acquisitions, and formed a sort of prnciresist a charge of cavalry. The pike had pacity around Perugia. This, however, a greater tendency to subvert the military was entirely dissipated at his death. system of the middle ages, and to de- When Sforza and Braccio were no more, monstrate the efficiency of disciplined their respective parties were headed by infantry. Two free nations had already the son of the former, Francesco Francesco Sforza, whose after winning their independence, inch by political talents fully equalled his militainch, from the house of Austria, had lately ry skill, never lost sight of the splendid established their renown by a splendid prospects that opened to his ambition. victory over Charles of Burgundy. Louis From Eugenius IV. he obtained the XI. took a body of mercenaries from the March of Ancona, as a fief of the Roman United Cantons into pay. Maximilian had see. Thus rendered more independent recourse to the same assistance.— And than the ordinary condottieri, he mingled though the importance of infantry was as a sovereign prince in the politics of Innot perhaps decidedly established till the aly. He was generally in alliance with Milanese wars of Louis XII. and Francis Venice and Florence, throwing his weight I. in the sixteenth century, yet the last into their scale to preserve the balance of years of the middle sages, according to power against Milan and Naples. But his ultimate designs rested upon Milan. Filippo Maria, duke of that city, the last Guicciardini, 1. i., p. 75, has a remarkable pas-
of his family, had only a natural daughage o0 the superiority of the French over the Ital-
ter whose hand he sometimes offered and ian a2.illery, in consequence of these improvementE.
sometimes withheld from Sforza. Even t Villaret, t. xiii., p. 176, 310. after he had consented to
their union, his t Sismondi, t. ix., p. 341. He says that it re- suspicious temper was incapable of
acquired a quarter of an hour to charge and fire a miting such a son-in-law into Ieaecquire
musket. I must confess that I very much doubt the fact of so many muskets having been
collected. confidence, and he joined in a the dutchy In 1432, that arm was seen for the first
time in confederacy with the pope and of Milan. Tuscany.-Muratori, Dissert. 26. p. 457. King
of Naples to strip Sforza of the S See Guicciardini's character of the Swiss March. At the death
of Filippo Maria, troops, p. 192. The French, he says. had no native i 1447, that ger had
nothing left but infantry; il regno di Francia era debolissimo di fanteria propria, tie nobilit y
monopolizing all war- his glory, and a very disputable claim tc ike occuations — Jid. the
Milanese suo. c.-,ion TI is howev
a formidable attack on the severance and energy, shake the founda-Greek empire, when a
memorable revo- tions of established states: while the lution in Sicily brought humiliation on
perfect concealment of his intrigues Rebellion of his latter years. John of Pro-
against a popular maxim, Sicily from cida, a Neapolitan, whose patri-
may be preserved hjaorles of mony had been confiscated for by a number of persons during a
consid his adherence to the party of erable length of time.* Manfred, retained, during long
years of exile, an implacable resentment against * Giannone, though he has well described the
the house of Anjou. From the dominions schemes of John of Procida, yet, as is too often his of
Peter III., king of Aragon, who had custom, or rather that of Costanzo, whom he imbestowed
estates upon him in Vaiencia, he plicitly follows, drops or slides over leading facts, kept his
eye continually fixed on hNaples and thus, omitting entirely, or misrepresenting the
circumstances of the Sicilian Vespers, treats the and Sicily. The former held out no fa-
whole insurrection as the result of a deliberate convourable prospects; the Ghibelin party spric. On
the other hand, Nicolas Specialis, a had been entirely subdued, and the prin-
writer, in the seventh volume of ci)al barons were of French extraction Muratori's collection,
represents the Sicilian Ves r inclinations. ut the island was in a pers as proceeding entirely from
the casual outrage or inclinations. But the island was in a in the streets of Palermo. The thought
of calling very different state. Unused to any in Peter, he asserts, did not occur to the Sicilians
strong government, it was now treated as till Charles had actually commenced the siege of a
conquered country. A large party of Messina. But this is equally removed from the French
soldiers garrisoned the fortified truth. Gibbon has made more errors tlan are us. al with so
accurate an historian in his account of towns, and the systematic oppression this revolution,
such as calling Constance, the was aggravated by those insults upon queen of Peter, sister
instead ofdaugzhte foManfred

Page 187 ?anyt fl. ITALY. The long war that ensaed upon, this rev- left at his decease a aon,
Carobert, thi War in con- olution involved or interested reigning sovereign of that country.
Acsequence the greater part of civilized Eu- cording to the laws of representative suc. Between
rope. Philip III. of France ad- cession, which were at this time tolerably Aragon. hered to his
uncle, and the King settled in private inheritance, the crol of Aragon was compelled to of
Naples ought to have regularly devolv. fight for Sicily within his native domin- ed upon that
prince. But it was contest ions. This indeed was the more vulnera- ed by his uncle Robert, the
eld- Robert, king ble point of attack. Upon the sea he was est living son of Charles II., of
Naples. lord of the ascendant. His Catalans, the and the cause was pleaded by civilians most
intrepid of Mediterranean saihors, before Pope Clement V. at Avignon, the were led to victory
by a Calabrian refu- feudal superior of the Neapolitan kinggee, Roger di Loria, the most
illustrious doin. Reasons of public utility, rather and successful admiral whom Europe than of
legal analogy, seem to have preproduced till the age of Blake and De vailed in the decision
which was made in Ruyter. In one of Loria's battles, the favour of Robert.* The course of his
eldest son of the King of Naples was reign evinced the wisdom of this determade prisoner, and
the first years of his mination. Robert, a wise and active, own reign were spent in confinement.
though not personally a martial prince, But notwithstanding these advantages, it maintained
the ascendency of the Guelf was found impracticable for Aragon to faction, and the papal
influence connectcontend against the arms of France, and ed with it, against the formidable
combiattlerly of Castile, sustained by the roll- nation of Ghibelin usurpers in Lombardy, ing
thunders of the Vatican. Peter III. and the two emperors Henry VII. and had bequeathed Sicily
to his second son Louis of Bavaria. No male issue survJames; Alfonso, the eldest, king of Ara-
ved Robert, whose crown descended to gon, could not fairly be expected to ruin his grand-
daughter Joanna. She had his inheritance for his brother's cause; been espoused, while a child, to her counor were the barons of that free country sin Andrew, son of Carobert, king of disposed to carry on a war -without na- Hungary, who was educated with her ip tional objects. He made peace accord- the court of Naples. Auspiciously coningly in 1295, and engaged to withdraw trived as this union might seem to silence all his subjects from the Sicilian service. a subsisting claim upon the kingdom, it Upon his own death, which followed very proved eventually the source of civil war soon, James succeeded to the kingdom and calamity for a hundred and fifty years. of Aragon, and ratified the renunciation Andrew's manners were barbarous, ntore of Sicily. But the natives of that island worthy of his native country than of that had received too deeply the spirit of in- polished court wherein he had been bred. dependence to be thus assigned over by He gave himself up to the society of Itunthe letter of a treaty. After solemnly garians, who taught him to believe that a abjuring, by their ambassadors, their alle- matrimonial crown and derivative royalty gianco to the King of Aragon, they placed were derogatory to a prince who claimed the crown upon the head of his brother by a paramount hereditary right. [A. D. Frederick. They maintained the war 1343.] In fact, he was pressing the court against Charles II. of Naples, against of Avignon to permit his own coronal James of Aragon, their former king, who tion, which would have placed in a very had bound himself to enforce their sub- hazardous condition the rights of the mission, and even against the great Ro- queen, with whom he was living on ill ger di Loria, who, upon some discontent terms, when one night he was Joana. with Frederick, deserted their banner, seized, strangled, and thrown Murder of and entered into the Neapolitan service. out of a window. Public ru- her husband Peace was at length made in 1300, upon mour, in the absence of notori- Andrew. condition that Frederick should retain du- ous proof, imputed the guilt of this myvspring his life the kingdom, which was af- terious assassination to Joanna. Whetherward to revert to the crown of Naples; er historians are authorized to assume a condition not likely to be fulfilled. her participation in it so confiately as Upon the death of Charles II. king of they have generally done, may perhaps Naples, in 1305, a question arose as to be doubted; though I cannot venture pos. the succession. His eldest son, Charles ivetly to rescind their sentence. The Martel, had been called by maternal inher- circumstances of Andrew's death were italce to the throne of Hungary, and had * Giannone, 1. xxii. Summonte, t. ii., p. 370 A good narrative of the Sicilian Vespers may be Some of the civilians of that age, however, ap/xo!ud in Velly's History of France, t. vi. undoubtedly pregnant with strong suspi- the church. She was smothereG with a cion.* Louis, king of Hungary, his broth- pillow, in prison, by the order of Charles. er, a just and stern prince, invaded Na- [A. D. 1378.] The name of Joan of Na ples, partly as an avenger, partly as a ples has suffered by the lax repetition o, conqueror. The queen, and her second calumnies. Whatever share she may husband, Louis of Tarento, fled to Pro- have had in her husband's death, and cervence, where her acquittal, after a sol- tainly under circumstances of extenua. emn, if not an impartial, investigation, tion, her subsequent life was not open to was pronounced by Clement VI. Louis any flagrant reproach. The charge of meanwhile found it more difficult to re- dissolute manners, so frequently made. tain than to acquire the kingdom of Na- is not warranted by any specific proof or ples; his own dominion required his contemporary testimony. presence; and Joanna soon recovered In the extremity of Joanna's distress, her crown. She reigned for thirty years she had sought assistance from a House oi more without the attack of any enemy, quarter too remote to afford it in Anjou. but not intermeddling, like her progeni- time for her relief. She adopted Louis, tors, in the general concerns of Italy. duke of Anjou, eldest uncle of the young
Childless by four husbands, the successor of Joanna began to excite ambitious in the kingdom of Naples and county of Provence. This bequest took effect of Charles I., none remained but the without difficulty in the latter country. King of Hungary, and Charles, duke of Naples was entirely in the possession of Durazzo, who had married the queen's Charles of Durazzo. Louis, however, niece, and was regarded by her as the entered Italy with a very large army, presumptive heir to the crown. But, of consisting at least of 30,000 cavalry, and, fended by her marriage with Otho of according to some writers, more than Brunswick, he procured the assistance of double that number. He was joined by an Hungarian army to invade the king many Neapolitan barons attached to the dom, and, getting the queen into his pow-late queen. But, by a fate not unusual in er, took possession of the throne. In so imperfect a state of military science, this enterprise was seconded by Ur-this armament produced no adequate efban VI., against whom Joanna had unfor-rect, and mouldered away through disinnately declared in the great schism of ease and want of provisions. Louis himself dying not long afterward, the go...
Joanna's reign, still altogether a feudal government. This had been introduced by the first Norman kings, and the system stable, and Sir (Gianni Caraccioli. the had rather been strengthened than im.-queen's minion,'who governed the pat-. paired under the Angevin line. The ace with unlimited sway. Sforza, assure princes of the blood, who were at one that the favo!rite was contriving his ruin, time numerous, obtained extensive do- and remembering the prison in which he mains by way of appanage. The prin- had lain more than once since the acees.. cipality of Tarento was a large portion sion of Joanna, determined to antitipate of the kingdom.* The rest was occu- his enemies by calling a pretender to pied by some great families, whose the crown, another Louis of Anjou, third strength, as well as pride, was shown in in descent of that unsuccessful dynasty. the number of men-at-arms whom they The Angevin party, though proscriber could muster under their banner. At the and oppressed, was not extinct; and the coronation of Louis II., in 1390, the San- populace of Naples, in particular, had severini appeared with 1800 cavalry com- always been on that side. Caraccioli's pletely equipped. This illustrious house, influence and the queen's dishonourable which had filled all the high offices of weakness rendered the nobility disaffectstate, and changed kings at its pleasure. Ed. Louis III. therefore had no remote was crushed by Ladislaus, whose bold prospect of success. But Caraccioli was and unrelenting spirit well fitted him to more prudent than favourites, selected bruise the heads of the aristocratic from such motives, have usually proved hydra. After thoroughly establishing Joanna was old and childless; the reverhis government at home, this ambitious sion to her dominions was a valuable monarch.directed his powerful resources object to any prince in Europe. None towards foreign conquests. The eccele- was so competent to assist her, Adopticn ot siastical territories had never been se- or so likely to be influenced by Allbnso D cure from rebellion or usurpation; but the hope of succession, as Al- Aragon. legitimate sovereigns had hitherto re- fonso, king of Aragon and Sicily. That spected the patrimony of the head of the island, after the reign of its de- Affairs of church. It was reserved for Ladislaus, liverer, Frederick I., had unfor- Sicily a feudal vassal of the Holy See, to seize tunately devolved upon weak or infant upon Rome itself as his spoil. For sev- princes. One great family, the Chiara eral years, while the disordered state of monti, had possessed itself of half Sicily; the church, in consequence of the schism not by a feudal title, as in other kingand the means taken to extinguish it, doms, but as akindof counter-sovereigngave hiln an opportunity, the King of ty, in opposition to the crown, though Naples occupied great part of the papal affecting rather to bear arms against the territories. He was disposed to have advisers of their kings than againstThemcarried his arms farther north, and at- selves. The marriage of Maria, queen tacked the republic of Florence, if not of Sicily, with Martin, son of the King the states of Lombardy, when his death of Aragon, put an end to the national relied Italy from the danger of this independence of her country. Dying new tyranny. without issue, she left the crown to her An elder sister, Joanna II., reigned husband. This was consonant perhaps JoannaII at Naples after Ladislaus. Un- to the received law of some European der this queen, destitute of cour- kingdoms. But, upon the death of hMarage and understanding, and the slave of tin, in 1409, his father, also named Marappetites which her age rendered doubly tin, king of Aragon, took possession, as disgraceful, the kingdom relapsed into heir to his son, without any election by that state of anarchy from which its late the Sicilian -parliament. The Chiarasoverign had rescued it. I shall only monti had been destroyed by the younger Martin, and no party remained to make * It comprehended the provinces now called opposition. Thus was Sicily united to Terra d'Otranto and Terra di Bari, besides part the crown of Aragon. Alfonso, who of those adjoining.-Summonte, Istoria di Napoli, now enjoyed those two crowns, gladly t. iii., p. 537. Orsini, prince of Tarento, who died embraced the proposals of the Queen of in 1463, had 4000 troops in arms, and the value of Naples. They were founded indeed on 1,500,O1 floris in
moveables -Sismondi,' x., the most substantial basis, mutual interp. 151 t Swunonte, t. iii., p 17. Giannone i. xxiv., est. She adopted Alfonso as her son e. 4. and successor, while he bound himself

Page 190 ~ EUROPE DURING THE MIDDLE AGE;S. -CH.AP.!!/ J employ his forces in delivering a king- tend against the King of Aragon, who's that was to become his own. Louis immediately laid claim to the kingdom. if Anjou, though acknowledged in sever- After a contest of several years, Reg. al provinces, was chiefly to depend upon nier, having experienced the treacherous ile army of Sforza; and an army of Ital- and selfish abandonment of his friends, ian mercenaries could only be kept by yielded the game to his adversary; and means which he was not able to apply. Alfonso founded the Aragonese line of The King of Aragon, therefore, had far sovereigns, at Naples, deriving preten the better prospects in the war, when sions more splendid than just from Man. one of the many revolutions of this fred, from the house of Swabia, and from reign defeated his immediate expecta- Roger Guiscard.* tions. Whether it was that Alfonso's no- In the first year of Alfonso's Neapolible and affable nature afforded a contrast tan war, he was defeated and Alfonso which Joanna was afraid of exhibiting to taken prisoner by a fleet of the king of the people, or that he had really formed a Genoese, who, as constant ene- Naples. plan to anticipate his succession to the mics of the Catalans in all the naval warthrone, she became more and more dis- fare of the Mediterranean, had willingly trustful of her adopted son; till, an open lent their aid to the Angevin party Gerupture having taken place, she entered noa was at this time subject to Filippo into a treaty with her hereditary competi- Maria, duke of Milan; and her royal mor, Louis of Anjou, and, revoking the captive was transmitted to his court. Its revoca adoption of Alfonso, substituted But here the brilliant graces of Alfonso's ion in fa- the French prince in his room. character won over his conqueror, who four of The King of Aragon was dis- had no reason to consider the war as his Ljouis appointed by this unforeseen own concern. The king persuaded him, stroke, which, uniting the Ange- on the contrary, that a strict alliance vin faction with that of the reigning fami- with an Aragonese dynasty in Naples ly, made it impracticable for him to main- against the pretensions of any French tain his ground for any length of time in claimant, would be the true policy and the kingdom. Joanna reigned for more best security of Milan. That city, which than ten years without experiencing any he had entered as a prisoner, he left as a inquietude from the pacific spirit of Louis, friend and ally. From this time Filippo who, content with his reversionary hopes, Maria Visconti and Alfonso were firr:Ly lived as.a sort of exile in Calabria.* united in their Italian politics, and formed Upon his death, the queen, who did not one weight of the balance, which the re. long survive him, settled the kingdom on publics of Venice and Florence kept ill his brother Regnier. The Neapolitans equipoise. After the succession of Sfor. were generally disposed to execute this za to the dutchy of Milan, the Ilisconnex bequest. But Regnier was unluckily at same alliance was generallypre- ion with that time a prisoner to the Duke of Bur- served. Sforza had still more rMiiatl gundy; and though his wife maintained powerful reasons than his predecessor the cause with great spirit, it was diffi- for excluding the French from Italy, his cult for her, or even for himself, to con- own title being contested by the Duke of Orleans, who derived a claim from his - Joanna's great favourite, Caraccioli, fell a vic- mother Valentine, a daughter of Gian'im some time before his mistress's death to an in- Galeazzo Visconti. But the two retrigue of the palace; the Dutchess of Sessa, anew publics were no longer disposed towards favourite, having prevailed on the feeble old queen to permit him to be assassinated. About this time war. Florence had spent a great deal Alfonso had every reason to hope for the renewal without any advantage in her contest of the settlement in his favour. Caraccioli had with Filip.po Maria; t and the new Duke himself opened
a negotiation with the King of Aragon; and, after his death, the Dutchess of Sessia embarked in the same cause. Joan even revoked * According to a treaty between Frederick III., secretly the adoption of the Duke of Anjou. This king of Sicily, and Joanna I., of Naples, in 1363.;circumstance might appear doubtful; but the his- the former monarch was to assume the title of torian to whom I refer has published the act of King of Trinacria, leaving the original style to the revocation itself, which bears date April 11th, 1433. Neapolitan line. But neither he, nor his succesZurita (Anales de Aragon, t. iv., p. 217) admits sors in the island, ever complied with this condi that no other writer, either contemporary or sub- tion, or entitled themselves otherwise than. kings nequent, has mentioned any part of the transaction, of Sicily ultra Phurum, in contradistinction to the which must have been kept very secret; but his other kingdom, which they denominated, Sicily authority is so respectable, that I thought it worth citra Pharuln. Alfonso of Aragon, when he unl. notice, however uninteresting these remote in- ted both these, was the first who took the title or' gues may appear to most re'era Joanna soon King of the two Sicilies, which his successors ha zhanged her mind again, an.: e'e steps retained ever Oinre.-Giannone, t. iii., p. 234. u favieur oef 4fomw Thel' -ding with tke peace of Fer- P

Page 191 vRT II ITALY. 191 of Milan had been the constant personal alry were combined in 4im with the pat friend of Cosmo de’ Medici, who alto- ronage of letters, and with more that gether influenced that republic. At Ven- their patronage, a real enthusiasm for ice, indeed, he had been regarded with learning, seldom found in a king a:no very different sentiments; the senate especially in one so active and ambihad prolonged their war against Milan tious.* This devotion to literature was, with redoubled animosity after his eleva- among the Italians of that age, almost Em tion, deeming him a not less ambitious sure a passport to general admiration ax and more formidable neighbour than the his more chivalrous perfection. MagnifVTisconti. But they were deceived in the icence in architecture, and the pageantry character of Sforza. Conscious that he of a splendid court, gave fresh lustre to had reached an eminence beyond his his reign. The Neapolitans perceived early hopes, he had no care but to secure with grateful pride that he lived almost for his family the possession of Milan, entirely among them, in preference to his without disturbing the balance of Lomn- patronial kingdom; and forgave the bardy. No one better knew than Sforza heavy taxes, which faults nearly allied to the faithless temper and destructive pol- his virtues, profuseness and ambition, itics of the condottieri, whose interest compelled him to impose.t But they rewas placed in the oscillations of intermi- marked a very different character in his nable war, and whose defection might son. Ferdinad was as dark nd Ferdinand. shake the stability of any government. vindictive as his father was afWithout peace it was impossible to break fable and generous. The barons, who that ruinous system, and accusatons had many opportunities of ascertaining to rely upon their natural resources. his disposition, began, immediately upon Venice had little reason to expect further Alfonso’s death, to cabal against his succesquests in Lombardy: and if her am- cession, turning their eyes first to the lebion had inspired the hope of them, she gitimate branch of the family [A. I). was summoned by a stronger call, that 1461], and, on finding that prospect not of self-preservation, to defend her nu- favourable, to John, titular duke of Calamerous and dispersed possessions in the bria, son of Regnier of Anjou, who survi. Levant, against the arms of Mahomet II. ved to protest against the revolution that All Italy indeed felt the peril that im- had dethroned him. John was easily Quadruple pended from that side: and these prevailed upon to undertake an ilvasion,eagueof various motions occasioned a of Naples. Notwithstanding the treaty 1455. quadruple league in 1455, be- concluded in 1455, Florence assisted him tween the King of Naples, the Duke with money, and Venice at least with hex of
Milan, and the two republics, for the wishes; but Sforza remained unshaken preservation of peace in Italy. One ob- in that alliance with Ferdinand, which his ject of this alliance, and the prevailing clear-sighted policy discerned to be the object with Alfonso, was the implied best safeguard for his own dynasty. A guarantee of his succession in the king- large proportion of the Neapolitan nobil dom of Naples to his illegitimate son, ity, including Orsini, prince of Tarento, Ferdinand. He had no lawful issue; the most powerful vassal of the crown, and there seemed no reason why an ac- raised the banner of Anjou, which was quisition of his own valour should pass sustained also by the youngest Piccinino, against his will to collateral heirs. The the last of the great condottieri, under pope, as feudal superior of the kingdom, whose command the veterans of former and the Neapolitan parliament, the sole warfare rejoiced to serve. But John uncompetent tribunal, confirmed the inherit- derwent the fate that had always attend.. ane of Ferdinand.* Whatever may be ed his family in their long competition thought of the claims subsisting in the for that throne. After some brilliant suchouse of Anjou, there can be no question cessed, his want of resources, aggravated that the reigning family of Aragon were by the defection of Genoa, on whose an legitimately excluded from that throne, cient enmity to the house of Aragon he though force and treachery enabled them had relied, was perceived by the barona ultimately to obtain it. of his party, uwho, according to the pracAlfonso, surnamed the Magnanimous, tice of their ancestors, returned olte byv CJthuracter was by far the most accomplishof Alfonso ed sovereign whom the fifteenth * A stoit is told, true or false, that his delight ir century produced. The virtues of chiv- hearing Quintus Curtius mead, without any othe; medicine, cured the king of an illness. Sea other in 1428, is said to have cost the rep-iblic of Flor. proofs of his love of letters in Tiraboschli, t., ence 3,500,000 florins.-Ammirato, p 1043. p. 40. + Giannone, 1. xxvi., c. 2. t Giannone, 1. xxvi

Page 192 1EWUROPE DURING THE MIDDLE AGES. ICHAI. Ili one to the al..egiance of Ferdinand. [A. till after his death relieved Italy from its D. 1461.] immediate terror that the ambitious reThe peace of Italy was little disturbed, public endeavoured to extend its terriexcept a few domestic revolutions, for tories by encroaching on the house of State of several years after this Neapol- Este. [A. D. 1482.] Nor had Milan Itai y the itan war.* Eventhe mostshort- shown much disposition towards ag.;after part sighted politicians were some- grandizement. Francesco Sforza had of the lif- teenth cern times withdrawn from selfish been succeeded, such is the condition of try' objects by the appalling prog- despotic governments, by his son Galeaz. l'isuA of a; Turks, though there was not zo, a tyrant more execrable than tte eneigy enough in their councils to form worst of the Visconti. His extreme ctuany concerted plans for their own secu- elties, and the insolence of a debauchry. Venice maintained a long, but ulti- ery that gloried in the public dishonour mately an unsuccessful contest with Ma- of families, excited a few daring spirits to homet II. for her maritime acquisitions assassinate him. [A. D. 1476.] The Miin Greece and Albania; and it was not lanese profited by a tyrannicide, the perpetrators of which they had not courage * The following distribution of a tax of 458,000 or gratitude to protect. The regency of forins, imposed, or rather proposed, in 1464, to de- Bonne of Savoy, mother of the infant fray the experYse of a general war against the duke Gian Gleazzo, deserved the praise Turks, will give a notion of the relative wealth and resources of the Italian powers; but it is probable of wisdom and moderation. [A. D. 1480.] that the pope rated himself above his fair contin- But it was overthrowed in a few years by gent. He was to pay 100,000 florins; the Vene- Ludovico Sforza, surnamed the Moor, her tiaas 100,000; Ferdinand of Naples 80,000; the husband's brother; who, while he pro. Duke of Milan 70,000; Florence 50,6000; the Duke of Modena 20,000; Siena 15,000; the Marquis of claimed his nephew's majority, and affect Mantua 10,000; Lucca 8000; the Marquis of Mont- ed to treat him as a
sovereign, hardly dis ferrat 5000.-Sismondi, t. x., p. 229. A similar as- guised in his conduct towards foreign sessment occurs, p. 307, where the proportions are states that he had usurped for himself not quite the same. Perhaps it may be worth while to extract an the sole direction of government. estimate of the force of all Christian powers, writ- The annals of one of the few surviving teln about 1454, from Sanuto's Lives of the Dogetic republics, that of Genoa, present Affairs of of Venice, p. 963. Some parts, however, appear to us, during the fifteenth as well Genoa in very questionable. The King of France, it is said, as the preceding century, an un- that age, cau raise 30,000 men-at-arms; but for any foreign ceasing series of revolutions, the shortest enterprise, only 15,000. The King of England can ceasing s Jo the same. These powers are exactly equal; enumeration of which would occupy se otherwise one of the two would be destroyed. The King of Scotland, "ch'6 signore di grandi paesi Adorni and Fregosi, equal and eternal ri vopoli con grande povert," can raise 10,000 men- vals, to whom the ol trician families it-arms' The King of Norway the same' The vals, to whom the old patrician families at-arms: The King of Norway the same* The King of Spain (Castile) 30,000: The King of Por- of Doria and Fieschi were content to betugal 6000: The Duke of Savoy 8000: The Duke come secondary, sometimes sinking from of Milan 10,000.- The republic of Venice can pay weariness of civil tumult into the grasp from her revenues 10,000: That of Florence 4000; of Milan or France, and again, from imThe pope 6000. The emperor and empire can atience of foreign subjection, starting raise 60,000: The King of Hungary 80,000 (not patience of foreign subjection, starting men-at-arms, certainly). back from servitude to anarchy, the GeThe King of France, in 1414, had 2,000,000 du- noa of those ages exhibits a singular concats of revenue; but now only half. The King of trast to the calm and regular aristocracy England had then as much; now only 700,000. of the last three centuries. The latest The King of Spain's revenue also is reduced by of this the wars from 3,000,000 to 800,000. The Duke of revolution within the compass of this Burgundy had 3,000,000; now 900,000. The Duke work was in 1488, when the Duke of Miof Milan has sunk from 1,006,000 to 500,000; Ven- lan became sovereign, an Adorno holding ice from 1,100,000, which she possessed in 1423, the office of doge as his lieutenant. to 800,000: Florence from 400,000 to 200,000. Florence, the most illustrious and forThese statistical calculations are chiefly remarkable, as they manifest that comprehensive spirit of tunate of Italian republics, was and of Fle. treating all the powers of Europe as parts of a com- now rapidly descending from renc. mon system, which began to actuate the Italians her rank among free commonwealths, of the fifteenth century. Of these enlarged views though surrounded with more than usual of policy the writings of Eneas Sylvius afford an We must eminent instance. Besides the more general and lustre in the eyes of Europe. We must insensible causes, the increase of navigation and take up the story of that city from the revival of literature, this may be ascribed to the revolution of 1382, which restored the continual danger from the progress of the Ottoman ancient Guelf aristocracy, or party of the,rrns, which led the politicians of that part of Eu- Albizi, to the asend qtpe most exposed to them into more extensive Albizi, to the ascendency of which a views as to the resources and dispositions of Chris- popular insurrection had stripped them. tian states. Fifty years elapsed during which this
revolution that lasted with the leaders of other factions, Maso from 1378 to 1382, escaped proscription degl' Albizi and Nicola di Uzzano, who of the revival of the Guelf party, though succeeded him in the management of his some of his family were afterward banparty, Mwere attached to a constitutional ished. Throughout the long depression liberty. Yet so difficult is it for any of the popular faction, the house of Medgovernment, which does not rest on a ici was always regarded as their consobroad basis of public consent, to avoid lation and their hope. That house was injustice, that they twice deemed it ne- now represented by Giovanni,t whose cessary to violate the ancient constitu- immense wealth, honourably acquired by tion. In 1393, after a partial movement commercial dealings, which had already in behalf of the vanquished faction, they rendered the name celebrated in Europe, assembled a parliament, and established was expended with liberality and mag what was technically called at Florence nificence. Of a mild temper, and averse a Balia.* This was a temporary delega- to cabals, Giovanni de’ Medici did not attion of sovereignty to a number, gener- tempt to set up a party, and contented ally a considerable number, of citizens, himself with repressing some fresh enwho, during the period of their dictator- croachments on the popular part of the ship, named the magistrates, instead of constitution, which the Albizi were disdrawing them by lot, and banished sus- posed to- make.t They, in their turn, pected individuals. A precedent so dan- freely admitted him to that share in pubge.rous was eventually fatal to themselves, lic councils to which he was entitled a[ld to the freedom of their country. Be- by his eminence and virtues; a proof sides this temporary balia, the regular that the spirit of their administration scrutinies periodically made in order to was not illiberally exclusive. But on the repleish the bags, out of which the death of Giovanni, his son Cosmo de’ izarmes of all magistrates were drwan by Medici, inheriting his father's riches aJdi lot, according to the constitution estab- estimation, with more talents and more lished in 1328, were so managed as to ex- ambition, thought it time to avail himself dlude all persons disaffected to the domi- of. the popularity belonging to his name. nant faction. But, for still greater secu- By extensive connexions with the most rity, a council of two hundred was form- eminent men in Italy, especially with ed, in 1411, out of those alone who had Sforza, he came to be considered as the enjoyed some of the higher offices with- first citizen of Florence. The oligarchy rm the last thirty years, the period of the were more than ever unpopular. Their aristocratical ascendency, through which administration, since 1382, had indeed every proposition was to pass before it been in general eminently successful; could be submitted to the two legislative the acquisition of Pisa, and of other Tus- councils.t These precautions indicate a can cities, had aggrandized the republic, government conscious of public enmity; while from the port of Leghorn her ships and if the Albizi had continued to sway had begun to trade with Alexandria, and the republic of Florence, their jealousy sometimts to contend with the Genoese.. of the people would have suggested still more innovations, till the constitution * The Medici are enumerated by Villanl among hlad acquired, in legal form as well as the chiefs of the Black faction in 1304, 1. viii., c. substance, an absolutely aristocratical 71. One of that family was beheaded by order ol the Duke of Athens in 1343, I. xii., c. 2. It is sincharacter. gular that Mr. Roscoe should refer their first ap. But, while crushing with deliberate se- appearance it, history, as he seerns to do, to the siege verity their avowed adversaries, the ru- of Scarperi, in 1351. aling party had left one family, whose t Giovanni was not nearly related tp Salvestra i e reasonable de’ Medici. Theirfamilies are said per lungo trat Rise of tie prudence gave no reasonable to allontanarsi.-Ammirato, p.992. Nevertheless.b, Medici. excuse for persecuting them; his being drawn gonfalonier, in 1421, created a great and whose popularity, as well as wealth, sensation in the city, and prepared the way to the rendered the, experiment hazardous. The subsequent revolution.-Ibid Machiavelli, 1. iv. Medici were among the most considera- Machiavelli, Istoria Fiorent., 1. iv.. The Florentines sent their first merchant ship to
Alexandria in 1422, with great and anxious Ammirato, p. 840 t Id., p. 961. hopes. Prayers were ordered for the success c, N

But an unprosperous war with Lucca di- ing magistrates was permitted to revive minished a reputation which was never against the wishes of some of the leading sustained by public affection. Cosmo party. They had good reason to be jealond his friends aggravated the errors of ours of a liberty which was incompatible the government, which, havin.g lost its with their usurpation. The gonfaloniers: wise and temperate leader, Nicola di drawn at random from among respecta Uzzano, had fallen into the rasher hands ble citizens, began to act with an inde of Rinaldo deg! Albizi. He incurred the pendence to which the new oligarchy blame of being the first aggressor in a was little accustomed. Cosmo, indeed, struggle which had become inevitable. the acknowledged chief of the party, per. [A. D. 1433.] Cosmo was arrested by ceivingthat some who had acted in insubcommand of a gonfalonier devoted to ordination to him were looking forward the Albizi, and condemned to banish- to the opportunity of becoming them ment. But the oligarchy had done too selves its leaders, was not unwilling to much or too little. The city was full of throw upon them the unpopularity attach his friends; the honours conferred upon ed to a usurpation by which he had main Lim in his exile attested the sentiments tained his influence. Without his appa of Italy. Next year he wreas recalled in, rent participation, though not against his triumph to Florence, and the A. ibizi were will, the free constitution was again sus completely overthrown. pended by a balia appointed for the nomin It is vain to expect, that a victorious ation of magistrates; and the regular drawfaction will scruple to retaliate upon its ing of names by lot was never, I believe, enemies a still greater measure of injus- restored.* Cosmo died at an advanced tice than it experienced at their hands. age in 1464. His son, Piero de' Medici, The vanquished have no rights in the though not deficient either in virtues or eyes of a conqueror. The sword of re- abilities, seemedtooinfirminhealthforthe turning exiles, flushed by victory, and in- administration of public affairs. At least censed by suffering, falls successively he could only be chosen by a sort of he upon their enemies, upon those whom reditary title, which the party above men. they suspect of being enemies, upon tioned, some from patriotic, more fror those who may hereafter become such. selfish motives, were reluctant to admit the Albizi had in general respected the A strong opposition was raised to the /egal forms of their free republic, which family pretensions of the Medici. Like good citizens, and perhaps themselves, all Florentine factions, it trusted to viomight hope one day to see more effect- lence; and the chance of arms was not ive. The Medici made all their govern- in its favour. There is little to regret it ment conducive to hereditary monarchy. the downfall of that oligarchy, which A multitude of noble citizens were driv- had all the disregard of popular rights en from their country; some were even without the generous virtues of the Meput to death. A balia was appointed for dic. t From this revolution in 1466, whoot ten years, to exclude all the Albizi from some of the most considerable citizuns magistracy, and for the sake of this secu- were banished, we may date an ackno writy to the ruling faction, to supersede edged supremacy in the house of Medici. the legitimate institutions of the republic. the chief of which nominated the regular After the expiration of this period, the magistrates, and drew to himself the dictatorial power was renewed on pre- whole conduct of the republic. tence of fresh danger, and this was re- The two sons of Piero, Lorenzo and peated six times in twenty-one years.* Julian, especially the former, Lorenzo do In 1455 the constitutional mode of draw- though young at their father's Medici. death [A. D. 1469], assumed, by the rethe republic by sea; and an embassy despatched quest of their friends, the reins of govwish presents to conciliate the
sultan of Babylon, erment. It was impossible that, amlong that is, of Grand Cairo-Amirid, p. 997. Flo-a people who had so many recollections rence had never before been so wealthy. The circulating money was reckoned (perhaps extrava- to attach to the name of liberty, among gantly) at 4,000,000 florins. The manufactures of so many citizens whom their ancient silk and cloth of gold had never flourished so much. constitution invited to public trust, the

The architecture revived under Brunelleschi; litera- control of a single family she uld excite tnder Leonard Aretin and Filelfo, p. 977. dissa There is some truth in M, Sismondi's remark, no dissatisfaction; and perhaps their want that the Medici have derived part of their glory from their predecessors in government, whom * Ammirato, t. ii., p. 82-87. they subverted, and whom they have rendered ob-t Ammirato, p. 93. Roscoca's Lorenro de Mea scure. But the Milanese war, breaking out in dici, ch. 2. Machiavelli. Sismondi. The twt 1423 tended a good deal to empower the city. latter are perpetual references in this pr, t of histo * Machiavelli, 1. v. Ammirato. ry, where no other is made.

Page 195 PAR_11.] ITALY 19o of any positive authority heightened the priors,ecoine a mochi..ry and pag cant to appearance of usurpation in their influ- keep up the illusion of lberty, were taught ence. But, if the people's wish to resign that, in exercising a legitimate authority their freedom gives a title to accept the without the sanction of their prince, a government of a country, the Medici name now first heard at Florence, they inwere no usurpers. That family never curred the risk of punishment for their au lost the affections of the populace. The dacity.* Even the total dilapidation of his wry of Palle, Palle (their armorial distinc- commercial wealth wat repaired at the Aion), would at any time rouse the Flor- cost of the state; and the republic di-... antines to defend' the chosen patrons of gracefully screenedthe bankruptcy of the the republic. If their substantial influ-Mediciby herown.t But, compared with once could before be questioned, the con- the statesmen of his age, we can respiracy of the Pazzi, wherein Julian per- proach Lorenzo with no heinous crime ished, excited an enthusiasm for the sur- He had many enemies; his descendants viving brother that never ceased during had many more; but no uneqmvoca his life. Nor was this any thing unnatu- charge of treachery or assassination has ral, or any severe reproach to Florence. been substantiated against his memory. All around, in Lombardy and Romagna, By the side of Galeazzo or Ludovico the lamp of liberty had long since been Sforza, of Ferdinand or his son Alfonso extinguished in blood. The freedom of' of Naples, of the pope Sixtus IV., he Siena and Genoa was dearly purchased shines with unspotted lustre. [A. D by revolutionary proscriptions; that of 1492.] So much was Lorenzo esteemec Venice was only a name. The republic by his contemporaries, that his premature which had preserved longest, and with death has frequently been considered as greatest purity, that vestal fire, had at least no relative degradation to fear in leas t no relative degradation tLoreo de' Me- Nardi, p. 7, I should infer that they still formally ~ surrendering herself to Lorenzo de' Medici- subsisted. dici. I need not in this place expatiate * Cambi, a gonfalonier of justice, had, in concert upon what the name instantly suggests, with the priors, admonished some public officers the patronage of science and art, and the for a breach of duty. Fu giudicato questo atto constellation of scholars a~nd poets, of molto superbo, says Ammirato, che senza partici. pazione di Lorenzo de' Medici, principe del gover architects and painters, whose reflected no. fosse seguito, che in Pisa in quel tempo si ri. beams cast their radiance around his trovava, p. 184. The gonfalonier was fined for ex. head. His political reputation, though ecuting his constitutional functions. This was a far less durable, wwas in his own age as downright confession that the republic was at an conspicuous as that which he acquired in nod;t toand all it piovokes M. Sismondi to say is the history of letters. Equally active and + Since the Medici took on themselves the charsagacious, he held his way through
the actor of princes, they had forgotten how to be mer varying combinations of Italian policy, chants. But, imprudently enough, they had not alway-s with credit, and generally with Ydiscontinued their commirrie, which was of course alway with credit, and generally with mismanaged by agents, whom they did not overlook success. Florence, if not enriched, was The consequence was the complete dilapidation upon the whole aggrandized during his of their vast fortune. The public revenues had administration, which was exposed to been for some years applied to make up its defi some severe storms from the unscrupu- ciencies. But from the measures adopted by the lous adversaries, Sixtus IV. and Ferdi- republicparif e may sidlered herself, rat name, sher than Lo mand of Naples, whom he was compelled renzo, as the debtor. The interest of the public to resist. As a patriot, indeed, we never debt was diminished one half. Many charitable foun can bestow upon Lorenzo de' Medici the dations were suppressed. The circulating specie ineed of disinterested virtue. He com- was taken at one fifth below its nominal value ir.payment of taxes, while the government continued pleted that subversion of the Florentine to issue it at its former rate. Thus was Lorenzo rerep.,blic which his two immediate ances- imbursed a part of his loss at the expense of all his tors had so well prepared. The two fellow-citizens.-Sismondi, t. xii., p. 347. It is councils, her regular legislature, he su- slightly alluded to by Machiavel. perseded by a permanent senate of sev- The vast expenditure of the Medici for the sake znty p erseded by a while te ofasev of political influence would of itself have absorbed vnty persons;* while the gonfalonier and all their profits. Cosmo is said by Guicciardini to. have spent 400,000 ducats in building churches * Ammirato, p. 145. Machiavel says, 1. viii., that monasteries, and other public works, - . i., p. 91. this was done ristriengere il governo, e che le de- The expenses of the family between 1434 and 1471 iberazioni importanti si riducessero in minore nu- in buildings. charities, and taxes alone, amounted mero. Mr. Roscoe, vol. ii., p. 53, is puzzled how to 663.755 florins; equal in value, according to Sis. to explain this decided breach of the people's rights mondi, to 32,000,000 francs at piesent.-Hist. des by his hero. But though it rather appears from Relpubl., t. x.,p. 173. They seem to have advan Ammirato's expressions that the two councils were ced moneys imprudently, through their agents, te now abolished, yet from M. Sismondi, t. xi., p. 186, Edward I V., who was not the best of debtors.,-who quotes an author I have not seen, and from Comines, M6m. de Charles VIII. 1. vii., c. 6. N 2

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196 EUROPE DURING THE MIDDLE AGES. LtAI'. liI the cause of those unhappy revolutions sidered its natural heads, as the Gerinar that speedilyensued, and which his fore- emperors were of the Ghibelins. The long sight would, it was imagined, have been English wars changed all views of the able to prevent; an opinion which, wheth- court of France to self-defence. But, ili cr founded in probability or otherwise, the fifteenth century, its plans of aggranattests the common sentiment about his dizement beyond the Alps began to re.t character. vive. Several times, as I have mention. If indeed Lorehzo de' Medici could not ed, the republic of Genoa put itself under Pretensions of have changed the destinies of the dominion of France. The dukes of France upon Italy, however premature his Savoy, possessing most part of Pied. Naples. death may appear, if we con- mont, and masters of the mountain- pass. sider the ordinary'duration of human ex- es, were, by birth, intermarriage, and istence, it must be admitted, that for his habitual policy, completely dedicated to own welfare, perhaps for his glory, he the French interests.* In the former wars had lived out the full measure of his of Ferdinand against the house of Anjou, time. An age of new and uncommon Pope Pius II., a very enlightened states revolutions was about to arise, among man, foresaw the danger of Italy from the earliest of which the temporary down- the prevailing influence of France, and fall of his family was to be reckoned. deprecated the introduction of her ar The long-contested
succession of Naples mies.t But at that time the central parts was again to involve Italy in war. The of Lombardy were held by a man equally ambition of strangers was once more to renowned as a soldier and a politician, desolate her plains. Ferdinando, king of Francesco Sforza. Conscious that a Naples, had reigned for thirty years after claim upon his own dominions subsisted the discomfiture of his competitor with in the house of Orleans, he maintained a success and ability; but with a degree of strict alliance with the Aragonese dynast faith as well as tyranny towards his ty at Naples, as having a common interest subjects that rendered his government against France. But after his death the deservedly odious. His son Alfonso, connexion between Milan and Naples whose succession seemed now near at came to be weakened. In the new sys lland, was still more marked by these tem of alliances, Milan and Florence, vices than himself.* Meanwhile, the sometimes including Venice, were cornm pretensions of the house of Anjou had bined against Ferdinand and Sixtus IV., legally descended, after the death of old an unprincipled and restless pontiff. LuRegnier, to Regnier, duke of Lorraine, dovico Sforza, who had usurped the his grandson by a daughter; whose mar-guardianship of his nephew, the Duke riage into the house of Lorraine had, of Milan, found, as that young man ad however, so displeased her father, that vanced to maturity, that one crime requir lie bequeathed his Neapolitan title, along ed to be completed by another. To with his real patrimony, the county of Provence, to a count of Maine; by whose * Denina, Storia dell' Italia Occidentale, t. ii., testament they became vested in the passim. Louis XI. treated Savoy as a fief of crown of France. Louis XI., while he France; interfering in all its affairs, and even took possession of Provence, gave him- taking on himself the regency after the death of self no trouble about Naples. But Charles Philibert I., under pretence of preventing disorpers, SudVIII., inheriting his father's ambition sessed considerable territories in the south of Pied that cool sagacity which restrain- mont, had done homage to France ever since 1353 ed it in general from impracticable at- (p. 40), though to the injury of his real superior, tempts, and far better circumstanced at the Duke of Savoy. This gave France another pretext for interference in Italy, p. 187. home than Louis had ever been, was t Cosmo de' Medici, in a conference with Pius ripe for an expedition to vindicate his II. at Florence, having expressed his surprise pretensions upon Naples, or even for that the pope should support Ferdinand: Pontifer more extensive projects. It was now haud ferendum fuisse ait, regem a se constitutum, armis ejici, neque id Italia~ libertati corducere; two centuries since the kings of France Gallos, si regnum. obtinuissent, Senas haud dubiA had aimed, by intervals, at conquests in subacturos; Florentinos adversus lilia nihil actu. Italy. Philip the Fair and his succes- ros; Borsium Mutinao ducem Gallis galliorera sors were anxious to keep up a connex- videri; Flaminia regulos ad Francois inclinare ion with the Guelf party, and to be con- Genuam Francis subesse, et civitatem Astensem' si pontifex Romanus aliquando Francorum armmcus assumatur, alihil reliqui in Italia remanere quod * Comines who speaks sufficiently ill of the non transeat in Gallorum nomen; tueri se Italiam, father, sums up the son's character very concisely: dum FerdinaLdum tueretur.- Commentar. Pii Se. Nul homniae n'a este plus cruel que lui, ne plus cundi, 1. iv., p. 96. Spondanus, who led me to this mauvais, tie plus vicieux et plus infect, ne p'us passage, is very angry; but the year 14!94 pteVo. gourmand que hli, 1. vii., c. 13. Pius II. to be a wary statesman.
Lorenzo's heir, his of policy, should never be unconnected decided enemies. A revolution at Milan with virtue. In relieving himself from an would be the probable result of his con-
immediate danger, Ludovico Sforza overtiruing ihi usurpation. [A. D. 1439.] In looked the consideration that the pre. thts3q circumstances, Ludovico Sforza sumptive heir of the King of France excited the King of France to undertake claimed by an ancient title that principalthe conquest of Naples.* ity of Milan, which he was compassing So long as the three great nations of by usurpation and murder. But neither Europe were unable to put forth their Milan nor Naples was free from other natural strength through internal separa- claimants than France, nor was she retion or foreign war, the Italians had so served to enjoy unmolested the spoil of little to dread for their independence, Italy. A louder and a louder strain of that their policy was altogether directed warlike dissonance will be heard from to regulating the domestic balance of the banks of the Danube, and from the power among themselves. In the latter Mediterranean gulf. The dark and wily part of the fifteenth century, a more en- Ferdand, the rash and lively Maximillarged view of Europe would have mani- ian, are preparing to hasten into the lists; fested the necessity of reconciling petty the schemes of ambition are assuming animosities, and sacrificing petty ambi- a more comprehensive aspect; and the fion, in order to preserve the nationality controversy of Neapolitan succession of their governments; not by attempting is to expand into the long rivalry beto melt down Lombards and Neapolitans, tween the houses of France and Austria principalities and republics, into a single But here, while Italy is still untouched monarchy, but by the more just and ra- and before as yet the first lances of tional scheme of a common federation. France gleam along the defiles of the The politicians of Italy were abundantly Alps, we close the history of the Middle competent, as far as cool and clear un- Ages. CHAPTER IV. rHE HISTORY OF SPAIN TO THE CONQUEST OF GRANADA. mingdom of the Visigoths.-Conquest of Spain by dynasty of the Visigoths; a na- i ngdom of the Moors.-Gradual Revival of the Spanish tion among the first that assault- visigoths in Nation.-Kingdoms of Leon, Aragon, Navarre, and overthrew the oma pain. and Castile, successively formed.-Chartered ed Towns of Castile.-Military Orders. —Conquest Empire, and whose establishment preceof Ferdinand II. and James of Aragon.-Causes ded by nearly half a century the invasion of the delay in expelling the Moors.-History of of Clovis. Vanquished by that conquerCastile continued.-Character of the government. or in the battle of Poitiers, the Gothic -Peter the Cruel.-House of Trastamare. — John II. —Henry IV.-Constitution of Castile. — monarchs lost their extensive dominions National Assemblies or Cortes.-Their constitu- in Gaul, and transferred their residence ent parts.-Right of Taxation.-Legislation.- from Toulouse to Toledo. But I hold Privy Council of Castile. —Laws for the protec- the annals of barbarians so unworthy of tion of Liberty. -Imperfections of the Constitution.-Aragon. -Its history in the fourteenth and that I will not detain the fifteenth centuries.-Disputed succession.-Con- reader by naming one sovereign of that stitution of Aragon.-Free spirit of its Aristoc- obscure race. The Merovingian kings of racy.-Privilege of Union.-Powers of the Jus- France were perhaps as deeply stained tiza.-Legal Securities.-Illustrations.-Other by atrocious crimes, but their history, Constitutional Laws.-Valencia and Catalonia. -Union of two Crowns by the Marriage of Fer- slightly as I have noticed it, is the necea dinand and Isabe ea.-Conquest of Granada. sary foundation of that of Charlemagne and illustrates the feudal system and THE history of Spain during the mid- constitutional antiquities of France. If ~4) ages ought to commence with the those of Castile had been equally interesting to the historical student, I should * Gui ciardini, 1 i have taken the same pains to trace'.heit
princes, but some source of the old Castilian constitution, times sought their alliance.* as the Anglo-Saxon polity of our own. The last attack, which seemed to en, It may, however, suffice to mention, that danger the reviving monarchy of Kingdorb it differed in several respects from that Spain, was that of Almanzor, the of Leon. of the Franks during the same period. illustrious vizier of Haccham II., towards The crown was less hereditary, or at the end of the tenth century, wherein the least the regular succession was more city of Leon, and even the shrine of Com frequently disturbed. The prelates had a postella, were burnt to the ground. Fol still more commanding influence in tem- some ages before this transient reflux poral government. The distinction of gradual encroachments had been made Romans and barbarians was less marked, upon the Saracens; and the kingdom, the laws more uniform, and approaching originally styled of Oviedo, the seat of nearly to the imperial code. The power which was removed to Leon in 914, had of the sovereign was perhaps more lim- extended its boundary to the Duero, and ited by an aristocratical council than in even to the mountainous chain of the France, but it never yielded to the dan- Guadarrama. The province of old Casgerous influence of mayors of the palace. tile, thus denominated, as is generally Civil wars and disputed successions were supposed, from the castles erected, while very frequent but the integrity of the it remained a march or frontier against kingdom was not violated by the custom the Moors, was governed by hereditary of partition. counts, elected originally by the provinSpain, after remaining from nearly three cial aristocracy, and virtually independColnquest centuries in the possession of the ent, it seems probable, of the kings of by the Visigoths, fell under the yoke of Leon though commonly serving them in Saracens. the Sai'acens in 712. The fer- war. as brethren of the same faith and,;id and irresistible enthusiasm which dis- nation.t tinguished the youthful period of AMa- While the kings of Leon were thus occuhometanism, might sufficiently account pied in recovering the western provinces, for this conquest; even if we could not another race of Christian princes grew up assign additional causes,-the factions silently under the shadow of the Pyrene. which divided the Goths, the resentment an mountains. Nothing can be Kingdoms ot of disappointed pretenders to the throne, more obscure than the begin- Navarre and the provocations of Count Julian, and the nings of those little states, Aragon. temperity that risked the fate of an em- which were formed in Navarre and the pire on the chances of a single battle. country of Soprarbe. They might perfIt is more surprising, that a remnant of haps be almost contemporaneous with the this ancient monarchy should not only Moorish conquests. On both sides of the have preserved its national liberty and Pyrenees dwelt an aboriginal people; the name in the northern mountains, but last to undergo the yoke, and who had newaged for some centuries a successful, er acquired the language, of Rome. We and generally an offensive warfare against know little of these intrepid mountainthe conquerors, till the balance was corn- eers in the dark period which elapsed plelety turned in its favour, and the under the Gothic and Frank dynasties. Mtoors were compelled tomaintain almost till we find them cutting off the rear as obstinate and protracted a contest for guard of Charlemagne in Roncesvalles, a small portion of the peninsula. But the Arabian monarchs of Cordova found in * Cardonne, Hist. de l' Afrique et de l' Espagne. their success and imagined security a pre- t According to Roderic of Toledo, one of the text for indolence; even in the (cultivation earliest Spanish historians, though not older than tof s c ience, and contemplation of the mag-tn the beginning of the thirteenth century, the nobles of science, and contemplation of the mag- of Castile, in the reign of Froila, about the year nifceent architecture of their mosques 924, sibi et posteris providerunt, et duos milites non and palaces, they forgot their poor but de potentioribus, sed de prudentioribus elegerunt, daring enemies in the Asturias; while, quod et judices statuerunt, ut dissensiones patriae according to the nature of despotism, the et querelantmm cause suo judicio sopirentur, 1. v.. c. 1. Several other passages in the same write; frits of wisdom or bravery in one gen- prove that the counts of Castile were nearly ind., eration were lost in the follies and
ependent of Leon, at least from the time of Ferdi feminacy of the next. Their kingdom and Gonsalvo about the middle of the tenth cents, was dismembered by successful rebels, ry. Ex quo iste suscipit su- patrit colntrabui who formed the states of Toledo, Hues- cessaverurnt reges Asturiarum insolescere in Cas tellam, et a flumine Pisorica nihil amplius vindic' ca, Saragosa, and others less eminent; runt, 1. v., c. 2. Marina, in his Ensayo Historic' and these, in thei r own mutual contests, I Critico, is disposed to controvert this act.

Page 199 CMAI IV] SPAIN 19. and maintaining at least their indepenid- which they began by pillaging, they graduence., though seldom, like the kings of ally Fossessed; their valour was height. Asturias, waging offensive war against ened by the customs of chivalry, and the Saracens. The town of Jaca, situa- inspired by the example of the Cid: and, ed among long narrow valleys that in- before the end of this age, Alonso VI. re-,ersect the southern ridges of the Pyre- covered the ancient mnetropolis of the mon noes, was the capital of a little free state, archy, the city of Toledo. This Capture ti wlich afterward expanded into the mon- was the severest blow whlich the Toledo, lrchy of Aragon.* A territory rather Moors had endured, and an unequivocal more extensive belonged to Navarre, the symptom ofthat change in their relative V.ings of which fixed their seat at Pam- strength which, from being so gradual, pelona. Biscay seems to have been di- was the more irretrievable. Calamities vided between this kingdom and that of scarcely inferior fell upon them in a difLeon. The connexion of Aragon or So- ferent quarter..The kings of Aragon (a prarbe and Navarre was very intimate, title belonging originally to a little disand they were often united under a single trict upon the river of. that name) had chief. been cooped up almost in the mountains At the beginning of the eleventh centu- by the small Moorish states north of the Kingdomof ry, Sancho the Great, king of Ebro, especially that of Huesca. About Castile. Navarre and Aragon, was ena- the middle of the eleventh century, they bled to render his second son, Ferdinand, began to attack their neighbours with count, or, as he assumed the title, King success; the Moors lost one town after of Castile. This effectually dismember-e another, till, in 1118, exposed and weakened that province from the kingdom of ened bythe reduction of all these places. Leon; but their union soon became more the city of Saragosa, in which a And Saracomplete than ever, though with a re- line of Mahometan princes had gosa. versed supremacy. Bermudo III.,kingf flourished for several ages, became the Leon, fell in a battle with the new king prize of Alfonso I., and the capital of his of Castile, who had married his sister; kingdom. The southern parts of what and Ferdinand, in her right or in that of is now the province of Aragon were suconquest, became master of the united cessively reduced during the twelfth cenmonarchy. This cessation of hostilities tury; while all new Castile and Estrebetween the Christian states enabled madura became annexed in the same them to direct a more unremitting ener- gradual manner to the dominion of the gy against their ancient enemies, who descendants of Alfonso VI. were now sensibly weakened by the va- Although the feudal system cannot rious causes of decline to which I have be said to have obtained in the Modo of setalready alluded. During the eleventh kingdoms of Leon and Castile, tling the century, the Spaniards were almost al- their peculiar situation gave the new con vays superior in the field; the towns, aristocracy a great deal of the quests. same power and independence whiet * The Fueros, or written laws of Jaca, were resulted in France and Germany from perhaps more ancient than any local customaryin - istddttin. The and Gerritory succe Europe. Alfonso III. confirms them.by name of the that institution. The territory succesanciens usages of Jaca. They prescribe the de- sively recovered from the Moors, like scent of lands and moveables, as well as the elec- waste lands reclaimed, could have no tion of municipal magistrates. The following law, pr which enjoins the rising in arms on a sudden emer- prospect of such acquisitierors; and the gency, illustrates, with a sort of
romantic wildness, prospect of such acquisitions was a conthe manners of a pastoral but warlike people, and stant incitement to the nobility of Spain, reminds us of a well-known passage in the Lady of especially to those who had settled themahe Lake. De appelitum ita statuirnus. Curn hom- selves on the Castilian frontier. In their ines de villis, vel qui stant in montanis cum suis new conquests, they built towns and ganatis [gregibus], audierint appellitum; omnes i capiant arma, et dirnissis ganatis, et omnibus allisinvited Christian settlers, the Saracen suis faziendis [negotiis] sequantur appellitum. Et inhabitants being commonly expelled, si illi qui fuerint magis remoti, invenerint in villa or voluntarily retreating to the safer migis proxinla appellito [deest aliquid?] omnes provinces of the south. Thus Burgos was qti nondum fuerint egressi tune villam illam, qu settled by a count of astile about 880; antautius secuta est appellitum, pecent [solvant] uram baccam [vaccaml; et unusquisque homo ex other fixed his seat at Osma; a third tllis qui tardius secutas est appellitum, et quem at Sepulveda; a fourth at Salamanca. inagis remoti prawcesserint, pecet tres solidos, quo- These cities were not free from inces. modo nobis videbitur, partiendos. Tamen in Jaca sant peril of a sudden attack till tle union et in allis villis, sint aliqui nominati et certi, quos of the to slegerint consules, qui remaneant ad villas custo- the two kingdoms under Ferdinand I, liendas et defendendas. —Biancue Commentaria in and, consequently, the necessity of keep.,cnctti HispanialIllustra' i, p. 595. ing in exercise a numerous, and armed

Page 200 g0(!.0 E "xUROPE DURING THE MIDJDLi AGES, JHSP. A population gadve a character of personal I civil as well as criminal, though essent freedom and privilege to the inferior i tially derived from the ancient code ol ~lasses, which they hardly possessed at the Visigoths, which continued to be the so early a period in any other monarchy. common law of Castile ill the fourteenth Viilanage seems never to have been or fifteenth century, varied from each established in the Hispano-Gothic king- other in particular usages, which had doms Leon and Castile; though I confess probably grown up and been established it was far from being unknown in that in these districts before their legal corn of Aragon, which had formed its institu- firmation. The territory held by char-:ions on a feudal pattern. Wnce nothing tered towns was frequently very extenmakes us forget the arbitrary distinctions sive, far beyond any comparison with of rank so much as participation in any corporations in our own country or in common calamity, every man who had France; including the estates of private escaped the great shipwreck of liberty landholders, subject to the jurisdiction and religion in the mountains of Asturi- and control of the municipality, as well as was invested with a personal dignity, as its inalienable demesnes, allotted to which gave him value in his own eyes the maintenance of the magistrates and and those of his country. It is probably other public expenses. In every town this sentiment, transmitted to posterity, the king appointed a governor to receive and gradually fixing the national charac- the usual tributes, and watch over the ter, that has produced the elevation of police and the fortified places within the manner remarked by travellers in the district; but the administration of justice Castilian peasant. But while these ac- was exclusively reserved to the inhabi-.quisions of the nobility promoted the tants and their elected judges. Even the grand object of winning back the penin- executive power of the royal officer was sula from its invaders, they by no means regarded with jealousy; he was forbidinvigorated the government, or tended to den to use violence towards any one domestic tranquillity. without legal process; and, by the fuero A more interesting method of securing of Logrono, if he attempted to enter forChartered the public defence was by the cibly into a private house, he might be towns or institution of chartered towns killed with impunity. These democratcommunities. or communities. These were ical customs were altered in the four established at an earlier period than in teenth century by Alfonso XI., who France and England,
and were in some vested the municipal administration in a degree of a peculiar description. Instead small number of jurats or regidores. A pretext for this was found in some dismounts their personal freedom, at the hands others to which popular elections had led; of a master, the burgesses of Castilian but the real motive, of course, must have towns were invested with civil rights and been to secure a greater influence for the extensive property on the more liberal crown, as in similar innovations of son of condition of protecting their country. English kings. The earliest instance of the erection of a community is in 1020, when Alfonso V., sions, the incorporated towns were bound in the cortes at Leon, established the priv- to certain money payments and to milieus of that city with a regular code of tary service. This was absolutely due laws, by which its magistrates should from every inhabitant, without dispensable governed. The citizens of Carrion, tion or substitution, unless in case of inLlanes, and other towns, were incorpo- ity. The royal governor and the magistrates by the same prince. Sancho the gistrates, as in the simple times of principal Great gave a similar constitution to Nax- ara. Sepulveda had its code of laws in militia; who, in a service always short, 1076 from Alfonso VI.; in the same reign and for the most part necessary, preLogrono and Sahagun acquired their priv- served that delightful consciousness of illeges, and Salamanca not long after- freedom, under the standard of their felward. The fuero, or original charter of low- citizens and chosen leaders, which a Spanish community, was properly a no mere soldier can enjoy. Every man compact by which the king or lord of a certain property was bound to serve granted a town and adjacent district to on horseback, and was exempted in refine jurgesse, with various privileges, turn from the payment of taxes. This and especially that of choosing magis- produced a distinction between the cabaltrates and a common council, who were leros, or noble class, and the pecsheros, of bound to conform themselves to the law. But the distinction Prescribed by the founder. These laws, appears to hve been founded only upor

Page 201 CeAP. t I SPAIN. wealth, as in the Roman equites, and not branched off from that of Calatrava at a upon hereditary rank, though it most subsequent time.* These were military likely prepared the way for the latter. colleges, having their walled towns in The horses of these caballeros could not different parts of Castile, and governed be seized for debt; in some cases they by an elective grand master, whose influ. were exclusively eligible to magistracy; ence in the state was at least equal to ind their honour was protected by laws that of any of the nobility. In the civil which rendered it highly penal to insult dissensions of the fourteenth and fifteenth IT molest them. But the civil rights of centuries, the chiefs of these incorpo-ich and poor in courts of justice were as rated knights were often very prominent. equal as in England.* The kingdoms of Leon and Castile The progress of the Christian arms in were unwisely divided anew by Final union Military Spain may in part be ascribed to Alfonso VII., between his sons of IJeon and orders. another remarkable feature in the Sancho and Ferdinand, add this Castile. constitution of that country, the military produced not only a separation, but a re orders. These had already been tried vial of the ancient jealousy, with freewith signal effect in Palestine; and the quent wars, for near a century. At similar circumstances of Spain easilyled length, in 1238, Ferdinand III., king of to an adoption of the same policy. In a Castile, reunited for ever the two branches very few years after the first institution of the Gothic monarchy. He employed of the Knights Templars, they were en- their joint strength against the Moors dowed with great estates, or rather dis- whose dominion, though it still embraced tricts, won from the Moors, on condition the finest provinces of the peninsula, was of defending their own and the national sinking by internal weakness, and bad territory. These lay chiefly in the parts never recovered a tremendous defeat at of Aragon beyond the Ebro, the conquest Banos di Toloso, a few miles
from Bay of which was then recent and insecure. Ferdinand, bursting into, So extraordinary was the respect for this Andalusia, took its great capi- Conquest of order, and that of St. John, and so power- tal, the city of Cordova [A. D. Andalusia, ful the conviction that the hope of Chris- 1236], not less ennobled by the cultivation tendom rested upon their valour, that Al- of Arabian science, and by the names of fonso the First, king of Aragon, dying Avicenna and Averroes, than by the childless, bequeathed to them his whole splendid works of a rich and munificent kingdom; an example of liberality, says dynasty. A few years more, Seville Mariana, to surprise future times, and dis- was added to his conquests, and the p.ease his own. The states of Aragon Moors lost their favourite regions on annulled, as may be supposed, this strange the banks of the Guadalquivir. And Valencia testament; but the successor of Alfonso James I. of Aragon, the victories of was obliged to pacify the ambitious whose long reign gave him the surname knights by immense concessions of mo- of Conqueror, reduced the city and kingney and territory; stipulating even not to dom of Valencia, the Balearic Isles, and make peace with the Moors against their the kingdom of Murcia; but the last was will. In imitation of these great military orders, common to all Christendom, * L. xi., c. 6, 13; 1. xii., c. 3. tary orders, common to all Christendom, t A letter of Alfonso IX., who gained this victory, there arose three Spanish institutions of to Pope Innocent III., puts the loss of the Moors a similar kind, the orders of Calatrava, at 180,000 men. The Arabian historians, though Santiago, and Alcantara. The first of without specifying numbers, seem to confirm this these was established in 1158; the sec- immense slaughter, which nevertheless it is diffi nd wand mostfamush i hd itshae cult to conceive before the invention of gunpow ond and most famous had its charter der, or indeed since. —Cardonne, t. ii., p. 327. from the pope in 1175, though it seems t If we can rely on a Moorish author, quoted b to have existed previously; the third Cardonne (t. i., p. 337), the city of Cordova con tained, I know not exactly in what century * I am indebted for this account of municipal 200,000 heuses, 600 mosques, and 900 public baths towns in Castile to a book published at Madrid in There were 12,000 towns and villages on the banks 1808, immediately aft -r the revolution, by the of the Guadalquivir. The minea of gold and silvec Doctor Marina, a canoa of the church of St. Isidor, were very productive. And the revenues of the entitled, Ensayo H-storico-Critico sobre la antigua khalifs of Cordova are said to have an:ounted to legislacion y principales cuerpos legales de los rey- 130,000,000 of French money; besides large con no, de Lyon y Castilla, especialment sobre el co- tributions that, according to the practice of oriendigo de D. Alonso el Sabio, conocido con el nombre tal governments, were paid in the fruits of the de las Siete Partidas. This work is perhaps not earth. Other proofs of the extraordinary 9pulse easily to cego procured in England: but an article in and splendour of this monarchy are dispersed in the Edinburgh Review, No. XLIII., will convey a Cardonne's work, tfrom which they have been sufficient notion of its contents. chiefly borrow.;l by later writers. The splendid * Mariana, Elist. Hispan., 1. x., c. 10. engrarings ii. urphvy's Moorish antislitles A I L. x., c. L] T. x., c. 1S Spain illustrate this subject.

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generally dreaded by those, his yoke should be completed. Ambition, religious zeal, national enmity, could probably, however, the kings of Granot be supposed to pause in a career nada were most indebted to the indolence which now seemed to be obstructed by which gradually became characteristic of such moderate difficulties; but we find, their enemies. By the cession of Murcia on the contrary, the exertions of the to Castile, the kingdom of Aragon shut Spaniards begin from this time to relax, itself out from the possibility of extendand their acquisitions of territory to be ing those conquests which had ennobléd come more slow. One of the causes, her earlier sovereigns; and their succcesundoubtedly, that produced this unex- sors, not less ambitious and enterprising, pected protraction of the contest, was diverted their attention towards objecti the superior means of resistance which beyond the peninsula. The Castilian, the Moors found in retreating. Their patient and undesponding in bad suc ess, population, spread originally over the loses his energy as the pressure becomes whole of Spain, was now condensed, and, less heavy, and puts no ordinary evil ill if I may so say, become no further com- comparison with the exertions by which possible, in a single province. It had it must be removed. The greater part been mingled, in the northern and central of his country freed by his arms, he was parts, with the Mozarabic Christians, content to leave the enemy in a single their subjects and tributaries, not perhaps province, rather than undergo the labour treated with much injustice, yet naturally of making his triumph complete. and irremediably their enemies. Toledo [A. D. 1252.] If a similar spirit of and Saragossa, when they fell under a insubordination had not been Alfonso X. Christian sovereign, were full of these found compatible in earlier ages inferior Christians, whose long inter- with the aggrandizement of the Castilian course with their masters has infused the monarchy, we might ascribe its want of tones and dialect of Arabia into the lan- splenid successes against the Moors to guaje of Castile.* But in the twelfth the continued rebellions which disturbed century, the Moors, exasperated by de- that government for more than a century feat, and jealous of secret disaffection, after the death of Ferdinand III. His began to persecute their Christian sub- son, Alfonso X., might justly acquire the jets, till they renounced or fled for their surname of Wise for his general profi. religion; so that, in the southern prov- ciency in learning, and especially in as inces, scarcely any professors of Chris- tromical science; if these attainments tianity were left at the time of Ferdi- desperd praise in a king, who was incanand's invasion. An equally severe pol- pable of preserving his subjects in their icy was adopted on the other side. The duty. As a legislator, Alfonso, by his Moors had been permitted to dwell in Sa- code of the Siete Partidas, sacrificed the ragosa, as the Christians had dwelt be- ecclesiastical rights of his crown to the fore, subjects, not slaves; but, on the cap- usurpation of Rome; and his philosophy ture of Seville, they were entirely ex- sunk below the level of ordinary prupelled, and new settlers invited from dence, when he permitted the phantom every part of Spain. The strong fortified of an imperial crown in Germany to setowns of Andalusia, such as Gibraltar, due his hopes for almost twenty years. Algeziras, Tariffa, maintained also a more For the sake of such an illusion he would formidable resistance than had been ex- even have withdrawn himself from Casperceived in Castile; they cost tedious tile, if the states had not remonstrated sieges, were sometimes recovered by the against an expedition that would proba. enemy, and were always liable to his at- bly have cost him the kingdom. In the tacks. But the great protection of the latter years of his turbulent reign, Al Sparish Mahometans was found in the ~__ ~_____________ * Cardonne, t. ii. and iii., passim. M* ariana, xi, c. 1. Gibbon, c. 51. t Marina, Ensayo Historico-Critic, p. 27%
The right of representation was hitherto Mariana remarks coolly of the family of unknown in Castile, which had borrowed Castro, that they were much in the habit little from the customs of feudal nations. of revolting to the Moors.* This house By the received law of succession, the and that of Lara were at one time the nearer was always preferred to the more great rivals for power; but from the remote, the son to the grandson. Al- time of Alfonso X. the former seems to fonso X. had established the different have declined, and the sole family that maxim of representation by his code in competition with the Laras du, the Siete Partidas, the authority of ring the tempestuous period that followe.J which, however, was not universally ac- was that of Haro, which possessed th, knowledge- The question soon came lordship of Biscay by an hereditary title, to an issue. on the death of his elder son The evils of a weak government were Ferdinand, leaving two male children. aggravated by the unfortunate circumSancho, their uncle, asserted his claim, stances in which Ferdinand IV. and Alfounded upon the ancient Castilian right fonso XI. ascended the throne; both of succession; and this, chiefly- no doubt minors, with a disputed regency, and the through fear of arms, though it did not interval too short to give ambitious spirit plausible arguments, was ratified by its leisure to subside. There is, indeed, an assembly of the cortes, and secured, some apology for the conduct of the notwithstanding the king's reluctance, Laras and Haros in the character of their by the courage of Sancho. But the de- sovereigns, who had but one favourite scendants of Ferdinand, generally called method of avenging a dissembled infants of La Cerda, by the protection ry, or anticipating a suspected treason. of France, to whose royal family they Sancho IV. assassinates Don Lope Haro were closely allied, and of Aragon, always in his palace at Valladolid. Alfonso XI. prompt to interfere in the disputes of a invites to court the infant Don Juan his rival people, continued to assert their first cousin, and commits a similar viopretensions for more than half a century, lence. Such crimes may be founi in and, though they were not very success- the history of other countries, but they ful, did not fail to aggravate the troubles were nowhere so usual as in Spain, of their country. which was far behind France, England, The annals of Sancho IV. and his and even Germany, in civilization. Civil dis- two immediate successors, Fer- [A. D. 1350.] But whatever violence turhances dinand IV. and Alfonso XI., pre- and arbitrary spirit might be im- Peter the ofCastile. sent a series of unhappy and puted to Sancho and Alfonso, Crueldishonourable civil dissensions with too was forgotten in the unexampled tyranny Sancho IV. much rapidity to be remem- of Peter the Cruel. A suspicion is fre12Fer4. bered or even understood. Al- quently intimated by Mariana, which iv. 1295. though the Castilian nobility seems in more modern times to have Alfonso XI. had no pretence to the original gained credit, that party malevolence has 1312. independence of the French at least grossly exaggerated the enormipeers, or to the liberties of feudal tenure, ties of this prince. t It is difficult, howthey assumed the same privilege of rebelling upon any provocation from their * Alvarus Castrius patria aliquanto antea, uti sovereign. When such occurred, they molis erat, renunciata.-Castria gens per haec seem to have been permitted, by legal temnpora ad Mauros seepe defecisse visa est, 1. xii., c. 12. See also chapters 17 and 19. custom, to renounce their allegiance by c.12 See also chapters and 19. ~~~~~~~custom, to renounce tThere is in general room enough for skepti a solemn instrument, which exempted cism as to the characters of men who are only them from the penalties of treason.* A known to us through their enemies. History is very few families composed an oligarchy, full of calumnies, and of calumnies that can never he wors and os ruinous condition o beeffaced. But I really see no ground for thinking politil wsociety, alternately thefavourites charitably of Peter the Cruel.-Froissart, part i., political society, alternately the favourites c. 230, and Matteo Villani (in Script. Rerui and ministers of the prince, or in arms Italic., t. xiv., p. 43), the latter of whom
died be against him. If unakbe to protect them—fore the rebellion of Henry of Trastamare, speak selves in their walled towns, and by the of him much in the same terms as the Spallnail of their faction, these Cristian pa—historians. And why should Ayala be doubted, aid of their faction, these Ckrtistia p uhen he gives a long list of murders committed in triots retired to Aragon or Granada, and the face of day, within the recollection of many excited a hostile power against their persons living when lie wrote? There may be A country and perhaps their religion. Noth—question whether Richard III. smothered his neph ilng is more common in the Castilian j5is- ews i the tower; but nobody can dispute that Henry VIII. cut off Anna Bullen's head. The passage from Matteo Villanl above men * Mariana. I. xiii.. c. 11. tioned is as follows:-Cominci6 aspramenute a
Portuguese at Aljubarrota disgraces the whom he had ungratefully offended, with—annals of John I., whose cause was as drew into Guienne; and he lost his king—unjust as his arms were unsuccessful. dom and life in a second short contest This comparatively golden period ceases with his brother. at the majority of John II. His reign A more fortunate period began with was filled up by a series of conspiracies Ihouse, of the accession of Henry. His and civil wars, headed by his cousins, Trastainare. own reign was hardly disturbed John and Henry, the infants of Aragon, Henrly by any rebellion; and though who enjoyed very extensive territories in John I. his successors, John I. and Castile by the testament of their father 1379. Henry 111., were not altogether Ferdinand. Their brother, the King of l9o0. so unmolested, especially the Aragon, frequently lent the assistance of latter, who ascended the throne his arms. John himself, the elder of these in his minority; yet the troubles of their two princes, by marriage with the heiress time were slight in comparison with those of the kingdom of Navarre, stood in a formerly excited by the houses of Lara double relation to Castile, as: a neighbour ing sovereign, and as a member of the far ubbidire, perche temnendo de' suoi baroni, trov6 native oligarchy. These con- Poweran inocd di far infamare l'uno l'altro, e prendendo cagione, gli cominci6 ad uccidere con le sue mani. spiraces were all ostensibly di all of Al E in brieve tempo ne fece morire 25, e tre suoi rected against the favourite of & ro de Vatelli feae morire. &c, John ii., Alvaro de Luna who Luna

Page 205 SPAIN 20 retained for five-and-thirty years an abso-ral of Castile, a veteran leader of f–tioa lute control over his feeble master. The and the Marquis of Villena, so lately the adverse faction naturally ascribed to this king's favourite, were undoubtedly actuapowerful minister every criminal intern- ted only by selfish ambition and revenge tion and all public mischiefs. He was [A. D. 1465.] They deposed Henry in ar certainly not more scrupulous than the assembly of their faction at Avila, with a generality of statesmen, and appears to sort of theatrical pageantry which has have been rapacious ill accumulating often been described. But modern his. wealth. But there was an energy and torians, struck by the appearance of judicourage about Alvaro de Luna which dis- cial solemnity in this proceeding, are tinguish him from the cowardly syco-sometimes apt to speak of it as a nationphants who usually rise by the favour of al act; while, on the contrary, it seems weak princes; and Castile probably would to have been reprobad by the majority not have been happier under the admin- of the Castilians as an audacious outrage istration of his enemies. His fate is upon a sovereign, who, with many deamong the memorable lessons of history. fects, had not been guilty of any excess After a life of troubles endured for the siee tyranny. The confederates set up sake of this favourite, sometimes a fugi- Alfonso, the king’s brother, and a civil tive, sometimes a prisoner, his son head-war of some duration ensued, in which ing rebellions against him, John II. sud- they had the support of Aragon. The denly yielded to an intrigue of the palace, Queen of Castile had at this time borne a and adopted sentiments of dislike towards daughter, whom the enemies of Henry the man he had so long beloved. No IV., and indeed no small part of his ad substantial charge appears to have been herents, were determined to treat as spubrought against Alvaro de Luna, except rious. Accordingly, after the death of that general malversation which it was Alfonso, his sister Isabel was considered too late for the king to object to him. as heiress of the kingdom. She might The real cause of John's change of af-have aspired, with the assistance of the fiction was, most probably, the insupport- confederates, to its immediate possession. able restraint which the weak are apt to but, avoiding the odium of a contest with find in that spell of a commanding un- her brother, Isabel agreed to a treaty, b) derstanding which they dare not break; which the succession was absolutely set the torment of living subject to the as-tled upon her. [A. D. 1469.] This ar cendant of an inferior, which has produ-
rangement was not long afterward fol ced so many examples of fickleness in lowed by the
union of that princess with sovereigns. That of John II. is not the Ferdinand, son of the King of
Aragon least conspicuous. Alvaro de Luna was This marriage was by no means accept brought
to a summary trial and behead- able to a part of the Castilian oligarchy ed; his estates were
confiscated. He who had preferred a connexion with Por met his death with the intrepidity of
tugal. And as Henry had never los, Strafford, to whom he seems to have sight of the interests of
one whom he, borne some resemblance in character. considered, or pretended to consider, as
John II. did not long survive his min- his daughter, he took the first opportuniH venryIV. ister,
dying in 1454, after a reign ty of revoking his forced disposition of that may be considered as
inglo- the crown, and restoring the direct line rious, compared with any except that of of
succession in favour of the Princess his successor. If the father was not re- Joanna. Upon his
death, in 1474, the spected, the son fell completely into con- right was to be decided by arms.
Joan tempt. He had been governed by Pa- na had on her side the commonpresumpcheco,
marquis of Villena; as implicitly as tions of law, the testamentary dispositior John byAlvaro de
Luna. This influence of the late king, the support of Alfonso lasted for some time afterward.
But the king of Portugal, to whom she was be king inclining to transfer his confidence trothed,
and of several considerable lead. to the queen, Joanna of Portugal, and to ers among the
nobility, as the young one Bertrand de Gueva, upon whom com- Marquis of Villena, the family
of Mernd., mon fame had fixed as her paramour, a za, and the Archbishop of.'Toledo, who,
powerful confederacy of disaffected no- charging Ferdinand with ingratitude, had bles was
formed against the royal author- quitted a party which he had above all ity. In what degree
Henry IV.'s gov- men contributed to strengthen. For Isaernment had been improvident or
oppress- bella were the general belief o0 Joanna's sive towards the people, it is hard to de-
illegitimacy, the assistance of Aragon. termine. The chiefs of that rebellion, the adherence of a
majority both among Carillo, archbishop of Toledo, the Admi- the, r.urbles and people. and,
more than all

Page 206 240 6 EUROPE DURING THE MIDDLE AGES. [Ca., IV the reputation of e bility
which both she period of the monarchy. Inl the priam and her husband had deservedly
acquired. ble of laws passed in 1020, and at severa. The scale, however, was pretty equally
subsequet times during that and the en. balanlced, till the King of Portugal having suing
century, we find only he bishops been defeated at Toro, in 1476, Joanna's and magnats recited
as pres- Admission party discovered their inability to prose- ent. According to the General of
deputies cute the war by themselves, and succes- Chronicle of Spain, deputies from towns
sively made their submission to Ferdi- from the Castilian towns formed a part and
Isabella. of cortes in 1169; a date not to be rejectThe Castilians always considered ed as
incompatible with their absence in CoDnstitu- themselves as subject to' a legal 1178.
However, in 1188, the first year tion of and limited monarchy. For sev- of the reign of Alfonso
IX., they are exScastile. eral ages the crown was elect- pressly mentioned; and from that era of
the ive, as in most nations of Ger- were constant and necessary parts of crown, man origin,
within the limits of those general assemblies.* It has been one royal family.* In general, of
course, seen already that the corporate towns, the public choice fell upon the nearest or districts
of Castile, had early acquired heir; and it became a prevailing usage considerable importance;
arising less to elect a son during the lifetime of his from commercial wealth, to which the
father; till, about the eleventh century, towns of other kingdoms were indebted a right of
hereditary succession was for their liberties, than from their utility clearly established. But the
form of in keeping up a military organization recognising the heir-apparent's title in among the
people. To this they Droban assembly of the cortes has subsisted ably owe their early reception
into the until our own time.t cortes as integrant portions of the legisIn the original Gothic monarchy of lature, since we do not read that taxes National Spain, civil as well as ecclesiastical affairs were decided in national councils, and their aliena tional councils, the acts of many of which tion of the domain, compelled them to are still extant, and have been published have recourse to the national represent. in ecclesiastical collections. To these atives. assemblies the dukes and other provincial Every chief town of a concejo or corgovernors, and in general the principal poration ought, perhaps, by the constittindividuals of the realm, were summoned tion of Castile, to have received its regu along with spiritual persons. This double lar writ for the election of deputies to aristocracy of church and state continued cortes. But there does not appear to to form the great council of advice and have been, in the best times, any uniform, consent in the first ages of the new king- practice in this respect. At the cortes doms of Leon and Castile. The prelates of Burgos, in 1315, we find one hun. and nobility, or rather some of the more dred and ninety-two representatives from distinguished nobility, appear to have more than ninety towns; at those of concurred in all general measures of le- Madrid, in 1391, one hundred and twenty-gislation, as we infer from the preamble six were sent from fifty towns; and the of their statutes. It would be against latter list contains names of several planalogy, as well as without evidence, to ces which do not appear in the former.t suppose that any representation of the No deputies were present from the king commons had been formed in the earlier dom of Leon in the cortes of Alcala in 1348, where, among many important en Defuncto in pace principe, primates totius reg- actments, the code of the Siete Partidas; i una cum sacerdotibus successorem regni con- first obtained a legislative recognition./ cilio communi constituant.-Concil. Toletan. IV., c. 75, apud Marina, Teoria de las Cortes, t. ii., p. * Ensayo Hist. Crit., p. 77. Teoria de las Cor2. This important work, by the author of the En- tes, t. i., p. 66. Marina seems to have somewhat sayo Historico-Critico, quoted above, contains an changed his opinion since the publication of the ample digest of the parliamentary law of Castile, former work, where he inclines to assert, that the drawn from original, and, in a great degree, un- commons were from the earliest times admitted published records. I have been favoured with the into the legislature. In 1188, the first year of the use of a copy, from which I am the more disposed reign of Alfonso IX., we find positive mention of to make extracts, as the book is likely, through its la muchedumbre de las cibdades s embiados de!ibirnal principles, to become almost as scarce in carla cibdat. Spain as in England. Marina's former work (the t Teoria de las Cortes, p. 139. Ensayo Hist. Crit.) furnishes a series of testimo- $ Idem, p. 148. Geddes gives a list of ornoea n roes (c. 66) to the elective character of the monar- dred and twenty-seven deputies for tory-eignt rhy from Pelayo downwards to the twelfth cen- towns to the cortes at Madrid in 1390.-MisceJa tory. neous Tracts, vol. iii. t' enria de las Cortes, t. ii, p. 7. {} Idem;i. 154
choice of a full assembly of the nation. Their representatives. Experience proved, as i rits were
directed only to certain several instances in these pages will towns; an abuse for which the
looseness show, that even upon this narrow basis of preceding usage had given a pretence.* the
deputies of Castile were not deficient It must be owned that the people bore it in zeal for their
country and its liberties. in general very patiently. Many of the But it must be confessed that a
small corporate towns, impoverished by civil body of electors is always liable to corwarfare
and other causes, were glad to rupt influence and to intimidation. John save the cost of
defraying their deputies’ II. and Heniry IV. often invaded the freeexpenses. Thus, by the year
1480, only dom of election; the latter even named seventeen cities had retained privilege of
some of the deputies.1 Several energetrepresentation. A vote was. afterward ic monstrances
were made in cortes added for Granada, and three more in against this flagrant grievance. Laws
later times for Palencia, and the prov- were enacted, and other precautions deinces of
Estremadura and Galicia.t It vised, to secure the due return of depumight have been easy,
perhaps, to redress ties. In the sixteenth century, the evil this grievance, while the exclusion
was of course was aggravated. Charles and yet fresh and recent. But the privileged Philip
corrupted the members by britemi1s, with a mean and preposterous bery.~Even in 1573 the
cortes are bold selfishness, although their zeal for liberty enough to complain, that creatures of
was at its height, could not endure the government were sent thither, "who are only means of
effectually securing it, by a always held for suspected by the other restoration of elective
franchises to their deputies, and cause disagreement among fellow-citizens. The cortes of
1506 as- them."II sert, with one of those bold falsifications There seems to be a considerable
obupon which a popular body sometimes scurity about the constitution Spiritual ventures, that
" it is established by some of the cortes, so far as relates and templaws and by immemorial
usage that eight- to the two higher estates, the ral nobility teen cities of these kingdoms have the
spiritual and temporal nobil-incortes. right of sending deputies to cortes, and ity. It is admitted,
that down to the latno more;" remonstrating against the at- ter part of the thirteenth century,
and temps made by some other towns to ob- especially before the introduction of
representatives from the commons, they * Sepades (says John I[, in 1442), que en el were
summoned in considerable numnayuntamiento que yo fice en la noble villa de Val- bers But
the writer to whom I must ladolid......los procuradores de ciertas cibdades b villas de mis
rey nos que por mi mandado fueron almost exclusively refer for the constillamados. This
language is repeated as to subse- tutional history of Castile contends, that, quentmeetings, p.
156. from the reign of Sancho IV., they took c The cities which retain their representation in
much less share, and retained much less cortes, if the present tense may still be used even
influence, in the deliberations o crts. for these ghosts of ancient liberty in Spain, are influence,
in the deliberations of cortes.~ Burgos, Toledo (there was a constant dispute for There is a
remarkable protest of the precedence between these two), Leon, Granada, Archbishop of
Toledo in 1295 against the Cordova, Murcia, Jaen, Zamora, Toro, Soria, Va!- acts done in
cortes, because neither he ladolid, Salamanca, Segovia, Avila, Madrid, Gu.- nor the other
prelates had been admitted dalaxara, and Cuenca. The representatives of these were supposed
to vote not only for their im- to their discussions, nor given any con mediate constituents, but
for other adjacent towns. sent to their resolutions, although suetl Thus Toro voted for Palencia
and the kingdom of Galicia before they obtained separate votes; Sala- + Teoria de las Cortes, p.
161. matnca for most of Estremadura; Guadalaxara t Idem, p. 86, 197. t Idem, p. 199 for
Siguenza and four hundred other towns.-Teo 6 Idem, p. 213. II Idem,) 290 i.-t de las Cortes p.
160, 268 d lem u. 67
in the laws exclude the great territorial aristocracy therein.* This protestation is from their place in cortes, would expose at least a testimony to the constitutional dignity and legislative rights of the prelacy, which indeed all body to unfavourable inferences. But, it the early history of Castile, as well as is manifest, that the king exercised very the analogy of other governments, con- freely a prerogative of calling or omitting sires to demonstrate. In the fourteenth persons of both the higher orders at his second fifteenth centuries, however, they discretion. The bishops were numerous, were more and more excluded. None and many of their sees not rich; while of the prelates were summoned to the same objections of inconvenience cortes of 1299 and 1301; none either of applied perhaps to the ricos hornbres, but the prelates or nobles to those of 1370 far more forcibly to the lower nobility, and 1373, of 1480 and 1505. In all the the hijosdalgo or caballeros. Castile latter cases, indeed, such members of never adopted the institution of deputies both orders as happened to be present in from this order, as in the States General the court attended the cortes; a fact of France and some other countries; which seems to be established by the much less that liberal system of landed language of the statutes.t Other instan- representation, which forms one of the ces of a similar kind may be adduced. most admirable peculiarities in our own Nevertheless, the more usual expression constitution. It will be seen hereafter, in the preamble of laws reciting those that spiritual, and. even temporal peers, summoned to, and present at, the cortes, were summoned by our kings with much though subject to considerable variation, irregularity; and the disordered state of seems to imply that all the three estates Castile through almost every reign was were, at least nominally and according to likely to prevent the establishment of legitimate forms, constituent members any fixed usage in this and most other of the national assembly. And a chron- points. icle mentions, under the year 1406, the The primary and most essential charmobility and clergy as deliberating separ- acteristic of a limited monarchy tght of ately, and with some difference of judg- is, that money can only be levied taxation. mnent, from the deputies of the com- upon the people through the consent of mons.t
ayuntamientos segunt se debe facer e es de dice in favour of the abortive Spanish constitution buena costumbre antigua (Cortes of 1393.) This of 1812, which excluded the temporal and spirit- last passage is apparently conclusive to prove, that ual aristocracy from a place in the legislature, to three estates, the superior clergy, the nobility, and unagine a similar form of government in ancient the commons, were essential members of the Letimes. But his own work furnishes abundant rea- gislature in Castile, as they were in France and sons, if I am not mistaken, to modify this opinion England; and one is astonished to read in Marina very essentially. A few out of many instances may that no faltaron a ninguna de las formalidades de be aduced from the enacting words of statutes, derecho los monarcas quo no tuvieron por oporttl which we consider in England as good evidences no Ilamar a cortes para semejantes actos ni al clero to establish a constitutional theory. Sepades que ni X la nobleza ni a las personas singulares de une yo hob6 mio acuerdo e mio consejo con mis her- y otro estado, t. i., p. 69. That great citizen.,:ovel. manos e los arzobispos, e los opisbos, e con los ri- lanos, appears to have had much wiser notions of cos homes de Castella, e de Leon, e con homes the ancient government of his country, as well as ruenos de las villas de Castella, e de Leon, que of the sort of reformation which she wanted, as fieron conmigo en Valladolit, sobre muchas cosas, we may infer from passages in his Memoria i sus &c. (Alfonso X. in 1258.) Mandamos enviar Ila- compatriotas, Corufia, 1811 quoted by Marina fee wmar (;cr cartas del rei e nuestras a los infantes e the purpose of censure

Page 209 CIis LV.} SPAIN 20g ng circumstances in the history of our complied wzth;"* His ~.on John I, hay. ronstitution. The lands of the nobility ing violated this constit ional privilege and clergy were, I believe, always ex- on the allegation of a pressing necessity emptied from direct taxation; an immu- the cortes, in 1420 pre-sented a long re nity which perhaps rendered the attend- mollstrance, couched in very respectful ance of the members of those estates in but equally firm language, wherein the) the cortes less regular. The corporate assert, " the good custom founded ill rea districts or concejos, which, as I have ob- son and in justice, that the cities ant served already, differed from the commu- towns of your kingdoms shall not be corn nities of France and England by possess- pelled to pay taxes, or requisition, or oth ing a large extent of territory, subordinate er new tribute, unless your highness order to the principal town, were bound by their it by advice and with the grant of the charter to a stipulated annual payment, said cities and towns, and of their deputhe price of their franchises, called mo- ties for them." And they express their neda forera.* Beyond this sum nothing apprehension lest this right should be inco nd be demanded without the consent fringed, because, as they say, " there renf the cortes. Alfonso VIII., in 1177, ap- mains no other privilege or liberty which plied for a subsidy towards carrying on can be profitable to subjects if this be he siege of Cuenca. Demands of money shaken."t The king gave them as ful do not however seem to have been very satisfaction as they desired, that his oel usual before the prodigal reign of Alfonso croachment should not be drawn intc X. That prince and his immediate succes- precedent. Some fresh abuses, during sors were not much inclined to respect the unfortunate reign of Henry IV., prothe rights of their subjects; but they en- duced another declaration in equally encountered a steady and insuperable re- plicit language; forming part of the sensistance. Ferdinand IV., in 1307, prom- tence awarded by the arbitrators to whom ises to raise no money beyond his legal the differences between the king and hit and customary dues. A more explicit people had been referred at Medina de law was enacted by A.lfonso XI. in 1328, Campo in 1465.t The Catholic kings, as who bound himself not to exact from his they are eminently called, Ferdinand ard people, or cause them to pay any tax, Isabella, never violated this part of the either partial or general, not hitherto es- constitution; nor did even Charles I., altablished by
law, without, the previous though sometimes refused money by the grant of all the deputies convened to the cortes, attempt to exact it without their cortes. This abolition of illegal consent. In the Recopilacion, or code sitions was several times confirmed by of Castilian law, published by Philip II. the same prince. The cortes, in 1393, having made a grant to Henry III., an- * Obedecidas don cumplidas. This expressior nexed this condition, that " since they occurs frequently in provisions made against illega. h is prest acts of the crown; and is characteristic of the sin had granted him enough for his present gular respect with which the Spaniards always necessities, and even to lay up a part for thought it right to treat their sovereign, while they a future exigency, he should swear be- were resisting the abuses of nis authority. fore one of the archbishops not to take or t La buena costumbre ~ possession fundada en demand any money, service, or loan, or razon 6 en justicia que las cibles e villas de vuestros reinos tenian de no ser mandado coger anything else of the cities and towns, monedas a pedidos nin otro tributo nuevo algunc nor of individuals belonging to them, on en los vuestros reinos sin que la vuestra sefioria lo any pretence of necessity, until the three faga e ordene de consejo e con otorgamiento de las estates of the kingdom should first be duly cibles ~ villas de los vuestros reinos A de sus esutamoned and ssembled in cortes ac-procuradores en su nombre * * * * no queda summoned and ast6embled in cortes ac- otro previlegio ni libertad de que los subditos puecording to ancient usage. And if any dan gozar ni aprovechar quebrantado el sobre such letters requiring money have been dicho, t. iii., p. 30. written, that they shall be obeyed, and not $ Declaramos e ordenamos, que el dicho sefior v _____________ X rei nin los otros reyes que despues del fueren non * Marina, Ensayo Hist. Crit., cap. 158. Teoria echan nin repartan nin pidan pedidos nin monedas de las Cortes, t. ii., p. 387. This is expressed en sus reynos, salvo por gran necessidad, [ seyendc in one of their fueros, or charters: Liberi et primero accordado con los perlados e grandes de ingenui semper maneatis, redendo mihi et suc- sus reynos, e con los otros que a la sawon residierer eessoribus meis in unoquoque anno in die Pente- en su consejo, e seyendo para ello llamados los costes de unaquaque dumo 12 denarios; et, nisi procuradores de las cibdades e villas de sus reynos, eum bon& voluntate vestra feceritis, nullumn alium que para las tales cosas se suelen e acostumbran servltium faciatis. 1lamar m seyendo per los dichos procuradores otor t Do los con echar nin mandar pagar pecho de- gado el dicho pedimento d monedas, t. ii., p. 391. saforado ninguno, especial nin general, en toda mi ~ Marina has published two letters from Chailes tierra, sin ser llamados primeramente a cortes, A to the city of Toledo, in 1542 and 1548, requeste storgado por todos los proc Ira lores que ni ve- them to instruct their depluties to consent to a fur iewren., p. 388 tber grant of monev, which ha kl t msfAIDA to ad. o
their es, is a matter of the highest importance. Control of representatives to grants of in those countries where they are imporcortes over money was by no means a sed by means of a gross assessment on a expenditure. mere matter of form. It was district. The produce was paid to the connected with other essential rights, in- royal council. It could not be applied to dispensable to its effectual exercise; any other purpose than that to which the those of examining public account: and tax had been appropriated. Thus the checking the expenditure. The cortes, cortes of Segovia, in 1407, granted a subin the best times at least, were careful to sidy for the war against Granada, on congrant no money until they were assured dition " that it should not be laid out on that what had been ahl-ady levied on any other service except this war;" which their constituents had beln properly em- they requested the queen and Ferdinand, ployed. They refused a subrhydin 1390, both regents in John II.'s minority, to because they had already given so much, confirm by oath. Part, however, of the and "not knowing how so great a sum money remained unexpended; Ferdinand( had been expended, it would be a great wished to apply it to his own object of dishonesty and mischief to promise any procuring the crown of Aragon; but the mere." In 1406 they stood out a long queen first obtained not only a release tilne, and at length gave only half of froml her oath by the pope, but the con. what was demanded. Charles I. at- sent of the cortes. They continued to tempted to obtain money, in 1527, from insist upon this appropriation, though in. the nobility as well as commons. But effectually, underthe reign of Charles I. the former protested, that " their obliga- The cortes did not consider it beyond tion was to follow the king in war, the line of theirduty, notwithstanding the wherefore to contribute money was to- respectful manner in which they always addressed the sovereign, to remonstrate without leave of their constituents.-Teoria de las against profuse expenditure even in his Cortes, t. iii., p. 180, 187. own household. They told Alfonso X., * Idem, t. ii., p. 393. in 1258, in the homely style of that age, t En las cortes de afio de 70 y en las de 76 pedi- that they thought it fitting that the king mos a v. m. fuese servide de no poner nuevos jimpuestos, rentas, pechos, ni derechos ni otros tribu- and his wife shouId eat at the rate of a tos particulares ni generales sin junta del reyno en hundred and fifty maravedis a day, and no cortes, come est& dispuesto por lei del señor rei Don more; and that the king should order his Alonso y se signifique a v. m. el daño grande quo attendantss to eat more moderately than con las nuevas rentas habia rescibido el reino, suplicando a v. m. fuese servido de mmandarle aliviar y they did. They remonstrated moe fordescargar, y que en lo de adelante se les hiciesse cibly against the prodigality of John II. merced de guardar las dichas leyes reales y que no Even in 1559, they spoke with an unse impusiessen nuevas rentas sin su asistencia; daunted Castilian spirit to Philip II.; paes podria v. m. estar satisfecho de que el reino Sir, the expenses of your royal estabhasta ahora no se ha proveido lo susodicho; y el lishment ard household are much increasreino por la obligacion que tiene a pedir a v. m. ed; and we conceive it would much re. guardela dicha lei, y quo no solamentehuan cessado dound to the good of these ringdoms, las necessidades de los subditos y naturales de that your majesty should direct them te v. ra. pero antes crecen de cads dia: vuelve a suplicar a v. m. sea servido concederle lo susodicho, y que las nuevas rentas, pechos y derecho en * Pelo que contribuir a la guerra con cieram quiten, y que de aqui adelante se guarde la dicha sumas era totalmente opuesto'a sus previlegios, J lei del selior rei don Alonso, como tan antigua y asi que no podrian acomodarse a lo que s. rl de Justa y que tanto tiempo se us6 y guard6, p. 395. seaba, p. 411.'his petitioner. was in 1579. t- Marina, t. ii., p. 11 t Ibid., p. 398. t Marina. ii. p. 404.406. -.bid., p. 409. ) Ibid., p. 412. II Ibid., u 417.
majesty may take example estates, who might be considered, in therefrom, to restrain the great disorder large sense, as representing the nation, and excess they commit in that respect."

The session be made with the consent (con acuerdo) was opened by a speech from the chancellor or other chief officer of the court. More commonly, the preamble of the deputies were invited to consider Castilian statutes only recites their ad certain special business, and commonly vice (consejo); but I do not know that any to grant money. After the principal stress is to be laid on this circumstance. fairs were despatched, they conferred to-gether, and having examined the instruc- tions of Alfonso X., did not obtain any sanction till the famous cortes of drew up a schedule of petitions. These Alcala, in 1348, when they were confirm-. were duly answered one by one, and from ed along with several others, forming the petition and answer, if favourable, together the basis of the statute law of laws were afterward drawn up, where the Spain.* Whether they were in fact matter required a new law, or promises ceived before that time, has been a matof redress were given, if the petition re- ter controverted among Spanish antiquated to an abuse or grievance. In the ries; and upon the question of their legal struggling condition of Spanish liberty validity at the time of their promulgation, under Charles I., the crown began to neg- depts, accounting the petitions of cortes, or -history, the disputed right of succession to use unsatisfactory generalities of ex- between Sancho IV. and the infants of La pression. This gave rise to many remon- Cerd4; the former claiming under the anstrances. The deputies insisted, in 1523, ciente customary law, the latter under the on having answers before they granted new dispositions of the Siete Partidas, money. They repeatedhe same conten- If the king could not legally change thec tion in 1525, and obtained a general law, established laws without consent of his inserted in the Recopilacion, enacting cortes, as seems niost probable, the right that the king should answer all their pet- of representative succession did not c:- tions beforehe dissolved the assembly. ist in favour of his grandchildren, and TThis, however, was disregarded as before; Sancho IV. cannot be considered as an but the cortes, whose intrepid honesty. usurper. under Philip II. so often attracts our ad- It appears upon the whole to have been miration, continued, as late as 1586, to a constitutional principle, that laws could appeal to the written statute, and lament neither be made nor annulled except in its violation. Cortes in 1506, this is claimed by the According to the ancient fundamental deputies as an established right.t John Right of constitution of Castile, the king cortisin did not legislate for his subjects l egislatione for his subjects of Leon in 1020 run thus: omnes pontifices et ab without their consent. The coe bates et optimates regni Hispania3 jussu ipsius reof the Visigoths, called in Spain the Fuero gis talia decreta decrevimus qua firmiter teneantur Jusgo, was enacted in public councils, as futuris temporibus. So those of Salamanca in were also the laws of the early kings of 1178: Ego rex Fernandus inter cantera qua cum Leona,-r which appears by the reciting episcopis et abbatibusregni nostri et quamplurimis aliis religiosis, cum cornitibus terrarum et principi. bus et rectoribus provinciarum, tc to posse tenenda * Setihor, los gastos de vuestro real estado y statuimus apud Salamancarn. mesa son muy crescidos, y entendemos que con- * Ensayo Hist. Crit., p. 353. Teoriadelas Corverria mucho al bien de estos reinos que v. m. los tes, t. ii., p. 77. Marina seems to have changed his mandasse moderar asi para algun remedio de sus opinion between the publication of these two works, nccqssidatles como para que de v. m. tomen egem- in the former of which he contends for the previo zi plootos los
grandes y caballeros y otros subditos authority of the Siete Partidas, and in faí our of de v. m.
en la gran desorden y excessos que hacer the infants of La Cerda. ren las costs sobredichas.-Marina, p. 437. t Los reyes establecieron que cuando habiessen t Ibid., t. i., p. 175; t. iii., p. 103. de hacer leyes, para que fuessen provechosas ta t Ibid., p. 278. Q Ibid., p. 301. sus reynos y cada provincias fuesen proveídas, se 11 Ibid, p. 288-304. llamasen cortes y procuradores que entendiesen en q Ibid t. ii., p 202. The acts of the cortes ellas y por esto se estableció lei que no se hiciesen 0'2

Page 212 V 1 EUROPE DURING THE MIDDLE AGES. [CHAP. IV the First had long before admitted, that tive, and passed, perhaps rightly, for in. what was done by cortes and general as- evitable consequences of a scanty code semblies could not be undone by letters and short sessions of the national council. missive, but by such cortes and assem- The kings were obliged to swear to the blies alone.* For the kings of Castile observance of laws enacted in cortes, be.. had adopted the English practice, of dis- sides their general coronation oath to pensar with statutes by a non obstante keep the laws and preserve the liberties clause in their grants. But the cortes of their people. Of this we find several remonstrated more steadily against this instances from the middle of the thir. abuse than our own parliament, who suf-teenth century; and the practice contin. fered it to remain in a certain degree till ued till the time of John II., who, in 1433 -the revolution. It was several times en- on being requested to swear to the laws acted upon their petition, especially by then enacted, answered, that he intended an explicit statute of Henry II., that to maintain them, and consequently no grants and letters patent dispensing with oath was necessary; an evasion, in which statutes should not be obeyed.t Never- the cortes seem unaccountably to have theless John II., trusting to force or the acquiesced.* The guardians of Alfonso servility of the judges, had the assurance XI. not only swore to observe all that to dispense explicitly with this verylaw.t had been agreed on at Burgos in 1315, The cortes of Valladolid, in 1442, obtain- but consented that, if any one of them ed fresh promises and enactments against did not keep his oath, the people should such an abuse. Philip I. and Charles I. no longer be obliged to regard or obey began to legislate without asking the him as regent.t consent of cortes; this grew much worse It was customary to assemble the corunder Philip II., and reached its height es of Castile for many purposes, Other under his successors, who entirely abol- besides those of granting money rights ished all constitutional privileges.~ In and concuring inlegislation. They of the 1555, we find a petition that laws made were summoned in every reign to cortes in cortes should be revoked nowhere else. acknowledge and confirm the succession The reply was such as became that age: of the heir apparent; and, upon his acces."To this we answer, that we shRlII do sion, to swear allegiance.4 These acts what best suits our government." But were however little more than foremaL even in 1619, and still afterward, the pa- and accordingly have been preserved fol triot representatives of Castile contin- the sake of parade, after all the real dig. ued to lift an unavailing voice against il- nity of the cortes was annihilated. In the legal ordinances, though in the form of fourteenth and fifteenth centuries, they very humble petition; perhaps the latest claimed and exercised far more ample testimonies to the expiring liberties of powers than our own parliament ever their country. l The denial of exclusive enjoyed. They assumed the right, when legislative authority to the crown must, questions of regency occurred, to limit however, be understood to admit the le- the prerogative, as well as to designate gality of particular ordinances, designed the persons who were to use it.~ And to strengthen the king's executive gov- the frequent minorities of Castilian kings, erment.~ These, no doubt, like the roy- which were unfavourable enough to tran al proclamations in England, extended quillity and subordination, served to consometimes very far, and subjected the firm these parliamentary
privileges. The people to a sort of arbitrary coercion cortes were usually consulted upon all much beyond what our enlightened no- material business. A law of Alfonso XI., tions of freedom would consider as rec- in 1328, printed in the Recopilacion, or oncileable to it. But in the middle ages, code published by Philip II.. declares, such temporary commands and prohibi-" Since, in the arduous affairs of our kingtions were not reckoned strictly legisla- dom, the counsel of our natural subjects is necessary, especially of the deputies ni renovasen leyes sino en cortes.-Teoria de las from our cities and towns, therefore -sw Cortes,ft. ii., p. 218.rom our cities and towns, th therefore s ga * Lo que es hecho por cortes, por ayuntamien- ordain and command that on such great tos que non se pueda disfacer por las tales cartas, occasions the cortes shall be assembled, salvo po.; ayuntamientos t cortes, p. 215. and counsel shall be taken of the three f Idem, p. 215. $ Idem, p. 216; t. iii., p. 40. estates of our kingdoms, as the kings our Idem, t. ii., p. 218. forefathers have been used to do. A 11 Ha suplicado el reino a v. m. no se promulguen forefathers have been used to do."li A owevas leyes, ni en too ni en parte las antiguas se cortes of John II., in 1419, claimed this alteren sin que sea por cortes.... y por ser de tanta importancia vuelve el reino a suplicarlo humil.- * Teoria de las Cortes, t. i., p. 306. me.n te v. m., p. 220. ~ Id., t. iii., p. 62. T Id., t. i., p. 33; t. ii., a. 24 s Idem, p 207 ~ Id., p. 230.!! Id., t. i., p. 31.

Page 213 UIrAP. 1yV. SPAIN. 213 right of bei Ig Consulted i.l all matters of European monarchies. And, though the importance, with a warm remonstrance sovereign might be considered as free to against the alleged violation of so whole- call in the advice of whomsoever he some a law by the reigning prince; who pleased, yet, in fact, the princes of the answered that, in weighty matters, he had blood and most powerful nobility had anacted, and would continue to act, in con- ciently a constitutional right to be memlormity to it.* What should be intended bers of such a council; so that it formed by great and weighty affairs, might be a very material check upon his personal Hot at all agreed upon by the two parties; authority. to each of whose interpretations these The council under went several changes, words gave pretty full scope. However, in progress of time, which it is not nethe current usage of the monarchy cer- cessary to enumerate. It was justly tainly permitted much authority in public deemed an important member of the consense and was to continue at the court during the interference to the cortes. Among other stitution, and the cortes showed a laudainstances, which indeed will continually ble anxiety to procure its composition in be found in the common civil histories, such a manner as to form a guarantee the cortes of Orcano,in 1469, remonstrate for the due execution of laws after their with Henry IV. for allying himself with own dissolution. Several times, espe- England rather than France, and give, as cially in minorities, they even named its the first reason of complaint, that, "ac- members, or a part of them; and in the cording to the laws of your kingdom, reigns of Henry III. and John 11., they when the kings have any thing of great obtained the privilege of general and the cortes of Castile. by
the advice of a smaller council by the council alone, under their own seal, answering, as it seems, almost ex-seals and signatures, and what required actly to the king's ordinary council in the royal seal. The consent of this England. In early ages, before the in-body was necessary for almost every act of the common, it is some- of the crown, for pensions or grants of times difficult to distinguish this body money, ecclesiastical and political proftr from the general council of the nation; motions, and for charters of pardon, the being composed, in fact, of the same class easy concession of which was a great of persons, though in smaller numbers, encouragement to the homicides so usual. A similar difficulty applies to the English in those ages, and was restrained by history. The nature of their proceedings some of our own laws. But the counsel seems best to ascertain the distinction. cil did not exercise any judicial authority, All executive acts, including those ordi- if we may believe the well-informed annals which may appear rather of a le- thor from whom I have learned these gislative nature, all grants and charters, particulars; unlike, in this, to the oriar declared to be with the assent of the nary council of the kings of England. It court (curia), or of the magnats of the was not until the days of Ferdinand and palace, or of the chiefs or nobles.~ This Isabella that this, among other innovaprigy council was an essential part of all tions, was introduced.~ * Teoria de las Cortes, t. i., p. 34. (Civil and criminal justice was administ Porque, segunt leyes de nuestros reynos, cu- tered., in the first instance, by the Adminisando los reyes han de facer alguna cosa de gran alcalde, or municipal judges of tration o. importancia, non lo deben facer sin consejo e sabi- towns; electedwithin themselves jus:ice. duria de las cibdades e villas principales devuertos by the community at la reynos.-Idem, t. ii., p. 241. originally by the community at large, but ynIIdem, t. iii., p. 183. in subsequent times by the governing ~ Cum assensu magnatum palatii: Cum consilio urriae mese: Cum consilio et beneplacito omnium * Teoria de las Cortes, t. ii., p. 346. p. 325 ~ Idem, p. 375, 379.
alcaldes. The latter, however, issue for putting any one to death, or could not take cognizance of any cause seizing his property, till he should be depending before the ordinary judges; a duly tried by course of law. Henry II. contrast to the practice of Aragon, where repeats the same law in very explicit the justiciary's right of evocation (juris language. But the civil history of Spain firma) was considered as a principal safe- displays several violations of it. An ex. guard of public liberty. As a court of extraordinary prerogative of committing appeal, the royal alcaldes had the su- murder appears to have been admitted, preme jurisdiction. The king could only in' early times, by several nations who cause their sentence to be revised, but did not acknowledge unlimited power in neither alter nor revoke it." They have their sovereign. Before any regular continued to the present day as a criminal police was established, a powerful crimetribunal; but civil appeals were trans- nal might have been secure from all punferred by the ordinances of Toro in 1371 ishment, but for a notion, as barbarous to a new court, styled the king's audience, as any which it served to counteract, which, though deprived under Ferdinand that he could be lawfully killed by the and his successors of part of its jurisdic- personal mandate of the king. And the tion, still remains one of the principal ju- frequent attendance of sovereigns in their dicatures in Castile.tt courts of judicature might lead men not No people in a half-civilized state of accustomed to consider the indispensable violent ac; society have a full practical se- necessity of legal forms, to confound an tions of curity against particular acts of somekings arbitrary power. They werese facer a jisica aquellos qu la of castile. more common, perhaps, in Cas- Que mandasefacerlajusticia en aquellosquela merecen comunalmente con fuero 6 con derecho; tile than in any other European monarchy 6 los homes que non sean muertos nin presos nin which professess to be free. Laws in- tomosados lo que han sin ser oidos por derecho 6 po, deed were not wanting to protect men's fuero de aquel logar do acaesciere, e que sea guarda lives and liberties, as well as their prop- do mejor que se guard6 fasta aql.-Marina, En sayo Hist. Critico, p. 148. ections. Ferdinand IV., in 1299, agreed to f Que non mandemos matar nin presder nin lisi a petition that "justice shall be executed ar nin despechar nin tomar a alguno ninguna cosa de lo suyo, sin ser ant6 llamado 6 oido 6 vencitli * Alfonso X. says: Ningun ome sea osado'fuz- por fuero 6 por derecho, por querella nin por querel gar pleytos, se no fuee alcalde puesto por el rey. las que a nos fuesen dadas, segunt que esto esti oi -Teoria de las Cortes, fol. 27. This seems an denado por el rei don Alonso nuestro padre.-Teo encroachment on?he municipal magistrates. ria de las Cortes, t. ii., p. 287. t Teoria de las Cortes, p. 251. t Si quis hominem per jussionem regis voel ducis t Idem, p. 255. Mariana, l. xx., c. 13. sui occiderit, non requiratur ei, nec sit fa'dosus, ~ Idem, p. 255. 11 Idem, p. 266. quia jussio domini sui fuit, et non potuit coritradi [ Idem, p. 260. ** Idem, p. 287, 304. cere Jussionem.-Leges Bajuvariorum, tit. ii., tA t Idem, p. 292, 302. Baluz. Capitularibus.
degree, but too much limited in its own armed combinations.* Such in number, and too unconnected with confederacies to obtain redress of grievances to the territorial aristocracy, to maintain a balance by force, of which there were five just balance against the crown. Yet, or six remarkable instances, were called with every disadvantage, that country Hermandad (brotherhood or union), and possessed a liberal form of government, though not so explicitly sanctioned as and was animated with a noble spirit for they were by the celebrated Privilege its defence. Spain, in her late memoranda of Union in Aragon, found countenance ble though short resuscitation, might well, in a law of Alfonso X., which cannot be have gone back to her ancient institu deemed so much to have voluntarily em- tions, and perfected a scheme of policy anated from that prince as to be a rec- which the great example of England ord of original rights possessed by the would have shown to be well adapted to Castilian nobility. r The duty of sub- the security of freedom. What she did, jects towards their king," he says, " en- or rather attempted instead, I need not join them not to permit him knowingly recall. May her next effort be more *o endanger his salvation, nor to incur wisely planned and more happily termidishonour and inconvenience in his per- nated!* son or family, nor to produce mischief to Though the kingdom of Aragon was his kingdom. And this may be fulfilled very inferior in extent to that of Affairs o inl two ways; one by good advice, show- Castile, yet the advantages of a Aragon. ing him the reason wherefore he ought not better form of government and wiser io act thus; the other by deeds, seeking sovereigns, with those of industry and means to prevent his going on to his commerce along a line of seacoast, renown ruin, and putting a stop to those dered it almost equal in importance. Caswho give him ill counsel, forasmuch as tile rarely intermeddled in the civil dishis errors are of worse consequence than sensions of Aragon; the kings of Aragon those of other men, it is the bounden frequently carried their arms into the duty of subjects to prevent his commit- heart of Castile. During the sanguinary ting them."t To this law the insurgents outrages of Peter the Cruel, and the appealed in their coalition against Alva- stormy revolutions which ended in esro de Luna; and indeed we must confess, tablishing the house of Trastamare, Arathat however just and admirable the prin- gon was not indeed at peace, nor altociples which it breathes, so general a gather well governed; but her political license of rebellion was not likely to pre- consequence rose in the eyes of Europe serve the tranquillity of a kingdom. The through the long reign of the ambitious deputies of towns, in a cortes of 1445, pe- and wily Peter IV., whose sagacity and titioned the king to declare that no con- good fortune redeemed, according to the struction should be put on this law in- common notions of mankind, the iniquity consistent with the obedience of subjects with which he stripped his relation, the towards their sovereign; a request to King of Majorca, of the Balearic Islands, which of course he willingly acceded. and the constant perfidiousness of his Castile, it will be apparent,' bore a character. I have mentioned in another closer analogy to England in its form of place the Sicilian war, prosecuted with civil polity than France or even Aragon. so much eagerness for many years by But thl frequent disorders of its govern- Peter III. and his son Alfonso III. Afment, and a barbarous state of manners, ter this object was relinquished, James rendered violations of law much more II. undertook an enterprise less splencontinual and flagrant than they were in did, but not much less difficult, the con* Teoria de las Cortes, t. ii., p fbo * The first edition of this work was published + Ensavo Hist. Critico. p. 312. in 1818.
till the commencement of the to Peter IV., and, according to our rules next, under the reign of
Martin. of inheritance, certainly stood in the first At the death of Martin, king of Aragon, place.
The other claimants were i:Te Disputed' in 1410, a memorable question Duke of Gandia,
grandson of James:1., succession arose as to the right of succes- who, though descended from a
more after the death of sion. Though Petronilla, daugh- distant ancestor, set up a claim founded
Martin. ter of Ramiro II., had reigned on proximity to the royal stock, which in her own right
from 1137 to 1172, an in some countries was preferred to a repopinion seems to have gained
ground resentative title; the Duke of Calabria, from the thirteenth century, that females son of
Violante, younger daughter of could not inherit the crown of Aragon. John I. (the Countess of
Foix being Peter IV. had excited a civil war by at- childless); Frederick, count of Luna, a
tempting to settle the succession upon natural son of the younger Martin, king his daughter, to
the exclusion of his next of Sicily, legitimated by the pope, but brother. The birth of a son
about the with a reservation excluding him from same time suspended the ultimate decis- royal
succession; and finally, Ferdinand, ion of this question; but it was tacitly infant of Castile, son
of the late king's understood that what is called the Salique- sister.t The Count of Urgel was
falaw ought to prevail.* Accordingly, on voured in general by the Catalans, and the death of
John I., in 1395, his two he seemed to have a powerful support in daughters were set aside in
favour of his Antonio de Luna, a baron of Aragon, so brother Martin, though not without oppo-
ri th that he might go through his own on the part of the elder, whose estate from France
to Castile. But this husband, the Count of Foix, invaded the apparent superiority frustrated his
hopekingdom, and desisted from his preten- The justiciary and other leading Aragc sion only
through want of force. Mar- nese were determined not to suffer this tin's son, the King of
Sicily, dying in his great constitutional question to be deci. father's lifetime, the nation was
anxious ded by an appeal to force, which might' that the king should fix upon his suc- sweep
away their liberties in the strug. cessor, and would probably have acqui- gle. Urgel, confident
of his right, and esced in his choice. But his dissolution surrounded by men of ruined fortunes,
occuring more rapidly than was expect- was unwilling to submit his pretensions ed, the throne
remained absolutely va- to a civil iribunal. His adherent, Aunto cant. The Count of Urgel had
obtained nio de Luna, committed an extraordinary * Zurita, t. ii., f. 188. It was pretended that
women were excluded from the crown in England as well as France: and this analogy seems to
have had some influence in determining the Aragonese tc adopt a Salique-law. + The subjoined
pedigree will show more clearly the respective titles of the competitors:JAMES II. died 1327.
ALFONSO IV. d. 1336. D. of Gandin PETER IV. d. 1387. James C. of Urg foix Eleanor Q. of o
Castile. JohN I. d. 1395. MARTIN, Peter C. of Urgel d. 1410. Henry III.
Ferdinand I C. of Urg&. K. of Castile Martin, K. of Sicily, 1409. Joanna Violante Jaou. l.,
Countess of Foix. Q. of Naples. K. of tv.. f r, Frederick C. of Luna. Lots D. of Calabria.
Ferdinand's sucpretensions of the several competitors, cessor was his son Alfonso V., Afonso and, by a plurality of six votes, to adjudge more distinguished in the history of Italy the crown. Nothing could be more than of Spain. For all the latter years solemn, more peaceful, nor, in appear- of his life, he never quitted the kingdom ance, more equitable, than the proceed- that he had acquired by his arms: and, ings of this tribunal. They summoned enchanted by the delicious air of Naples, the claimants before them, and heard intrusted the governmentof his patrimothem by counsel. One of these, Fred- nial territories to the care of a brother erick of Luna, being ill defended, the and an heir. [A. D. 1458.] John John II. court took charge of his interests, and II., upon whom they devolved by named other advocates to maintain them. the death of Alfonso without legitimate A month was passed in hearing argu- progeny, had been engaged during h's ments; a second was allotted to con- youth in the turbulent revolutions of Cas sidering them; and, at the expiration of tile, as the head of a strong party that opthe prescribed time, it was announced to posed the domination of Alvaro de Luna. the people, by the mouth of St. Vincent [A. D. 1420.] By marriage with the heir Ferrier, that Ferdinand of Castile had ess of Navarre, he was entitled, accord. ascende. he throne.t ing to the usage of those times, to assume [A. D 1412.] In this decision it is im- the title of king, and administration of Decision ir possible not to suspect that the government during her life. But his amravour of judges were swayed rather by bitious retention.of power still longer Ferdinand politic considerations than a produced events which are the chief of Castile. strict sense of hereditary right. stain on his memory. Charles, prince of It was therefore by no means universally Viana, was, by the constitution of Na popular, especially in Catalonia, of which varre, entitled to succeed his mother. [A. principality the Count of Urgel was a D. 1442.] She had requested him in her native; and perhaps the great rebellion testament not to assume the government of the Catalans fifty years afterward may without his father's consent. That con * This Duke of Gandia died during the interreg- sed was always withh eld. The prince num. His son, though not so objectionable on the raised what we ought not to call a rebellscore of age, seemed to have a worse claim; yet ion; but was made prisoner, and remainhe became a competitor. ed for some time in captivity. John's ill t Bianca Commentaria, in Schotti Hispania I1- disposition towards his son was exasperlustrata, t. ii. Zurita, t. iii. f. 1-74. Vincent Fer- a rier was the most distinguished churchman of his ted by a stepmother, who scarcely dis time in Spain. His influence, as one of the nine guised her intention of placing her own judges, is said to have been very instrumental in childman of the throne of Aragon at the exproucing the crown for Ferdinand. Five others pense of the eldest-born. After a life of voted the s ay; one for the Count of Urgel and; perpetual oppression, chiefly passed in one doubtfully between the Count of Urgel and exile or captivity, the Prince of Viana Duke of Gandia; the nth declined to vote.- exile or captivity, the Prince of Viana Zurita, t. iii., f. 71. It is curious enough, that died in Catalonia, at a moment when that John, king of Castile, was altogether disregarded; province was in open insurrection upon though his claim was at least as plausible as that his account. [A. D. 1461.] Though i' of his uncle Ferdinand. Indeed, upon the princi- hardly seems that the Catalans had any ples of inherita- to which we are accustomed, Louis, duke of Calabria, had a prior right to Ferdi- more general provocations, they perse nand, admitting the rule which it was necessary vered for more than ten years with in for both of them to establish; namely, that a right veteate obstinacy in their rebellion; of succession mightbe transmitted throughfemales, fering the sovereignty first to a prince of which females could not personally enjoy. This, Portugal and afterward to Rgnier, duk as is well known, had been advanced in the preceding age by Edward III. as the t undation of his of Anjou, who was destined to pass hUi,ailn to the crown of France. life in unsuccessfill competitii,)n for king
The King of Aragon behaved ever called upon, assisting in its judicial with great clemency towards these in- as well as deliberative business. In the sulrgents on their final submission. towns and villages of his barony he might It is consonant to the principle of this appoint bailiffs to administer justice and Constitution work, to pass lightly over the receive penalties; but the higher crimisfAragon. common details of history, in nal jurisdiction seems to have been reoder to fix the reader's attention more served to the crown. According to.uly on subjects of philosophical inquiry. Vitalis, the king could divest these ricos Perhaps in no European monarchy, ex- hombres of their honours at pleasure, aect our own, was the form of govern- ter which they fell into the class of mesnadaries, or mere tenants in chief. But a fortunate temperament of law and jus- if this were constitutional in the reign of tice with the royal authority. So far as James I., which Blanças denies, it was Originally a any thing can be pronounced of not long permitted by that ligh-spirited sort of regal its earlier period, before the aristocracy. By the General Privilege, or aristocracy. capture of Saragosa in 1118, it Charter of Peter III., it is declared that was a kind of regal aristocracy, where a no barony can be taken away without a small number of powerful barons elected just cause and legal sentence of the justtheir sovereign on every vacancy, though, ticiary and council of barons.* And the as usual in other countries, out of one same protection was extended to the vasfamily; and considered him as little more sals of the ricos hombres. Privileges than the chief of their confeder- Below these superior nobles were the othericos acy.* These were the ricos mesnadaries, corresponding to Lower nohombres or hombres or barons, the first or- our mere tenants in chief, hold- bility. barons. der of the state. Among these ing estates not baronial immediately the kings of Aragon, in subsequent times. from the crown; and the military vasas they extended their dominions, shared sals of the high nobility, the knights and the conquered territory in grants of hon- infanzones; a word which may be renours on a feudal tenure. For this sys- dered by gentlemen. These had conern was fully established in the kingdom siderable privileges in that aristocratic of Aragon. A rico hombre, as we read government: they were exempted from n Vitalis, bishop of Huesca, about the all taxes, they could only be tried by the middle of the thirteenth century, J must royal judges for any crime; and offences hold of the king an honour or barony committed against them were punished capable of supporting more than three with additional severity. The Burgesses knights; and this he was bound to dis- ignoble classes were, as in other and peastribute among his iassals in military fiefs. countries, the burgesses of towns, antry. Once in the year he. might be summoned and the villeins or peasantry. The peaswith his feudatayids to serve the sover- antry seem to have been subject to tereign for two months (Zurita says three); ritorial servitude, as in France and Engand he was to attend the royal court, or land. Vitalis says, that some villeins general assvnably, as a counsellor, when- were originally so unprotected, that, as he expresses it, they might be divided to bring back old times, that his barons want- into pieces by the sword among the sons reyno tantos reyes como ricos hombres.-Bianca of their masters: till they were provoked Commentaria, p. 787. The form of election sup- to an insurrection, which ended in esnosed to have been used by these bold barons is tablishing certain stipulations, whence well known. "We, who are as good as you, they obtained the denomination of vilchoose you for out king and lord, provided that you leins de parada, or of convention. observe our laws and privileges, and if not, not." But I do not much believe the authenticity of this Though from the twelfth century the form of words.-See Robertson's Charles V., vol., principle of hereditary succes- Libelies of i., note 31. It is, however, sufficiently agreeable sion to the throne superseded, the Aragonto the spirit of the old government. in Araon as well as Castile, et Los ricos hombres, por los feudos que tenian the origin al right of choosing a dom. del rey, eran obligados de
seguir al rey, si yva en el original right of choosing a persona a la guerra, y residir en ella tres meses en, sovereign within the royal family, it was cadaun afio.-Zurita, tom. i., fol. 43. (Saragosa, still founded upon one more sacred and t610.) A fief was usually called in Aragon an hon- fundamental, that of compact. No king our, que en Castilla llamavan tierra, y en el prin- of Aragon was entitled to assume lhat cipado de Cataluha feudo, fol. 46. t I do not know whether this work of Vitalis name until he had taken a coronation has been printed; but there are large extracts from oath, administered by the justiciary at it in Blarncas's history, and also in Du Cange, un- Saragosa, to observe the laws and liberder the words Infancia, Mesnadarius, &c. Several. illustrations of these military tenures may be found * Biancæ Comm., p. 730.'j the Fuel' de Aragon, especially lib. 7 t Idem, p. 732. t Idem, t, 729

Page 219 L'AtP. IV.l 1PA1N. 219 ties of the realm.* Alfonso III., in 1-285, (mero imperio e mixto), it is A1clared being in France at the time of his father's never was the constitution of Aragon, not death, named himself king in addressing of Valencia, nor yet of Ribagorqa, no! the states, who immediately remonstra- shall there be in time to come any inno.ted on this premature assumption of his vation made; but only the law, custom, title, and obtained an apology. t Thus and privilege which has been anciently too Martin, having been called to the used in the aforesaid kingdoms."* crown of Aragon by the cortes in 1395, The concessions extorted by our anceswas specially required not to exercise tors from John, Henry III., and Privilege ms any authority before his coronation. S Edward I., were secured by the uTion. Blancas quotes a noble passage from only guarantee those times could affori, the acts of cortes in 1451. "We have the determination of the barons to enrr always heard of old time, and it is found force them by armed confederacies. by experience, that, seeing the great bar- These, however, were formed according renness of this land, and the poverty of to emergencies, and, except in the fathe realm, if it were not for the liberties mous commission of twenty-five conserthereof, the folk would go hence to live vators of Magna Charta, in the last year and abide in other realms, and lands of John, were certainly unwarranted by more fruitful." ~ This high spirit of free- law. But the Aragonese established a dom had long animated the Aragonese positive right of maintaining their liber After several contests with the crown in. ties by arms. This was contained in the the reign of James I., not to go back to Privilege of Union granted by Alfonso earlier times, they compelled Peter III, III. in 1287, after a violent conflict with General in 1283, to grant a law, called the his subjects; but which was afterward Privilege General Privilege, the Magna so completely abolished, and even eradi of 1283 Charta of Aragon, and perhaps a cated from the records of the kingdom, more full and satisfactory basis of civil that its precise words have never been liberty than our own. It contains a se- recovered.- According to Zurita, it con ries of provisions against arbitrary talla- sisted of two articles: first, that, in the ges, spoliations of property, secret pro- case of the king's proceeding forcibly cess after the manner of the Inquisition in against any member of the union without criminal charges, sentences of the justi- previous sentence of the justiciary, the clary without assent of the cortes, ap- rest should be absolved from their allegib pointment of foreigners cr Jews to judi- ance; secondly, that he should hold colr cial offices, trials of accused persons in tes every year in Saragosa.1: During the places beyond the kingdom, the use of two subsequent reigns of James II. and torture, except in charges of falsifying Alfonso IV.,little pretence seems to have the coin, and the bribery of judges. been given for the exercise of this right. These are claimed as the ancient liber- But dissensions breaking out under Peter ties of their country. " Absolute power IV. in 1347, rather on account of his attempt to settle the crown upon his daughZurita, Anales de Aragon, t. i., fol. 104; t. iii., ter than of any specific public grievances, t Bianc Comm.. p. 661. They acknowledged, the nobles had recourse to the union, that at the
same time, that he was their natural lord, last voice, says Blancas, of an al-
Revolt and entitled to reign as lawful heir to his father- most expiring state, full of weight against so oddly were
the hereditary and elective titles and dignity, to chastise the pre-
Peter IV jumbled together. — Zurita, t. i., fol. 303. sumption of kings. Q They assembled at S Zurita, t. ii., fol. 424. 0 Siempre
haverlos oyo dezir antigament, se a, and used a remarkable sel fo troba por esperiencia, que
attendida la grand ste- all their public instruments, an engraving
probreza de aqueste reg- from which may be seen in the historian no, si non fues por las
heritages de aquel, se yriar a bivir, y habitar las gentes a otros regnos, [ tier-
Aragon, fol. 9. Zurita, t i..ol. 265. ras mas frutieras, p. 571. Aragon was, in fact, a t Blancas
says that he had discoverct s copy of poor country, barren and ill-peotled. The kings the
Privilege of Union in the archives of the sev were forced to go to Catalonia for money, and in-
I of Tarragona, and would gladly nave published it deed were little able to maintain expensive
con- but for his deference to the wisdom of former ages tests. The wars of Peter IV. in
Sardinia, and of i which had studiously endeavoured to destroy a.: Alfonso V. with Genoa and
Naples, impoverished recollection of that dangerous law.-Ibid., p. 662 theJr people. A hearth-
tax having been imposed: Ibid., t. i., f 322. in 1404, it was found that there were 42,683 houses
Q Priscam illa n Unionis, quasi morientis reiljlcs, in Aragon, which, according to most
calculations, lica extremam rocem, auctoritatis et gravitatis ple will not give much more than
200,000 inhabitants.,alm, regum insolentioa apertum vindicem excltA In 1429, a similar tax
being laid on, it is said that runt, summa ac singulari bonorum ominum con. the number of
houses was diminished in conse- sione, p. 669. It is remarkable that suchl strong guence of
war.-Zurita, t. iii., fol. 189. It contains language should have been tole-tted nnder Philk present
between 600,000 and 700,0t i inhabitants. II.
illegal imprisonPrivilege this victory ofthe royalists. The ment by the crown or its officers during of Union Privilege of Union was abroga- the continuance of the Plantagenet dynasty abolished, Peter himself cutting to nasty. We shall speedily take notice of visions in-pieces with his sword the origi- a very different conduct in Aragon. t.ituated. nal instrument. But, in return, The office of justiciary, whatever conmany excellent laws for the security of jectual antiquity some have assigned to the subject were enacted; and their pres- it, is not.o be traced beyond the capture evration was intrusted to the greatest of Saragosa in 1118, when the selies of officer of the kingdom, the justiciary, magistrates commences.* But for whose authority and pre-eminence may great length of time; ey do not appear in a great degree be dated from this peri- to have been particularly important; the od.T That watchfulness over public lib- judicial authority residing in the council ery, which originally belonged to the of ricos hombres, whose suffrages the usaristocracy of ricos hombres, always apt ticiary collected, in order to pronounce to thwart the crown, or to oppress the their sentence rather than his own. Apaspeople, and which was afterward main- sage in Vitalis, bishop of Huesca, whom tained by the dangerous privilege of union, I have already mentioned, shows this to became the duty of a civil magistrate, have been the practice during the reign accustomed to legal rules, and responsi- of James I. Gradually, as notions of hle for his actions, whose office and fune- liberty became more definite, and laws more numerous, the reverence paid to * Zurita observes that the battle of Epila was their permanent interpreter grew strong the last fought in defence of public liberty, for er; and there was fortunately a success. which it was held lawful of old to take up arms, sion of prudent and just men in that high and resist the king, by virtue of the Privileges of office, through whom it acquired dignity Union. For the authority of the justiciary being office, through whom itSoaqquired dignity afterward established, the former contentions and wars came to an end; means being found to put the weak on a level with the powerful, in which * Biancæ Comment., p. 638. consists the peace and tranquillity of all states; and t Id., p. 722. Zurita indeed refers the justicia from thence the name of Union was, by common ry's pre-eminence to an earlier date; namely, the consent, proscribed, t. ii., fol. 226. Blancas also reign of Peter II., who took away a great part of remarks, that nothing could have turned out more the local jurisdictions of the ricos hombres, t. i., fol. advantageous to the Aragonese than their ill-for- 102. But, if I do not misunderstand the meaning tune at Epila. of Vitalis, his testimony seems to be beyond dis t Fueros de Aragon. De ii., quas Dominr *ex, pute. By the General Privilege of 1283, the justi'l. 14, et alibis passim. ciary was to advise with the ricos hombres in aL t Bianc. Ccm., p 671,811 Zurit'. ii., fol. cases where the king was a party against any o tVw t his subiects, —Zurita, f 281 See also f 180
when we have entered into a league, and sentenced the leaders to a recognizance (firme et graviter asseverishment). It was adjudged also that no appeal could lie to the spiritual court abide the decision of law, our fortunes from a sentence of the justiciary passed shall be protected by the interposition of with assent of the cortes. James II. is his prohibition, from the intolerable inisaid to have frequently sued his subjects quity of the royal judges. The process in the justiciary's court, to show his re- termed mani festation, afforded as ample gard for legal measures; and during the security for personal liberty as that of reign of this good prince, its authority jurisfirma did for property. "To mani became more established. Yet it was fast any one," says the writer so often not perhaps looked upon as fully equal to quoted, "is to wrest him from the hands maintain public liberty against the crown, of the royal officers, that he may not suftill, in the cortes of 1348, after the Privi- fer any illegal violence; not that he is lege of Union was for ever abolished, such set at liberty by this process, because the laws were enacted, and such authority giv- merits of his case are still to be inquired en to the justiciary, as proved eventually a into; but because he is now detained more adequate barrier against oppression publicly, instead of being, as it were, con. than any other country could boast. All cealed, and the charge against him is the royal as well as territorial judges investigated, not suddenly or with paswere bound to apply for his opinion in sion, but in calmness and accc:ding to case of legal difficulties arising in their law, therefore this is called manifesta-ours, which he was to certify within tion."t The power of this writ (if I may eight days. By subsequent statutes of the same reign, it was made penal for * Bianc., p. 751. Fueros de Aragon, f. 137. any one to obtain letters from the king, t Est apud nos manifestare, reum subito sumere, n e t nexeuo frof the jsin atque e regis manibus extorquere, ne qua ipsi con. impeding the execution of the justiza's ti jus vis inferatur. Non quod tunc reus judicio process, and they were declared null. In- liberalit; nihilominus, ut loquimur, de merferior courts were forbidden to proceed its causT ad plenum cognoscitur. Sed quod deinin any business after his prohibition.m ceps manifesto teneatur, quasi antea celatus extitis~Maly other laws might be cited, corrob- set; necesseque deinde sit de ipsius culpa, non impetu et cum furore, sed sedatis prorsus animis, et orating the authority of the great magis- iuxta constitutas leges judicari. Ex eo autem, quoO trate; but there are two parts of his re- hujusmodi judicium manifesto apprehensum, omnimedial jurisdiction which deserve special business jam patere debat, Manifestationis sibi nomen notice. arripuit, p. 675. nothee are the processes ofjurisfirma, or Ipsius Manifestationis potestas tam solida est et These are the processes ofjurisfirma, or repentina, ut homini jam collum in laqueum insefirma del derecho, and of manifestation. renti subveniat. Illius enim prasidio, damnatus, __I __------------------ dum per leges licet, quasi experiendi juris gratiS, * Bianca Comment., p. 663 de manibus judicum confection extorquetur, et in t Zurita, t. i., f. 403; t. ii., f. 34. Bianc., p. 666. carcerem ducitur ad id awdificatum. ibidemque as. The assent of the cortes seems to render this in the servatur tamdiu, quamdiu jurene, an injuriA quid nature of a legislative rather than a judicial pro- in ea causa factum fuerit, judicatur. Propterea ceding; but it is difficult to pronounce about a career hic vulgari lingua, la car31l de los manifes transaction so remote in time, and in a foreign tados nuncupatur, p. 751. country, the native historians writing rather con- Fueros de Aragon, fol. 60. De Manifestationi cisely. bus personarum. Independently of this right ol + Bianc., p. 663. James acquired the surname of manifestation by writ of the justiciary, there axe Just, el Justiciero, by his fair dealings towards his several statutes in the Fueros against illegal dosubjects.-Zurita, t. ii., fol. 82. tention, or unnecessary severity towards prisoners.. Fueros de Aragon: Quod in dubis non crassis. -(De Custodia reorum, f. i63.) No judge could A. D. 1348.) Quodimpetrans(1372), &c. Zurita, proceed secretlyin a criminal process; an indis. ii. foot 229. Bianc., p. 671 and 811. pensable safeguard to public liberty, and one of the
such, as he else- extinction, continually displays itself. I where asserts, that it would rescue a
cannot help illustrating this subject by man whose neck was in the halter. A two remarkable
instances. The heir apparticular prison was allotted to those parent of the kingdom of Aragon
had a detained for trial under this process. constitutional right to the lieutenancy or Several
proofs that such admirable pro- regency during the sovereign's absence instances of visions did
not remain a dead from the realm. The title and office in lheirappli letter in the law of Aragon,
deed were permanent, though the funcration. appear in the two historians, tions must of course
have been superseBlancas and Zurita, whose noble attach- ded during the personal exercise of
royment to liberties, of which they had al authority. But as neither Catalonia either witnessed,
or might foretel the nor Valencia, which often demanded the king's presence, was considered
as part most salutary, as well as most ancient, provisions of the kingdom, there were pretty
frein our own constitution. (De judiciis.) Torture quent occasions for this anticipated reign was
abolished, except in cases of coining false mon- of the eldest prince. Such a regulation ey, and
then only in respect of vagabonds.- (General Privilege of 1283.) was not likely to diminish the
mutual Zurita has explained the two processes of juris- and almost inevitable jealousies
between firma and manifestation so perspicuously, that, as kings and their heirs apparent,
which have the subject is very interesting, and rather out of so often disturbed the tranquillity
of a the common way, I shall both quote and translate court and a nation. Peter I. removed the
passage. Con firmar de derecho, que es dar caution a estara justicia, se conseden literas inhib-
his eldest son, afterward John I., from itorias por el justicia de Aragon, para que no pue- the
lieutenancy of the kingdom. The dan ser presos, ni privados, ni despojados de su prince entered
into a firma del derecho possession, hasta que judicialmente se conozca, Domiic de Cerda
eclare sobre la pretension, y justicia de!as partes,whpoucininhfsorejie y parezca por processo
legal, que se deve revo- who, pronouncing in his favour, enjoined car la tal inhibition. Esta
fu6 la suprema y prin- the king to replace his son in the lieutencipal autoridad del Justicia de
Aragon desde que ancy as the undoubted right of the eldest este magistrado tuvo origen, y lo
que llama mani- born. Peter oceed, not only in fact to festation; porque assi como la firma de
derecho pox privilegio general del reyno impide, que no which, as Blancas observes, the law
com-?uede ninguno ser preso, o agraviado contra razon pelled him, but with apparent cheerful.
y justicia, de. la misma manera la manifestacion, ness.* There are indeed no private perque es
otro privilegio, y remedias muy principal, sons who have so strong an interest in Liene fuerca,
quando alguno es preso sli preceder m ini a free constitution and the processo legitimo, o
quando lo prenden de hecho itit gin orderl de justicis; y en estos casos solo el Jus- civil liberties
of their countrymen, as the ticia de Aragon, quando se tiene recurso al el, se members of royal
families; since none interpone, manifestando it preso, que es tomarlo a are so much exposed, in
absolute governs mano, de poder de qualquiera juez, aunque sea ments, to the resentment and
suspicion el mas supremo; y es obligado el Justicia de Aragon, y sus lugartenientes de proveer
la manifesta- of a reigning monarch. cion en el mismo instante, que les es pedido sin John I.,
who had experienced the propreceder informacion; y basta que se pida por tection of law in his
weakness, had afqualquiere persona que se diga procurador del que terward occasion to find it
interposed quiere que lo tengan por manifesto, t. ii., fol. 386. "Upon a firma de derecho, which
is to give securi- against his power. This ing had sent ty for abiding the decision of law, the
Justiciary of some citizens of Saragosa to prison withAragon issues letters inhibiting all
persons to ar- out form of law. They applied to Juan rest the party, or deprive him of his
possession, de Cerda, the justiciary, for a manifestauntil the matter shalt be judicially inquired
into, tiol. He issued his writ accordingly, and it shall appear that such inhibition ought to be
revoked. This process and that which is called nor, says Blancas, could he do otherwise,
manifestation have been the chief powers of the without being subject to a heavy fine.
justiciary ever since the commencement of that The king, pretending that the justiciary
magistracy. And as the firma de derecho, by the was partial, named one of his own judges,
general privilege of the realm, secures every man the vice-chancellor, as coadjutor. This from
being arrested or molested against reason and justice, so the manifestation, which is another
raised a constitutional question, whether, C'tincipal and remedial right, takes place when any
on suspicion of partiality, a coadjutor to none is actually arrested without lawful process; the
justiciary could be appointed.. The sril in such cases only the Justiciary of Aragon, king sent a
private order to the justiciary when recurce is had to him, interposes by mani- not to proceed
to sentence upon this infesting the person arrested, that is, by taking him into his own hands,
out of the power of any judge, terlocutory point until he should receive however high in
authority; and this manifestation instructions in the council, to which he the justiciary, or his
deputies in his absence, are was directed to repair. But he instantly bound to issue at the same
instant it is demanded, pronounced sentence in favour of his ex without farther inquiry; and it
may be demanded Dy any one as attorney of the party requiring to be I manifeteed." I * Zurita,
ubi supra. Blancas, p 673
sometimes ex- have been more respected than in any acted a promise to resign upon request. other monarchy. The general privileg. Ximenes Cerdan, the justiciary in 1420, having refused to fulfil this engagement * Fueros le Aragon, fol. 25; having refused to fulfil this engagement, X t Blancas. Zurita, t. iii., f. 321; t. iv., f. 103 Alfonso V. gave notice to all his subjects These regulations were very acceptable to the na not to obey him, and notwithstanding the tion. In fact, the justiza of Aragon had possessed alarm which this encroachment created, much more unlimited powers than ought to be in eventually succeeded in compelling him trusted to any single magistrate. The court of to quit his office. In 1439, Alfonso in- King's Bench in England, besides its consisting of In 1439, Alfonso in- four co-ordinate judges, is checked by the appelsisted with still greater severity upon the lant jurisdictions of the Exchequer Chamber and execution of a promise to resign made House of Lords, and, still more importantly, by the by another justiciary, detaining him in rights of juries. prison until his death. But the cortes of t Majores nostri, quae de omnibus statuenda es 1442outi po sdedath. la, t the kig sent, noluerunt juberi, vetarive posse, nisi vocatis, 1442 proposed a law, to which the king descriptisque ordinibus. ac cunctis eorum adhibitis reluctantly acceded, that the justiciary suffragis, re ipsa cognita et promulgate. Unde should not be compellable to resign his perpetuum illud nobis comparatum est jus, ut com office on account of any previous en- munes et publicae leges neque tolli, neque rogari gagement he might have madeo e possint, nisi prius universus populus unA voce co gagemeit he might have made.t.mitiis institutis suum ea de re liberums uffragium But lest these high powers, imparted ferat; idque postea ipsius regis assensu comprcbs Responsibi- for the prevention of abuses, tur.-Biance, p. 761. lity of this should themselves be abused, Zurita, t. i., fol.92. magistrate. the justiciary was responsible Fueros de Aragon: Quod sissin in Aragon:A removeantur (A. D. 1372). De prohibitione slsaa. in case of an unjust sentence, to the ex- rum (1398). De conservacione patrimonii (1461) I have only remarked two instances of arbitrary * Bianca Commentar., ubi supra. Zurita relates taxation in Zurita's history, which is singularly full..e story, but not so fully. of information; one, in 1343, when Peter IV. col t Fueros de Aragon, fol. 22. Zurita, t. iii., fol. lected money f rom various cities, though nrotw, il.. x40. 255,'72. Bianc. Commen.:, p. 701. out oposition; and the other a remonstrar.c~ v
deputies to the cortes; but their Four estates, or, as they were called, representation was very full; eight or Cortes of arms (brazos), formed the cortes ten, and sometimes more, sat for Sara Aragon. of Aragon; the prelates, and some gosa, and no town appears to have had the cortes in 1383 against heavy taxes; and it is less than four representatives. During not clear that this refers to general unauthorized the interval of the cortes a permanent taxation. Zurita, t. ii., f. 168 and 382. Blancas commission, varying a good deal as to mentions that Alfonso V. set a tallage upon his numbers, but chosen out of the four estowns for the marriage of his natural daughters, tates was empowered to sit with very which he might have done had they been legiti-ty, receiving and; but they appealed to the justiciary's tribu-considerable authority, receiving and; al, and the king receded from his demand, p. 701. managing the public revenue, and pr(oSome instances of tyrannical. conduct in violation tecting the justiciary in his functions. if the constitutional laws occur, as will naturally The kingdom of Valencia and print i Le, supposed, in the annals of Zurita. The execu- pality of Catalonia having been tion of Bernard Cabrera under Peter IV., t. ii., f. Gover-t36, and the severities inflicted on Queen Forcia annexed to Aragon, the one by ment of va by her son-in-law John I., f. 391, are perhaps as conquest, the other by marriage, lencia and remarkable as any. were always kept distinct from Catalonia. * Zurita, t. i., f. 426. In general the session it in their laws and government. Each lasted from four to six months. One assembly had its cortes, composed of three estates, was prorogued from time to time, and continued six years, from 1446 to 1452, which was com. for the division of the nobility into two plained of as a violation of the law for their bien- orders did not exist in either country. nial renewal, t. iv., f. 6. The Catalans were tenacious of their t The Sicilian war of Peter III. was very un- ancient usages, and averse to incorpora. popular, because it had been undertaken without consent of the barons, contrary to the practice of tion with any other people of Spain. the kingdom; porque ningun negocio arduo em- Their national character was high-spirprendian, sin acuerdo y consejo de sus ricos hom- ited and independent; in no part of the bres.-Zurita, t. i., fol. 264. The cortes, he tells peninsula did the territorial aristocracy us, were usually divided into two parties, whigs retain, or at least pretend to such exten and tories; estaba ordinariamente dividida en dos end t ee partes, la una que pensava procurar el beneficio del sive privileges,- and the citizens were reyno, y la otra que el servicio del rey, t. iii., fol. 321 * Popular representation was more ancient in t Fueros y observancias del reyno de Aragon. Aragon than in any other monarchy. The depu2 vols. in fol., Saragbsa, 1667. The most impor- ties of towns appear in the cortes of 1133, as Rob. tant of these are collected by Blancas, p. 750. ertson has remarked fiom Zurita.-Ilist. of Charles ~ It is said by some writers that the ecclesiasti- V., note 32. And this cannot well be called in quesal arm was not added to the cortes of Aragon till tion, or treated as an anomaly, for we find them ab t the year 1300. But I do not find mention in mentioned in 1142 (the passage cited in the last ZUi;csa of any such constitutional change at that note), and again in 1164, when Zurita enumerates time; and the prelates, as we might expect from many of their names, fol. 74. The institution of the analogy of other countries, appear as members concejos, or corporate districts under a presiding of the national council long before. Queen Petro- town, prevailed in Aragon, as it did in Castile. nilla, in 1142, summoned a los perlados, ricos t Zurita, t. ii., f. 420; t. iii., f. 76. hornbres, y cavalleros, y procuradores de las ciu:- Biancae, p. 762. Zurita, t. iii., f. 76; f. 182, et dades y villas, que le Juntassen a'ortes generales alibi. en la ciudad de Huesca.-Zurita, t. i., fol. 71. So ~ Zurita, t. ii., f. 360. The villanage of the peas in the cortes of 1275, and on other:ccasions. antry in some parts of Catalonia was very severe
At the accession of Ferdinand I., which tice. But, owing to the remarkable co. they had not much desired, the Catalans piousness of the principal Aragonese his obriged him to swear three times succes- torian, we find more frequent details of sively to maintain their liberties, before this nature than in the scantier annals of they would take the reciprocal oath of some countries. The internal condition allegiance.* For Valencia it seems to of society was certainly far from peacelhave been a politic design of James the able in other part's of Europe. Conqueror to establish a constitution By the marriage of Ferdinand. with nearly analogous to that of Aragon, but Isabella, and by the death of Union of with such lim;ations as he should im- John II. in 1479, the two an- Castileand pose, taking care that the nobles of the cien and rival kingdoms of Cas- Aragon. two kingdoms should not acquire strength tile and Aragon were for ever consolida by union. In the reigns of Peter III. ted in the monarchy of Spain. There and Alfonso III., one of the principal ob- had been some difficulty in adjusting the jects contended for by the. barons of Ar- respective rights of the husband and wife agon was the establishment of their own over Castile. In the middle ages, it was laws in Valencia; to which the king customary for the more powerful sex to never acceded.t They permitted, how- exercise all the rights which it derived ever, the possessions of the natives of Ar- from the weaker, aw much in sovereign in the latter kingdom to be govern- ties as in private possessions. But the ed by the law of Aragon.T These three Castilians were determined to maintain states, Aragon, Valencia, and Catalonia, the positive and distinct prerogatives of were perpetually united by a law of Al- their queen, to which they attached the fonso III.; and every king on his acces- independence of their nation. A comaion was bound to swear that he would promise therefore was concluded, by never separate them.0 Sometimes gen- which, though,. according to our notions, eral cortes of the kingdoms and princi- Ferdinand obtained more than a due pality were convened; but the members share, he might consider himself as more did not, even in this case, sit together, strictly limited than his father had been and were no otherwise united, than as in Navarre. The names of both were to they met in the same city.li appear jointly in their style, and upon I do not mean to represent the actual the coin, the king's taking the prececondition of society in Aragon as equally dence in respect of his sex. But, in thle excellent with the constitutional laws. royal scutcheon, the arms of Castilo Relatively to other monarchies, as I were preferred on account of the kingstate of have already observed, there seem dom's dignity. Isabella had the appointPlic. to have been fewer excesses of ment of all civil offices in Castile; the the royal prerogative in that kingdom. nomination of spiritual benefices ran in But the licentious habits of a feudal aris- the name of b.)th. The government was tocracy prevailed very long. We find inll to be conducted by the two conjointly history instances of private war between when they were together, or by either the great families, so as to disturb the singly, in the province where one or other peace of the whole nation, even near the might happen to reside.* This partition close of the fifteenth century.-l The was well preserved throughout the life right of avenging injuries by arms, and of Isabel without mutual encroachments the ceremony of diffidation, or solemn or jealousies. So rare a unanimity bedefiance of an enemy, are preserved by tween persons thus circumstanced must the laws. We even meet with the an- be attributed to the superior qualities of cient barbarous usage of paying a compo- that princess, who, while she maintained sition to the kindred of a murdered man.** a constant good understanding with a'The citizens of Saragosa were sometimes very ambitious husband, never relaxed in the exercise of her paternal authority wven near the end of the fifteenth century, t. iv., over the kingdoms of her ancestors. 237.. Ferdinand and Isabella had no sooner * Zurita, t. iii., f. 81. quenched the flames of civil Conquest o: t Id., t. i., f. 281, 310, 333. There was originally discord in Castile, than they Granada.. iusticiari in the kingdom of Valencia, f. 281; but determined to give an unequivocal proof this, I believe, did not long continue. determined to give an unequivocal proof T Idem, t. ci, f. 433 ~ Idem, t. ii., f. 91. to Europe of the vigour
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EUROPE DURING THE MIDDLE AGES. 

IV government. For many years an armis - 200,000 inhabitants.* Its resistance to ties with the Moors of Granada had been such a force as that of Ferdinand is per. uninterrupted. Neither John II. nor hap the best justification of the apparent Henry IV. had been at leisure to think of negligence of earlier monarchs. But aggressive hostilities; and the Moors Granada was ultimately compelled to unthemselves, a pley, like their Christian dergo the yoke. The city surrendered enemies, to civil war, and the feuds of on the second of January, 1492; an eve. tt their royal family, were content with the glorious not only to Spain, but to Chris unmolested enjoyment of the finest prov - tendom; and which, in the political corn. ince, in the peninsula. If we may trust bat of the two religions, seemed almost historians, the sovereigns of Granada to counterbalance the loss of Constanti were generally usurpers and tyrants. It raised the name of Ferdinand But I know not how to account for that and of the new monarchy which he gov vast populousness, that grandeur and emered, to high estimation throughout Eu magnificence,' which distinguished the rope. Spain appeared an equal compet Mahometan kingdoms of Spain, without itor with France in the lists of ambition, ascribing some measure of wisdom and These great kingdoms had for some time beneficence to their governments. These felt the jealousy natural to emulous neighsouthern provinces have dwindled in later bours. The house of Aragon loudly comtimes; and, in fact, Spain itself is chiefly plained of the treacherous policy of Louis interesting to most travellers, for the XI. lie had fomented the troubles of' nonuments which a foreign and odious Castile, and given, not indeed an effectual race of conquerors have left behind aid, but all promises of support, to the them. Granada was however disturbed Princess Joanna, the competitor of Isabel, by a series of revolutions about the time Rousillon, a province belonging to Ara. of Ferdinand's accession, which natural- gon, had been pledged to France by John ly encouraged his designs. The Moors, II. for a sum of money. It would be te. contrary to what might have been ex- dious to relate the subsequent eventsl or pected from their relative strength, were to discuss their respective claims to it,s the aggressors by attacking a town in possession.t At the accession of Per A.ndalusia.* [A. D. 1481.] Predatory in- dinand, Louis XI. still held Rousillon, and roads of this nature had hitherto been showed little intention to resign it. But only retaliated by the Christians. But Charles VIII, eager to smooth every im. Ferdinand was conscious that his resour- pediment to his Italian expedition, restoces extended to the conquest of Granada, red the province to Ferdinand in 1493. the consummation of a struggle protract- Whether, by such a sacrifice, he was able ed through nearly eight centuries. Even to lull the King of Aragon into acquiesin the last stage of the Moorish dominion, cence, while he dethroned his relation exposed on every side to invasion, en- at Naples, and alarmed for a moment all feebled by a civil dissension, that led one Italy with the apprehension of French party to abet the common enemy, Granadominion, it is not within the limits of the da was not subdued without ten years of present work to inquire sanguinary and unremitting contest. Fertile beyond all the rest of Spain, that * Zrita, t. iv., fol. 314 kingdom contained seventy walled towns; FFor these transactions, see Garnier, Hist. dt and the capital is said, almost two cen- France, or Gaillard, Rivaltit de France et duEs turins before, to have been peopled by pagne, t. iii.. The latter is the most impart'. french writer I have ever read, in matters wb * Zurita, t. iv., fol 314 his own country is concerned.
German History under the Emperors of Lorrainers, who occupied the left bank of the Rhine as far as its termination. Henry IV.

House of Swabia.

Frederick Bar. A 911 The of these Election I barossa. -Fall of Henry the Lion. -Frederick II. e Election oo -Extinction of House of Swabia. -Changes in nations in their general assem-

Conrad. the Germanic Constitution. -Electors. -Terri-

bly fell upon Conrad, duke of Francotorial Sovereignty of the Princes. -Rodolph of nia, according to some writers,' or at Hapsburg. -State of the Empire after his Time. least a man of high rank, and descended -Causes of Decline of Imperial Power. -House of Luxemburg-Charles IV. -Golden Bull. -through females from Charlemagne. * House of Austria. -Frederick III. -Imperial Conrad dying without male issue, the Cities. -Provincial States. -Maximilian. -Diet crown of Germany was bestowed House of peal Chambers. -Abolition of private' Wars. -Im- upon Henry the Fowler, duke of Saxony. Hungary. -Switzerland. Saxony, ancestor of the three Othos, who followed him in' direct succes- Henry the AFTER the deposition of Charles the sion. To Henry, and to the Fowler, 919. Separation Fat, in 888, which finally sev- first Otho, Germany was more indebted of Germany ered the connexion between than to any sovereign since Charle1rom France France and Germany,* Arnulf, magne. The conquest of Italy, and rean illegitimate descendant of Charle- covery of the imperial title, are Otho T. 936. magne, obtained the throne of the latter indeed the most brilliant tro- Otho II. 73. country, in- which he was succeeded by phies of Otho the Great; but otho r. 983. his son Louis.jt But upon the death of he conferred far more unequi-

ocal bene this prince in 911, the German branch of fits upon his own country by comr eting that dynasty became extinct. There re- what his father had begun, her iberation mained indeed Charles the Simple, ac- from the inroads of the Hungarians. knowledge as king in some parts of Two marches, that of Misnia, erected by France, but rejected in others, and pos- Henry the Fowler, and that of Austria, sessing no' personal claims to respect. by Otho, were added to the Germanic The Germans therefore wisely deter- territories by their victories.t mined to choose a sovereign from among A lineal succession of four descents themselves. They were at this time without the least opposition, seems to divided into five nations, each under its show that the Germans were disposed to own duke, and distinguished by difference consider their monarchy as fixed in the of laws as well as of origin; the Franks, Saxon family. Otho II. and III. had whose territory, comprising Franconia been chosen each in his father's lifeand the modera palatinate, was consid- time, and during infancy. The formality ered as" the cradle of the empire, and of election subsisted at that time in every who seem to have arrogated some supe-

European kingdom; and the imperfect riority over the rest, the Scwabians, the rights of birth required a ratification by Bavarians, the Saxons, under which name public assent. If at least France and tile inhabitants of Lower Saxony alone England were hereditary monarchies il and Westphalia were included, and the * Schmidt, Hist. des Allemands, t. ii., p. 28S' Struvius, Corpus Historiae Germanicar, p. 210 There can be no question about this in a gen- The former of these writers does not considet eral sense. But several German writers of the Conrad as Duke of Franconia. time assert, that both Eudes and Charles the Sim- t Many towns in Germany, especially on the ple, rival kings of France, acknowledged the feudal Saxon frontier, were built by Henry I., who is superiority of Arnulf. -Charles,;says Reginq, reg- said to have compelled every ninth man to take up num quod usurpaverat ex manu ejus percepit.- his residence in them.. This had a remarkable Struvius, Corpus Hist. German., p. 202, 203.; tendency.to.promote the improvement of that tel t The German princes had some hesitation about ritory, and, combined with the discovery of the.. the choice of Louis; but.their partiality to the gold. and silver mines of Goslar under. Otho I., ren Carlovigian line prevailed.- Struvius, p. 208: dered it the richest and most important part of the quia reges Francorum
same may surely prerogative in this respect stood highel lie said of Germany; since we find the than in France, there was a countervail lineal succession fully as well observed ing principle, that prohibited the empea11 the last as in th. former. But upon ror from uniting a fief to his domain, o: tire immature and unexpected decease of even retaining one which he had passosOtho III., a momentary opposition was sed before his accession. Thus Otho the Henry II. offered to Henry, duke of Bava- Great granted away his dutchy of Saxony, 1002. ria, a collateral branch of the and Henry II. that of Bavaria. Otho the eing family He obtained the crown, Great endeavoured to counteract the ef. however, by what contemporary his- fects of this custom, by conferring the torians call an hereditary title,* and it dutchies that fell into his hands upon was not until his death, in 1024, that the members of his own family This polhouse of Saxony was deemed to be ex- icy, though apparently well conceived, tinguished. proved of no advantage to Otho; his son No person had now any pretensions and brother having mixed in several Hbouseof that could interfere with the un- rebellions against him. It was revived, Franconia. biased suffrages of the nation; however, by Conrad II. and Henry III. (onrad II. and accordingly a general as- The latter was invested by his father 1024. Henry III. sembly was determined by merit with the two dutchies of Swabia and 1039. to elect Conrad, sumamed the Bavaria. Upon his own accession, he ne056 I. Salic, a nobleman of Franco- retained the former for six years, and \henry V. nia.t From this prince sprang even the latter for a short time. The 1106. three successive emperors, Hen- dutchy of Franconia, which became va r:v III., IV., and V. Perhaps the impe- cant, he did not regrant, but endeavoured rial prerogatives over that insubordinate to set a precedent of uniting fiefs to the confederacy never reached so high a domain. At another time, after sentence point as in the reign of Henry II-I., the of forfeiture against the Duke of Bavaria, siecond emperor of the house of Franco- he bestowed that great province on his nia.. It had been, as was natural, the wife, the Emperess Agnes.* He put ani object of all his predecessors, not only to end altogether to the form of popular render their throne hereditary, which, in concurrence, which had been usual wher effect, the nation was willing to concede, the investiture of a dutchy was conferred: but, to surround it with authority suffi- and even deposed dukes by the sentence cient to control the leading vassals. of a few princes, without the consent ofThese were the dukes of the four nations the diet.i If we combine with these -f Germany, Saxony, Bavaria, Swabia, proofs of authority in the domestic ad and Franconia, and the three archbishops ministration of Henry III., his almos of the Rhenish cities, Mentz, Treves, and unlimited control over papal elections Cologne. Originally, as has been more or rather the right of nomination that he fully shown in another place, dutchies, acquired, we must consider him as the like counties, were temporary govern- most absolute monarch in the annals of ments, bestowed at the pleasure of the Germany. crown. From this first stage they ad- These ambitious measures of Henry vanced to hereditary offices, and finally III. prepared fifty years of ca- Unfortunate to patrimonial fiefs. But their progress lamity for his son. It is easy reign of was much slower in Germany than in toperceive that the misfortunes Henry V. France. Under the Saxon line of empe- of Henry IV. were primarily occasioned rors, it appears probable, that although by the jealousy with which repeated viot was usual, and consonant to the pre- lations of their constitutional usages had vailing notions of equity, to confer a inspired the nobility.T The mere cirdutchy upon the nearest heir, yet no pos- cumstance of Henry IV.’s minority, under:tive rule enforced this upon the emperor and some
instances of a contrary supposes the hereditary rights of dukes to have ror, and some instances of a contrary commenced under Conrad I.; but Schmidt is per. proceeding occurred.4 But, if the royal haps a better authority; and Struvius afterward mentions the refusal of Otho i. to grant the dutchy ~* A maxims multitudine vox una respondit; of Bavaria to the sons of the last duke, which, Henricum, Christi adjutorio, et jure haereditario, however, excited a rebellion, p 235. regnaturum.-Ditmarapud Struvium, p. 273. See * Schmidt, t. iii., p. 25, 37. other passages quoted in the same place.-Schmidt, - Id., p. 207. t. ii., p. 410.. In the very first year of Henry ae reign, while t Conrad was descended from a daughter of he was but six years old, the princes of Saxony are Otho the Great, and also from Conrad I. His said by Lambert of Aschaffenburg to have formed ist cousin was Duke of Franconia.-St-uvius. a conspiracy to depose him, out of resentment fo Schmidt. Pfeffel. the injuries they lad sustained from his fathe r t Schmidt t. ii., p. 393, 403. Struvius, p. 214, Struvius, p. 306. St. Marc, t. iii., p. a48.

Page 229 JIHA v. V.] GERMANY. 229 mne guardianship of a woman, was enough ing monarch, unless his merit should:o dissipate whatever powers his father challenge the popular approlationL * The had acquired. Hanno, archbishop of pope strongly encouraged this plan of Mentz, carried the young king away by rendering the empire elective, by which force from his mother, and governed he hoped either eventually to secure the Germany in his name; till another arch- nomination of its chief for the Holy See, bishop, Adalbert of Bremen, obtained or, at least, by sowing the seed of civil greater influence over him. Through dissensions in Germany, to render Italy the neglect of his education, Hlenry grew more independent. Henry IV. however up with a character not well fitted to re- displayed greater abilities in his adversity trieve the mischief of so unprotected a than his early conduct had promised. minority; brave indeed, well-natured, and [A. D. 1080.] In the last of several deciaffable, but dissolute beyond measure, and sive battles, Rodolph, though victorious, addicted to low and debauched company. was mortally wounded; and no one cared [A. D. 1073.] He was soon involved in a to take up a gauntlet which was to be desperate war with the Saxons, a nation won with so much trouble and uncervaluing itself on its populousness and tainty. The Germans were sufficiently riches, jealous of the house of Franco- disposed to submit; but Rome persevered nia, who wore a crown that had belonged in her unrelenting hatred. At the close to their own dukes, and indignant at of Henry's long reign, she excited against Henry's conduct in erecting fortresses him his eldest son, and after more thal throughout their country. thirty years of hostility, had the satisfac. In the progress of this war many of the lion of wearing him down with misfortune, chief princes evinced an unwillingness to and casting out his body, as excommunicate the emperor.* Notwithstanding cated, from its sepulchre. this, it would probably have terminated, In the reign of his son Henry V. ther i as other rebellions had done, with no per- is noevent worthy of much at- Extinction of manent loss to either party. But, in the tention, except the termination the House ol middle of this contest, another far more of the great contest about in- Franconia. memorable broke out with the Roman vestitures. Athis deathin 1125, the male see, concerning ecclesiastical investi- line of the Franconian emperors was at tures. The motives of this famous quar- an end. [A. D. 1125.] Frederick, duke rel will be explained in a different chap- of Swabia, grandson by his mother of ter of the present work. Its effect in Henry IV., had inherited their patrimoGermany was ruinous to Henry. [A. D. nial estates, and seemed to represent their 1077.] A sentence, not only of excom- dynasty. But both the last emperors had munication, but of deposition, which Greg- so many enemies, and a disposition to ory VIT. pronounced against him, gave a render the crown elective prevailed so pretence to all his enemies, secret as well strongly among the leading princes, that as avowed, to withdraw their allegiance.t Lothaire, duke of Saxony, was Election of At the head of these was Rodolph, duke
elevated to the throne, though Lothaire, of Swabia, whom an assembly of revolted rather in a
tumultuous and irregular manprinces raised to the throne. We may ner.t Lothaire, who had
been engaged perceive, in the conditions of Rodolph's in a revolt against Henry V. and the
chief election, a symptom of the real principle that animated the German aristocracy * Hoc
etiam ibi consensu communi comproba. against Henry IV. It was agreed that turn, Romani
pontificis auctoritate est corroborata. the kingdom should no longer be heredi-
tary, not conferred on the son of a reign- antea fuit
consuetudo, cederet, sed filius regis, Xary, not conferred on the son of a reign- etiamsi valde
dignus esset, per electionem spontaneam, non per successionis lineam, rex proveniret: *
Strivius. Schmidt. si vero non esset dignus regis filius, vel si nollet t A party had I een already
formed who were eum populus, quem regem facere vellet, haberet in meditating to depose
Henry. -His excommunica- potestate populus.-Bruno de Bello Saxonicou, apud tion came just in
time to confirm their resolutions. Struvium, p. 327. It appears clearly, upon a little
consideration of f See an account of Lothaire's election byacon Her.-y IV.'s reign, that the
ecclesiastical quarrel temporary writer, in Struvius, p. 357. See also was Drely secondary in the
eyes of Germany. The proofs of the dissatisfaction of the aristocrac y at the contest against him
was a struggle of the aristocr. Franconian government.-Schmidt, t. iii., p. 328. racy, jealous of
the imperial prerogatives which It was evidently their determination to render the Conmad II.
and Henry III. had strained to the ut- empire truly elective (id., p. 335); and perhaps we most.
Those who were in rebellion against Henry may date that fundamental principle of the Gel
were not pleased with Gregory VII. Bruno, au- manic constitution from the accession of
Lothaire. thor of a history of the Saxon war, a fious invec- Previously to that era, birth seems
to have given tive, manifests great dissatisfaction with the court not only a fair title to
preference, but a sort of in of Rome, which he reproaches with dissimulation choate right, as in
France, Spain, and England., hi veniallt Lothaire signed a capitulation at his accession.
son-in-law the dutchy of resigning his claim to that of Bavaira.* which had been conferred on the Ma'. This amazing preponderance, however, grave of Austria. This renunciation, tended to alienate the princes of Ger- which indeed was only made in his name many from Lothaire's views in favour of during childhood, did not prevent h.;m Henry; and the latter does not seem to from urging the Emperor Frederick to have possessed abilities adequate.to his restore the whole of his birthright; and eminent station. On the death of Lo- Frederick, his first cousin, whose life he thaire in 1138, the partisans of the house had saved in a sedition at Rome, was in, of Swabia made a hasty and irregular duced to comply with this request in 1156. election of Conrad, in which the Saxon Far from' evincing that political jealousy House of faction found itself obliged, to which some writers impute to him, the Swabia. acquiesce.t- The new emperor emperor seems to have carried his gen Conrad III. availed himself of the jealousy erosity beyond the limits of prudence which Henry the Proud's aggrandizement For many years their union was appahad excited. [A. D. 1138.] Under pre- rently cordial. But, whether it was that tence that two dutchies could not legally Henry took umbrage at part of Frederbe held by the same person, Henry was ick's conduct,~ or that mere ambition rensummoned to resign one of them; and on dered him ungrateful, he certainly abanhis refusal, the diet pronounced that he doned his sovereign in a moment of dishad incurred a forfeiture of both. Henry tress, refusing to give any assistance in made but little resistance, and, before his that expedition into Lombardy, which enddeath, which happened soon afterward, ed in the unsuccessful battle of Legnano. saw himself stripped of all his hereditary Frederick could not forgive this injury; -s well as acquired possessions. Upon and taking advantage of complaints which Original of this occasion, the famous names Henry's power and haughtiness had proGuelfs and of Guelf and Ghibelin were first duced, summoned him to answer char-ges Ghibelins. heard, which were destined to in a general diet. The duke refused to Keep alive the flame of civil dissension in appear, and being adjudged contumacious, far distant countries, and after their mean- a sentence of confiscation, similar to that ing had been forgotten. The Guelfs or which ruined his father, fell upon his WVelfs were, as I have said, the ancestors head; and the vast imperial fiefs that he of Henry, and the name has become a sort of patronymic in his family. The * Struvius, p. 370 and 378. tf Ibid. - J:* Pfefle], p. 341. - * Pfelkel, Abrege Chronologique de l'Histoire Q Frederick had obtained the succeion of Weif d'Allemagne, t. i., p. 269 (Paris, 1777). Gibbon's marquis of Tuscany, uncle of Henry hle Lion, wh Antiquities of the House of Brunswick. probably considered himself s'entitle /o expect it 4 Schmidt. -Schmidt, p 427.

Page 231 CHAP. V j GERMANY. 231 posses ed were shared among some po- orther, unable o secure his nol- piiip and tent enemies.* He made an ineffectual phew's successin, brought about Otho IV. resletance; like his father, he appears to his own election by one party, while have owed more to fortune than to na- another chose Otho of Brunswick, youn1ture; and, after three years' exile, was er son of Henry the Lion. This double obliged to remain content with the res- election renewed the rivalry between toration of his allodial estates in Saxony. the Guelfs and Ghibelins, and threw G-el These, fifty yealn afterward, were con- many into confusion for several years verted into imperial fiefs, and became Philip, whose pretensions appear to be.he two dutchies of the house of Bruns- the more legitimate of the two, gained wick, the lineal representatives of Henry ground upon, his adversary, notwithstandinghe Lion) and inheritors of the name of ing the opposition of the pope, till he Guelf.t was assassinated, in consequence of a Notwithstanding the prevailing spirit private resentment. [A. D. 1208.] Otho of the German oligarchy, Frederick Bar- IV. reaped the benefit of a crime in barossa had found no difficulty in procu- which he did not participate; and bering the election of his son Henry,
even came for some years undisputed sover during infancy, as his successor. But, having offended the pope 1190. The fall of Henry the by not entirely abandoning his imperial Jeny Vt- Lion had greatly weakened the rights over Italy, he had, in the latter ducal authority in Saxony and Bavaria; part of his reign, to contend against the princes who acquired that title, es- Frederick, son of Henry VI., who, having pecially in the former country, finding grown up to manhood, came into Germathat the secular and spiritual nobility of ny as heir of the house of Swabia, and, the first class had taken the opportunity what was not very usual in his own his-..o raise themselves into an immediate tory or that of his family, the favoured lependance upon the empire. Henry VI. candidate of the Holy See. Otho IV. same therefore to the crown with con- had been almost entirely deserted, exsiderable advantages in respect of pre- cept by his natural subjects, when his rogative; and these inspired him with a death, in 1218, removed every difficulty, Dold scheme of declaring the empire he- and left Frederick II. in the peaweable reditary. One is more surprised to find possession of Germany. that he had no contemptible prospect of The eventful life of Frederick II. was success in this attempt; fifty-two princes, chiefly passed in Italy. To Frederick IL and even what appears hardly credible, preserve his hereditary dominthe See of Rome, under Clement III., ions, and chastise the Lombard cities, having been induced to concur in it. were the leading objects of his political But the Saxons made so vigorous an op- and military career. He paid therefore position, that Henry did not think it but little attention to Germany, from advisable to persevere. He procured, which it was in vain for any emperor to however, the election of his son Freder- expect effectual assistance towards obick, an infant only two years old. But, jects of his own. Careless of preroga the emperor dying almost immediately, tives which it seemed hardly worth an ef a powerful body of princes, supported by fort to preserve, he sanctioned the indePope Innocent III., were desirous to pendence of the princes, which may be withdraw their consent. [A. D. 1197.] properly dated from his reign. In return, Philip, duke of Swabia, the late king's they readily elected his son Henry king of the Romans; and, on his being impli* Putter, in his Historical Development of the of the Romans; and, on his being impliConstitution of the German Empire, is inclined to cated in a rebellion, deposed him with consider Henry the Lion as sacrificed to the empe- equal readiness, and substituted his brothor's jealousy of the Guelfs, and as illegally pro- er Conrad at the emperor's request * scribed by the diet. But the provocations he had but In the latter part of Frederick's reign, given Frederick are undeniable; and, without pretendi:g to decide on a question of German history, I do not see that there was any precipitancy or yond the Alps. After his sol- Consemannfest breach of justice in the course of pro- emn deposition in the coUmncil quences of cevdings against him. Schmidt, Pfeffel, and Stru- of Lyons, he was incapable, in the council vis." do not represent the condemnation of Henry of Lyons. ecclesiastical eyes, of holding Putter, p. 220. t Struvius, p. 418. the imperial sceptre. [A. D. 1245.] In d Struvius, p. 424. Impetravit a subditis, ut, nocent IV. found however some difficulty ceesante pristina Palatinorum electione, imperium in setting up a rival emperor. Henry in ipsius posteritatem, distinctA proximorum suc- landgrave of Thuringia, made an indiffer cessione, transiret, et sic in ipso terminus esset electionis, principiumque successivae dignitatis. — - G(ervas. Tilburien., ibidem.'Struvi'is; p 457. 

Page 232 232 EUROPE DURING THE MIDDLE AGES!CHAI'. ent figure h;i this character. [A. D. 1248.] by respect. The -hang ts wrought in th& Upon his death, William, count of Hol-Germanic consti tion during the period land, was chosen by the party adverse to of the Swal.an emperors chiefly consist Frederick and his son Conrad; and, after in the establishment of an oligarchy of me emperor's death, he had some suc- electors, and of the territorial sovereignty cess against the latter. It is hard indeed of the princes. to say that any one was
At the extinction of the tranconian elgn for twenty-two years that followed the death of Henry V., it was determined by the German Electors contested title and universal anarchy, nobility to make their empire practically Grand in- which is usually denominated elective, admitting no right, or even nat terregnum. The grand interregnum. [A.D. ural pretension, in the eldest son of a 1250-1272.] On the decease of William reigning sovereign. Their choice upon of Holland, in 1256, a schism among the former occasions had been made by free electors produced the double choice of and general suffrage. But it made preRichard of Richard, earl of Cornwall, and sumed that each nation voted unanimous Cornwall. Alfonso X., king of Castile. It ly, and according to the disposition of its seems not easy to determine which of duke. It is probable, too, that the lead these candidates had a legal majority of ers, after discussing in previous deliberavotes,* but the subsequent recognition tions the merits of the several candidates, of almost all Germany, and a sort of pos submitted their own resolutions to the session evidenced by public acts, which assembly, which would generally concur have been held valid, as well as the gener- in them without hesitation.

At the elec- consent of contemporaries, may justify tion of Lothaire, in 1124, we find an evius in adding Richard to the imperial list. dent instance of this previous choice, or, The choice indeed was ridiculous', as he as it was called, pretaxation, from which possessed no talents which could com- the electoral college of Germany has sate for his want of power; but the elec- been derived The princes, it is said, tors attained their objects; to perpetuate trusted the choice of an emperor to ten a state of confusion by which their own persons, in whose judgment they prom-independence: was consolidated, and to ised to acquiesce.* This precedent was plunder without scruple a man, like Di- in all likelihood, followed at all subsedius at Rome, rich and foolish enough to quent elections. The proofs indeed are purchase the first place upon earth. not perfectly clear. But in the famous That place, indeed, was now become a privilege of Austria, granted by Frederick State of the mockery of greatness. For I., in 1156, he bestowed a rank upon the Germanic more than two centuries, not- newly created duke of that country, imconstitution. withstanding the temporary in- mediately after the electing princes (post fluence of Frederick Barbarossa and his principes electores); t a strong presumption, the imperial: authority had been in a tion that the right of pretaxation was not state of gradual decay. From the time only established, but limited to a few defof Frederick II. it had bordered upon ab- inite persons. In a letter of Innocent the imperial: the electors' claim had been on the author- t Schmidt, t. iii., p. 331. Struvius should assert the contrary, on the author- t Schmidt, t. iii., p. 390. t Pfeffel; 360 ity of an instrument of
Rodolph, which expressly Q Schmidt, t. iv., p. 80. designates him king, per quondam Richardum re II This is not mentioned ir. Stm-uvius, or the other gem illnstem.-Struv., p. 502. German writers. But Denina'Rivolazioni d'Ita

Page 233 DRAP V. GERMANY. 23V ar deviation from the principle already of Bohemia was fully recognised. The established. But it is admitted, that all palatine. and Bavarian branches, howe-r the princes retained, at least during the er, continued to enjoy their family vote twelfth century, their consenting suf- conjointly, by a determination of Rodolph; frage; like the laity in an episcopal elec- upon which Louis of Bavaria slightly in. tion, whose approbation continued to be novated, by rendering the suffrage alternecessary long after the real power of nate. But the golden bull of Charles IV. ra choice had been withdrawn from them.* put an end to all doubts on the rights o! It is not easy to account for all the electoral houses, and absolutely excluded circiLtances tnat gave to seven spirit- Bavaria from voting. The limitation to ual and temporal princes this distinguish- seven electors, first perhaps fixed by aced pre-eminence. The three archbish- cident, came to be invested with a sort ops, Mentz, Treves, and Cologne, were of mysterious importance, and certainly always indeed at the head of the German was considered, until times comparative-.hurch. But the secular electors should ly recent, as a fundamental law of the naturally have been the dukes of four empire.* nations: Saxony, Franconia, Swabia, and 2. It might appear natural to expect Bavaria. We find, however, only the that an oligarchy of seven per- Princesan first of these in the undisputed exercise sons, who had thus excluded untitled in of a vote. It seems probable that, when their equals from all share in ferior nebil the electoral princes came to be distin- the election of a sovereign, ity. guished from the rest, their privilege was would assume still greater authority, and considered as peculiarly connected with trespass farther upon the less powerful the discharge of one of the great offices vassals of the empire. But while the in the imperial court. These were at- electors were establishing their peculiar tached, as early as the diet of Mentz, in privilege, the class immediately inferior 1184, to the four electors, who ever af- raised itself by important acquisitions o1 terward possessed them: the Duke of power. The German dukes, even aftei Saxony having then officiated as arch- they became hereditary, did not succeed marshal, the Count Palatine of the Rhine in compelling the chief nobility within as arch-steward the King of Bohemia as their limits to hold their lands in fief so arch-cup-bearer, and the Margrave of completely as the peers of France had Brandenburg as arch-chamberlain of the done. The nobles of Swabia refused to empire.t But it still continues a prob- follow their duke into the field against elm why the three latter offices, with the the Emperor Conrad II.t Of this aristoelector capacity as their incident, should racy the superior class were denominated not rather have been granted to the dukes princes; an appellation which, after the of Franconia, Swabia, and Bavaria. I eleventh century, distinguished theim have seen no adequate explanation of from the untitled nobility, most of whom this circumstance; which may perhaps were their vassals. They were constit lead us to presume that the right of pre- unt parts of all diets, and though grad election was not quite so soon confined ually deprived of their original participa to the precise number of seven princes. tion in electing an emperor, possessed The final extinction of two great origi- in all other respects, the same rights as nal dutchies, Franconia and Swabia, in the dukes or electors. Some of them the thirteenth century, left the electoral were fully equal to the electors, in birth rif,hts of the count palatine and the Mar- as well as extent of dominions; such a, grave of Brandenburg beyond dispute. the princely houses of Austria, Hesse But the dukes of Bavaria continued to Brunswick, and Misnia. By the division claim a vote in opposition to the kings of Henry the Lion's vast territories., and of Bohemia. At the election of Rodolph by the absolute extinction of the Swabian in 1272 the two
brothers of the house of family in the following century, a great Wittels'bach voted separately, as count many princes acquired additional weight palatint:, and Duke of Lower Bavaria. Of the ancient dutchies only Saxony and Ottocar was excluded upon this occasion; Bavaria remained: the former of which and it was not till 1290 that the suffrage especially was so dismembered, that it was vain to attempt any renewal of the lia, L. xL.; i. 9) quotes the style of the act of electiort from the Chronicle of Francis Pippin. * Schmidt, t. iv., p. 78, 568. Putter, p. 271. * This is manifest by the various passages rela- Pfeffel, p. 435, 565. Struvius, p. 511.:ing to the elections of Philip arni Otho, qu'tied t Pfeffel, p. 209. by Struvius, p. 428, 430. See too Pfeffel, ubt su- $ See the arrangements made in consequence pra, Schmidt, t. iv., p. 79. of Henry's forfeiture, which gave quite a new face a Schmidt. t iv p 78. to Germany, in Pfeffel, p. 234. also n. 437
interesting account of Rodolph's reign. upon Rodolph, count of Hapsburg, at the privileges of Austria were granted to the, upon Rodolph, count of Hapsburg, Henry in 1156, by way of indemnity for prince of very ancient family, and of his restitution of Bavaria to Henry the Lion. The considerable possessions as well in Swisserland as upon each bank of the upper territory between the Inn and the Ems was separated from the latter province, and annexed to Rhine, but not sufficiently powerful to Austria at this time. The Dukes of Austria are ilarm the electoral oligarchy. Rodolph (archi-ducibus palatinis). This expression gave a was brave, active, and just; but his char- hint to the Duke Rodolph IV. to assume the title aceristic quality appears to have been of Archduke of Austria.-Schmidt, t. iii., p. 390. good sense, and judgment of the circumstances in which he was placed. Of this king: a very curious fact, though neither he nor his successors ever assumed the title.-Struvius, lie gave a signal proof in relinquishing p. 463. The instrument runs as follows: Duke.. the favourite project of so many prece- tuous Austrie et Styrim, cum pertinertiis et termi ng emperors, alti leaving Italy alto- nis sui hactenus habuit, ad nomel et honorem regium transferentes, te hactenus ducatum, pra dictorum ducem, de potestatis nostra plenitudine et * Pfeffl, p. 334. Putter, p. 233. magnificenti& speciali promovemus in regem, pet In the instruments relating to the election of libertates et jura praedictum regnum tuum praesen Otho IV., the princes sign their names, Ego N. tis epigrammatis auctoritate donantes, quae regiam elegi et subscripsi. But the counts only as follows: decent dignitatem: ut tamen ex honore quem tbl Ego N. consensi et subscripsi.-Pfeffel, p. 360. libenter addimus, nihil honoris et juris nostri die t Pfeffel, p. 445. Putter, p. 254. Stfvius, p demantis ant imperii subtrahatur. ill. * Struvius, p. 525 Schmidt. Coxe

Page 235 wNAP. V.] GERMANY. 23' Notwithstanding the merit and popu- exclusively; that of Fiance gave him ate of the larity of Rodolph, the electors great advantages. But in Germany c;dispire after refused to choose his son King ferent rule began to prevail about tlie Rodolph. of the Romans in his lifetime; thirteenth century.* An equal partifqioo and, after his death, determined to avoid of the inheritance, without the least re- Adolphus the appearance of hereditary gard to priority of birth, was the general 1292. succession, put Adolphus of law of its principalities. Sometimes tl1. bt1298. Nassau upon the throne. There was effected by undivided possession, o: Henry VI. is very little to attract notice tenancy in common, the brothers resi130s8i. in the domestic history of the ding together and reigning jointly. This 1314. empire during the next two tended to preserve the integrity of domnin Charles IV centuries. From Adolphus to ion; but as it was frequently incommoWen47es.ias Sigismund, every emperor had dious, a more usual practice was to di 1378. either to struggle against a vide the territory. From such partition.s Rob4ejr competitor, claiming the ma- are derived those numerous independent Sigismund jority of votes at his election, principalities of the same house, many 1414. or against a combination of of which still subsist in Germany. In the electors to dethrone him. The impe- 1589, there were eight reigning princes rial authority became more and more in- of the palatine family; and fourteen, in effective; yet it was frequently made a 1675, of that of Saxony.t Originally subject of reproach against the emperors, these partitions were in general absolute that they did not maintain a sovereignty and without reversion; but, as their ef to which no one was disposed to submit. feet in weakening families became evi It may appear surprising, that the Ger- dent, a practice was introduced of ma manic confederacy, under the nominal king compacts of reciprocal succession, supremacy of an emperor, should have by which a fief was prevented from es.. been preserved in circumstances appa- cheating to the empire, until all the male rently so calculated to dissolve it.
But, posterity of the first feudatory should be besides the natural effect of prejudice extinct. Thus, while the Gertnian ermand a famous name, there were sufficient pire survived, all the princes of Hesse or reasons to induce the electors to pre- of Saxony had reciprocal contingencies serve a form of government in which of succession, or what our lawyers call they bore so decided a sway. Accident cross-remainders, to each other's dominions in a considerable degree restricted ions. A different system was gradually the electoral suffrages to seven princes adopted. By the Golden Bull of Charles Without the college, there were houses IV., the electoral territory, that is, the more substantially powerful than any particular district to which the electoral within it. The dutchy of Saxony had suffrage was inseparably attached, beeen subdivided by repeated partitions came incapable of partition, and was to among children, till the electoral right descend to the eldest son. In the fifteenth century, the present house of only the small territory of Wittenberg.

Brandenburg set the first example f esThe great families of Austria, Bavaria, tablishing pritnogeniture by law; the and Luxemburg, though not electoral, principalities of Anspach and Bayreuth were the real heads of the German body; were dismembered from it for the benefit and though the two former lost much of of younger branches; but it was declared their influence for a time through the per- that all the other dominions of the family nicious custom of partition, the empire should for the future belong exclusively seldom looked for its head to any other to the reigning elector. This poetic house than one of these three. measure was adopted in several other While the dutchies and counties of Ger- families; but, even in the sixteenth cenCastom of many retained their originalchar- tury, the prejudice was not removed, and partition. acter of offices or governments, some German princes denounced cursethey were of course, even though consid- on their posterity if they should introduce ered as hereditary, not subject to parti- the impious custom of primogeniture. T ion among children. When they ac- Weakened by these subdivisions, he quired the nature of fiefs, it was still coinsonant- to the principles of a feudal ten- * Schmidt, t. iv., p. 66. Pfeffel, p. 289, main ure, that the eldest son should inherit ac- tains that partitions were not introduced till the cording to the law of primogeniture; an latter end of the thirteenth century. This may be true, as a general rule; but I find the house of inferior provision, or appanage, at most, beBaden divided into two branches, Baden and Hoch being reserved for the younger children. berg, in 1190, with rights of mutual reversion. The, law of England favounrod the eldest t Pfeffel, ib. Putter. e. 189. f Id., p. 28e
Bavaria in 1347; not restrained to seven. The place of legal indeed without opposition, for a
double imperial elections was fixed at Frankfort; election and a civil war were matters of of
coronations, at Aix-la-Chapelle; and course in Germany. Charles IV. has the latter ceremony
was to be performed been treated with more derision by his by the Archbishop of Cologne.
These contemporaries, and consequently by regulations, though consonant to ancien later
writers, than almost any prince in usage, had not always been observed, history; yet he was
remarkably success- and their neglect had sometimes excited ful in the only objects that he
seriously questions as to the validity of elections. pursued. Deficient in personal courage, The
dignity of elector was enhanced by insensible of humiliation, bending with- the Golden Bull as
highly as an:imperial out shame to the pope, to the Italians, to edict could carry it: they were
decclared the electors, so poor and so little rever- equal to kings, and conspiracy against enced
as to be arrested by a butcher at their persons incurred the penalty of high Worms for want of
paying his demand, treason.t Many other privileges are Charles IV. affords a proof that a
certain granted to render themr more completely dexterity and cold-blooded perseverance
sovereign within their dominions. It may occasionally supply, in a sovereign, seems
extraordinary that Charles should the want of more respectable qualities. have voluntarily
elevated an oligarchy, lie has been reproached with neglecting from whose pretensions his
predecessors the empire. But he never designed to had frequently suffered injury. But he
doubled himself about the empire, except had more to apprehend from the two for his private
ends. He did not neglect great families of Bavaria and Austria, the kingdom of Bohemia, to
which he al- whom he relatively depressed by giving most seemed to render Germany a prov-
such a preponderance to the seven elecInce. Bohemia had been long consid- tors, than from
any members of the colored as a fief of the empire, and indeed lege. By this compact with
Brandencould pretend to an electoral vote by no burg he had a fair prospect of adding a other
title. Charles, however, gave the second vote to his own; and there was states by law the right
of choosing a king, more room for intrigue and management, on the extinction of the royal
family, which Charles always preferred to arms, which seems derogatory to the imperial with a
small number, than with the whole prerogative.* It was much more mate- body of princes. rial
that, upon acquiring Brandenburg, The next reign, nevertheless, evinced partly by conquest and
partly by a com- the danger of investing the elec- Deposition pact of succession in 1373, he not
only tors with such preponderating of Weninvested his sons with it, which was con- authority.
Wenceslaus, a su- ceslaus.. formable to usage, but annexed that elec- pine and voluptuous man,
less respected, lorate for ever to the kingdom of Bohe- and more negligent of Germany, if pos.
nxia.t He constantly resided at Prague, * Struvius, p. 637. where he founded a celebrated
iv., p. 566. The Golden Bull not only fixed the palatine vote, in absolute exclusion of Bavaria,
but * Struvius, p. 641. settled a controversy of long standing between the tPfeffcul, ~p. 641.
Scmd vp55 two branches of the house of Saxor.y, Wittenberj ~ Pfeffel, p. 575. Schmidt, t. iv.,
p. 595. P Lauenber, in favou of the former

Page  237 CGnP. V.1 GERMAN E. 931 slble, than his fifiher, was regularly de- law in 1437.
He died in two years, leav posed by a majority of the electoral col- ing his wife pregnant with a
son, Ladistege in 1400. This right, if it is to be laus Posthumus, who afterward reigned
considered as a right, they had already in the two kingdoms just mentioned; and used against
Adolphus of Nassau in 1298, the choice of the electors fell upon Fred and against Louis of
Bavaria in 1346. erick, duke of Styria, second cousin ol They chose Robert count palatine in-
the last emperor, from whose posterity. stead of WVenceslaus; and though the it never
departed, except in a single illlatter did not cease to have some adhe- stance, upon the
extinction of his mal& rents, Robert has generally been counted line in 1740. among the lawful emperors.*. Upon his Frederick III. reigned fifty-three years death the empire returned to the house of a longer period than any of his Reign of Luxemburg; Wenceslaus himself waiv-predecessors; and his person- Frederick III. ing his right in favour of his brother Si- al character was more insignificant. [A. gismund, king of Hungary.t D. 1440-1493.] With better fortune than The house of Austria had hitherto giv- could be expected, considering both these Louse or but two emperors to Germa- circumstances, he escaped any overt atAustria. ny, Rodolph, its founder, and his tempt to depose him, though such a pros Albert, whom a successful rebellion ject was sometimes in agitation. He elevated in the place of Adolphus.: Upon reigned during an interesting age, full oil the death of Henry of Luxemburg, in remarkable events, and big with other1313, Frederick, son of Albert, disputed of more leading importance. The de the election of Louis, duke of Bavaria; struction of the Greek empire, and ap alleging a majority of genuine votes. pearance of the victorious crescent upot This produced a civil war, in which the the Danube, gave an unhappy distinctior Austrian party were entirely worsted. to the earlier years of his reign, and dis Though they advanced no pretensions to played his mean and pusillanimous char the imperial dignity during the rest of acter in circumstances which demanded the fourteenth century, the princes of a hero. At a later season he was drawn that line added to their possessions Ca- into contentions with France and Bur rhinia, Istria, and the Tyrol. As a coun- gundy, which ultimately produced a newv bal ance to these acquisitions, they lost and more general combination of Europea great part of their ancient inheritance an politics. Frederick, always poor, and by unsuccessful wars with the Swiss. scarcely able to protect himself in AusAccording to the custom of partition, so tria the sitions of his subjects, 0i injurious to princely houses, their domin- the inroads of the King of Hungary, was ions were divided among three branches: yet another founder of his family, and one reigning in Austria, a second in-Styria left their fortunes incomparably more and the adjacent provinces, a third in the prosperous than at his accession. The Tyrol and Alsace. [A. D. 1438.] marriage of his son Maximilian with the lbtr This had in a considerable degree heireess of Burgundy began that aggraneclipsed the glory of the house of Haps- dizement of the house of Austria which burg. But it was now its destiny to re- Frederick seems to have anticipated.* -vive, and to enter upon a career of pros- The electors, who had lost a good deal perity which has never since been per- of their former spirit, and were grown manently interrupted. Albert, duke of sensible of the necessity of choosing a Austria, who had married Sigismund's powerful sovereign, made no opposition only daughter, the queen of Hungary and to Maximilian's becoming king of the Bohemia, was raised to the imperial Romans in his father's lifetime. The throne upon the death of his father-in- Austrian provinces were reunited, either under Frederick, or in the first years of Many of the cities, besides some princes, con- Maximilian; so that, at the close of that tinned to recognise Wenceslaus throughout the life of Robert; and the latter was so much considered as a usurper by foreign states, that his ambassa- * The famous device of Austria, A. E. I. O. U., dors were refused admittance at the council of Pisa. was first used by Frederick III., who adopted it oni -Struvius, p. 658. his plate, books, and buildings. These initials t This election of Sigismund was not uncontest- stand for A.ustriae Est Imperare Orbi Universo; or, ea: Josse, or Jodocus, margrave of Moravia, hav- in German, Alles Erdreich Ist Osterreich Unter ing been chosen, as far as appears, by a legal major- than: a bold assumption for a man who was not safe ity. However, his death, within three months, re- in an inch of his dominions.-Struvius, p. 722. He moved the difficulty; and Josse, who was not crown- confirmed the arch-ducal title of his family, which ed aqt Frankfort, has never been reckoned among might seem implied in the original grant of Freer the emperors, though modern critics agree that his ick L., and bestowed other high privileges above title was legitimate.-Struv., p. 684. Pfeffel, p, all princes of the empire. These are enumerate.4 G12, in Coxe's house of Austria, vol. i., p. 263
During the Middle Ages, the German empire, sustained by fully established in that of his grandson, the patrimonial dominions of its chief, the period which we denominate the Middle Ages, the German empire, sustained by the wealth of its chief, who proba. nations, and capable of preserving a bal- bly continued to administer criminal jus. ance between the ambitious monarchies. But, in the thirteenth century, the of France and Spain, citizens, grown richer and stronger eiThe period between Rodolph and Fred- ther purchased the jurisdiction, or usurp Progress of erick II. is distinguished by no ed it through the lord's neglect, or drove free im- circumstance so interesting as out the bailiff by force. The great revriual cities. the prosperous state of the free olution in Franconia and Swabia occaimeperial cities, which had attained their sioned by the fall of the Hlohenstauffen maturity about the commencement of family, completed the victory of the citthat interval. We find the cities of Ger- ies. Those which had depended upon many, in the tenth century, divided into mediate lords became immediately consuch as depended immediately upon the nectd with the empire; and with the empire, which were usually governed by empire in its state of feebleness, when an their bishop as imperial vicar, and such occasional present of money would easias were included in the territories of the the Rhine and in might prefer. Franconia, acquired a' certain degree of it was a natural consequence of the importance before the expiration of the importance which the free citizens had eleventh century. Worms and Cologne reached, and of their immediacy, that manifested a zealou not their of Hen- they were admitted to a place in the rty IV., whom they supported in despite diets, or general meetings of the confed of their bishops. His son Henry V. eracy. They were tacitly acknowledged granted privileges of enfranchisement to be equally sovereign with the electors to the inferior townsmen or artisans, and princes. No proof exists of any law who had hitherto been distinguished from by which they were adopted into the the upper class of freemen, and particu- diet. We find it said that Rodolph of larly relieved them from oppressive usa- Hapsburg, in 1291, renewed his oath ges, -which either gave the whole of their with the princes, lords, and cities. Under noveable goods to the lord upon the the Emperor Henry VII. there is urequivdecease, or at least enabled him to seize ocal mention of the three orders compothe best chattel as his heriot. He took sing the diet; electors, princes, and depaway the temporal authority of the bish- uties from cities. And, in 1344, they apop, at least in several instances, and re- pear as a third distinct college in the stored the cities to a more immediate de- diet of Frankfort.0 pendance upon the empire. The citizens The inhabitants of these free cities alwere classed in companies, according ways preserved their respect for the em to their several occupations; an in- peror, and gave him much less vexation stitution which was speedily adopted than his other subjects. He was indeed in other commercial countries. It does their natural friend. But their nobility not appear that any German city had ob- and prelates were their natural enemies; tained, under this emperor, those privile- and the western parts of Germany were ges of choosing its own magistrates, the scenes of irreconcilable warfare bewhich were conceded about the same tween the possessors of fortified castles time, in a few instances, to those of and the inhabitants of fortified cities. France Gradually, however, they be- Each party was frequently the aggressor. gan to elect councils of citizens as a sort of senate and magistracy. This innova- * In the charter granted by Frederick I. to Spire tion might perhaps take place as early as in 1182, confirming and enlarging that of Henry V., though no express mention is made of any munic cipal jurisdiction, yet it seems imp.ied in the fol. * Pfeffel, p. 187. The Othos adopted the same bowing words: Causam in civitate jam lite con policy in Germany which they had introduced in testatam non
episcopus aut alia potestas extra ci, Italy, conferring the temporal government of cities itatem determinari compellet.-Dumont, p. 108 upon the bishops; probably as a counterbalance to t Schmidt, t. iv., p. 96. Pfeffl, p. 441. the lay aristocracy.-Putter, p. 136. Struvius, t Mansit ibi rex sex hebdomadibuscum princ.; p. 252. bus electoribus et aliis principibus et civitatum nun t Schmidt, t. iii., p. 239. tiis, de suo transitu et de pmstandis servitis it t Schmidt, n. 242. Pfeffl, p. 293. Duhmont, Italian disponendo. —Auctor apud Schmidt, t. vi GCoips Diplomatique, t. i., p. 64 p. 31. o &chmnidt, p. 24.. ~ Pfeffl, r, 552

Page 239 CiAAP. V.] GERMA Y~. 2.1; The nobles were too oftez mere robbers, Rhine united themselves in t strict con who lived upon the plunder of travellers. federacy against the princes, and espe, But the citizens were almost equally in- cially the families of Wirtemburg and Ba attentive to the rights of others. It was varia. It is said that the Emperor Wen their policy to offer the privileges of ceslaus secretly abetted their projects burghership to all strangers. The peas- The recent successes of the Swiss, who antry of feudal lords, flying to a neigh- had now almost established their repub bouring town, found an asylum constant- lic1 inspired their neighbours in the empire ly open. A multitude of aliens, thus with expectations which the event did not seeking as it were sanctuary, dwelt in realize; for they were defeated in this the suburbs or liberties, between the city war, and ultimately compelled to relin. wells and the palisades which bounded quish theirleague. Counter-associations the territory. Hence they were called were formed by the nobles, styled sociePfahlburgher, or burgesses of the pali- ty of St. George, St. William the Lion, sa(les; and this encroachment on the or the Panther.* rights of the nobility was positively, The spirit of political liberty was not but vainly prohibited by several imperial confined to the free immediate Provincial edicts, especially the Golden Bull. An- cities. In all the German prin- states ofthe other class were the Ausburger, or out- cipalities, a form of limited empire. burghers, who had been admitted to priv- monarchy prevailed, reflecting, on a re illeges of citizenship, though resident at a duiced scale, the general constitution of distance, and pretended in consequence the empire. As the emperors shared to be exempted from all dues to their their legislative sovereignty with the diet, original feudal superiors. If a lord re- so all the princes who belonged to that sisted so unreasonable a claim, he incur- assembly had their own provincial states red the danger of bringing down upon composed of their feudal vassals, and of himself the vengeance of the citizens. their mediate towns within their territory. These outburghers are in general classed No tax could be imposed without consent under the general name of Pfahlburgher of the states; and, in some countries. the by contemporary writers.* prince was obliged to account for the As the towns were conscious of the proper disposition of the money granted. Leagues of hatred which the nobility bore In all matters of importance affecting the le cities. towards them, it was their inter- principality, and especially in cases of est to make a common cause, and render partition, it was necessary to consult mutual assistance. From this necessity them; and they sometimes decided beof maintaining, by united exertions, their tween competitors in a disputed succesgeneral liberty, the German cities never sion, though this indeed more strictly besuffered the petty jealousies, which might, longed to the emperor. The provincial no doubt, exist among them, to ripen into states concurred with the prince in masuch deadly feuds as sullied the glory, king laws, except such as were enacted and ultimately destroyed the freedom, of by the general diet. The city of WurtrLombardy. They withstood the bishops burgh, in the fourteenth century, tells its and barons by confederacies of their own, bishop, that if a lord would make any new framed expressly to secure their com- ordinance, the custom is that he must merce against rapine or unjust exactions consult the citizens, who have alwayt of toll. More than sixty cities, with three opposed his innovating upon the ancien ecclesiastical electors at their head, form- laws without
their consent.' ed the league of the Rhine in 1-255, to re- The ancient imperial domain, or pos
pel the inferior nobility, who, having now sessions which belonged to the Alienation c become immediate, abused that inde-
the league of the Rhine in 1-255, to re- The ancient imperial domain, or pos
pelle the inferior nobility, who, having now sessions which belonged to the Alienation c become immediate, abused that inde-
ch of the empire as such, the imperia pendence by perpetual robberies.
The had originally been very exten-
sive. Besides large estates in everother cause, and may be traced perhaps province, the territory upon each barnk to rather a higher date. About the year of the Rhine, afterward occupied by the 1370, a league was formed, which, though counts palatine and ecclesiaislical elecit did not continue so long, seems to have tors, was, until the thirteenth.,entury, an produced more striking effects in Ger-
the imperial domain was deemed so adequate to the support of his dvgnity, that it was
Schmidt, t. iv., p. 98; t. vi., p. 76. Pfeffel, p. usual, if not obligatory for him to gran; 402. Du
sive. Besides large estates in everother cause, and may be traced perhaps province, the territory upon each barnk to rather a higher date. About the year of the Rhine, afterward occupied by the 1370, a league was formed, which, though counts palatine and ecclesiaislical elecit did not continue so long, seems to have tors, was, until the thirteenth.,entury, an produced more striking effects in Ger-
Schmidt, t. iv., p. 98; t. vi., p. 76. Pfeffel, p. usual, if not obligatory for him to gran; 402. Du
Cange, Gloss. v. Pfalburger. Fauxbourg is derived from this word. * Struvius, p. 649. Pfeffel,
293. &1 m. 416 Schmidt, t. vi., p. 8. Putter o. 236

Page 240
epoch which is made by the diet of built a fortress of this kind, the governor Worms, in 1495. This assembly is cel- inquired how he was to maintain himself, no revenue having been assigned for public peace, and of a paramount that purpose. The prelate only desired court of justice, the Imperial Chamber, him to remark that the castle was situaThe same causes which produced ted near the junction of four roads.~ As Establish- continual hostilities among the commerce increased, and the example of ment of French nobility were not likely French and Italian civilization rendered public to operate less powerfully on the Germans more sensible to their own peace. the Germans, equally warlike rudeness, the preservation of public peace with their neighbours, and rather less was loudly demanded. Every diet under civilized. But while the imperial gov- Frederick III. professed to occupy itself eminent was still vigorous, they were with the two great objects of domestic kept under some restraint. We find reformation, peace and law. Temporary Henry III., the most powerful of the - Franconian emperors, forbidding all pri- * Pfeffel, p. 212. vate defiances, and establishing solemnly t Schmidt, t. iv.,p. 108, et infra. Pfeffel, p. 316. Putter, p. 205. t Germani atque Alemanni, quibus census patri Pfeffel, p. 580. monii ad victum suppetit, et hos qui procul urbl + Idem, p. 494. Struvius, p. 546. bus, aut qui castellis et oppidulis dominantr r, quot Struvius, p. 611. In the capitulation of Rob- rum magna pars latrocinio deditur, nobiles consent ert, it was expressly provided that he should re- -Pet. de Andlo. apud Schmidt, t. v., p. 490. tain any escheated fief for the domain, instead of ~ Quem cum officiatus suus interrogans, de quo granting it away; so completely was the Fullic castrum deberit retinere, cum annuis careret redi policy of the empire reversed.-Schmik.t t. v., tibis, dicitur respondisse: Quatuor vim sunt trans p. 44. castrum s:uatw. —Auctor apwn Schmtidt, p. i92.

Page 241 (aA P.v GERMANY. 241 cessations, during which all private hos exclusive of that still possessed by the tility was illegal, were sometimes enact- dukes. As the la e became more inde. ed; and, if observed, which may well be pendent of the empire, the provinci.ai doubted, might contribute to accustom counts palatine lost the importance of men to habits of greater tranquillity. their office, though their name m; y be The leagues of the cities were probably traced to the twelfth and thirteeiith cenulore efficacious checks upon' the d'sturb-turies.* The ordinary administratif ot frs of order. In 1486 a ten years' peace justice by the emperors went into disustwas proclaimed, and before the expira- in cases where states of the empire tion of this period the perpetual abolition were concerned, it appertained to the, of the right of defiance was happily ac- diet, or to a special court of princes. complshed in the diet of Worms.* The first attempt to re-establish an ini. These wars, incessantly waged by the perial tribunal was made by Frederick I} states of Germany, seldom ended in con- in a diet held at Mentz in 1235. A judg*e quest. Very few princely houses of the of the court was appointed to sit daily, middle ages were aggrandized by such with certain assessors, half nobles, half means. That small and independent no- lawyers, and with jurisdiction over all bility, the counts and knights of the em- causes where princes of the empire pire, whom the unprincipled rapacity of were not concerned.t Rodolphof Hapson own age has annihilated, stood burg endeavoured to give efficacy to this through the storms of centuries with judicature; but, after his reign, it under little diminution of their numbers. An xwent the fate of all those parts of the incursion into the enemy's territory, a Germanic constitution which maintained pitched battle, a siege, a treaty, are the the prerogatives of the emperors. Sigeneral circumstances of the minor wars gismond endeavoured to revive this triof the middle ages, as far as they appear bunal; but, as he did not render it permain history. Before the invention of ar- ment, nor fix the place of its sittings, it tillery, a strongly fortified castle, or produced little other good than as it exwalled city, was hardly reduced except cited an earnest anxiety for a regular sysly famine, which a
besieging army, wast- tem. This system, delayed throughout iUg improvidently its means of subsist- the reign of Frederick III., was reserved ence, was full ds likely to feel. That for the first diet of his son.t invention altered the condition of society, The Imperial Chamber, such was the and introduced an inequality of forces, name of the new tribunal, consisted, at that rendered war more inevitably ruin- its original institution, of a chief judge, ows to the inferior party. Its first and who was to be chosen among the princes -most beneficial effect was to bring the or counts, and of sixteen assessors, part. plundering class of the nobility into con- ly of noble or equestrian rank, partly pzotrol; their castles were more easily fessors of law. They were named by taken, and it became their interest to de- the emperor with the approbation of the serve the protection of law. A few of diet. The functions of the Imperial these continued to follow their own pro- Chamber were chiefly the two following. fession after the diet of Worms; but they They exercised an appellant jurisdiction were soon overpowered by the more ef- over causes that had been decided by the ficient police established under Maximil- tribunals established in states of the emtan. pire. But their jurisdiction in private The next object of the diet was to pro- causes was merely appellant. According tincipal vide an effectual remedy for pri- to the original law of Germany, no man Chamber. vate wrongs which might super- could be sued except in the nation or sede all pretence for taking up arms. province to which he belonged. The The administration of justice had always early emperors travelled from one part )een a high prerogative, as well as bound- of their dominions to another, in order to en duty, of the emperors. It was exer- render justice consistently with this fun. cised originally by themselves in person, damental privilege. When the Luxemor by the count palatine, the judge who burg emperors fixed their resi.,ence in alwvays attended their court. In the prov- Bohemia, the jurisdiction of the imperial inces of Germany, the dukes were in- court in the first instance would have trusted with this duty: but, in order to ceased of itself by the operation of thLs control their influence, Otho the Great ancient rule. It was not, however appointed provincial counts palatine, strictly complied with; and it is said thail whose jurisdiction was in some respects * Pfeffel, p. 180. Schmidt, t. iv., p. 116; v., p. 338, 311; t. vi.. t Idem, p. 386. Schmidt, t. iv., p. 564 34. Putter, p. 292, 348. t Pfeffel, t. ii., p. 66 Q.

Page 242 242 EUROPE DURING THE MIDDLE AGES. [CIIAP. V the emperors had a concurrent jurisdic- it was to convoke them, and its military tion with the provincial tribunals even in force to compel obedience. In 1512 foul private causes. They divested them- more circles were added, comprehending selves, nevertheless, of this right, by those states which had been excluded in granting privileges de non evocando; so the first division. It was the business of that no subject of a state which enjoyed the police of the circles to enforce the such a privilege could be summoned into execution of sentences pronounced by the imperial court. All the electors pos- the Imperial Chamber against refractor) sessed this exemption by the terms of the states of the empire.* Golden Bull; and it was specially granted As the judges of the Imperial Chamber o the burgraves of Nuremberg, and some were appointed with the consent Aulic )ther princes. This matter was finally of the diet, and held their sittings Council settled at the diet of Worms; and the in a free imperial city, its establishme;-. Imperial

*Chamber was positively re- seemed rather to encroach on the ancient restricted from taking cognizance of any prerogatives of the emperors. Maximilcauses in the first instance, even where ian expressly reserved these in consenta state of the empire was one of the par- ing to the new tribunal. And, in order tc ties. It was enacted, to obviate the de- revive them, he soon afterward instituted nial of justice that appeared likely to re- an Aulic Council at Vienna, composed of suit from the regulation in the latter case, judges appointed by himself, and under that every elector and prince should es- the political control of the Austrian gov tablish a
tribunal in his own dominions, ernment. Though some German patri. where suits against
himself might be en- ots regarded this tribunal with jealousy, tertained.* it continued until the
dissolution of the The second part of the chamber's ju- empire. The Aulic Council had, in all
risdiction related to disputes between cases, a concurrent jurisdiction. with the two states of the
empire. But these two Imperial Chamber; an exclusive one in could only come before it by way
of ap- feudal and some other causes. But it peal. During the period of anarchy which was
equally confined to cases of appeal; preceded the establishment of its juris- and these, by
multiplied privileges de non diction, a custom was introduced, in or- appellando, granted to the
electoral and der to prevent the constant recurrence superior princely houses, were gradually of
hostilities, of referring the quarrels of reduced into moderate compass.t states to certain
arbitrators, called Aus- The Germanic constitution may be tregues, chosen among states of the
same reckoned complete, as to all its essential rank. This conventional reference be-
characteristics, in the reign of Maximilcame so popular that the princes would ian. In later
times, and especially by not consent to abandon it on the institu- the treaty of Westphalia, it
underwent tion of the Imperial Chamber; but, on the several modifications. Whatever migl-t.
contrary, it was changed into an invaria- be its defects, and many of them seem to: ble and
universal law, that all disputes have been susceptible of reformatio(l between different states
must, in the first without destroying the system of govern. instance, be submitted to the
arbitration ment, it had one invaluable excellence. of Austregues.t it protected the rights of the
weaker The sentence of the chamber would against the stronger powers. The law of Establish-
have been very idly pronounced., nations was first taught in Germany, and ment of’ if means
had not been devised to grew out of the public law of the empire circles. carry them into
execution. In To narrow, as far as possible, the rights earlier times the want of coercive pro- of
war and of conquest, was a natural cess had been more felt than that of ac- principle of those
who belonged to petty tual jurisdiction. For a few years after states, and had nothing to tempt
them in the establishment of the chamber, this de- ambition. No revolution of our own ficiency
was not supplied. But in 1501 eventful age, except the fall of the ancient an institution,
originally planned under French system of government, has been Wenceslaus, and attemptedby
Albert II., so extensive, or SQ likely to produce imlwas carried into effect. The empire, portant
consequences, as the spontanewith the exception of the electorates and ouss: dissolution of the
German empire. the Austria-n dominions, was divided into Whether the new confederacy that
nan six circles; each of which had its coun- been substituted for that venerable.tin. cil of states,
its director, whose pro vince stitution will be equally favourabl, to * Schmidt, t. v., p. 373.
357. Pfeffel p iu2.

Page 243 fHAP VA.] GERMANY. 243 peace, justice, and liberty, is among the confederacy.
The kings obtained dis most interesting and difficult problems pensations from attending the
diets of the that can occupy a philosophical observer.* empire, nor were they able to reinstate
At the accession of Conrad the First, themselves in the privilege thus abandonl,imits of
Germany had by no means ed till the beginning of the last century.* the empire. reached its
present extent on The government of this kingdom, in a the eastern frontier. Henry the Fowler
very slight degree partaking of the feudal and the Othos made great acquisitions character,f
bore rather a resemblance to upon that side. But tribes of Sclovonian that of Poland; but the
nobility were da'origin, generally called Venedic, or, less vided into two classes, the baronial
and properly, Vandal, occupied the northern the equestrian, and the burgthers formed a coast
from the Elbe to the Vistula. These third state in the national diet. For the were independent
and formidable both peasantry, they were in a condition of to the kings of Denmark and princes
of servitude, or predial villanage. The royalty, till, in the reign of Frederick the Great, was restrained by a corona-Barbarossa, two of the latter, Henry the Lion oath, by a permanent senate, and by Lion, duke of Saxony, and Alberi the frequent assemblies of the diet, where a Bear, margrave of Brandenburg, subdued numerous and armed nobility appeared to Mecklenburg and Pommerania, which as- secure their liberties by law or force. I terward became dutchies of the empire. The sceptre passed, in ordinary times, to Bohemia was undoubtedly subject, in the nearest heir of the royal blood; but feudal sense, to Frederick I. and his suc- the right of election was only suspended, censors, though its connexion with Ger- and no king of Bohemia ventured to boast many was always slight. The emperors of it as his inheritance. This mixture sometimes assumed a sovereignty over of elective and hereditary monarchy was Denmark, Hungary, and Poland. But common, as we have seen, to most Eu what they gained upon this quarter was ropean kingdoms in their original consti compensated by the gradual separation of tution, though few continued so long to ad the Netherlands from their dominion, and mit the participation of popular suffrages by the still more complete loss of the king- The reigning dynasty having become dom of Arles. The house of Burgundy extinct, in 1306, by the death of House of possessed most part of the former, and paid Wenceslaus, son of that Otto- Luxemburg as little regard as possible to the imperial car, who, after extending his conquests supremacy; though the German diets in to the Baltic Sea, and almost to the Adri- the reign of Maximilian still continued to atic, had lost his life in an unsuccessful treat the Netherlands as equally subject contention with the Emperor Rodolph, to their lawful control with the states on the Bohemians chose John of Luxemburg, the right bank of the Rhine. But the son of Henry VII. Under the kings of provinces between the Rhone and the this family in the fourteenth century, and Alps were absolutely separated; Swis- especially Charles IV., whose character serland has completely succeeded in es- appeared in a far more advantageous light tablishing her own- independence; and in his native domains than in the empire, the kings of France no longer sought Bohemia imbibed some portion of refineeven the ceremony of an imperial inves- ment and science. A university, erected for Dauphine and Provence. ed by Charles at Prague, became one of Bohemia, which received the Christian Bohemia faith in the tenth century, was * Pfeffel, t. ii., p. 497. ~~~~~~~~~~Bohemia ----- fai----t Bona ipsorum toth Bohemia pleraque omma its consti- elevated to the rank of a kingdom hereditaria sont seu allodialia perpaucal feudalia -OU. near the end of the twelfth. The -Stransky, Resp. Bohemica, p. 392. Stransky dukes and kings of Bohemia were feudal- was a Bohemian Protestant, who fled to Holland ly dependant upon the emperors, from after the subversion of the civil and religious liber whom they received investiture. They ties of his country by the fatal battle of Prague, is whom they received investiture. They 1621. possessed, in return, a suffrage among the $ Dubravius, the Bohemian historian, relates seven electors, and held one of the great (lib. xviii.) that the kingdom having no written laws, offices ii. the imperial court. But, sep- Wenceslaus, one of the kings, about the year 1300. arated by a rampart of mountains, by a sent for an Italian lawyer to compile a code. But oifenceyramp of morintaind ad the nobility refused to'consent to this; aware, prcb. ifference of origin and language, and ably, of the consequences of letting in the prercg perhaps by national prejudices, from Ger- ative doctrines of the civilians. They opposed,a many, the Bohemians withdrew as far as the same time, the institution of a university possible from the general politics of the Prague, which, however, took pace afterward'in der Charles IV. _ Stransky, Resp. Bobem, Coxe's Honue oi E The first edition of this work was published Austria, p. 487. asrly in 1818. Schmidt, Core. Q
the their retention of the sacramental cup, of university, who had distinguish-which the priests had latterly thought fit ed himself by opposition to many abuses to debar laymen; an abuse indeed not then prevailing in the church, repaired to sufficient to justify a civil war, but so the council of Constance, under a safe con- tally without pretence or apology, that duct from the Emperor Sigismund. In vi- nothing less than the determined obstinacy of this pledge, to the indelible in- of the Romish church could have maizi. famy of that prince and of the council, he tained it to this time. The Taborites, was condemned to be burnt; and his dis- though no longer led by Zisca, gained: ciple, Jerome of Prague, underwent after- some remarkable victories, but were al nussitewear. ward the same fate.: His coun- last wholly defeated; while the Catholic trymen, aroused by this atroci- and Calixtin parties came to an accomity, flew to arms. They found at their modation, by which Sigismund was achead one of those extraordinary men, knewledged as King of Bohemia, which whose genius, created by nature and he had claimed by the title of heir to his called into action by fortuitous events, brother Wenceslaus, and a few indulappears to borrow no reflected light from gences, especially the use of the sacraJohn Zisca. that of others. John Zisca had mental cup, conceded to the moderate not been trained in any school Hussites. [A. D. 1433.] But this cornwhich could have initiated him in the pact, though concluded by the council of science of war; that, indeed, except in Basle, being ill observed throughout the peritaly, was still rude, and nowhere more fidious bigotry of the See of Rome, the so than in Bohemia. But, self-taught, he reformers armed again to defend their re became one of the greatest captains who ligious liberties, and ultimately elected a had appeared hitherto in Europe. It ren- nobleman of their own party [A D. 1458], ders his exploits more marvellous, that by name George Podiebrad, to the throne he was totally deprived of sight. Zisca of Bohemia, which he maintained during has been called the inventor of the mod- his life with great vigour and prudence ~ e.n art of fortification; the famous moun- Upon his death they chose Uladislaus tain near Prague, fanatically called Tabor, [A. D. 1471], son of Casimir, king of Po. became, by his skill, an impregnable in- land, who afterward obtained also the trenchment. For his stratagems he has kingdom of Hungary. [A. D. 1527.] Both been compared to Hannibal. In battle, these crowns were conferred on his son Weing destitute of cavalry, he disposed at Louis, after whose death, in the unfortuintervals ramparts of carriages filled with nate battle of Mohacz, Ferdinand of Aussoldiers, to defend his troops from the tria became sovereign of the two kingenem-y's horse. His own station was by doms. the chief standard; where, after hearing The. Hungarians, that terrible peolpe the circumstances. of the situation ex- who laid waste the Italian and plained, he gave his orders for the dispo- German provinces of the empire Hutlng; sition of the army. Zisca was never de- in the tenth century, became proselytes feated; and his genius inspired the Hus- soon afterward to the religion of Europe, sites with such enthusiastic affection, that and their sovereign, St. Stephen, was adsome of those who had served under him mitted by the pope into the list of Chrisrefused to obey any other general, and tankings. Thoughthe Hungarians were denounced themselves Orphans, in of a race perfectly distinct from either commemoration of his loss. He was in- the Gothic or the Slavonian tribes, their deed a ferocious enemy, though some of system of government was in a great his cruelties might, perhaps, be extenua- more natural to rude nations, who had soldiers affable and generous, dividing but recently accustomed themselves to among them all the spoil.* settled possessions, than a territorial aris [A. I. 1424.] Even during the lifetime tocracy, jealous of unlimited or even he Calixtins of Zisca, the Hussite sect was reditary power in their chieftain, and sub disunited; the citizens of Prague jugating the inferior power to that servian many of the nobility contenting them- tude, which, in such a state of society, is s) Ives with moderate demands, while the the unavoidable consequence of poverty. Taborites, his peculiar, followers, were The marriage of an Hungarian princesi

Page 245 l’!4 P. V.] GERMANY 2.4 than it had been with the affairs of Italy. power, frequently defeated. but i,nconI have mentioned in a different place the quered in defeat. If the renown of Hun. circumstances which led to the invasion niades may seem exaggerated by the parof Naples by Louis, king of Hungary, and tiality of writers who lived under the the wars of that powerful monarch with reign of his son, it is confirmed by more SBiasm l.,YVenice. [A. D. 1392.]:By mar- unequivocal evidence, by the dread and rying the eldest daughter of hatred of the Turks, whose children were Louis, Sigismund, afterward emperor, ac- taught obedience by threatening them quired the crown of Hungary, which, upon with his name, and by the deference of a her death without issue, he retained in jealous aristocracy to a man of no dishis own right, and was even able to trans- tinguished birth. He surrendered to nit to the child of a second marriage, and young Ladislaus a trust that he had exerto her husband, Albert, duke of Austria. cised with perfect fidelity; but his merit From this commencement is deduced the was too great to be forgiven, and the connexion between Hungary and Austria. court never treated him with cordiality. [A. D. 1437.] In two years, however, Al- The last, and the most splendid service of bert, dying, left his widow pregnant; but Hunniades, was the relief of Belgrade. the states of Hungary, jealous of Austrian [A. D. 1456.] That strong city was Relief of influence, and of the intrigues of a mi- besieged by Aahomet II., three Belgrade nority, without waiting for her delivery, years after the fall of Constantinople; Uladislaus. bestowed the crown upon Ula- its capture would have laid open all Hundislaus, king of Poland. [A. D. garry. A tumultuary army, chiefly col1410.] The birth of Albert's posthumous lected by the preaching of a friar, was son, Ladislaus, produced an opposition in intrusted to Hunniades; he penetrated behalf of the infant's right; but the Aus- into the city, and having repulsed the trian party turned out the weaker, and Turks in a fortunate sally, wherein MlaUladislaus, after a civil war of some du- hornet was wounded, had the honour of ration, became undisputed king. Mean- compelling him to raise the siege in conwhile a more formidable enemy drew fusion. The relief of Belgrade was nuore near. The Turkish arms had subdued all important in its effect than in its immeServia, and excited a just alarm through- diate circumstances. It revived the spirout Christendom. Uladislaus led a con- its of Europe, which had been appalled siderable force, to which the presence of by the unceasing victories of the infidels the Cardinal Julian gave the appearance Mahomet himself seemed to acknowl; of a crusade, into Bulgaria, and after sev- edge the importance of the blow, and selera successes, concluded an honourable dom afterward attacked the Hungarians. treaty with Amurath II. [A. D. 1444.] Hunniades died soon after this achieve Battle of But this he was unhappily per- ment, and was followed by the King LaWvrna. suaded to violate, at the instiga- dislaus.* The states of Hungary, altion of the cardinal, who abhorred the though the Emperor Frederick III. had impiety of keeping faith with infidels.* secured to himself, as he thought, the reHeaven judged of this otherwise, if the judgment of Heaven was pronounced to those prudently brave men, who, when victory judgment of Heaven was pronounced is out of their power, reserve themselves to iiighI upon the field of Warna. In that fatal another day; which is the characteristicof all par-' battle Uladislaus was killed, and the Hun- tisans accustomed to desultory warfare. This is garians utterly routed. The crown was the apology made for him by 2Eneas Sylvius: for now permitted to rest on the head of tasse rei militaris perito nulla in pugna salus visa, Lyoungladislaus; but the regency was et salvare aliquos quam omnes perire maluit. Po young Ladislausbuthereency loni acceptam eo prelio cladem Huniadiis vecordia allotted by the states of Hungary to a na- atque
ignavie tradiderunt; ipse sua consilia spretniades. tive warrior, John Hunniades. t conquestus est. I observe that all the writers This hero stood in the breach upon Hungarian affairs have a party bias one way or other. The best and most authentic account o, Hunniades seems to be, still allowing for this par tiality, in the chronicle of John Thwrocz, who. A+ hineas Sylvius lays this perfidy on Pope Eu- lived under Matthias. Bonfinius, an Italian coin genius IV. Scripsit Cardinalli, nullum valere pilier of the same age, has amplified this original au fcedus, quod se inconsulto cum hostibus religionis thory in his three decades of Hungarian history. percussum esset, p. 397. The words in italics are * Ladislaus died at Prague, at the age of twen slipped in to give a slight pretext for breaking the ty-two, with great suspicion of poison, which fell treating chiefly on George Podiebrad and the Bohernmans t Hunniades was a Wallachian, of a small farm- XEneas Sylvius was with him at the time, and in ily. The Poles charged him with cowardice at letter written immediately after, plainly hintstnis, Warn. —("Eneas Sylvius, p. 398.) And the Greeks and his manner carries with it more persuasion than impute the same to him, or at least desertion of his if he had spoken out.-Epist. 324. Mr. Coxo.;oops, at Cossova, where he was defeated in 1418. however, informs us that the Bohomian Histnrianw inondanus, ad ann. 1448.) Probablvhe was one have fully disproved the charge.
system, stood with respect to their de- the forest cantons, he pretended, after pendants. In the twelfth century, the his election to the empire, to send impe Swiss towns rise into some degree of rial bailiffs into their valleys, as adminis. importance. Zuric was eminent for com- trators of criminal justice. Their opamercial activity, and seems to have had pression of a people unused to control, no lord but the emperor. Basle, though whom it was plainly the design of Albert subject to its bishop, possessed the usu- to reduce into servitude, excited thse al privileges of municipal government. generous emotions of resentment which Berne and Friburg, founded only in that a brave and simple race have seldom century, made a rapid progress, and the the discretion to repress. Three men, tatter was raised, along with Zuric, by Staffacher of Schwitz, Forst of Uri, Frederick II., in 1218, to the rank of a Melchthal of Underwald, each Thierinsur free imperial city. Several changes in with ten chosen associates, met rection. the principal Helvetian families took by night in a sequestered field, and place in the thirteenth century, before swore to assert the common cause of the end of which the house of Hapsburg, their liberties, without bloodshed or inunder the politic and enterprising Ro- jury to the rights of others. Theil success was answerable to the justice * Spondanus frequently blames the Italians, of their undertaking; the three cantons who received pensions from Matthias, or wrote at unanimously took up arms, and expellea his court, for exaggerating his virtues or dissem- their oppressors without a contest. [A. bling his misfortunes. And this was probably theby case. However, Spondanus has rather contracted D. 1308.] Albert's assassination by hi a prejudice against the Corvini. A treatise of Gal- nephew, which followed soon afterward etus Martinus, an Italian ltt rateur, De dictis et fac- fortunately gave them leisure to consol tis Mathize, though it often notices an ordinary saying as jocose or facete dictum, gives a favourable * Planta's History of the Helvetian families. impression of Matthias's ability, and also of his vol. i., chaps. 2-5. itegrity. t Id., c. 1.

Page 247 ! Hat. V.]. GERMANY 24 idate their union.* He was succeeded burghers (a privilege which virtually iln. in the empire by Henry VII., jealous of plied a defensive alliance against any she Austrian family, and not at all dis-assailant), and uniformly respecting the pleased at proceedings which had been legal -ights of property. Many feudal accompanied with so little violence or superiorities they obtained from the disrespect for the empire. But Leopold, owners in, a more peaceable manner: duke of Austria, resolved to humble the through purchase or mortgage. Thus peasants who had rebelled against his the house of Austria, to which the extenfither, led a considerable force into their sive domains of the counts of Kyburg country. The Swiss, commending them- had devolved, abandoning. after repeated selves to Heaven, and determined rather defeats, its hopes of subduing the forest.o perish than undergo that yoke a sec- cantons, alienated a great part of its ond time, though ignorant of regular possessions to Zuric and Berne.* And discipline and unprovided with defensive the last remnant of their ancient IelveteBattle of armour, utterly discomfited the tic territories in Argovia was wrested ill Morgarten. assailants at Morgarten.t [A. D. 1417 from Frederick, count of Tyrol, who, 1315.] imprudently supporting Pope John XXIII. This great victory, the Marathon of against the council of Constance, had Swisserland, confirmed the independence been put to the ban of the empire. These Formation of the three original cantons. conquests Berne could not be induced to of Swiss After some years, Lucerne, con- restore, and thus completed the indecoofede- tiguous in situation and alike in prestige of the confederate republics.t racy. interests, was incorporated into The other free cities, though riot yet intheir confederacy. It was far more ma- incorporated, and the few remaining nobles. terially enlarged about the middle of whether lay or spiritual, of whom the the fourteenth century, by the accession abbot of St. Gall was the principal, entered of Zuric, Glaris, Zug, and Berne, all into separate leagues with different
can which took place within two years. The tons. Swisserland became therefore, in first and last
of these cities had already the first part of the fifteenth century, a been engaged in frequent
wars with the free country, acknowledged as such by Helvetian nobility, and their internal
neighbouring states, and subject to no polity was altogether republican. They external control,
though still compreacquired, not independence, which they hended within the nominal
sovereignty already enjoyed, but additional security of the empire. by this union with the
Swiss, properly The affairs of Swisserland occupy a so called, who, in deference to their very
small space in the great chart of Eupower and reputation, ceded to them the ropeanhistory But
in some respects they first rank in the league. The eight are more interesting than the
revolutions already enumerated are called the an- of mighty kingdoms. Nowhere besides cient
cantons, and continued till the late do we find so many titles to our sympareformation of the
Helvetic system to thy, or the union of so much virtue with possess several distinctive
privileges, so complete success. In the Italian read even rights of sovereignty over sub-
publics, a more splendid temple may ject territories, in which the five cantons seem to have
been erected to liberty; but, of Friburg, Soleure, Basle, Schaffausen, as we approach, the
serpents of faction and Appenzel, did not participate. From hiss around her altar, and the form
of this time the united cantons, but espe- tyranny flits among the distant shadows cially those
of Berne and Zuric, began behind the shrine. Swisserland, not abto extend their territories at the
expense solutely blameless (for what republic has of the rural nobility. The same contest been
so?), but comparatively exempt frombetween these parties, with the same turbulence,
usurpation, and injustice, has termination, which we know generally well deserved to employ
the native pen to have taken place in Lombardy during of an historian, accounted the most
eleventh and twelfth centuries, may quent of the last age T Other nations be traced with
1. bards too, the Helvetic cities acted with $ I am unacquainted with Muller's history in the and
moderation towards the nobles original language; but, presuming the first volume policy and
moderation otowards the nobles of Mr. Planta's History of the Helvetic Confederation. whom they
ove rame, admitting them to cy tc be a free translation or abridgment of it, I cai the franchises
of their community, as co- wall conceive that it deserves the encomiums of Madame de Stael,
and other foreign critics. It is very rare to meet with such picturesque and lively * Plar. ta, c. 6.
t I'd., c. 7. delineation in a modern h'storian of distant times t I'd., cc 8, 9. ( I'd., c. 10. But I.must
observe, ha, if the al' ient chroni
sterling probity which had the enemy's knights, dismounted from distinguished their earlier efforts for in..their horses, presented an impregnable dependence. These events, however, do barrier of lances, which disconcerted the not fall within my limits; but the last Swiss; till Winkelried, a gentleman of year of the fifteenth century is a leading Underwald, commending his wife and epoch with which I shall close this children to his countrymen, threw him- sketch. Though the house of Ratification self upon the opposite ranks, and collect- Austria had ceased to menace of their ining as many lances as he could grasp, the liberties of Helvetia, and dependence forced a passage for his followers by bu- had even been for many years in 1500 rying them in his bosom.t its ally, the Emperor Maximil an, aware The burghers and peasants of Swisser- of the important service he might derive Excellence land, ill provided with cavalry, from the -cantons in his projects upor, vf the Swiss and better able to dispense with Italy, as well as of the disadvantage ht troops. it than the natives of chain- sustained by their partiality to French inpaignt countries, may be deemed the prin- terest, endeavoured to revive the un cipal restorers of the Greek and Roman extinguished supremacy of the empire. tactics, which. place the strength of ar- That supremacy had just been restored mies in a steady mass of infantry. Be- in Germany by the establishment of the sides their splendid victories over the Imperial Chamber, and of a regular pecudukes of Austria and their own neigh- niary contribution for its support as well buring nobility, they had repulsed, in the as for other purposes, in the diet of year 1375, one of those predatory bodies Worms. The Helvetic cantons were of troops, the scourge of Europe in that summoned to yield obedience to these age, and to whose licentiousness king- imperial laws; an innovation, for such doms and free states yielded alike a pas- the revival of obsolete prerogatives must sive submission. They gave the dauphin, be considered, exceedingly hostile to their afterward Louis XI., who entered their republican independence, and involving country, in 1444, with a similar body of consequences not less material in their ruffians, called Armagnacs, the disbanded eyes, the abandonment of a line of policy' mercenaries of the Eiglishwar, sufficient which tended to enrich, if not to agreason to desist from his invasion and to grandize them. Their refusal to comply respect their valour. That able prince brought on a war, wherein the Tyrolese formed indeed so high a notion of the subjects of Maximilian, and the Swabian Swiss, that he sedulously cultivated their league, a confederacy of cities in that alliance during the rest of his life. He province lately formed under the empe. ror's auspices, were principally engaged cles of Swisserland have enabled Muller tc embel- against, the Swiss. But the success of lish his narration with so much circumstantial de- the latter was decisive; and, after a erl tail, he has been remarkably fortunate. his an- ribe devastation of the frontiers of Ger thories. No man could write the anna:s: England or France in the fourteenth century with such many, peace was concluded upon terms particularity, if he was scrupulous not to fill up the very honourable for Swisserland. The meager sketch of chroniclers from the stories of cantons were declared free from the ju his invention. The striking scenery of Swisser- risdtion of the Imperial Chamber, n land, and Muller's exact acquaintance with it, r isdbution of the Imperial Chamber, have given him anothe: advantage as a painter of from all contributions imposed by th history. diet. Their right to enter into foreign,o.. i.. c ft Vol i, c 10. alliance, even hostile to the empire. if i.

Page 249 rUne. VI.] GREEKS AND SARACENS. 249 was not expressly recognised, continued treaty of Westphalia, their real sover. unimpaired in practice; nor am 1 aware eignty must be dated by an historian frowm that they wert, at any time afterward sup- the year when every prerogative which posed to incur the crime of rebellion by a government can exercise was finally such proceedings. Though, perhaps, in abandoned.* the strictest letter of public law, the Swiss. cantons were not absolutely released from * Planta, vol. ii., i. th:ei subjection to
the empire until the CHAPTER VI. HISTORY OF THE GREEKS AND SARACENS. Rise of Mahometanism.-Causes of its Success.- a permanent influence upon the Appea. Progress of Saracen Arms. —Greek Empire. — civil history of mankind, none ane of Ma Decline of the Khalifs.-The Greeks recoveriet. part of their Losses.-The Turks.-The Cru- could so little be anticipated by hornet sades.-Capture of Constantinople by the Lat- human prudence as that effected by the ms.-Its Recovery by the Greeks.-The Mo- religion of Arabia. As the seeds of in guls.-The Ottomans.-Danger at Constantino- visible disease grow up sometimes in siple.- Ti'mur.-Capture of Constantinople by Ma- lence to maturity, till they manifest themhomet 11.- Alarm of Europe. selves hopeless and irresistible, the grad. THE difficulty which occurs to us in ual propagation of a new faith in a barenendeavouring to fix a natural commence- barous country beyond the limits of the ment of modern history, even in the empire was hardly known perhaps, and Western countries of Europe, is much certainly disregarded, in the court ot enhanced when we direct our attention Constantinople. Arabia, in the age o! to the Eastern Empire. In tracing the Mahomet, was divided into many small long series of the Byzantine annals, we states, most of which, however, seem to never lose sight of antiquity; the Greek have looked up to Mecca as the capital *language, the Roman name, the titles, of their nation and the chief seat of their:he laws, all the shadowy circumstance religious worship. The capture of that of ancient greatness, attend us throughout city accordingly, and subjugation of its the progress from the first to the last of powerful and numerous aristocracy, read. the Constantines; and it is only when ily drew after it the submission of the we observe the external condition and minor tribes, who transferred to the conrelations of their empire, that we per- quor the reverence they were used to ceive ourselves to be embarked in a new show to those he had subdued. If we sea, and are compelled to deduce, from consider Mahomet only as a military points of bearing to the history of other usurper, there is nothing more explicable, n:ttions, a line of separation, which the or more analogous, especially to the domestic revolutions of Constantinople course of Oriental history, than his sucwould not satisfactorily afford. The ap- cess. But as the author of a religious peart-nce of Mahomet, and the conquests imposture, upon which, though avowedly of his disciples, present an epoch in the unattested by miraculous powers, and history of Asia still more important and though originally discountenanced by more definite than the subversion of the the civil magistrates, he had the boldness Roman empire in Europe; and hence the to found a scheme of universal dominion boundary line between the ancient and which his followers were half enabled to modern divisions of Byzantine history realize, it is a curious speculation, by will intersect the reign of Heraclius. what means he could inspire so sincere, That prince may be said to have stood so’ ardent, so energetic, and so pertma oa the verge of both hemispheres of time, wont a belief. whose youth was crowned with the last A full explanation of the causes which victories over the successors of Arta- contributed to the progress of Causes of xerxes, and whose age was clouded by Mahometanism is not perhaps his success the first calamities )f Mahometan inva- at present attainable by those most con sion. versant with this department of litera Oif all the revolutions which have had ture But we may point out several ol
iewish and Christian fellow-citizens, to ments of the former kind for the diffusion Lin
superstitions of their ancient idola- of his system. We are not to judge of try;w next, the artful
incorporation of this by rules of Christian purity or of Lenets, usages, and traditions from the
European practice. If polygamy was a various religions that existed in Arabia;I prevailing
usage in Arabia, as is not quesand thirdly, the extensive application of tioned, its permission
gave no additional the precepts in the Koran, a book con- license to the proselytes of Mahomet,
fessedly written with more elegance and who will be found rather to have narpurity, to all legal
transactions, and all rowed the unbounded liberty of Oriental the business of life. It may be
expected manners in this respect; while his decithat I should add to these, what is com- ded
condemnation of adultery, and of in cestuous connexions, so frequent among We arte
verydestitute of satisfactory materialsbarbarous nations, does not argue a very for the history
of Mahomet himself. Abulfeda, the A demost judicious of his biographers, lived in the four-
laxand accommodating morality. A deteenth century, when it must have been morally vout
Mussulman exhibits much more of impossible to discriminate the truth amid the tor- the Stoical
than the Epicurean character. rent of fabulous tradition. Al Jannabi, whom Gag- Nor can any
one read the Koran without. it is a mere, legend writer; it wouldible that it
breathes an auster be as rational to quote the Acta Sanctorum as his an romance. It is therefore
difficult to ascertain the an-d scrupulous spirit. And, in fact, the real character of the prophet,
except as it is dedu- founder of a new religion or sect is little cible from the Koran; and some
skeptical Orien- likely to obtain permanent success by in talists, if I am not mistaken, have
called in ques- dulging the vices and luxuries of manki ntuf absolute geniuitnaeknessdeven
of that. dulging the vices and luxuries of mankind non the absolute genuineness even of that.
Gibtori has hardly apprized the reader sufficiently of rather be disposed to reckon the t:he
crumbling ifundation upon which his narrative severity of Mahomet's discipline among af
Mahomet's life and actions depends. the causes of its influence. Precepts of t The very curious
romance of Antar, written ritual observance, being always definite;erhaps before the
appearance of Mahomet, seemusuvocal, are less likely to be to render it probable, that however
idolatry, as we are told by Sale, might prevail in some parts of neglected, after their obligation
has been Arabia, yet the genuine religion of the descendants acknowledged, than those of
moral virof Ishmael was a belief in the unity of God as tue. Thus the long fasting, the pilgrim
strict AJ is laid down in the Koran itself, and ac- ages, the regular prayers and ablutions,
comparied by the same antipathy, partly religious, partly national, towards the Fire-
worshippers, the constant almsgiving, the abstinence which Mahomet inculcated. This
corroborates from stimulating liquors, enjoined by the what I had said in the text before the
publication Koran, created a visible standard of praet that work. tice among its followers, and
preserved a $ I am very much disposed to believe, notwithstanding continual recollection of their law.
standing what seems to be the general opinion, ntual recollection of their law. hat Mahomet
had never read any part of the New But the prevalence of Islam in the life. Testament. His
knowledge of Christianity ap- time of its prophet, and during the first pears to be wholly
derived from the apocryphal ages of its existence, was chiefly owing gospels, and similar
works. He admitted the mi- to the spirit of martial energy that he iraculous conception and
prophetic character of fused into it. The religion of ahomet Jesus, but not his divinity or pre-
existence. Hence fused into it. The religion of Mahomet it is rather surprising to read, in a
popular book of is as essentially a military'system as the sermons by a living prelate, that all
the heresies of institution of chivalry in the west of Eu. the Christian church (I quote the
substance from rope. The people of Arabia, a race of memory) are to be found in the Koran,
but espe- strong passions and cially that of Arianism. No one who knows what sanguinary
temper, Arianism is, and what Mahometanis is, could inured to habits of pillage and murder,
possibly fall into so strange an error. The mis- found in the law of their native prophet, fortune
has been, that the learned writer, while not a license, but a command to desolate accumnulating
a mass of reading upon this part of the world, and a promise of all that their his subject,
neglected what should have been the nucleus of the whole, a perusal of the single book
glowing imaginations could anticipate of which contains the doctrine of the Arabian impos-
Paradise annexed to all in which they tor. In this strange chimera about the Arianism most
delighted upon earth. It is difficult of Mahomet, he has been led away by a misplaced for us, in
the calmness of our closets, to!rust in Whitaker; a writer almost invariably in conceive that
feverish intensity of exciterne wrong, and whose bad reasoning upon all the points of historical
criticism which he attempted ment to which mall may be wrought, to,disicss is quite noto-ious.
when the animal and intellectual ener.

Page 251 CHAP. VI.] GREEKS AND SARACENS. gies of hi3 nature converge to a point,
The Roman and Persian enlpires, engaand the buoyancy of strength and cour- ged in tedious
and indecisive hostility age reciprocates the influence of moral upon the rivers of Mesopotamia
and the sentiment or religious hope. The effect Armenian mountains, were viewed by the of
this union I have formerly remarked ambitious fanatics of his creed as theiT in the crusades; a
phenomenon perfectly quarry. In the very first year of Mahom analogous to the early history of
the et's immediate successor, Abubeker, ea] Saracens. In each, one hardly knows of these
mighty empires was invado!: whether most to admire the prodigious The latter opposed but a
short resistance exertions of heroism, or to revolt from The crumbling fabric of eastern de.pot
the ferocious bigotry that attended them. ism is never secure against rapid ant But the crusades
were a temporary ef- total subversion; a few victories, a feNfort, not thoroughly congenial to
the sieges, carried the Arabian arms front spirit of Christendom, which, even in the the Tigris
to the Oxus, and overthrew darkest and most superstitious ages, was with the Sassanian
dynasty, the annot susceptible of the solitary and over- ciant and famous religion they had
ruling fanaticism of the Moslems. They professed. Seven years of active and needed no
excitements from pontiffs and unceasing warfare sufficed to subju preachers to achieve the
work to which gate the rich province of Syria, though they were called; the precept was in
defended by numerous armies and fortheir law, the principle was in their tified cities [A. D.
632-639]; and the hearts, the assurance of success was in Khalif Omar had scarcely returned
thanks their swords. 0 prophet, exclaimed for the accomplishment of this conquest, Ali, when
Mahomet, in the first years when Amrou his lieutenant announced of his mission, sought
among the scanty to him the entire reduction of Egypt. and hesitating assembly of his friends a
After some interval, the Saracens won vizier and lieutenant in command, I am their way along
the coast of Africa as the man; whoever rises against thee, I far as the pillars of Hercules [A. D.
647 will dash out his teeth, tear out his eyes, -698], and a third province was irrevot couples were the glad tidings of the Arabian
prophecy. To the idolaters indeed, or under the
Pyrenees,* those who acknowledged no special rev- These conquests, which astonish the
C:lation, one alternative only was pro- careless and superficial, areless State ofthe posed,
conversion or the sword. The perplexing to a calm inquirer than Greek enPeopole of the Book,
as they are termed their cessation; the loss of half pire. in the Koran, or four sects of Christians, the Roman empire, than the preservation Jews, Magians, and Sabians, were per- of the rest. A glance from MAedina to mitted to redeem their adherence to their Constantinople, in the middle of the sev ancient law, by the payment of tribute, enth century, would probably have induand other marks of humiliation and ser- ced an indifferent spectator, if such a bevidtude. But the limits which Mahomet- ing may be imagined, to anticipate by an intolerance had prescribed to itself eight hundred years the establishment o1 were seldom transgressed, the word pledged lo unbelievers was seldom for- * Ockley's History of the Saracens. Cardornne. R6volutions de l'Afrique et de l'Eeragne. The feited; and, with all their insolence and former of these works is q vell known, and l:::t v oppression, the Moslem conquerors were admired for its simplicity and picturesque detatls. mild and liberal in comparison with those Scarcely any narrative has ever excelled in beauty who obeyed the pontiffs of Rome or Con- that of the death of Hossein. But these do not stanltinople. tend to render it more deserving of confidence. On the contrary, it may be laid down as a pretty At the death of Mahomet in 632, his general rule, that circumstantiality, which enhanc-s First con- temporal and religious sover- the credibility of a witness, diminishes that of ar quests of the eignty embraced, and was lim- historian remote in time or situation. And I eb baracens. ited by the Arabia peninsula. serve that Reiske, in his preface to Abulfeda, speaks of Wakidi, from whom Ockley s book is * Gibhhhon, vol ix., p. 284 but a translation, as a mere fabul: st.

Page 252 IEUROPE DURING THE MIDDLE AGES. [CHL- g1 a Mahomnetan domini- ,n upon the shores often governed by feeble tyrants. Bu. ne of the Hellespont. The fame of Herac- regulation could be more than a tempo. lius had withered in the Syrian war; and rary preservative against civil war. The his succe:3sors appeared as incapable to dissensions which still separate and rean resist a.s they were unworthy to govern. der hostile the followers of Mahomet Their despotism, unchecked by law, was may be traced to the first events that en often punished by successful rebellion; sued upon his death, to the rejection of Lut not a whisper of civil liberty was his son-in-law Ali by the electors of Meever heard, and the vicissitudes of servi- dina. Two reigns, those of Abubeker tude and anarchy consummated the mor- and Omar, passed in external glory and al degeneracy of the nation. Less igno- domestic reverence; but the old age of rant than the western barbarians, the Othman was weak and imprudent, and Greeks abused their ingenuity in theo- the conspirators against him established ogical controversies, those especially the first among a hundred precedents of which related to the nature and incarna- rebellion and regicide. Ali was now tion of our Saviour; wherein the dispu- chosen; but a strong faction disputed his tants, as is usual, became more positive right; and the Saracen empire was for and rancorous as their creed receded many years distracted with civil war, from the possibility of human apprehen- among competitors who appealed, in resion. Nor were these confined to the ality, to no other decision than that of clergy, who had not, in the East, obtain- the sword. The family of Omrmiyah suced the prerogative of guiding the national ceeded at last in establishing an unresistfaith; the sovereigns sided alternately ed, if not an undoubted title. But rebellwith opposing factions; Heraclius was ions were perpetually afterward breaking qot too brave, nor Theodora too infamous, out in that vast extent of dominion, till i,r discussions of theology; and the dis- one of these revolters acquired by suscenters from an imperial decision were cess a better name than rebel, and foundinvolved in the double proscription of ed the dynasty of the Abbassides..reason and heresy. But the persecu- [A. D. 750.] Damascus had been the tors of their opponents at home pretend- seat of empire under the Ommi- Khalifs of ad to cowardly scrupulousness in the ades; it was removed by the suc- Bagdad. field;' nor was the Greek church ashamed ceeding family to their new city
of Bagd to require the lustration of a canonical dad. There are not any names in the peniarnce
from the soldier who shed the long line of khalifs, after the companions blood of his enemies in
a national war. of Mahomet, more renowned in history But this depraved people were preserv-
than some of the earlier sovereigns who Decline of ed from destruction by the vices reigned in
this capital, Almansor, Haroun the Sara- of their enemies, still more than Alraschid, and
Almamdn. Their splenPens. by some intrinsic resources which did palaces, their numerous
guards, their they yet possessed. A rapid degenera- treasures of gold and silver, the popucy
enfeebled the victorious Moslems in lousness and wealth of their cities, formtheir career. That
irresistible enthu- ed a striking contrast to the rudeness and siasm, that earnest and disinterested
zeal poverty of the western nations in the of the companions of Mahomet was in a same age. In
their court, learning, which great measure lost, even before the first the first Moslem had
despised as unwargeneration had passed away. In the like, or rejected as profane, was held in
fruitful valleys of Damascus and Bassora, honour.* The Khalif Almamdn, especial. the Arabs
of the desert forgot their ab- ly, was distinguished for his patronage stenlious habits. Rich from
the tribute of letters; the philosophical writings of of an enslaved people, the Mahometan
Greece were eagerly sought and translaovernins knew no employment of rich- ted; the stars
were numbered, the course es but in sensual luxury, and paid the of the planets was measured;
the Arabiprice of voluptuous indulgence in the re- ans improved upon the science they
boslaxation of their strength and energy. rowed, and returned it with abundant inUJnder the
reign of Moawiyah, the fifth terest to Europe in the communication of khalif, an hereditary
succession was sub- numeral figures and the intellectual lanstituted for the free choice of the
faith- guage of algebra. Yet the merit of the ful, by which the first representatives of the
profet had been elevated to pow- * The Arabian writers date the origin of their er; and this
regulation, necessary as it literature (except those works of fiction which had plainly was to
avert in some degree the always been popular) from the reign of Almansor A. D. 758.-
Abulpharagius, p. 160. Gibbon, c. 52. Aangers of schism and civil war, exposed t Several very
recent publications contain in.ie kinjdomU to the certainty of being terestngdWeailson
8arace!ite.atui Beringtonl'c
from the Sea of Aral owned that the former are in much bet-
ter taste. In the wars which the khalifs or their Though the Abbassides have
acquired lieutenants waged against them, many of more celebrity, they never attained the these
Turks were led into captivity, and real strength of their predecessors. Un-
dispersed over the empire. Their strength der the last of the house of Omniyah, one and courage distinguished
them among a command was obeyed almost along the people grown effeminate by luxury; and
whole diameter of the known world, from that jealousy of disaffection among his the banks of
the Sihon to the utmost pro-

objects, so natural to an eastern monmrontry of Portugal. But the revolution arch, might be an additional motive with which changed the succession of khalifs
the Khalif Motassem to form bodies of produced another not less important. A guards out of
these prisoners. But his fugitive of the vanquished family, by name policy was fatally
erroneous. More rude, Abdalrallman, arrived in Spain; and the and even more ferocious than
the Arabs, Moslems of that country, not sharing in they contemned the feebleness of the the
prejudices which had stirred up the khalifate, while they grasped at its richPerslans in favour of
the line of Abbas, es. The son of Motassem, Motawakkel, and conscious that their remote
situa-

was murdered in his palace by the barbation entitled them to independence, pro-
rians of
the north; and his fate revealed separation claimed him Khalif of Cordova. the secret of the
empire, that the choice of Spain There could be little hope of re- of its sovereign had passed to
their slaves. and Africa. ducing so distant a dependance; Degradation and death were
frequently and the example was not unlikely to be the lot of succeeding khalifs; but, in the
imitated. In the reign of Haroun Alras-

...
the second, though shorter, was more appear after this time in oriental annals. terrible, and her
walls, as well as her 3. During these revolutions of the pal-port, were actually invested by the
comn ace, every province successively shook bined forces of the Khalif Waled, under off its
allegiance; new principalities were his brother Moslemma.* The final dis formed in Syria and
Mesopotamia, as comfiture of these assailants showed the well as in Khorasan and Persia, till
the resisting force of the empire, or rather dominion of the Commander of the Faith- of its
capital; but perhaps the abandonfil was literally confined to the city of metent of such maritime
enterprises by the Bagdad and its adjacent territory. Fora Saracens may be in some measure
astime, some of these princes, who had cribed to the removal of their metropolis been
appointed as governors by the kha- from Damascus to Bagdad. But the lifs, professed to
respect his supremacy, Greeks in their turn determined to disay naming him in the public
prayers and pute the command of the sea. By posupon the coin; but these tokens of de-
sessing the secret of an inextinguishable pendance were gradually obliterated.* fire, they fought on
superior terms: their Such is the outline of Saracenic his- wealth, perhaps their skill, enabled
them Pevival of tory for three centuries after to employ larger and better appointed the Greek
Mahomet; one age of glorious vessels; and they ultimately expelled Empire. conquest; a second
of stationary, their enemies from the islands of Crete but rather precarious greatness; a third
and Cyprus. By land they were less deof rapid decline. The Greek empire sirous of
encountering the Moslems. meanwhile survived, and almost recov-The science of tactics is
studied by the ered from the shock it had sustained. pusillanimous, like that of medicine by
Besides the decline of its enemies, sev- the sick; and the Byzantine emperors, eral
circumstances may be enumerated, Leo and Constantine, have left written tending to its
preservation. The rare- treatises on the art of avoiding defeat., of time province of Cilicia had
been over- protracting contest, of resisting attack.-I run by the Mahometans; but between But
this timid policy, and even the pert this and the lesser Asia, Mount Taurus chase of armistices
from the Saracens. raises its massy buckler, spreading, as a were not ill calculated for the state
of natural bulwark, from the seacoast of the both nations; while Constantinople ternancient
Pamphylia to the hilly district of porized, Bagdad shook to her founda Isuria, whence it
extends in an easterly tions; and the heirs of the Roman name direction, separating the
Cappadocian and might boast the immortality of their own Cilician plains, and, after throwing
off empire, when they contemplated the disconsiderable ridges to the north and solution of that
which had so rapidly south, connects iteself with other chains sprung up.and perished. Amid all
the of mountains that penetrate far into the crimes and revolutions of the Byzantine Asiatic
continent. Beyond this barrier government, and its history is but a series the Saracens formed
no durable settle- of crimes and revolutions, it was never ment, though the armies of Alraschid
dismembered by intestine war; asedition wasted the country as far as the Helles- in the army, a
tumult in the theatre, a pont, and the city of Amorium in Phry- conspiracy in the palace,
precipitated a gia was razed to the ground by Al Mo- monarch from the throne; but the
alletassem. The position of Constantinople, giance of Constantinople was instantly chosen with
a sagacity to which the transferred to his successor, and the provcourse of events almost gave
the appear- inces implicitly obeyed the voice of the ane of prescience, secured her from any
capital. The custom too of partition, so' Gibbon, c. 52. Univ. Hist., vol. ii. Al Radi's command
of the t Idem, c. 53. Constantine PorphyrogenitLs ix army is only mentioned by the last. his
advice to his son as to the administration ofthe * The decline of the Saracensis fully discussed
empire, betrays a mind not ashamed to confess in the 52d chapter of Gibbon, which is, in itself,
a weakness and cowardice, and pleasing itself in. complete philosophical dissertation upon;his
part petty arts to elunde the rapacity, or divide the power,F history 1 of its enemies
The Gaz pire. It stood in the middle of the terth nevides fell the earliest victims; Their century, as vicious indeed and cowardly, but Persia, violated in turn by quests. but more wealthy, more enlightened, and every conqueror, was a tempting and un far more secure from its enemies, than resisting prey. Togrol Bek, the founder under the first successors of Heraclius.

of the Seljukian dynasty of Turks, overFor about one hundred years preceding threw the family of Bowides, who bad there had been only partial wars with the long reigned at Isphahan, respected the Mahometan potentates; and in these the pageant of Mahometan sovereignty in the emperors seem gradually to have gained Khalif of Bagdad, embraced with all his the advantage, and to have become more tribes the religion of the vanquished, and frequently the aggressors. [A. D. 963- commenced the attack upon Christendom 975.] But the increasing distractions of by an irruption into Armenia. [A.. D. 1071.] His nephew and successor, Alj; Nicephorus Phocas and John Zimisces, Arslan, defeated and took prisoner the to attempt the actual recovery of thelost Emperor Romanus Diogenes; and the provinces. They carried the Roman conquest of Asia Minor was almost cornarms (one may use the term with less re- pleted by princes of the same family, the luctance than usual) over Syria; Antioch Seljukians of Rflm,* who were permitted and Aleppo were taken by storm, Damas- by Malek Shah, the third sultan of the cus submitted; even the cities of Meso- Turks, to form an independent kingdom. potamia, beyond the ancient boundary of Through their own exertions, and the the Euphrates, were added to the trophies selfish irpolicy of rival competitors for of Zimises, who unwillingly spared the the throne of Constantinople, who bartercapital of the khalifate. From such dis- ed the strength of the empire for assisttt conquests it was expedient, and in- ance, the Turks became masters of the deed necessary, to withdraw; but Cilicia Asiatic cities and fortified passes; nor and Antioch were permanently restored did there seem any obstacle to the inva to the empire. At the close of the tenth sion of Europe.t century, the emperors of Constantinople In this state of jeopardy, the Greel possessed the best and greatest portion empire looked for aid to the na- The first of the modern kingdom of Naples, a part tions of the west, and received it Crusade.. of Sicily, the whole European dominions in fuller measure than was expected, oi of the Ottomans, the province of Anato- perhaps desired. The deliverance of lia or Asia Minor, with some part of Syria Constantinople was indeed a very sec a nd Armenia.* ondary object with the crusaders. But it These successes of the Greek empire was necessarily included in their scheme TqheTurks. were certainly much rather due of operations, which, though they all to the weakness of its enemies, tended to the recovery of Jerusalem than to any revival of national courage must commence with the first enemies and vigour; yet they would probably that lay on their line of march. The have been more durable, if the contest Turks were entirely defeated, their capihad been only with the khalifate, or the tal of Nice restored to the empire. As kingdoms derived from it. But a new the Franks passed onwards, the Emperoi actor was to appear on the stage of Asiat- Alexius Commenus trod on their footic tragedy. The same Turkish nation, steps, and secured to himself the fruits the slaves and captives from which had for which their enthusiasm disdained to become arbiters of the sceptre of Bagdad, wait. He regained possession of the passed their originallimits of the laxartes strong places on the AEgean shores, of or Sihon. The sultans of Gazna, a dy- the defiles of Bithynia, and of the entire nasty whose splendid conquests were of coast of Asia Minor, both on the Euxine very short duration, had deemed it politic and Mediterranean Seas, which the Turk. to divide the strength of these formidable ish armies, composed of cavalry and un. allies, by inviting a part of them into Kho- used to regular
warfare, could not recover. They covered that fertile prov- er. So much must undoubtedly be as* Gibbon, c. 52 and 53. The latter of these Rfim, i.e., country of the Romans. chapters contains as luminous a sketch of the con- t Gibbon, c. 57. De Guignes, Hist. des Huns, dision of Greece, as the former does of Saracenic t. ii., 1. 2. history. In each the facts are not grouped histor- 1 It does not seem perfectly clear whether the tcally, according to the order of time, but philosop- seacoast, north and south, was reannexed to th;-.allv, according to their relations. empire during the reign of Alexius, or of his ga

Page 256 456 EUROPE DURING THE MIDDLE AGES tChil'. Vt cribcd to the. first crusade. But I think surrender. But alimosities sprmgln iuat the general effect of these expedi- from religious schism and nat oral jealb no-as has been overrated by those whoousy were not likely to be allayed by coasider them as having permanently re- such remedies; the Greeks, wounded ill Progress of tarded the progress of the Turk- their pride and bigotry, regarded the legittke Greeks. ish power. The Christians in imate emperor as a creature of their enePalestine and Syria were hardly in con- mies, ready to sacrifice their church, a,act with the Seljukian kingdom of Romans, stipulated condition of his restoration, to;he only nemies of the empire; and it is that of Rome. ~ In a few months a new,ot easy to perceive that their small and sedition and conspiracy raised another feeble principalities, engaged commonly usurper, in defiance of the crusaders' army in defending themselves against the Ma- encamped without the walls. [A. D. aometan princes of Mesopotamia, or the 1204.] The siege instantly recommenFatimite khalifs of Egypt, could obstruct ced; and after three months the city of the arms of a sovereign of Iconium upon Constantinople was taken by storm. The the Meare or the Halys. Other causes tale of pillage and murder is always unia ite adequate to explain the equipoise in form; but the calamities of ancient capiwhich the balance of dominion in Ana- talia, like those of the great, impress us tolia was kept during the twelfth century; more forcibly. Even now we sympathe valour and activity of the two Com- thise with the virgin majesty of Constan-. nen, John and Manuel, especially the tinople, decked with the accumulated former; and the frequent partitions and wealth of ages, and resplendent with the insnal feuds, through which the Selju- monuments of Roman empire and of Grecians of Iconium, like all other oriental cian art. Her populousness is estimated gove nople by their descendants one hunired in numbers; instead of the thatched years afterward, when the Durth roofs, the mud walls, the narrow streets;n nlumber of those expeditions was turn- the pitiful buildings of those cities, sh: (d to the, subjugation of Constantinople had marble and gilded palaces, churchei tsel, One of those donlestic revolu- and monasteries, the works of skilful ar tions which occur perpetually in Byzan- chitects, through nine centuries, gradual tine history, had placed a usurper on the ly sliding from the severity of ancien imperial *throne. The lawful monarch taste into the more various and brilliani was condemned to blindness and a pris- combinations of eastern fancyt In the on; but the heir escaped to recount his libraries of Constantinople were collect misfortunes to the fleet and army of cru- ed the remains of Grecian learning; her saders, assembled in the Dalmatian port forum and hippodrome were decorated of Zara. [A. D. 1202.] This armament with those of Grecian sculpture; but nei had been collected for the usual purposes, ther would be spared by undistinguishing and through the usual motives, temporal rapine; nor were the chiefs of the cruand spiritual, of a crusade; the military saders more able to appreciate the loss force chiefly consisted of French nobles; than their soldiery. Four horses, that the naval was supplied b--y
the republic of Venetia, whose doge commanded per- 

* Ville Hardouin reckons the inhabitants of Con of Venice, whose doge commanded per- 

stantinople at quatre cens mil hommes ou plus, by sonally in the expedition. It was not ap- which Gibbon understands him to mean men of a parently consistent with the primary ob- military age. Le Beau allows a million for the ject of retrieving the Christian affairs in whole population.-Gibbon, vol. xi., p. 213. We Palestine, to interfere in the government should probably rate London, in 1204. too high at of a Christian empire; but the tempta- 40,000 souls. Paris had been enlarged by Philip, f a Christian empire; but the tempta- Augustus, and stood on more ground than London. tion of punishing a faithless people, and — Delamare sur la Police, t. i., p. 76. ~he hope of assistance in their subsequent t o quanta civitas, exclaims Fulk of Chartres a operations, prevailed. They turned their hundred years before, nobilis et decora! quot mo. >rows up the Archipelago; and notwith. nasteria quoque palatia sunt in es, opere mero tanding the vast population and defen hbrefacta! 

quot etiam in plateis vel in vicis opera Atanding the vlast population and defen tAsd spectandum mirabilia! Tadium est quidem sible strength of Constantinople, compell - magnum recitare, quanta sit ibi opulentia benorum ed the usurper to fly, and the citizens to omnlum, auri et argenti, palliorum multiformium, sacrarumque reliquiarum. Omni etiam tempore navigio freluent cuncta hominum necessaria illua mant son John Comnenu- But the doubt is hard- 

afferuntu>. —Du Chesne, Scrip Rerim Gallia *y worth noticing. rum, t. iv.. 822.

Page 257 UXAP. l. J GREEKS AND SARACENS. 257 breathe in the brass of Lysippus, were on the side of their former enemies, and removed from Constantinople to the were generally on terms of friendship square of St. Mark at Venice; destined with the Seljukians of Iconium. Tloat again to become the trophies of war, and monarchy indeed had sufficient objects to follow the alternate revolutions of con- of apprehension for itself. Their own quest. But we learn from a contemporary example in changing the up- Invasiors ot Greek to deplore the fate of many other land plains of Tartary for the Asia by the pieces of sculpture, which were destroy- cultivated valleys of the south Karismians ed in wantonness, or even coined into was imitated in the thirteenth century by brass money.* two successive hordes of northern barThe lawful emperor and his son had barians. The Karismians, whose tents Partition of perished in the rebellion that had been pitched on the lower Oxus and the empire. gave occasion to this catas- Caspian Sea, availed themselves of the tro-ohe; and there remained no right to decline of the Turkish power to establish interfere wit hlat of conquest. But the their dominion in Persia, and menaced, Latins were a promiscuous multitude, though they did not overthrow, the kingand what their independent valour had dom of Iconium. A more tremendous earned was not to be transferred to a storm ensued in the irruption single master. Though the name of em- of Moguls under the sons of Mouls peror seemed necessary for the govern- Zingis Khan. From the farthest regions ment of Constantinople, the unity of de- of Chinese Tartary issued a race more spotic power was very foreign to the fierce and destitute of civilization than principles and the interests of the crusa- those who had preceded, whose numbers ders. In their selfish schemes of ag- were told by hundreds of thousands, and grandizement they tore in pieces the whose only test of victory was devastaGreek empire. One fourth only was al- tion. [A. D. 1218-1272.] All Asia, from lotted to the emperor, three eighths were the Sea of China to the Euxine, wasted the share of the republic of Venice, and beneath the locusts of the north. They the remainder was divided among the annihilated the phantom of authority chiefs. Baldwin, count of Flanders, ob- which still lingered with the name cf tained the imperial title, with the feudal khalif at Bagdad. They reduced into desovereignty over the minor principalities. pendance, and finally subverted, the SelA monarchy thus dismembered had little jukian dynasty of Persia, Syria, and Icoprospect of honour or durability. The nium. The Turks of the
latter kingdom Latin emperors of Constantinople were betook themselves to the mountainous more contemptible and unfortunate, not country, where they formed several petty so much from personal character as po- principalities, which subsisted by incuritical weakness, than their predecessors; sions into the territory of the Moguls or their vassals rebelled against sovereigns Greeks. The chief of one of these, nanot more powerful than themselves; the med Ottman, at the end of the thirteenth Bulgarians, a nation who, after being century [A. D. 1299], penetrated into the long formidable, had been subdued by the province of Bithynia, from which his imperial arms, and only recovered inde- posternity were never to withdraw.* pendence on the eve of the Latin con- The empire of Constantinople had nevquest, insulted their capital; the Greeks recovered the blow it receivThe Greeks viewed them with silent hatred, ed at the hands of the Latins. state ititha recover and hailed the dawning deliver- Most of the islands in the Archi- Greek emConstanti- ance from the Asiatic coast. pelago, and the provinces of pire. ple On that side of the Bosphorus, proper Greece from Thessaly southw;ar., the Latin usurpation was scarcely for a were still possessed by those invaders. moment acknowledged; Nice became The wealth and naval power of the enothe seat of a Greek dynasty, who reigned pire had passed into the hands of the with honour as far as the Maeander; and maritime republics; Venice Genoa, Pl. crossing into Europe, after having estab- sa, and Barcelona were enriched by a lished their dominion throughout Roma- commerce which they carried on as innia and other provinces [A. D. 1261], ex- within the precincts of pelled the last Latin emperors from Con- Constantinople, scarcely deigning to so. stantinople in less than sixty years from licit the permission or recognise the suits capture. premacy of its master. [A. D. 1352.] In During the reign of these Greeks at a great battle fought under the walls of; F4lce, they had fortunately little to dread * De Guignes, Hist. des Huns, t. tii, I. 15. Gilb * Gibbon, c. 60. bon, c. 64.
ing Constantinople, invested it by sea under the children of Zingis, at the same and land. [A. D. 1396.] The Greeks period as that which overwhelmed Persia. called loudly upon their brethren of the The Russian monarchy was destroyed inr west for aid against the common enemy this invasion, and for two hundred years of Christendom; but the flower of French that great country lay prostrate under the chivalry had been slain or taken in the yoke of the Tartars. As they advanced, battle of Nicopolis in Bulgaria,* where Poland and Hungary gave little opposithe King of Hungary, notwithstanding tion; and the farthest nations of Europe the heroism of these volunteers, was en- were appalled by the tempest. But Ger. tirely defeated by Bajazet. The Empe- many was no longer as she had been iin ror Manuel left his capital with a faint the anarchy of the tenth century; the hope of exciting the courts of Europe Moguls were unused to resistance, and to some decided efforts, by personal rep- still less inclined to regular warfare; they resentations of the danger; and, during retired before the Emperor Frederick II. his absence, Constantinople was saved, [A. D. 1245], and the utmost points of not by a friend, indeed, but by a power their western invasion were the cities of more formidable to her enemies than to Lignitz, in Silesia, and Neustadt, in Ausherself. tria. In the fourth and last The loose masses of mankind, that of the Tartars, their progress in Europe TheTartars without laws, agriculture, or is hardly perceptible; the Moguls of Tior Moguls of fixed dwellings, overspread the mur's army could only boast the destruct. Timur. vast central regions of Asia, tion of Azoph, and the pillage of some have at various times been impelled, by Russian provinces. Timur, the soi er necessity of subsistence, or through the eign of these Moguls, and founder of their second dynasty, which has been * The Hungarians fled in this battle, and desert- more permanent and ynasty, which has been ed their allies, according to the M6moires de Bou- more permanent and celebrated than that cicaut, c. 25. But Froissart, who seems a fairer of Zingis, had been the prince of a small authority, imputes the defeat to the rashness of the tribe in Transoxiana, between the Gihon French.-Part iv., ch. 79. The Count de Nevers and Sirr, the doubtful frontier of settled (Jean Sans Peur, afterward Duke of Burgundy), and pastoral nations. His own energy who commanded the French, was made prisoner with others of the royal blood, and ransomed at a and the weakness of his neighbours are very high price. Many of eminent birth and merit sufficient to explain the revolution hN were put to deiaith; a fate from which Boucicaud effected. Like former conquerors, Towas saved by the interference of the Count de grol Bek and Zingis, he chose the road Nevers, who might better himself have perished through Persia; and, meeting little rewith honour on that occasion, than survived to plunge his couitlry;n to civil war and his name sistance from the disordered governments into infamy. of Asia, extended his empire on one side

Page 259 C xAP. VI.] GREEKS AND SARACENS. 259 to the Syrian coast, while by successes dantly employed in self-defene e. [A D still more renowned, though not belong-1444.] ing to this place, it reached on the other The two monarchies which have suc -to the heart of Hindostan. In his old cessively held their seat in the city of age, the restlessness of ambition impelled Constantine, may be contrasted in the him against the Turks of Anatolia. Ba-circumstances of their decline. In the iazet hastened from the siege of Constan- present day we anticipate, with an assutinople to a more perilous contest': his rance that none can deem extravagant, Defeat of defeat and captivity, in the plains the approaching subversion of the OttoBajazet of Angora [A. 1D. 1402], clouded man power; but the signs of internal for a time the Ottoman crescent, and weakness have not yet been confirmed preserved the wreck of the Greek empire by the dismemberment of provinces; and for fifty years longer. the arch of dominion, that long since has The Moguls did not improve their seemed nodding to its fall, and totters at Danger of victory; in the western parts of every blast of the north, still rests upon
Constan-

Asia, as in Hindostan, Timur was the landmarks of ancient conquest, and tinopie. But a barbarian destroyer, though spans the ample regions from Bagdad to at Samarcand a sovereign and a legisla-

Belgrade. Far different were the events tor. He gave up Anatolia to the sons of that preceded the dissolution of the Greek B.

ajazet; but the unity of their power empire. Every province wasinturn subwas broken; and the Ottoman kingdom, due;

city opened her gates Its fall like those which had preceded, experien-
to the conqueror; the limbs were ced the evils of partition and mutual ani-

lopped off one by one; but the pulse still mosity. For about twenty years an op-

beat at the heart, and the majesty of the portunity was given to the Greeks of re-

Roman name was ultimately confined to covering part of their losses; but they

the walls of Constantinople. Before Mawere incapableof making the best use of homet II.

planted his cannon against this advantage, and though they regained them, he had completed every smaller possession of part of Romania, did not ex-

conquest, and deprived the expiring emirpate a strong Turkish colony that held pire of every hope of succour or delay. the city of Gallipoli in the Chersonesus. It was necessary that Constantinople [A. D. 1421.1 When Amurath II., there-

should fall; but the magnanimous resignafore, reunited under his vigorous

seep-
tion of her emperor bestows an honour tre the Ottomar monarchy, Constantinon-

fall which her prosperity sel. ple was exposed to another siege and dom earned. The long deferred but in to fresh losses. Her walls, however, evitable moment arrived [A. D. 1453], repelled the enemy; and, during the and the last of the Cesars (I will not say reign of Amurath, she had leisure to re-

of the Palaeologi) folded sound him the peat those signals of distress which the imperial mantle, and remembered the princes of Christendom refused to ob-

name which he represented in the dignity serve. The situation of Europe was in-
of heroic death. It is thus that the inteldeed sufficiently inauspicious: France, lectual principle, when enfeebled by disthe original country of the crusades and of ease or age, is said to rally its energies chivalry,

was involved in foreign and do-
in the presence of death, and to pour the mestic war; while a schism, apparently radianc of unclouded reason around the interminable, rent the bosom of the Latin last struggles of dissolution. church, and impaired the efficiency of the Though the fate of Constantinople had only power that could unite and animate been protracted beyond all rea-

Alarm exits disciples in a religious war. Even sonable expectation, the actual cited by it when the Roman pontiffs were best dis-

intelligence operated like that in Europe. posed to rescue Constantinople from de-
of sudden calamity. A sentiment of struction, it was rather as masters than consternation, perhaps of self-reproach, as allies that they would interfere; their thrilled to the heart of Christendom. ungenerous bigotry, or rather pride, die-

There seemed no longer any thing to tated the submission of her church, and divert the Ottoman armies from Hun
ta. the renunciation of her favourite article ry; and, if Hungary should be subdued, it of distinctive faith. The Greeks yielded was evident that both Italy and the Get.

w'i' th reluctance and insincerity in the man empire were exposed to invasion.,* council of Florence; but soon rescedned their treaty of union. Eugenius IV. pro-

* Sive vincitur Hungaria, sive coacta jungitul cured a short diversion on the side of Turcis, neque Italia neque Germania tuta etnt, neque satis Rhenus Gallos secures reddet. —:En Flungary; but after the unfortunate bat-

Sylv., p. 678. This is part ofa discourse pronoun le of Warna, the Hungarians were abun-

red by ZEneas Sylvius before the diet of Frankfoet R 2
formed attempting to restore unanimity. War into a regular force with the name of Jan. was proclaimed against the Turks at the izaries. After conquest had put an end diet of Frankfort, in 1454; but no efforts to personal captivity, a tax of every fifthi were made to carry the menace into ex- male child was raised upon the Christian execution. No prince could have sat on population for the same purpose. The the imperial throne more unfitted for the arm of Europe was thus turned upon heremergency than Frederick III.; his mean self; and the western nations must have spirit and narrow capacity exposed him contended with troops of hereditary roto the contempt of mankind; his avarice businesst and intrepidity, whose emulous and duplicity ensured the hatred of Aus- enthusiasm for the country that had adopttria and Hungary. During the papacy of ed them was controlled by habitual obePius II., whose heart was thoroughly end- dience to their commanders.* gaged in this legitimate crusade, a more Yet, forty years after the fall of specious attempt was made by convening Constantinople, at the epoch of Charles a European congress at Mantua. Almost VIII.'s expedition into Italy, the just apall the sovereigns attended by their en- prehensions of European statesmen might voy; it was concluded that 50,000 men- have gradually subsided. Except the at-arms should be raised, and a tax levied Morea, Negropont, and a few other unfor three years of one tenth from the important conquests, no realSuspension c revenues of the clergy, one thirtieth from progress had been made by the Ottoman those of the laity, and one twentieth from the Ottomans. Mahomet II. conquests. the capital of the Jews.* Pius engaged had been kept at bay by the Hungarians; to head this armament in person; but he had been repulsed with some ignomini when he appeared next year at Ancona, ny by the knights of St. John from the the appointed peace of embarkation, the Island of Rhodes. A petty chieftain deprinces had failed in all their promises of men and money; and he found only a head- * In the long declamation of 2Eneas Sylvius bel long crowd of adventurers, destitute of fore the diet of Frankfort, in 1454, he has the follow every necessary, and expecting to be fed in contrast between the European and Turkish militia; a good specimen of the artifice with which and paid at the pope's expense. It was an ingenious orator carl disguise the truth, while not by such a body that Mahomet could he seems to be stating it most precisely. Conferbe expelled from Constantinople. If the amus nunc Turcos et ros invicem; et quid speran Christian sovereigns had given a steady dum sit, si cum illis pugnetis, examinemus. Wis and sincere co-operation, the contest nati ad arma, illi tracti. Vos armati, illi inermes; vos gladios versatis, illi cultris utuntur; vos ballswould soll have been arduous and unicer- ta tenditis, illi arcus trahunt; vos loricaw tha Institution of tain. In the early crusades, cesque protegent, illos culcitra tegit; vos equos reJanizaries. the superiority of arms, of skill, Fitis, illi ab equis reguntur; vos nobiles in bellum and even of discipline, had been uniform- ducitis, illi servos aut artifices cogunt, &c. &c., p. 685. This, however, had little effect upon the ly on the side of Europe. But the pres- hearers, who were better judges of military affairs ent circumstances were far from similar. than the secretary of Frederick III. Pius II., o. An institution, begun by the first and per- Aeneas Sylvius, was a lively writer and a skilful infected by the second Amurath, had given triguer. Long experience had given him a consid0totheTurkish armies, what their enemies erable insight into European politics; and his views are usually clear and sensible. Though not still wanted, military subordination and so learned as some popes, he knew much better veteran experience. Aware, as it seems, what was going forward in his own time. But the vanity of displaying his eloquence betrayed him into which, though too declamatory, like most of his a strange folly, when Se addressed a very long let-writings, is an interesting illustration of the state of ter to Mahomet II., explaining the Catholic faith EnIope, and of the impression produced by that and urging him to be baptized; in which case, sa calamity. Spondanus, ad an. 1454, has given large far from preaching a crusade against the Turks, he extracts from this oration. would gladly make use of their power to recover * Spondanus. Neither Charles VTI., nor even the rights of the church. Some of his
inducements Philip of Burgundy, who had made the loudest are curious, and must, if made public, have been professions, and pledged himself in a fantastic pa- highly gratifying to his friend Frederick III. Quip geant at his court, soon after the capture of Con- De ut arbitramur, si Christianus fuisses, mortue stantinople, to undertake this crusade, was sincere Ladislao Ungariax et Bohemiae rege, nemo praeter in his promises. The former pretended apprehen-. te sua regna fuisset adeptus. Sperassent Ungari sions of invasion from England, as an excuse for post diuturna bellorum mala sub tuo regimine pa 3endingnotroops; which, consideringthe situation cem, et illos Bohemi secuti fuissent; sed cumr of England in 1459, was a boc1 attempt upon the esses nostrae religicnis hostis, elegen.:nt Ur.ali credulity of mankird &c.- Epist. 396

Page 261 a.r VII.1 ECCLESIASTICAL POWER. 20 fled this mighty conqueror for twenty session of Mahomet. On his death a dis years in the mountains of Epirus; and puted succession involved his children in the persevering courage of his desulto- civil war. Bajazet, the. eldest, obtained ry warfare with such trifling resources, the victory; but his rival brother Zizirm ind so little prospect of ultimate success, fled to Rhodes, from whence he was remay justify the exaggerated admiration moved to France, and afterward to Rome. M ith which his contemporaries honoured Apprehensions of this exiled prince seem tkh names of Scanderbeg. Once only to have dictated a pacific policy to the the crescent was displayed on the Cala- reigning sultan, whose character did not brian coast [A. D. 1480]; but the city of possess the usual energy of Ottoman Otranto remained but a year in the pos- sovereigns. CHAPTER VII. HISTORY OF ECCLESIASTICAL POWER DURING THE MIDDLE AGES. Wealth of the Clergy-its Sources.-Encroach- tain immoveable estates, the revenues of ments on Ecclesiastical Property —their Juris- which were applicable to their own main diction - arbitrative - coercive - their Political Power. - Supremacy of the Crown. - Charle- tenance and that of the poor.* These magne.-Changeafter his Death, and Encroach- indeed, were precarious, and liable to ments of the Church in the ninth Century.-Pri- confiscation in times of persecution. But macy of the See of Rome-its early Stage.- it was among the first effects of the conGregory I.-Council of Frankfort-false Decre- version of Constantine, to give not only tals. —Progress of Papal Authority.-Effects of Excommunication. - Lothaire. — State of the a security, but a legal sanction, to the terChurch in the tenth Century. -Marriage of ritorial acquisitions of the church. The Priests. - Siinony.- Episcopal Elections.-Im- edict of Milan, in 313, recognises the perial Authority over the Popes.-Disputes con- actual estates of ecclesiastical corpora. cerning Investitures.-Gregory VII. and Henry tions.t Another, published in 321, grants IV.-Concordat of Calixtus.-Election by Chapters-general System of Gregory VII.-Progress to all the subjects of the empire the powof Papal usurpations in the twelfth Century.- er of bequeathing their property to the Innocent III.-his Character and Schemes-con- church.t His own liberality and that of tinual Progress of the Papacy.-Canon Law.- his successors set an example which did Mendicant Orders-dispensing Power.-Taxatlon of the Clergy by the Popes.-Encroachments not want imitators. Passing rapidly on Rights of Patronage.-Mandats, Reserves, from a condition of distress and persecu&c.-General Disaffection towards the See of tion to the summit of prosperity, the Rome in the thirteenth century. —Progress of church degenerated as rapidly from her Ecclesiastical Jurisdiction. — Immunity of the Clergy in Criminal Cases.-Restraints imposed ncient purity, and forfeited the respect.ipon their Jurisdiction-upon their Acquisition of future ages in the same proportion as of Property.-Boniface VIII.-his Quarrel with she acquired the blind veneration of her Philip the Fair-its Termination.-Gradual De- own. Covetousness, especially, became cline of Papal Authority.-Louis of Bavaria.- almost a characteristic vice. ValentiniSecessio to Avignon and Return to Rome.Conduct of Avignon
Popes-contested Election an I., in 370, prohibited the clergy from of Urban and Clement produces the great Schism. receiving the bequest of women; a modi-Council of Pisa - Constance-Basle. —Meth- fication more discreditable than any genods adopted to restrain the Papal usurpations in eral law could have been. And several Eng-libs of the Gallican Church.-Decline of the Papal In- of the fathe rs s everely reprobate the pre fluence in Italy. vailing avidity of their conltemporaries. The devotion of the conquering naAT the irruption of the northern inva- tions, as it was still less enlight- Increased Wealth of ders into the Roman empire, ened than that of the subjects of after its the church they found the clergy already the empire, so was it still more subversion snder the endowed with extensive possesemp-re. Slons. Besides the spontaneous * Giannone, Istoria di Napoli, I. ii., c 8. Gib oblations upon which the ministers of the bon, c. 15 and c. 20. F. Paul's Treatise on Bene Christian church had originally subsist- fices, c. 4. The last writer does not wholly con ed. they had obtained, even under the firm this position; but a comparison of the thlef pagan emperors, by concealment or con- setms to justify my text. paga.... t Giannone. Gibbon, ubi supra. F. Paul.: nivance, for the Roman law did not per- t Idem, Ibid mrit a tenure of lands in mortmain, cer- G'annone ubi supra. F. Paul. c r

Page 262 362 kEUROPE DURING THE MIDDLE At;ES. CIHP. I mnun ficent. They left, indeed, the wor- erality, as numerous charters still extant shlp of Hesus and Taranis in their for- in diplomatic collections attest. Many ests; but they retained the elementary churches possessed seven or eight thouprinciples of that, and of all barbarous sand mansi; one with but two thousand idolatry, a superstitious reverence for the passed for only indifferently rich.* But priesthood, a credulity that seemed to in- it must be remarked, that many of these vite imposture, and a confidence in the donations are of lands uncultivated and Efficacy of gifts to expiate offences. Of unappropriated.f The monasteries acthis temper it is undeniable that the min- quired legitimate riches by the culture,sters of religion, influenced probably not of these deserted tracts, and by the pruso much by personal covetousness as by dent management of their revenues, zeal for the interests of their order, took which were less exposed to the ordinary,advantage. Many of the peculiar and means of dissipation than those of the prominent characteristics in the faith and laity. Their wealth, continually accuinudiscipline of those ages appear to have lated, enabled them to become the regular been either introduced, or sedulously purchasers of landed estates, especially promoted, for the purposes of sordid in the time of the crusades, when the fiefs fraud. To those purposes conspired the of the nobility were constantly in the veneration for relics, the worship of ima- market for sale or mortgage., ges, the idolatry of saints and martyrs, If the possessions of ecclesiastical the rt:ligious inviolability of sanctuaries, communities had all been as Sometimes the consecration of cemeteries, but, above fairly earned, we could find no- improperly all, the doctrine of purgatory, and masses thing in them to reprehend. acquired for the relief of the dead. A creed thus But other sources of wealth were less contrived, operating upon the minds of pure; and they derived their wealth from barbarians, lavish though rapacious, and many sources. Those who entered into devout though dissolve, naturally caused a monastery threw frequently their whole a torrent of opulence to pour in upon the estates into the common stock; and even church. Donations of land were contin- the children of rich parents were expect.ually made to the bishops, and, in still ed to make a donation of land on assu. more ample proportion, to the monastic ming the cowl. Some gave their properfoundations. These had not been very ty to the church before entering on militia. numerous in the west till the begin- ry expeditions; gifts were made by some ning of the sixth century, when Benedict to take effect after their lives, and be. established his celebrated rule.* A more quests by many in the terrors of dissoluremarkable show of piety, a more abso-
tion. Even those legacies to charitable lute seclusion from the world, forms purposes, which the clergy could with more impressive and edifying, prayers more decency and speciousness recomend masses more constantly repeated, mend, and of which the administration gave to the professed in these institu- was generally confined to them, were fretions a preference over the secular quently applied to their own benefit.% clergy. They failed not, above all, to inculcate The ecclesiastical hierarchy never re- upon the wealthy sinner, that no atoneceived any territorial endowment by law, ment could be so acceptable to Heaven either under the Roman empire or the as liberal presents to its earthly delekingdoms erected upon its ruins. But gates.11 To die without allotting a por the voluntary munificence of princes, as well as their subjects, amply supplied the Schmdt, t ii., p. 20. t Muratori, Dissert. 65. Du Cange, v. Eremub place of a more universal provision. S Heeren, Essai sur les Croisades, p. 166. Large private estates, or, as they were Schmidt, t. iii., p. 293. termed, patrimonies, not only within their S Primd sacris pastoribus data est facultas, ut own diocesses, but sometimes in distant haereditatis portio in pauperes et egenos dispergecountries, sustained the dignity of the retur; sed sensilmuccinestat quoque in pauperue censum venerunt, atque intestate gentis mens cre. principal sees, and especially that of dita est proclivior in eas futura fuisse: qua ex re Rome.t The French monarchs of the pinguius illarum patrimonium evasit. Immr epis. first dynasty, the Carlovingian family copi ipsi in rem suam ejusmodi consuetudinerq and their great chief, the Saxon lifine of interdum convertebant: ac tributum evasit, quct mperors, the kings of England and antea pii moris fuit.-Muratori, Antiquitates. l': emperors, the kings of Eongland and lia, t. v., Dissert. 67. Leon, set hardly any bounds to their lib- I Muratori, Dissert. 67 (Antiquit. Italife, t., p. 1055), has preserved a curious charter of an Ital * Giannonle, 1. iii., c. 6; 1. iv., c. 12. Treatise an account, who declares, that, struck with reflec. an Benefices, c. 8. Fleury, Huithkme Discours sur tions upon his sinful state, he had taken counr —t'Hist. Ecclesiastique. Muratori, Dissert. 65. with certain religious how he should atone for I, t St. Marc, t. i., p. 281. Giannone, 1. iv., c. 12 offences. Accepto consilio ab iis excepto si )

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episcopal concessions the military service, when of a feudal tenure. privileges of baptism and burial, which But their tenure was frequently in what were accompanied with a fixed share of was called frankalmoign, without any tithes, and seem to imply the residence obligation of service. Hence it became of a minister. The same privileges were a customary fraud of lay proprietors to gradually extended to the rest; and thus grant estates to the church, which they a complete parochial division was finally received again by way of fief or lease, established. But this was hardly the exempted from public burdens. And as case in England till near the time of the if all these means of accumulating what conquest.T they could not legitimately enjoy were The slow and gradual manner in which insufficient, the monks prostituted their parochial churche obecame independent, knowledge of writing to the purpose of appears to be of itself a sufficient answer forging charters in their own favour, to those who ascribe a great antiquity to which might easily impose upon an igno- the universal payment of tithes. There rapt age, since it has required a peculiar are, however, more direct proofs that thi. science to detect them in modern times. species of ecclesiastical property was Such rapacity might seem incredible in acquired not only by degrees, but with men cut off from the pursuits of life and considerable opposition. We find the the hope of posterity, if we did not be- payment of tithes first enjoined by the, hold every day the unreasonableness of canons of a provincial council in France avarice, and the fervour of professional near the end of the sixth century. From attachment t the ninth to the end of the twelfth, or even later, it is continually enforced by nunciare sanculo possem, nullum esse melius inter similar authority.— Father Paul remarks, sleemosinarum virtues, quam si de propriis meis that most of the sermons preached about substantii is in monasterium concederem. Hoc the eighth century inculcate this as a consilium ab iis libenter, et ardentissimo animo ego duty, and even seem to place the summit accepi. * Selden, vol. iii., p. 1676. Prynne's Constitu. of Ch: istian perfection in its performtions, vol. iii., p. 18. Blackstone, vol. ii., chap. 32. -- In France, the lord of the fief seems to have taken * Muratori, Dissert. 74, and Fleury, Institutions the whole spoil.-Du Cange, v. Instestatus. au Droit Eccl6siastique, t. i., p. 162, refer the orit Muratori, Dissert. 68. gi.i of parishes to the fourth century; but this: Muratori's 65th, 67th, and 68th Dissertations must be limited to the most populous parts of the An the antiquities of Italy, have furnished the prin- empire. epial materials of my text, with Father Paul's trea- t Schmidt, t. ii., p. 206. This seems to have J.se on Be:ef-ices, especially chap. 19 and 29; been founded on an ancient canon.—F. Pau., c, 7 tiannone, loc. cit. and 1. iv., c. 12; i. v., c. 6; 1. x., $ Collier's Ecclesiastical History, p. 229 a. 12 Schmidt, Hist. des Allemands, t. i., p. 370; Selden's History of Tithes, vol. iii., p. 1108 t. ii., p. 203, 462; t. iv., p. 202.' Fleury, III., Dis- edit. Wilkins. Tithes are said by Giannone tc cours sur l'Hist. Eccl6s. Du Cange, voc. Pre- have been enforced by some papal decrees in the caiia. sixth century, 1. iii., c. 6.

Page 264 BEUROPE DURING THE MIDDLI AGES. ICHAF Vi anse.* This reluctant submission of the through such means as I have described, people to a general and permanent tribute and torn from her by lawless power is perfectly co asistentwiththe eagerness Those very men who, in the hour of displayed by them in accumulating vol- sickness and impending death, showered untary donations upon the church. Char- the gifts of expiatory devotion upon her.magne was the first who gave the con- altars, had passed the sunshine of their firmation of a civil statute to these ec- lives in sacrilegious plunder. Notwith clesiastical injunctions; no one at least standing the frequent instances of exhas, so far as I know, adduced any ear- treme reverence for religious institutions lie r law for the payment of tithes than among the nobility, we should be deceivone of his capitularies.t But it would be ed in supposing this to be their general precipitate to infer, either that the prac- character. Rapacity, not less insatiable tice had
not already gained ground to a than that of the abbots, was commonly considerable extent,

through the influ- united with a daring fierceness that the erne of ecclesiastical authority, or, on abbots could not resist. In every coun the other hand, that it became universal try, we find

continual lamentation over in consequence of the commands of Char- the plunder of ecclesiastical possessions. lemagne. In the subsequent ages, it Charles Martel is reproached with having was very common to appropriate tithes, given the first notorious example of such which had originally been payable to the spoliation. It was not, however, com bishop, either towards the. support of par- monly practised by sovereigns. But the ticular churches, or, according to the prev- evil was not the less universally felt. alent superstition, to monastic founda- The parochial tithes, especially, as the tions.~ These arbitrary consecrations, hand of robbery falls heaviest upon the though the subject of complaint, lasted, weak, were exposed to unlawful seizure by a sort of prescriptive right of the land- In the tenth and eleventh centuires noth holder, till about the year 1200. It was ing was more common than to see the nearly at the same time that the obliga- revenues of benefices in the hands of lay tion of paying tithes, which had been ori- impro priators, who employed curates at ginally confined to those called predial, the cheapest rate; an abuse that has nevor the fruits of the earth, was extended, er ceased in the church.* Several at at least in theory, to every species of tempts were made to restore these tithes, profit, and to the wages of every kind of but even Gregory VII. did not venture to |abour.I proceed in it;tt and indeed it is highly Yet there were many hinderances that probable that they might be held in some Spoliation thwarted the clergy in their ac- instances by a lawful title.t Sometimes of church quisition of opulence, and a sort the property of monasteries was dilapida. property. of reflux, that set sometimes very veryed by corrupt abbots, whose acts, how — strongly against them. In times of bar- ever clandestine and unlawful, it was not barous violence, nothing can thoroughly easy to revoke. And both the bishops compensate for the inferiority of physi- and convents were obliged to invest powcal strength and prowess. The ecclesi- erful lay protectors, under the name ol astical history of the middle ages presents advocates, with considerable fiefs, as the one long contention of fraud against rob- price of their assistance against depredahery; of acquisitions made by the church tors. But these advocates became too Treatise on often themselves the spoilers, and oppresTreatise on Benefices, c. 1.t t Mably (Observations sur l'Hist. de France, t. ecclesiastics for whose i., p. 238 et 438) has, with remarkable rashness, defence they had been engaged.~ attacked the current opinion, that Charlemagne established the legal obligation of tithes, and de- e Du Cange, voc. Abbas. nied that any of his capitularies bear such an inter- t Schmidt, t. iv., p. 204. At an assembly held at pretation. Those which he quotes have indeed a St. Denis in 997, the bishops proposed to restore different meaning; but he has overlooked an ex- the tithes to the secular clergy: but such a tumult press etactrnent in 789 (Baluzii Capitularia, t. i., p. was excited by this attempt, that the meeting was 253), which admits of no question; and I believe broken up. —Recueil des Historiens, t. xi., praffat, that there are others in confirmation. p. 212. T The grant of Ethelwolf in 855 seemn: to be Selden's Hist. of Tithes, p. 1136. The thirc the most probable origin of the right to tithes in council of Lateran restrains laymen from transfer England. Whether this law, for such it was, met ring their impropriated tithes to other laymen.with constant regard, is another question. It is Velly, Hist. de France, t. iii., p. 235. This seems said by Marina, that tithes were not legally estab- tacitly to admit that their possession was lawful, at lished in Castile till the reign of Alfonso X. —En- least by prescription. mayo sobre las siete partidas, c. 359. q For the injuries sustained by ecclesiastical pro Q Selden, p. 1114, et seq: Coke, 2 Inst., p. 641. prietors, see Muratori, Dissert. 72. Du Cange, v 11 Selden's History of Tithes. Treatise on Ben- Advocatus. Schmidt, t. ii., p. 220, 470... iii., p;fic.es, c. 2.: Giannone, 1. x c. 12 290; t. iv., p. 188, 202. Recueil des Historions,
If it had not been for these drawbacks, ecclesiastical jurisdiction was the clergy must, one would imagine, have powerfully supported by a law of Constantine, which directed the civil magistrates to enforce the execution of the bishops of England, and, I believe, a greater pro-pal awards. Another edict, ascribed to a law of Constantinian origin, nearly acquired the exclusive property of the bishops. The same emperor, and annexed to the Theodosian code, extended the jurisdiction of the bishops to all causes which about the conclusion of the twelfth century either party chose to refer to it, even to the secular court, and declared the bishop's became forgery. It is evident, by a novel of Vandalian III., about 450, that the church had already commenced in a to enrich the clergy by pious donations. The acquisitions of wealth by the church were hardly so remarkable, and scarcely contributed so much to her greatness, as those possessed by ecclesiastics in the fourth and fifth centuries. The arbitrative authority of ecclesiastical pastors, if not coeval with Christianity, grew up very early in the extent of his concession. Certain it is, that the church in her society, and was natural, or even necessary, to an insulated and persecuted church, in her cessary, to an insulated and persecuted most arrogant temper, asserting the full society. It is hardly, perhaps, necessary to caution the reader, that rights of territorial jurisdiction in questions of ecclesiastical nature, except by means of branch jurisdiction, can be conceived, and scarcely contributed so much to her greatness, as those used by the innovations upon the ordinary course of emperor, seem intended to repress. Charlemagne, howtion the reader, that rights of territorial ever, deceived by the spurious constitution, possessed by ecclesiastics in the fourth and fifth centuries, sentence a bishop or priest to deposition, even to consider a recurrence to them as general obligation upon the prima-coercive hardly consistent with their profession, itive Christians to decide their over the the early Christians retained somewhat civil disputes by internal arbitrative- clergy in of a similar prejudice even after the excursion, much more would this be in civil establishment of their religion. The arbitrative- cumbent upon the clergy. The canons of their bishops still seemed a less of several councils, in the fourth and fifth objectionable mode of settling different centuries, sentence a bishop or priest to deposition should bring any suit. Martermne, Thesaurus Anec- ii n wo ul bri a sui dotorum, t. i., p. 595. Vaissette, Hist. de Langue- civil or even criminal, before a secular doe, t. ii., p. 109, and appendix, passim. magistrate. This must, it should appear, according to a calculation founded on ant was a clerk, since the ecclesiastical a passage in Knyghton, the revenue of the Eng. court had hitherto no coercive jurisdiction. Ishchur hou in 1337 amounted to 730,000 marks per tion over the laity. It was not so easy annum.-Macpherson's Annals of Commerce, vol..,p. 519. Histoire du Droit public EcclEs. Fran- to induce laymen, in their suits against rois.
214. clerks, to prefer the episcopal tribunal. The great age of monasteries in England was in the reigns of Henry I., Stephen, and Henry II. favour this species of encroachment ill-Lyttleton's *Henry II.*, 701. ii., p. 329. David I. of Scotland, contemporary with Henry II., was also a noted follower of monasteries. —Dalrymple's *Annals.

* Baluzii *Capitularia*, t. ii., p. 985. t 1 *Corinth.*, c. iv. The word Εὐγάφω,7levov;, ren-. t Gibbon, c. xx. Giannone, I. ii., c. 8; I. iii. i. ( dered in our version " of no reputation," has been 1. vi., c. 7 Schmidt, t. ii., p. 208. Fleury, 7m' interpreted by some to mean, persons destitute of D)iscours, und *Institutions au Droit Ecclesiastiqu8 coercive authority, referees. The passage at least t ii., p. 1. M6emoires de l'Académie des Inseri. 4n!ds tn discourage suits before a secular judge. t ons., t. xxxrii p 566.

Page 266 EUROPE DURING THE MIDDLE AGES. L.;Hx. VeL the reign of Justinian, who ordered civil 3. The character of a cause, as well suits against ecclesiastics to be carried as of the parties engaged, might Over partic only before the bishops. Yet this was bring it within the limits of ec- ular causes. accompanied by a provision, that a party clesiastical jurisdiction. In all questions dipisatisfied with the sentence might ap- simply religious, the church had an orilply to the secular magistrate, not as an ginal right of decision; in those of a temappellant, but a co-ordinate jurisdiction; poral nature, the civil magistrate had, by for, if different judgments were given in the imperial constitutions, as exclusive the two courts, the process was ultimate- an authority.* Later ages witnessed y referred to the emperor.* But the strange innovations in this respect, when early Merovingian kings adopted the ex- the spiritual courts usurped, under soclusive jurisdiction of the bishop over phistical pretences, almost the whole adcauses wherein clerks were interested, ministration of justice. But these enwithout ally of the checks which Justin- croachments were not, I apprehend, very ian had provided. Many laws enacted striking till the twelfth century; and as during their reigns, and under Charle- about the same time measures, more or magne, strictly prohibit the temporal less vigorous and successful, began to be magistrates from entertaining complaints adopted in order to restrain them, I shall against the children of the church. defer this part of the subject for the This jurisdiction over the civil causes present. And crirn- of clerks was not immediately In this sketch of the riches and jurisLnal suits- attended with an equally exclu- diction of the hierarchy, I may Political sive cognizance of criminal offences im- seem to have implied their politi- powerot puted to them, wherein the state is so cal influence, which is naturally clergy. deeply interested, and the church could connected with the two former. They inflict so inadequate a punishment. Jus- possessed, however, more direct means tinian appears to have reserved such of- of acquiring temporal power. Even unfences for trial before the imperial ma- der the Roman emperors they had found g!strate, though with a material provision their road into palaces; they were somethat the sentence against a clerk should times ministers, more often secret counniet be executed without the consent of sellors, always necessary, but formula.. the bishop, or the final decision of the ble allies, whose support was to be conemperor. The bishop is not expressly ciliated, and interference to be respected. invested with this controlling power by But they assumed a far more decided the laws of the Merovingians; but they influence over the new kingdoms of the enact that he must be present at the trail west. They were entitled, in the first of one of his clerks; which probably was place, by the nature of those free gov intende declared to the necessity of his emments, to a privilege unknown under concurrence in the judgment. The epis- the imperial despotism, that of assisting copal order was indeed absolutely ex- in the deliberative assemblies of the naempted from secular jurisdiction by Jus- tion. Councils of bishops, such as had tinian; a privilege which it had vainly been convoked by Constantine and his endeavoured to establish under the
ear successors, were limited in their funclier emperors. France permitted the tions to decisions
of faith, or canons of same immunity; Chilperic, one of the ecclesiastical discipline. But the
normost arbitrary of her kings, did not yven- them nations did not so well preserve ture to
charge some of his bishops with the distinction between secular and spirtreason, except before
a council of their itual legislation. The laity seldom, perbrethren. Finally, Charlemagne seems
haps, gave their suffrage to the canons to have extended to the-whole body of of the church;
but the church was not the clergy an absolute exemption from so scrupulous as to trespassing
upon the the judicial authority of the magistrate.t province of the aity. Many provisions
are found in the canons of national and, This w as also established about the
same time by Athalaric, king of the Ostrogoths, and of centur, non apud seculares, are
sufficiently gea. coarse affected the popes, who were his subjects. eral (Baluz. Capitul., t. i., p.
227): and the sanm -St. Marc, t. i., p. 60. Fleury, Hist. Eccl6s., t. is expressed still more forcibly
in the collection vii., p. 292. published by Ansegisus under Louis the Debonair. t Miroires de
l'Academie, ubi supra. Gian- -(Idem, pp. 904 a'd 1115.) See other proofs in lione, 1. iii., c. 6.
religione agitur, episcopos opoltet Some of these writers do not state the law of judicare; alteras
vero causas quam ad ordinarios Charlemagne so strongly. Nevertheless the words cognitores
vel ad usurn publici Juris pertinent, le. of a capitulary in 789, Ut c erici ecclesiastici ordi- gibus
oportet audiri. Lex Arcadii et Honorii, apud lis si culpam incurrerint, al ud eo:lesiasticos judi-
M6m. de l'Academie, t. xxxix., p. 571

Page 267 ? ~p PVII.

ECdLESIASTICAL POWER 26 ecen provir.cial councils, which relate
to France and Spain exerci3ed th, saamm the temporal constitution of the state. right over the
synids of their nationsa Thus one held at Calcluith (an unknown churches.* Trhe Ostrogoth
kings of Italy place in England), in 787, enacted that fixed by their edicts the limits within none
but legitimate princes should be which matrimony was prohibited on ac. raised to the throne,
and not such as count of consanguinity, and granted diswere engendered in adultery or incest.
pensions from them.t Though the But it is to be observed that, although Roman emperors left
episcopal elections this synod was strictly ecclesiastical, to the clergy and people of the
diocess, being summoned by the pope's legate, in which they were follo-wed by the yet the
kings of Mercia and Northum- Ostrogoths and Lombards, yet they often berland, with many of
their nobles, con- interfered so far as to confirm a decision, firmed the canons by their
signature. or to determine a contest. The kings of -As for the councils held under the Visi-
France went farther and seem to have goth kings of Spain during the seventh invariably either
ominated the bishops, century, it is not easy to determine or, what was nearly tantamount,
recom whether they are to be considered as ec- mended their own candidate to the
ecclesiastical or temporal assemblies * No tors. kingdom was so thoroughly under the But the
sovereign who maintained with bondage of the hierarchy as Spain.t The the greatest vigour his
eclesi- especially first dynasty of France seem to have astical supremacy was Charle-
ofctlarlekept their national convention, called magne. Most of the capitu- ties magne. the Field
of March, more distinct from of his reign relate to the discipline of the merely ecclesiastical
councils. church; principally, indeed, taken from The bishops acquired and retained a the
ancient canons, but not the less regret part of their ascendency by a very ceiving an additional
sanction from his respectable instrument of power, intel- authority.T Some of his regulations,
lectual superiority. As they alone were which appear to have been original, are acquainted with
the art of writing, they such as men of high-church principles were naturally intrusted with
political would, even in modern times, deem in.. correspondence, and with the framing
fringements of spiritual independence; of t:le laws. As they alone knew the that no legend of
doubtful authority tenants of a few sciences, the educa- should be read in the churches, but only tion of royal families devolved upon them the canonical books, and that no saint as a necessary duty. In the fall of Rome, should be honoured whom the Ad nol their influence upon the barbarians wore church did not acknowledge. These down the asperities of conquest, and were not passed in a synod of bishops, saved the provincials half the shock of but enjoined by the sole authority of the that tremendous revolution. As captive emperor, who seems to have arrogated a Greece is said to have subdued her Ro- legislative power over the church, which man conquerors, so Rome, in her own he did not possess in temporal affairs. turn of servitude, cast the fetters of a Many of his other laws relating to the moral captivity upon the fierce invaders ecclesiastical constitution are enacted in of the north. Chiefly through the exer- a general council of the lay nobility as tions of the bishops, whose ambition may well as of prelates, and are so blended be forgiven for its effects, her religion, with those of a secular nature, that the her language, in part even her laws, were two orders may appear to have equally transplanted into the courts of Paris and consented to tLhe whole. Ilis father Toledo, which became a degree less bar- Pepin, indeed, left a remarkable precebarous by imitation.tg dent in a council held in 744, where the Notwithstanding, however, the great Nicene faith is declared to be established, Supremacy authority and privileges of the ofthe state, church, it was decidedly subject * Encyclopédie, art. Concile. Schmidt, t. 3, to the supremacy of the crown, both p. 384. De Marcæ, De ConcordantiA Sacerdotii el during the continuance of the western Imperii, 1. ii., c. 9, 11; et 1. iv., passim. empire, and after its subversion. The The last of these sometimes endeavours'a ae emperors convoked, regulated, and dis- tenuate the royal supremacy, but his own wor*, solved universal councils; te kings of furnishes abundant evidence of it; especially.. vi. solved - universal councils; the kings of c. 19, &c. For the ecclesiastical independence ol Spain, down to the eleventh century, see Matim. * Marina, Teoria de las Cortes, t. i., p. 9. Essayo sobî la siete partidas, c. 322, &c.; a Ad t See instances of the temporal power of the De Marcæ, 1 vi., c. 23. Ispanish bishops in Fleury, Hist Eccl., t. viii., p. t Giannone, 1. iii., c. 6. 368, 397; t. ix., p. 68, &c. + Baluzii Capitularia, passim. Schmidt L. e Schmidt, t. i.. p. 365.. D. 239 Gaillard, Vie de Charlemagne, t. iii
to govern better than he ble execution. It was the error of a had done, permitted and commanded superior mine, zealous for religion and them to divide his territories. After learning, to believe that men, dedicated concurring in this unprecedented ento the functions of the one, and posses- croachment, Charles the Bald had little sing what remained of the other, right to complain when, some years afterward strict rules of discipline, enforced terward, an assembly of bishops declared by the const Imt vigilance of the sovereign, himself to have forfeited his crown, rebecome fit instruments to reform and leased his subjects from their allegiance, civilize a barbarous empire. It was the and transferred his kingdom to Louis of error of a magnanimous spirit to judge too Bavaria. But, it was highly probable, indeed, that an sovereigns, and of the nation whom they ambitious hierarchy did not endure with- represent. " No one," says this degener out reluctance this imperial supremacy ate grandson of Charlemagne, "ought to of Charlemagne, though it was not expe- have degraded me from the throne to dient for them to resist a prince so for- which I was consecrated, until at least I midable, and from whom they had so P s much to expect. But their dis- * Habitf smculi se exuens habitum penitentis of the hie- satisfaction at a scheme of per impositionem manuum episcoporum suscepit wt ut post tantam talemque paenitentiam nemo ulti ranchy in government incompatible with ad militiam saecularem redeat. Acta exauctoratio thee ninth ury their own objects of perfect in- nis Ludovici, apud Schmidt, t. ii., p. 68. Thert dependence, produced a violent was a sort of precedent, though not, I think, very recoil under Louis the Debonair, who at- apposite, for this doctrine of implied abdication, in tempted to act the censor of ecclesias- the case of Wamba, king of the Visigoths in Spain, tempted to act the censor of ecclesias- who, having been clothed with a monastic dress, tical abuses with as much earnestness according to a common superstition, during a danas his father, though with very inferior gerous illness, was afterward adjudged by a council qualifications for so delicate an under- incapable of resuming his crown, to which he voltaking. The bishops, accordingly, were untarily submitted. The story, as told by an original writer, quoted: i Baronius, ad A. D. 681, is limong the chief instigators of those nu- too obscure to wariant any positive inference, mreoub revolts of his children which thought we may justly suspect a fraudulent!ars ssed this emperor. They set, upon contrivance between the bishops and Ervigius, the one occasion, the first example of a successor of Wamba. The latter, besides his mousration which was to become very nastic attire, had received the last sacrament; after surpation which he might be deemed civilly dead.-Fleuv, dangerous to society, the deposition of 3me Discours sur Hist. Ecclesiast. puts this case sovereign. by ecclesiastical authority. too strongly, when he tells us that the bishops de. Louis, a prisoner in the hands of his en- posed Wamba; it may have been a voluntary abdi. emies, had been intimidated enough to cation, influencered by superstition, or, perhaps by citsease. undergo a public penance; and the bisl.- Schmidt t. ii., p. 77 Velvy. ii., p. 1; ops pretended that, according to a o'.t:- too p. 74.
bishop Odo and St. Dunstan was an in. and afford a decisive proof that the pow- tolerable outrage of spiritual tyranny.* er obtained by national churches, through But, while the prelates of these nathe superstitious prejudices then received, tions, each within his respect- Rise of the and a train of favourable circumstances, ivesphere, were prosecuting papal powwas as dangerous to civil government their system of encroachment er. itscom as the subsequent usurpations of the Ro- upon the laity, a new scheme mencement. man pontiff, against which Protestant was secretly forming within the bosom writers are apt too exclusively to direct of the church, to inthral both that and their animadversions. Voltaire, I think, the temporal governments of the world has remarked, that the ninth century was under an ecclesiastical monarch. Long the age of the bishops, as the eleventh before the earliest epoch that can be fixed and twelfth were of the popes. It seem- for modern history, and, indeed, to speak ed as if Europe was about to pass under fairly, almost as far back as ecclesiastical as absolute a domination of the hierar- testimonies can carry us, the bishops of chy, as had been exercised by the priest- Rome had been venerated as first in rank hood of ancient Egypt., or the druids of among the rulers of the church. The Gaul. There is extant a remarkable in- nature of this primacy is doubtless a X ery strument, recording the election of Boson, controverted subject. It is, however, king of Arles, by which the bishops alone reduced by some moderate Catholics to appear to have elevated him to the throne, little more than a precedency attached to without any concurrence of the nobility.t the see of Rome in consequence of its But it is inconceivable that such could foundation by the chief of the apostles have really been the case; and if the' as well as the dignity of the imperial instrument is genuine, we must suppose it to have been framed in order to counte- * Two living writers of the Roman Catholic communion, Dr. Milner, in his History of Winchester, and Mr. Lingard, in his Antiquities of the gy, by their exclusive knowledge of Latin, Anglo-Saxon church, contend that Elgiva, whom had it in their power to mould the lan- some Protestant historians are willing to represent guage of public documents for their own as the queen of Edwy, was but his mistress; and purposes; a circumstance which should seem inclined to justify the conduct of Odo and e cautiously kept in mind when we pe- Dunstan towards this unfortunate couple. They be cautiously kept in mind when we pe- are unquestionably so far right, that few, if any of ruse instruments drawn up during the those writers, who have been quoted as authorities dark ages. in respect of this story, speak of the lady as a It was with an equal defiance of noto- queen or lawful wife. I must, therefore, strongly rious truth, that the Bishop of Winches- reprobate the conduct of Dr. Henry, who, calling Elgiva queen, and asserting that she was married, ter, presiding as papal legate at an assem- refers, at the bottom of his page, to William of bly of the clergy in 1141, during the civil Malmsbury, and other chroniclers, who give a to. war of Stephen and Matilda, asserted the tally opposite account; especially as he does not right of electing a king of England to ap- intimate, by a single expression, that the nature of her connexion with the king was equivocal. pertain principally to that order; and, by Such a practice, when it proceeds, as I fear it did virtue of this unprecedented claim, raised in this instance, not from oversight, but from preMiatilda to the throne.+ England, indeed, judice, is a glaring violation of historical integrity, has been obsequious, beyond most other and tends to render the use of references that countries, to the arrogance of her hierar- great improvement of modern history, a sort of countries, thfraud upon the reader. But the fact itself, one cer. chy; especially during the Anglo-Saxon tainly of little importance, is, in my opinion, not period, when the nation was sunk in ig- capable of being proved or disproved. The authoi ities, as they are called, that is, the passages in * Schmidt, t. ii., p. 217. Voltaire, Velly, Gail- monkish writers which mention this transaction.ard, &c. are neither sufficiently circumstantial, nor co sist t Recuell des Historiens, t. ix., p. 304. en' nor impartial, ndr contemporaneous, to -Afrd t Ventilata est causa, says the Legate, coram ground for rational belief; or, at least, there must
majori parte cleri Angliae, ad cujus jus potissimam always remain a strong shade of uncertainty. And pectat principem eliggere, simulque ordinare. In- it is plain, that different reports of the story pre. vocatA itaque prim5 in auxilium divinitate, filiam vailed, so as to induce some to imagine that there pacifici regis, &c., in Anglia Normannieque dorni- were two Elgivas, one queen, the other concubine. nam eligimus, et ei fidem et mnAnutenementum pro-But the monkish chronicleers, experto credibe are no mittimus — Gu Malmsb. p. 188. l entitled to so much ceremr, nv.

270 EUROPE DURING THE MIDDLE AGES. CHAP. i: city.* X sort of general superintendence of the ten provinces forming this division was a:mitted as an attribute of this pri- had any metropolitan; so that the popes macy, so that the bishops of Rome were exercised all metropolitical functions entitled, and indeed bound, to remon- within them, such as the consecration of strate, when any error or irregularity bishops, the convocation of synods, the came to their knowledge, especially in ultimate decision of appeals, and many the western churches, a greater part of other sorts of authority. These Patriar. which had been planted by them, and provinces are sometimes called the chateof were connected, as it were by filiation, Roman patriarchate; the bishops Rome. with the common capital of the Roman of Rome having always been reckoned empire and of Christendom.t Various one, generally indeed the first of the patricauses had a tendency to prevent the archs; each of whom was at the head of bishops of Rome from augmenting their all the metropolitans within his limits, authority in the East, and even to dimin-, but without exercising those privileges ish that which they had occasionally ex- which, by the ecclesiastical constitution, ercised; the institution of patriarchs at appertained to the latter. Though the Antioch, Alexandria, and afterward at Roman patriarchate, properly so called, Constantinople, with extensive rights of was comparatively very small in extent, jurisdiction; the difference of rituals and it gave its chief, for the reason mentiondiscipline; but, above all, the many dis- ed, advantages in point of authority whicl gusts taken by the Greeks, which ulti- the others did not possess.* mately produced an irreparable schism I may perhaps appear to have noticed between the two churches in the ninth circumstances interesting only to ecclecentury, But, within the pale of the Lat- siastical scholars. But it is important to in church, every succeeding age enhan- apprehend this distinction of the patriced the power and dignity of the Roman archate from the primacy of Rome, besee. By the constitution of the church, cause it was by extending the boundaries such at least as it became in the fourth of the former, and by applying the maxcentury, its divisions being arranged in ims of her administration in the south of conformity to those of the empire, every Italy to all the western churches,, that province ought to have its metropolitan, she accomplished the first object of her and every vicariate its ecclesiastical ex- scheme of usurpation, in subverting the arch or primate. The Bishop of Rome provincial system of government under presided, in the latter capacity, over the the metropolitans. Their first encroachRoman vicariate, comprehending south- ment of this kind was in the province of ern Italy, and the three chief Mediterra- Illyricum, which they annexed in a omanaean islands. But, as it happened, none ner to their own patriarchate, by not permitting any bishops to be consecrated * These foundations of the Roman primacy are without their consent.t This was before indicated by Valentinian III., a great favourer of the end of the fourth century. Their subhat see, in a novel of the year 455: Cum igitur se- sequent advances were, however, very dis apostolicae primatum B. Petri meritum, qui est gradual. About the middle of the sixth princeps sacerdotalis coronae, et Romane dignitas;ivitatis, sacram etiam synodi firmavit auctoritas. rhe last words allude to the sixth canon of the elections of archbishops of Milan.t They Nicne council, which establishes, or recognises, came by degrees to exercise, though not he
patriarchal supremacy, in their respective dis- always successfully, and seldom without ricts, of
the churches of Rome, Antioch, and opposition, an appellant jurisdiction ove; Ulexandria.-De
Marca, de Concordantid Sacerdo- the causes of bishops, deposed or cen tii et Imperii, 1. i., c. 8.
At a much earlier period, the causes of bishops, deposed or cen. yrenmus rather vaguely, and
Cyprian more posiively, admit, or rather assert, the primacy of the ~ Dupin, De antiquA
Eccles. Disciplina, p. 35 church of Rome, which the latter seems even to &c. Giannone, Ist. di
Napoli, I. ii., c. 8; 1. iii., c have considered as a kind of centre of Catholic 6. DeMarca, 1. i., c.
7, et alibi. There is some unity, though he resisted every attempt of that disagreement among
these writers as to the extent church to arrogate a controlling power. See his of the Roman
patriarchate, which some suppose t, ireatise De Unitate Ecclesiae. have even at first
comprehended all the western f Dupin, De antiqu' Ecclesiae Disciplina, p. 306, churches,
though they admit that, in a more par et seqn. Histoire du Droit public eccl6siastique ticular
sense, it was confined to the vicariate of Franfois, p. 149. The opinion of the Roman see's
Rome. supremacy, though apparently rather a vague and + Dupin, p. 66. Fleury, Hist. Eccl6s.,
t. v., p. general motion, as it still continues in those Cath- 373. The ecclesiastical province of
Illyricum inflics who dleny its infallibility, seems to have pre- cluded Macedonia. Siricius, the
author of this en vailed very much in the fourth century. Fleury croachment, seems to have
been one of the first brings remarkable proofs of this from the writings usurpers. In a letter to
the Spanish bishops (A. I). uf Socrates, Sozomen, Ammianus Marcellinus, 375), he exalts his
own authori y very high. —l) ard Optatus.-Hist. Eccles., t. iii., p. 282, 32f, 449; Marca, 1. i., c.
8. is. p 227. J St. Marc, t. i., p. 139, 153

Page 271. ~'eF VIL.] ECCLESIASTICAL POWER. 27t sured in provincial synods. This, in-
ereigns of the western kingdoms wilt deed, had been granted, if we believe the all the hierarchy
of the Catholic church fact, by the canons of a very early coun- employing, as occasion
dictated, the lan. cil, that of Sardica in 347, so far as to guage of devotion, arrogance, or adula
permit the pope to order a revision of the tion.*- Claims hitherto disputed, or hall process, but
not to annul the sentence.* preferred, assumed under his hands 7 Valentinian III., influenced by
Leo the more definite form; and nations too igGreat, one of the most ambitious of pon- norant
to compare precedents or discrim. tffs, had gone a great deal farther, and inate principles,
yieldee co assertions con. established almost an absolute judicial fidently made by the
authority which supremacy in the Holy See.t- But the they most respected. Gregory dweA
metropolitans were not inclined to sur- more than his predecessors upon the pow, render their
prerogatives; and, upon the er of the keys, exclusively or at least whole, the papal authority had
made no principally committed to St. Peter, which decisive progress in France, or perhaps had
been supposed in earlier times, as it anywhere beyond Italy, till the pontifi- is note by the
Gallican Catholics, to be cate of Gregory I. inherent in the general body of bishops [A. D. 590-
604.] This celebratedperson joint sharers of one indivisible episcoGregory I. was not
distinguished by learn- pacy. And thus the patriarchal rights, ing, which he affected to depre-
being manifestly of mere ecclesiastical ciate, nor by his literary performances, institution, were
artfully confounded, or, which the best critics consider as below as it were, merged in the more
paramediocrity, but by qualities more noces- mount supremacy of the papal chair. sary for his
purpose, intrepid ambition and From the time of Gregory, the popes unceasing activity. Ile
maintained a appear in a great measure to have erpetual correspondence with the em- thrown
away that scaffolding, and relied perors and their ministers, with the sov- in preference on the
These which might occur for enforcing their canons have been questioned, and Dupin does not
dominion with the pretence of divine alseem to lay much stress on their authority, though
thority. I do not perceive that either he or Fleury (Hist. Eccl6s, t. iii., p. 372) doubts their
genuineness. It cannot, I think, be said, that any Sardica was a city of illyricum, which the
transla- material acquisitions of ecclesiastical tor of Mosheim has confounded with Sardes.
power were obtained by the successors Consultations or references to the Bishop of of Gregory
for nearly one hundred and Rome, in difficult cases of faith or discipline, had fifty years. As
none of them possessed been common in early ages, and were even made by provincial and
national councils. But these were also made to other bishops, eminent for per- * The flattering
style in which this pontiff adsonal merit or the dignity of their sees. The dressed Brunehaut and
Phocas, the most flagitious popps endeavoured to claim this as a matter of monsters of his time,
is mentioned in all civil and right. Innocent I. asserts (A. D. 402) that he was ecclesiastical
histories. Fleury quotes a remark. to be consulted, quoties fidei ratio ventilator; and able letter
to the patriarcs of Antioch and Alex3elasius (A. D. 492) quantum ad religionem per- andria,
wherein he says that St. Peter has one see, tinet, non nisi apostolica? sedi, juxta canones, de-
divided into three, Rome, Antioch, and Alexandria, )etur sui.ma judicii totius. As the oak is in
the stooping to this absurdity, and inconsistence with acorn, so edd these maxims contain the
system of his real system, in order to conciliate their alliance Bellarmine. —De Marca, 1. i., c.
10; and 1. vii., 12. against his more immediate rival, the patriarch of Dupin. Constantinople.-
Hist. Eccles., t. viii., p. 124. t Sone bishops belonging to the province of t Gregory seems to
have established the appel Hilary, metropolitan of Aries, appealed from his lant jurisdiction of
the see of Rome, which had senterce to Leo, who not only entertained their been long in
suspense. Stephen, a Spanish bishop, appeal, but presumed to depose Hilary. This as- having
been deposed, appealed to Rome. Gregory sumption of power would have had little effect, if
sent a legate to Spain, with full powers to confir:n it bad not been seconded by the emperor in
very or rescind the sentence. He says in his letter or, unguarded language; hoc perenni
sanctione de-

Page 272 ;1A ELst ROPE DURING THE MIDDLE AGES. [CH(AP. Va vigour and
reputation equal to his own, times made by prelates dissatisfied with it might even appear that
the papal influ- a local sentence; but his judgment of ence was ietrograde. But, in effect, the
reversal was not always executed.::s we principles w-which supported it were taking perceive
by the instance of Bishop WiL, deep root, and acquiring strength by oc- frid.* National
councils were stil concasional, though not very frequent exer- voked by princes, and canons
enacted cise. Appeals to the pope were some- under their authority by the bishops who
attended. Though the church of Lomnconsiderable importance to a supposed concession bardy
was under great subjection during the whole of the title of universal bishop, made by the Emperor this period, yet those of France, and Phocas in 606 to Boniface III., and even appear to even of England, planted as the latter date the papal supremacy from this epoch. Those had been by Gregory, continued to pre"/ho have imbibed this notion may probably have Deen misled by a loose expression in Mosheim's serve a tolerable measure of independEcclesiastical History, vol. ii., p. 169; though ence.t The first striking infringement the general tenour of that passage by no means of this was made through the influence gives countenance to their opinion. But there are of an Englishman, Winfrid, better known several strong objections to our considering this as as St Boniface, the apostle of a leading fact, much less as marking an era in the St. Boniface, the apostle of history of the papacy. 1. Its truth, as commonly Germany. Having undertaken st. Boniface. stated, appears more than questionable. The the conversion of Thuringia, and other Roman pontiffs, Gregory I. and Boniface III., had still heathen countries, he applied to the been vehemently opposing the assumption of this r a commission, and was conseiztite by the patriarch of Constantinople, not as due pope fo to themselves, but as one to which no bishop could crated bishop without any determinate legitimately pretend. There would be something fsee. Upon this occasion he took an oath almost ridiculous in the emperor's immediately of obedience, and became ever after. conferring an appellation on themselves, which ward a zealous upholder of the apostolthey had just disclaimed; and though this objec- ical chair. His success in the convertlon would not stand against evidence, yet when we find no better authority quoted for the fact sion of Germany was great, his reputathan Baronius, who is no authority at all, it retains tion eminent, which enabled him to efconsiderable weight. And indeed the want of fact a material revolution in ecclesiastically testimony is so decisive an objection to any cal government. Pelagius II had, about alleged historical fact, that, but for the strange orepossessions of some men, one might rest the 580, sent a pallium, or vest peculiar to case here. Fleury takes no notice of this part of metropolitan, to the Bishop of Arles, toe story, though he tells us that Phocas compelled perpetual vicar of the Roman see in the patriarch of Constantinople to resign his title. Gaul Gregory. had made a similar 2. But if the strongest proof could be advanced for the authenticity of this circumstance, we might well present to other metropolitan. But it deny its importance. The concession of Phocas was never supposed that they were could have been of no validity in Lombardy, obliged to wait for this favour before France, and other western countries, where nev- they received consecration, until a synod ertheless the papal supremacy was incomparably of the French and German bish- synod of more established than in the east. 3. Even within the empire, it could have had no efficacy after the OpS, held at Frankfort in 742 by Frankfort violent death of that usurpe, which followed soon Boniface, as legate of Pope Zachary. It afterward. 4. The title of universal bishop is was here enacted, that, as a token of not very intelligible; but, whatever it meant, the their willing subjection to the see of patriarchs of Constantinople had borne it before, and continued to bear it ever afterward.-(Dupin, ome all metropolitan should request De antiqua Disciplina, p. 329.) 5. The preceding the pallium at the hands of the pope, and popes, Pelagius II. and Gregory I., had constantly obey his lawful commands.~ This was disclaimed the appellation, though it had been adopted by some towards Leo the Great in the * I refer to the English historians for the history council of Chalcedon (Fleury, t. viii., p. 95); nor of Wilfrid, which neither altogether supports, nor does it appear to have been retained by the succes- much impeaches the independence, of our Anglo. sors of Boniface, at least for some centuries. It is Saxon church in 700; a matter hardly worth so even laid down in the decretum of Gratian, that much contention as Usher and Stillingfleet seem to the pope is not styled universal: Nec etiam Ro- have thought. The consecration of Theodore by manus pontifex universalis appellatur (p. 303, edit. Pope Vitalian in 668 is a stronger fact, and cannot 1591); though some refer its assumption to the be got over by those injudicious
Protestants,'Aho urth century.-Nouveau Trait6 de Diplomatique, take the bull by the horns. t. v., p. 93. In fact, it has never been a usual title. t Schmidt, t. i., p. 386, 394. 6. The popes had unquestionably exercised a spe- $ Ut ad instar suum, in Galliarum partibus promin cies of supremacy for more than two centuries be- sacerdotis locum obtineat, et quidquid ad guber. fore this time, which had lately reached a high nationem vel dispensationem ecclesiastici status point of authority under Gregory I. The rescript gerendum est, servatis patrum regulis, et sedis of Valentinian III., in 455, quoted in a former note, apostolice constitutis, faciat. Preterea, pallium woul. certainly be more to the purpose than the illi concedit, &c.-Dupin, p. 34. Gregory I. con lette: of Phocas. 7. Lastly, there are no sensible firmed this vicariat to Virgilius, bishop of Arles, marks of this supremacy making a more rapid and gave him the power of convoking synods.- LIs progress for a century and a half after the pretend- Marca, 1. vi., c. 7. ed grant -f that emperor ( Decrevimus. says Boniface, in nostro -enodal

Page 273 CtIArP. VhL ECCLESIASTICAL POWER. 273 construed oy the popes to mean a prom- ter. These events had a natural telldenise of obedience before receiving the cy to exalt the papal supremacy, which pall, which was changed in after times it is needless to indicate. But a circum by Gregory VII. into an oath of fealty.* stance of a orvy different nature contribThis council of Frankfort claims a ued to this in a still greater degree. leading place as an epoch in the history About the conclusion of the eighin cell of the papacy. Several events ensued, tury, there appeared, under the name or chiefly of a political nature, which rapid- one Isidore, an unknown person, a co} ly elevated that usurpation almost to its lection of ecclesiastical canons, now greatest height. Subjects of the throne commonly denominated the False False Des of Constantinopole, the popes had not as Decretals.* These purported to crelals. yet interfered, unless by mere admoni- be rescripts or decrees of the early bistntion, with the temporal magistrate. The ops of Rome; and their effect was to di first instance wherein the civil duties of minish the authority of metropolitans a nation and the rights of a crown appear over their suffragans, by establishing an to have been submitted to his decision, appellant jurisdiction of the Roman See was in that famous reference as to the in all causes, and by forbidding national deposition of Childeric. It is impossible councils to be holden without its consent. to consider this in any other light than as Every bishop, according to the decretals a point of casuistry laid before the first of Isidore, was amenable only to the im religious judge in the church. Certainly mediate tribunal of the pope; by which the Franks, who raised the king of their one of the most ancient rights of the pro choice upon their shields, never dreamed vincial synod was abrogated. Every acth that a foreign priest had conferred upon cused person might not only appeal from him the right of governing. Yet it was an inferior sentence, but remove an uneasy for succeeding advocates of Rome finished process before the supreme ponto construe this transaction very favour- tiff. And the latter, instead of directing ably for its usurpation over the thrones a revision of the proceedings by the oriof the earth.t ginal judges, might annul them by his owvI I shall but just glance at the subsequent authority; a strain of jurisdiction beyond political revolutions of that period: the the canons of Sardica, but certainly warinvasion of Italy by Pepin, his donation ranted by the more recent practice of of the exarchate to the Holy See, the Rome. New sees were not to be erect. conquest of Lombardy by Charlemagne, ed, nor bishops translated from one see the patriarhate of Rome conferred upon to another, nor their resignations accept-, both these princes, and the revival of the ed, without the sanction of the pope. iWestern Empire in the person of the lat- They were still indeed to be consecrated by the metropolitan, but in the pope's convenetu, et confessi sumus fidem catholicam, et name. It has been plausibly suspected anitatem et subjectionem Romnan ecclesiam fine that these decretals were forged by some tenus servare, S. Petro et vicario ejus velle subjici, metropolitanos pallia
ab illa sede qu a.rere, et, per their omnia, praeepta S. Petri canonic6 sequi.-De their general reception may at least be rMarca, 1. vi., c. 7. Schmidt, t. i., p. 424, 438, 446. partly ascribed to such sentiments. The This writer justly remarks the obligation which archbishops were exceedingly powerful, Rome had to St. Boniface, who anticipated the and might often abuse their superiority system of Isidore. We have a letter from him tosuperiority the English clergy, with a copy of canons passed over inferior prelates; but the whole in one of his synods, for the exaltation of the apostolic see, but the church of England was not then * The era of the False Decretals has not been inclined to acknowledge so great a supremacy in precisely fixed; they have seldom been supposed, Rome.-Collier's Eccles. History, p. 128. however, to have appeared much before.800. But In the eighth general council, that of Constanti- there is a genuine collection of canons published people in 872, this prerogative of sending the pallium by Adrian I., in 785, which contain nearly the same to metropolitans was not only confirmed to the principles, and many of which are copied by Isi pope, but extended to the other patriarchs, who had done, as well as Charlemagne in his capitularies every disposition to become as great usurpers as -De Marca, 1. vii., c. 20. Giannone, 1. v., c. 6 their more fortunate elder brother. Dupin, de AntiquA Disciplina, p. 133. Fleury,, * De Marca, ubi supra. Schmidt, t. ii., p. 262. Hist. Eccles., t. ix., p. 500, seems to consider the de-'. According to the latter, this oath of fidelity was ereitals as older than this collection of Adrian; but exacted in the ninth century; which is very prob- I have not observed the same opinion in any other able, since Gregory VII. himself did but fill up the writer. The right of appeal from a sentence of the sketch which Nicholas I. and John VIII. had de- metropolitan deposing a bishop to the Holy See is lineated. I have since found this confirmed by positively recognised in the capitularies of Lovsis Gratian, p. 305. the Debonair (Baluze, p. 1000), the three last + Eginhard says that Pepin was made king per books of which, according to the collection of Antuctoritatem Romani pontificis; an ambiguous word, segisus, are said to be apostolichi auctoritate robowhich may rise to command, or sink to advice, ac- rata, quia his cudendis maximb apostolica interfui cording to...
In the subsequent pendence. The popes had a closer inter reign of Charles the Bald, a bold defend- est in granting exemptions, which at er of ecclesiastical independence was tached to them the regular clergy, and found in Hincmar, archbishop of Rheims, lowered the dignity of the bishops. In the most, distinguished statesman of his the eleventh and twelfth centuries, whole age. Appeals to the pope, even by orders of monks were declared exempt at ordinary clerus, had become common, a single stroke; and the abuse began to and the provincial councils, hitherto the awaken loud complaints, though it lid supreme spiritual tribunal as well as not fail to be aggravated afterward. legislature, were falling rapidly into de-

The principles of ecclesiastical su cay. The frame of church government, premacy were readily applied by And upon which had lasted from the third or fourth the popes to support still more zivi gov ce.ntury, was nearly dissolved; a refracto- insolent usurpations. Chiefs by ernments rbishop was sure to invoke the supreme divine commission of the whole church,;ourt of appeal, and generally met there every earthly sovereign must be Loiare. piith a more favourable judicature. Hinc- subject to their interference. The.nar, a man equal in ambition, and almost bishops indeed had, with the common.n public estimation, to any pontiff, sometimes came off successfully in his conten- * The earliest instance of a papal exemption is tions with Rome. But time is fatal to in 455, which indeed is a respectable antiquity. the unanimity of coalitions; the French Others scarcely occur till the pontificate of Zacha ry, in the middle of the eighth century, who granted * I have not seen any account of the decretals an exemption to Monte Casino, ita ut nullius juri su clear and judicious as in Schmidt's History of subjaceat, nisi solius Romani pontificis. See this Germany, t. ii., p. 249. Indeed, all the ecclesiasti- discussion in Giannone, 1. v., c. 6. Precedents for cal part of that work is executed in a very superior the exemption of monasteries from episcopal juris. See also De Marca, 1. iii., c. 5; 1. vii., c. 20. diction occur in Marcullus's forms, compiled to The latter writer, from whom I have derived much wards the end of the seventh century, but these information, isbyno means astrenuous adversary of were by royal authority. The kings of France ultramontane pretensions. In fact, it was his ob- were supreme heads of their national church.ject to please both in France and at Rome, to be- Schmidt, t. i., p. 382. De Marca, i. iii., c. 16. come both an archbishop and a cardinal. He failed Fleury, Institutions au Droit, t. i., p. 288. Murato. nevertheless of the latter hope; it being impossible ri, Dissert. 70 (t. iii., p. 404, Italian), is of opinion at that time (1650) to satisfy the papal court, with- that exemptions of monasteries from episcopal visi out sacrificing altogether the Gallican church and tation did not become frequent ill Italy till the e'er the crown. enth century; and that many charters of this kind t De Marca, 1. iv., c. 11. Velly, &c. are forgery. It is held also by some EngLsh an t)De Marca 1. iv., c. 68, &c.; 1. vi., c. 14, 28; 1. tiquaries, that no Anglo-Saxon monastery cwas e-. vii., c. 21. Dupin, p. 133, &c. Hist. du Droit Ec- empt, and that the first instance is that of Lattle Ab els. Franquois, p. 188, 224. Velly, &c. Hincmar, bey under the Conqueror; the charters of an earlier however, was not consistent; for, having obtained date having been forged.-Hody on Convocations, the see of Rheims in an equivocal manner, he had p. 20 and 170. It is remarkable that this grant is applied for confirmation at Rome, and in other re- made by William, and confirmed by Lanfranc. Impaired the Gallican rights.-Pasquier, Re- Collier, p. 256. Exemptions became very usual iv cerches de la France, 1. iii., c. 12. England afterward.-Henry, vol. v., vp.31

Page 275 :HAP. VII.† ECCLESIASTICAL POWER. 27weapons of their order, kept their own original intention. There was certainly sovereigns in check; and it could not some pretext for nlany of these censures, seem any extraordinary stretch in their as the only means of defence within the supreme head to assert an equal preroga- reach of the clergy, when their posses live. GregoryIV., as I have mentioned, sions were lawlessly violated.* Others became a party in the
revolt against were founded upon the necessity of enforcing Louis I.; but he never carried his threats censing their contentious jurisdiction, which of excommunication into effect. The while it was rapidly extending itself over first instance where the Roman pontiffs almost all persons and causes, had no' actually tried the force of their arms acquired any proper coercive process. against a sovereign, was the excommunication of Lothaire, king of Lorraine, and jurisdiction is so multifarious, and, in grandson of Louis the Debonair. This general, so little of a religious nature, prince had repudiated his wife upon un- had till lately no means even of compelling just pretexts, but with the approbation of all appearance, much less of enforcing a national council, and had subsequence censing a sentence, but by excommunica quently married his concubine. Nicholas, who felt the inadequacy las I., the actual pope, despatched two le- of their own laws to secure obedience gates to investigate this business, and de- called in the assistance of more formidable s. They hold ble sanctions. Several capitularies of a council at Metz, and confirm the divorce Charlemagne denounced the penalty of and marriage. Enraged at this conduct excommunication against incendiaries, or of his ambassadors, the pope summons deserters from the army. Charles the a council at Rome, annuls the sentence, Bald procured similar censures against deposes the archbishops of Treves and his revolted vassals. Thus the boundary Cologne, and directs the king to discard between temporal and spiritual offences his mistress. After some shuffling on grew every day less distinct; and the the part of Lothaire, he is excommunica clergy were encouraged to fresh ented; and, in a short time, we find both croachments, as they discovered the set the king and his prelates, who had begun crot rendering them successful.t *pith expressions of passionate contempt The civil magistrate ought undoubtedpnowards the pope, suing humbly for absolu- ly to protect the just rights and lawful lution at the feet of Adrian II., successor jurisdiction of the church. It is not so of Nicholas, which was not granted with-evident that he should attach temporal out difficulty. In all its most impudent penalties to her censures. Excommu. pretensions, the Holy See has attended nication has never carried such a preto the circumstances of the time. Lo- sumption of moral turpitude as to disable thaire had powerful neighbours, the kings a man, upon any solid principles, from of France and Germany, eager to invade the usual privileges of society. Supernis dominions on the first intimation from stition and tyranny, however, decided Rome; while the real scandalousness of otherwise. The support due to church his behaviour must have intimidated his censures by temporal judges is vaguely Conscience, and disgusted his subjects. declared in the capitularies of Pepin and Excommunication, whatever opinions Charlemagne. It became, in later ages, Sxcommu- may be entertained as to its re- a more established principle in France aciations. ligious efficacy, was originally and England, and, I presume, in other nothing more in appearance than the ex- countries. By our common law, an exercise of a right which every society communicated person is incapable of be. claims, the expulsion of refractory mem- ing a witness, or of bringing an action, bers from its body. No direct temporal and he may be detained in prison until disadvantages attended this penalty for he obtains absolution. By the establish several ages; but, as it was the most se- ments of St. Louis, his estate or person vere of spiritual censures, and tended to might be attached by the magistrate.s exclude the object of it not only from a participation in religious rites, but, in a * Schmidt, t. iv., p. 217. Fleury, Institutions au considerable degree, from the intercourse Droit, t. ii.. p. 192. of Christian societyBy a recent statute, 53 G. III., c. 127, the writ of Christian society, it was used spa-De excommunicato capiendo, as a process in con. ringly, and upon the gravest occasions. tempt, was abolished in England, but retained mi Gradually, as the church became more Ireland. powerful and more imperious, excommu- T M6m. e l'Acad. des Inscript., t. xxxix., p. 589 &c. nications were issued upon every provo- Ordonnances des Rois, t. i, p. 121. But ai
These actual penalties were attended by Gregory VII., that some have inferred marks of abhorrence and ignominy still to him as their author; instances more calculated to make an impression may however be found of an earlier date on ordinary minds. They were to be and especially that which accompanied shunned, like men infected with leprosy, the abovementioned excommunication of by their servants, their friends, and their Robert, king of France. They were of families. Two attendants only, if we terward issued not unfrequently against may trust a current history, remained kingdoms; but in particular districts they with Robert, king of France, who, on ac- continually occurred.* count of an irregular marriage, was put This was the mainspring of the ma. to this ban by Gregory V.; and these chinery that the clergy set in motion, the threw all the meats which had passed his lever by which they moved the world. table into the fire.* Indeed, the mere in- From the moment that these interdicts tercourse with a proscribed person incur- and excommunications had been tried, red what was called the lesser excom- the powers of the earth might be said to munication, or privation of the sacra- have existed only by sufferance. Nor ments, and required penitence and abso- was the validity of such denunciations lution. In some places, a bier was set supposed to depend upon their justice. before the door of an excommunicated The imposer indeed of an unjust excomindividual, and stones thrown at his win- munication was guilty of a sin; but the dows; a singular method of compelling party subjected to it had no remedy but his submission.t Everywhere the ex- submission. He who disregards such a communicated were debarred of a regular sentence, says Beaumanoir, renders his sepulture, which, though obviously a mat- good cause bad.t And indeed, without ter of police, has, through the supersti- annexing so much importance to the dition of consecrating burial-grounds, been rect consequences of an ungrounded cen treated as belonging to ecclesiastical con- sure, it is evident that the received thetrol. Their carcasses were supposed to ory of religion concerning the indispenbe incapable of corruption, which seems sable obligation and mysterious efficacy to have been thought a privilege unfit for of the rites of communion and confession, those who had died in so irregular a man- must have induced scrupulous minds tc, ner.t make any temporal sacrifice rather than Bu as excommunication, which at- incur their privation. One is rather surtaterd>.t. tackled only one and perhaps a prized at the instances of failure, that hardened sinner, was not always of success, in the employment of these efficacious, the church had recourse to spiritual weapons against sovereigns, oe a more comprehensive punishment. For the laity in general. It was perhaps the offence of a nobleman, she put a a fortunate circumstance for Europe; county, for that of a prince, his entire that they were not introduced, upon a kingdom, under an interdict, or suspen- large scale, during the darkest ages of sion of religious offices. No stretch of superstition. In the eighth or ninth cen her tyranny was perhaps so outrageous turies they would probably have met with as this. During an interdict, the church- a more implicit obedience. But after es were closed, the bells silent, the dead Gregory VII., as the spirit of ecclesiunburied, no rite but those of baptism astical usurpation became more violent, and extreme unction performed. The there grew up by slow degrees an oppenalty fell upon those who had neither posite feeling in the laity, which ripened partaken nor could have prevented the into an alienation of sentiment from the offence; and the offence was often but a church, and a conviction of that sacred private dispute, in which the pride of a truth, which superstition and sophistry pope or bishop had been wounded. In- have endeavoured to eradicate from the terdits were so rare before the time of heart of man, that no tyrannical government can be founded on a divine commis. to have been so severe

Page 276 EUROPI DURING THE:IDDLH, AGES. [U:()}E.'lJ
in this respect as that of being founded on a divine commis
sion. with Dr. Cosens (Gibson's Codex, p. 1102), that Excommunications had
very seldom, if the writ De excommun. capiendo is a privilege pe-
ever, been levelled at the
head. Further culiar to the English church. of a sovereign before the in-
stance of Lothaire. His igno-
or the t Vaissette, Hist. de Languedoc, t. iii. Appendix, stance of
tation. mimious submission, and the
gent Du Cange, v. Imblocatus: where several authors are referred to, for the constant opinion *
Gianneme, I. vii., c. 1. Schmidt, t. iv., p. 220 among the members of the Greek church, that the
Dupin, De antiqua Ecc I. Disciplinm, p. 288. St bodies of excommunicated persons remain in

Page 277 nap. VII.] ECCLESIASTICAL POWERt 2f oral feebleness of the Carlovingian line, so
favourable for her ambition. But the produced a repetition of the menace at consummation
was still sus- Their de-
by excommunication. Sustained by the in-
true shepherd, drove each other alter-
and the pope nately from the city. A few respectable in this instance failed of success.* But
names appear thinly scattered through John VIII., the next occupier of the this darkness; and
sometimes, perhaps, chair of St. Peter, carried his pretensions a pope, who had acquired
estimation by to a height which none of his predeces-
sors had reached. The Carlovingian by some encroachment on the rights of princes had formed
an alliance against princes, or the privileges of national Boson, the usurper of the kingdom of
churches. But, in general, the pontiffs of Arles. The pope writes to Charles the that age had
neither leisure nor capacity Fat: I have adopted the illustrious prince to perfect the great system
of temporal Boson as my son; be content therefore supremacy, and looked rather to a vile with
your own kingdom; for I shall in-
ùprofit from the sale of episcopal confirm-
ations, or of exemptions to monaster
to injure my son.t In
another letter to ies.* the same king, who had taken some prop-
The corruption of the head extended erty from a convent, he enjoins him to naturally to all other members Corruption
restore it within sixty days, and to cer-
of the church. All writers con-
of morals. tify by an
evoy that he had obeyed the cur in stigmatizing the dissoluteness and command; else an
excommunication neglect of decency that prevailed among would immediately ensue, to be fol-
the clergy. Though several codes of lowed by still severer castigation, if the ecclesiastical
discipline had been comipping should not repent upon the first led by particular prelates, yet
neither punishment.; These expressions seem these nor the ancient canons were much to
intimate a sentence of deposition from regarded. The bishops, indeed, who were his throne, and
thus anticipate by two to enforce them, had most occasion to hundred years the famous era of
Grego-
their severity. They were obtury VII., at which we shall soon arrive. ded upon
their sees, as the supreme poIn
some respects, John VIII. even ad-
tiffs were upon that of
Rome, by force or vanced pretensions beyond those of Greg-
corruption. A child of five years
old ory. He asserts very plainly a right of was made archbishop of Rheims. The choosing the
emperor, and may seem see of Narbonne was purchased for an indirectly to have exercised it in the other at the age of ten. By this relax. election of Charles the Bald, who had ation of morals the priesthood began to not primogeniture in his favour.~ This lose its hold upon the prejudices of man prince, whose restless ambition was uni-kind. These are nourished chiefly, ined with meanness as well as insincerity, deed, by shining examples of piety and consented to sign a capitulation, on his virtue, but also, in a superstitious age, by coronation at Rome, in favour of the ascetic observances, by the fasting and pope and church, a precedent which was watching of monks and hermits; who improved upon in subsequent ages.11 have obviously so bad a lot in this life, Rome was now prepared to rivet her fet- that men are induced to conclude that tcrs upon sovereigns, and at no period they must have secured a better rever, have the condition of society and the sion in futurity. The regular clergy, acircumstances of civil government been cordingly, or monastic orders, who prac. * De Marca, I. iv., c. 11. * Schmidt, t. ii., p. 414. Mosheim. St. Marc t Schmidt, t. ii., p. 260. Muratori, Ann. d'Italia, passim. Dunriribus deinceptis scions te verberibus erudi- Schmidt, p. 261. was almost general in the church to have bishops ~ Baluz. Capitularia, t. ii., p. 251. Schmid-. t. under twenty years old.-idem, p. 149. Even the I, p. 197. Pope Benedict IX. is said to have 0een onll I Idt, p 199 1 tweli 3, but this has been doubted.

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278 EUROPE DURING’TH’ MIDDLE AGES LC'HA.. vii tused, at leas apparently, the specious vigorous effortshad been made in England impostures of self-mortification, retained by Dunstan, with the assistance of King at all Aimes a far greater portion of re- Edgar, to dispossess the married canons, Ipect than ordinary priests, though de- if not the parochial clergy, of their beneenerated themselves, as was admitted, fices; but the abuse, if such it is to be from their primitive strictness. considered, made incessant progress, til: Two crimes, or at least violations of the middle of the eleventh century Neglect of ecclesiastical law, had become There was certainly much reason for the rules of almost universal in the eleventh rulers of the church to restore this part celibacy. century, and excited general in- of their discipline, since it is by cutting dignation; the marriage or concubinage off her members from the charities of of priests, and the sale of benefices. By domestic life that she secures their en an effect of those prejudices in favour of. tire affection to her cause, and renders austerity to which I have just alluded, them, like veteran soldiers, independent celibacy had been, from very early times, of every feeling but that of fidelity to enjoined as an obligation upon the cler- their commander, and regard to the ingy. Some of the fathers permitted those terests of their body. Leo IX., accordalready married for the first time, and to ingly, one of the first pontiffs who retriev a virgin, to retain their wives after ordi- ed the honour of the apostolic chair, after nation, as a kind of indulgence, of which its long period of ignominy, began in it was more laudable not to take advan- good earnest the difficult work of enfortage; and this, after prevailing for a cing celibacy among the clergy.* His length of time in the Greek church, was successors never lost sight of this essensiected by the council of Trullo in tial point of discipline. It was a struggle 691,* and had ever since continued one against the natural rights and strongest of the distinguishing features of its dis- affections of mankind, which lasted fol cipline. The Latin church, however, did several ages, and succeeded only by the not receive these canons; and has uni- toleration of greater evils than those it firmly persevered in excluding the three was intended to remove. The laity, in orders of priests, deacons, and subdea- general, took part against the married cons, not only from contracting matri- priests, who were reduced to infamv and mony, but from cohabiting with wives want, or obliged to renounce their dear espoused before their ordination. The est connexions. In many parts of Gerprohibition, however, during some ages, many, no ministers were left to perform existed only in the letter of her canons.
divine services. But perhaps there was In every country, the secular or parochial no country where the rules of celibacy clergy kept women in their houses, upon met with so little attention as in England. more or less acknowledged terms of in- It was acknowledged, in the reign of Hentercourse, by a Connivance of their eccle- ry I., that ith.e greate.r and better part of siastical superiors, which almost amount- the clergy wer3e marriedA; and that prince ed to a positive toleration. The sons of is said to hiii. v: permitted them to retain priests were capable of inheriting by the their wives. Bu.t the hierarchy never law of France and also of Castile.t Some always inheriting in default of those born in sol * This council was held at Constantinople in etmn wedlock. —bid. the dome of the palace, called Trullus, by the Lat- * St. Marc, t. iii., p. 152, 164, 219, 602, &c. ins. The word Trullo, though solceciastical, is t Schmidt, t. iii., p. 279. Martenne, Thesaurus used, I believe, by ecclesiastical writers in Eng- Anecdotorum, t. i., p. 230. A Danish writer draws lish.-St. Marc, t. i., p. 294. Art de v6rifier les a still darker picture of the tyranny exercised toDates, t. i., p. 157. Fleury, Hist. Eccls., t. ix., p. wards the married clergy, which, if he does not ex110. Bishops are not within this permission, and aggerate, was severe indeed: alii membris truncacannot retain their wives by the discipline of the bantur, alii occidebantur, alii de patria expellebanGreek church. tur, pauci sua retinuere.- Langebek, Script. Re. t This prohibition is sometimes repeated in rum Danicarum, t. i., p. 380. The prohibition was Charlemagne's capitularies; but I have not ob- repeated by Waldenar II. in 1222, so that there served that he notices its violation as a notorious seems to have been much difficulty found.-Idem, abuse. It is probable, therefore, that the open con- p. 287 and p. 272. cubinage or marriage of the clergy was not general: Wilkins, Concilia, p. 387. Chronicon Saxon. until a later period. And Fleury declares, that he Collier, p. 248. 286, 294. Lyttleton, vol. iii., p has found no instance of it before 893, in the case 328. The third Lateran council, fifty years after of a parish priest at Chalons, who gave great scan- ward, speaks of the detestable custom of keeping dal by publicly marrying.-Hist. Eccles., t. xi., p. concubines, long used by the English clergy. C, im 594. in Anglia prava et detestabili consuetudine et lone: Recueil dqs Historiens, t. xi., preface. Mari- tempore fuerit obtentum, ut clerici in dormibus sulm na, Ensayo socre las siete partidas, c. 221, 223. fornicarias habeant. —Labbe, Concilia, t. X, p. This was by virtue of the general indulgence 1633. Eugenius IV. sent a legate te impose.e.i shown by the customs of that, country to concubi- bacy on the Irish clergy. — Lyttleton's 1Henry I. [Lae, or barraganie; the chi.dren of such a union vol. ii., p. 42.
of the clergy and people more regular, by recommendatory letters belonging to the city or
diocese. The to the electors. In England also, before subject of their choice was, after the the
conquest, bishops were appointed in establishment of the federate or provi- the wittenagemot;
and even in the reign cial system, to be approved or rejected of William, it is said that Lanfranc
was by the metropolitan and his suffragans; raised to the see of Canterbury by conand, if
approved, he was consecrated by sent of parliament. But, independently' them. It is probable
that, in almost of this prerogative, which length of time every case, the clergy took a leading and
the tacit sanction of the people have part in the selection of their bishops; rendered
unquestionably legitimate, the but the consent of the laity was abso- sovereign had other means
of controlling lutely necessary to render it valid. the election of a bishop. Those estates They
were, however, by degrees ex- and honours which compose the tenlpoccluded from any real
participation, first ralities of the see, and without which the in the Greek, and finally in the
western naked spiritual privileges would not have church. But this was not effected till tempted
an a-aricious generation, had pretty late times; the people fully preserved their- elective rights
at Milan in The form of elecion of a bishop of Puy, in 1053,,he eleventh century; and traces of
their runs thus: clerus, populus, et militia elegimus.-.oncurrence may be found both in France
Vaissette, Hist. de Languedoc, t. ii. Appendix, p. ind Germany in the next age. 220. Even
Gratian seems to admit in one place'that the laity had a sort of share, though no deci se voice,
in filling up an episcopal vacancy. * Quidam sacerdotes Latini, says Innocent III., Electio
clericorum est, petitio plebis.-Decret., 1. i., n domibus suis habent concubinas, et nonnulli ali-
distinctio 62. And other subsequent passages con auas sibi non metuunt desponsare.-Opera
Inmo- firm this. zent Ill., p. 558. See also p. 300 and 407. The * Gibbon, c. 20. St. Marc,
Abr60g6 Chronolo latter cannot be supposed a very common case, gique, t. i., p. 7. after so
many prohibitions; the more usual prac- t Fra Paolo on Benefices, c. ix. Giannone, 1. lice was
to keep a female in their houses, under iii., c. 6; I. iv., c. 12. St. Marc, t. i., p. 37. some pretence
of relationship or servitude, as is t Schmidt, t. i., p. 386; t. ii., p. 245, 487. This still said to be
usual in Catholic countries.-Du interference of the kings was perhaps not quite Cange, v.
Focaria. A writer of respectable au- conformableto their own laws, which only reserved thority
asserts, that the clergy frequently obtained to them the confirmation. Episcopo decedente, a
bishop's license to cohabit with a mate. —Har- says a constitution of Clotaire II. in 615, in loco
mer's [Wharton's] Observations on Burnet, p. 11. ipsius, qui a metropolitano ordinari debet, a
provin[ find a passage in Nicholas de Clemanegis, about cialibus, a cleret et populo eligatur: et si
persona 1400, quoted in Lewis's life of Pecock, p. 30. Ple- condigna fuerit, per ordinationem
principis ordine risque in diocesibus, rectores parochiarum ex certo tur.-Baluz. Capitul., t. i., p.
21. Charlemagneis et conducto cum his praslatis pretio, passim et pub- said to have adhered to
this limitation,'leaving ic4 concubinas tenent. This, however, does not elections free, and only
approving the person, and tmount to a direct license. conferring investiture on him.-F. Paul, on
Bene. The marriages of English clergy are noticed and fices, c. xv. But a more direct influence
was re. condemned in some provincial constitutions of stored afterward. Ivon, bishop of
Chartres, about 1237.-Matt. Paris, p. 381. And there is, even so the year 1100. thus concisely
expresses the several late as 1404, a mandate by the Bishop of Exeter parties concurring in the
creation of a bishop: eli.gainst married priests.-Wilkins, Concilia, t. iii., gente clero, suffragante
populo, dono regis, pet p. 277. manum metropolitani, approbante Romano ponti. t Marcia, De
Concordantia, &c., 1. vi., c. 2. fice. —Du Chesne, Script. Rerum Gallicarum, t. iv., § Father
of Henry II., vol. iv. p. 144
ISO EURPE DURING r1 FIE MIDDLE AGES. Y[CmAi. VII chiefly been granted by former kings, praying that their election of a popep and were assimilated to lands held on a might be confirmed. Exceptions, if any. beneficiary tenure. As they seemed to are infrequent while Rome was subject partake of the nature of fiefs, they re- to the eastern empire.* This, among Investitieres. quired similar formalities; in- other imperial prerogatives, Charlemagne vestiture by the lord, and an might consider as his own. He posses. oath of fealty by the tenant. Charle- sed the city, especially after his corona. In says is said to have introduced this tion as emperor, in full sovereignty; and, practice; and, by way of visible symbol, even before that event, had investigated, as usual in feudal institutions, to have as supreme chief, some accusations preput the ring and crosier into the hands of ferred against the Pope Leo III. No vac the newly-consecrated bishop. And this cancy of the papacy took place after continued for more than two centuries Charlemagne became emperor; and it afterward without exciting any scandal must be confessed, that, in the first which or resistance.* happened under Louis the Debonair, SteThe church has undoubtedly surren- phen IV. was consecrated in haste without dera part of her independence in return that prince's approbation.t But Gregory for ample endowments and temporal IV., his successor, waited till his elecpower; nor could any claim be more rea- tion had been confirmed; and, upon sonable than that of feudal superiors to the whole, the Carlovingian emperors, grant the investiture of dependant fiefs. though less uniformly than their predBut the fairest right may be sullied by ecessors, retained that mark of sov abuse; and the sovereignt, the lay-pa- ereignty.T But during the disorderly trons, the prelates of the tenth and elev- state of Italy which followed the last enth centuries, made their powers of reigns of Charlemagne's posterity, while nomination and investiture subservient the sovereignty and even the name of an to the grossest rapacity.i According to emperor were in abeyance, the supreme the ancient canons, abenifice was avoid- dignity of Christendom was conferred ed by any simoniacl payment or stipu- only by the factious rabble of its capital lation. If these were to be enforced, the Otho the Great, in receiving the imperial church must almost be cleared of its min- crown, took upon him the prerogatives isters. Either through bribery in places of Charlemagne. There is even extant a where elections still prevailed, or through decree of Leo VIII., which grants to him corrupt agreements with princes, or, at and his successors the right of naming least, customary presents to their wives future popes. But the authenticity of and ministers, a large proportion of the this instrument is denied by the Italians.b bishops had no valid tenure in their sees. It does not appear that the Saxon enr The case was perhaps worse with inferior perors went to such a length as nomina. clerks; inthe chutrclof Milan, whichwas tion, except in one instance (that of notorious for this corruption, not a single Gregory V. in 906); but they sometimes ecclesiastic could stand the test, the arch- not uniformly, confirmed the election of bishop exacting a price for the collation a pope, according to ancient custom. of every benefice.t An explicit right of nomination was howrThe bishop of Rome, like those of in- ever conceded to the Emperor Henry I11 Imperial feror sees, were regularly elected in 1047, as the only means of rescuing confirm- by the citizens, laymen as well as the Roman church from the disgrace and atior of ecclesiastics. But their conse- depravity into which it had fallen. Henry popes. eration was deferred until the popular choice had received the so- Le Blanc, Dissertation sur i'Autorit6 des Em ereign's sanction. The Romans regu- pereurs. This is subjoined to his Trait6 des larly despatched letters to Constanti- Monnoyes; mut not in all copies, which makes nople or to the exarchs of Ravenna, those that want it less valuable. —St. Marc and Muratori, passim. E De Marca, p. 416. Giannone, l. vi., c. 7. t Muratori, A. D. 817. St. Marc. Boniface, marquis of Tuscany, father of the t Le Blanc. Schmidt, t. ii., p. 186. St. Marc, t u-,tntess Matilda, and by far the greatest prince in i., p. 387, 393, &c. Italy, was flogged before the altar by an abbot
for Q St. Marc had defended the authenticity of th; selling benefices.—Muratori, ad ann. 1046.
The instrument in a separate dissertation, t. iv., p. 116 offence was much more common. than the punish- though admitting some interpolations. Pagi i mernt, but the two combined f:rnish a good speci- Baronium, t. iv., p. 8, seemed to me to have urgesnen of the eleventh century. some weighty objections; and Muratori, Alna.i $ St. Marc, t. iii., p. 65, 188, 219, 296, 230, 568. d'Italia, A. D. 962, speaks of it as a gross impos Muratori, A. D. 958, 1057, &c. Fleury, Hist. Ec- ture, in which he probably goes too far. It obtain cl6s., t. xiii., p. 73. The sum, however, appears to ed credit rather early, and is admitted into the de nave been very small rather like a fee than a retrem of Gratian, notwithstanding its obvios ris, tenden.ey. tD 211. edit. 1591.

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for the assertion of their part of his general scheme for emancipation independs, or the
restoration of disting the spiritual, and subjugating the cipline, was Hildebrand, archdeacon of
temporal power. The ring and crosier, the church of Rome, by far the most it was asserted by
the papal advocates, conspicuous person of the eleventh century were the emblems of that power
which tury. Acquiring by his extraordinary no monarch could bestow; but even if a qualities an
unbounded ascendency over less offensive symbol were alleged in the Italian clergy, they
regarded him as investitures, the dignity of the church their chosen leader, and the hope of their
was lowered, and her purity contaminacommom cause. He had been empower- ted, when her
highest ministers were ed singly to nominate a pope, on the part compelled to solicita the
patronage ot of the Romans, after the death of Leo the approbation of laymen. Though the IX,
and compelled Henry III. to acqui- St. Marc, p. 306. t Ibid., p. 552. He acted however as pope,
for' St. Marc. M:lratori. Schmidt. Struvius. responding in that character with bishops of at' t St.
Marc, t. iii., p. 276. The first canon of the countries, from the day of his election, p. 55. thild
Lateran council makes the consent of two t Schmidt. St. Marc. These two are my prm thirds of
the college necessary for a pope's elec- cipal authorities for tile contest between the churct
ion.-Labb6, Concilia, t. x p 1508. and the empire. i St. Mare. n 9' 6 St Marc, t. iii.... 670.
in promised not to assume the ensigns of the Lateran palace, and, by a solemn sen- tence, not only excommunicated Henry. This base humiliation, instead of conbut deprived him of the kingdoms of Ger- ciliating Henry's adversaries, forfeited the many and Italy, releasing his subjects attachmentof his friends. In his contest from their allegiance, and forbidding them with the pope, he had found a zealous to obey him as sovereign. Thus Grego- support in the principal Lombard cities, ry VII. obtained the glory of leaving all among whom the married and simoniaclal his predecessors behind, and astonishing clergy had great influence.* Indignant mankind by an act of audacity and ambition which the most emulous of his suc- cem reges a regno deponere posse denegabit, quicessimi Papae Gregorii nor. proscribenda judicabit. Ipse enim vir apostolicus.... Praterea, liberi homines Henricum eo facto * The sentence of Gregory VII. against the Em- sibi prwaposuerunt in regem, ut electores suos ylstK peror Henry was directed, we should always re- judicare et regali providentia gubernare satageret, member, to persons already well disposed to reject quod pactum ille postea praevoricari et contemhis authority. Men are glad to be told that it is nere non cessavit, &c. Ergo, et abque sedis their duty to resist a sovereign against whom they apostolicae judicio principes eum pro rege merit5 are in rebellion, and will not be very scrupulous in refutare possent, cum pactuin adimplere contem. examining conclusions which fall in with their in- serit, quod iis pro electione suA promiserat; quc clinations and Interests. Allegiance was in those non adimpleto, nec rex esse poterat.-Vita Greg. turbulent ages easily thrown off, anl, the right of VII. in Muratori, Script. Rer. Ital., t. iii., p. 342. resistance was in continual exercise. To the Ger Upon the other hand, the friends and supporters mans of the eleventh century; a prince unfit for of Henry, though ecclesiastics, protested against Christian communion would easily appear unfit to this novel stretch of prerogative in the Roman see reign over them; and though Henry had not given Several proofs of this are adduced by Schridt, t. much -eal provocation to the pope, his vices and iii., p. 315. tyrar.'m' might seem to challenge any spiritual cen- * There had been a kind of civil war at Milan sure, or temporal chastisement. A nearly contem- for about twenty years before this time, excited by poiary writer combi es the two justifications of the intemperate zeal of some partisan, who 2n the rebellious party. Nemo Romanorum t ontifi- deavoured to execute the papal decrees agatrst it

Page 283 sAP. V11. ECCLESIASTICAL POWER. 2s at his submission lo Gregory, whom they I They raised up enemies against llhery affected to consider as a usurper of the IV. out of the bosom of his family, nsti. papal chair, they now closed their gates gating the ambition of two of his sons-. against the emperor, and spoke openly successively, Conrad and Henry, to minof deposing him. In this singular posi- gle in the revolts of Germany. But tien between opposite dangers, Henry Rome, under whose auspices the latter retrod his late steps, and broke off his had not scrupled to engage in an almos! treaty with the pope; preferring, if he parricidal rebellion, was soon disappoint. must tall, to fall as the defender rather ed by his unexpected tenaciousne.ss of than the betrayer of hts imperial rights. that obnoxious prerogative which had The rebellious princes of Germany chose occasioned so much of his father's misanother king, Rodolph, duke of Swabia, ery. tie steadily refused to part with jn whom Gregory, after some delay, be- lhe right of investiture; and the empire stowed the crown, with a Latin verse, was still committed in open hostility with unporting that it was given by virtue of the church for fifteen years of his reign. the original commission of St. Peter.* But Henry V. being stronger in the sup. But the success of this pontiff in his port of his German vassals than his father immediate designs was not answerable had been, none of the popes with whom to his intrepidity. Henry both subdued he was engaged had the boldness to rethe German rebellion,
and carried on the peat the measures of Gregory VII. [A war with so much vigour, or rather so D. 1122.] At length, each party little resistance, in Italy, that he was grown weary of this ruinous imied bcrowned in Rome by the antipope Gui- contentioi, a treaty was agreed concordat bert, whom he had raised in a council of upon between the emperor and of Calixtus his partisans to the government of the Calixtus II., which put an end by coin church instead of Gregory. The latter promise to the question of ecclesiastical found an asylum under the protection of investitures. By this compact, the emRoger Guiscard at Salerno, where he peror resigned for ever all pretence to Dispute died an exile. His mantle, how- invest bishops by the ring and crosier, about i,- ever, descended upon his suc- and recognised the liberty of elections. investitures. cessor, especially Urban II. and But, in return, it was agreed that elecPaschal II., who strenuously persevered tions should be made in his presence or in the great contest for ecclesiastical in- that of his officers; and that the new, dependence; the former with a spirit and bishop should receive his temporalities policy worthy of Gregory VII., the latter from the emperor by the sceptre.* with steady but disinterested prejudice.t Both parties in the concordat at Worms - receded from so much of their pretenregular clerks by force. The history of these feuds sions, that we might almost hesitate to has been written by two contemporaries, Arulf determine-which is to be considered as and Landulf, published in the fourth volume of Muratori's Scriptores Rerum Italicarum; suffi- victorious. On the one hand, in restocient extracts from which will be found in St. 230, &c., and in Muratori's Annals. the emperors lost a prerogative of very The Milanese clergy set up a pretence to retaiu long standing, and almost necessary to wives, under the authority of their great archbishop, the maintenance of authority over no St. Ambrose, who, it seems, has spoken with more indulgence of this practice than most of the fa- the least turbulent part of their subjects. thers. Both Arulf and Landulf favour the mar- And though the form of investiture by rie,’ clerks; and were perhaps themselves of that the ring and crosier seemed in itself of description.-Muratori. no importance, yet it had been in effect Potra dedit Petro, Petrus diadema Rodolpho. t Paschal II. was so conscientious in his abhor- collateral security against the election rence of investitures, that he actually signed an of obnoxious persons. For the emeuagreement with Henry V., ir. 1110 whereby the rors, detaining this necessary part of the prelates were to resign all the lands and other pontificals until they should confer invespossessions which they held in fief of the em- titure, prevented a hasty consecration of peror, on condition of the latter renouncing the the new bishop, a hasty cnsecration of right of investiture which indeed, in such circum-the new bishop, after which, the vacancy stances, would fall of itself. This extraordinary being legally filled, it would not be decent concession, as may be imagined, was not very sat- for, them to withhold the temporalities, isfactory to the cardinals and bishops about Pus- But then, on the other hand they pre. chal's court, more worldly-minded than himself, nor to those of the emperor's party, whose joint served by the concordat their feudal sov ramours sooni put a stop to the treaty.-St. Marc, ere ignty over the estates of the church, iv., p. 976. A letter of Paschal to Anselm in defiance of the language which had Schmidt, t. iii., p. 304), seems to imply that he recently been held by its rulers. Greg hought it better for the church to be without riches, than to enjoy them on condition of doing homage * St. Marc, t. iv., p. 1093. Schmidt, t. ii; p to laymen. 178. The latter quotes the Latin words
and have always The same doctrine had been maintained possessed, by the concession of Urban by all his successors, without any limita- II., an absolute privilege of nomination tion of their censures to the formalities of to bishoprics in their dominio:ls * An the ring and crosier. But Calixtus II. early evidence of that indifference of the himself had gone much farther, and ab- papes towards the real independence of solu–ely prohibited the compelling eccl- national churches, to which subsequent siastics to render any service to laymen ages were to lend abundant confirmation. on account of their benefices.t It is evi- When the emperors had surrendered dent, that such a general immunity from their pretensions to interfere in Introduction feudal obligations for an order who pos- The primi- of capitular sessed nearly half the lands in Europe, tive mode of collecting the suf- elections. struck at the root of those institutions frages of clergy and laity in conjunction, by which the fabric of society was prin- or at least of the clergy with the laity's cipally held together. This complete in- assent and ratification, ought naturally t( dependence had been the aim of Grego- have revived. But in the twelfth centu ry's disciples; and, by yielding to the ry, neither the people, nor even the gell continuance of lay investitures in any eral body of the diocesan clergy, were shape, Calixtus may, in this. point of considered as worthy to exercise this view, appear to have relinquished the function. It soon devolved altogether principal object of contention. But as upon the chapters of cathedral churches.f there have been battles, in which though The original of these may be traced very immediate success may seem pretty high. In the earliest ages, we find a equally balanced, yet we learn from college of presbytery consisting of the subsequent effects to whom the intrinsic priests and deacons, assistants as a counadvantages of victory belonged, so it is cil of advice, or even a kind of parliament manifest from the events that followed to their bishops. Parochial divisions, the settlement of this great controversy and fixed ministers attached to themr about investitures, that the see of Rome were not established till a later period. had conquered. But the canons, or cathedral clergy, acThe emperors were not the only sov- quired afterward a more distinct characereigns whose practice of investiture ex- ter. They were subjected by degrees to cited the hostility of Rome, although they certain strict observances, little differing, sustained the principal brunt of the war. in fact, from those imposed on monastic A similar contest broke out under the orders. They lived at a common table, pontificate of Paschal II. with Henry I. they slept in a common dormitory, their of England; for the circumstances of dress and diet were regulated by peculiar which, as they contain nothing peculiar, laws. But they were distinguished from I refer to our own historians. It is re.- monks by the right of possessing individ markable, that it ended in a compromise ual property, which was afterward exnot unlike that adjusted at, Worms; the tended to the enjoyment of separate prebking renouncing all sort of investitures, * F. Paul on Benefices, c. 24. Zurita, Anales while the pope consented that the bishop de Aragon, t. iv., p. 305. Fleury says that the should lo homage for his temporalities. kings of Spain nominate to bishoprics by virtue of This was exactly the custom of France, a particular indulgence, renewed by the pope for where investiture by the ring and cro- the life of each prince.-Institutions au Droit, t. i., oier is said not to have prevailed; and p. 106. t Fra Paolo (Treatise on Benefices, c. 24) says, t answered the main end of sovereigns that between 1122 and 1145, it became a rule al. 3y keeping up the feudal dependance of most everywhere established, that bishops should ecclesiastical estates. But the kings of be chosen by the chapter. Schmidt, however, brings a few instances where the consent of the nobility and other laics is expressed, though per8St. Marc, t. iv., p. 774. A bishop of Placentia haps little else than a matter of form. Innocent,sert, that prelates dishonoured their order by II. seems to have been the first who declared, that putting their hands, which held the body and blood whoever had the majority of the chapter in his fa of Christ, between tkose of impure laymen, p. 956. vour should be deemed duly elected; and this was The same expressioca are used by others, and are confirmed by Otho IV. in the
capitation upon his levelled at the form of feudal homage, which, according to the principles of that age, ought to have Fleury thinks that chapters had not an exclusive neen as obnoxious as investiture. Election till the end of the twelfth century. The second Lateran council, in 1139, represses their attempts to engross it.—Institutions au Droit Ecclesiastique Fran.ols., 2il61. I do not fully rely on this authority. elh., t. i., p. 1061, 1067.

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Benefices, er c. 16. Fleury, 8me Discours sur i'Hist. Ecclés. land and the northern kingdoms to
receive t St. Marc, t. iii., p. 628. Fleury, Hist. Eccles., the commands of the spiritual monarch t.
xiii., p. 281, 284. William the Conqueror having made 2 t The language he employs is worth
quoting, as a specimen of his style: Non latere vos credimus, regnum Hispanica ab antiquo
juris sancti Petri possit, sub conditione inter nos facts pactiosis e} fuisse, et adhuc licet diu a
paganis sit occupatum, parte Stl. Petri possideret.-Labbe, Concilia, t. x. lege tamen justitian non
evacuatA, nulli mortalium, p. 10. Three instances occur in the Corps Diplo sed soli apostolicae
sedi ex equo pertinere. Quod matique de Dumont, whele a duke of Dalmatia (t enim auctore
Deo semel in proprietates ecclesia. i., p. 53), a count of Provence (p. 58), and a couni rum justpervenerit, manente Eo, ab usu quidem, of Barcelona (ibid.), put themselves under the feu sed
ab earum jure, occasione transeuntis temporis, dal superiority and protection of Gregory VII
sine legitimA concessione divelli non poterit. Ita- The motive was sufficiently obvious. que
Comes Evalus de Roceio, cujus farnam apud * St. Marc, t. iii., p. 624, 674. Schmidt, p. 73. vos
haud obscuram esse putamus, terram illam ad t The character and policy of Glegory VIi, as,
eripere cупiens, hanc concessionem ab apostolicA ] St. Marc, p. 460. sode obtinuit, ut partemr
illam, unde paganos suo Schmidt, t. iii., p. 80, 322. studio et adjunr:to sibi aliorum auxil io
expellere Id., t. iv., p. 170

Page 286 286 EUROPE DURING THE MIDDLE AGES. iCsHAA. (V difficulty about
permitting his prelates to trine not calculated for general reception obey these citations,
Gregory, though in but the popes availed themselves of every general on good terms with that
prince, opportunity which the temporizing policy and treating him with a deference which the
negligence, or bigotry of sovereigns marks the effect of a firm character in threw into their
hands. Lothaire coming repressing the ebullitions of overbearing to receive the imperial crown
at Rome, pride,* complains of this as a persecution this circumstance was commemorated by
unheard of among pagans.t The great a picture in the Lateran palace, in which, quarrel between
Archbishop Anselm and and in two Latin verses subscribed, he his two sovereigns, William
Rufus and was represented as doing homage to the Henry I., was originally founded upon a
pope.* When Frederick Barbarossa came similar refusal to permit his departure upon the same
occasion, he omitted to for Rc-ne. hold the stirrup of Adrian IV., This perpetual control
exercised by who, in his turn, refused to give Adrian IV Aulhority the popes over
ecclesiastical, and, him the usual kiss of peace; nor was the ot papal in some degree, over
temporal contest ended but by the emperor's acLegates. affairs, was maintained bymeans
quiescence, who was content to follow of their legates, at once the ambassa- the precedents of
his predecessors. The dors and the lieutenants of the Holy See. same Adrian, expostulating
with FrederPreviously to the latter part of the tenth ick upon some slight grievance, reminderage,
these had been sent not frequently ed him of the imperial crown which he and upon special
occasions. The lega- had conferred, and declared his willingtine or vicarial commission had
generally ness to bestow, if possible, still greater b)een intrusted to some eminent me- benefits.
But the phrase employed (matropolitan of the nation within which it jora beneficial suggested
the idea of a was to be exercised; as the Archbishop fief; and the general insolence which Af
Canterbury was perpetual legate in pervaded Adrian's letter confirming this England.- But the
special commission- interpretation, a ferment arose among ers, or legates a latere, suspending
the the German princes, in a congress of pope's ordinary vicars, took upon them- whom this
letter was delivered. "From selves an unbounded authority over the whom then," one of the
legates was rash national churches, holding councils, pro- enough to say, " does the emperor
hold mulgating canons, depositing bishops, and his crown, except from the pope." which issuing
interdicts at their discretion. so irritated a prince of Wittelsbach, that They lived in splendour at
the expense he was with difficulty prevented from of the bishops of the province. This
claving the priest's head with his sabre.t was the more galling to the hierarchy, Adrian IV. was
the only Englishman that because simple deacons were often in- ever sat in the papal chair. It
might, vested with this dignity, which set them perhaps, pass for a favour bestowed on above
primates. As the sovereigns of his natural sovereign, when he granted France and England
acquired more cour- to Henry II. the kingdom of Ireland: age, they considerably abridged this pre-
yet the language of this donation, whererogative of the Holy See, and resisted the in he
asserts all islands to be the excluentrance of any legates into their domin- sive property of St.
Peter, should not ions without their consent.t have had a very pleasing sound to an inFrom the
time of Gregory VII., no pon-
sular monarch. tiff thought of awaiting the confirmation I shall
not wait to comment on the supof the emperor, as in earlier ages, before he was installed in the
throne of St. Pe- the age of Hildebrand, and his friend, puts these ter. On the contrary, it was
pretended words into the mouth of Jesus Christ, as addressed that the emperor was himself to
be con- to Pope Victor II. Ego claves totius universalis firim-ed by the pope. This had indeed
ecclesiae mese tuis manibus tradidi, et super earn beeniroaed by t poh hil td ndred te mihi
vicarium posui, quam proprii sanguinis ef been broached by ~John VIII. two hundred fusione
redemi. Et si paucsunt ista, etiam moyears before Gregory.~ It was still a doc- narchias
additi: immo sublato rege de medio toius Romani imperii vacantis tibi jura permisi.+ St.
252. * Rex venit ante fores, jurans prius urbis ho.; De Marca, i. vi., c. 28, 30, 31. Schmidt, t. ii.,
nores: 498, iii., p. 312, 320. Hist. du Droit Public Post homo fit papae, sulnit quo dante
t'Hst. Eccl6s., c. 10. There was a pretext for this artful line. Lo < Vide supra. It appears
manifest, that the thaire had received the estate of Matilda in fie, sence of temporal
sovereignty was only suspend- from the pope, with a reversion to Henry the ed by the disorders
of the Roman see in the tenth Proud, his son-in-law.-Schmidt, p. 349. en.urv. Peter Damian. a
celb-ated writer tori ubi suora. Schmidt, t. iii u. 393

Page 287 CRaP. VII. ECCLESIASTICAL POWER. 287 Innocent III port given to Becket by
Alex- fief," said Innocent to the kings.f f.anca ander III. [A. D. 1194-1216], and England, " yet
it is my province tc whiih must be familiar to the English judge where sin is committed, and
lm reader, nor on his speedy canonization; duty to prevent all public scandals." Phil. a reward
which the church has always ip Augustus, who had at that time thf held out to its most active
friends, and worse in his war with Richard. acquies which may be compared to titles of no-
ced in this sophism; the latter was mor, lility granted by a temporal sovereign.* refractory, till
the papal legate begat But the epoch when the spirit of papal to menace him with the rigour of the
usurpation was most strikingly displayed church.* But the King of England, at was the
pontificate of Innocent III. In well as his adversary, condescended ta each of the three leading
objects which obtain temporary ends by an impolitic Rome haspursued, independent sovereign-
submission to Rome. We have a lettet ty, supremacy over the Christian church, from Innocent
to the King of Navarre, control over the princes of the earth, it directing him, on pain of
spiritual censure, was the fortune of this pontiff to conquer. to restore some castles which he
detainHe realized, as we have seen in another ed from Richard.,* And the latter appears place,
that fond hope of so many of his to have entertained hopes of recovering predecessors, a
dominion over Rome and his ransom paid to the emperor and Duke the central parts of Italy.
During his of Austria, through the pope's interfepontificate, Constantinople was taken by
rence.t By such blind sacrifices of the the Latins; and, however he might seem greater to the
less, of the future to the to regret a diversion of the crusaders, present, the sovereigns of Europe played which impeded the recovery of the Holy continually into the hands of their subtle Land, he exulted in the obedience of the enemy. new patriarch, and the reunion of the Though I am not aware that any pope Greek church. Never, perhaps, either before Innocent III. had thus announced before or since, was the great eastern himself as the general arbiter of differenschism in so fair a way of being healed; ces and conservator of the peace through even the kings of Bulgaria and of Arme-out Christendom, yet the scheme had nia acknowledged the supremacy of Innocent III. had thus been already formed, and the public mind nocent, and permitted his interference wasin some degree prepared to admit it. with their ecclesiastical institutions. Gerohus, a writer who lived early in the The maxims of Gregory VII. were now twelfth century, published a theory of Iis extraor-matured by more than a hun-perpetual pacification, as feasible cer dinary pre-dred years, and the right of tainly as some that have been planned in tensions. trampling upon the necks of later times. All disputes among princes kings had been received, at least among were to be referred to the pope. If either churchmen, as an inherent attribute of party refused to obey the sentence of the papacy. " As the sun and the moon Rome, he was to, be excommunicated are placed in the firmament" (such is the and deposed. Every Christian sovereign language of Innocent), " the greater as the was to attack the refractory delinquent, light of the day, and the lesser of the under pain of a similar forfeiture. night; thus are there two powers in the A project of this nature had not only a church; the pontifical, which, as having magnificence flattering to the ambition the charge of souls, is the greater; and of the church, but was calculated to imthe royal, which is the less, and to which pose upon benevolent minds, sickened the bodies of men only are intrusted."t by the catholicity and oppression of princes. Intoxicated with these conceptions (if we may apply such a word to successful * Philippus rex Franciwe in manu ejus data fide ambition), he thoughtno quarrel of princes promisit se ad mandatum ipsius pacem vel treugas beyond the sphere of his jurisdiction. cum rege Anglib initurum. Richardus autem i AngliM se diticilem ostendebat. Sed cum iderrn' Though I cannot judge of the right to a legatus ei cepit rigorem ecclesiasticum intentare, sanio ri ductus consilio acquievit.-Vita Innocentii Te" * The first instance of a solemn papal canoniza- tii, t. iii., pars i., p. 503. ti n is that of St. Udalric by John XVI., in 993. t Innocentii Opera (Colonial, 1574), p. 124. However, the metropolitans continued to meddling t Id., p. 134. Innocent actually wrote some let with this sort of apotheosis till the pontificate of ters for this purpose, but without any effect, nom Alexander III., who reserved it, as a choice prerog-was he probably at all solicitous about it.-P. 139 alive, to the Holy See.-Art de verifier les Dates, and 141. Nor had he interfered to procure Rich t. i., p. 247 and 290. ard's release from prison: though Eleanor wrotes ] Vita Innocentii Tertii in Muratorn, Scriptores him a letter, in which she asks, "Has not God gii Rerum Ital., t. iii., pars i., p. 488. This life is writ-en you the pov er to gove: n nations and kings?V" ten by a contemporary.-St. Marc, t v., F 325. Velly, Hist. de France, t. iii., p. 382 fim liaidt. t iv., p. 227. 4 Slaidt, t iv., D. 232.
this potentate, but fails not to intimate trary government, or from the calamities that he might be compelled to prevent his of national wars in favour of universal son's succession to the throne. The King monarchy, involve the tacit fallacy, that of Leon had married his cousin, a princess perfect, or at least superior, wisdom and of Castile. innocent subjects the kingvirtue will be found in the restraining doni to an interdict. When the clergy power. The experience of Europe was of Leon petition him to remove it, be not such as to authorize so candid an ex-
cause, when they ceased to perform their pectation in behalf of the Roman see. functions, the laity paid no tithes, ana There were certainly some instances, listened to heretical teachers when or., where the temporal supremacy of Inno- thodox mouths were mute, he consented cent II., however usurped, may appear that divine service with closed doors, to have been exerted beneficially. He di- but not the rites of burial, might be perrects one of his legates to compel the ob- formed.* The king at. length gave way servance of peace between the kings of and sent back his wife. But a more ilCastile and Portugal, if necessary, by ex- lustrious victory of the same kind was communication and interdict.* He en- obtained over Philip Augustus, who, hav joins the King of Aragon to restore his ing repudiated Isemburga of Denmark coin'which he had lately debased, and of had contracted another marriage. The which great complaint had arisen in his conduct of the king, though not without ringdom.t Nor do I question his sin-
tcrity in these, or in many other cases ness of blood, was justly condemned:f interference with civil government. and Innocent did not hesitate to visit his 4A great mind, such as Innocent III. un-
spons upon the people by a general undoubtedly possessed, though prone to terdict. This, after a short demur from sacrifice every other object to ambition, some bishops, was enforced throughout can never be indifferent to the beauty of France; the dead lay unburied, and the social order, and the happiness of man- living were cut off from the offices of kind. But, if we may judge by the cor- religion, till Philip, thus subdued, took respondecence of this remarkable person,, back his divorced wife. The submission his foremost gratificationwas the display of such a prince, not feebly superstiof unbounded power HI-s letters, espe- tious like!his predecessor Robert, nor cially to ecclesiastics, are fill of unpro-
vexed with,editions like the Emperor voked rudeness. As impetuous as Greg- Henry IV., but brave, firm, and victory VII., he is unwilling to owe any rious, is perhaps the proudest trophy in thing to favour; he seems to anticipate the scutcheon of Rome. Compared with denial, heats himself into anger as he this, the subsequent triumph of Innoproceeds, and where he commences with cent over our pusillanimous John seems solicitation, seldom concludes without a cheaply gained, though the surrender of menace.t An extensive learning in ec-
clerical law, a close observation of of the pope may strike us as a proof of whatever was passing in the world, an unwearied diligence, sustained his fearess ambition. d With such a temper, and prevented from raising the money, the creditor ess ambition.; With such aterper, and had now refused to accept it; and directs them to inquere into the facts, and if they prove truly " Innocent. Opera, p. 146. f P. 378. stated, to compel the creditor by spiritual censures; Idem, p. 31, 73, 76, &c. &c. to restore the preinises, reckoning their rent during O The following instance may illustrate the char- the time of the mortgage as part of the debt, and to %ater of this pope, and his spirit of governing the receive the remainder.-Id., t. ii., p. 17. It must whole world, as much as those of a more public be admitted, that Innocent III. discouraged in gen nature. He writes to the chapter of Pisa, that eral those vexatious and dilatory appeals from in one Rubeus, a citizen of that place, had -complain-
erior ecclesiastical tribunals to the curt of Rome ed to him, that having mortgaged a house and which had gained ground before his time, and es garden for two hundred and fifty-two pounds, on pecially in the pontificate of Alexander III. ~ondition that he might redeem it before a fixed * Innocent. Opera, t. ii., p. 411. Vita Innm a-y, within which time he had been unavoidably cent III.
MAPr. ~ II.] ECCLESIASTICAL PuW ER. 289 stupendous baseness on one side, and were not much influenced by this halcyon audacity on the other. Yet, under this assumption, which manifests the temper very pontificate, it was not unparalleled of Innocent III. and of his court rather ed. Peter II., king of Aragon, received than their power. But Otho IV., at his at Rome the belt of knighthood and the coronation by the pope, signed a capitula royal crown from the hands of Inno- tion, which cut off several privileges en cent III.; he took an oath of perpetual joyed by the emperors, even since the fealty and obedience to him and his suc-
concordat of Calixtus, in respect of episcessors; he surrendered his kingdom, copal elections and investitures.* and accepted it again, to be held by an The noonday of papal dominion es annual tribute, in return for the protec- tions from the pontificate of tion of the apostolic see.t This strange Innocent III. inclusively to ity in the iut conversion of kingdoms into spiritual that of Boniface VIII.; or, teent hcnfiefs was intended as the price of se- in other words, through the tury. curity from ambitious neighbours, and thirteenth century. Rome inspired dumay be deemed analogous to the change in this age all the terror of her ancient of alodial into feudal, or, more strictly, name. She was once more the mistress to that of lay into ecclesiastical tenure, of the world, and kings were her vassals, which was frequent during the turbu- I have already anticipated the two most lence of the darker ages. conspicuous instances when her tempo I have mentioned already, that among ral ambition displayed itself. both of the new pretensions advanced by the Ro- which are inseparable from the civil hisman see was that of confirming the tory of Italy.t In the first of these, her election of an emperor. It had, however, long contention with the house of Swabean asserted rather incidentally than in bia, she finally triumphed. After his dea peremptory manner. But the doubtful position by the council of Lyons, the afections of Philip and Otho, after the fairs of Frederick II. went rapidly into death of Henry VI., gave Innocent III. decay. With every allowance for the an opportunity of maintaining more pos- enmity of the Lombards, and the jealous'tively this pretended right. In a decre- ies of Germany, it must be confessed tal epistle addressed to the Duke of Zah- that the proscription of Innocent IV. and ringen, the object of which is to direct Alexander IV. was the main cause ol him to transfer his allegiance from Phil- the ruin of his family. There is, howip to the other competitor. Innocent, after ever, no other instance, to the best of rmy stating the mode in which a regular elec- judgment, where the pretended right c- tion ought to be made, declares the deposing kings has been successfully ex pope's immediate authority to examine, ercised. Martin IV. absolved the sub confirm, anoint, crown, and consecrate jects of Peter of Aragon from their alle the elect emperor, provided he shall be giante, and transferred his crown to a worthy; or to reject him if rendered un- prince of France; but they did not cease fit by great crimes, such as sacrilege, her- to obey their lawful sovereign. This is esy, perjury, or persecution of the church; the second instance which the thirteenth in default of election, to supply the va- century presents of interference on the cancy; or, inthe event of equal suffrages, part of the popes in a great temporal to bestow the empire upon any person at quarrel. As feudal lords of Naples and his discretion.t The princes of Germany Sicily, they had indeed some pretext for engaging in the hostilities between the * The stipulated annual payment of 1000 marks houses of Anjou and Aragon, as well as was seldom made by the kings of England; but for their contest with Frederick II. But one is almost ashamed that it should ever have the pontiffs of that age, improving upox beer. so. Henry III. paid it occasionally, when he had any object to attain, and even Edward I. for the system of Innocent III., and san some years: the latest payment on record is in the guine with past success, aspired to renseventeenth of his reign. After a long discontia lance, it was demanded in the fortieth of Edward all. (A. D. 1366), but the parliament unanimously tle asserts the pope's right electum;meratcrem declared that John had no right to subject the king- examinare, approbare, et inungere, consecrare et dom to
a superior without their consent; which coronare, si est dignus; vel rejecere si est indignus put an end for ever to the applications.-Prynne's ut quia sacrilegus, excommunicatus, tyrannus, fh Constitutions, vol. iii. tuns et haereticus, paganus, perjurus, vel ecclesie t Zurita, Anales de Aragon, t. i., f. 91. This persecutor. Et electoribus nolentibus eligere, Paws not forgotten towards the latter part of the pa supplent. Et data paritate vocum elegiunt, same (century, when Peter III. was engaged in the nec accedente majord concordia, Papa potest grattisicilian war, and served as a pretence for the ficari cui vult. The epistle itself is, if possible pope's sentence of deprivation. more strongly expressed. t Decretal., l. i., tit. 6, c. 34, commonly cited * Schmidt, t. iv., p. 14S, 175 venerabilem. The rubric or synopsis of this epis- t See above, chapter ii: T
Deere-onciled to the church. And the rubrics to be published by Raimond de Pen- prefixed to the declaration of Frederick afwart in 1234. These consist almost II.'s deposition in the council of Lyon) entirely of rescripts issued by the later asserts that the pope may dethrone the popes, especially Alexander III., Inno- emperor for lawful causes.~ These ru cent III., Honorius III., and Gregory himself. They form the most essential part Duck, De Usu Juris Civilis, 1. i., c. 8. of the canon law, the mostDecretumialpat Constitutiones principum ecclesiasticis con of the canon law, the Decretur of Gra- stitutionibus non preeminent, sed obsequuntur. — tian being comparatively obsolete. In Decretum, distinct. 10. Statutum generale laico these books find a regular and co- rum ad ecclesias vel ad ecclesiastica personas, vde pious system of jurisprudence, derived eorum bonain earumpaejudicium non extenditur in a great measure from the civil law, Decretal., 1. i., tit. 2, c. 10. Quaecunqua principi bus in ordinibus vel in ecclesiastics rebus decrectv but with considerable deviation, and pos- inveniuntur, nullius auctoritatis esse monstrantut. sibly improvement. Boniface VIII. adl- -Decretum, distinct. 96. ed a sixth part, thence called the Sext, t Domino excommunicate manente, subditilidel itself divided into five books, in the na-tatem non debent; et si longo tempore in ei per siterint, et monitus non pareat ecciesie,.~ ejup ture of a supplement to the other five, debito absolvuntur.- Decretal., 1. v., tit. 3'i, c. 13. of which it follows the arrangement, I must acknowledge, that the decretal epi-ole alid composed of decisions promulgated Honorius III. scarcely warrants this general proposition of the rubric, though it seems to lead to it ~ Papa imperatorem depot ere laetest ex causi, * Dalrymple's Annals o Scotland, vol. i., p. 267. legititnis, 1. ii., tit. 13. c. 2

Page 291 ~CHAP. Ull. ECCLESIASTICAL POW. t. brics to the decretals are not perhaps of characters; the one, active and ferocious direct authority as part of the law; but had taken a prominent part in the crusade they express its sense, so as to be fairly against the unfortunates Albigeois, and cited instead of it.* By means of her was among the first who bore the terrible new jurisprudence, Rome acquired in ev- name of inquisitor; while the other, a cry country a powerful body of advocates, harmless enthusiast, pious and sincere, who, though many of them were laymen, but hardly of sane mind, was much rather would, with the usual bigotry of lawyers, accessory to the intellectual than to the defend every pretension or abuse to moral degradation of his species. Variwhich their received standard of authori- ous other mendicant orders were instity gave shanction.t tuted in the thirteenth century; but most Next to the canon law, I should reck- of them were soon suppressed, and beMendicant on the institution of the mendi- sides the two principal, none remain bul orders. cant orders among those circum- the Augustin and the Carmelites.* stances which principally contributed to These new preachers were received the aggrandizement of Rome. By the with astonishing approbation by the laity, acquisition, and in some respects the whose religious zeal usually depends a enjoyment, or at least ostentation of good deal upon their opinion of sincerity immense riches, the ancient monastic and disinterestedness in their pastors. orders had forfeited much of the public And the progress of the Dominican and esteem.t Austere principles as to the Franciscan friars in the thirteenth centuobligation ( f evangelical poverty were ry bears a remarkable analogy to that of inculcated by the numerous sectaries of our English Methodists. Not deviating that age, and eagerly received by the from the faith of the church, but profespeople, already much alienated from an sing rather to teach it in greater puriestablished hierarchy. No means ap- ty, and to observe her ordinances with peared so efficacious to counteract this greater regularity, while they imputed effect, as the institution of religious so- supineness and corruption to the secular cieties, strictly debarred from the insidi- clergy, they drew round their sermons a ous temptations of wealth. Upon this multitude of such listeners as in all ages principle were founded the orders of are attracted by similar means. They IMendicant Friars, incapable, by the
rules practised all the stratagems of itinerancy, of their foundation, of possessing estates, preaching in public streets, and administering only by alms and pious tering the communion on a portable alremunerations. Of these the two most tar. Thirty years after their institution, celebrated were formed by St. Dominic an historian complains that the parish and St. Francis of Assisa, and established churches were deserted; that none conby the authority of Honorius III. in 1216 fessed except to these friars; in short, and 1223. These great reformers, who that the regular discipline was subverted.f have produced so extraordinary an effect This uncontrolled privilege of performing upon mankind, were of very different sacerdotal functions, which their modern antitypes assume for themselves, was AIf understand a bull of Gregory XII., pre- conceded to the mendicant orders by the zxed to his recension of the canon law, he confirms the rubrics or glosses along with the text; favour of Rome. Aware of the powerful but I cannot speak with certainty as to his mean- support they might receive in turn, the ing. pontiffs of the thirteenth century acce t For the canon law, I have consulted, besides mulated benefits upon the disciples of the Corpus Juris Canonici, Tiraboschi, Storia Francis and Dominic. They were cx conta Litteratura, t. iv. and v.; Giannone, l. xiv., c. 3; l. xix., c. 3; l. xxii., c. 8. Fleury, Institu- emptied from episcopal authority; they tions aa Droi; Eccl.siatique, t. i., p. 10, and 5me were permitted to preach or hear confesDiscours sur l'Histoire Eccl6s. Duck, De Usu sions without leave of the ordinary,J to Juris Civilis, 1. i., c. 8. Schmidt, t. iv., p. 39. F. accept of lkgacies, and to inter in their Paul, Treatise of Benefices, c. 31. I fear that my c few citations from the canon law are not made scientifically; the proper mode of reference is to the first word; but the book and title are rather mere con- * Mosheim's Ecclesiastical Hlstory. Fleury, vsnient; and there are not many readers;n Eng- 8me Discours. Crevier, Histoire de l'Universit6 d( land who will detect this impropriety. Paris, t. i., p. 318. + It would be easy to bring evidence from the t Matt. Paris, p. 607. writings of every successive century to the general $ Another reason for preferring the friars is giver viciousness of the regular clergy, whose memory by Archbishop Peckham; quoniam casus episco it is sometimes the fashion to treat with respect. pales reservati episcopis ab homine, vel a jure See particu arly Muratol, Dissert. 65, and Fleury, communiter a Deum timentibus episcopis ipsis ira Smc Disco. -s. The late observes that their great tribus committuntur, et non presbyteris, quoru m dis/ wealth was the cause o.. this relaxation in disci- plicitas non sufjicit aliiis dirigendis.-Wilmins, Com Dline cilia, t. ii., p. 169. rl'

Page 292 292 EUROPE DURING THE MIDDLE AGES. [CIHAFP k 1 granted without resistance from the other at pleasure. In man) capitularics of clergy; the bishops remonstrated, the Charlemagne, we find evidence of the university of Paris maintained a stren- prevailing license of repudiation and uous opposition; but their reluctance even polygamy.* The principles which served only to protract the final decision. the church inculcated were in appearance Boniface VIII. appears to have peremp- the very reverse of this laxity; yet they Gorily. established the privileges and im- led indirectly to the same effect. Maru munities of the mendicant orders in riages were forbidden, not merely within 1295.* the limits which nature, or those inveter It was naturally to be expected that ate associations which we call nature, the objects of such extensive favours have rendered sacred, but as far as the would repay their benefactors by a more seventh degree of collateral consanguin than usual obsequiousness and alacrity ity, computed from a common ancestor.s in their service. Accordingly, the Do- Not only was affinity, or relationship by inincans and Franciscans vied with each marriage, put upon the same footing as other in magnifying the papal supremacy. that by blood, but a fantastical connexMany of these monks became eminent ion, called spiritual affinity, was invented., in canon law and scholastic theology. in order to prohibit
marriage between a The great lawgiver of the schools, sponsor and godchild. A union, however Thomas Aquinas, whose opinions the innocently contracted, between parties Dominicans especially treat as almost thus circumstanced, might at any time be infallible, went into the exaggerated prin- dissolved, and their subsequent cohabitaciples of his age in favour of the see of tion forbidden; though their children, Rome. And as the professors of those believe, in cases where there had beet sciences took nearly all the learning and no knowledge of the impediment, were logic of the times to their own share, it not illegitimate. One readily apprehends was hardly possible to repel their argu- the facilities of abuse to which all this ments by any direct reasoning. But this led; and history is full of dissolutions of partiality of the new monastic orders to marriage, obtained by fickle passion o] the popes must chiefly be understood to cold-hearted ambition, to which the apply to the thirteenth century, circum- church has not scrupled to pander on stances occurring in the next which some suggestion of relationship. It is gave in some degree a different.complex- so difficult to conceive, I do not say any ion to their dispositions in respect of the reasoning, but any honest superstition, Holy See. which could have produced those monWe should not overlook, among the strous regulations, that [ was at first inPapal dis- causes that contributed to the clined to suppose them designed to give pensatioIs dominion of the popes, their by a side wind, that facility of divorce of marriage. prerogative of dispensing with which a licentious people demanded, bu ecclesiastical ordinances.'The most remarkable exercise of this was as to the * Although a man might not marry again whet canonical impediments of matrimony. his wife had taken the veil, hewas permitted to do Such strictness as is prescribed by the so if she was infected with the leprosy. Compare Christian religion with respect to divorce Capitularia Pippini, A.D. 752 and 1,5. If a worn Christianreligionwithrespecttodivoran conspired to murder her husband, lie might re was very unpalatable to the barbarous marry.-Idem, A. D. 753. A large proportion of nations. They, in fact, paid it little re- Pepin's laws relate to incestuous connexionis and gard; under the nMerovingian dynasty, divorces. One of Charlemagne seems to imply even private men put away their wivesT that polygamy was not unknown even among priests. Si sacerdotes plures ui-o)rfs habuerint, sacerdotio priventur; quia sweculaxibus deteriores * Crevier, Hist. de l'Université de Paris, t. i. et sunt-.Capitul., A. D. 769. This seecs to imply t. ii., passim. Fleury, ubi supra. Hist. du Droit that their marriage with one was allowable, which Ecclesiastique François, t. i., p. 394, 396, 446. nevertheless is contradicted by other passages in Collier's Ecclesiastical History, vol. i., p. 437, 448 the Capitularies. 452. Wood's Antiquities of Oxford, vol. i., p. 376, t See the canonical computation explained 5 480 (Gutch's edition). St. Marc, t. iii., p. 376. Also in Blackatone's Law t It was maintained by the enemies of the mel- Tracts, Treatise on Consanguinity. In the elev,licants, especially William St. Amour, that the enth century, an opinEon began to gasin ground in?ope could not give them a privilege to preach or Italy that third cousins might marry, being in the p;perform the other duties of the parish priests. seventh degree according to the civil law. Peter ThoXmas Aquinas answered, that a bishop might Damian, a passionate abetter of Hildebrand and perform any spiritual functions within his diocess, his maxims, treats this with horror, and calls it a or commit the charge to another instead, and that heresy.-Fleuv, t. xiii., p. 152. St. Marc, ubi su the pope being to the whole church what a bishop pra. This opinion was supported by a reference is to his diocess, might do the same everywhere.- to the Institutes of Justinian; a proof, among sev Crevier, t. i., p. 474. eral others, how much earlier that book was kuowt t Mfarculfi Formulre, 1. ii., c 30 than is vulgarly supposed.
he says, that one who is lesupported by facts. The prohibition is gitimate for spiritual functions should very ancient, and was really derived from continue otherwise in any civil matter.* the ascetic temper which introduced so But the most important and mischievous many other absurdities.* It was not un- species of dispensations. was from the eil the twelfth century that either this or observance of promissory oaths. Two any other established rules of discipline principles are laid down in the decretals; were supposed liable to arbitrary dispen- that an oath disadvantageous to the sation; at least the stricter churchmen church is not binding; and that one ex had always denied that the pope could tortured by force was of slight obligation, Infringe canons, nor had he asserted any and might be annulled by ecclesiastical right to do so.t But Innocent III. laid authority.t As the first of these maxims down as a maxim, that out of the pleni- gave the most unlimited privilege to the tude of his power he might lawfully dis- popes of breaking all faith of treaties pense with the law; and accordingly which thwarted their interest or passion, granted, among other instances of this a privilege which they continually exer. prerogative, dispensations from impedi- cised,4 so the second was equally coments marriage to the Emperor Otho venient:o princes, weary of observing IV.t Similar indulgences were given by engagements towards their subjects or his successors, though they did not be- their neighbours. They reclaimed with come usual for some ages. The fourth a bad grace against the absolution of their Lateran Council, in 1215, removed a great people from allegiance by an authority to part of the restraint, by permitting mar- which they did not scruple to repair in riages beyond the fourth degree, or what order to bolster up their own perjuries. we call third cousins;~ and dispensations have been made more easy, when it was Decretal., i. iv., tit. 17, c. 13. t Juramentum contra utilitatem ecclesiasticani discovered that they might be converted praestitum non tenet. ——Decretal., 1. ii., tit. 24, c. 27, into a source of profit. They served a et Sext., i. i., tit. 11, c. i. A juramento per metum more important purpose by rendering it extorto ecclesia solet absolvere, et ejus transgres necessary for the princes of Europe, who sores ut peccantes mortaliter non punientur. ——Eodem lib. et tit., c. 15. The whole of this title in aeldom could marry into one another's the decretals upon oaths seems to have given the houses without transgressing the canon- first opening to the lax casuistry of succeeding ical limits, to keep on good terms with times. the court of Rome, which, in several in- t Take one instance out of many. Piccinino. stances that have been mentioned, ful- the famous condottiere of the fifteenth century, had promised not to attack Francis Sforza, at that minated its censures against sovereigns time engaged against the pope. Eugenius IV. (the who lived without permission in what same excellent person who had annulled the comwas considered an incestuous union. pactata with the Hussites, releasing those who The dispensing power of the popes had sworn to them, and who afterward made the King of Hungary break his treaty with Amurath D)ispensa- s exerted in several cases of I.), absolves him from this promise, on the express tions from a temporal nature, particularly ground that a treaty disadvantageous to the church promissory in the legitimation of children, ought not to be kept.-Sismondi, t. ix., p. 196. The oath's. for purposes even of succession. church, in that age, was synonymous with the pa This Innocent III. claimed as an indirect pal territories in Italy. It was in conformity to this sweeping principle consequence of his right to remove the of ecclesiastical utility, that Urban VI. made the canonical impediment which bastardy of- following solemn and general declaration against keeping faith with heretics. Attendentes quod hu * Gregory I. pronounces matrimony to be un- jusmodi confederaciones, colligationes, et ligfe seu iawful as far as the seventh degree; and even, if I conventiones facte cum hujusmodi haereticis seu unders',and his meaning, as long as any relation- schismaticis postquam tales effecti erant, sunt teship could be traced; which seems to have been merariwe; illicitae, et ipso jure nulle (etsi forte the maxim of strict theologians, though not abso- ante ipsorum lapustum in schisma, seu heresin iniLutely enforced.-Du Cange, v. Generatio. Fleu- tse, seu factwe fuissent), etiam si forent juramento ry,
Hist. Eccles., t. ix., p. 211. vel fide datA firmatwa, aut confirmatione apostolica; De Marca, l. iii., cc. 7, 8, 14. Schmidt, t. iv., vel quAcunque firmitate aliA roborata, postquam p. 235. Dispensations were originally granted only tales, ut prellittitur, sunt effecti.-Rymer, t. vii., as to canonical penances, but not prospectively to p. 352. authorize a breach of discipline. Gratian asserts it was of little consequence that all divines and that the pope is not bound by the canons; in sound interpreters of canon law maintain that which, Fleury observes, he goes beyond the False pope cannot dispense with the divine or moral law, Decretals.-Septibme Discours, p. 291. as De Marca tells us, l. iii., c. 15, though he adt Secundam plenitudinem potestatis de jure pos- mits that others of less sound judgment assert the smul us supra jus dispensare.-Schmidt, t. iv., p. contrary; as was common enough, I believe, 23h. among the Jesuits at the beginning of the sevens 4 Fleu ry, Institutions au Droit Ecclesiastique, t. teenth century. His power of interpreting the law' i n..29fi was of itself a privilege -l liswensing with it.

Page 294 Z94 EUROPE DURING THE MIDDLE AU;S. Lihat. 1". Thus Edvward I., the strenuous asserter ling what had been dale by the chapter of his temporal rights, and one of the first and bestowing the see on a favourite, who opposed a barrier to the encroach- candidate.* The popes soon assumed rrients of the clergy, sought at the hands not only a right of decision, but of devo,. of Clement V. a dispensation from his lution; that is, of supplying the want of oath to observe the great statute against election, or the unfitness of the elected, arbitrary taxation. by a nomination of their own.+ Thus, In all the earlier stages of papal dom- Archbishop Langton, if not absolutely ion, the supreme head of the church had nominated, was at least chosen in an in. Encroach- been her guardian and protec- valid and compulsory manner, by the ments of tor; and this beneficent charac- order of Innocent III.; as we may read freedom of terappeared to receive its con- in our English historians. And several elections, summation in the result of that succeeding archbishops of Canterbury arduous struggle which restored the an- equally owed their promotion to the pacient practice of free election to ecclesi- pal prerogative. Some instances of the astical dignities. Not long however after same kind occurred in Germany, and it this triumph had been obtained, the popes became the constant practice in Naples.4 began by little and little to interfere with WWhile the popes were thus artfully dethe regular constitution. Their first step priving the chapters of their right of elecwas conformable indeed to the prevailing tion to bishoprics, they interfered in a system of spiritual independence. By more arbitrary manner with the the concordat of Calixtus, it appears that collation of inferior benefices. Mandat. the decision of contested elections was This began, though in so insensible a manreserved to the emperor, assisted by the ner as to deserve no notice but for its con. metropolitanos and suffragans. In a few sequences, with Adrian IV.,who requestcases during the twelfth century, this im- ed some bishops to confer the next bene, perial prerogative was exercised, though fice that should become vacant on a part not altogether undisputed.* But it was ticular clerk.- Alexander III. used to consonant to the prejudices of that age solicit similar favours.4H These recomb to deem the supreme pontiff a more nat- mendatory letters were called mandats irlal judge, as in other cases of appeal. But though such requests grew more freo The point was early settled in England, quent than was acceptable to patrons, where a doubtful election to the arch- they were preferred in moderate Ianbishopric of York, under Stephen, was guage, and could not decently be refilsed referred to Rome, and there kept five to the apostolic chair. Even' Innocent years in litigation.4 Otho IV. surrender- III. seems in general to be aware that he ed this among other rights of the empire is not asserting a right; though in one into Innocent III. by his capitulation;$ and stance I have observed his violent tem. from that pontificate the papal jurisdic- per break out against the
chapter of Poitiers over such controversies became tiers, who had made some demur to the thoroughly recognised. But the real aim appointment of his clerk, and whom he of Innocent, and perhaps of some of his threats with excommunication and in predecessors, was to dispose of bishop terdict.~ But, as we find in the history tics, under pretext of determining con- of all usurping governments, time changes tests, as a matter of patronage. So many anomaly into system, and injury into And of rules were established, so many right; examples beget custom, and cus rights of patronage. Constitutions, incorporated af- cedent of one generation becomes the fun. terward into the canon law, that the court damental maxim of another. Honorius of Rome might easily find means of annul* F. Paul, c. 30. Schmidt, t. iv., p. 177, 247. * Schmidt, t. iii., p. 299; t. iv., p. 149. Accord- t Thus we find it expressed, as captiously as tng to the concordat, elections ought to be made it words could be devised, in the decreets, 1. i., tit. the presence of the emperor or his officers; but 6, c. 22. Electus a majori et saniori parte capituli, the chapters contrived to exclude them by degrees, si est, et erat idoneus tempore electionis, confirma though not perhaps till the thirteenth century.- bitur: si autem erit indignus in ordinibus scientia Compare Schmidt, t. iii., p. 296; t. iv., p. 146. vel aetate, et fuit scieret electus, electus a minori t Henry's Hist. of England, vol. v., p. 324. Lyt- parte, si est dignus, confirmabitur. tleton's Henry II., vol. i., p. 356. A person canonically disqualified when presented + Schmidt, t. iv., p. 149. One of these was the to the pope for confirmation was said to be postulz; apolium, or moveable estate of a bishop, which the tus, not electus. r. imperor was used to seize upon his decease, p. 154. f Giannone, 1. xiv., c. 6; 1. xix.. 5. 1' was certainly a very leonine prerogative; but the g St. Marc, t. v., p. 41. Art de verifier les l)ats popes did not fail at a subsequent time to claim it t. i, p. 288. Encyclopedie, Art. Maneats. lor themselves.- Fleury, Institutions au Droit, t. i., II Schmidt, t. iv., p. 239. o 425 Lenfalit, Concile de Constance. t. ii., p. 130 Innocent III., Ope a, p. 50k.
asserted by the English envoys at the IV. in a still more positive tone; and council of Lyons. But the remedy was Clement V. laid down as a maxim, that not to be sought in remonstrances to the the pope might freely bestow, as univercourt of Rome, which exulted in the sal patron, all ecclesiastical benefices.—success of its encroachments. There In order to render these tenable by their was no defect of spirit in the nation to Italian courtiers, the canons against plu. oppose a more adequate resistance; but ralities and nonresidence were dispensed the individual upon the throne sacrificed with; so that individuals were said to the public interest sometimes through have accumulated fifty or sixty preferhabital timidity, sometimes through silly ments. It was a consequence Provisions, ambition. If England, however, suffered from this extravagant princi- reserves, &c. more remarkably, yet other countries ple, that the pope might prevent the orwere far from being untouched. A Ger- dinary collator upon a vacancy; and as man writer, about the beginning of the this could seldom be done with sufficient fourteenth century, mentions a cathedral expedition in places remote from his where, out of about thirty-five vacancies court, that he might make reversionary of prebends that had occurred within grants during the life of an incumbent, twenty years, the regular patron had filled only two. The case was not very There are several material objections to the au different iny France, wherehe c ontinual no theticity of this edict, and in particular that we do different in France, where the continual not find the king to have had any previous differusurpations of the popes are said to have ences with the see t f Rome; on the contrary, he, produced the celebrated Pragmatic Sanc- was just indebted to Clement IV. for bestowing tionl of St. Louis. This edict, which is the crown of Naples on his brother, the Count of noti of undisputed authority, contains Provence. Velly has defended it, Hist. de France, t. vi., p. 57, and in the opinion of the learned Ben three important provisions; namely, that edictine editors of L’Art de verifier les Dates, t. i., all prelates and other patrons shall enjoy p. 585, cleared up all difficulties as to its genuine. their full rights as to the collation of ness. In fact, however, the Pragmatic Sanction benefices, according to the canons that of St. Louis stands by itself, and can only be con. chfurches shall possess freely their rights sidered as a protestation against abuses whith it churches shall possess freely their rights was still impossible to suppress. of election; and that no tax or pecuniary * Sext. Decretal., 1. iii., t. iv., c. 2. F. Paul on. exaction shall be levied by the pope, Benefices, c. 35. This writer thinks the privilege without consent of the king and of the of nominating benefices vacant in curit to have national church.[l We do not find, how- been among the first claimed by the popes, even before the usage of mandats, c. 30. t Matt. Paris, p. 817. * Matt. Paris, p. 267. De Marca, 1. iv c. 9. 4 Sext. Decretal., 1. iii., t. iv., c. 3. He extend t F. Paul on Benefices, c. 30. ed the vacancy in curA to all places within twc S M. Paris, p. 579, 740, days' journey of the papal court. g Schmidt, t. vi., p. 104. Q F. Paul, c. 35. e rdonnances des Rois de France,, i. p. 97 11 Id., c. 33, 34, 35. Schmid* t. iv., p). 104

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pontificate the But this exemption was compensated by tyranny of Rome, if we consider her temannual donatives, probably to a large poral and spiritual usurpations together, amount, which the bishops and monaste- reached perhaps its zenith, hit upon the ries were accustomed, and as it were device of ordering the English prelates compelled, to make to their sovereigns. They were subject also, generally speak- arms to defend the church at their exing. to the feudal services and prestations. This would soon have been comH.inry I. is said to have exorted a sum muted into a standing escuage instead of of money from the English church. But the demand was not permitted any effectmoveable estate, imposed by the kings usual measure to be adopted; and indeed he of France and England upon all their sometimes shared in the booty, and was subjects, with the consent of their great indulged with the produce of taxes incouncils of prelates and barons, to de- posed upon his own clergy to defray the fray the expense of their intended cru- cost of his projected war against Sicily. Yet even this contribution, though A nobler example was set by the kingdom called for by the imminent peril of the of Scotland: Clement IV. having, in Holy Land after the capture of Jerusa- 1267, granted the tithes of its ecclesias. lem, was not paid without reluctance; the tical revenues for one of his mock cru- lergy doubtless anticipating the future sades, King Alexander III., with the conextension of such a precedent.~ Many currence of the church, stood up against years had not elapsed when a new de- this encroachment, and refused the legate mand was made nmoon them, but from permissionto enterhis dominions. Taxa different quarter. — ocent III. (the name continually recurs when we trace the clergy to make any effective resistance to the pope, without unravelling a tissue which they had the commencement of a usurpation) in- been assiduously weaving. One English prelate posed, in 1199, upon the whole church, a distinguished himself in this reign by his strenu. tribute of one fortieth of moveable estate, ous protestation against all abuses of the church to be paid to his own collectors; but This was Robert Grosstete, bishop of Lincoln, who strictly pledging himself that the money tiede, and the first who had any tinshurean of his should only be applied to the purposes literature. Matthew Paris gives him a high char of a crusade.lf This crusade ended, as acter, which he deserved for his learning and in is well known, in the capture of Con- tegrity; one of his commendations is for keeping stantine. But the word had lost much a good table. But Grosstete appears to have been imbued in a great degree with the spirit of his age of its original meaning; or rather that as to ecclesiastical power, though unwilling to meaning had been extended by ambition yield it up to the pope: and it is a strange thing to and bigotry. Gregory IX. preached a reckon him among the precursors of the Reforma crusade against the Emperor Frederick, tion.-M. Paris, p. 754. Berington's Literary His in a quarrel which only concerned his tory of the Middle Ages, pto 378. * M. Paris, p. 613. It would be end'ess to m%. temporal principality; and the church of tiply proofs from Matthew Paris, which indeea England was taxed by his authority to occur in almost every page. His laudable zeal carry on this holy war.~T After some op- against papal tyranny, on which some Protestant writers have been so pleased to dwell, was a littl stimulated by personal feelings for the abbey of St M* uratori Dissert. 70. Schmidt, to iii., p. 211. Alban's; and the same remark is probably applica t ld., Ibid. Du Cange, v. Dona. ble to his love of civil liberty. $ Eadmer, p. 83. t Rymer, t. i., p. 599, &c. The substance 0o ~ Schmidt, t. iv., p. 212. Lyttleton's Henry II., English ecclesiastical history during the reign of ol. iii., p. 472. Velly, t. iii., p. 316 Henry III. may be collected from Henry, and stil 11 Innocent. Opera, p. 266. better from Collier. ~' M. Paris, p 470. It was hardly possible for t Dalrymple's Annals of Scotland, vol. i. D A71t
ECCLESIASTICAL POWER 291 ation of the clergy was not so outra-
that ecclesiastical jurisdiction, N hlich geous in other countr'es; but the'ypes through the partial
indulgence of sover granted a tithe of benefices to St Louis eigns, especially Justinian and
Charie for each of his own crusades, and also magne, had become nearly independen for the
expedition of Charles of Anjou of the civil magistrate. Several ages of against Manfred."C In
the council of confusion and anarchy ensued, during Lyons, held by Gregory X. in 1274, a
which the supreme regal authority was genera.. tax of the same proportion was literally
suspended in France, and no imposed on all the Latin church, for the much respected in some
other countries. oretended purpose of carrying on a holy It is natural to suppose that ecclesiasti
war.t cal jurisdiction, so far as even that was These gross invasions of ecclesiastical regarded in
such barbarous times, would Disaffection property, however submissively be esteemed the
only substitute for coer towards the endured, produced a very gen- cive law, and the best
security against court of eral disaffection towards the wrong. But I am not aware that it
exRome. court of Rome. The reproach tended itself beyond its former limits till of venality and
avarice was not indeed about the beginning of the twelfth cencast for the first time upon the
sovereign tury. From that time it rapidly enpontiffs; but it had been confined in ear- croached
upon the secular tribunals, and lier' ages to particular instances, not seemed to threaten the
usurpation of an affecting the bulk of the Catholic church. exclusive supremacy over all
persons and But, pillaged upon every slight pretence, causes. The bishops gave the tonsure
without law and without redress, the indiscriminately, in order to swell the clergy came to
regard their once pater- list of their subjects. This sign of a nal monarch as an arbitrary
oppressor. clerical state, though below the lowest All writers of the thirteenth and follow- of
their seven degrees of ordination, imnt ing centuries complain in terms of un- plying no
spiritual office, conferred the measured indignation, and seem almost privileges and
immunities of the profesready to reform the general abuses of sion on all who wore an
ecclesiastical the church. They distinguished, how- habit, and had only once been married.*
ever, clearly enough between the abuses Orphans and widows, the stranger and which
oppressed them and those which the poor, the pilgrim and the leper, under it was their interest
to preserve, nor had the appellation of persons in distress the least intention of waiving their
own (miserabiles personae), came within thle immunities and authority. But the laity peculiar
cognizance and protection of the came to more universal conclusions. A church; nor could they
be sued before spirit of inveterate hatred grew up among any lay tribunal. And the whole body
them, not only towards the papal tyranny, of crusaders, or such as merely took the but the
whole system of ecclesiastical vow of engaging in a crusade, enjoyed independence. The rich
envied and the same clerical privileges. longed to plunder the estates of the su- But where the
character of the litigant perior clergy; the poor learned from the parties could not, even with
this large Waldenses and other sectaries to deem construction, be brought within their pale,
such opulence incompatible with the the bishops found a pretext for their juris character of
evangelical ministers. The diction in the nature of the dispute. Spir. itinerant minstrels invented
tales to sat- itual causes alone, it was agreed, could irise vicious priests, which a predis-
appertain to the spiritual tribunal. But posed multitude eagerly swallowed. if the word was
indefinite; and according the thirteenth century was an age of to the interpreters of the twelfth
century, more extravagant ecclesiastical preten- the church was always bound to prevent sions
than any which had preceded, it and chastise the commission of sin. By was certainly one in
which the disposi- this sweeping maxim, which we have ti3n to resist them acquired great con-
* Clerici qui curn unicis et virginibus contraxe sistence. runt, si tonsuram et vestes deferant
clericales, privi To -ivsist had indeed become strictly legium retineant - proasenti declamamus
edicto, prOgreof necessary, if the temporal gov- hujusmodi clericos conjugatos pro conr.miss.s
ab iis gPogresaz>f ernments of Christendom would excessibus vel delictis, trahi non posse criminalitei ~cla.iesenofChristendoul ant civiliter ad judicium sweculare.-Bonifacius cal jurisd>-Occupy any better station than Octavus, in Sext. Secretal., l iii., tit. ii. c. i. Philip t. of officers to the hierarchy. the.Bold, however, had subject.ed these married I have traced already the first stage of clerks to taxes, and later ordinances of the French kings rendered them amenatle lo tonmp ral juris diction; from which, in Niples, by ni:i'.~ a ovis w Velly, t. iv p. 343; t. v., p. 343; t. vi., p. 47. ions of the Angevyn line, they aelsa,-'...- d ~ Idem, t. vi p:308. St. Marc, t. vi., p. 3r7 free -Giannone i. xix. c 6

Page 298 FEUROPE DURING 71 HE MIIDDLLE AGES [CGl, t seenl Innocent III. apply to.vindicate his munication still continued the only lihascontrol over national quarrels, the corn-tisement which the church could directly mon differences of individuals, which gen- inflict. But thb bishops acquired a right errly involve some charge of wilful inju- of having their own prisons for lay of rv, fell into the hands of a religious judge. fenders,* and the monastries were the One is almost surprised to find that it did appropriate prisons of clerks. They not extend more universally, and might sentences of excommunication were enpraise the moderation of the church. forced by the temporal magistrate by Rea. actions, orsuits relatingto the prop-imprisonment or sequestration of eferty of land, were always the exclusive fects; in some cases by confiscation t(r province of the lay court, even where a death.t clerk was the defendant.* But the ec- The clerVy did not forget to secure clesiastical tribunals took cognizance of along with this jurisdiction their And immu breaches of contract, at least where an own absolute exemption from nity. oath had been pledged, and of personal the criminal justice of the state. This, trusts.t They had not only an exclusive as I have above mentioned, had been'trisdiction over questions immediately conceded to them by Charlemagne; but matrimonial, but a concurrent one with how far the same privilege existed in the civil magistrate in France, though countries not subject to his empire, such never in England, over matters incident as England, or even in France and Gerto the nuptial contract, as claims of mar- many during the three centuries after his reign portion and of dower.t They took reign, is what I am not able to assert. the execution of testimonials into their The False Decretals contain some pashands, on account of the legacies to pious sages in favour of ecclesiastical immuniuses which testators were advised to be- ty, which Gratian repeats in his collequeath.~ In process of time, and under tion.t About the middle of the twelfth favourable circumstances, they made still century the principle obtained general greater strides. They pretended a right reception, and Innocent III. decided it to to supply the defects, the doubts, or the be an inalienable right of the clergy negligence of temporal judges; and in- whereof they could not be divested even vented a class of mixed causes, whereof by their own consent.~ Much less were the lay or ecclesiastical jurisdiction took any constitutions of princes, or national possession according to priority. Besides usages, deemed of force to abrogate such this extensive authority in civil disputes, an important privilege.[l These, by the they judged of some offences, which natu- canon law, were invalid when they affectrally belong to the criminal law, as well as ed the rights and liberties of holy church.~ of some others, which participate of a civ- But the spiritual courts were charged il and criminal nature. Such were perju- with scandalously neglecting to visit the ry, sacrilege, usury, incest, and adultery;ll most atrocious offences of clerks with from the punishment of all which the secular magistrate refrained, at least in Eng. * Charlemagne is said by Giannone to have per land, after they had become the prov- mitted the bishops to have prisons of their own, l. ince of a separate jurisdiction. Exdom- Vi C. 7. t Giannone, i. xix., c. 5. t. iii. Schmidt, t. iv., p. 195; t. vi., p. 125. Flieury, 7me Discours, Mem. de * Decretal., l. ii., t. ii. Ordonnances des Rois, t. l'Acad. des Inscript., t. xxxix., p. 603. Ecclesiasti. l., p. 40 (A. D. 1189). In the council
of Lambeth, cal jurisdiction not having been uniform in differ in 1261, the bishops claim a
right to judge inter ent ages and countries, it is difficult, without much clericos suos, vel inter
laicos conquerentes et cler- attention, to distinguish its general and permanent icos defendentes,
in personalibus actionibus super attributes from those less completely established. contractibus,
anut delictis, aut quasi, i. e. quasi de- Its description, as given in the Decretals, lib. ii., tit..ictis.-
Wilkins, Concilia, t. i., p. 747. ii., De foro competenti, does not support the pro 1-
Ordonnarnces des Rois, p. 319 (A. D. 1290). tensions made by the canonists, nor come up to:
Idem, p. 40, 121, 220, 319. the sweeping definition of ecclesiastical jurisdic~
Glanvil, 1. vii., c. 7. Sancho IV. tion by Boniface VIII. in the Sext., 1. iii., tit. xxiii., save the
same jurisdiction to the clergy of Castile, c. 40, sive ambe partes hoc voluerint, sise un'a'oria
de las Cortes, t. iii., p. 20; and in other re- super causis ecclesiasticis, sive qua3 ad forum
crerts followed the example of his father Alfonso clesiasticum ratione tersonarum,
negotiorum, vel St. in favouring their encroachments. The church return de jure vel de antiqua
consuetudine pertiof Scotland seems to have had nearly the same ju- nere noscuntur. ns
Idem. Institutions au Droit Eccl6s., t. io., p. 8. {l It was a maxim of the canon, as well as the II
In criminalibus caus s in nullo casu possu.' crom mon law, that no person should be punished
clerici ab aliquo quim ab ecclesiastico judice con twice for the same ofence; therefore, if a
clerk had demnari, etiamsi consuetudo regia habea dit fures been degraded, or a penance
imposed on a lay- a judicibus saecularibus judicenl ur - Dlecretal., 1, i., man, it was supposed
unj:r.- to proceed against tit. i., c. e. him u, a temporal court fl Decret., distinct. 96.

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Page 299 JhAAP. V11.J CCLESIASTICAL POWER. 299 such punishment as they could
immunity dignified part, the See of Rome, which from the thraldom of canonical discipline, an
existing schism rendered dependant though rich, and highly respected by a upon the favour of
those two monarchs, devout nation, had never, perhaps, de- might have receded in some
measure sired the thorough independence upon from her pretensions. But France im secular
jurisdiction at which the con- plicitly giving way to the encroachments tenental hierarchy
aimed. William the of ecclesiastical power, it became imposConqueror first separated the
ecclesias- sible for Henry completely to withstand ti- cal from the civil tribunal, and forbade
them. the bishops to judge of spiritual causes The constitutions of Clarendon, how;in the
hundred court.I His language is, ever, produced some effect, and, in the however, too
indefinite to warrant any reign of Henry III.,more unremitted and successful efforts began to be
made to - Collier, vol i., p. 351. It is laid down in the maintain the independence of temporal
canon laws that a layman cannot be a witness in a criminal case against a clerk.-Decretal., 1. ii.,
tit. government. The judges of the king's xx., c. 14. court had until that time been thent
Lyttleton's Henry II., vol. iii., p. 332. This selves principally ecclesiastics, and commust be
restricted to that period of open hostility secretly tender of spiritual privilegessyt between the
church and state.: Ut nullus episcopus vel archidiaconus de legi-But now, abstaining from the
exercise of bus episcopalibus amplius in Hundret placita ten- temporal jurisdiction, in
obedience to the eant, nec causam que ad regimen animarum pert- strict injunctions of their
canons,0the net, ad judicium secularium hominum adducant. clergy gave place to common
lawyers, -Wilkins, Leges Anglo-Saxon., 230. Before the conquest, the bishop and earl 4,c to-
professors of a system very discordant gethel in the court of the county or hundred; and, from
their own. These soon began to as we imay infer from the tenour of this charter, ecclesiastical
matters were decided loosely, and rather * Ecclesiasticarum personarum et ointumm cleri ny
the common law than according to the canons. corum, et rerum eorum justitiam et pAtestatem,
el This practice had been already forbidden by some distributionem honorum ecclesiastico-
um, in mant canons enacted under Edgar, id., p. 83; but appa- episcoporum esse perhibeo, et
confirmo. —Wilkins, rently with little effect. The separation of the civil Leges Anglo-Saxon.,
p. 310. and ecclesiastical tribunals was not made in Den- t Wilkins, Leges Anglo-Saxon., p.
323. Lyttle mark till the reign of Nicolas, who ascended the ton's Henry II., Collier, &c. throne
Others refer the law to St. Canut, I Decretal., I. i., tit. x:Esvii., c. 1. Wilkins, IC0' mlburt 1080,
t. ii., D. 209. cilia, t. ii. p. 4.
themselves I, less vig Edward I., an archbishop acknowledges so vigorously for their emancipatory ill the abstract right of the king's bench to tion. The same, or rather worse France. issue prohibitions; and the statute en-usurpations existed, and the same committed Circumspecte agatis, in the thir-plaints were made, under Philip Augussteenth year of that prince, while by its tus, St. Louis, and Philip the Bold; but mode of expression it seems designed to the laws of those sovereigns tend much guaranty the actual privileges of spirit- more to confirm than to restrain eccleual jurisdiction, had a tendency, espe-siastical encroachments. t Some limita-ally with the disposition of the judges, tions were attempted by the secular to preclude the assertion of some which courts; and an historian gives us the are not therein mentioned. Neither the terms of a confederacy among the French right of advowson nor any temporal con-nobles, in 1246, binding themselves by tract is specified in this act as pertain-oath not to permit the spiritual judges to ing to the church; and accordingly the take cognizance of ally matter, except temporal courts have ever since main-heresy, marriage, and usury. T Unfortunatian an undisputed jurisdiction over nately, Louis IX. was almost as little them.- They succeeded also partially disposed as Henry III. to shake off the * Prynne has produced several extracts from the yoke of ecclesiastical dominion. But plpe rolls of Henry II., where a person has been fined quia placitavit de laico feodo in curia chris-various motives, were equally submianitatis. And a bishop of Durham is fined five sive. Frederick II. explicitly adopts the hundred marks quia tenuit placitum de advocatione exemption of clerks from criminal in curia christianitatis.-Epistle dedicatory to Prynne's Records, vol. iii. Glanvil gives the form of a writ of prohibition to the spirit-knownledge as a statute, though not drawn up in ual court for inquiring de feodo laico; for it had the form of one, is founded upon an answer of Ed jurisdiction over lands in frankalmoign. This is ward I. to the prelates who had petitioned for some conformable to the constitutions of Clarendon, and modification of prohibitions. Collier, always prone shows that they were still in force; though Col. to exaggerate church authority, insinuates that the her has the assurance to say, that they were re-jurisdiction of the spiritual court over breaches of pealed soon after Becket's death, supporting this contract, even without oath, is preserved by this also by a false quotation from Glanvil.-Statute; but the express words of the king show ast. Hist., vol. i., p. 380. Lyttleton's Henry II., that none whatever was intended; and the arch vol. iii., p. 97. bishop complains bitterly of it afterward.- Wit. t Cum judicandi Christos domini nulla sit laicis kins, Concilia, t. ii., p. 118. Collier's Ecclesiast. attributa potestas, apua quos manet necessitas ob- History, vol. i., p. 487. So far from having any sequendi.-Wilkins, Concilia, t. i., p. 747. cognizance of civil contracts not confirmed by $ Id. ibid.; et t. ii., p. 90. oath, to which I am not certain that the church ~ Vide Wilkins, Concilia, t. ii., passim. ever pretended in any country, the spiritual court 11 Licet prohibitiones hujusmodi a curia chris-had no jurisdiction at all even where an oath had liani.4sini regis nostri just6 procubdubio, ut dixi-intervened, unless there was a deficiency of proof nnus, concedantur.-Idem, t. ii., p. 100, and p. 115. by writing or witnesses.-Glanvil, I. x., c. 12 Yet after such an acknowledgment by Archbishop Constitut. Clarendon., art. 15. Peckham, in the height of ecclesiastical power, * 2 Inst., p. 163. and after a practice deducible from the age of t It seems deducible from a law of Phillp A.u Henry II., some Protestants, as Archbishop Ban-gustus, Ordonnances des Rois, t. i., p. 39, that a croft (2 Inst., 609); Gibson (preface to Codex clerk convicted of some heinous offences ight be Jmr. Eccl.); Collier (Ecclesiast. Hist., vol. i., p. capitally punished after degradation; yet a subse 522), have complained that the court of king's quent ordinance, p. 43, renders this doubtful; an6 oench should put any limits to their claims of spir-the theory of clerical immunity became afterward itual jurisdiction. more fully established. q The statute CircumspecteB agatis. for it is ac-Matt. Paris, p. 6~ a
man emperors, to check the overgrowth. Alfonso X. introduced the same system of seculars.* The first at. ten in Castile; a kingdom where neither tempt at a limitation of this description the papal authority nor the independence in modern times was made by Frederick of the church had obtained any legal rec- Barbarossa, who, in 1158, enacted that no obligation until the promulgation of his fief should be transferred either to the code, which teems with all the principles church or otherwise, without the permission of the canon law.t It is almost needless sion of the superior lord. Louis IX. into mention that all ecclesiastical powers sorted a provision of the same kind in his and privileges were incorporated with establishments.f Castile had also laws of the jurisprudence of the kingdom of Na- a similar tendency.T A license from the ple., which, especially after the acces- crown is said to have been necessary in sion of the Angevin line, stood in a pe- England before the conquest for alienac- relation of dependance upon the tions in mortmain; but, however that may Holy See. be, there seems no reason to imagine The vast acquisitions of landed wealth that any restraint was put upon them by Restraints made for many ages by bishops, the common law before Magna Charta; on aliena- chapters, and monasteries, began a clause of which statute was construed tions in at length to excite the jealousy to prohibit all gifts to religious houses mortmain. of sovereigns. They perceived without the consent of the lord of the fee. that, although the prelates might send And by the 7th Edward I., alienations in their stipulated proportion of vassals into mortmain are absolutely taken away; the field, yet there could not be that ac- though the king might always exercise co-operation which the spirit of feu- his prerogative of granting a license, dal tenures required, and that the nation- which was not supposed to be effected by al arm was palsied by the diminution of the statute.– military nobles. Again, the reliefs upon It must appear, I think, to every caresuccession, and. similar dues upon aliena- ful inquirer, that the papal author- Bonifac- tion, incidental to fiefs, were entirely lost ity, though manifesting outward- VIII. when they came into the hands of these ly more show of strength every year, had undying corporations, to the serious in- been secretly undermined, and lost a jury of the feudal superior. Nor could great deal of its hold upon public opinion, it escape reflecting meni, during the con- before the accession of Boniface VIII., test about investitures, that, if the church in 1294, to the pontifical throne. The peremptorily denied the supremacy of the clergy were rendered sullen by demands state over her temporal wealth, it was of money, invasions of the legal right of but a just measure of retaliation, or rather patronage, and unreasonable partiality to self-defence, that the state should restrain the mendicant orders; a part of the menber further acquisitions. Prohibitions of dicants themselves had begun to degists in mortmain, though unknown to claim against the corruptions of the pathe lavish devotion of the new kingdoms, pal court; while the laity, subjects alike had been established by some of the Ro- and sovereigns, looked upon )both the _ head and the members of the hierarchy -* Statuimus, ut nullus ecclesiasticam personam, with jealousy and dislike. Boniface, full in criminali quaestione vel civili, trahere ad judici- of inordinate arrogance and ambition, um saeculare praesumat.-Ordonnances des Rois de F'rance, t. i., p. 611, where this edict is recited and not sufficiently sensible of this gradapproved by Louis Hutin. Philip the Bold had ual change in human opinion, endeavourobtained leave from the pope to arrest cltn-ks ac- ed to strain to a higher pitch the despotcused of heinous crimes, on condition of remitting ic pretensions of former pontiffs. As them to the bishop's court for trial.-Hist. du Droit. Eccl. Franq., t. i., p. 426. A council at Gregory VII. appears the most usurping Bourges, held in 1276, had so absolutely condemned of mankind till we read the history of finall interference of the secular power with clerks, nocent III., so Innocent I'1. is thrown that the king was obliged to solicit this moderate into shade by the superior audacity of favour, p. 421. BonifaceII. t
independently of Marina, Ensayo Historico-Critico sobre las Siete Partidas, c. 320, &c. Hist. du Droit Eclesiastique, less favourable dispositions of the public.

He wanted the most essential quality for € Giannone, 1. xix., c. v.; 1. xx., c. 8. One provis- an ambitious pope, reputation for integrity of Robert, king of Naples, is remarkable: it extends the immunity of clerks to their concubines. * Giannone, 1. iii. — Ibid. t Ordonnances des Rois, p. 213. See too p. 303 Villani strongly censures a law made at Flor- and alibi. Du Cange, v. Manus morta. Amortis.ence, in 1345, taking away the personal immunity siment, in Denisart, and other French law-books of clerks in criminal cases. Though the state could Fleury, Institut. au Droit., t. i., p. 350. make such a law, hre says, it had no right to do so: Marina, Ensayo sobre las siete partidas, c o36 agai:st the liberti.s of holy church I xii., c. 43. 6 2 Inst., p 74. Blackstone vol. ii., c. 18

Page 302 302 EUROPE DURING THE MIDDLE AGES..r(.,AP VII ty. le was suspected of having procu- ecclesiastical order without their consent, red through fraud the resignation of his a measure perhaps unprecedented, yet predecessor Celestine V., and his harsh not more odious than the similar exactatement of that worthy man afterward tions of the King of England Irritated seems to justify the reproach. His ac- by some previous differences. the pope- tions, however, display the intoxication issued his bull, known by the initial words of extreme self-confidence. If we may Clericis laicos, absolutely forbidding the rredit some historians, he appeared at clergy of every kingdom to pay, under he Jubilee in 1300, a festival successful- whatever pretext of voluntary grant, gift. ly instituted by himself to throw lustre or loan, any sort of tribute to their govaround his court and fill his treasury,* ernment without his especial permission. dressed in imperial habits, with the two Though France was not particularly naswords borne before him, emblems of his med, the king understood himself to bc. temporal as well as spiritual dominion intended, and took his revenge by a pro over the earth.t hibition to export money from the king It was not long after his elevation to dom. This produced angry remonstrai —!His disputes the pontificate before Boniface ces on the part of Boniface; but the Galwith the displayed his temper. The two lican church adhered so faithfully to the Kinagfd most powerful sovereigns of crown, and showed indeed so much wil Europe, Philip the Fair and Ed- lingness to be spoiled of their money, the I ward the First, began at the same mo- he could not insist upon the most unrea. ment to attack in a very arbitrary man- sonable propositions of his bull, and ulti. ner the revenues of the church. The Eng- mately allowed that the French clergy lish clergy had, by their own voluntary might assist their sovereign by voluntary grants, or at least those of the prelates contributions, though not by way of tax. in their name, paid frequent subsidies to For a very few years after these cirthe crown, from the beginning of the cumstances, the pope and King of France reign of Henry III. They had nearly, in appeared reconciled to each other; and effect, waived the ancient exemption, and the latter even referred his disputes with retained only the common privilege of Edward I. to the arbitration of Boniface., English freemen to tax themselves in a "as a private person, Benedict of Gaeta constitutional manner. But Edward I. (his proper name), and not as pontiff;" an came upon them with demands so fre- almost nugatory precaution against his quent and exorbitant, that they were cor- encroachment upon temporal authority., pelled to take advantage of a bull issued But a terrible storm broke out in the first by Boniface, forbidding them to pay any year of the fourteenth century. A bishrontribution to the state. The king dis- op of Pamiers, who had been sent as Ieregarded every pretext, and, seizing their gate from Boniface with some complaint, goods into his hands, with other tyran- displayed so much insolence, and such nical proceedings, ultimately forced them disrespect towards the king, that Philip, to acquiesce in his extortion. It is re- considering him as his own subject, was markable, that the pope appears to
have provoked to put him under arrest with been passive throughout this contest of a view to institute a criminal process. Edward I., with his clergy. But it was Boniface, incensed beyond measure at the eyes of far otherwise in France. Philip this violation of ecclesiastical and iega France. the Fair had imposed a tax on the tine privileges, published several bulls addressed to the king and clergy of ~ The Jubilee was a centenary commemoration, in honour of St. Peter and St. Paul, established * Walt. Hemingford, p. 150. The awa.' of by Boniface VIII. on the faith of an imaginary pre- Boniface, which he expresses himself to make both cedent a century before. The period was soon re- as pope and Benedict of Gaeta, is published in Rymer to fifty years, and from thence to twenty- mer, t. ii., p. 819, and is very equitable. Never. five, as it still continues. The court of Rome, at thesless, the French historians agree to charge him the next jubilee, will, however, read with a sigh the with partiality towards Edward, and mention sev. description given of that in 1300. Papa innumera- eral proofs of it, which do not appear in the bull it. lilem pecuniam ab isdem recepit, quia die et nocte self. Previous to its publication, it was allowable dao clerici stabant ad altare Sancti Pauli, tenentes enough to follow common fame; but Velly, a wriin e~omm manibus rastellos, rastellantes pecuniam ter always careless and not always honest, has -einfinitam.-Muratori. Plenary indulgences were peated mere falsehoods from Mezeray and Bailet, gracrte by Boniface to all who should keep their while he refers to the instrument itself ir. Rymer, jubilee at Rome, and I suppose are still to be had which disproves them.-Hist. de France, t. vii., p. on the same terms. Matteo Villani gives a curi- 139. M. Gaillard, one of the most candid critics in quas account of the throng at Rome in 1350. history that France ever produced, pointed out the t Giannone, l. xxi., c. 3. Velly, t. vii., p. 149. error of her common historians in the Mdm. de nave not observed any good authority referred to l'Academie des Inscriptions, t. xxxix., p. 642; and for this fact, which is however in he character of the editors of L'Ar' le vmrifier les Dates have aSaw Boniface. rectified it
reluctant to enter circumstance interrupted all his projects. Into an engagement not to obey the pope's summons; yet they did not hesitate unequivocally to deny his temporal ages to disentangle the artful sophisms, jurisdiction, and detect the falsehoods in point of fact, The council, however, opened at Rome; whereon the papal supremacy had been and, notwithstanding the king's absolute established, that the King of France prohibition, many French prelates held should not have altogether pursued the themselves bound to be present. In this course most becoming his dignity and the assembly Boniface promulgated his famous constitution, denominated Unam Sanctum. The church is one body, he Boniface to what should have been a restherein declares, has one head. Un- absolute opposition to the despotism of der its command are two swords, the one Rome. Accordingly, in an assembly of spiritual, and the other temporal; that to his states at Paris, he preferred virulent be used by the supreme pontiff himself; charges against the pope, denying him to this by kings and knights, by his license, have been legitimately elected, imputing and at his will. But the lesser sword to him various heresies, and ultimately must be subject to the greater, and the appealing to a general council and a lawful authority. He ful head of the church. These measures concludes by declaring the subjection of were not very happily planned: and ex. every human being to the See of Rome Innocent IV. had, however, in 1245, appointed to be an article of necessary faith.* An- one Bolon, brother to Sancho II., king of Portugal, other bullpronounces allpersons of what- to be a sort of coadjutor in the government of ever rank obliged to appear when person- that kingdom, enjoining the barons to honour him ally cited before the audience or apostol- as their sovereign, at the same time declaring that ical tribunal of Rome; " since such is our he did not intend to deprive the king, or his lawful issue, if he should have any, of the kingdom. But pleasure, who, by divine permission, rule this was founded -n, the request of the Portuguese nobility themselves, who were dissatisfied with * Uterque est in potestate ecclesiae, spiritalis, Sancho's administrat.ion.- Sext. Decretai., 1. i., tit scilicet gladius et materialis. Sed is quidem pro viii., c. 2. Art de Vérifier les Dates, t. i., p. 778. ecclesi, ille vero ab ecclesiA exercendus: ille sa- Boniface invested James II. of Aragon with the cerditos, is manu regum ac militum, sed ad nutum crown of Sardinia, over which, however, the See et patientiam sacerdotis. Oportet autem gladium of Rome had always pretended to a superiority bj esse sub gladio, et temporalem auctoritatem spiri- vi: tue of the concession (probably spurious) of Lot tali subjici potestati. Porro subesse Romano pon- is the Debonair. He promised Frederick, king of tifici omni humanae creaturwe deklaramus, dicimus, Sicily, the empire of Constantinople, which, I sup definimus et pronunciavrns omnino esse de neces:-o.se, was not a fief of fia Holv See.-G-ianmnme sitat e fid ei Extra vag mt.; 1 i., t;i. vGiiri., c. 1. 1 A.. 3.

Page 304 3$[4 EUOUPE DJRING THE MIDDLE AGES its, perience had arways shown, that Europe defying and despising the papal juridic. would no submit to change the common tion, Boniface had every claim to be chief of her religion for the purposes of avenged by the inheritors of the same a single sovereign. But Philip succeed- spiritual dominion. When Benedict XI. ed in an attempt apparently more bold rescinded the bulls of his predecessor, and singular. Nogaret, a minister who and admitted Philip the Fair to comlnmu llad taken an active share in all the pro- nion without insisting on any concessions, needings against Boniface, was secretly he acted perhaps prudently, but gave a Jespatched into Italy, and, joining with fatal blow to the temporal authority of some of the Colonna family, proscribed Rome. as Ghibeiins, and rancorously persecuted [A. D. 1305.] Benedict XI. lived but a by the pope, arrested him at
Anagnia, a few months, and his successor, Removal o' town in the neighbourhood of Rome, to Clement V., at the instigation, papal court which he had gone without guards. This as is commonly supposed, of to Avignon. violent action was not, one would ima- the King of France, by whose influence gine, calculated to place the king in an lie had been elected, took the extraordiadvantageous light; yet it led accidental- nary step of removing the papal chair to ly to a favourable termination of his dis- Avignon. In this city it remained for pute. Boniface was soon rescued by the more than seventy years; a period which inhabitants of Anagnia; but rage brought Petrarch and other writers of Italy cornon a fever, which ended in his death; and pare t) that of the Babylonish captivity the first act of his successor, Benedict The majority of the cardinals was always XI., was to reconcile the King of France French, and the popes were uniformly to the Holy See.* of the same nation. Timidly dependant The sensible decline of the papacy is upon the court of France, they neglected to be dated from the pontificate of Bon- the interests, and lost the affections of iface VIII., who had strained its author- Italy. Rome, forsaken by her sovereign, ity to a higher pitch than any of his pre-nearly forgot her allegiance; what redecessors. There is a spell wrought by mained of papal authority in the ecclesiuninterrupted good fortune, which cap- astical territories was exercised by cartivates men's understanding, and per- dinal legates, little to the honour or ad. suades them, against reasoning and anal- vantage of the Holy See. Yet the series ogy, that violent power is immortal and of Avignon pontiffs were far from inirresistible. The spell is broken by the sensible to Italian politics. These occurfirst change of success. We have seen pied, on the contrary, the greater part of the working and the dissipation of this their attention. But engaging in them charm with a rapidity to which the events from motives too manifestly selfish, and of former times bear as remote a rela- being regarded as a sort of foreigners tion as the gradual processes of nature to from birth and residence, they aggrahler deluges and her volcanoes. In tra- vated that unpopularity and bad reputacing the papal empire over mankind, we which from various other causes have no such marked and definite crisis attached itself to their court. of revolution. But slowly, like the re- Though none of the supreme pontiffs treat of waters, or the stealthy pace of after Boniface VIII. ventured Contest of old age, that extraordinary power over upon such explicit assumptions popes with human opinion has been subsiding for of a general jurisdiction over Louis of five centuries. I have already observed, sovereigns by divine right as he Bavaria. that the symptoms of internal decay may had made in his controversy with Philip, be traced farther back. But as the re- they maintained one memorable struggle trocession of the Roman terminus under for temporal power against the Emperoi Adrian gave the first overt proof of de- Louis of Bavaria. Maxims long boldly cline in the ambitious energies of that repeated without contradiction, and in empire, so the tacit submission of the granted upon the canon law, passed al. successors of Boniface VIII. to the King most for articles of faith among the of France might have been hailed by clergy, and those who trusted in them; Europe as a token that their influence and, in despite of all ancient authorities, was beginning to abate. Imprisoned, in- Clement V. laid it down, that the popes, sulted, deprived eventually of life by the having transferred the Roman empire violence of Philip, a prince excommuni- from the Greeks to the Germans, and cated, and -who had gone all lengths in delegated the right of nominating an * Velly, Hist. de France, t.,ii., p. 109-258. Cr~ emperor to certain electors, still reserved ew, Hist. de l'Universi: de Paris, t. ii., p. 170, the prerogative of approving the choice &~st, ist. gc versi de Pars, t. ii., p. 170 and of receiving from its subiect uton his
against John interpretation, and whose measures, much XXII., publishing scandal, us accusations. o the alarm of the court of Avignon, in an assembly of the citizens of Rome, were directed towards the restoration of and causing a Franciscan friar to be his imperial rights in Italy. Among other chosen in his room, after an irregulathings, he conferred the rank of vicar of sentence of deposition, he was'always the empire upon Matteo Visconti, lord anxious to negotiate terms of accommo of Milan. The popes had for some time dation, to give up his own active parti pretended to possess that vicariate, du- sans, and to make concessions the mos ring a vacancy of the empire; and after derogatory to his independence and dig Henry's death, insisted upon Visconti's nity. From John, indeed, he had nothing surrender of the title. Several circum- to expect; but Benedict XII. would gladly stances, for which I refer to the political have been reconciled, if he had not feared historians of Italy, produced a war be- the kings of France and Naples, political tween the pope's legate and the Visconti adversaries of the emperor, who kept family. The Emperor Louis sent assist- the Avignon popes in a sort of servitude ance to the latter, as heads of the Ghib- His successor, Clement VI., inherited the elin or imperial party. This interference implacable animosity of John XXIi. tocost him above twenty years of trouble. wards Louis, who died without obtaining John XXII., a man as passionate and the absolution he had long abjectly soiambitious as Boniface himself, immedi- ately published a bull, in which he assert- Though the want of firmness in this ed the right of administering the empire emperor's character gave some- spiri o'r during its vacancy (even in Germany, as times a momentary triumph to sitance to it seems from the generality of his ex- the popes, it is evident that their papal usur pression), as well as of deciding in a authoritylost ground during the pations. doubtful choice of the electors, to apper- continuance of this struggle. Their rightIan to the Holy See; and commanded of confirming imperial elections was ex Louis to lay down his pretended author- pressly denied by a diet held at Frank..ty, until the supreme jurisdiction should fort, in 1338, which established as a fun determine upon his election. Louis's damental principle that the imperial digelection had indeed been questionable; nity depended upon God alone, and that but that controversy was already settled whoever should be chosen by a majority in the field of Muhldorf, where he had of the electors became immediately both obtained a victory over his competitor king and emperor, with all prerogatives the Duke of Austria; nor had the pope of that station, and did not require the ever interfered to appease a civil war approbation of the pope.t This law, conduction several years that Germany had firmeid as it was by subsequent usage, been internally distracted by the dispute. emancipated the German empire, which [A. D. 1323.] The emperor, not yielding was immediately concerned in opposing co this peremptory order, was excomnu- the papal claims. But some who were nicated; his vassals were absolved from actively engaged in these transactions their oath of fealty, and all treaties of took more extensive views, and assailed alliance between him and foreign princes the whole edifice of temporal powei annull ed. Germany, however, remained which the Roman see had been confirm; and if Louis himself had manifest- structing for more than two centuries ed more decision of mind and uniformity in his conduct, the court of Avignon must * Schmidt, Hist. des Allem'a'nds, t. iv., p. 446, have signaly failed in a contest, from 536, seems the best modern authority for this contest between the empire and papacy.-See also * Remani priJciprs, &t.... Romano ponti- Struvius, Corp. Hist. German., p. 591. fici, a quo apprbrationemn personae ad imperialis t Qu6d imperialis dignitas et potestas immediate celsitudIn.i?i!Acemr assumendaw, necnon uctionem, ex solo Deo, et qu6d de jure et imperii consuetudni consecrationem et i.imperii coronam accipiunt, sua ne antiquitas approbath postquam aliquis eligitur submittere capita non reputarunt indignum, seque in imperatore sive regem ab electoribus imperii illi et eiderm ecclesia, quae a Graecis imperium tran- concorditer, vel majori parte eorundem, statim ex stulit in Germanos, et a qu ad certos eorum prin- sola electione est rex verus et imperator Romancipes jus et potestas
eligendi regem, in imperato- orum censendus et nominandus, et eidem debet ab rein postmodum promovendum, pertinet, adstrin- omnibus imperio subjectis obediri, et administrandi gere vinculo juramenti, &c.-Clement., 1. ii., tit. ix. jura imperil, et caetera faciendi, qua ad imperato'The terms of the oath, as recited in this constitu- rem verum pertinent, plenariam habet potestatem, ion, do not warrant the pope's interpretation, but nec Papa sive sedis apostolicae aut alicui::s alterimply only that the emperor shall be the ad'.?cate us approbatione, confirmatione, auctoritate indigo cr defender of.the church vel conlsensu.- Schmidt, p. 513 I1

Page 306 so0t EUROPE DURING THE MIDDLE AGES. LCHArP Xrf Several men of learning, among whom served to himself all the bishoprics in Dante, Ockham, and Marsilius of Padua, Christendom.* Benedict XII. assumed ~are the most conspicuous, investigated the privilege for his own life of disposing the foundations of this superstructure, of all benefices vacant by cess;on, depri. and exposed their insufficiency.* Liter- vation, or translation. Clement V1. nat ature, too long the passive handmaid of urally thought that his title was equally spiritual despotism, began to assert her good with his predecessor's, and contibnoble birthright of ministering to liberty ued the same right for his own time; and truth. Though the writings of these which soon became a permanent rule of opponents of Rome are not always rea- the Roman chancery.t Hence the ap. soned upon very solid principles, they at pointment of a prelate to a rich bishopric least taught mankind to scrutinize what was generally but the first link in a chain had been received with implicit respect, of translation, which the pope could regand prepared the way for more philosoph- ulate according to his Interest. Another ical discussions. About this time a new capital innovation was made by John class of enemies had unexpectedly risen XXII. in the establishment of the famous up against the rulers of the church. tax called annates, or first fruits of ec These were a part of the Franciscan or- clesiastical benefices, which he imposed der, who had seceded from the main for his own benefit. These were one body. on account of alleged deviations year's value, estimated according to a from the rigour of their primitive rule. fixed rate in the books of the Roman Their schism was chiefly founded upon chancery, and payable to the papal cola quibble about the right of property in lectors throughout Europe.T Various things consumable, which they maintain- other devices were invented to obtain ed to be incompatible with the absolute money, which these degenerate popes poverty prescribed to them. This friv- abandoning the magnificent schemes of olous sophistry was united with the wild- their predecessors, were content to seek est fanaticism; and as John XXII. at- as their principal object. John XXII. is tempted to repress their follies by a cruel sail to have accumulated an almost persecution, they proclaimed aloud the credible treasure, exaggerated perhaws corruption of the church, fixed the name by the ill-will of his contemporaries;'~ of antichrist upon the papacy, and warm- but it may be doubted whether even hit ly supported the Emperor Louis through- avarice reflected greater dishonesty on out all his contention with the Holy See.t the church than the licentious piofuseMeanwhile the popes who sat at Avig- ness of Clement VI.IH Rapacity of non continued to invade with These exactions were too much en. Avignon surprising rapaciousness the bourged by the kings of France, who popes. patronage and revenues of the participated in the plunder, or at least re. church. The mandats or letters directing quired the mutual assistance of the popes a particular clerk to be preferred seems for their own impost on the clergy. to have given place in a great degree to John XXII. obtained leave of Charles the more effectual method of appropria- ___ ting benefices by reservation or provis- * Fleury, Institutions, &c., t. i., p. 368. F. Paul ion, which was carried to an enormous Benefices, c. 37. ion, which was carried to an enormous t F. Paul, c. 38. Translations of bishops had extent in the fourteenth century. John been made by the
authority of the metropolitan, XXII., the most insatiate of pontiffs, re- till Innocent III. reserved
vi., p. 152. T F. Paul, c. 38. Fleury, p. 424. De Marca, 1. Dante was dead before these events,
but his prin- vi., c. 10. Pasquier, 1. iii., c. 28. The popes Lad ciples were the same. Ockham had
already ex- long been in the habit of receiving a pecuniary g:a erted his talents in the same
cause by writing, in tuity when they granted the pallium to an archnishop for the expenses of Philip IV.
against Boniface, a dialogue op, though this was reprehended by strict men, and between a
knight and a clerk on the temporal su- even condemned by themselves.-De Marea, ibid.
preamcy of the church. This is published among It is noticed as a remarkable thing of Innocent
I V., other tracts of the same class in Gol iastus, Monar- that he gave the pall to a German
archbishop chia Imperii, p. 13. This dialogue is translated without accepting any thing.-Schmidt, t. iv., D entire in the Songe du Vergier, a more celebrated 172. The original and
nature of afinates Is co performance, ascribed to Raoul de Presles under piously treated in
Lenfant, Concilo de Constrstr, Charles V. t. ii., p. 133. t The schism of the rigid Franciscans or
Fratri- ~ G. Villani puts this at 25,006,000 of florins celli is one of the most singular parts of
ecclesias- which it is hardly possible to believe. The Ital tical history, and had a material
tendency both to ians were credulous enough to listen to any report depress the temporal
authority of the papacy, and against the popes of Avignon.-L. xi.. c. 20. Gian. to pave the way
for the Reformation. It is fully none, 1. xxii., c. 8. treated by Mosheim, cent. 13 and 14; and by
Cre- II For the corruption of morals at A )gnon during vier. Hist, de i'Universit6 de Paris t. ii.,
p. 233- the secession, see De Sade, Vie d6 Ptiaraue. 6t4. &(c. i., p 70. and several otha
nearly to the same effect as the former. It was 3o-incident in point of time with that of found on examination in 1367, that some the French nobility; and the two com- clerks enjoyed more than twenty beneficed may be considered as a joint pro- ces by the pope's dispensation. (And testation of both kingdoms, and a testi- the parliaments both of this and of Richmony to the general sentiment among ard II.'s reign invariably complain of the the superior ranks of the laity. A very disregard shown to the statutes of provifew years afterward, the parliament of the residence of the popes at Avignon visions and other extortions, including gave very general offence to Eu. Return o! that of first fruits, which it was rumour- rope, and they could not them- Popes to ed, they say, he was meditating to de- selves avoid perceiving the dis- Rome. mand.) But the court of Avignon was advantage of absence from their proper not to be moved by remonstrances; and diocess, the city of St. Peter, the source the feeble administration of Edward II. of all their claims to sovereignty. gave way to ecclesiastical usurpations at But Rome, so long abandoned, offered home as well as abroad. 1 His magnani- but an inhospitable reception; Urban V, mous son took a bold line. After comdirected rather towards confirming than limiting the clerical immunity in criminal cases. * Continuatur Gul. de Nangis, in Spicilegio * Collier, p. 546. d'Archery, t. iii., p. 86 (folio ed.), ita miseram eccle- t It is singular that Sir E. Coke should assert siam, says this monk, unus tondet, alter excoriat. that this act recites, and is founded upon the stat t Fleury, Institut. au Droit ecclesiastique, t. ii., ute 35 E. I., De asportatis religiosorum (2 Inst., p. 245. Villaret, t. ix., p. 431. It became aregular 580); whereas there is not the least resemblance practice for the king to obtain the pope's consent in the words, and very little, if any, in the sub- laid a tax on his clergy; though he sometimes stance. Blackstone, inconsequence, mistakes the applied first to themselves.-Garnier, t. xx., p. 141. nature of that act of Edward I., and supposes it $ Rymer, t. ii., p. 373. Collier, vol. i., p. 725. to have been made against papal provisions, to Q Rotuli Parliamenti, vol. i., p. 204. This pas- which I do not perceive even an allusion. Whether sage, hastily read, has led Collier and other English any such statute was really made in the Carlisle writers, such as Henry and Blackstone, into the parliament of 35 E. i., as is asserted both in supposition that annates were imposed by Clem- 25 E. III., and in the roll of another parliamen' ealt V. But the concurrent testimony of foreign 17 E. IIT (Rot. Parl., t. ii., p. 144), is hard to de authors refers this tax to John XXII., as the canon cide; and perhaps those who examine this poin law also shows. —Extravagant. Communes, 1. iii., will have to choose betw een wilful appres tit ii.. c. 11. and wilful interpolation. The statute called Articuli cleri, in 1316, was t 25 E. III., stat. 6. ~ Collier, p. 568. Ti'
election which distracted the found to depend. * ment VII. Latin church for so many years. Whatever posterity may have judged [A. D. 1377.] All contemporary testimo- about the pretensions of these The Great nies are subject to the suspicion of partial- competitors, they at that time Schisrn. in a cause where no one was permitted shared the obedience of Europe in near to be neutral. In one fact, however, there ly equal proportions. Urban remained at is a common agreement, that the cardinals, Rome; Clement resumed the station of of whom the majority were French, hav- Avignon. To the former adhered Italy ing assembled in conclave for the elec- the empire, England, and the nations of tion of a successor to Gregory XI., were the north; the latter retained in his alle disturbed by a tumultuous populace, who gance France, Spain, Scotland, and Sidemanded with menaces a Roman, or, at cily. Fortunately for the church, no least, an Italian pope. This: tumult ap- question of religious faith intermixed it.. pears to have been sufficiently violent to self with this schism; nor did any othel excuse, and in fact did produce, a con- impediment to reunion exist, than the siderable degree of intimidation. After obstinacy and selfishness of the contendsome time, the cardinals made choice of ing parties. As it was impossible to the Archbishop of Bari, a Neapolitan, who come to any agreement on the original] assumed the name of Urban VI. His merits, there seemed to be no means of election satisfied the populace, and tran- healing the wound but by the abdication quillity was restored. The cardinals an- of both popes and a fresh undisputed nounced their choice to the absent mem- election. This was the general wish of bers of their college, and behaved to- Europe, but urged with particular zeal by' wards Urban as their pope for several the court of France, and, above all, by the weeks. But his uncommon harshness university of Paris, which esteems this of temper giving them offence, they period the most honourable in her annals withdrew to a neighbouring town, and The cardinals however of neither obediprotesting that his election had been ence would recede so far from their par. compelled by the violence of the Roman ty as to suspend the election of a succespopulace, annulled the whole proceeding, sor upon a vacancy of the pontificate, and chose one of their own number, who which would have at least removed one took the pontifical name of Clement VII. half of the obstacle. The Roman conSuch are the leading circumstances which dlave accordingly placed three pontiffs produced the famous schism. Constraint successively, Boniface IX., Innocent VI., is sol destructive of the essence of elec- and Gregory XII., in the seat of Urban tion, that suffrages given through actual VI.; and the cardinals at Avignon, upon intimidation ought, I think, to be held in- the death of Clement, in 1394, elected valid, even without minutely inquiring Benedict XIII. (Peter de Luna), famous whether the degree of illegal force was for his inflexible obstinacy in prolonging such as might reasonably overcome the the schism. He repeatedly promised to constancy of a firm mind. It is improbable that the free votes of the cardinals a Lenfant has collected all the original testimo hies on both sides in the first book of his Concil] would have been bestowed on the Arch- de Pise. No positive decision has ever been made bishop of Bari; and I should not feel on the subject, but the Roman popes are numberd much hesitation in pronouncing his elec- in the commonly received list, and those of Avignon tion to have been void. But the sacred are not. The modern.talian writers express no college unquestionably did not use the doubt about the legitimacy of Urban; the French at most intimate that Clement's pretensions were earliest opportunity of protesting against not to t e wholly rejected. But I am saying to he violence they had suffered; and we much or, a question so u'te fly unimportant.

Page 309 H AP. VII. ECCLESIASTICAL POWER Jdl sacrifice his dignity for the sake of union. ford of restoring union, the council found But there was no subterfuge to which a pretext for this sentence in his-enorth this crafty pontiff had not recourse in or- mous vices, which indeed
they seem to der to avoid compliance with his word, have taken upon common fame without though importuned, threatened, and even any judicial process. The true motive, besieged in his palace at Avignon. Fa- however, of their proceedings against tigued by his evasions, France withdrew him, was a desire to make a signal dishier obedience, and the Gallican church play of a new system, which had rapidly continued for a few years without ac- gaining ground, and which I may venture kniwledging any supreme head. But this to call the whig principles of the Catholic step, which was rather the measure of church. A great question was at issue, the university at Paris than of the nation, whether the polity of that establishment it seemed advisable to retract; and Ben- should be an absolute, or an exceedingly edict was again obeyed, though France limited monarchy. The papal tyranny, continued to urge his resignation. A long endured and still increasing, had essexsecond subtraction of obedience, or at cited an active spirit of reformation which least declaration of neutrality, was re- the most distinguished ecclesiastics of solved upon, as preparatory to the con- France and other countries encouraged vocation of a general council. On the They recurred, as far as their knowledge other hand, those who sat at Rome dis- allowed, to a more primitive discipline played not less insincerity. Gregory than the canon law, and elevated the suXII. bound himself by oath on his acces- premy of general councils. But in the sion to abdicate when it should appear formation of these they did not scruple necessary. But while these rivals were to introduce material innovations. The loading each other with the mutual re- bishops have usually been considered the proach of schism, they drew on them- sole members of ecclesiastical assembles the suspicion of at least a virtual blies. At Constance, however, sat and collusion in order to retain their respect- voted not only the chiefs of monasteries, ive stations. At length the cardinals of but the ambassadors of all Christian both parties, wearied with so much dis- princes, the deputies of universities, with simulation, deserted their masters, and a multitude of inferior theologians, and summoned a general council to meet at even doctors of law.* These were natPisa.* urally accessible to the pride of sudden [A. D. 1409.] The council assembled at elevation, which enabled them to conCouncil Pisa deposed both Gregory and trol the strong, and humiliate the lofty. of Pisa; Benedict, without deciding in any In addition to this, the adversaries of the respect as to their pretensions, and elect- court of Rome carried another not less ed Alexander V. by its own supreme au- important innovation. The Italian bishthority. This authority, however, was ops, almost universally in the papal internot universally recognised; the schism, ests, were so numerous, that, if suffrages instead of being healed, became more had been taken by the head, their predesperate; for, as Spain adhered firmly ponderance would have impeded any to Benedict, and Gregory was not with- measures of transalpine nations towards out supporters, there were now three reformation. it was determined, thecontending pontiffs in the church. A fore, that the council should divide itself general council was still, however, the into four nations, the Italian, the German favourite, and indeed the sole remedy; the French, and the English; each with and John XXIII., successor of Alexander equal rights, and that every proposition ofcon- V., was reluctantlyprevailed upon, hatving been separately discussed, the stance; or perhaps trepanned into convo-majorityofthefourshouldprevail.t This king one to meet at Constance. [A. D. 1414.] In this celebrated assembly he * Lenfant, Concile de Constance, t. i., p. 107.himstlf deposed; a sentence which.. (edit. 1727). Crevier, t. iii., p. 405. It was agreed was nims(If deposed; a sentence which that the ambassadors could not vote upon articles he incurred by that tenacious clinging to of faith, but only on questions relating to the sethis dignity, after repeated promises to tlement of the church. But the second order of abdicate, which had already proved fatal ecclesiastics were allowed to vote generally. to his competitors. The deposition of ot This separation of England, as a coequal limit of the council, gave great umbrage to the French, John, confessedly a legitimate pope, may who maintained that, like Denmark and Sweden,
strike us as an extraordinary measure. It ought to have been reckoned along with Germa. But, besides the opportunity it might afford to the subtraction of the other's chief for the subtraction of the other's; monarchy, for which they did not fail to put in re * Villaret. Lenfant, Concile de Pise. Crevier, quisition the immeasurable pedigrees of Ireland. fist. de l'Uniiiversitd de Paris, t. iii. Joseph of Arimathea, who planted Chitiianity and

Page 310 ELROPE DURING THE MIDDIE AGES. LCaa. VII revolhtioary spirit was very unaccepta- its chief for the subtraction of the other's chief for the subtraction of the other's, who submitted its chief for the subtraction of the other's, who submitted obedience. Boniface IX., one of the Roluctantly, and with a determination that man line, whose fame is a little worse did not prove altogether unavailing, to than that of his antagonists, made a gross save their papal monarchy by a dexter- traffic of his patronage; selling the privilegious policy. They could not, however, leges of exemption from ordinary jurisprevent the famous resolutions of the diction, of holding benefices in communionfourth and fifth sessions, which declare dam, and other dispensations invented for that the council has received by divine the benefit of the Holy See.* Nothing right an authority to which every rank, had been attempted at Pisa towards refeven the papal, is obliged to submit, in ormation. At Constance the majority matters of faith, in the extirpation of the were ardent and severe; the representapresent schism, and in the reformation of tives of the French, German, and English the church both in its head and its mem- churches met with a determined and, as bers; and that every person, even a pope, we have seen, not always unsuccessful who shall obstinately refuse to obey that resolution to assert their ecclesiastical council, or any other lawfully assembled, liberties. They appointed a committee is liable to such punishment as shall be of reformation, whose recommendations, necessary.* These decrees are the great if carried into effect, would have annihipillars of that moderate theory with re- lated almost entirely that artfully conspect to the plural authority which dis- structed machinery by which Rome had tinguished the Gallican church, and is absorbed so much of the revenues and embraced, I presume, by almost all lay- patronage of the church. But men inmex. and the major part of ecclesiastics terested in perpetuating these abuses, eson this side of the Alps. They embar- pecially the cardinals, improved the ad. rass the more popish churchmen as the vantages which a skilful government allRevolution does our English tories; ways enjoys in playing against a popular some boldly impugn the authority of the assembly. They availed themselves of council of Constance, while others chi- the jealousies arising out of the division cane upon the interpretation of its de- of the council into nations, which exterereeves. Their practical importance is not, or political circumstances had enhanced. indeed, direct; universal councils exist France, then at war with England, whose only in possibility; but the acknowledg- pretensions to be counted as a fourth nament of a possible authority paramount tion she had warmly disputed, and not to the see of Rome has contributed, well disposed towards the Emperor Siamong other means, to check its usur- gismund, joined with the Italians against pations. the English and German members of the The purpose for which these general council in a matter of the utmost imporcouncils had been required, next to that of tance, the immediate election of a pope healing the schism, was the reformation before the articles of reformation should of abuses. All the rapacious exactions, be finally concluded. These two nations, all the scandalous venality of which Eu- in return, united with the Italians to rope had complained, while unquestioned choose the Cardinal Colonna, against the pontiffs ruled at Avignon, appeared light advice of the French divines, who objectin comparison of the practices of both ed to any member of the sacred college. rivals during the schism. Tenths repeat- The court of Rome were gainers in both edly levied upon the clergy, annates rig- questions. Martin V., the new pope, orously exacted and enhanced by new soon evinced his determinatiun to elude valuations, fees annexed to the complica- any
substantial reform. After publishing the formalities of the papal chancery, a few constitutions

tending to redress were the means by which each half of some of the abuses that had arisen
during the church was compelled to reimburse the schism, he contrived to make separate

conventions with the several nations, and his stick at Glastonbury, did his best to help the as

soon as possible dissolved the council. The recent victory of Azincourt, I am in-

By one of the decrees passed at Con dlined to think, had more weight with the council. stance, another
general council was to be -Lenfant, t. ii., p. 46. At a time when a very different spirit prevailed,

* Lenfant, Hist. du Concile de Pise, passim the English bishops under Henry II. and Henry

Crevier, Villaret, Schmidt, Collier. III. had claimed as a right, that no more than four t Lenfant,

Concile de Constance. The copious of their number should be summoned to a general ness as

well as impartiality of this work justly ren
council.-Hoveden, p. 320; Carte, vol. ii., p. 84. der it

an almost exclusive authority. Crevie, This was like boroughs praying to be released from

(Hist. de l'Université de Paris, t. iii.) has given a sending members to parliament. good

abridgment; and Schmidt (Hist. des Alle * Idem, p. 164. Crovier, t. iii., p. 417. mands,.. v' is

worthy of attention.

Page 311] CHAP. V11.]

ECCLESIASTICAL POWER. 311 assembled in five ears, a second

at the indeed of ecclesiastical public law seemz end of seven more, and from that time a to be

still undecided. The fathers o Basle similar representation of the church was acted however

with greater intrepidity to meet every ten years. Martin V. ac- than discretion, and not perhaps

sensible cordingly convoked a council at Pavia, of the change that was taking place in which,
on account of the plague, was public opinion, raised Amadeus, a retired transferred to Siena;

but nothing of im- duke of Savoy, to the pontifical dignity, portance was transacted by this

assem- by the name of Felix V. They thus re.. of Basle. bly.* [A. D. 1433.] That which newed

the schism, and divided the ob. ihe summoned seven years after- dience of the Catholic

church for a few ward to the city of Basle had very differ- years. The empire, however, as well

as eat results. The pope, dying before the France, observed a singular and not very meeting of

this council, was succeeded consistent neutrality respecting Eugenius by Eugenius IV., who,

anticipating the as lawful pope, and the assembly at Basle spirit of its discussions, attempted to

as a general council. England warmly crush its independence in the outset by supported

Eugenius, and even adhered transferring the place of session to an to his council at Florence;

Aragon and Italian city. No point was reckoned so some countries of smaller note

acknowlmaterial in the contest between the edged Felix. But the partisans of Basle popes and

reformers, as whether a coun- became every year weaker; and Nicolas cil should sit in Italy or

beyond the Alps. V., the successor of Eugenius, found no The council of Basle began, as it pro-
great difficulty in obtaining the cession of ceased, in open enmy to the court of Felix, and

terminating this schism. This Rome. Eugenius, after several years victory of the court of Rome

over the had elapsed in more or less hostile dis- council of Basle nearly counterbalanced

cussions, exerted his prerogative of remo- the disadvantageous events at Constance, ving

the assembly to Ferrara, and from and put an end to the project of fixing thence to Florence. For

this he had a permanent limitations upon the head of spurious pretext in the negotiation, then

the church by means of general counapparently tending to a prosperous issue, cils. Though the
decree that prescribed for the reunion of the Greek church; a the convocation of a council every
ten triumph, however transitory, of which his years was still unrepealed, no absolute council at

Florence obtained the glory. monarchs have ever more dreaded to On the other hand, the

assembly at Basle, meet the representatives of their people, though mmch weakened by the
defection than the Roman pontiffs have abhorred of those who adhered to Eugenius, enter-
the name of those ecclesiastical synods, ed into compacts with the Bohemian in- once alone, and
that with the utmost reluctance, has the Catholic church been of the church than any union with the convoked since the council of Basle; but Greeks, and completed the work begun the famous assembly to which I allude at Constance by abolishing the annates, does not fall within the scope of my pre- the reservations of benefices, and other ent undertaking.* abuses of papal authority. In this it re- It is a natural subject of speculation, ceived the approbation of most princes; what would have been the effects of these but when, provoked by the endeavours of universal councils, which were so popu the pope to frustrate its decrees, it pro- lar in the fifteenth century, if the decree ceased so far as to suspend and even to passed at Constance for their periodical repose him, neither France nor Germany assembly had been regularly observed! concurred in the sentence. Even the Many Catholic writers, of the moderate council of Constance had not absolutely or cisalpine school, have lamented their asserted a right of deposing a lawful disuse, and ascribed to it that irreparable pope, except in case of heresy, though logians, the democracy of the Catholic church, their conduct towards John could not whose right of suffrage seems rather an anomalous otherwise be justified. This question infringement of episcopal authority, pressed it with ___ much heat and rashness. See a curious passage on this subject in a speech of the Cardinal of Aries. * Ledant, Guerre des Hussites, t. i., p. 223. — Lenfant, t. ii., p. 225. t The council of Basle endeavoured to evade this. There is not, I believe, any sufficient history os difficulty by declaring Eugenius a relapsed heretic. the council of Basle. Lenfant designed to write it -Lenfant, Guerre des Hussites, t. i., p. 98. But from the original acts, but, finding his health de an the church could discover no heresy in his disa- cline, intermixed some rather imperfect notices of greement with that assembly, the sentence of de- its transactions with his history of the Hussite war, position gained little strength by this previous de which is commonly quoted under the titles of His cision. The bishops were unwilling to take tHis story of the Council of Basle. Schmlidt Crew iel 4ole It step against Eugenius; but the minor theo. Villaret, are still mv other autt rites.
consistent; her free parliament predreaded the encroachments of priests upon venting, as far as the times permitted the civil government, the Christian, who that wavering policy to which a court is panted to see his rites and faith purified liable. We have already seen that a from the corruption of ages, found no foundation was laid in the statute of prohope of improvement in these councils. visors under Edward III. In the next They took upon themselves the preten-reign, many other measures tending.e s'ons of the popes whom they attempt- repress the interference of Rome were ed to supersede. By a decree of the fa- adopted; especially the great statute of thers at Constance, all persons, including premunire, which subjects all persons princes, who should oppose any obstacle bringing papal bulls for translation of to a journey undertaken by the Emperor bishops and other enumerated purposes Sigismund, ill order to obtain the cession into the kingdom to the penalties of of Benedict, are declared excommunicated, and deprived of their dignities, with a safe-conduct of the emperor, very loose) whether secular orecclesiastical.* Their worded, and not directed to any individuals.condemnation of Huss and Jerome of Lenfant, t. i., p. 59. 2. This pass, however, was Prague, and the scandalous breach of binding upon the emperor himself, and was so faith which they induced Sigismund to considered by him, when he remonstrated against commit on that occasion, are notorious, the arrest of Huss.-Id., p. 73, 83. 3. It was not binding on the council, who possessed no tempoBut perhaps it is not equally so, that this ral power, but had a right to decide upon the quescelebrated assembly recognised by a tion of heresy. 4. It is not manifest by what civil solenln decree the flagitious principle authority Huss was arrested, nor can I determine which it had practised, declaring that how far the imperial safe-conduct was a legal protection within the city of Constance. 5. Sigis. Huss was unworthy, through his obsti-mund was persuaded to acquiesce in the capital nate adherence to heresy, of any privi-punishment of Huss, and even to make it his own lege; nor ought any faith or promise to act (Lenfant, p. 409); by which he manifestly be kept with him, by natural, divine, or broke his engagement. 6. It is evident that in human law, to the prejudice of the Cath- this he acted by the advice and sanction of the council, who thus became accessory to the gull olic religion.t It will be easy to esti- of his treachery. The great moral to be drawn from the stoily of * Lenfant, t. i., p. 439. John Huss's condemnation is, that no breach of t Nec aliqua sibi fides ant promissio, de jure faith can be excused by our opinion of ill desert in aaturali, divino, et humano fuerit in prejudicium the party, or by a narrow interpretation of our own Cathoica fidei observanda.-Lenfant, t. i., p. 491. engagements. Every capitulLti-n ought to be cm This proposition is the great disgrace of the strued favourably for the weaker side. In rtuc council in the affair of Huss. But the violation cases it is emphatically true, that if the letter of his safe-conduct being a famous event in eccle- killeth, the spirit should give life. siast cal history, and which has been very much Gerson, the most eminent theologian of his age, disputed with some degree of erroneous statement and the coryphmus of the party that opposed the on both sides, it may be proper to give briefly an transalpine principles, was deeply concerned i; inmartial si mmary. 1. Huss came to Constance this a -ocious hblus ess. ---revier, p. 4 12

Page 313 CHApT. Vlt L CCLES AkSTICAL POWE q forfeiture and perpetual imprisonment.* of this reformer: and the House of Com'-his act received, and probably was de- mons more than once endeavoured to signed to receive, a larger interpretation carry it into effect, pressing Henry IV than its language appears to warrant. to seize the temporalities of the church Combined with the statute of provisors, for public exigences.* This recommend it put a stop to the pope's usurpation of ation, besides its injustice, was not likely patronage, which had empowivered the to move Henry, whose policy had been church and kingdom of England for nearl3 to sustain the prelacy against their new two centuries. Several attempts were adversaries.
Ecclesiastical jurisdiction made to overthrow these enactments; was kept in better control than former the first parliament of Henry IV. gave a ly by the judges of common law, who, very large power to the king over the through rather a strained construction of statute of provisors, enabling him even the statute of premunire, extended its to annul it at his pleasure. This, how- penalties to the spiritual courts when ever, does not appear in the statute-book. they transgressed their limits. The Henry, indeed, like his predecessors, ex- privilege of clergy in criminal cases still excised rather largely his prerogative of remained; but it was acknowledged not dispensing with the law against papal to comprehend high treason. Drovisions; a prerogative which, as to Germany, as well as England, was disth this point, was itself taken away by an appointed of her hopes of gen- Concordats act of his own, and another of his son eral reformation by the Italian of Aschar Henry V. But the statute always stood party at Constance; but she did fenburg. unrepealed; and it is a satisfactory proof not supply the want of the council's deoff the ecclesiastical supremacy of the crees with sufficient decision. A conlegislature, that in the concordat made cordat with Martin V. left the pope ir by AMartin V. at the council of Constance possession of too great a part of his re with the English nation, we find no men- cent usurpations. This, however, was tion of reservation of benefices, of anna- repugnant to the spirit of Germany, which tes, and the other principal grievances called for a more thorough reform with of that age; our ancestors disdaining to all the national roughness and honesty. accept by compromise with the pope any The diet of Mentz, during the continuance modification or even confirmation of their statute law. They had already restrain-

* Walsingham, p. 371, 379. Rot. Parl., 11 H. IV., ed another flagrant abuse, the increase vol. iii., p. 645. The remarkable circumstances of first fruits by Boniface IX.; an act of etailed by Walsingham in the former passage are f first fruits by Boniface IX.; an act not corroborated by any thing in the records. Blut Henry IV. forbidding any greater sum to as it is unlikely that so particular a narrative be paid on that account than had been should have no foundation, Hume has plausibly formerly accustomed Il conjectured that the roll has been wilfully mutila It will appear evident to every person ted. As this suspicion occurs in other instances, it will appear evident to every person it would be desirable to ascertain, by examinatio, influencee of acquainted with the contempo- of the original rolls, whether they bear any exterWicliffe's rare historians and the pro- nal marks of injury. The mutilators, however, if, enets. ceedings of parliament, that be- such there were, have left a great deal. The rolls sides partaking in the general resentment of Henry IV. and V.'s parliaments are quite full of f.0 ~~~. petitions against the clergy.:f Europe against the papal court, Eng- t 3 Inst., p. 121. Collier, vol. i., p. 668. and was under the influence of a pecu- t 2 Inst., p. 634, where severainstances of priests liar hostility to the clergy, arising fron executed for coining and other treasons are adduthe dissemination of the principles of ced. And this may also be inferred from 25 E. III., Wicliffe.T All ecclesiastical possessions stat. 3, c. 4; and from 4 H. IV., c. 3. Indeed, the Wicliffe.~clesiastical possessions..benefit of clergy has never been taken away by were marked for spoliation by the system statute from high treason. This renders it impr}bable that Chief- justice Gascoyne should, as Carte * 16 Ric. If., c. 5. tells us, vol. ii., p. 664, have refused to try Arch t Rot. Parl., vol. iii., p. 428. bishop Scrope for treason, on the ground that no t 7 H. IV., c. 8; 3 H. V., c. 4. Martin V. pub- one could lawfully sit in judgment on a bishop fox lished an angry bull against the " execrable stat- his life. Whether he might have declined to try ute" of premunire, enjoining Archbishop Chiche- him as a peer, is another question The pope ex ley to procure its repeal.-Collier, p. 653. Chi-. communicated all who were concerned in Scrope', cheley did all in his power; but the commons were death, and it cos' Henry a large sum to obtain ab always inexorable on this head, p. 636: and the solution. But Boniface IX. was no arbiter of tht archbishop even incurred Martin's resentment by English law. Edward IV. granted a strange char it. —Wilkins, Concilla, t. iii., p. 483. ter to the clergy, not only dispensing with
the stat Q Lenfant, t. ii., p. 444. 11 6 H. IV., c. 1. utes of premunire, but absolutely exempting thert ~l See, among many other passages, the articles from temporal jurisdiction in cases of treason a, exhibited by the Lollards to parliament against the well as felony.-Wilkins, Concilia, t. iii., p. 583 clergy, in 1394. Collier gives the substance of Collier, p. 678. This, however, being an illega them, and they are noticed by Henry: but the.v grant, took no effe't, at least after

his death are at fill length in Wilkins, t. iii p. 221. Lenfant, t. ii., p. 428. Schmidt, t. v, 13

Page 314 314 iJROPE DURING THE MIDDLE AGES [CHA. VII of the Zouncil of Basle, adopted all those jurisprudence an authority which it no. regulations hostile to the papal interests where else possessed in national tribu. which occasioned the deadly quarrel be- nals.* That richly-endowed hierarchy tween that assembly and the court of was a tempting spoil. The popes filled Rome.* But the German empire was be- up its benefices by means of expectatives

trayed by Frederick III., and deceived and reserves with their own Italian dey an accomplished but profligate states- pendants. We find the cortes of Palen aian, his secretary, AEneas Sylvius. Fresh cia, in 1388, complaining that strangers co;ncordats, settled at Aschaffenburg, in are beneficed in Castile, through which:14418, nearly upon the footing of those the churches are ill supplied, and native concluded with Martin V., surrendered scholars cannot be provided, and
regret part of the independence for which questing the king to take such measures Germany had contended. The pope re- in relation to this as the kings of France, tained his annates, or at least a sort of Aragon, and Navarre, who do not permit tax in their place; and instead of reserv- any but natives to hold benefices in their ing benefices arbitrarily, he obtained the kingdoms. The king answered to this positive right of collation during six al- petition that he would use his endeavours ternate months of every year. Episco- to that end.t And this is expressed with pal elections were freely restored to the greater warmth by a cortes of 1473, who chapters, except in case of translation, declare it to be the custom of all Chriswhen the pope still continued to nomi- tian nations that foreigners should not be nate; as he did also, if any person, ca- promoted to benefices, urging the disnonicallr; unfit, were presented to him couragement of native learning, the defor confirmation.t Such is the concordat cay of charity, the bad performance of reof Aschaffenburg, by which the Catholic ligious rites, and other evils arising from principalities of the empire have always the nonresidence of beneficed priests, been governed, though reluctantly ac- and request the king to notify to the court quiescing in its disadvantageous provis- of Rome that no expectative or provisions. Rome, for the remainder of the ion in favour of foreigners can be receivfifteenth century, not satisfied with the ed in future.1 This petition seems to terms she had imposed, is said to have have passed into a law; but I am ignorant cornitually Pncroached upon the right of of the consequences. Spain certainly election.T But she purchased too dearly took an active part in restraining the. her triumph over the weakness of Fred- abuses of pontifical authority at the counierick III., and the hundred grievances of cils of Constance and Basle; to which I Germany, presented to Adrian VI. by the might add the name of Trent, if that asdiet of Nuremberg, in 1522, manifested sembly were not beyond my province the workings of a long-treasured resent- France, dissatisfied with the abortive ment, that had made straight the path termination of her exertions du- Checks on before the Saxon reformer. ring the schism, rejected the con- papal au. I have already taken notice. that the cordat offered by Martin V., which thority in Castilian church was in the first held out but a promise of im- France. rapal en- ages of that monarchy nearly in- perfect reformation.s She suffered in ments on dependent of Rome. But, after consequence the papal exactions for some church of many gradual encroachments, the years, till the decrees of the council of Castile. code of laws promulgated by Al- Basle prompted her to more vigorous effonso X. had incorporated a great part forts for independence, and Charles VITI. of the
decretals, and thus given the papal enacted the famous Pragmatic Sanction of Bourges.] This has been deemed a * Schmidt, t. v., p. 221. Lenfant. sort of Magna Charta of the Gallican f Schmidt, t. v., p. 250; t. vi., p. 94, &c. He church; for though the law was speedily observes that there is three times as much money abrogated, its principle has remained fixed at present as in the fifteenth century; if, therefore, as the basis of ecclesiastical liberties. the annates are now felt as a burden, what must they have been? p. 113. To this Rome would an- By the Pragmatic Sanction a general swer: if the annates were but sufficient for the council was declared superior to the pope pope's maintenance at that time, what must they be now? * Marina, Ensayo Historico-Critico, c. 320, &c, t Schmidt, p. 98. XAneas Sylvius, Epist. 369 f Idem, Teoria de las Cortes, t. iii., p. 126. and 371; and De Moribus Germanorum, p. 1041, t Idem, t. ii., p. 364. Mariana, Hist. Hispan, 1061. Several little disputes with the pope indi- 1. xix., c. 1.,ate the spirit that was fermenting in Germany ~ Villaret, t. xv., p. 126. throughout the fifteenth century. But this is the [I Idein, p. 263. Hist. du Droit Public Ec,'ls. roper subject of a more detailed ecclesiastical his- Franpois, t. ii., p. 234. Fleury, Institutions au Dioit. )ry, and should form an intr, duction to that of Crevier, t. iv., p. 100. Pascuier, Recherches de 18 ne Reformation. France, i. iii. c. 27

Page 315 cHnAr. VFt.J ECCLESIASTICAL POWER. 31I elections of bishops were made free from only to force; the university hardly stope all control; mandats or grants in ex- ped short of sedition; the zealous G(allis pectancy, and reservations of benefices cans have ever since deplored it as a were taken away; first fruits were abol- fatal wound to their liberties. There is ished. This defalcation of wealth, which much exaggeration in this, as far as the had now become dearer than power, relation of the Gallican church to Rome could not be patiently borne at Rome. is concerned; but the royal nomination Pius II., the same JEnaes Sylvius who to bishoprics impaired of course the in. had sold himself to oppose the council dependence of the hierarchy. Wh ethei of Basle, in whose service he had been this prerogative of the crown were upon originally distinguished, used every en- the whole beneficial to France, is a prob. deavour to procure the repeal of this or- lem that I cannot affect to solve; in this dinance. With Charles VII. he had no country there seems little doubt that success; but Louis XI., partly out of capitular elections, which the statute of blind hatred to his father's memory, Henry VIII. had reduced to a name, partly from a delusive expectation that would long since have degenerated into the pope would support the Angevin fac- the corruption of close boroughs; but tion in Naples, repealed the Pragmatic the circumstances of the Gallican estabSanction.* Tnis may be added to other lishment may not have been entirely simproofs that Louis XI., even according to ilar, and the question opens a variety of the measures of worldly wisdom, was considerations that do not belong to my not a wise politician. His people judged present subject. from better feelings; the parliament of From the principles established during Paris constantly refused to enregister the the schism, and in the Pragmatic Liberties revocation of that favourite law, and it Sanction of Bourges, arose the ofthe continued in many respects to be acted far-famed liberties of the Gallican Gallican upon until the reign of Francis I.t At church, which honourably distin- the States-General of Tours, in 1404, the guished her from other members of th: inferior clergy, seconded by the two other Roman communio. These have beetl orders, earnestly requested that the Prag- referred by French writers to a much earmatic Sanction might be confirmed; but lier era; but, except so far as that coun. the prelates were timid or corrupt, and try participated in the ancient ecclesias. the Regent Anne was unwilling to risk a tical independence of all Europe, before quarrel with the Holy See.t This un- the papal encroachments had subverted settled state continued, the Pragmatic it, I do not see that they can be properly Sanction neither quite enforced nor quite traced above the fifteenth century.
Nor repealed, till Francis I., having accom- had they acquired, even at the expiration modated the differences of his predeces- of that age, the precision and consistency sor with Rome, agreed upon a final con- which was given in later times by the cordat with Leo X., the treaty that sub- constant spirit of the parliaments and sisted for almost three centuries between universities, as well as by the best ecthe papacy and the kingdom of France. § clesiastical authors, with little assistance Instead of capitular election or papal pro- from the crown, which, except in a few vision, a new method was devised for periods of disagreement with Rome, has filling the vacancies of episcopal sees. rather been disposed to restrain the more The king was to nominate a fit person, zealousGallicans. These-liberties, therewith the pope was to collate. The fore, do not strictly fall within my limits; one obtained an essential patronage, the and it will be sufficient to observe that other preserved his theoretical suprem- they depended upon two maxims; one, acy. Annates were restored to the pope; that the pope does not possess any direct a concession of great importance. He or indirect temporal authority; the other, gave up his indefinite prerogative of re- that his spiritual jurisdiction can only be serving benefices, and received only a exercised in conformity with such parts small stipulated patronage. This con- of the canon law as are received by the vention met with strenuous opposition in kingdom of France. Hence the Gallicas France; the parliament of Paris yielded church rejected a great part cf the Sexf and Clementines, and paid little regard to Villaret nd Garnier, t. xvi. Crevier, t. iv., p. modern papal bulls, which in fact obtain t Garnier, t. xvi., p. 432; t. xvi.., p. 222, et alibi. ed validity only by the king's approba Crevier, t. iv., p. 318, et alibi. tion.* J Garnier, t. xix., p. 216 and 321. ~ Idem, t. xxiii., p. 151. Hist. du Droit Public * Fleury, Institutions au Droit, t. ii., page 226, &c., Eccles. Fr., t. ii., p. 243 Fleuv. Institutions au and Discours sur les Libertes de l'Egl.se Galli l)roit, t., p. 107 cane. The last editors of this dissertation go fat
testamentary, and ever, in 1329 before Philip of Valois, his advo-
cate-general, Peter de Cugnieres, pro- were decided by the parliament; and ir announced a
long harangue against the ex- many other matters, that body, being the. cesses of spiritual
jurisdiction. This is a judge of its own competence, narrowed curious illustration of that branch
of legal by means of the appeal because of abuse, and ecclesiastical history. It was an- the
boundaries of the opposite jurisdictionbeyond Fleury, and perhaps reach the utmost point tion.1
This remedial process appears to limiting the papal authority which a sincere have been more
to be remembered, that ecclesi- extensively applied than member of that communion can attain.- See notes, our English writ of
prohibition. The latter p. 417 and 445. merely restrains the interference of the * It ought always
be remembered, that ecclesi- temporal judges are in doubt si quid ambigu- II Fleury, Institutions, t. ii., p. 421. De Marca, der
which he has a right to teresting to follow the track of the star which was punish him capitally.-Du Clos, Vie de Louis XI., now
receding, though still fierce. t. i., p. 422. Garnier, Hist. de France, t. xvii., p. t De Marca,
complaining that Q Pasquier, 1. iii., c. 33. Hist. du Droit Eccles. the lay judges invaded
ecclesiastical jurisdiction, Franqois, t. ii., p. 119. Floury, Institutions au and reckoning the
cases subject to the latter, un, Droit Eccles. Franqois, t. ii., p. 221. De Marca, der which he
includes feudal and criminal causes De Concordantia Sacerdotii et Imperii, 1. iv., c. 19. in
some circumstances, and also those in which The last author seems to carry it; rather higher. the
temporal judges are in doubt si quid ambigu- II Fleury, Institutions, t. ii., p. 42, &c. nue inter
judices sanlllares oriatui l De Marca, De Concordantii,. 1. iv., c. 9 Flea

Page 317 CHAP V11.] ECCLESIASTICAL POWER. 311 While the bishops of Rome were
losing Even the crusades, which had already eime of their general influence over Eu- been tried
against the helretics of LanPapal infu- rope, they did not gain more es- guedoc, were now
preached against all ence in Ita- timation in Italy. It is indeed who espoused a different party
from the.Y. a problem of some difficulty, Roman see in the quarrels of Italy. Such whether
they derived any substantial were those directed at Frederick II,,: advantag- from their
temporal principalii- Manfred, and at Matteo Visconti, accomny. For the last three centuries, it
has panied by the usual bribery, indulgences certainly been conducive to the mainte- and
remission of sins.' The papal intemnance of their spiritual supremacy, which, diets of the fourteenth century wore a in the complicated relations of policy, different complexion from those of for- night have been endangered by their be- mer times. Though tremendous to the zoming the subjects of any particular imagination, they had hitherto been conseoverign. But I doubt whether their fined to spiritual effects, or to such as real authority over Christendom in the were connected with religion, as the promiddle ages was not better preserved by hibition of marriage and sepulture. But a state of nominal dependance upon the Clement V., on account of an attack empire, without much effective control made by the Venetians upon Ferrara, in on one side, or many temptations to 1309, proclaimed the whole people infaworldly ambition on the other. That mous, and incapable for three generacovetousness of temporal sway which, tions of any office; their goods, in every having long prompted their measures of part of the world, subject to confiscation, usurpation and forgery, seemed, from the and every Venetian, wherever he might ttle of Innocent III. and Nicolas III., be found, liable to be reduced into slave. to reap its gratification, impaired the ry.* A bull in the same terms was pubmore essential parts of the papal author- lished by Gregory XI., in 1376, against:ty. In the fourteenth and fifteenth cen- the Florentines. turies, the popes degraded their character From the termination of the schism, by too much anxiety about the politics of as the popes found their ambition thwar, Italy. The veil woven by religious awe ed beyond the Alps, it was diverted mooie was rent asunder, and the features of or- more towards schemes of tempnrt dinary ambition appeared without dis- sovereignty. In these we do not l,elguise. For it was no longer that magnif- ceive that consistent policy, which re icent and original system of spiritual markably actuated their conduct as sui power, which made Gregory VII., even prime heads of the church. Men genlei in exile, a rival of the emperor, which ally advanced in years, and born of no held forth redress where the law could ble Italian families, made the papacy not protect, and punishment where it subservient to the elevation of their kin could not chastise, which fell in some- dred, or to the interests of a local fac. times with superstitious feeling, and tion. For such ends they mingled in the sometimes with political interest. Many dark conspiracies of that bad age, distinmight believe that the pope could depose guished only by the more scandalous tur a, schismatic prince, who were disgusted pitude of their vices from the petty ty at his attacking an unoffending neighbour. rants; and intriguers with whom they As the cupidity of the clergy in regard to were engaged. In the latter part of the worldly estate had lowered their charac- fifteenth century, when all favourable ter everywhere, so the similar conduct prejudices were worn away, those who of their head undermined the respect felt occupied the most conspicuous station in for him in Italy. The censures of the Europe disgraced their name by more nochurch, those excommunications and in- torious profligacy than could be parallelterdicts which had made Europe trem- ed in the darkest age that had preceded ble, became gradually despicable as well and at the moment beyond which thisq as odious, when they were lavished in work is not carried, the invasion of Italy every squabble for territory which the by Charles VIII., I must leave the poun pope was pleased to make his own.* tifical throne in the possession of A Lex ander VI. ry, t. ii., p. 224. In Spain, even now, says De Mar-It has been my object in the present ca, bishops or clerks not obeying royal mandates that inhibit the excesses of ecclesiastical courts, month.-Muratori ad ann. A curious style for thle are expelled from the kingdom and deprived of the pope to adopt towards a free city! Six years be. rights of denizenship. fore the Venetians had been interdicted, bec.ause * In 1290, Pisa was put under an interdict for they would not allow their galleys to be hired by having conferred the signiory on the Count of the King of Nap!es. But it would be almost -ind Montefeltro, and he wan ordered, on pain of excom- less to quote every instance. ication, to lav downr the government within * Muratori
CHAPTER VII. EUROPE DURING THE MIDDLE AGES.

A few hours' perusal of a branch of history; power, the pontiffs hardly protect their not certainly with such extensive reach dilapidated citadel from the revolution of learning as the subject might require, ary concussions of modern times, the rai but from sources of unquestioned credi- pacity of governments, and the grow bility. Unconscious of any partialities that could give an oblique bias to my, if thus bearded by unmannery and mind, I have not been very solicitous to threatening innovation, they should occaavoid offence where offence is so easily sionally forget that cautious policy which taken. Yet there is one misinterpreta- necessity has prescribed, if they should tion of my meaning which I would gladly attempt, an unavailing expedient! to reobviate. I have not designed, in exhibit- vive institutions which can be no longering without disguise the usurpations of operative, or principles that have died Rome during the middle ages, to furnish away, their defensive efforts will not be materials for unjustprejudice orunfound- unnatural, nor ought to excite either ed distrust. It is an advantageous cir- indignation or alarm. A calm, compreumstance for the philosophical inquirer hensive study of ecclesiastical history, into the history of ecclesiastical domin- not in such scraps and fragments as the ion that, as it spreads itself over the ordinary partisans of our ephemeral litvas. extent of five or more centuries, the de- erature obtrude upon us, is perhaps the pendance of events upon general causes, best antidote to extravagant apprehension rather than on transitory combinations.

No unbiased observer, who derives est; distinguished especially; as it is pleasure from the welfare of his species, from all free governments of powerful can fail to consider the long and uninter- nations which history has recorded, by ruptedly increasing prosperity of England its manifesting, after the lapse of several as the most beautiful phenomenon in the centuries, not merely no symptom of irhistory of mankind. Climates more pro- retrievable decay, but a more expansive pitious may impart more largely the energy. Comparing long periods of mere enjoyments of existence; but in no time, it may be justly asserted that the other region have the benefits that polit- administration of government has pro- ical institutions can confer been diffused gressively become more equitable, and over so extended a population; nor have the privileges of the subject more secure; any people so well reconciled the dis- and, though it would be both presumptuordant elements of wealth, order, and ous and unwise to express an unlimited liberty. These advantaaes are surely confidence as to the durability of liber
The destruction (if those minor states he constant suspicion of the people, yet, was reserved for a different enemy if we calmly reflect on the present as- About the end of the eighth century thepect of this country, it will probably ap- northern pirates began to ravage the pear, thatwhatever perils may threaten coast of England. Scandinavia exhibited our constitution are rather from circum- in that age a very singular condition of stances altogether unconnected with it society. Her population, continually re. than from any intrinsic defects of its own.
dundant in those barren regions whil. It will be the object of the ensuing chap- gave it birth, was cast out in search of ter to trace the gradual formation of this plunder upon the ocean. Those who system of government. Such an inves- loved riot rather than famine embarked tigation, impartially conducted, will de- in large armaments under chiefs of legitte errors diametrically opposite; those imnate authority, as well as approved val intended to impose on the populace, our. Such were the sea-kings, renownwhich, on account of their palpable ab- ed in the stories of the North; the youngsurdity and the ill faith with which they er branches commonly of royal families, are usually proposed, I have seldom who inherited, as it were, the sea foi thought it worth while directly to re- their patrimony. Without any territory pel; and those which better informed but on the bosom of the waves, without persons are apt to entertain, caught from any dwelling but their ships, these princetransient reading and the misrepresented- ly pirates were obeyed by numerous substions of late historians, but easily refuted jects, and intimidated mighty nations.* by the genuine testimony of ancient times. Their invasions of England became conThe seven very unequal kingdoms of tinually more formidable; and, as their Sketchof the Saxon Heptarchy, formed confidence increased, they began first to Anglo- successively out of the countries winter, and ultimately to form permanent Saxon wrested from the Britons, were settlements in the country. By their history. originally independent of each command of the sea, it was easy for other. Several times, however, apower- them to harass every part of an island ful sovereign acquired a preponderating presenting such an extent of coast as influence over his neighbours, marked Britain; the Saxons, after a brave resistperhaps by the payment of tribute. Sev- ance, gradually gave way, and were were enumerated by Bede as having the brink of the same servitude or exter.s thus reigned over the whole of Britain; mination which their own arms had al an expression which must be very loose- ready brought upon the ancient posses ly interpreted.
Three kingdoms became sors. at length predominant; those of Wessex, From this imminent peril, after the Mlercia, and Northumberland. The first three dependant kingdoms, Mercia, Norrendered tributary the small estates of thumberland, and East Anglia, had been the Southeast, and the second that of the overwhelmed, it was the glory of Alfred Eastern Angles. But Egbert, king of to rescue the Anglo-Saxon monarchy.'Wessex, not only incorporated with his Nothing less than the appearance of a own monarchy the dependant kingdoms hero so undesponding, so enterprising. of Kent and Essex, but obtained an aC- and so just, could have prevented the enknowledgment of his superiority from tire conquest of England. Yet he never Miceria and Northumberland; the latter subdued the Danes, nor became master of which, though the most extensive of of the whole kingdom. The Thames, any Anglo-Saxon state, was too much the Lea, the Ouse, and the Roman road weakened by its internal divisions to of-called Watling-street, determined the limfer any resistance.* Still, however, the its of Alfred's dominion.t To the northkingdoms of Mercia, East Anglia, and east of this boundary were spread the inNorthumberland remained under their vaders, still denominated the armies of ancient line of sovereigns; nor did either East Anglia and Northumberland; a Egbert or his five immediate successors name terribly expressive of foreign con assume the title of any other crown than querors, who retained their warlike cotn -Wessex.t federacy without melting into
the mass __ For these Vikingr, or sea-kings, a new and in A Chronicon Sa:onicum, p. 70. 
teresting subject, I would refer to Mr. Turner'. t Alfred denominates himself in his will, Occi-
History of the Anglo-Saxons, in which valuable dentalium Saxorum rex; and Asserius neves 
gives work almost every particular that can i'tustrata hin any other name. But his son Edward 
tie El- our early annals will be found. der takes the title of Rex Anglorum on his coins. — t 
Wilkins, Leges Anglo-Saxon., pl. 47 Chron Vid. Numismata Anglo-Saxon. in T Hickes's The-

Page 320 .320 EUROPE DURING THE MIDDLE AGES. LC(Et t. v111 of their subjekt 
population. Three able No free people, therelbre, would ntralst and active sovereigns, Edward, 
Athel- their safety to blind chance, and permit stan, and Edmund, the successors of Al- a 
uniform observance of hereditary suc. fred, pursued the course of victory, and cession to 
prevail against strong public finally rendered the English monarchy expediency. Accordingly 
the Saxons, coextensive with the present limits of like most other European nations, while 
England. Yet even Edgar, the most theylimited the inheritance of the crown powerful of the 
Anglo-Saxon kings, did exclusively to one royal family, were not venture to interfere with the 
legal not very scrupulous about its devolution customs of his Danish subjects.* upon the 
nearest heir. It is an unwarUnder this prince, whose rare fortune ranted assertion of Carte, that 
the rule a, well as judicious conduct procured of the Anglo-Saxon monarchy was "linh'm the 
surname of Peaceable, the king- eal agnauc succession, the blood of the dom appears to have 
reached its zenith second son having no right until the exof prosperity. But his premature death 
tinction of that of the eldest."* Unqueschanged the scene. The minority and tionably the eldest 
son of the last king, feeble character of Ethelred II. provoked being of full age, and not 
manifestly infresh incursions of our enemies beyond competent, was his natural and probable 
the German Sea. A long series of dis- successor; nor is it perhaps certain that asters, and the 
extincible treason of he always waited for an election to take those to whom the public safety 
was in- upon himself the rights of sovereignty; trusted, overthrew the Saxon line, and although 
the ceremony of coronation, established Canute of Denmark upon the according to the ancient 
form, appears to throne, imply its necessity. But the public seThe character of the Scandinavian 
na- curity in those times was thought incomts of patible with a minor king; and the artiwhat it had been during their first inva- ficial substitution of a 
regency, which sions. They had embraced the Christian stricter notions of hereditary right have 
faith; they were consolidated into great introduced, had never occurred to so kingdoms; they 
had lost some of that rude a people. Thus, not to mention predatory and ferocious spirit which a 
re- those instances which the obscure times U.gion, invented, as it seemed, for pirates, of the 
Heptarchy exhibit, Ethelred I., as had stimulated. Those too who had some say, but certainly 
Alfred, excluded long been settled in England became the progeny of their elder brother from 
gradually more assimilated to the na- the throne.t Alfred, in his testament, tives, whose laws 
and language were not dilates upon his own title, which he builds rodically different from their 
own. Hence upon a triple foundation, the will of his thie accession of a Danish line of kings 
father, the compact of his brother Ethel.?reduced neither any evil nor any sen- red, and the 
consent of the West Saxon 5Able change of polity. But the English nobility. {. A similar 
objection to the till outnumbered their conquerors, and government of an infant seems to have 
eagerly returned, when an opportunity rendered Athelstan, notwithstanding his arrived, to the 
ancient stock. Edward reputed illegitimacy, the public choice the Confessor, notwithstanding 
his Nor- upon the death of Edward the Elder. man favourites, was endeared by the mild- Thus, 
too, the sons of Edmund 1. were nесс of his character to the English na- postponed to their 
uncle Edred, and tion; and subsequent miseries gave a again preferred to his issue. A.nd happy
kind of posthumous credit to a reign not might it have been for England if this eminent either for good fortune or wise exclusion of infants had always obtained. government. But upon the death of Edgar, the royal government. But upon the death of Edgar, the royal In a stage of civilization so little ad- family wanted some prince of mature Succession vanced as that of the Anglo-Sax- years to prevent the crown from resting to the Ot1S, and under circumstances upon the head of - child; and hence the Zrown. of such incessant peril, the fortunes of a nation chiefly depend upon the * Vol. i., p. 365. Blackstone has labo red to wisdom and valour of its sovereigns. prove the same proposition; but his knowle.dge of English history was rather superficial., Chronicon Saxon., p. 99. Hume says tha * Wilkins, Leges Anglo-Saxon., p. 83. In 1064, Ethelwald, who attempted to raise an insurrection after a revolt of the Northumbrians, Edward the against Edward the Elder, was son of Ethelbert. Confessor renewed the laws of Canute.-Chronic. The Saxon Chronicle only calls him the king's Saxon. It seems now to be ascertained by the cousin; which he would be as the son of Ethelred comparison of dialects, that the inhabitants from t Spelman, Vita Alfredi, Appendix. the Humber, or at least the Tyne, to the Firth of According to the historian of Ramsey, a sort Forth, vPret chiefly Danes of interregnum took place on Edgar's icath; his
the Confessor, the whole king-land; he was capable of property, and dom seems to have been divided among of the privileges which it conferred. If five earls, three of whom were Godwin he came to possess five hydes of land and his sons Harold and Tostig. It can- (or about 600 acres), with a church and not be wondered at that the royal line mansion of his own, he was entitled to was soon supplanted by the most power- the name and rights of a thane.** I am, ful and popular of these leaders, a prince however, inclined to suspect, that the well worthy to have founded a new dv- ceorl were sliding more and more towards nasty, if his eminent qualities had not a state of servitude before the conquest.tt yielded to those of a still more illustrious. The natural tendency of such times of eny. There were but two denominations of Wilkins, p. 40, 43, 64, 72, 101. t Idem, p. 117. Distribution persons above the class of ser- Domesday Book having been compiled by difinto Thanes vitude, Thanes and Ceors; the feren sets of commissioners, their language has and Ceorl-. owners and the cultivators of sometimes varied in describing the same class of persons. The liberi homines, of w.lorn we find continual mention in some counties, - are perhaps not son's birth not being thought sufficient to give him different from the thaini, who occi in other places. a c!.ear right during infancy.-3 Gale, xv. Script., But this subject is very ob-cure; and a clear upp. 413. prehension of the classes f society mentioned in * Chronicon Saxon. Domesday seems at present unattainable. t The word earl (eorl) meant originally a man 0 Leges Alfredi, c. 33, in Wilkins. Ti:is text is of noble birth, as opposed to the ceorl. It was not it was unequivocal; and I confess that a 3 w of Ina a title of office till the eleventh century, when it (c. 39) has rather a contrary appeara:ce was used as synonymous to alderman, for a gov- I Leges Ina), c. 51, ibid. ernor of a county or province. After the conquest, ~ Leges Alfredi, c. 31, 35. It superseded altogether the ancient title.- Selden's Leges Athelstani, ibid., p. 70, 71. Titles of Honour, vol. iii., p. 638 (edit. Wilkins), tt If the laws that bear the name of William asl and Anglo-Saxon writings passin. as is generally supposed those of ila predecesuo
who believe great part of our lanto his kindred, not to the lord.* Indeed, guage to be borrowed from the Welsh it seems positively declared in another may doubtless infer that great part of passage, that the cultivators, though our population is derived from the same bound to remain upon the land, were source. If we look through the subsition only subject to certain services.t Again, ing Anglo-Saxon records, there is not the treatise denominated the Laws of very frequent mention of British subjects. Henry I., which, though not deserving But some undoubtedly there were in a that appellation, must be considered as state of freedom, and possessed of landed a contemporary document, expressly- estate. A Welshman (that is, a Briton), mentions the twyhinder or villein as a who held five hydes, was raised, like a freeman.. Nobody can doubt that the ceorl, to the dignity of tharle.* In the villani and bordarii of Domesday Book, composition, however, for their lives, who are always distinguished from the and consequently in their rank in society, serfs of the demesne, were the ceorls of they were inferior to the meanest Saxon Anglo-Saxon law.~ And I presume that freeman. The slaves, who were Slaves the socmen, who so frequently occur in frequently the objects of legislatathat record, though far more in some tion, rather for the purpose of ascertaincounties than in others, were ceorls more ing their punishments than of securing fortunate than the rest, who by purchase their rights, may be presumed, at least had acquired freeholds, or by prescrip- in early times, to have been part of the tion and the indulgence of their lords had conquered Britons. For though his own obtained such a property in the outlands crimes, or the tyranny of others, might allotted to them that they could not be possibly reduce a Saxon ceorl to this conremoved, and in many instances might dition, it is inconceivable that the lowdispose of them at pleasure. They are est of those who won England with their the root of a noble plant, the free soccage swords should in the establishment of the tenants, or English yeomanry, whose in- new kingdoms have been left destitute dependence has stamped with peculiar of personal liberty. features both our constitution and our na- The great council by which an Anglo tional character. Saxon king was guided in all TheWittet Beneath the ceorls in political estima- the main acts of government agenrot. tion were the conquered natives of Brit- bore the appellation of Wittenagemot, oi the assembly of the wise men. All thei Edward, they were already annexe.! to the soil, p. laws express the assent c f this council:25. * Wilkins, p. 221. t bid., p. 225. It eges Henr. I., c. 70 and 76, iu Wilkins. * Leges Ine, p. 18. Leg. Athelst. p 71 0 Soruner on (;avelkind, p. 74. t Leges I -e, c. 24.
does not unequivocally relate certain that both existed long before his to the wittenagemot; and
being vaguely time;* and the utmost that can be supworded by an ignorant monk, who per-
posed is that he might in some instances hap had never gone beyond his fens, have ascertained
an unsettled boundary. ought not to be assumed as an incontro- There does not seem to be
equal evivertible testimony. Certainly so very dence as to the antiquity of the minoi high a
qualification cannot be supposed divisions. Hundreds, I think, are first to have been requisite in
the kingdoms mentioned in a law of Edgar, and tiDf the Heptarchy; nor do we find any things
in one of Canute.t But as Alfred, collateral evidence to confirm the hypoth- it must be
remembered, was never massis. If, however, all the body of thanes ter of more than half the
kingdom, the Jr freeholders were admissible to the complete distribution of England into
willtigenmot, it is unlikely that the pryng- these districts cannot, upon any supposilege should
have been fully exercised. tion, be referred to him. Very few, I believe, at present, imagine
There is, indeed, a circumstance obthat there was any representative system servable in this
division which seems to in that age; much less that the ceorls or indicate that it could not have
taken place inferior freemen had the smallest share at one time, nor upon one system; I in the
deliberations of the national as- mean, the extreme inequality of hundreds sembly. Every
argument which a spirit in different parts of England. Whether of controversy once pressed into
this the name be conceived to refer to the service, has long since been victorious number of
free families, or of landholdrefuted. ers, or of petty vills, forming so many It has been justly
remarked by Hume, associations of mutual assurance or frankJudicial that among a people who
lived in pledge, one can hardly doubt that, when power. so simple a manner as these An- the
term was first applied, a hundred of glo-Saxons, the judicial power is always one or other of
these were comprised, at of more consequence than the legislative. an average reckoning,
within the district, The liberties of these Anglo-Saxon thanes But it is impossible to reconcile
the varywere chiefly secured, next to their swords ing size of hundreds to any single hypothand
their free spirits, by the inestimable esis. The county of Sussex contains right of deciding civil
and criminal suits sixty-five; that of Dorset forty-three, in their own county-court; an institution
while Yorkshire has only twenty-six; which, having survived the Conquest, and and Lancashire
but six. No difference of contributed in no small degree to fix the population, though the south
of England liberties of England upon a broad and was undoubtedly far the best peopleled,
popular bass, by limiting the feudal aris- can be conceived to account for so pro. tocracy,
deserves attention in following digious a disparity. I know of no better thie history of the
British constitution. solution than that the divisions of the The division of the kingdom into
coun* Counties, as well as the alderman who por * Leges Anglo-Saxon., in Wilkins, passim.
sided over them, are mentioned in the laws of ina, t Quoniam ille quadragmnta hydarum terra
do- c. 36. minium minime obtinget, licet nobilis esset, inter t Wilkins, p. 87, 136. The firmer,
ownever tunc nuncram non potuit. —.3 Gale, Scrip- refers to them as an ancient
institution: quera t rer, p. 513. centurine conventus, ricit antea instituturm erat
county-court Suit in g.e ding the ceorls as well as their landlords. under the reign of Canute, has county ff we suppose none but the latter to have been published by Hickes, and court. oeen numbered, we should find six thou- may be deemed worthy of a literal transia sand thanes in Kent, and six thousand tion in this place. "It is made known by five hundred in Sussex; a reckoning to- this writing, that in the shiregemot (countally inconsistent with any probable esti- ty-court) held at Agelnothes-stane (Aylsisate.t But though we have little direct ton in Herefordshire), in the reign of Catesimony as to the population of those nute, there sat Athelstan the bishop, and times, there is one passage which falls in Ranig the alderman, and Edwin his soln, very sufficiently with the former suppo- and Leofwin Wulfig's son; and Thurkil sition. Bede says that the kingdom of the White and Tofig came there on the the South Saxons, comprehending Sur- king's business; and there were Bryning rey as well as Sussex, contained seven the sheriff, and Athelward of Frome, and thousand families. The county of Sus- Leofwin of Frome, and Goodric of Stoke, sex alone is divided into sixty-five hun- and all the thanes of Herefordshire. dreds, which comes at least close enough Then came to the mote Edwin son of to prove that free families, rather than Erneawne, and sued his mother for some proprietors, were the subject of that nu- lands, called Weolintun and Cyrdeslea. roeration. And this is the interpretation Then the bishop asked, who would anof Du Cange and Muratori, as to the Cen- swer for.his mother. Then answered tenae and Deccniae of their own ancient Thurkil the White, and said that he laws. would, if he knew the facts, which he I cannot but feel some doubt, notwith- did not. Then were seen in the mote standing a passage in the laws ascribed three thanes, that belonged to F- ligly to Edward the Confessor,+ whether the (Fawley, five miles from Aylston), Leoftithing-man ever possessed any judicial win of Frome, _GEgelwig the Red, and magistracy over his small district. He Thinsig Staegthman; and they went to was, more probably, little different from a her, and inquired what she had to say petty constable, as is now the case, I be- about the lands which her son claimed. lieve, wherever that denomination of of- She said that she had no land which befice is preserved. The court of the hun- longed to him, and fell into a noble pasdred, not held, as on the continent, by its sion against her son, and calling for Le own centenarius, but by the sheriff of the ofleda her kinswoman, the wife of Thurcounty, is frequently mentioned in the kil, thus spake to her before them: —' Trhis County- later Anglo-Saxon laws. It was, is Leofleda my kinswoman, to whom I court. however, to the county-court that gtve my lands, money, clothes, and whatan English freeman chiefly looked for the ever I possess after my life:' and this maintenance of his civil rights. In this said, she thus spake to the thanes:'Beassembly, held monthly, or at least more have like thanes, and declare my mesthan once in the year (for there seems sage to all the good men in the mote, and some ambiguity or perhaps fluctuation as tell them to whom I have given my lands, to this point), by the bishop and the earl, and all my possessions, and nothing to or, in his absence, the sheriff, the oath of my son;' and bade them be witnesses to allegiance was administered to all free- this. And thus they did, rode to the men, breaches of the peace were inquired mote, and told all the good men what she * _Leges.33. had enjoined them. Then Thurkil the Legesi Edwardi Confess., c. 33. prWhite addressed the mote, and requested t It would be easy to mention particular hun- all the thanes to let his wife have the dreds in these counties, so small as to:errier this supposition quite ridiculous. lands which her kinswoman had given: Leges Edwardi Confess., p. 203. Nothing, as he; and thus they did, and Thurkil far as I know, confirms this passage, which hardly__ allies with what the genuine Anglo-Saxon docu- This point is obscure; but I do not perceive ments contain as to the judicial arrangements of,aat the Anglo-Saxon laws distinguish the tire that oeriod. t from the criminal tribunal
TAR YI NGLISH CONSTITUTION. 32b rode to the church of St. Ethelbert, with
who, either by way of appeal from the the leave and witness of all the people, lower courts, or
in excepted cases, formand had this inserted in a book in the ed a paramount judicature; but
how their church."* court was composed under the AngloI t may be presumed from the appeal
Saxon sovereigns I do not pretend to made to the thanes present at the county- assert.* court,
and is confirmed by other ancient It had been a prevailing opinion, that authorities, t that ail of
them, and they trial by jury may be referred to the Trial by alone, to the exclusion of inferior
free- Anglo-Saxon age, and common Jury. men, were the judges of civil controver- tradition
has ascribed it to the wisdom i W es. The latter indeed were called upon of Alfred. In such an
historical deduco attend its meetings, or, in the language of the English government as I
have of our present law, were suiters to the attempted, an institution so peculiarly court, and it
was penal. to be absent. characteristic deserves every attention But this was on account of other
duties, to its origin; and I shall therefore prothe oath of allegiance which they were duce the
evidence which has been suppto take, or the frank-pledges into which posed to bear upon this
most eminent they were to enter, not in order to exer- part of our judicial system. The first cise
any judicial power; unless we con- text of the Saxon laws which may apceive that the disputes
of the ceors were pear to have such a meaning is in those decided by judges of their own rank.
It of Alfred. "If any one accuse a king's is more important to remark the crude thane of
homicide, if he dare to purge state of legal process and inquiry which himself (ladian), let him
do it along with this instrument denotes. Without any twelve king's thanes. If anyone accuse
cerual method of instituting or conduct- a thane of less rank (lessa maga) than a ing causes,
the county-court seems to king's thane, let him purge himself along have had nothing to
recommend it but, with eleven of his equals, and one king's what indeed is no trifling matter,
its se- thane."t This law, which Nicholsoi. curity from corruption and tyranny; and contends
can mean nothing but trial bi' in the practical jurisprudence of our jury, has been referred by
Hickes to the Saxon ancestors, even at the beginning ancient usage of compurgation, where of
the eleventh century, we perceive no the accused sustained his own oath by advance of civility
and skill from the those of a number of his friends, who state of their own savage progenitors
on pledged their knowledge, or at least their the banks of the Elbe. No appeal could belief of
his innocence.t be made to the royal tribunal, unless jus- In the canons of the Northumbrian
tice was denied in the county- court.t clergy, we read as follows: "If a king's This was the great
constitutional judica- thane deny this (the practice of heathen ture in all questions of civil right.
In superstitions), let twelve be appointed another instrument, published by Hickes, for him, and
let him take twelve of his of the age of Ethelred II., the tenant of kindred (or equals, maga) and
twelve lands which were claimed in the king's British strangers; and if he fail, then let court
refused to submit to the decree of him pay for his breach of law twelve half that tribunal,
without a regular trial in mares: If a landholder (or lesser thane) the county; which was
accordingly grant- deny the charge, let as many of his equals ed. ~ There were, however,
royaljudges, and as many strangers be taken as for a * Hickes, Dissertatio Epistolari, p. 4, in
The- royal thane; and if he fail let him pay saurus Antiquitatum Septentrion, vol. iii. Before Six
half-marcs: If a ceorl deny it, let as the conquest, says Gurdon (on Courts-Baron, p. many of
his equals and as many stran. 589), grants were enrolled in the shire-book in pub- gers be taken
for him as for the others i lic shire mot'e, after proclamation made for any to come in that could
claim the lands conveyed; and * Madox, History of the Exchequer, p. 65, will this was as
irreversibly as the modern fine with not admit the existence of any court analogous to
proclamations or recovery. This may be so; but the Curia Regis before the conquest; all pleas
beshe county-court has at least long c:ased to be ing determined in the county. There are, how a
court of record; and one would a.,k for proof ever, several instances of decisions before the
king; of the assertion. The book kept in the church of and in some cases it seems that the wittenagemot St. Ethelbert, wherein Thurkil is said to have in- had a judicial authority.-Leges Canuti, p. 135, serted the Fcxeedings of the county-court, may or 136. Hist. Eliensis,' 469. Chron. Sax., p. 169 may not have been a public record. In the Leges Henr. I, c. 10, the limits of the royal t Id., pl 3. Leges Henr. Primi, c. 29. and local jurisdictions are defined as to criminal t Leges Eadgari, p. 77; Canuti, p. 136; Henrici matters, and seem to have been little changed sines PNimi, c. 34. 1 quote the latter freely as Anglo- the reign of Canute, p. 135. 6axon, though posterior to the conquest; their t Leges Alfredi, p. 47. Firit being perfectly of the former period. $ Nicholson, Prefatio ad Leges Anglo-Saxon 6 Jtlsertatio Epistolaris, p. 5. Wilkinsii, p. 10. Hickes, Dissertatio Eriscolari.s

**Page 326** 3X26 EUROPE DURING THE MIDDLE AGES Lt H&P. I'l and if he fail, let him pay twelve orne for forfeiting their possessions, if, excep his breach of law."* It is difficult at first through ignorance, they give fall'e infor. sight to imagine that these thirty-six so mation."* This is obviously but a reguselected were merely ccmmtpurgators, since lation intended to settle disputes among it seems absurd that the judge should the Welsh and English, to which thei name indifferent persons, who, without ignorance of each other's customs might inquiry, were to make oath of a party's give rise. innocence. Some have therefore con- By a law of the same prince, a court seived, that in this and other instances was to be held in every wapentake. where compurgators are mentioned, they where the sheriff and twelve principal were virtually jurors, who, before attest- thanes should swear that they would neiing the facts, were to inform their con- ther acquit any criminal, nor convict any sciences by investigating them. There innocent person.t It seems more probare, however, passages in the Saxon able that these thanes were permanent laws nearly parallel to that just quoted, assessors to the sheriff, like the scabini which seem incompatible with this in- so frequently mentioned in the early terpretation. Thus, by a law of Athel- laws of France and Italy, than jurors in stan, if any one claimed a stray ox as his discriminately selected. This passage, own, five of his neighbours were to be however, is stronger than those which assigned, of whom one was to maintain have been already adduced; and it may the claimant's oath.t Perhaps the prin- be thought, perhaps with justice, that at ciple of these regulations, and indeed of least the seeds of our present form of the whole law of compurgation, is to be trial are discoverable in it. In the hisfound in that stress laid upon general tory of Ely, we twice read of pleas held character which pervades the Anglo- before twenty-four judges in the court of Saxon jurisprudence. A man of ill rep- Cambridge; which seems to have been ution was compelled to undergo a triple formed out of several neighbouring hunordeal, in cases where a single one suffi- dreds.t ted for persons of credit; a provision But the nearest approach to a regular rather inconsistent with the trust in a jury which has been preserved in our miraculous interposition of Providence scanty memorials of the Anglo-Saxon which was the basis of that superstition. age, occurs in the history of the monasAnd the law of frank-pledge proceede tery of Ramsey. A controversy relating upon the maxim that the best guarantee to lands between that society and a (mrof every man's obedience to the govern- tain nobleman was brought into the coun ment was to be sought i in the confidence ty-court; when each party was heard of his nsighbours. Hence, while some in his own behalf. After this commencecompurgators were to be chosen by the ment, on account probably of the length sheriff, to avoid partiality and collusion, and difficulty of the investigation, it was it was still intended that they should be referred by the court to thirty-six thanes, residents of the vicinage, witnesses of equally chosen by both sides. { And here the defendant's previous life, and compe- we begin to perceive the manner in tent to estimate the probability of his ex- which those tumultuous assemblies, the culpatory oath. For the British
stran- mixed body of freeholders in their coungers, in the canon quoted above, were ty-court, slid gradually into a more certainly the original natives, more inter- steady and more diligent tribunal. But mingled with their conquerors, probably, this was not the work of a single age in the provinces north of the Humber In the Conqueror's reign we find a pro. than elsewhere, and still denominated ceeding very similar to the case of Ramstrangers, as the distinction of races was sey, in which the suit has been commennot done away. ced in the county-court, before it was If in this instance we do not feel our- found expedient to remit it to a select selves warranted to infer the existence body of freeholders. In the reign of of trial by jury, still less shall we find William Rufus, and down to that of Hen., even an analogy to it in an article of the ry II., when the trial of writs of right by treaty between England and Wales du- the grand assize was introduced, Hick ring the reign of Ethelred II. " Twelve has discovered other instances of the ori persons skilled in the law (lahmen), six ginal usage.l'rhe language of Domes. English and six Welsh, shall instruct the natives of each country, on pain of * Leges Ethelredi, p. 125. t P. 117. _ Hist. Eliensis, in Gale's Scriptores, t. iii., p 471 and 478. * Wilkins, p. 100. Hist. Ramsey, id., p. 415. * Legeo Athel.stani, p. 58. 11 Hickesii Dissertatio Epistolari, p. 33 38.

Page 327 eART 1.J ENGLISH CONSTITUTIOT. 321 day Book lends some confirmation to late writers is not sufficietl to prove th. its existence at the time of that survey; he compiled a dom-boc, or general code and even our common legal expression for the government of his kingdom. of trial by the country seems to be deri- An ingenious and philosophical writer ved from a period when the form was lit- has endeavoured to found the law of orally popular. frank-pledge upon one of those general In comparing the various passages principles to which he always loves to which I have quoted, it is impossible not recur. " If we look upon a tithing," he to be struck with the preference given to says, "as regularly composed of ten famtwelve, or some multiple of it, in fixing ilies, this branch of its police will appeal the number either of jut ges or compur- in the highest degree artificial and sipgators. This was not peculiar to Eng- gular; but if we consider that society as land. Spelman has produced several in- of the same extent with a town or vilstances of it in the early German laws. lage, we shall find that such a regulation And that number seems to have been re- is conformable to the general usage of garded with equal veneration in Scandi- barbarous nations, and is founded upon navia.* It is very immaterial from what their common notions of justice."* A caprice or superstition this predilection variety of instances are then brought for arose. But its general prevalence shows ward, drawn from the customs of almost that, in searching for the origin of trial every part of the world, wherein the in by jury, we cannot rely for a moment habitants of a district have been made upon any analogue which the mere num- answerable for crimes and injuries impu ber affords. I am induced to make this ted to one of them. But none of these observation, because some of the pas- fully resemble the Saxon institution of sages which have been alleged by emi- which we are treating. They relate ei nent men for the purpose of establishing ther to the right of reprisals, exercised the existence of that institution before with respect to the subjects of foreign the conquest, seem to have little else to countries, or to the indemnification exsupport them. acted from the district, as in our modern There is certainly no part of the Anglo- statutes, which give an action in certain., of Saxon polity which has attracted cases of felony against the hundred, for frank- so much the notice of modern crimes which its internal police was suppedge, times as the law of frank-pledge, posed capable of preventing. Inthe Irish or mutual responsibility of the members custom, indeed, which bound the head of of a tithing for each other's abiding the a sept to bring forward every one of his course of justice. This, like the distribu- kindred who should be charged with any tion of hundreds and tithings themselves, heinous crime, we certainly perceive a and like trial by jury, has been generally strong analogy
to the Saxon law, not as attributed to Alfred; and of this, I sus- it latterly subsisted, but under one of its pect, we must also deprive him. It is prior modifications. For I think that not surprising that the great services of something of a gradual progression may Alfred to his people in peace and in war be traced to the history of this famous should have led posterity to ascribe every police, by following the indications of the beginning was forded by those laws through which alone obscure, to his contrivance, till his fame we become acquainted with its exist has become almost as fabulous in legisla- tion as that of Arthur in arms. The Eng- The Saxons brought with them from servitude, and their original forests at least as much their name from extinction; the lamp of roughness as any of the nations which learning refreshed, when scarce a glimpse- by following the indications of a institution, of which the beginning was ence. tion as that of Arthur empire; and their name was visible; the watchful observance long struggle with the Britons could not of justice and public order; these are the contribute to polish their manners. The genuine praises of Alfred, and entitle him royal authority was weak; and little had to the rank he has always held in men's been learned of that regular system of esteem, as the best and greatest of Eng.- government which the Franks and Lomlish kings. But of his legislation there is bards acquired from the provincial Ro, little that can be asserted with sufficient mans, among whom they were mingled. evidence; the laws of his time that re- No people were so much addicted to rob.-main are neither numerous nor particu- bery, to riotous frays, and to feuds arln larly interesting; and a loose report of sing out of family revenge, as the Anglo * Spelman's Glossary, voc. Jurata. iDa Cange, voc. Nembda. Edinb. Review, vol. xxx' p. 115: * Millar on the English Government, vol i. i most learned and elaborate essay 189.

Page 328 328 EUROPE DURING. THE MIDDLE AGES. [CHAP. Viii Saxons. - Theie statutes are filled with standing his trial. At a subsequett pe. complaints that the public peace was riod his relations were called upon to openly violated, and with penalties which become sureties for payment of the comseem, by their repetition, to have been position and other fines to which he M as disregarded. The vengeance taken by liable.* They were even subject to be the kindred of a murdered man was a sa- imprisoned until payment was made, and cred right which no law ventured to for- this imprisonment was commutable for a bid, though it was limited by those which certain sum of money. The next stage established a composition, and by those was to make persons already convicted, which protected the family of the mur- or of suspicious repute. give sureties for derer from their resentment. Even the their future behaviour.t It is not till the author of the laws ascribed to the Con- reign of Edgar that we find the first genfessor speaks of this family warfare, eral law, which places every man in the where the composition had not been paid, condition of the guilty or suspected, and as perfectly lawful.* But the law of com- compels him to find a surety, who shall position tended probably to increase the be responsible for his appearance when number of crimes. Though the sums judicially summoned.t This is perpetuimposed were sometimes heavy, men ally repeated and enforced in later statpaid them with the help of their relations, utes, during his reign and that of Ethelred. or entered into voluntary associations, Finally, the lawxs of Canute declare the the purposes whereof might often be necessity of belonging to some hundred laudable, but which were certainly sus- and tithing, as well as of providing sureceptible of this kind of abuse. And many ties; and it may, perhaps be inferred, led a life of rapine, forming large parties that the custom of rendering every memof ruffians, who committed murder and ber of a tithing answerable for the aprobbery with little dread of punishment. pearance of all the rest, as it existed Against this disorderly condition of so- after the conquest, is as old as the reign ciety, the wisdom of our English kings, of this Danish monarch. with the assistance of their great coun- It is by no means an accurate notion cils, was employed in devising remedies, which the
writer to whom I have already which ultimately grew up into a peculiar adverted has
conceived, that "the memsystem. No man could leave the shire bers of every tithing were
responsible to which he belonged without the per- for the conduct of one another; and that
mission of its alderman.t No man could the society, or their leader, might be be without a lord,
on whom he depended; prosecuted and compelled to make repa though he might quit his
present patron, ration for an injury committed by any in it was under the condition of engaging
dividual." Upon this false apprehension himself to another. If he failed in this, of the nature of
frank-pledges the whole his kindred were bound to present him in of his analogical reasoning is
found. the county-court, and to name a lord for It is indeed an error very current in popphim
themselves. Unless this were done,ular treatises, and which might plead he might be seized by
any one who met the authority of some whose professional him as a robber.t Hence,
notwithstand- learning should have saved them from so ing the personal liberty of the peasants,
obvious a misstatement. But, in fact, the it was not very practicable for one of members of a
tithing were no more than them to quit his place of residence. A perpetual bail for each other.
"The stranger guest could not be received greatest security of the public order (says more than
two nights as such; on the the laws ascribed to the Confessor), is third the host became
responsible for his that every man must bind himself to one;mate's conduct. { of those
societies which the English ir. The peculiar system of frank-pledges general call freeborgs, and
the people of seems to have passed through the follow- Yorkshire ten men's tale."Jj This con-
ing very gradual stages. At first an ac- sisted in the responsibility of ten men, cused person was
obliged to find bailll for each for the other, throughout every vii lage in the kingdom; so that if
one of * Parentibus occisi fiat emendatio, vel glerra the ten committed any fault, the nine
eorum portetur.-Wilkins, p. 199. This, like many should rodute him in ustice; where he other
parts of that spurious treatise, appears to should akereparation b his on have been; aken from
some older laws, or at least should make reparation by his own prop traditions, I do not
conceive that this private revenge was tolerated by law after the conquest. * Leges Edwardi
Senioris, p. 52. t Leges Alfredi, c. 33., Leges Athelstani, p. 57, c. 6, 7 8. t Leges Atl;helstani, p.
Lotharii [*egis Cantii] p. 8. 8. Teges Edwardi, in Wilkins, I 201
equally shared among the whose duty it was to inquire into the children; it was capable of being entailed state of tithings, whence they were call- by the person under whose grant it was ed the view of frank-pledge, are regula- originally taken; and, in case of a treachted in Magna Charta. But this custom, erous or cowardly desertion from the which seems to have been in full vigour army, it was forfeited to the crown.t when Bracton wrote, and is enforced by It is an improbable, and even extravaa statute of Edward II., gradually died gant supposition, that all these hereditary away in succeeding times.t According estates of the Anglo-Saxon freeholders to the laws ascribed to the Confessor, were originally parcels of the royal de-, which are perhaps of insufficient author- mesne, and consequently that the king ty to fix the existence of any usage be- was once the sole proprietor in his kingfore the conquest, lords, who possessed dom. Whatever partitions were made a baronial jurisdiction, were permitted to upon the conquest of a British province, keep their military tenants and the ser- we may be sure that the shares of the vants of their household under their own army were coeval with those of the genpeculiar frank-pledge.1 Nor was any eral. The great mass of Saxon property freeholder, in the age of Bracton, bound could not have been held by actual bene. to be enrolled in a tithing. ficiary grants from the crown. However, It remains only, before we conclude the royal demesnes were undoubtedly Feudal te this sketch of the Anglo-Saxon very extensive. They continued to be nures wheth- system, to consider the once so even in the time of the Confessor, Tr known be- famous question respecting after the donations of his predecessors. fore the con- the establishment of feudal te- And several instruments granting lands nures in England before the to individuals, besides those in favour of conquest. The position asserted by Sir the church, are extant. These are genHenry Spelman in his Glossary, that erally couched in that style of full and lands were not held feudally before that unconditional conveyance, which is obperiod, having been denied by the Irish servable in all such charters of the same judges in the great case of tenures, he was compelled to draw up his treatise on * This supposition may plead the great authori. feuds, in which it is more fully maintain- ties of Somner and Lye, the Anglo Saxon lexicog ed. Several other writers, especially the theory of Sir John Dalrymple, in his Essay or Feudal Property, or'hat of the author of a dis * Leges Canuti, p. 136. course on the Boclan. and Folkland of the Saxons t Stat. 18 E. 11. Traces of the actual view of 1775, whose name, I think, was lhbetson. The frank-pledge appear in Cornwall as late as the 10th first of these supposes bocland to have been feudal of Henry VI., Rot. Parliam., vol. iv., p. 403. And and folkland allodial; the second most strangely indeed Selden tells us (Janus Anglorum, t. ii., p. takes folkland for feudal. I cannot satisfy myself 993 that it was not quite obsolete in his time. whether thanland and reveland, which occur The form may, for aught I know, be kept up in sometimes in Domesday Book, merely correspond some parts of England at this day. For some rea- with the other two denominations. sor. which I cannot explain, the distribution by t Wilkins, p. 43, 145. The latter law al copid tens was changed into one t:y do; han.-Britton, c. from one of Charlemagne's Capitflaries -- Bai;ze i9, and Stat. 18 E. II. T P. 202. {o 767.
pressed in some ecclesiastical canons, ficiary tenure.* apparently of the tenth century, which
All the freehold lands of England, ex- distinguish the king's thane from the cept some of those
belonging to the landholder, who depended upon a lord.f church, were subject to three great
public Other proofs of this might be brought burdens; military service in the king's from the
Anglo-Saxon laws.t It is not, expeditions, or at least in defensive war,t however, sufficient to
prove a mutual rethe repair of bridges, and that of royal lation between the higher and lower
fortresses. These obligations, and espe- der of gentry, in order to establish the cially the first,
have been sometimes existence of feudal tenures. For this rethought to denote a feudal tenure.
There lation was often personal, as I have menis, however, a confusion into which we tioned
more fully in another place, and may fall by not sufficiently discriminating bore the name of
commendation. And the rights of a king as chief lord of his no nation was so rigorous as the
English vassals, and as sovereign of his subjects. in compelling every man, from the king's In
every country, the supreme power is thame to the ceorl, to place himself under entitled to use
the arm of each citizen a lawful superior. Hence the question in the public defence. The usage
of all is not to be hastily decided on the credit nations agrees with common reason in of a few
passages that express this graestablishing this great principle. There dation of dependance;
feudal vassalage is nothing, therefore, peculiarly feudal in- the object of our inquiry, being of a
real, this military service of landholders; it not a personal nature, and resulting entirewas due
from the allodial proprietors ly from the tenure of particular lands. But upon the continent; it
was derived from it is not unlikely that the personal relaAheirGerman ancestors; it had been
fixed, tion of client, if I may use that word, probably, by the legislatures of the Hep- might in a
multitude of cases be changed tarchy upon the first settlement in Brit- into that of vassal. And
certainly many ain. of the motives which operated in France It is material, however, to observe,
that to produce a very general commutation a thane forfeited his hereditary freehold of allodial
into feudal tenure might have by misconduct in battle; a penalty more a similar influence in
England, where the severe than was inflicted upon alodial pro- disorderly condition of society
made it prietors on the continent. We even find the interest of every man to obtain the in the
earliest Saxon laws, that the sith- protection of some potent lord. cundman, who seems to have
correspond- The word thane corresponds in its deed to the inferior thane of later times, for-
ervation to vassal; and the latter term is feited his land by neglect of attendance used by
Asserius, the contemporary hiin war; for which an alodialist in France ografhei e Alfred, in
speaking of the would only have paid his heribannum, or nobles of that prince.~ In their
attendpenalty.T Nevertheless, as the policy of ane, too, upon the royal court, and the different
states may enforce the duties fidelity which was expected from them, of subjects by more or
less severe sanc- the king's thanes seem exactly to have tions, I do not know that a law of for-
resented that class of followers who, feiture in such cases is to be considered under different
appellations, were the as positively implying a feudal tenure. guards as well as courtiers of the
Frank But a much stronger presumption is and Lombard sovereigns. But I have Afforded by
passages that indicate a mu- remarked that the word thame is not apD dissertatio Epistolariis, p.
60. * Leges Ina!, p. 10, 23. t Wilkins, p. 101 ~ This duty is by some expressed'ata expedi-
P. 71, 144,145. tio; by others, hostis propulsio, whkh seems to ( Alfredus cum paucis suis
nobilibus, et etia.r make no small difference. But, unfortunately, cum quibusdam militibus et
Vassallis, p. 166. No. most of the military service which an Anglo-Saxon biles Vassalli
Sumertunensis pagi, p. 167. Yet freeholder had to render was of the latter kind. Hickes objects
to the authenticity of a charter as. t Leges Ine, p. 23. Du Cange, voc. Heribannlm. cried to
Edgar, because it contains the word Vas By the laws of Canute, p 135, a fine only was im
sallus, "quam a Nortmannis Angli habuerunt." — posed for this offence Dissertatio Epistol., p.
7.
am not aware that military service is more ancient laws, where the word eorl specified in any instance to b, due from is opposed to the ceorl or roturier, and one of these tenants; though it is difficult that of sithcundman* to the royal thane. To speak as to a negative proposition it would be too much to infer from the this kind with any confidence. Extension of this latter word to a large No direct evidence appears as to the less of person, that we should interpret ceremony of homage or the oath of fealit with a close attention to etymology, a ty before the conquest. The feudal ex very uncertain guide in almost all inves-action of aid in certain prescribed cases tigations. seems to have been unknown. Still less For the age immediately preceding the could those of wardship and marriage Norman invasion, we cannot have re-prevail, which were no parts of the great course to a better authority than Domes-feudal system, but introduced, and perday Book. That incomparable record haps invented, by our rapacious Norman contains the names of every tenant, and tyrants. The English lawyers, through the conditions of his tenure, under the an imperfect acquaintance with the hisConfessor, as well as the time of its com-tory of feuds upon the continent, have pilation; and seems to give little coun- treated these unjust innovations as if they tenance to the notion that a radical had formed essential parts of the system, change in the system of our laws had and sprung naturally from the relation been effected during the interval. In at- between lord and vassal. And, with ref most every page, we meet with tenants erence to the present question, Sir Heneither of the crown, or of other lords, ry Spelman has certainly laid too much denominated thanes, freeholders (liberi stress upon them in concluding that feuohomines) or soccagers (socmanni). Some dal tenures did not exist among the An of these, it is stated, might sell their glo-Saxons, because their lands were not lands to whom they pleased; others were in ward; nor their persons sold in marrestricted from alienation. Some, as it is riage. But I cannot equally concur with expressed, might go with their lands this eminent person in defying the ex. whither they would; by which I under- instence of reliefs during the time period. stand the right of commending themselves If the heriot, which is first mentioned in to any patron of their choice. These, the time of Edgar* (though it may prob of course, could not be feudal tenants in ably have been an established custom any proper notion of that term. Others long before), were not identical with could not depart from the lord whom the relief, it bore at least a very strong they served; not certainly that they analogy to it. A charter of Ethelred's were personally bound to the soil, but so interprets one word by the other. In long as they retained it, the seigniory of the laws of William, which re-enact the superior could not be defeated. But those of Canute concerning heriots, the term relief is employed as synonymous. Wilkins, p. 3, 7, 23, &c. This is an obscure Though the heriot was in later times word, occurring only, I believe, during the Hep-paid in chattels, the relief in money, it is tarchy. Wilkins translates it, praepositus paganus, equally true that originally the law fixed which gives a wrong idea. But gesith, which is a sum of money in certain cases for the plainly the same word, is used in Alfred's translation of Bede for a gentleman or nobleman. Where heriot, and a chattel for the relief. And Bede uses comes, the Saxon is always gesith or the most plausible distinction alleged by gesithman: where princes or dux occurs, the ver-Spelman, that the heriot is by law due sion is ealdorman.-Selden's Titles of Honour, p. from the personal estate, but the relief 643.....from the heir, seems hardly applicable to 4 It sometimes weakens a proposition which is, capable of innumerable proofs to take a very few that remote age, when the law of muccestrandom: yet the followingcasual specimens will sion as to real and personal estate was illustrate the common language of Domseyday Book. not different. Hawc tria maneria tenuit Ulveva tempore regis It has been shown, in another place, Edwardi et potuit ire cum terra quo volebat, p. 85.f territorial jurisdiction Toti emit eam T. R. E. (temp. regis E dwardi) de ecclesiA Malnisburiensi
ad aetatem trium homin- was generally. and at last inseparably, numm; et infra hunc terminum poterat ire cum ea connected with feudal tenure. Of this ad quem vellet dominum, p. 72. right we meet frequent instances in these Tres Angli tenuerunt Darneford T. R. E. et non laws and records of the Anglo-Saxons poterant ab ecclesiA separari. Duo ex iis reddebant v solidos, et tertius serviebat sicut Thainus, though not in those of an early date. A p. 68. charter of Edred grants to the monastery Has terreas qui tenuerunt T. R. E. quo voluerunt ire poterunt, pranter unum Seric vocatum, qui in * Selden's Works, vol. ii., p. 1620. Ragendal tenuit iii carucatas terra; sed non poterat t Hist. Ramseyens, p. 430. gum eA alicubi recedere, p. 235. t T.aes Canuti, p. 144. Leges Gulielmi, p. 223

Page 332 832 EUROPE DURING THE MIDDLE AGES. CHAP. VP1. of Croyland soc sac, toll, team, and in- privileges of territorial jurisdiction, wil4 fangthef; words which generally went I think, perceive much of the intrinsic together in the description of these privi- character of the feudal relation, tho ugh leges, and signify the right of holding a in a ess mature and systematic shape ~court to which all freemen of the terri- than it assumed after the Norman con tory should repair, of deciding pleas quest. therein, as well as -f imposing amercements according tc law, of taking tolls upon the sale of goods, and of punishing capitally a thief taken in the fact within PART II. the limits of the manor.* Another charter from the confessor grants to the abbey of Ramsey similar rights over all The Anglo-Norman Constitution.-Causes of the who were suiters to the sheriff's court, Conquest. —Policy and character of Williamsubject to military service, and capable his Tyranny.-Introduction of Feudal Services. —Difference between the Feudal Governments of landed possessions; that is, as I con- of France and England. —Causes of the great ceive, all who were not in servitude.t By Power of the first Norman Kings.-Arbitrary a law of Ethelred, none but the king could Character of their Government.-Great Council. have jlurisdiction over a royal thaneg. -Resistance of the Barons to John.-Magna And Domesday Book Is full of decisive Charta-its principal Articles.-Reign of Henry And Domesday Book is full of decisive III.-The Constitution acquires a more liberal proofs, that the English lords had their Character.-Judicial System of the Anglo-Norcourts wherein they rendered justice to mans.-Curia Regis, Exchequer, &c.-Estabtheir suiters, like the continental nobility; lishment of the Common Law-its effect in privileges which are noticed with great fixing the Constitution.-Remarks on the Lim precision in that record, as part of the itation of Aristocratical Privileges in England statistical survey. For the right of juris- IT is deemed by William of Malmsbury diction at a time when punishments were an extraordinary work of Prov- Conquestol almost wholly pecuniary, was a matter idence, that the English should England bv of property, and sought from motives of have given up all for lost after William. rapacity as well as pride. the battle of Hastings, where only a Whether, therefore, the law of feudal small though brave army had perished.*.enures can be said to have existed in It was indeed the conquest of a great England before the conquest, must be leant kingdom by the prince of a single provto every reader's determination. Per- ince, an event not easily paralleled, wherehaps any attempt to decide it positively the vanquished were little, if at all, less would end in a verbal dispute. In tracing courageous than their enemies, and where the history of every political institution, no domestic factions exposed the country three things are to be considered: the to an invader. Yet William was so adprinciple, the form, and the name. The vantageously situated, that his success last will probably not be found in any seems neither unaccountable nor any genuine Anglo-Saxon record.~ Of the matter of discredit to the English nation. former, or the peculiar ceremonies and The heir of the house of Cerdic had been incidents of a regular fief, there is some, already set aside at the election of H~. though not much appearance. But those rold; and his youth, joined to a medioc who reflect upon the
dependance in which rity of understanding which excited nei, free and even noble tenants held their ther esteem nor fear, t- gave no encourestates of other subjects, and upon the agement to the scheme of placing him upon the throne in those moments of * Ingulfus, p 35. I do not pretend to assert the imminent peril which followed the battle e.uthenticity of these charters, which at all events of Hastings. England was peculiarly desare nearly as old as the conquest. Hickes calls titute of great men. The weak reigns most of them in question.-Dissera. Epist., p. 66: but some latei antiquaries seem to have been more * Malmsb., p. 53. And Henry of Huntingdon favourable.-Archaolog'a, vol. xviii., p. 49. Nou- says emphatically: Millesimo et sexagesimo sexto vea i Traité de Diploma..ique, t. i., p. 348. anno gratioe, perfeicit dominator Deus de gente An+ Hist. Ramsey, p. 454. glorum quod diu cogitaverat.-Genti namque Nor. X P 118. This is the earliest allusion, if I am Inannorum asperse et callidae tradidit eos ad exter aot mistaken, to territorial jurisdiction in the Sax- minandum, p. 210. on laws. Probably it was not frequent till near the t Edgar, after one or two ineffectual attempts end of the tenth century. to recover the kingdom, was treated by William Q Feodum twice occurs in the testament of Al- with a kindness which could only have proceeded freih; but it does not appear to be used in its proper from contempt of his understanding; for he was ser:se, nor do I apprehend that instrument to have not wanting in courage. He became the intimate been originally written in Latin. It was: s much friend of Robert, duke of Normandy, whose mor more consonant to Alfred's practice to employ his tunes, as well as character, much resembled'bi:)wn' Lguage. I own.
William and his Norman followers were offered perpetual imprisonment. Walthe. to bring upon their country. off, a man of equally conspicuous birth. The commencement of his administration lost his head upon a scaffold by a very harsh, if not iniquitous sentence. It was at first moderate. Though many confiscations were so rare in those times to inflict judicially. Elections took place, in order to any capital punishment upon persons of gratify the Norman army, yet the mass such rank, that his death seems to have of property was left in the hands of its produced more indignation and despair in former possessors. Offices of high trust England than any single circumstance. were bestowed upon Englishmen, even The name of Englishman was turled into upon those whose family renown might a reproach. None of that race fo- a hun have raised the most aspiring thoughts.* dreed years were raised to any dign'ity in t becomes -But partly through the inso- the state or church. Their langtge, more tyran- lence and injustice of William's and the characters in which it was writocal. Norman vassals, partly rejected as barbarous; in all the suspiciousness natural to a man con- schools, children were taught French, scions of having over turned the national - scions of having overturned the national strictly meant the killing of any one by an un government, his yoke soon became more known hand, the hundred should be liable in a fine heavy. The English were oppressed; unless they could prove the person murdered to be, they rebelled, were subdued, and op- an Englishman. This was tried by an inquest. pressed again. A-11 their risings were upon what was called a presentment of Engli.shry. without concert, and desperate; they But from the reign of Henry II., the two nations without concert, and desperate; they having been very much intermingled, this inquiry, wanted men fit to head them, and for- as we learn from the Dialogue de Scaccario, p. 26. tresses to sustain their revolt. After a ceased, and in every case of a freeman murdered by persons unknown, the hundred was fined. —Se, Ordericts Vitalis, p. 520 (in Du Chesre, Hist. however Bracton, 1. iii., c. 15. Norm. Script.). * Malms'bury, p. 14. t Hoveden, p. 453. t Ordericus notices the want of castles in Eng-.; Becket is said to have been the first English land, as one reason why rebellions were easily man who reached any considerable dignity.-Lord quelled, p. 511. Failing in their attempts at a gen- Lyttleton's Hist. of Henry II., vol. ii., p. 22. And erous resistance, the English endeavoured to get Eadmer declares that Henry I. would not place a rid of their enemies by assassination, to which single Englishman at the head of a monastery. Si many Normans became victims. William there- Anglus erat, nulla virtus, ut honore aliquo digunv forf enacted, that in every case ot murder, which judicare tur, eum poterat adjuvare, p. 110

**Page 334** 334 EUROPE DURING THE MIDDLE AGES. ICHAT. I. and the laws were administered in no mer times, the king's thanes.* Cospa. other tongue * It is well known that tric, son perhaps of one of that name this use of French in all legal proceed- who had possessed the earldom of Nor. ings lasted till the reign of Edward III. thumberland, held forty-one manors ill TtThis exclusion of the English from po- Yorkshire, though many of them are sta. Conflscation litcal privileges was accom- ted in Domesday to be waste. Inferior of English panied with such a confiscation freeholders were probably much less disproperty. of property as never perhaps turbed in their estates than the higher has proceeded from any government not class. Though few of English birth conavowedly founding its title upon the tinued to enjoy entire manors, even by a sword. In twenty years from the acces- mesne tenure, it is reasonable to suppose sion of William, almost the whole soil that the greater part of those who apof England had been divided among for- pear, under various denominations, to cigners. Of the native proprietors many have possessed small freeholds and parhad perished in the scenes of rapine and cels of manors, were no other than the tyranny which attended this convulsion;
original natives. many were fallen into the utmost pover- Besides the severities exercised upon ty; and not a few, certainly, still held the English after every insur- Devastation their lands as vassals of Norman lords. in the proved their valour in the wars of Alex- former, which had the tyrant's plea, neius against another Norman conqueror cessity, for its pretext, an invasion being scarcely less celebrated than their own, threatened from Denmark, the whole Robert Guiscard. Under the name of country between the Tyne and the HumVarangians, those true and faithful sup- ber was laid so desolate, that for nine years porters of the Byzantine empire preserv- afterward there was not an inhabited viled to its dissolution their ancient Saxon lage, and hardly an inhabitants left; the'diom.t wasting of this district having been foiiow. The extent of this spoliation of prop- ed by a famine, which swept away the terty is not to be gathered merely from whole population.f That of the New F'or historians, whose language might be ac- est, though undoubtedly less calamitous in cused of vagueness and amplification. In its effects, seems even more monstrous, the great national survey of Domesday from the frivolousness of the cause.T He'Book, we have an indisputable record of afforested several other tracts. And these this vast territorial revolution during the favourite demesnes of the Norman kings reign of the Conqueror. I am indeed sur- were protected by a system of iniquitous prised at Brady's position, that the Eng- and cruel regulations, called the Forest lish had suffered an indiscriminate depri- Laws, which it became afterward a great vation of their lands.

Undoubtedly there object with the assertors of liberty to were a few left in almost every county, correct. The penalty for killing a stag who still enjoyed the estates which they or a boar was loss of eyes: for William held under Edward the Confessor, free loved the great game, says the Saxon from any superiority but that of the Chronicle, as if he had been their father.0 crown, and were denominated, as in for- A more general proof of the ruinolus * Ingulfus, p. 61. Tantum tune Anglicos abo. minati sunt, ut quantocunque merito pollerent, de * Brady, whose unfairness always keeps pace dignitatibus repellebantur; et multo minus habiles with his ability, pretends that all these were mealienigenae de quacunque ali& natione, qua) sub nial officers of the king's household. But notwith zcelo est, extitissent, gratanter assumerentur. Isp- standing the difficulty of disproving these gratuisum etiam idioma tantum abhorrebant, quod leges tous suppositions, it is pretty certain that many terra.,'atutaque Anglicorum regum linguta Gal- of the English proprietors in Domesday could not ficA tractarentur; et puercis etiam in scholis prin- have been of this description.-See... 99, 153, 218, cipia literarum grammatica GallicA, ac non Angli- 219, and other places. The question, however, c, traderentur; modus etiam scribendi Anglicus was not worth a battle, though it makes a figure in omftteretur, et modus Gallicus in chartis et in li- the controversy of Normans and Anti-Normans,bris omnibus admitteretur. between Dugdale and Brady on the one side, and t Gibbon, vol. x., p. 223. No writer, except per- Tyrrell, Petyt, and Atwood on the other. hape the Saxon Chronicler, is so full of William's + Malmsbury, p. 103. Hoveden, p. 451. Orde.;yranny as Ordericus Vitalis.- See particularly pp. ric. Vitalis, p. 514. The desolation of Yorkshire 507, 512, 514, 521, 523, in Du Chesne, Hist. Norm. continued in Malmsbury's time, sixty or seventy Script. Ordericus was an Englishman, but pass- years afterward; nudum omnium solum usque 4d ed at ten years old, A. D. 1084, into Normandy, hoc etiam tempus.'where he became professed in the monastery of $ Malmsbury, p. 111. Eu, ibid, p 924 6 Chron. Saxon.. r.. 191.
was not sufficient for his Innerlion from Domesday comparative condition of the purpose, like other tyrants, he nary troops, look. English towns in the reign of put greater trust in mercenary obedience Edward the Confessor, and at the compi-Some of his predecessors had kept bodies lation of Domesday. At the former of Danish troops in pay; partly to be seepoch there were in York 1607 inhabited cure against their hostility, partly from houses, at the latter 967; at the former the convenience of a regular army, ane there were in Oxford 721, at the latter the love which princes bear to it. But 243; of 172 houses in Dorchester, 100 William carried this to a much greater were destroyed; of 243 in Derby, 103; length. He had always stipendiary solof 487 in Chester, 205. Some other diers at his command. Indeed, his army towns had suffered less, but scarcely any at the conquest could not have been one fails to exhibit marks of a decayed swelled to such numbers by any other population. As to the relative numbers means. They were drawn, by the allure of the peasantry and value of lands at ment of high pay, not from France and these two periods, it would not be easy Britany alone, but Flanders, Germany, to assert any thing without a laborious and even Spain. When Canute of Den examination of Domesday Book. mark threatened an invasion in 1085, The demesne lands of the crown, ex-William, too conscious of his own tyrantsDomains of tense and scattered over every ny to use the arms of his English subthe crown. county, were abundantly suiffi-jects, collected a mercenary force so cien to support its dignity and magnifi- vast, that men wondered, says the Saxon cence;* and William, far from wasting Chronicler, how the country could mainthisis revenue by prodigal grants, took tain it. This he quartered upon the peo. care to let them at the highest rate to pie, according to the proportion of their farm, little caring how much the cultiva- estates.* tors were racked by his tenants.t Yet Whatever may be thought of the Anglo-, his exactions, both feudal and in the way Saxon tenures, it is certain that Feudalsys of tallage from his burgesses and the ten- those of the feudal system were tem estabants of his vassals, were almost as vio- thoroughly established in Eng- lished lent as his confiscations. No source of land under the Conqueror. It has been incomne was neglected by him, or indeed observed in another part of this work, by his successors, however trifling, un- that the rights, or feudal incidents of just, or unreasonable. His revenues, if wardship and marriage, were nearly pe. Riches of we could trust Ordericus Vitalis, cular to England and Normandy. They she Con- amounted to ~1060 a day. This, certainly did not exist in the former be. quor. in mere weight of silver, would fore the conquest; but whether they were be equal to nearly ~1,200,000 a year at ancient customs of the latter cannot be present. But the arithmetical statements ascertained, unless we had more inconof these writers are not implicitly to be testable records of its early jurisprudence. relied upon. He left at his death a treas-Fore the Great Customary of Normandy ure of ~60,000, which, in conformity to is a compilation as late as the reign of his dying request, his successor distrib- Richard Cceur de Lion, when the laws of uted among the church and poor of the England might have passed into a country kingdom, as a feeble expiation of the so long and intimately connected with it crimes by which it had been accumula- But there appears reason to think that ted; an act of deskinterestedness, which the seizure of the lands in wardship, the seems to prove that Rufus, amid all his selling of the heiress in marriage, were vices, was not destitute of better feelings originally deemed rather acts of violence than historians have ascribed to him. It than conformable to law. For Henry might appear that William had little use I.’s charter expressly promises that the for his extorted wealth. By the feudal mother, or next of kin, shall have the constitution, as established during his custody of the lands as well as person of reign, he commanded the service of a the heir.t And as the charter of Henry vast army at its own expense, either for II. refers to and confirms that of his grandfather, it seems to follow that what!* They consisted of 1422 manors.-Lyttleton's Henry II., vol. ii., p. 288. t Chron. Saxon., p. 188. * Chron. Saxon., p. 185. Ingulfus, p. 79. t Huntingdon, p. 371. Ordericus Vitalls puts a t Terrae et liberorum custos erit sive uxor, slvt.org
The invaders, though without Northampton in 1176,* that the custody perhaps any intrinsic superiority in social of the heir is clearly reserved to the lord. virtues over the native English, degraded with the right of consenting and barbarous as these are represented to the marriage of a female vassal, it to us, had at least that exterior polish of seems to have been, as I have elsewhere courteous and chivalric manners, and that observed, pretty general in feudal tenures. taste for refinement and magnificence, But the sale of her person in marriage, which serve to elevate a people from the exaction of a sum of money in mere savage rudeness. Their buildings, lieu of this scandalous tyranny, was only sacred as well as domestic, became more the law of England, and was not perhaps substantial and elegant. The learning of fully authorized as such till the statute of the clergy, the only class to whom that Merton in 1236, word could at all be applicable, became one innovation made by William upon infinitely more respectable in a short time the feudal law is very deserving of attention after the conquest. And though this may tiona. By the leading principle of feuds, by some be ascribed to the general imadl oath of fealty was due from the vassals of Europe in that point during sal to the lord of whom he immediately the twelfth century, yet I think it was held his land, and to no other. The King partly owing to the more free intercourse of France, long after this period, had no with France and the closer dependance feudal and scarcely any royal authority upon Rome which that revolution proover the tenants of his own vassals. But duced. This circumstance was, how William received at Salisbury, in 1085, ever, of no great moment to the English the fealty of all landholders in England, of those times, whose happiness could both those who held in chief and their hardly be affected by the theological rep tenants; t thus breakinginupon the feudal utation of Lanfranc and Anselm. Per compact in its most essential attribute, haps the chief benefit which the natives the exclusive dependance of a vassal of that generation derived from the government of William and his successors, ed among the several causes which pre next to that of a more, vigilant police, was vented the continental notions of inde the security they found from invasion upon the crown from ever the side of Denmark and Norway. The taking root among the English aristoc high reputation of the conqueror and his racy. sons, with the regular organization of a The best measure of William was the feudal militia, deterred those predatory Preservacion of establishment of public peace. armies which had brought such repeated public peace. He permitted no rapine but calamity on England in former times. his own. The feats of private revenge, The system of feudal policy, though dethe lawlessness of robbery, were re rived to England from a French Difference pressed. A girl loaded with gold, if we source, bore a very different ap between the feudal policy believe some ancient writers, might have pearsance in the two countries. in England passed safely through the kingdom.$ But France, for about two centu - and France. this was the tranquillity of an imperious ries after the house of Capet had usurped and vigilant despotism, the degree of the throne of Charlemagne's posterity, which may be measured by these effects, could hardly be deemed a regular con in which no improvement of civilization federacy, much less an entire monarchy. had any share. There is assuredly noth But in England, a government, feudal ining to wonder at in the
detestation with deed in its form, but arbitrary in its exerwhich the English long regarded the
cise, not only maintained subordination, memoryofthis tyrant.~ Some advantages but almost
extinguished liberty. Several causes seem to have conspired towards this radical difference. In
the first place, t Chron. Saxon., p. 187. a kingdom, comparatively small, is much t Chron.
Saxon., p. 190. M. Paris, p. 10. I will more easily kept under control than on( not omit one
other circumstance, apparently praise- of vast extent. And the fiefs of Angloworthy, which
Ordericus mentions of William, that Norman barons after the conquest were he tried to learn
English, in order to render justice by understar.ding every man's complaint, but failed far less
considerable, even relatively to on account of his advanced age, p. 520. This was the size of the
two countries, than those in the early part of his reign, before the reluctance of France. The Earl
of Chester held, ofat the Enlglish to submit had exasperated;s - indeed, almost all that county;*
tha position. 0 W Malmsb., PraJ, d. 1in. * This was upon the whole, more like a greMs

Page 337 ,X 1LJ Eh JLISH CONSTITUTION. 337 Earl of Shrewsbury nearly the whole of
aristocracy, the right ot territorial jurisSalop. But these domains bore no com- diction. Except
in the counties pri atine. p.arison with the dukedom of Guienne or the feudal courts possessed a
very trilhe county of Touloues. In general, the fling degree of jurisdiction over civil, and
ordships of WXilliam's barons, whether no a very extensive one over criminal this Twere
owing to policy or accident, causes. were exceedingly dispersed. Robert, We may add to the
circumstances tha: earl of Moreton: for example, the most rendered the crown powerful du-
Hatred of richly-endowed of his followers, enjoyed ring the first century after the English to
248 manors in Cornwall, 54 in Sussex, conquest, an extreme antipathy Normans. 196 in
Yorkshire, 99 in Northampton- of the native English towards their inshire, besides many in
other counties.* vaders. Both William Rufus and Henry Estates so disjoined, however immense
I. made use of the former to strengthen in their aggregate, were ill calculated for themselves
against the attempts of their supporting a rebellion. It is observed by brother Robert; though
they forgot their Madox, that the knight's fees of almost promises to the English after attaining
every barony were scattered over vari- their object.* A fact, mentioned by Orous counties.
dericus Vitalis, illustrates the advantage In the next place, these baronial fiefs which the
government found in this naware held under an actual derivation from tional animosity. During
the siege of the crown. The great vassals of France Bridgenorth, a town belonging to Robert
had usurped their dominions before the de Belesme, one of the most turbulent accession of
Hugh Capet, and barely sub- and powerful of the Norman barons, by mitted to his nominal
sovereignty. They Henry I., in 1102, the rest of the nobility never intended to yield the feudal
tributes deliberated together, and came to the of relief and aid, nor did some of them
conclusion, that if the king could expel even acknowledge the supremacy of his so
distinguished a subject, he would be royal jurisdiction. But the conqueror able to treat them all
as his servants. and his successors imposed what condi- They endeavoured, therefore, to bring
tions they would upon a set of barons who about a treaty; but the English part of 3wed all to
their grants; and as man- Henry's army, hating Robert de Belesme kind's notions of right are
generally as a Norman, urged the king to proceed founded upon prescription, these peers with
the siege; which he did, and took grew accustomed to endure many bur- the castle.t dens,
reluctantly indeed, but without that Unrestrained, therefore, comparativefeeling of injury which
would have re- ly speaking, by the aristocrat- Tyranny of sisted an attempt to impose them
upon ic principles which influenced the Norman the vassals of the French crown. For other
feudal countries, the ad- government the same reasons, the barons of England ministration
acquired a tone of rigour were regularly summoned to the great and arbitrariness under William
the Conconcil, and by their attendance in it, and queror, which, though sometimes
perconcurrence in the measures which were haps a little mitigated, did not cease duthere resolved upon, a compactness and ring a century and a half. For the first unity of interest was given to the monar- three reigns we must have recourse chy which was entirely wanting in that to historians; whose language, though of France. But above all, the paramount vague, and perhaps exaggerated, is too authority of the king's court, and those uniform and impressive to leave a doubt excellent Saxon tribunals of the county of the tyrannical character of the governand hundred, kept within very narrow ment. The intolerable exactions of trib-imits that great support of the feudal ute, the rapine of purveyance, the iniquity of royal courts, are continually in their mouths. "God sees the wretched peo-.French fief than any English earldom. Hugh de mouths. God sees the wretched peoAbrincis, nephew of William I., had barons of his ple, says the Saxon Chronicler, "most own, cne of whom held forty-six and another thirty unjustly oppressed; first they are demoners. Chester was first called a county-palatine spoiled of their possessions, then butchlander Henry II.; but it previously possessed all ered. This was a grievous year (1124). regalian rights of jurisdiction. After the forfeit- Whoever had any property, lost it by ares of the house of Montgomery, it acquired all The the country between the Mersey and Ribble. Sev- heavy taxes and unjust decrees.": The eral eminent men inherited the earldom; but upon the death of the most distinguished, Ranulf, in * W. Malmesbury, p. 120 et 156. R. Hoveden, 1232 it fell into a female line, and soon escheated p. 461. Chron. Saxon., p. 194..o the crown.-Dugdale's Baronage, p. 45. Lyttle- t Du Chesne, Script. Norman., p. 807. on'e Henry II., vol. ii., p. 218. f Chron. Saxon., p. 228. Non facile potest nar Dugdale's Baronage, 0. 25. rari iniseria, says Roger de Ic'-eden, quam susti Y
ding the marriage of their vassals' daughters in a certain court; to emplace a certain term to such persons as they thought person; to have restitution of land which was unfriendly or dangerous to themselves; they had recovered at law. From the but I am not aware that they ever com- sale of that justice which every citizen pelled them to marry, much less that they has a right to demand, it was an easy turned this attribute of sovereignty into transition to withhold or deny it. Fines a means of revenue. But in England, were received for the king's help against women, and even men, simply as ten- the adverse suiter; that is, for perversion ants in chief, and not as wards, fined to of justice, or for delay. Sometimes they the crown for leave to marry whom they were paid by opposite parties, and, of would, or not to be compelled to marry course, for opposite ends. These were any other. Towns not only fined for called counter-fines; but the money nwoas original grants of franchises, but for re- sometimes, or, as Lord Lyttleton thinks, illo tempore [circ. ann. 1103] terraAglorum invariably, returned to the unsuccessful propter regias exactiones, p. 470. suiter.' * The following simple picture of that reign from Among a people imperfectly civilized, the Saxon Chronicle may be worth inserting. the most outrageous injustice to- General' The nobles and bishops built castles, and filed wards individuals may pass with- taxes them with devilish and wicked men, and oppressed out the slightest notice, while in matters the people, cruelly torturing men for their money. They imposed taxes upon towns, and when they affecting the community, the powers of had exhausted them of every thing, set them on government are exceedingly controlled fire. You might travel a day, and not find one It becomes therefore an important ques. man living in a town, nor any land in cultivation. tion, what prerogative these Norman Never did the country suffer greater evils. If two or three men were seen riding up to a town, all its kings were used to exercise in raising inhabitants left it, taking them for plunderers. And money, and in general legislation. By his last, growing worse and worse, throughout the prevailing feudal customs, the lord Stephen's reign. Men said openly that Christ and was entitled to demand a pecuniary aid his saints were asleep," p. 239. t The earliest record in the Pipe-office is that of his vassals in certain cases. which Madox, in conformity to the usage of others, cites by the name of Magnum Rotulum quinto * Madox, c. 7. 1 Id., c. 12 and 13. Stephani. But in a particular dissertation subjoin- a considerable of these instances of these exactionid ed to his History of the Exchequer, he inclines, are well selected from Madox by Hume, Appendix though not decisively, ta refer this record to the i.: upon which account I have none less into do reign of Henry 1. t Madox, c. 10. tail than would otherwise.ave aeer.icecessary.
service latest instance on record of its payment having then grown general, and the rate is in the 20th of Henry II. Its imposiof commutation being variable. tion appears to have been at the king's None but military tenants could be lia- discretionble for escuage; but the inferior sub- The right of general legislation was jects of the crown were oppressed by undoubtedly placed in the king, Rightofle tallages. The demesne lands of the conjointly with his great coun-
gislation. king and all royal towns were liable to cil,$ or, if the expression be thought more tallage; an imposition far more rigorous proper, with their advice. So little opand irregular than those which fell upon position was found in these assemblies the gentry. Tallages were continually by the early Norman kings, that they raised upon different towns during all the gratified their own love of pomp, ass well Norman reigns, without the consent of as the pride of their barons, by consult-. parliament, which neither represented it in every important business, them nor cared for their interests. The But the limits of legislative power were itinerant justices in their circuit usually extremely indefinite. New laws, like set this tax. Sometimes the tallage was new taxes, affecting the community, reassessed in gross upon a town, and col- quired the sanction of that assembly lected by the burgesses: sometimes indi-which was supposed to represent it.; but vidually, at the judgment of the justices. there was no security for individuals There was an appeal from an excessive against acts of prerogative, which we assessment to the barons of the ex- should justly consider as most tyrannichequer. Inferior lords might tallage cal. Henry II., the best of these montheir own tenants and demesne towns, archs, banished from England the relalthough not, it seems, without the king's tions and friends of Becket, to the numpermission.~ Customs upon the import ber of four hundred. At another time, he sent over from Normandy an injunc* The reasonable aid was fixed by the statute of tion, that all the kindred of those who WestminsterI.,3 Edw. I., c. 36, at twenty shillings obeyed a papal interdict should be banfor every knight's fee, and as much for every 201. ished, and their estates confiscated.9 value of land held by soccage. The aid pour faire fitz chevalier might be raised, when he entered into his fifteenth year; pour fille marier, -when she * Madox, c. 18. Hale's Treatise on the Cus. reached the age of seven. toms in Hargrave's Tracts, vol. i., p. 116. t Fit interdum, ut imminentem vel insurgente in t Henr. Huntingdon, 1. v., p. 205. Dialogus de regnum hostium machinatione, decernat rex de Scaccario, c. 11. Madox, c. 17. Lyttleton's singulis feodis militum summam aliquam solvi, Henry II., vol. ii., p. 170. m narcam scilicet, vel libram unam; unde militibus $ Glanvil, Prologus ad Tractatum de Consuetud stipendia vel donativa succedant. Mavult enim † Hoveden, p. 496. Lyttleton, vol. ii., p. 530.:rinceps stipendiarios quam domesticos bellicos The latter says that this edict must have been exponere casibus. Haece itaque summa, quia:ramed by the king with the advice and assent of nomine scutorum solvitur, scutagium nominatur. his council. But if he means his great council, I — Dialogus de Scaccario, ad finem. Madox, Hist. cannot suppose that all the barons and tenants Exchequer, p. 25 (edit. in folio). in capite could have been duly summoned to a t The tenant in capite was entitled to be reim- council held held beyond seas. Some English barons ouryied what would have been his escuage by his might doubtless have been with the king, as al vassals esen if he performed personal service.- Verneuil in 1176, where a mixed assembly cf EngMadox, c. 16. lish and French enacted laws for both countries 5 For the important subject of tad ages, see Ma- Benedict. Abbas apud Hume. So at Ncrthampton do'. c. 1a. in 1165, several Norman barons voted, nor is any v2
begun to look back to a earlier foundation. And although the laws more ancient standard of law. The then enacted have not all been preserved, Norman conquest, and all that ensued yet it is unlikely that any of an exten- upon it, had endeared the memory of sively remedial nature should have left their Saxon government. Its disorders no trace of their existence. We find, were forgotten, or rather were less odihower, what has sometimes been call- ous to a rude nation, than the coercive ed the Magna Charta of William the justice by which they were afterward Conqueror, preserved in Rogerde Hove- restrained. T Hence it became the fa. den's collection of his laws. We will, vourite cry to demand the laws of Ed enjoin, and grant, says the king, that all ward the Confessor; and the Normans freemen of our kingdom shall enjoy their themselves, as they grew dissatisfied lands in peace, free from all tallage, and with the royal administration, fell into from every unjust exaction, so that noth- these English sentiments.~

But what ing but their service lawfully due to us these laws were, or more properly, pershall be demanded at their hands.* The haps, these customs, subsisting in the laws of the Conqueror, found in Hove- Confessor's age, was not very distinctly den, are wholly different from those in understood 11 So far, however, was clear, Ingulfus, and are suspected not to have that the -rigorous feudal servitudes, the escaped considerable interpolation.t It weighty tributes upon poorer freemen, is remarkable that no reference is made had never prevailed before the conquest. to this concession of William the Con- In claiming the laws of Edward the Con quorer in any subsequent charter. How- fessor, our ancestors meant but the re ever, it seems to comprehend only the dress of grievances which tradition told feudal tenants of the crown. Nor does them had not always existed. the charter of Henry I., though so much It is highly probable, independt-~yti i celebrated, contain any thing specially the evidence supplied by the Ricbard I.4 expressed but a remission of unreasona- charts of Henry I. and his chancellor:le reliefs, wardships, and other feudal two successors, that a sense of deposed by burdens.t It proceeds, however, to de- oppression had long been stim. thebarons clare that he gives his subjects the laws * Wilkins, Leges Anglo-Saxon., p. 310. of Edward the Confessor, with the t ld., p. 318. emendations made by his father with $ The Saxon Chronicler complains of a wilten consent of, his barons.~ The charter agemot, as he calls it, or assizes, held at Leices of Stephen not only confirms that of his ter in 1124, where forty-four thieves were hanged predecessor, but adds, in fuller terms a greater number than was ever before known; it Xpredecesso bvt adds, in fuller terms was said that many suffered unjustly, p. 228. than Henry had used, an express conces- < The distinction between the two nations was sion of the laws and customs of Ed- pretty well obliterated at the end of Henry II.'s reign, as we learn from the Dialogue on the Ex notice taken of this as irregular.-Fitz Stephen, chequer, then written; jam cohabitantibus Angli ibid. So unfixed, or rather unformed, were all cis et Normannis, et alterutrfim uxores ducenti constitutional principles. bus vel nubentibus, sic permixtaw sunt nationes, ut * Volumus etiam, ac firment prcecipimus et vix discerni possit hodie, de liberis loquer, quis concedimus, ut omnes liberi homines totius mon- Anglicus, quis Normannus sit genere; exceptis archim praedicti regni nostri habeant et teneant ter- duntaxat ascripti'ttis qui villani dcluntur, quibus ras suas et possessiones suas benQ, et in pace, li- non est liberum obstantibus dominia suis a sui sta. ber6 ab omni exactione injusta, et ab omni tallagio, tus conditioe disced.ere. Eapropter pene qui ita quod nihil ab iis exigatur vel capiatur, nisi ser- cuneque sic hodie occisus reperitur, ut murdrum vitium suum liberum, quod de jure nobis facere punitur, exceptis his quibus certa sunt ut diximus debent, et facere tenentur; et prout statutum eat servilis conditionis indicia, p. 26. iis, et illis a nobis datum et concessum jure hmared- II Non quas tuli, sed quas obscurvaverit, says itario in perpetuum per commune concilium totius William of Malmsbury, concerning the Confes. regni nostri praedicti. sor's laws. Those bearing hip name in Lambard t Selden, ad Edmerum. Hody (Treatise on and Wilkins are evidently spurious, though it may Convocations, p. 249), infers from the words of not be easy to fix upon
the time when they were Hoveden, that they are altered from the French forged. Those found
in Ingulfus, in the French original by Glanvil. language, are genuine, and were confirmed by I
Wilkins, p. 234. William the Conqueror. Neither of these collections is said to have been made.

In the Frenchnot have any relation on the barons confederated against John by the

tion to the civil liberty of the subject. It has been production of Henry I's
charter, whereof they had deemed more rational to suppose, that these logs been ignorant.-
Matt. Paris., p. 212. But this is of Edward's laws were rather meant for a
could hardly have been the existing charter, for mild administration of government, free from un
reasons alleged by Blackstone.-Introduction to just Norman innovations, than any written ant
Magna Charta, p 6 definitive system.

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ENGLISH CONSTITUTION. 4. ulating the subjects of so arbitrary a
gov- by order of society during six hundred years
subsequent to the Great Charter, strataions of it sufficiently palpable to find have undoubtedly
lessened its direct ap place in history. But there are cer- plication to our present
circumstances. tainly no instances of rebellion, or even, But it is still the keystone of English
as far as we know, of a constitutional liberty. All that has since been obtained resistance in
parliament, down to the is little more than as confirmation or reign of Richard I. The revolt of
the commentary; and if every subsequent earls of Leicester and Norfolk against law were to be
swept away, there would Henry II., which endangered his throne still remain the bold features
that distinguish comprehended his children with a guish a free from a despotic monarchy. large
part of his barons, appears not to It has been lately the fashion to deprecate have been founded
even upon the pretext at the value of Magna Charta, as if it of public grievances. Under
Richard I., had sprung from the private ambition of something more of a national spirit be-
a few selfish barons, and redressed only gan to show itself. For the king having some feudal
abuses. It is indeed of little left his chancellor, William Longchamp, importance by what
motives those who joint regent and justiciary with the Bishop obtained it were guided. The real
chancellor of Durham during his crusade, the actors of men most distinguished in the foolish
insolence of the former, who ex- transactions of that time are not easily depicted his coadjutor
from any share in determined at present. Yet if we bring he administration, provoked every one
these ungrateful suspicions to the test of the nobility. A convention of these, they prove
destitute of all reasonable the king's brother placing himself at their foundation. An equal
distri.,tion of head, passed a sentence of removal and civil rights to all classes of.-eemen
banishment upon the chancellor. Though forms the peculiar beauty of the cite'ter. there might
be reason to conceive that In this just solicitude for the people, a.-d this would not be
unpleasing to the king, in the moderation which infringed upol. who was already apprized how
much no essential prerogative of the monarchy Longehamp had abused his trust, it was we may
perceive a liberality and patria remarkable assumption of power by otism very inlike the
selfishness which! ~hat assembly, and the earliest authority is sometimes rashly imputed to
those for a leading principle of our c onstitu- ancient barons. And, as far as we are lion, the
responsibility of ministers to guided by historical testimony, two great parliament. men, the
pillars of our' church and state, In the succeeding reign of John, all the may be considered as
entitled beyond the IMagna rapacious exactions usual to these rest to the glory of this
monument; Ste Charta. Norman kings were not only re- phen Langton, archbishop of
Canterbury, doubled, but mingled with other outrages and William, earl of Pembroke. To of
tyranny still more intolerable.* These their temperate zeal for a legal govern too were to be
endured at the hands of a ment, England was indebted during that prince utterly contemptible
for his folly critical period for the two greatest blesand cowardice. One is surprised at the sings
that patriotic statesmen could conforbearance displayed by the barons, till fer; the establishment of civil liberty they took arms at length in that confed- upon an immovable basis, and the preseracy which ended in establishing the evration of national independence under Great Charter of Liberties. As this was the ancient line of sovereigns, which the first effort towards a legal govern- rashier men were about to exchange for ment, so is it beyond comparison the the dominion of France. most important event in our history, ex- By the Magna Charta of John, reliets cept that revolution without which its were limited to a certain sum, according benefits would rapidly have been annihi- to the rank of the tenant, the waste com lated. The constitution of England has mitted by guardians in chivalry restrainindeed no single date from which its du- ed, the disparagement in matrimony of ration is to be reckoned. The institu- female wards forbidden, and widows setions of positive law, the far more impor- from compulsory marriage. These taWt changes which time has wrought in regulations, extending to the sub-vassalh of the crown, redressed the worst griev* In 1207, John took a seventh of the moveables ances of every military tenant in Ens of lay and spiritual persons, cunctis murmurantibus, land. The franchises of the city of Lonsed contradicere non audentibus.-Matt. Paris, p. don and of all towns an booughs wer 186, ed. 1684. But his insults upon the nobility in debauching their wives and daughters were, as usu- declared inviolable. The freedom of allv happen, the ml s-t exasperating provocation, commerce was guarantied to alien mcr.

Page 342 342 EUROPE DURING THE MIDDLE AGFS. [CIIHA VII chants. The Court of Common Pleas, distinguishing characteristic of our con instead of following the king s person, stitution will be effaced. was fix d at Westminster. The tyranny As the clause recited above protects exercised in the neighbourhood of royal the subject from any absolute spoliation forests met with some check, which was of his freehold rights, so others restrain further enforced by the Charter of For- the excessiv- amercements which had an ests under Henry III. almost equally. ruinous operation. The But the essential clauses of Magna magnitude of his offence, by the 14th C(harta are those which protect the per- clause of Henry III.'s charter, must be sonal liberty and property of all freemen, the measure of his fine, and in every by giving security from arbitrary impris- case the contenement (a word expressive onment and arbitrary spoliation. "No of chattels necessary to each man's stafreeman (says the 29th chapter of Henry tion, as the arms of a gentleman, the IHL.'s charter, which, as the existing law, merchandise of a trader, the plough and f quote in preference to that of John, the wagons of a peasant) was exempted from variations not being very material) shall seizure. A provision was made in the be taken or imprisoned, or be disseized of charter of John, that no aid or ekcuage his freehold, or liberties, or free customs, should be imposed, except in the three or be outlawed, or exiled, or any other- feudal cases of aid, without consent of wise destroyed; nor will we pass upon parliament. And this was extended to him, nor send upon him, but by lawful aids paid by the city of London. But judgment of his peers, or by the law of the the clause was omitted in the three charland.* We will sell to no man, we will ters granted by Henry III., though par not deny, or delay to any man justice or liament seem to have acted upon it in right." It is obvious that these words, in- most part of his reign. It had, however, terpreted by any honest court of law, con- no reference to tallages imposed upon vey an ample security for the two main towns without their consent. Fourscore rights of civil society. From the era, years were yet to elapse before the great therefore, of King John's charter, it must principle of parliamentary taxation was have been a clear principle of our consti- explicitly and absolutely recognised. tution, that no man can be detained in A law which enacts that justice shall prison without trial. Whether courts of neither be sold, denied, nor delayed, justice framed the writ of habeas corpus stamps...
with infamy that government unin conformity to the spirit of this clause, der which it had become necessary. But or found it already in their register, it be- from the time of the charter, according came from that era the right of every sub- to Madox, the disgraceful perversions of iect to demand it. That writ, rendered right, which are upon record in the rolls more actively remedial by the statute of of the exchequer, became less frequent.* Charles II., but founded upon the broad From this era a new soul was infused oasis of Magna Charta, is the principal bul- into the people of England. State of the wark of English liberty; and if ever tem- Her liberties, at the best long constituporary circumstances, or the doubtful plea in abeyance, became a tangible tion under of political necessity, shall lead men to possession, and those indefinite Henry III. look on its denial with apathy, the most aspirations for the laws of Edward the Confessor were changed into a steady * Nisi per legale judicium parium suorum, vel regard for the Great Charter. Pass but per legem terraw. Several explanations have been from the history of Roger de Hoveden to offered of the alternative clause, which some that of Matthew Paris, from the second have referred to judgment by default or demurrer, that of Matthew Paris, from the second others to the process of attachment for contempt. Henry to the third, and judge whethe — Certainly there are many legal procedures besides the victorious struggle had not excited trial by jury, through which a party's goodson per- an energy of public spirit to which the son may be taken. But one may doubt whether nation was before a stranger. The these were in contemplation of the framers of Magna Charta. In an entry of the charter of 1217 strong man, in the sublime language of by a contemporary hand, preserved in a book in the Milton, was aroused from sleep, and town-clerk's office in London, called Liber Cus- shook his invincible locks. Tyranny intumarum et Regum antiquorum, a various reading, deed, and justice, will, by all historian.t per legem terra, occurs.-Blackstone's Char- not absolutely servile be noted with ters, p. 42. And the word vel is so frequently used not absolutely servile, be noted with for et, that I am not wholly free froma suspicion moral reprobation; but never shall we that it was so intended in this place. The mean- find in the English writers of the twelfth mng will be, that no person shall be disseized, &c. century that assertion of positive and naexcept upon a lawful.cause of action or endictment, tional rights which distinguishes those found by the verdict of a jury.'This really seems t good as any of the disjunctive interpretations; blt I do not offer it with much confidence * Hist'of Ex( hequer, c. 12

Page 343 T&RT II.] ENGLISH CONSTITUJTION. 84 as the next age, and particularly the had his own notions as to the validity o monk of St. Alban's. From his prolix an oath that affected hit power, and in. history we may collect three material deed passed his life in a series of perju. propositions as to the state of the Eng- ries. According to the creed of that lish constitution during the long reign of age, a papal dispensation might annul any Henry III.; a prince to whom the epiteth prior engagement; and he was generally of worthless seems best applicable; and on sufficiently good terms with Rome to who, without committing any flagrant obtain such an indulgence. erimes, was at once insincere, ill-judging, 2. Though the prohibition of levying and pusillanimous. The intervention of aids or escuages without consent of parsuch a reign was a very fortunate circum- liament had been omitted in all Henry's stance for public liberty; which might charters, an omission for which we can. possibly have been crushed in its infancy, not assign any other motive than the disif an Edward had immediately succeeded position of his ministers to get rid of that to the throne of John. restriction, yet neither one nor the other 1. The Great Charter was always con- seem in fact to have been exacted at sidered as a fundamental law. But yet discretion throughout his reign. On the it was supposed to acquire additional se- contrary, the barons frequently refused curity by frequent confirmation.' This the aids, or rather subsidies, which his it received, with some not inconsiderable prodigality was
always demanding. In variation, in the first, second, and ninth deed, it would probably have been impose years of Henry's reign. The last of sible for the king, however frugal, striphese is in our present statute-book, and ped as he was of so many lucrative has never received any alterations; but though oppressive prerogatives by the Sir E. Coke reckons thirty-two instances Great Charter, to support the expenditure wherein it has been solemnly ratified. of government from his own resources. Several of these were during the reign Tallages on his demesnes, and especially of Henry III., and were invariably pur- on the rich and ill-affected city of Lonchased by the grant of a subsidy. * This don, he imposed without scruple; but it prudent accommodation of parliament to does not appear that he ever pretended the circunstances of their age not.only to a right of general taxation. We may made the law itself appear more inviola- therefore take it for granted, that the ble, but established that correspondence clause in John's charter, though not exbetween supply and redress, which for pressly renewed, was still considered as some centuries was the balance-spring of binding force. The king was often of our constitution. The charter indeed put to great inconvenience by the refusal was often grossly violated by their ad- of supply; and at one time was reduced ministration. Even Hubert de Burgh, to sell his plate and jewels, which the of whom history speaks more favour- citizens of London buying, he was proably than of Henry's later favourites, voked to exclain with envious. spite though a faithful servant of the crown, against their riches, which he had not seems, as is too often the case with been able to exhaust. * such men, to have thought the king's 3. The power of granting money must honour and interest concerned in main- of course imply the power of withholding taining an unlimited prerogatives The it; yet this has sometimes been little government was however much worse more than a nominal privilege. But in administered after his fall. From the this reign the English parliament exer great difficulty of compelling the king cised their right of refusal, or, what was to observe the boundaries of law, the muchbetter, of conditional assent. Great English clergy, to whom we are much discontent was expressed at the demand indebted for their zeal in behalf of liberty of a subsidy in 1237; and the king alle during this reign, devised means of bind- ging that he had expended a great deal of ing his conscience, and terrifying his money on his sister's marriage with the imagination by religious sanctions. The emperor, and also upon his own, the bar. solemn excommunl tion, accompanied ons answered, that he had not taken thei with the most awful threats, pronounced. advice in those affairs, nor ought they to against the violators of Magna Charta, is share the punishment of acts of impru. well known froan our common histories. dence they had not committed. t In The king was a party to this ceremony, 1241, a subsidy having been demanded and swore to observe the charter. But Henry III., though a very devout person, * M. Paris, p. 650. Quod hac omnia sine consilio fidellum suo rum facerat, nec debuerant esse ponam participie T1Matt. Pari, 2 22. t Id., p. 284. qui fuerant a culp' immunes, p. 367.
complaints against war for his advantage and his own.* He the violation of the charter, the
waste did not even want the effrontery to tell ft. re.,-r subsidies, and the maleadministr-
parliament in 1257, introducing his son o'-is servants.t Finally, the bar- Edmund as King of
Sicily, that they were ons positivt2y refused any money; and bound for the repayment of
14,000 marks, he extorted 1500 marks from the city of with interest. The pope had also, in
London. Some years afterward they fartherness of the Neapolitan project, declared their
readiness to burden them- conferred upon Henry the tithes of all selves more than ever, if they
could se- benefices in England, as well as the first cure the observance of the charter; and fruits
of such as should be vacant.t Such requested that the justiciary, chancellor, a concession drew
upon the king the imand treasurer might be appointed with placable resentment of his clergy,
already consent of parliament, according, as they complaining of the cowardice or conni
asserted, to ancient custom, and might vance that had during all his reign exhold their offices
during good behaviour.t posed them to the shameless exactions Forty years of mutual
dissatisfaction of Rome. Henry had now indeed cause had elapsed, when a signal act of Henry's
to regret his precipitancy. Alexander improvidence brought on a crisis which IV., the reigning
pointiff, threatened him endangered his throne. Innocent IV., not only with a revocation of the
grant out of mere animosity against the family to his son, but with an excommunication.;f
Frederick II., left no means antried and general interdict, if the money ad to raise up a
competitor for the crown vanced on his account should not be ini of Naples, which Manfred
had occupied. mediately repaid,$ and a Roman agent Richard.; earl of Cornwall, having been
explained. the demand to a parliament prudent enough to decline this specula- assembled at
London. The sum required tion, the pope offered to support Henry's was so enormous, we are
told, that it second son, Prince Edmund. Tempted struck all the hearers with astonishment and
horror. The nobility of the realm E Matt. Paris, p. 515. were indignant to think that one man's t
Id., p. 563,572. Matthew Paris's language is supine folly should thus bring them to particularly
uncourtly: rex cum instantissiln, ne iterum postularet, toties lesi et illusi, contradix-
yond the ordinary course of the co\nstierunt ei unanimiter et uno ore in facie. tution were necessary to
control so pi od+ De communi consilio regni, sicut ab antique ileg and injudicious a sovereign?
Acconsuetum et justum, p. 778. This was not so cordingly, the barons insisted that twen. great
an encroachment as it may appear. Ralph cordingly the barons insisted that twende Nevillle,
bishop of Chichester, had been made y-four persons should be nominated, half chancellor in
1223, assensu totius regni; itaque by the king and half by themselves, to scilicet ut non
deponeretur ab ejus sigilli custodia reform the state of the kingdom. Th ese nisi totius regni
ordinante consilio et consilio, p. were appointed on the meeting of the 266. Accordingly, the
king demanding the great parliament at Oxford, after a prorogation. real from him in 1236, he
 refused to give it up, alleging that, having received it in the general council of the kingdom, he
could not resign it without the * Rymer, t. i., p. 771. t P. 813. same authority, p. 363. And the
parliamean of t Idem, p. 632. This inauspicious negotiatior. 1248 complained that the king had
not followed for Sicily, which is not, altogether unlike that of the steps of his predecessors in
appointing taese James I. about the Spanish match, in its folly, ba~ three great officers by their
consent, p. 646. What success, and the dissatisfaction it occasion:ed a had( been in fact the
practice of former kings, I do home, receives a good deal of illustration front dcc not know; but
it is not likely to have been such uments in Rymer's collection. as they represent. Henry,
however, had named Q Quantitas pecuniae ad tantam ascendit sum the Archbishop of York to
the regency of the king- mam, ut stuporem. simul et horrorem in auribhn dom dving his
absence beyond sea in 1242, de generaret audientium. Doluit igitur nobilitas reg consilio
omnia comitum et baronum nostrorum et ni, se unius hominis ita confundii supine
The seven years that followed are a revolutionary period, the events of which because, by the words that follow in the text, we do not find satisfactorily explained by the text, it appears to design not any mere the historians of the time. A king, the will of the prince, but that which is vested of prerogatives by his people, soon dispatch of the advice of his counsel appears even to themselves an injured lord, the king giving his authority, and party. A id as the baronial oligarchy deliberation being had upon it." This acted with that arbitrary temper which passage is undoubtedly a misrepresentation never pardoned in a government that tion of the famous regia, which has nas an air of usurpation about it, the ever been interpreted to convey the unroyalists be Jan to gain ground, chiefly limited power of the people to their em through the defection of some who had perors. But the very circumstance of joined in the original limitations imposed so perverted a gloss put upon this text is on the crown, usually called the provis- a proof that no other doctrine could be ions of Oxford. An ambitious man, con- admitted in the law of England. In anfident in his talents and popularity, ven- other passage, Bracton reckons as supertured to display too marked a superiority rior to the king, " not only God and the above his fellows in the same cause. law, by which he is made king, but his But neither his character, nor the battles court of earls and barons; for the former of Lewes and Evesham, fall strictly with- (comites) are so styled as associates of in the limits of a constitutional history, the king, and whoever has an associate. It is, however, important to observe, that has a master; so that if the king were even in the moment of success, Henry without a bridle, that is, the law, they III. did not presume to revoke any part ought to put a bridle upon him." Sevof the Great Charter. His victory had eral other passages in Bracton might be been achieved by the arms of the Eng- produced to the same import; but these lish nobility, who had, generally speaking, are sufficient to demonstrate the imputation, the royal prerogative proved from best evidence that can be ad- in imitation of the papal dispensations. Bracton. duced in constitutional history. But this prerogative could only be exit wit.. therefore be satisfactory to select erted within certain limits, and however a few passages from Bracton, himself a pernicious it may be may be justly thought, was, judge at the end of Henry III.'s reign, by when thus understood and defined, not, which the limitation of prerogative by strictly speaking, incompatible with the law will clearly appear to have been legislative sovereignty of parliament. fully established. i The king," says he, In conformity with the system of "4 must not be subject to any man, but to France and other feudal countries, there God and the law; for the law makes him was one standing council, which assist king. Let the king therefore give to the ed the kings of England in the The king's law what the law gives to him, dominion collection and management of court. and power; for there is no king where their revenue, the administration of uswill and not law bears rule." T " The tice to suiters, and the despatch of all king (in another place) can do nothing public business. This was styled the on earth, being the minister of God, but king's court, and held in his palace, 01 what he can do by law; nor is what is wherever he was personally present. It said (in the Pandectt) any objection, that was composed of the great officers; the chief justiciary; the chancellor, the con~ The best account of the provisions of Oxford in 1260, and the circumstances connected with * L. iii., c. 9. These words are nearly copice them, is found in
Many of these provisions were later enacted in the statute of Marlborough. This means, I suppose, that he who acts with the Earl of Glocester, whose personal quarrel the consent of others, must be in some degree re with Montfort had overthrown the baronial oligarchy strained by them; but it is ill expressed. thy wrote to the king in 1267, ut provisiones Oxo-Q L. ii. c. 16. nim teneri faciat per regnum suum, et ut promissa i) M. Paris, p. 701. sibi apud Evesham de facto cenereret.-Matt. ~1 The chief justiciary was the greatest subject of Paris, p. 850. t l. i., c, 8. in England. BesiJes presiding in the king's coum the same persons, yet be- king's authority, nor, what perhaps was rne court ing held in a different part of the more immediately regarded, to his reveDflex.he- palace, and for different business, nne; since a fine was always paid for uvjery. was distinguished from the king's leave to plead in his court, or to remove court by the name of the exchequer; a thither a cause commenced below. But separation which became complete when because few, comparatively speaking, civil pleas were decided and judgments could have recourse to so distant a tribunal recorded in this second court.* nal as that of the king's court, and perl it is probable, that in the age next after haps also on account of the attachment the conquest, few causes in which the which the English felt to their ancient crown had no interest were carried be- right of trial by the neighbouring free royal tribunals; every man finding holders, Henry II. established Institution a readier course of justice in the manor or itinerant justices, to decide civil of justices county to which he belonged.t But, by and criminal pleas within each of assize. degrees, this supreme jurisdiction be- county.* This excellent institution is came more familiar; and as it seemed referred by some to the twenty-second less liable to partiality or intimidation year of that prince; but Madox traces it several years higher.' We have owed and in the exchequer, he was originally, by virtue to it the uniformity of our common law, of his office, the regent of the kingdom during the which would otherwise have been split, absence of the sovereign; which, till the loss of like that of France, into a multitude of Normandy, occurred very frequently. Writs, at local customs; and we still owe to it the such times, ran in his name, and were teste'd by assurance, which is felt by the poorest him.-Madox, Hist. of Excheq., p. 16. His appointment upon these temporary occasions was express. and most remote inhabitant of England, ed, ad custodiendum loco nostro terram nostram that his right is weighed by the same ininglire et pacem regni nostri; and all persons corrupt and acute understanding, upon were enjoined to obey him tanquam justitiariinos- the decision of the highest questro.-Rymer, t. i., p. 181. Sometimes, however, the king issued his own writ de ultra mare. The tions is. reposed. The justices of assize first time when the dignity of this office was im- seem originally to have gone their cirepaired was at the death of John, when the justicia- suits annually; and as part of their duty ry, Hubert de Burgh, being besieged in Dover cas- was to set tallages upon royal towns, and tie, those who proclaimed Henry III. at Glocester, superintend the collection of the revenue, constituted the Earl of Pembroke governor of the king and kingdom, Hubert still retaining his of- we may be certain that there could be no fice. This is erroneously stated by Matthew Par- long interval. This annual visitation is, who has misled
Spelman in his Glossary; but was expressly confirmed by the twelfth the truth appears from
Hubert's answer to the ar- section of Magna Charta, which provides tieldes of charge against
him, and from a record in Madox's Hist. of Excheq., c. 21, note A, wherein also that no assize
of novel disseisin, or the Earl of Pembroke is named rector regis et reg- mort d'ancestor, should
be taken except ni, and Hubert de Burgh justiciary. In 1241, the in the shire where the lands in
controArchbishop of York wasappointed to the regency lay. Hence this clause stood op during
Henry's absence in Poitou, without the title of justiciary.-Rymer, t. i., p. 410. Still the office
posed on the one hand to the encroach was so considerable, that the baronn who met in the
ments of the king's court, which might Oxford parliament of 1258 inste jed that the justi-
otherwise, by drawing pleas of land to itciary should be annually chosen with their appro- self,
have defeated the suiter's right to a bation. But the subsequent successes of Henry jury from the
vicinage; and on the other, prevented this being established; and Edward 1. discontinued the
office altogeteher. feudal aristocracy, who * For every thing that can be known about the hated
any interference of the crown to.uria Reg's, and especially this branch of it, he chastise their
violations of law or control student of our constitutional history should have their own
jurisdiction. Accordingly, recourse to Madox's History of the Exchequer, while the
confederacy of barons against and to the Dialogus de Scaccario, written in the time of Henry If.
by Richard, bishop of Ely, though commonly ascribed to Gervase of Tilbury. * Dialogus de
Scaccario, p. 38. This treatise he will find subjoined. to Madox's f Hist. of Exchequer, c. iii.
Lord Lyttleton work. thinks that this institution may have been adopted f Ormtis causa
terminetu comitatu, vel hundre- in imitation of Louis VI., who half a century before do, vel
halimoto socam habentium.-Leges Henr. had introduced a similar regulation in his domin 1. c 9.
ions.-Hist. of Henry 111., vcl. iii., p. 206.
by means mon Law. to withdraw from it after this of ordeal was not disused in his timet
separation into Three courts of justice, yet trial by combat, of which we find no and left their
places to regular lawyers; instance before the conquest, was evithough the treasurer and
chancellor of dently preferred. Under the Saxon govt he exchequer have still seats on the
ermment, suits appear to have commen. equity side of that court, a vestige of its ced, even
before the king, by verbal or ancient constitution. It would indeed written complaint; at least,
no trace rehave been difficult for men bred in camps mains of the original writ, the foundation
or palaces to fulfil the ordinary functions of our civil procedure.S The descent of of judicature,
under such a system of lands before the conquest was according law as had grown up in
England. The to the custom of gavelkind, or equal parrules of legal decision among a rude peo-
tition among the children;~ in the age of ple are always very simple; not serving Henry I. the
eldest son took the principal much to guide, far less to control, the fief to his own share;Il in
that of Glanvil feelings of natural equity. Such were he inherited all the lands held by knight
those which prevailed among the Anglo- service; but the descent of soccage lands Saxons;
requiring no subtler intellect or depended on the particular custom of the deeper learning than
the earl or sheriff estate. By the Saxon laws, upon the at the head of his county-court might be
death of the son without issue, the father expected to possess. But a great change inherited;~ by
our common law, he is absolutely, and in every case, excluded. * Justiciarii regis Anglim, qui
dicuntur itineris, Lands were, in general, devisable by tesmissi Herfordiam, pro suo exequendo
officio repel- tament before the conquest; but not in ilntur, allegantibus his qui regi
adversabantur, ip- .js contrh formam provisionum Oxoniaw nuper fac- * C. 70. garum venisse.-
where I found this quotation. tng failed in the ordeal of cold water, was hanged t Hist. of
Exchequer, c. 19. Justices of the by order of Henry II., though he offered 500 marka bench are
mentioned several years before Magna to save his life.-Hoveden, p. 566. It appears as Charta.
But Madox thinks the chief justiciary of if the ordeal were permitted to persons already
consEngland might preside in the two courts, as well victed by the verdict of a jury. If they
escaped in as in the exchequer. After the erection of the this purgation, yet, in cases of murder,
they were Common Bench, the style of the superior court banished the realm. —Wilkins,
Leges Anglo-Sax Legan to alter. It ceased by degrees to be called on., p. 330. Ordeals were
abolished about the re the king's court. Pleas were said to be held coram ginning of Henry
III,'s reign. rege, or coram rege ubicunque fuerit. And thus: Hickes, Dissert. Epistol., p. 8. the
court of king's bench was formed out of the re- Leges Gulielmi, p. 225. mains of the ancient
curia regis. II Leges Henr. m., p. 7,
the future, have been constantly noted, characteristics as well as unfolds the prin- and form
indeed almost the sole ground ciples of English law. It is difficult to of argument in questions
of mere law. assert any thing decisively as to the pe- But these authorities being frequently ri-
between the conquest and the reign unreasonable and inconsistent, partly of Henry II., which
presents fewer mate- from the infirmity of all human reason, rials for legal history than the
preceding partly from the imperfect manner in age; but the treatise denominated the which a
number of unwarranted and Laws of Henry I., compiled at the soonest incorrect reporters have
handed them about the end of Stephen's reign,* bears down, later judges grew anxious to elude
so much of a Saxon character, that I by impalpable distinctions what they did should be
inclined to ascribe our present not venture to overturn. In some incommon law to a date, so far
as it is ca- stances, this evasive skill has been appable of any date, not much antecedent to plied
to acts of the legislature. Those the publication of Glanvil.t At the same who are moderately
conversant with the time, since no kind of eviaence attests history of our law will egsily trace
other nay sudden and radical change in the ju- circumstances that have co-operated in
risprudence of England, the question must producing that technical and subtle sys. be
considered as left in great obscurity. tem which regulates the course of real Perhaps it might be
reasonable to con- property. For as that formed almost the jecture that the treatise called Leges
whole of our ancient jurisprudence, it is;lenrici Primi contains the ancient usa- there that we
must seek its original char..ges still prevailing in the inferior juris- acter. But much of the same
spirit per. dctions, and that of Glanvil the rules vades every part of the law. No triestablished
by the Norman lawyers of the bunal of a civilized people ever borrowed king's court, which
would of course ac- so little, even of illustration, from the quire a general recognition and
efficacy, writings of philosophers, or from the inin consequence of the institution of jus-
titutions of other countries. Hence law tices holding their assizes periodically has been
studied, in general, rather as an throughout the country. art than a science, with more solicitude
The capacity of deciding legal contro- to know its rules and distinctions, than Character versies
was now only to be to perceive their application to that for and defects found in men who had
do- which all rules of law ought to have been of the Eng- ted themselves to that peculiar
established, the maintenance of public ish law. study; and a race of such men and private
rights. Nor is there any arose, whose eagerness and even enthu- reading more jejune and
unprofitable to a siasm in the profession of the law were philosophical mind than that of our
anstimulated by the self-complacencyof in- cient law-books. Later times have intellectual
dexterity in thridding its intri- produced other inconveniences, till the cate and thorny mazes.
The Normans vast extent and multiplicity of our laws are noted in their own country for a have
become a practical evil of serious shrewd and litigious temper, which may importance,, and an
evil which, between have given a character to our courts of the timidity of the legislature on the
one hand, and the selfish views of practition * The decretum of Gratian is quoted in this trea.
ers on the other, is likely to reach, in no tise, which was not published in Italy till 1151. long
period, an intolerable excess. Det Madox, Hist. of Exch.; p. 122, edit. 1711. terred by an
interested clamour against Lord Lyttleton, vol. ii., p. 267, has given reasons for supposing that
Glanvil was not the author of innovation from abrogating what is usethis treatise, but soene
c!eTk under hia dire tion. less, simplifying what is complex or do

Page 349 PART II. ENGLISH CUNSTITION dd termmining what is doubtful, and always
distinguishing and argumentative, subt more inclined to stave off an immediate lety as every
other part of 11t V-What. difficulty by some patchwork scheme of ever things, therefore, it was
asserted, modifications and suspensions, than to that the king might do, it was a necesconsult
for posterity in the comprehen- sary implication that there were other sive spirit of legal
philosophy, we accu- things which he could not do; else it mulate statute upon statute, and prece- were vain to specify the former. It is dent upon precedent, till no industry can not meant to press this too far; since un. acquire, nor any intellect digest the mass doubtedly the bias of la wyers towards of learning that grows upon the panting the prerogative was sometimes too disstudent; and our jurisprudence seems cernible. But the sweeping maxims of not unlikely to be simplified in the worst absolute power, which servile judges and and least honourable manner, a tacit churchmen taught the Tudor and Stuart agreement of ignorance among its pro-princes, seem to have made no progress fessors. Much indeed has already gone under the Plantagenet line. into desuetude within the last centu- Whatever may be thought of the efr, and is known only as an occult fect which the study of the law Hereditary science by a small number of adepts had upon the rights of the sub- right of the VWe are thus gradually approaching the ject, it conduced materially to crown escrisis of a necessary reformation, when the security of good order by tablished. our laws, like those of Rome, must be ascertaining the hereditary succession of cast into the crucible. It would be a dis- the crown. Five kings out of seven that grace to the nineteenth century, if Eng- followed William the Conqueror were land could not find her Tribonian.* usurpers, according at least to modern This establishment of a legal system, notions. Of these, Stephen alone enwhich must be considered as complete at countered any serious opposition upon the end of Henry III.'s reign, when the that ground; and with respect to him, it unwritten usages of the common law, as must be remembered, that all the barons well as the forms and pre.cedents of the himself included, had solemnly sworn ts courts, were digested into the great work maintain the succession of Matilda Hlenl of Bracton, might, in some respects, con- ry II. procured a parliamentary settlks duce to the security of put lic freedom. ment of the crown upon his eldest and For, however highly the prerogative second sons; a strong presumption tha; might be strained, it was incorporated their hereditary right was not absolute3 with the law, and treated with the same secure.* A mixed notion of right and choice in fact prevailed as to the suc. * Whitelocke, just after the restoration, com- cession of every European monarchy plans that "Now the volume of our statutes is The coronation oath and the form of grown or swelled to a great bigness." The vol- popular consent then requited were con ume! What would he have said to the monstrous sidered as more material, at least to per birth of a volume triennially, filled with laws pro- fect a title, than we deem thm at present fessing to be the deliberate work of the legislature, fect a title, than we deem them at present which every subject is supposed to read, remem- They gave seisin, as it were, of th9.er, and understand! The excellent sense of the crown, and, in cases of disputed preten'/llowing sentences from the same passage may sions, had a sort of judicial efficacy, well excuse me from quoting them, and, perhaps, TheChronicle of Dunstaple says, con in this age of bigoted averseness to innovation, I have need of some apology for what I have ven- cerning Richard I., that he was "ele tured to say in the text. "I remember the opin- vated to the throne by hereditary right ion of a wise and learned statesman and lawyer after a solemn election by the clergy and (the Chancellor Oxenstiern) that multiplicity of people'4 words that indicate the current written laws do but distract the judges, and render the law less certain; that where the law sets due and clear bounds between the prerogative royal ed, however, that Richard took upon him and the rights of the people, and gives remedy in the exercise of royal prerogatives, withprivate causes, there needs no more laws to be in- out waiting for his coronation.4 The creased, for thereby litigation will be increased like-s c. wise. It were a work worthy of a parliament, and succession of John has certainly passed cannot be done otherwise, to cause a review of al in modern times for a usurpation. I do our statutes, to repeal such as they shall judge not find that it was considered as such inconvenient to remain in force; to confirm those by his own contemporaries on this s fond which they shall think fit to stand, and those sev- of the channel. The question of inheroral statutes which are confused, some repugnatt itance between an uncle
and the son of others, many touching the same matters, to be reduced into certainty, all of one subject into one statute, that perspicuity and clearness may appear * Lyttleton, vol. ii., p. 14. in our written laws, which at this day few students t Iden., p. 42. Haereditario jure promovendus is or sages can find in them."- Whitelocke's Com- regnum, post cleri et populi solennem electicnem mortery on Parliamentary Writ, vol. i., p. 409.1 Gut Neuhrigensis.. iv., c. 1.

Page 350 EUROPE DURING THE MIDDLE AGES.'CrAP VIII his deceased elder brother was yet unset- At length, about the middle of the thl tled, as we learn from Glanvil, even in teenth century, the lawyers applied t4 private succession.* In the case of sov- the crown the same strict principles of ereignties, which were sometimes con- descent which regulate a private inherit. tended to require different rules from or- ance. Edward I. was proclaimed immedinary patrimonies, it was, and continued diately upon his father's death, though long to be, the most uncertain point in absent in Sicily. Something, however, public law. John's pretensions to the of the old principle may be traced in this crown might therefore be such as the proclamation, issued in his name by the English were justified in admitting, espe- guardians of the realm, where he asserts cially as his reversionary title seems to the crown of England " to have devolhve been acknowledged in the reign of ed upon him by hereditary succession his brother Richard.t If indeed we may and the will of his nobles."* These last place reliance on Matthew Paris, Arch- words were omitted in the proclamabishop Hubert, on this occasion, declared tion of Edward II.;t since whose time in the most explicit terms that the crown the crown has been absolutely hereditary was elective, giving even to the blood The coronation oath, and the recognition royal no other preference than their merit of the people at that solemnity, are formight challenge.j Carte rejects this as malities which convey no right either to a fiction of the historian; and it is cer- the sovereign or the people, though they tainly a strain far beyond the constitu- may testify the duties of each. tion, which, both before and after the I cannot conclude the present chap.conquest, had invariably limited the ter without observing one most English throne to one royal stock, though not prominent and characteristic gentry des strictly to its nearest branch. In a char- distinction between the consti- clusie priv ter of the first year of his reign, John tuition of England and that of illeges. calls himself king "by hereditary right, every other country in Europe; I mean and through the consent and favour of its refusal of civil privileges to the lower the church and people."~ nobility, or those whom we denominate It is deserving of remark, that during the gentry. In France, in Spain, in Gerthe rebellions against this prince and his many, wherever, in short, we look, the son Henry III., not a syllable was breathed appellations of nobleman and gentleman in favour of Eleanor, Arthur's sister, who, have been strictly synonymous. Those if the present rules of succession had entitled to bear them by descent, by tenbeen established, was the undoubted heir- ure of land, by office or royal creation, ess of his right. The barons chose rather have formed a class distinguished by to call in the aid of Louis, with scarcely privileges inherent in their blood from a shade of title, though with much bet- ordinary freemen. Marriage with noble ter means ofbmainaining himself. One should think that men whose fathers had sent of his barons, nobles, and cities (that is, of been in the field for Matilda could make no parliament; nobles here meaning knights, if the difficulty about female succession. But I word nas any distinct sense) for such issue to in doubt whether, notwithstanding that pre- herit the kingdom; and if he die leaving a daugh tder only, Edward or his heir shall make such pro cedent, the crown of England was uni- vision for her as belongs to the daughter of a king. versally acknowledged to be capable of de- -Rymer, t. v., p. 114. It may be inferred from scendiag to a female heir. Great averse- this instrument, that in Edward's intention, if not ness had been shown by the
nobility of by the constitution, the Salique-law was to regulate Heny. to his proposal of settling the he succession of the English crown. This law, Henry I. to his proposal of settling the it must be remembered, he was compelled to altmit kingdom on his daughter. I And from a in his claim on the kingdom of France, thoough remarkable passage which I shall produce with a certain modification, which gave a pretext in a note, it appears that even in the reign of title to himself. of Edward III. the succession was sup- * Ad nos regni gubernaculum successione hae rpditaria, ac procerum regni voluntate, et fidelitate posed to be confined to the male line.~ nobis proestita sit devolutum. —Brady (History of England, vol. ii., Appendix, p. 1) expounds proce. * Glanvil, 1. vii., c. 3. t Hoveden, p. 702. rum voluntate to mean willingness, not will; as I Hoveden, p. 165. much as to say, they acted readily and without 9 Jure haereditario, et meliante tam clen et pop- command. But in all probability it was intended:all consensu et favore. —Gurdon on Parliaments, to save the usual form of consent. ). 139. v Rymer, t. iii., p. 1. Walsingham, however, 11 Lyttleton, vol. i., p. 162. asserts that Edward II. ascended the throne non 9 This is intimated by the treaty made in 1339, tam jure hareditario quAm unanimi assensu procefor a marriage between the eldest son of Edward rum et magnatum, p. 95. Perhapswe should omit II. and the Duke of Brabant's daughter. Edward the word non, and he might intend to say, that the thereirm promises, that if his son should die before king had not only his hereditary title, but the free um. leaving male issue he will p~ slcre the con- consent of his barons.

Page 351' ART tl. ENULISH CONSTITUTION. 351 families, or the purchase of military fiefs, as we well know, are commoners, and or the participation of many civil offices, totally destitute of any legal right beyond were more or less interdicted to the a barren precedence. commons of France and the empire. Of There is no part, perhaps, of our corthese restrictions, nothing, or next to stitution so admirable as this equality of nothing, was ever known in England. civil rights; this isonomia, which the phiThle law has never taken notice of gen- losophers of ancient Greece only hoped tlemen.* From the reign of Henry III. to find in democratical governments' at least, the legal equality of all ranks From the beginning our law has been no below the peerage was, to every essen- respecter of persons. It screens not the tial purpose, as complete as at present. gentleman of ancient lineage from the Compare two writers nearly contempo- judgment of an ordinary jury, nor frorr rary, Bracton with Beaumanoir, and mark ignominious punishment. It confers not how the customs of England are distin- it never did confer, those unjust immuni guishable in this respect. The French- ties from public burdens which the superman ranges the people under three divis- rior orders arrogated to themselves upon ions, the noble, the free, and the servile; the continent. Thus, while the privileges our countryman has no generic class of our peers, as hereditary legislators of but freedom and villanage.t No restraint a free people, are incomparably more valseems ever to have lain upon marriage; uable and dignified in their nature, they nor have the children even of a peer are far less invidious in their exercise been ever deemed to lose any privilege than those of any other nobility in Euby his union with a commoner. The rope. It is, I am firmly persuaded, to purchase of lands held by knight-service this peculiarly democratical character of was always open to all freemen. A. few the English monarchy that we are inprivileges indeed were confined to those debtor for its long permanence, its reguwho had received knighthood.4 But, lar improvement, and its present vigour. upon the whole, there was a virtual It is a singular, a providential circum equality of rights among all the com- stance, that in an age when the gradual moners of England. What is most par- march of civilization and commerce wa;.; particular is, that the peerage itself imparts so little foreseen, our ancestors, devil. no privilege except to its actual possessor. ting from the usages of neighbouring In every other country, the descendants countries, should,
as if deliberately, have of nobles cannot but themselves be noble, guarded against that expansive force because their nobility is the immediate which, in bursting through obstacles imconsequence of their birth. But though providently opposed, has scattered havoc we commonly say that the blood of a over Europe. peer is ennobled, yet this expression This tendency to civil equality in the seems hardly accurate, and fitter for English law may, I think, be Causes of heralds than lawyers; since in truth ascribed to several concurrent the equality nothing confers nobility but the actual causes. In the first place, the men in Eng descent of a peerage. The sons of peers, feudal institutions were far less land. military in England than upon the contiIt is hardly worth while, even for the sake of nent. From tEl time of enry., the obviating cavils, to notice as an exception the statute of 23 H. VI., c. 14, prohibiting the election of escuage, or pecuniary commutation for any who were not born gentlemen for knights of personal service, became almost univerthe shire. Much less should I have thought of sal. The armies of our kings were commotting, if it had not been suggested as an objec- of hired troops great part of whom. ion, the provision of the statute of Merton, that re s guardians in chivalry shall not marry their wards certainly were knights and gentlemen, ~o villeins or burgesses, to their disparagement. but who, serving for pay, and not by virWherever the distinctions of rank and property tue of their birth or tenure, preserved are felt in the customs of society, such marriages nothing of the feudal character. It was will be deemed unequal; and it was to obviate the not, however, so much for the ends of na tyranny of feudal superiors, who compelled their wards to accept a mean alliance, or to forfeit its tional as of private warfare, that the re price, that this provision of the statute was made. lation of lord and vassal was contrived. But this does not affect the proposition I had main- The right which every baron in France tained as to the legal equality of commoners, any possessed of redressing his own wrongs more than a report of a master in chancery at the present day, that a proposed marriage for a ward of the court was unequal to what her station in II7X0os aerov, Tprow psv bvoya Ka,sXXov Ettl society appeared to claim, would invalidate the waooptav, says the advocate of democracy ill t same proposition. discussion of forms of government which Herodo t Beaumanoir, c. 45. Bracton, 1. i., c. 6. tus (Thalia, c. 80) has put into the mouths of t See for these, Selden's Titles of Honour, vol. three Persian satraps, after the murder of Sinerdis; iii.. p. 806. a scene conceived in the spirit (if (Corneille
derived from the superior and imore forbaronial wars of Henry III., speaks of the tunate Anglo-
Saxon ceorls, they were disseisins that had taken place during the perfectly exempt from all
marks of vil-ate disturbances; and thirty-five ver- lanage both as to their persons and esdicts
are said to have been given at one tates. Some have derived their name court of assize against
Foulkes de from the Saxon soc, which signifies a Breaut6, a notorious partisan, who com-
franchise, especially one of jurisdiction. manded some foreign mercenaries at the And
whatever may come of this etymolbeginning of the same reign:~ but these ogy, which is not
perhaps so well estabare faint resemblances of that wide- lished as that from the French word
soc spreading devastation which the nobles a ploughshare,* they undoubtedly were cif France
and Germany were entitled to suiters to the court-baron of the lord, to Mcarry among their
neighbours. The most whose soc, or right of justice, they be:-;prominent instance, perhaps, of
what may longed. They were consequently Judges be deemed a private war, arose out of a in
civil causes, determined before the contention between the earls of Gloces- manorial tribunal.
Such privileges set sr and.Hereford, in the reign of Edward * It is not easy to decide between
these two 1., during which acts of esstraordinary derivations of the words soccage and
socman.';olence were perpetrated; but, far from On the one hand, the frequent recurrence in Its
having passed for lawful, these pow- Domesday Book of the expression, soccanni de,eful
nobles were both committed to pris- soca Algari, &c., seems to lead us to infer that on, and
paid heavy fines. 1 Thus the these words, so near in sound, were related to each other. Sommer
(on Gavelkind, p. 13) is tenure of knight-service was not in effect clearly for this derivation.
But Bracton, 1. ii., c. m'och more peculiarly connected with the 35, derives soccage from the
French soc, and this etymology is curiously illustrated by a passage in Blomefield's Hist. of
Norfolk, vol. iii., p. 538 * I have modified this passage, in consequence (folio). In the manor of
Cawston, a mace with a )f the just animadversion of a periodical critic. In brazen hand holding
a ploughshare was carried;he former edition I had stated too strongly the dif- before the
steward, as a sign that it was held by ference which I still believe to have existed be- soccage of
the dutchy of Lancaster. Perhaps, tween the customs of England and other feudal however, this
custom may be thought not sufficientcountries, in respect of private warfare. ciently ancient to
confirm Bracton's derivation. t The penalties imposed on breaches of the t Territorial
jurisdiction, the commencement r3ace in Wilkins's Anglo-Saxon laws are too nu- of which we
have seen before the conquest, was merous to be particularly inserted. One remarka- never so
extensive as in governments of a more ble passage in Domesday appears, by mentioning a
aristocratical character, either in criminal or civil legal custom of private feud in an individual
man- cases. 1. In the laws ascribed to Henry I., it in or, and there only among Welshmen, to
afford an in- said that all great offences could only be tried in ference thatitwas anomalay. In
the royal manor the king's court, or by his commission, c. 10. of Archenfeld in Herefordshire, if
one Welshman Glanvil distinguishes the criminal pleas, which kills another, it was a custom
for the relations of could only be determined before the king's judges, the slain to assemble and
plunder the murderer and from those which belong to the sheriff Treason, his kindred, and burn
their nouses until the corpse murder, robbery, and rape were of the forme7 should be interred,
which was tc take place by class; theft of the latter, 1. xlv. The criminal jr noon on the morrow
of his death. Of this plunder risdiction of the sheriff is entirely taken away by the king had a
third part, and the 1 ist they kept for Magna Charta, c. 17. Sir E. Coke says, the ter themselves,
"had some continuance afterward, but either by 11 Rot Parl., vol. i., p. 70. this act, or po-'esz
atudinem, for inconvenierree
ENGLISH CONSTITUTION. hemn greatly above the roturiers, or cen- place in the Constitution of parliameont slers of France. They A, re all Eng- consummated the degradation, if we ishmen. and their tenure strictly Eng- must use the iword, of the lower nobili. dish; which seems to have given it ty: I mean, not so much their attend. credit in the eyes of our lawyers, when ance by representation instead of perthe name of Englishman was affected sonal summons, as their election by the,sen by those of Norman descent, and whole body of freeholders, and their sep. he laws of Edward the Confessor be- aration, along with citizens and bur*ame the universal demand. Certainly gesses, from the house of peers These Ilanvil, and still more Bracton, treat changes will fall under consideration ip he tenure in free socage with great re- the following chapter.pect. And we have reason to think Lhat this class of freeholders was very aumerous, even before the reign of Edward I. PAR.T III. ward I. But, Lastly, iMte change which took TrHE ENGLISH CONSTITUTIOh. Reign of Edward I.- Confirmatio Chartarum. these franchises within manors are antiquated and Constitution of Parliament-the Prelates-the gone."-2 Inst., p. 31. The statute hardly seems Temporal Peers. —Tenure by Barony —its to reach them; and they were certainly both claim-Changes.-Difficulty of the Subject.-Origin of ed and exercised as late as the reign of Edward Representation of the Commons.-Knights of 1. Blomefield mentions two instances, both in Shires - their Existence doubtfully traced 1285, where executions for felony took place by through the Reign of Henry III. - Question the sentence of a court-baron. In these cases whether the Representation was confined to Tenlord's privilege was called in question at the as- ants in capite discussed. —State of English sizes, by which means we learn the transaction; Towns at the Conquest and afterward-their it is very probable that similar executions occurred Progress.-Representatives from them summon in manors where the jurisdiction was not dispu- ed to Parliament by Earl of Leicester.-Im ted.- ( Hist. of Norfolk, vol. i., p. 313; vol. iii., p. probability of an earlier Origin.-Cases of St. Al 50.) Felonies are now cognizable in the greater ban's and Barnstaple considered.-Parliament.ts part of boroughs; though it is usual, except in the under Edward I.-Separation of Knights and most considerable places, to remit such as are not Burgessess from the Peers.-Edward III.-grad within benefit of clergy to the justices of jail de- usual progress of the Authority of Parliamien livery on their circuit. This jurisdiction, however, traced through the Reigns of Edward III. ant 5s given, or presumed to be given, by special char- his successors down to Henry VI.-Privilege aceter, and perfectly distinct from that which was Parliament-the early instances of it noticed. — feudal and territorial. Of the latter some vestiges Nature of Borough Representation.-Rights.appear to remain in particular liberties, as for ex- Election-other particulars relative to EIFle, ample the Soke of Peterborough; but most, if not tions.-House of Lords.-Baronies by Teturn all, of these local franchises have fallen, by right -by Writ.-Nature of the latter discussed.or custom, into the hands of justices of the peace. Creation of Peers by Act of Parliament and by A territorial privilege somewhat analogous to Patent.-Summons of Clergy to Parliament.criminal jurisdiction, but considerably more op- King's Ordinary Council-its Judicial and other pressive, was that of private jails. At the parlia- Power.-Character of the Plantagenet Government of Merton, 1237, the lords requested to have ment.-Prerogative-its Excesses - erroneous their own prison for trespasses upon their parks Views corrected.-Testimony of Sir John For and ponds, which the king refused.-Stat. Merton, tescue to the Freedom of the Constitution.^ 11. But several lords enjoyed this as a particu- Causes of the superior Liberty of England con.ar franchise; which is saved by the statute 5 H. sidered.-State of Society in England.-Want IV., c. 10, directing justices of the peace to im- of Police.-Villanage-its gradual extinctionrison no man, except in the common jl11. 2. latter years of Henry VI.-Regencies.-Instan[he civil jurisdiction of the court-baron was ren- ces of them enumerated.-Pretensions of the iered insignificant not only by its limitation, in House of York,
and War of the Roses.-Ed personal suits, to debts or damages not exceeding ward IV.-
Conclusion., forty shillings, but by the writs of tolt and pone, which at once removed a suit for
lands, in any THOUGH the undisputed accession of a stage of its progress before judgment,
into the prince like Edward the First Accession ( county court or that of the king. The statute of
to the throne of his father, Edward I. Marlebridge took away all appellant jurisdiction does not
seem so convenient a restin of the superior lord, for false judgment in the manorial court of his
tenant, and thus aimed an-place in history as one of those revolu. other blow at the feudal
connexion. —52 H. III.,c. tions which interrupt the natural chain 19. 3. The lords of
the counties palatine of Ches- of events, yet the changes wrought duter and Durham, and the royal
franchise of Ely, ring his reign make it properly an epoch had not only a capital jurisdiction il,
criminal cases, but an exclusive cognizance of civil suits; in the progress of these inquiries.
And, he former still is retained by the bishops of Dur- indeed, as ours is emphatically styled a
ham and Ely, though much shorn of its ancient government by king, lords, and comextent by
an act of Henry VIII. (27 H. VIII., c. mons, we cannot perhaps in strictness 24), and
administered by the king's justices of as, mons, w c a not perha in strictsion size; the
bishops or their deputies being put only her back than the admission bn the totting of ordinary
justices of the peace -. of the latter into parliament; so that, if d., s. 20. the constant
representation of't-e corn

Page  354 354 tUROPE iDURING THE MIDDLE AGES. [CHAP. Vi-1 mons is to be referred
to the age of Ed- Confirmation of the Charters, because Il ward the First, it will be nearer the
truth added another pillar t-.Jur constitution to date the English constitution from that not less
important tha.n the Great Char than from any earlier era. ter itself.* The various statutes
affecting the law It was enacted by the 25 E. L., that the of property and administration of
justice charter of liberties, and that of the for which have caused Edward I. to be est, besides
being explicitly confirmed,J nained, rather hyperbolically, the Eng- should be sent to all
sheriffs, justices in lish Justinian, bear no immediate relation eyre, and other magistrates
throughol: to our present inquiries. In a constitu- the realm, in order to their publication tional
point of view, the principal object before the people; that copies of them Confirma- is that
statute entitled the Con- should be kept in cathedral churches, and iown of the firmation of the
Charters, which publicily read twice in the year, accom3harters. was very reluctantly conceded
panied by a solemn sentence of excomby the king in the twenty-fifth year munication against
all who should inof his reign. I do not know that Eng- fringe them; that any judgment given
land has ever produced any patriots to contrary to these charters should be in whose memory
she owes more gratitude valid, and holden for naught. This authan Humphrey Bohun, earl of
Here- thentic promulgation, these awful sanford and Essex, and Roger Bigod, earl tions of the
Great Charter, would alone of Norfolk. In the Great Charter the render the statute of which we
are speak. base spirit and deserted condition of ing illustrious. But it went a great deal John
take off something from the glory of farther. Hitherto the king's prerogative the triumph,
though they enhance the of levying money, by name of tallage ot moderation of those who
pressed no far- prise, from his towns and tenants in de ther upon an abject tyrant. But to mesne,
had passed unquestioned. Some withstand the measures of Edward, a impositions, that
especially on the exprince unequalled by any who had reign- port of wool, affected all his
subjects., ed in England since the Conqueror for It was now the moment to enfranchise
prudence, valoui aid success, required the people, and give that security to pria far more
intrepid patriotism. Their vate property which Magna Charta had provocations, if less
outrageous than given to personal liberty. By the 5th, those received from John, were such as
and 6th sections of this statute, " the aids, evidently manifested a disposition in Ed- tasks, and
prises" before taken are reward to reign without any control; a nounced as precedents; and the king constant refusal to confirm the charters, " grants for him and his heirs, as well to which in that age were hardly deemed to archbishops, bishops, abbots, priors, and bind the king without his actual consent; other folk of holy church, as also to earls. heavy impositions, especially one on the barons, and to all commonalty the export of wool, and other unwarrantable land, that for no business from hence ble demands. He had acted with such forth we shall take such manner of aids unmeasured violence towards the clergy, tasks, nor prises, but by the common ason account of their refusal of further sent of the realm, and for the common subsidies, that, although the ill-judged profit thereof, saving the ancient aids and policy of that class kept their interests prises due and accustomed." The toll too distant from those of the people, it upon wool, so far as levied by the king's was natural for all to be alarmed at the mere prerogative, is expressly released precedent of despotism.* These en- by the seventh section.t croachments made resistance justifiable, and the circumstances of Edward made a Walsingham, in Camden's Scriptores Re-. it prudent. His ambition, luckily for the Anglicarum, p. 71-73. people, had involved him in foreign war- t Edward would not confirm the chartels, notwithstanding his promise, without the words rlfare, from which he could not recede vo jure coronie nostra; on which the two earl1 without disappointment and dishonour. retired from court. When the confirmation wsee Thus was wrested from him that famous read to the people at St. Paul's, says Hemingford. statute, inadequately denominated the they blessed the king on seeing the charters with the great seal affixed: but when they heard the * The fullest account we possess of these do- captious conclusion, they cursed him instead. At mestic transactions from 1294 to 1298 is in Walter the next meeting of parliament, the king agreeec, to Hemingford, one of the historians edited by omit these insidious words, p. 168. Hearne, p. 52-168. They have been vilely per- t The supposed statute, De Tallagio non concsverted by Carte, but extremely well told by Hume, dendo, is considered by Blackstone (Introduction the first writer who had the merit of exposing the to Charters, p. 67) as merely an abstract of the character df Edward I. See too Knyghton,.n Confirmatio Chartarum. By that entitled Articul' Twysden's Decem Scriptores, col. 2492. sup;r Chartas, 28 Edw. I., a court was erecte, is
whether bishops are entitled, on charges of treason crown. It has been frequently maintain-
or felony, to a trial by the peers. If this question ed, that these spiritual lords sat in par-
considered either theoretically or according to liament only by virtue of their baronial ancient
authority, I think the affirmative proposenure. And certainly they did all hold tion is beyond
more baronies, were sufficient to give nity. Since the conquest, they have held their tem such a
share in the legislature. oralities of the crown by a baronial ten.re, which, Nevertheless, I think
that this is rather if there be any consistency in law, must unequivocally distinguish them from
commoners; since any of holding by barony might be challenged the English hierarchy, and, indeed, by on a jury, as not being the peer of the party
whom implication, of the peerage. For a great he was to try. It is true that they take no share
of advice and assent in matters in the judicial power of the house of lords in cases of
legislation or national importance was of treason or felony; but this is merely in
conformssential to all the northern governments. Ity to those ecclesiastical canons which
prohibited essential to all the northern governments. the clergy from partaking in capital
judgment, and And all of them, except perhaps the Loom- they have always withdrawn from
the house on bards, invited the superior ecclesiastics such occasions under a protestation of
their right to their councils; not upon any feudal to remain. Had it not been for this particula
t, notions, which at that time had hardly arising wholly out of their own discipline, the question
of their peerage could never have come begun to prevail, but chiefly as represent- into dispute.
As for the common argument, that atives of the church and of religion itself; they are not tried
as peers because they have no next, as more learned and enlightened inheritable nobility, I
consider it as very frivolous; counsellors than the lay nobility; and in since it takes for granted
the precise matter in controversy, that an inheritable nobility is neces some degree, no doubt, as
rich propriety to the definition of peerage, or to its incident tors of land. It will be
remembered al privileges. also that ecclesiastical and temporal af- If we come to constitutional
precedents, by fairs were originally.decided in the same which, when sufficiently numerous
and unexcep-a-ssembies, both upon the continent and tionable, all questions of this kind are
ultimately to be determined, the weight of ancient authority in England. The Norman conquest,
seems to be in favour of the prelates. In the fifteenth century of Edward III. (1340), the king brought ity, and substituted a new race in their several
charges against Archbishop Stratford. He stead, could not affect the immortality came to
parliament with a declared intention of defending himself before his peers.. The king in. f
church possessions. The bishops of sisted upon his answering in the court of excieWWilliaarm's
age were entitled to sit in his quer. Stratford, however, persevered; and the councils by the
general custom of Eu- house of lords, by the king's consent, appointed rope, and by the
common law of ETgland,* twelve of their number, bishops, earls, and barons, to report
whether peers ought to answer criminal charges in parliament and not elsewhere This every
county, of three knights or others, to be committee reported to the king in full parliament.
elected by the commons of the shire, whose sole that the peers of the land ought not to be
arraignprovince was to determine offences against the two ed nor put on trial, except in
parliament and by charters, with power of punishing by fine and im- their peers. The
archbishop upon this prayed the pisonment; but not to extend to any case where- king, that
inasmuch as he had been notoriously de w the remedy by writ was already provided. famed, he
might be arraigned in full parliamzen * IS )dy (Treatise on Convocations, p. 26) states before
the peers and there make answer; whjt Z 2
EUROPE DURING MIDDLE AGES. [ULC; P. II Nex, to Lhese spiritual lords are the the county-courts, all might, perhaps: earls and barons, or lay peerage of England; command the militia of his county when land. The former dignity was perhaps it was called forth.* Every earl was also not so merely official as in the Saxon a baron, and held an honour or barony of times, although the earl was entitled to the crown, for which he paid a higher re. the third penny of all emoluments ari- lief than an ordinary baron, probably on sing from the administration of justice in account of the profits of his estate. I request the king granted.-Rot. Parl., vol. ii., p. lingfleet's treatise on the judicial power of the bish 127. Collier's Eccles. Hist., vol. i., p. 543. The ops in capital cases; a right which though now; I proceedings against Stratford went no farther, but think, abrogated by non-claim and a course of contra I think it impossible not to admit that his right to ry precedents, he proves beyond dispute to have ex trial as a peer was fully recognised both by tho isted by the common law and constitutions of Cl. king and lords. lendon, to have been occasionally exercised, and to This is however the latest, and perhaps the have been only suspended by their voluntary act Ir only instance of a prelate's obtaining so high a priv- the course of this argument he treats of the peerage ilege. In the preceding reign of Edward I., if of the bishops, and produces abundant evidenct we can rely on the account of Walsingham (p. from the records of parliament that they were sty i19), Adam Orleton, the factious bishop of Hereford, had first been arraigned before the house eral recollection, I had not leisure or disposition to of lords, and subsequently convicted by a com- search. But if any doubt should remain, the statute mon jury; but the transaction was of a singular 25 E. III., c. 6, contains a legislative declaration nature, and the king might probably be influenced of the peerage of bishops. The whole subject is by the difficulty of obtaining a conviction from the discussed with much perspicuity and force by Stil temporal peers, of whom many were disaffected to lingfleet, who seems however not to press very him, in a case where privilege of clergy was vehe- greatly the right of trial by peers, aware no doubt inently claimed. But about 1357, a bishop of Ely, of the weight of opposite precedents.-Stillingfleet being accused of harbouring one guilty of murder, fleet's Works, vol. iii., p. 820.) In one distinction, though he demanded a trial by the peers, was com- that the bishops vote in their judicial functions as pelled to abide the verdict of a jury.-Collier, p. barons, but in legislation as magnates, which War 557. In the 31st of Edward III. (1358), the abbot burton has brought forward as his own in the Alli of Missenden was hanged for coining.-2 Inst., p. ance of Church and State, Stillingfleet has per 635. The abbot of this monastery appears from haps not taken the strongest ground, nor sufficient Dugdale to have been summoned by writ, in the ly accounted for their right of sitting in judgment 19th of Henry III. If he actually held by barony, on the impeachment of a commoner. Parliament I do not perceive any strong distinction between any impeachment, upon charges of high public his case and that of a bishop. The leading prece- crimes, seems to be the exercise of a right inherent dent, however, and that upon which lawyers prin- in the great council of the nation, some traces of cipally found their denial of this privilege to the which appear even before the conquest (Chron. bishops, is the case of Fisher, who was certainly Sax., p. 164, 169); independent of and superseding tried before an ordinary jury; nor am I aware that that of trial by peers, which, if the 29th section of any remonstrance was made by himself, or com- Magna Charta be strictly construed, is only requi pla.- by his friends, upon this ground. Cramer red upon endictments at the king's suit. And this was m..ated in the same manner; and from these consideration is of great weight in the question two, being the most recent precedents, though still unsettled, whether a commoner can be trie. r,ither of them in the best. of times, the great plu- by the lords upon an impeachment for treason, aility of law-books have drawn a conclusion that The treatise of Stillingfleet was written on oc bishops are not entitled.
to trial by the temporal casion of the objection raised by the commons to peers. Nor can there be much doubt that, when- the bishops voting on the question of Lord Danby's ever the occasion shall occur, this will be the de- pardon, which he pleaded in bar of his impeach cision of the house of lords. ment. Burnet seems to suppose that their right of There are two peculiarities, as it may naturally final judgment had never Leen defended, and con appear, in the abovementioned resolutions of the founds judgment with sentence. Mr. Hargrave, lords in Stratford's case. The first is, that they strange to say, has made a much greater blunder, claim to be tried, not only before their peers, but and imagined that the question related to their in parliament. And in the case of the Bishop of right of voting on a bill of attainder, which no one, Ely, it is said to have been objected to his claim of I believe, ever disputed.-Notes on Co. Litt., trial by his peers, that parliament was not then sit- 134 b. ting (Collier, ubi sup.). It is most probable, there- - Madox, Baronia Anglica, p. 138. Dialogus de fore, that the court of the lord high steward, for the Scaccario, 1. i., c. 17. Lyttleton's Henry II., vol. special purpose of trying a peer, was of more re- ii., p. 217. The last of t-ese writers supposes, concen institution.; as appears also from Sir E. Coke's trary to Selden, that the earls continued to be gov. expressions.-4 Inst., p. 58. The second circum- errors of their counties under Henry II. Stephen stance that may strike a reader is, that the lords created a few titular earls, with grants of crown assert their privilege in all criminal cases, not dis- lands to support them; but his successor resumeW tinguishing misdemeanors from treasons and feio- the grants, and deprived them of their earldoms. nies. But in this they were undoubtedly warrant- In Rymer's Feedera, vol. i., p. 3, we find a grant 3d by the clear language of Magna Charta, which of Matilda, creating Milo of Gloucester earl of Heremakes no distinction of the kind. The practice of ford, with the moat and castle of that city in fee trying a peer for misdemeanors by a jury of com- to him and his heirs, the third penny of the remlt moners, concerning the origin of which I can say of the city, and of the pleas in the county, three nothing, is one of those anomalies which too often manors and a forest, and the service of three ten render our laws capricious and unreasonable in the ants in chief; with all their fiefs, to be held with Siyesof impartial men. all privileges and liberties as fully as ever any earl Sires writIng the above note I have read Stil I ji England had possessed them.

Page 357 PARr 111.] ENGLISH CONSTIT'rUTION. 5 will not pietend to say whether titular particular number of the king's immediate earldorns, absolutely distinct from the vassals. But it is reasonable to thril, lieutenancy of a county, were as ancient that before this charter was made, it had as the conquest, which Madox seems to been settled by the law of some other par. think, or were considered as irregular, so liament, how these greater barons should late as Henry II., according to Lord Lyt- be distinguished from the lesser tenants in tleton. In Dugdale's Baronage, I find chief; else what certainty could there be none of this description in the first Nor- in an expression so general and indefimanl reigns, for even that of Clare was nite ! And this is likely to have proeonl.Sected with the local earldom of Hert- ceeded from the pride with which the ford ancient and wealthy barons of the realm It is universally agreed, that the only would regard those newly created by Question as baronies known for two centu- grants of escheated honours, or those to the ra- ries after the conquest were in- decayed in estate, who yet were by their tune of bar- cident to the tenure of land held tenures on an equality with themselves. onies. immediately from the crown. They procured, therefore, two innovaThere are, however, material difficulties tions in their condition; first, that these in the way of rightly understanding their inferior barons should be summoned gennature, which ought not to be passed erally by the sheriff, instead of receiving over, because the consideration of baro- their particular writs, which made an nial tenures will best develop the forma- honorary distinction;
and next, that they tion of our parliamentary system. Two should pay relief, not as for an entire of our most eminent legal antiquaries, barony, one hundred marks; but at the Selden and Madox, have entertained dif- rate of five pounds for each knight's fee ferent opinions as to the characteristics which they held of the crown. This and attributes of this tenure. changed their tenure to one by mere According to the first, every tenant in knight-service, and their denomination to Theory of chief by knight-service was an tenants in chief. It was not difficult Selden; honorary or parliamentary baron afterward for the greater barons to exby reason of his tenure. All these were elude any from coming to parliament as summoned to the king's councils, and such, without particular writs directed to were peers of his court. Theirbaronies, them, for which purpose some law was or honours, as they were frequently call- probably enacted in the reign of Henry ed, consisted of a number of knight's III. If indeed we could place reliance fees, that is, of estates, from each of on a nameless author whom Camden has which the feudal service of a knight was quoted, this limitation of the peerage to due; not fixed to thirteen fees and a such as were expressly summoned dethird, as has been erroneously conceived, pended upon a statute made soon after but varying according to the extent of the the battle of Evesham. But no one has barony, and the reservation of service at ever been able to discover Camden's auth time of its creation. Were they thority, and the change was probably of more or fewer, however, their owner was a much earlier date.* equally a baron, and summoned to serve Such is the theory of Selden, which, if the king in parliament with his advice and it rested less upon conjectural of Madox, judgment, as appears by many records alterations in the law, would unand passages in history. doubtedly solve some material difficulties But about the latter end of John's reign, that occur in the opposite view of the some only of the most eminent tenants subject. According to Madox, tenure by in chief were summoned by particular knight's-service in chief was always diswrits; the rest by one general summons tinct from that by barony. It is and obaerthrough the sheriffs of their several coun- not easy, however, to point out vations up ties. This is declared in the Great Char- the characteristic differences of ot both. ter of that prince, wherein he promises the two; nor has that eminent antiquary, that whenever an aid or scutage shall be in his large work, the Baronia Anglica, required, faciemus summoneri archiepis- laid down any definition, or attempted to copos, episcopos, abbates, comites et ma- explain the real nature if a barony. The jores barones regni sigillatim per literas distinction could not cnsist in the numerostras. Et praeterea faciemus summon- ber of knight's fees; for the barony of eri in generali per vicecomites et ballivos Hwayton consisted of only three;t while nostros omnes alios qui in capite tenent de John de Baliol held thirty fees by rere nobis. Thus the barons are distinguished from other tenants in chief, as if the for- * Selden's Works, vol. iii., p. 71" -743 mner name were only applicable to a par- t Lyttleton's Henry It.. vol. ii., p 21?.
tonlin 1165, in that held at the same town refused to grant an aid to the king till in 1176, and upon other occasions.* Sev- they were issued.* eral persons appear in the Liber Niger But it would have been easy to disappScaccarii, a roll of military tenants made point this mode of packing a parliament, in the age of Henry II., who held single if an unsummoned baron could have sat knight's fees of the crown. It is, how- by mere right of his tenure. The opinever, highly probable, that in a lax sense ion of Selden, that a law of exclusion of the word, these knights may some- was enacted towards the beginning of times have been termed barons. The Henry's reign, is not liable to so much author of the Dialogus de Scaccario objection. But perhaps it is unnecessary speaks of those holding greater or lesser to frame an hypothesis of this nature. baronies, including, as appears by the Writs of summons might probably be context, all tenants in chief.t The for- older than the time of John; and when rmer of these seem to be the majores bar- this had become the customary and regones of King John's Charter. And the ualar preliminary of a baron's coming to secundae dignitatis barones, said by a con- parliament, it was a natural transition to temporary historian to have been present look upon it as an indispensable conditioni in the parliament of Northampton, were tion; in times when the prerogative in all probability no other than the was high, the law unsettled, and the knighly tenants of the crown.t For the service in parliament deemed by many world baro, originally meaning only a still more burdensome than honorable. man, was of very large significance, and Some omissions in summoning the king's is not unfrequently applied to common tenants to former parliaments may perfreeholders, as in the phrase of court- haps have produced the abovementioned baron. It was used too for the magis- provision of the Great Charter, which trates or chief men of cities, as it is still had a relation to the imposition of taxes, for the judges of the exchequer, and the wherein it was deemed essential to obrepresentatives of the Cinque-Ports. tain a more universal consent than was The passage, however, before cited required in councils held for state, or from the Great Charter of John affords even for advice.T one spot of firm footing in the course of It is not easy to determine how long our progress. Then, at least, it is evi- the inferior tenants in chief con- Whether dent that all tenants in chief were entitled tinued to sit personally in par- mere ten. to their summons; the greater barons liament. In the charters of ants in by particular writs, the rest through one Henry III., the clause which tended par directeto their sheriff. The epoch when we have been considering is liament un fall, who, though tenants in chief, had not omitted: and I think there is no elr Henry been actually summoned, were deprived express proof remaining, that of their right of attendance in parliament, the sheriff was ever directed to summon Is again involved in uncertainty and con_ the king's military tenants within his * Hody on Convocations, p. 222, 234. county in the manner which the charter * Hody on Convocations, p. 222, 234. t Lib. ii., c. 9. * M. Paris, p. 785. The barons even tell the t Hody and Lord Lyttleton maintain these king that this was contrary to his charter, ia l' barons of the second rank" to have been the sub- which neveo the ess tie clause to that effect, convassals of the crown; tenants of the great barons, tained in his father's charter, had been ormittel to whom the name was sometimes improperly ap- t Henry II., in 1175, forbade any of those who plied. This was very consistent with their opin- had been concerned in the late rebellion to come ion, that the commons were a part of parliament at to his court without a particular summons.-Carte, that time. But Hume, assuming at once the truth vol. ii., p. 249. nf their interpretation in this instance, and the $ Upon the subject of tenure by barony, beside falsehood of their system, treats it as a deviation the writers already quoted, see West's Inoairy hito from the established rule, and a proof of the unset- the Method of creating Peers, and Carte's Hiistors ed state of the constitution of England, vol. ii., p. 247.
privilege of coming in arms to the point in their case, which shows that they were among an advancing people, and fortus summoned either by particular writs or natcely the true remedy was discovered through the sheriff; and the latter is the with little difficulty, more plausible conjecture. There is in- The principle of representation, in its deed great obscurity as to the constitu- tion of parliament in this reign; and the known to any government not progress co passages which I am about to produce purely democratical. Inalmost any area may lead some to conceive that the free- every country the sense of the sentation. holders were represented even from its whole is understood to be spoken by a beginning. I rather incline to a different part, and the decisions of a part are bindopinion. ing upon the whole. Among our ances In the Magna Charta of I Henry III., tors, the lord stood in the place of his it is said: Pro hac donatione et conces- vassals, and, still more unquestionably, sione.... archiepiscopi, episcopi, com- the abbot in that of his monks. The ites, barones, milites, et libere tenentes, system indeed of ecclesiastical counet archiepiscopi, episcopi, comites, et dency to render its application to nation barones, c-. omnes alii de toto regno nos- al assemblies more familiar. tro Angliae, spontanel voluntate su& con- The first instance of actual representa cesserunt nobis efficax auxilium.t The tion which occurs in our history is only largeness of these words is, however, four years after the conquest: when Willcontrolled by a subsequent passage, iam, if we may rely on Hoveden, caused which declares the tax to be imposed ad twelve persons skilled in the customs of mandatum omnium comitum et baronum England to be chosen from each county et omnium aliorum qui de nobis tenant in who were sworn to inform him rightly capite. And it seems to have been agen- of their laws; and these, so ascertained, eral practice to assume the common were ratified by the consent of the great consent of all ranks to that which had council. This Sir Matthew Hale asserts actually been agreed by the higher. In to be "as sufficient and effectual a para similar writ, 21 Henry III., the ranks liament as ever was held in England."* of men are enumerated specifically; ar- But there is no appearance that these chiepiscopi, episcopi, abbates, priores, et twelve deputies of each county were inclerici terras habentes quwe ad ecclesias vested with any higher authority than suas non pertinent, comites, barones, mi- that of declaring their ancient usages. lites, et liberi holnines, pro se et suis vii- No stress can be laid, at least, on this inlanis, nobis conesserunt in auxilium tri- sulated and anomalous assembly, the excesimam partem omnium mobilium.1 istence of which is only learned from an historian of a century later. have a writ directed to the archbish- We find nothing that can arrest our ops, bishops, abbots, priors, earls, barons, attention, in searching out the origin of knights, and freeholders (liberi homines) county representation, till we come to a of Ireland, in which an aid is desired of writ in the fifteenth year of John, directhem; and it is urged. that one had been ed to all the sheriffs in the following granted by his fideles Angli e.~ terms: Rex Vicecomiti N., salutem. But this attendance in parliament of Pracipimus tibi quod omnes milites balinferior tenants in chief, some of them livae tute qui summonit fuerunt esse too poor to have received knighthood, apud Oxoniam ad Nos a die Omnium grew insupportably vexatious to them- Sanctorum in quindecim dies venire fa selves, and was not well liked by the cias cum armis suis: corpora vero bar. king. He knew them to be dependant onum sine armis singulariter, et quatuor upon the barons, and dreaded the confluentivos milites de comitatu tuo, illuc veence of a multitude who assumed the nire facias ad c-ndem terminum, rad

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304 ELL' IOPE DURING THE MIDDLE AGEk. C.Ur. Vto nas said; but it remains problematical, er writ analogous:) a sunlmon.; Duwhether these four knights (the only ring the contest between Henry III. and clause which concerns our purpose) were the confederate barons in 1261, they preto be elected by the county, or return- sumed to call a sort of parliament, sum ed, in the nature of a jury, at the discre- moning three knights out of every coun tion of IIe sheriff. Since there is no1 ty, secum tractaturos super communibu, sufficient proof whereon to decide, we negotis regni. This we learn only by can only say with hesitation, that there an opposite writ, issued by the king, di may have been an instance of county recting the sheriff to enjoin these knights representation in the fifteenth year of who had been convened by the ears of John. Leicester and Glocester to their meeting We may next advert to a practice, of at St. Alban's, that they should repair inwhich there is very clear proof in the stead to the king at Windsor, and to no reign of Henry III. Subsidies granted in other place, nobiscum super pramissir parliament were assessed, not as in for- colloquium habituros * It is not abso mer times, by the justices upon their cir- lutely certain that these knights were cuits, but by knights freely elected in the elected by their respective counties. But county-court. This appears by two writs, even if they were so, this assembly has one of the fourth and one of the ninth much less the appearance of a parliament year of Henry III.* At a subsequent pe- than that in the thirty-eighth of Henry III. riod, by a provision of the Oxford parlia- At length, in the year 1265, the forty ment, in 1258, every county elected four ninth of Henry III., while he was a capknights to inquire into grievances, and tive in the hands of Simon de Montfort, deliver their inquisition into parliament.t writs were issued in his name to all the The next writ now extant that wears sheriffs, directing them to return two the appearance of parliamentary repre- knights for the body of their count r sentation is in the thirty-eighth of Hen- with two citizens or burgesses for every ry 111. This, after reciting that the earls, city and borough contained within it. barons, and other great men (cateri mag- This therefore is the epoch at which the nates) were to meet at London three representation of the -ommons becomes weeks after Easter, with horses and arms, indisputably manifest, even should wt for the purpose of sailing into Gascony, reject altogether the more equivocal in. requires the sheriff to compel all within stances of it which have just been Enu his jurisdiction, who hold twenty pounds merated. a year of the king in chief, of or those If, indeed, the knights were Stmn eleciin ward of the king, to appear at the ed by none but the king's mili- Whether the same time and place. And that besides tary tenants, if the mode of rep- knights were those mentioned he shall cause to come ressentation was merely adopt- elected by before the king's council at Westminster, ed to spare them the inconve- freehdersal on the fifteenth day after Easter, two nience of personal attendance, good and discreet knights of his county, the immediate innovation in our polity whom the men of the county shall have was not verry extensive. This is an inchoen for this purpose, in the stead of teresting, but very obscure topic of inall and each of them, to consider, along quiry. Spelman and Brady, with other with the knights and other counties, what writers, have restrained the original right aid they will grant the king in such an'of election to tenants in chief, among emergency.* In the principle of elec- whom, in process of time, those holding tion, and in the object of the assembly, under rnesne lords, not being readily diswhich was to grant money, this certain- tinguishable in the hurry of an election, ly resembles a summons to
parliament, contrived to slide in, till at length their There are indeed anomalies, sufficiently encroachments were rendered legitimate remarkable upon the face of the writ, by the statute 7 H. IV., c. 15, which put'thich distinguish this meeting from a reg- all suiters to the county-court on an mar parliamen, But when the scheme equal footing as to the elective franchise. of obtaining money from the commons The argument on this side might be plauof shires through the consent of their sibly urged with the following reasoning. representatives had once been entertain- The spirit of a feudal monarchy, which ed, it was easily applicable to more for-compelled every lord to act by the advice ofmal councils of the nation. - and assent of his immediate vassals, es. A. few years later there appears anoth- established no relation between him and those who held nothing at his hands * Brady's Introduction, Appendix, pp. 41 and 44. t Bradv's leist. of England, vol. i., Appendix, p. 227 t 2 Prynne, p. 23. * 2 Prynne, p.'S
part: it is not unusual to find mention her law from our own, has never admitted in records of
cominunitas populi or omnes any freeholders, except tenants in chief de regno, where none are
intended but of the crown, to a suffrage in county the barons, or, at most, the tenants in
elections. These attended the parliachief. If we look attentively at the ear-
ment of Scotland in
person till 1428, when the earliest instance of summoning knights of a law of James I. permitted
them to send shires to parliament, that in 38 HI. III., representatives.t which has been noticed
above, it will Such is, I think, a fair statement of appear that they could only have been the
arguments that might be alleged by chosen by military tenants in chief. The those who would
restrain the right of object of calling this parliament, if par-
election to tenants of the crown. It may
liament it was, to obtain an aid from be urged on the other side, that the genius the
military tenants, who, holding less of the feudal system was never con. than a knight's fee,
were not required to pletely displayed in England; much less do personal service. None then,
surely can we make use of that policy to exbut the tenants in chief could be elector~ plain
institutions that prevailed under upon this occasion, which merely re- Edward I. Instead of aids
and scutages spected their feudal duties. Again, to come much lower down, we find a series *
12 Ric. II., c. 12. Prynne's 4th Register. come much lower down, we find a series t' Pinkerton's
Hist. of Scotland, vol. i., p. iiU0 of petitions in the reigns of Edward III. 357. But this law wa
not regular actvoed i up. and Richard [I., which seem to lead us till 1587, p. 36R.

Page 362 3,62 EUROPE DUlxni., G THE MIDDLE AGES. [LC3ar. Vill tevir'd upon the
king's military tenants, tenants in chief; and yet the word com the cr)wn found ample resources
in sub- munitas can hardly be applied to differ. sidies upon moveables, from which no ent
persons, when it occurs ill the same cass of men was exempted. But the stat- instrument and
upon the same matter. uo that abolished all unparliamnentary The series of petitions above
mentioned taxation led, atleast in theoretical princi- relative to the payment of wages rather pie,
to extend the elective franchise to as tends to support a conclusion, that all arge a mass of the
people as could con- mesne tenants had the right of suffrage, leniently exercise it. It was even
in the if they thought fit to exercise it, since it mouth of our kings, that what concerned was
earnestly contended that they were all should be approved by all. Nor is liable to contribute
towards that expense. tho language of all extant writs less ad- Nor does there appear any reason
to verse to the supposition, that the right doubt that all freeholders, except those of suffrage in
county elections was lim- within particular franchises, were suiters ited to tenants in chief. It
seems extraor- to the county-court; an institution of no dinary, that such a restriction, if it
existed, feudal nature, and in which elections should never be deducible from these in, were to
be made by those present. As ltruments; that their terms should inva- to the meeting to which
knights of shires riably be large enough to comprise all were summoned in 38 II. III., it ought
(reholders. Yet no more is ever re- not to be reckoned a parliament, but rathquired of the
sheriff than to return two or one of those anomalous conventions knights, chosen by the body
of the coun- which sometimes occurred in the unfixty. For they are not only said to be re-
ed state of government. It is at least turned pro communitate, but " per com- the earliest known
instance of represent munitatem.," and " de assensu totius com- ation, and leads us to no
conclusion in munitatis." Nor is it satisfactory to al- respect to later times, when the comlege,
without any proof, that this word mons had become an essential part of should be restricted to
the tenants in the legislature, and their consent was chief, contrary to what must appear to
required to all public burdens. be its obvious meaning.* Certainly if This question, upon the
whole, is certhese tenants of the crown had found in- tainly not free from considerable
difficultior freeholds usurping a right of suf- ty. The legal antiquaries are divided. frage, we
might expect to find it the sub- Prynne does not seem to have doubted ject of some legislative
provision, or at but that the knights were "elected in the least of some petition and complaint.
full county, by and for the whole ccunAnd, on the other hand, it would have ty," without
respect to the tenure of the been considered as unreasonable to levy freeholders.* But Brady
and Carte are the wages due to knights of the shire for of a different opinion.t Yet their
dispotheir service in parliament on those who sition to narrow the basis of the constituthad no
share in their election. But it tion is so strong, that it creates a sort of appears by writs at the
very beginning prejudice against their authority. And of Edward II.'s reign, that wages were if I
might offer an opinion on so obscure levied " de communitate comitatus."t It a subject, I should
be much inclined Ad will scarcely be contended that no one believe, that even from the reign of
Henwas to contribute under this writ but ry I., the election of knights by all freeholders in the
county-court, without regard to tenure, was little, if at all, differ* What can one who adopts this
opinion of Dr. gard to tenure, was at, differBrady say to the following record? Rex militi-ent
rom what it is at present t bus, libeas horninibus, et toti communirati comita- The progress of
towns in several contus Wygornis tam intra libertates quam extra, tinental countries from a
condi- Progress oP salutem. Cum comites, barones, milites, liberi tionbordering upon servitude
townshomines et communitates regni nostri wealth and liberty has more than
once vicesimam omnium bonorum suorum mobilium, civesque et burgenses et communitates
omnium attracted our attention i other parts of civitatum et burgorum ejusdem regni, neconon te-
the present work. Their growth in Eng netes de antiquis dominicis coronas nostrea quin-land,
both from general causes and irmi lecimam bonorum suorum mobilium nobis conces- tative
policy, was very similar and nearerunt.-Pat. Rot., 1 E. I., in Rot. Par., vol i., p. ly coincident.
Under the Anglo-Saxon 442. See also p. 241 and p. 260. If the word corn-
line of soveeis we scarcely can dimunitas is here used in any precise sense, which, line of sovereigns, we scarcely
can diwhen possible, we are to suppose in construing a legal instrument, it must designate, not
the tenants * Prynne's 2d Register, p. 50. in chief, but the inferior class, who, though neither t
Carte's Hist. of England, vol. ii, p. 250. freeholders nor free burgesses, were yet contribu-
+ The present question has been discussed with table to the subsidy on their goods. much ability
it the Edinburgh Review, vol Xn'?L ~ Madox. Firma Burgi, D. 99 and -. 102. note Z p. 341
conversion fee-farm. some other lord to whom they paid an- of their individual tributes into a perpetual rents, and determinate dues or cus- ual rent from the whole borough. The toms.

Sometimes they belonged to dif- town was then said to be affermed, or ferent lords; and sometimes the same let in fee-farm to the burgesses and their burgesses paid customs to one master, successors forever.t Previously to such while he was under the jurisdiction of an- a grant, the lord held the town in his deother. They frequently enjoyed special mesne, and was the legal proprietor of privileges as to inheritance; and in two or the soil and tenements; though I by no three instances they seem to have possess- means apprehend that the burgesses were ed common property, belonging to a sort destitute of a certain estate in their pos of guild or corporation; but never, as far as appears by any evidence, had they a do not always recite what is true; yet it is possi municipal administration by magistrates ble that the citizens of Lincoln, which had been muicplofmnstato b mgstatsone of the five Danish towns, sometimes mentioned of their own choice. t esides the regu- with a sort of distinction by writers before the con. quest, might be in a more advantageous situation * Wilkins, p. 71. than the generality of burgesses.

Sciatis me t Burgenses Exoniae urbis habent extra civita- concessisse civibus meis Lincoln, omnes libertates tem terrain duodecim carucatarum: quaw nullam et consuetudines et leges suas, quas habuerunt consuetudinem reddunt nisi ad ipsam civitatem.- tempore Edwardi et Will. et Henr. regum Angli, Domesday, p. 100. At Canterbury the burgesses et gildam suam mercatoriam de hominibus civitahad forty-five houses without the city, de quibus tis et de allis mercatoribus comitatus, sicut illam ipsi habeabant gablum et consuetudinem, rex autem hubuerunt termpore predictorum antececorurn nos. ocam et sacam; ipsi quoque burgenses habeabant trorum, regum Angilî, melius et liberius. Et om.nnde rege triginta tres acras prati in gildam suam, p. nes homines qui infra quatuor divisas civitates ma. 2. In Lincoln and Stamford some resident propri- nent et mercatum deducunt, sint ad gildas, et con etors, called Lagemanni, had jurisdiction (socam suetudines et assisas civitatis, sicut melius fue. et sacain) over their tenants. But nowhere have runt temp. Edw. et Will. et Henr. regun Angliiae.I been able to discover any trace of internal self- Rymer, t. i., p. 40 (edit. 1816). government; unless Chester may be deemed an I am indebted to the friendly remarks of the pe exception, where we read of twelve judices civita- riodical critic whom I have before mentioned, fox tis; but by whom constituted does not appear. reminding me of otner charters of the same age, The word lageman seems equivalent to judex. expressed in a similar manner, wsl. in my haste The guild mentioned above at Canterbury was, in I had overlooked, though printed in common books all probability, a voluntary association: so at Do- But whether these general words ought to out ver we find the burgesses' guildhall, gihalla bur- weigh the silence of Domesday Book, I am not gensium, p. 1. prepared to decide. I have admitted below, that the Many of the passages in Domesday relative to possession of corporate property implies an elec, the stace of burgesses are collected in Brady's His- ive government for its administration, and I thinktory of Boroughs; a work which, if read with due it perfectly clear that the guilds made by-laws fc~ suspicion of the author's honesty, will convey a the regulation of their members. Yet this' great deal of knowledge. something different from municipal jurisdicrion Since the former part of this note was w-itten, over all the inhabitants of a town. I have met with a charter granted by Henry II. to * Madox, Hist. of Exchequer, c. 17. Lincoln, which seems torefer, more explicitly than t Madox, Firma Burgi, p. 1. There is one in any similar instrument, to municipal privileges of stance, I know not if any more could be fourld, of jui isdiction er.joyed by the citizens under Edward a firma burgi before the conquest. It was at Hun ihe confessor. These charters, it is well known, tingdon.-DomesdaV, p. 203.
But of a town in fee-farm he Before that time, the interior arrange. only kept the superiority, and the in-
ment of towns had received a new organ. heritance of the annual rent, which he ezation. In the
Saxon period we find vol. mingnt recover by distress.* The burgess- untary associations,
sometimes religious es held their lands by burgage-tenure, sometimes secular; in some cases
for nearly analogous to, or rather a species mutual defence against injury, in others of, free
soccage. t Perhaps before the for mutual relief in poverty. These grant they might correspond to
modern were called guilds, from the Saxon verb Cop)y-holders. It is of some importance
gildan, to pay or contribute, and exhibitto observe, that the lord, by such a grant ed the natural,
if not the legal character of the town in fee-farm, whatever we of corporations.* At the time of
the com may think of its previous condition, di- quest, as has been mentioned above, such vested
himself of his property, or luca- voluntary incorporations of the burgestive dominion over the
soil, in return for es possessed in some towns either landed the perpetual rent; so that tallages
sub- property of their own, or rights of supesequently set at his own discretion upon riority
over that of others. An internal the inhabitants, however common, can elective government
seems to have been hardly be considered as a just exercise required for the administration of a
com of the rights of proprietorship. mon revenue, and of other business inUnder such a system
of arbitrary tax- cident to their associatiotit They belCharters of ation, however, it was evident
to' Madox, Firma Burgi, p. 23. Hicks has giver ileorpora- the most selfish tyrant that the us a
bond of fellowship among the thanes of Cam1011. wealth of his burgesses was his bridgeshire,
containing several curious particulars. wealth, and their prosperity his interest; A composition
of eight pounds, exclusive, I commuch more were libera- l and sagacious ceive, of the usual
weregild, was to be enforced monarchs, like Henry ai., inclined to en- from the slayer of any
fellow. If a fellow (gilda' mon archs, like Henry 11., inclined to en- killed a man of 1200
shillings weregild, each of the suddenly them by privileges. From the society was to contribute
half a marc; for a ceorl, timne of William Rufus, there was no two ora (perhaps ten shillings);
for a Welshman, reign in which charters were not granted one. If, however, this act was
committed wan to different towns, of exemption from tonly, the fellow had no right to call on
the socie ty for contribution. If one fellow killed another, tolls on rivers and at markets, those
hewas t o pay the legal weregild to his kindred, lighter manacles of feudal tyranny; or and also
eight pounds to the society. Harsh words of commercial franchises; or of immuni- used by one
fellow towards another, or even to-, ty from the ordinary jurisdictions; or, wards a stranger,
incurred a fine. No one was to eat or drink in the company of one who had killed lastly, of
internal self-regulation. Thus eat or drink in the company of one who had killed lastly, of
internal self-regulation. Thus his brother fellow, unless in the presence of the the original
charter of Henry I. to the king, bishop, or alderman.-Dissertatio Epistola.,'ity of Londont
concedes to the citizens, ris, p. 21. in addition to valuable commercial and We find in Wilkins's
Anglo-Saxon laws, p. 65, a fiscal immunities, the right of choosing number of ordinances,
sworn to by persons both of noble and ignoble rank (ge eorlisc ge ceorlisc), their own sheriff
and justice, to the ex- ndobnfirm ed by Kinlg Athelstan. These are in elusion of every foreign
jurisdiction.- the nature of by-laws for the regulation of certain These grants, however, were
not in ge- societies that had been formed for the preservation oral so extensive till the reign of
John. | of public order. Their remedy was rather violent: to kill and seize the effects of all who
should rob * Madox, p. 12,13. t Id., p. 21. any member of the association. This property, t I
have read somewhere that this charter was after deducting the value of the thing stolen, was
anted in 1101. But the instrument itself, which to be divided into two parts; one given to the
crime ls only preserved by an Inspeximus of Edward IV., inal's wife if not an accomplice, the
other shared does not contain any date.-Rymer, t. i., p. 11 between the king and the
society.' edit. 1816). Could it be traced so high, the cir-

stance would be remarkable, as the earliest of Exeter, every fellow was entitled
to) a contribucharters granted by Louis VI., supposed to be the tion in case of taking a journey,
or. f his house father of these institutions, are several years later. was burnt. Thus they
resembled in some deQ This did not, however, save the citizens from gree our friendly
societies; and display an interesing in one hundred marks to the king for this esting picture of
manners, which has induced me privilege -Mag. Rot., 5 Steph., apud Madox, Hist. to insert this
note, though not greatly to the pres.' Exchequer, t. xi. I do not know that the charter ent purpose.
See more of the Anglo-Saxon guilds, of Henry I. can be suspected; but Brady, in his in Turner's
History, vol. ii., p. 102. Societies of treatise of Boroughs (p. 38, edit. 1777), does not the same
kind, for purposes of religion, charity, or think proper once to mention it; and indeed uses
mutual assistance, rather than trade, may be found many expressions incompatible with its
existence. afterward.-Blomefield's Hist. of Norfolk, vol. iii., Blomefield, Hist. of Norfolk,
vol. ii., p. 16, says p. 494. that IHenry I. granted the same privileges by char-
tSee a grant from Turstin, archbishop of York, ter to Norwich in 1122, which London possessed. in the reign of
Henry I., to the burgesses of BeveYet it appears that the king named the port-reeve, that
they may have their hanshus (i. e. guild or Drovost; but Blomefield suggests that he was hiil)
like those of York, et ibi sua statuta pertrac probably r-scommen led by the citizens, the office
tent ad hororem Dei, &c.-Rymer, t. i., p.'0. edit beintq rml 1. S1816.

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tP&RT?!I.1] ENGLISH CONSTITUTIUN. 36.1 came more numel ~us, and more peculi-
tem. Tllis gre at ity, so admirah y sitcaAy commercial after that era, as well from ted,
was rich and populous long before the increase of trade as through imita- the conquest. Bede, at
the beginning of tion of similar fraternities existing in the eighth century, speaks of London as
many towns of France. The spirit of a-great market, which traders frequented taonopoly gave
strength to those institu- by land and sea.* It paid 15,000 out tions, each class of traders
forming itself of ~82,000, raised by Canute upon the into a body, in order to exclude compe-
kingdom.t If we believe Roger Hovetition. Thus were established the com-
den, the citizens of London, on the death panies in corporate towns, that of the of Ethelred II., joined with part of
the Weavers in London being perhaps the nobility in raising Edmund ironside to earliest;* and
these were successively the throne.t Harold I., according to betconsolidated and sanctioned by
charters ter authority, the Saxon Chronicle, and from the crown. In towns not large William of
Malmsbury, was elected by enough to admit of distinct companies, their concurrence.~
Descending to later one merchant guild comprehended the history, we find them active in the
civil traders in ge.cral, or the chief of them; war of Stephen and Matilda. The fa and this, from
the reign of Henry II. mous Bishop of Winchester tells the Londlowndward, became the subject of incor-
doners that they are almost accounted as porating charters. The management of
noblemen on account of the greatness of their internal concerns, previously to any their city;
into the community of which incorporation, fell naturally enough into a it appears that some
barons had been resort of oligarchy, which the tenour of the ceived.il Indeed the citizens
themselves, charter generally preserved. Though or at least the principal of them, were the
immunities might bec very extensive, called barons. It was certainly by fat the powers were
more or less restrained the greatest city in England. There have to a small number. Except in a
few been different estimates of its population, places, the right of choosing magistrates some of
which are extravagant; but I was first given by King John; and cer- think it could hardly have
contained less'ainly must rather be ascribed to his pov- than thirty or forty thousand souls
witherty than to any enlarged policy, of in its walls; and the suburbs were very which he was
utterly incapable.t populous.~ These numbers, the enjoy. From the middle of the twelfth
century Prosperity to that of the thirteenth, the tra- * Macpherson, p. 245. t Id., p. 292. of English ders of England became more and t Cives Lundinenses, et pars nobiliuro, oal eo tempore consistebant Lundoniaw, Clitonemn Ead towns- more prosperous. The towns on mundum unanimni consensu in Legem',eavere, p the southern coast exported tin and oth- 249. er metals in exchange for the wines of ~ Chron. Saxon., p. 154. Malmsbury, p. 76 France; those on the eastern sent corn lie says the people of London were become al F rance; those on the eastern sent corn most barbarians through their intercourse with the to Norway; the Cineports bartered Danes; propter frequentem convicturmm. wool against the stuffs of Flanders.t II Londinenses, qui sunt quasi optimates pro Though bearing no comparison with the magnitudine civitatis in Angli. —Malmsb., p. 189. cities of Italy or the empire, they increas- Thus too Matthew Paris: cives Londinenses, quo. ed sufficiently to acquire iportance at propter civitatis dignitatem et civium antiquam ed sufficiently to acquire importance at libertatem Barones consuevim#l appellare, p. 744; home. That vigorous prerogative of the and in another place: totius civitatis cives, quos Norman monarchs, which kept down the barones vocant, p. 835. Spelman says that the feudal aristocracy, compensated for vhat- magistrates of several other towns were called bar ever inferiority there might be in the ons.-Glossary, Baronesde London. aT Drake, the historian of York, maintains that population and defensible strength of the London was less populous about the time of the English towns, compared with those on conquest than that city; and quotes Hardyne, a the continent. They had to fear no pet- writer of Henry V.’s age, to prove that the interi ty oppressors, no local hostility; and if or part of the former was not closely built.-Ebo.they could satisfy the rapacity of the racum, p. 91. York however does not appear to have contained more than 10,00 inhabitants at crown, were secure from all other grieve the accession of the Conqueror; nd the very er London. ances. London, far above the aggerations as to the populonu ss of Lonzlor rest, our ancient and noble capital, prove that it must have far exceeL1ed that number. night, even in those early times, be just- Fitz-Stephen, the contemporary biographer ct term'ed a member of the political sys- Thomas Becket, tells us of 80,000 men capa. iy termed a member of the political sys- of bearing arms within its precincts; where how ever his translator, Pegge, suspects a mistake cf + Madox, Firma Burgi, p. 189. the MS. in the numerals. And this, with simi. t Idem, passim. A few of an earlier date may lar hyperboles, so imposed on the judicious nmind Se found in the new ed'tion of Rymer. of Lord Lyttleton, that, finding in Peter of Bloie f Lyttleton's Hist. of Henry II., vol. ii., p. 170. the inhabitants of London reckoned at quadrugin MacJherson's Annals of Commerce, vol. i., p. 331. ta millia he has actually pno-osed to read quad:ia
should have by the court, and sometimes suffered been drawn into precedent, though it pretty severely by its hands, especially might perhaps accelerate what the course after the battle of Evesham.t of affairs was gradually preparing. Notwithstanding the influence of Lon- It is well known that the earliest writs don in these seasons of disturbance, we of summons to cities and [lor- First sum do not perceive that it was distinguish- oughs of which we can prove the moning of towns to ed from the most insignificant town by existence, are those of Simon parliament, greater participation in national councils. de Montfort, earl of Leicester, in 49 If. III Rich, powerful, honourable, and high- bearing date the' 12th of December, 1264. spirited as its citizens had become, it was in the forty-ninth year of I[enry III.* very long before they found a regular After a long controversy, almost all place in parliament. The prerogative of judicious inquirers seem to have acquimposing tallages at pleasure, unsparing- esced in admitting this origin of popular ly exercised by Henry III. even over representation.t The argument may be London,~ left the crown no inducement very concisely stated. We find from innumerable records that the king imposed genta.-Hist. Henry II., vol. iv., ad finem. It is tallages upon his demesne towns at dis nardly necessary to observe, that the condition of cretion No public instrument previo agriculture and internal communication would not have allowed half that number to subsist. The subsidy-roll of 1377, published in the Paris, who laments it with indignation. Cives Archaeologia, vol. vii., would lead to a conclusion Londinenses, contra consuetudinem et libertatem that all the inhabitants of London did not even civitatis, quasi servi ultimaa conditionis, non sub then exceed 35,000. If this be true, they could nominate aut titulo liberu adjutorii, sed tallagii, quod not have amounted probably to so great a num- multum eos angebat, regi, licet invitati et renitentes, ber two or three centuries earlier. numerare sunt coacti, p). 492. fleu ubi est Londi * This seditious, or at least refractions character nensis, toties empta..toties concessa, toties scripta, of the Londoners, was displayed in the tumult toties jurata libertas! &c. p. 657. The king some. headed by William Longbeard in the time of Rich- times suspended their market, that is, I suppose, ard I., and that under Constantine in 1222, the pa- their right of toll, till his demands were paid. triarchs of a long line of city demagogues.-Hove- * These writs are not extant, having perhaps den, p. 765. M. Paris, p. 154. never been returned:; and consequently we cannot t Hoveden's expressions are very precise, and tell to what particular places they were addressed. show that the share taken by the citizens of Lon- It appears, however, that the assembly was intenddon (probably the mayor and aldermen) in this ed to be numerous,' for the entry runs: scribitur measure was no tumultuary acclamation, but ade- civibus Ebor,'civibus'Lincoln, et cteteris burgis liberate concurrence with the nobility. Comes Angliae. It is singular that no mention is made of Johannes, et fere omnes episcopi, et comites An- London, which must have had some' special sumglia edemdie intraverunt Londonias; et in cras- mons.-Rymer, t. i., p. 803. Dugdale, Summoni. tino predictus Johannes frater regis, et archiepi- tiones ad Parliamentum, p. 1. copus Rothomagensis, et omnes episcopi, et comi- t It would ill repay any reader's diligence to tes, et barones, et cives Londonienses cum illis wade through the vapid and diluted pages of Tvr ronvenerunt in atrio ecclesim S. Pauli.... Pla- rell; but whoever would know what cant be best cuir. ergo Johanni fratri regis, et omnibus episco- pled for a higher antiquity of our present par. is, et comitibus, et baronibus regni, et civibus liamentary constitution, may have recourse to Hody todoniarum, quod cancellarius ille deponeretur, on Convocations, and Lord Lyttleton's History of e; d posuerunt eum, &c., p. 701. Henry II., vol. ii., p. 276, and vol. iv., p. 79-106. t The reader may consult, for a more full ac- I do not conceive it possible to argue the question count of the English towns before the middle of more ingeniously than has been done by the noble the thirteenth century Lyttleton's History of Hen- writer last quoted. Whitelocke, in his commentary rv II., vol. ii., p. 174; nid Macpherson's Annals on the parliamentary writ, has treated it ver of Co.mmerce. much at length, but with no critical discrim.ina Ftrequent pTrofs of
names of the abbot of St. Albans had neglected the citizens and burgesses as constituents to cause an election and return to be held parts of parliament; though prelates, made; and prayed remedy To this pebarons, knights, and sometimes freehold- tition it was answered, "Let the rolls o, ers, are enumerated;* while, since the chancery be examined, that it may ap undoubted admission of the commons, peer whether the said burgesses were acthey are almost invariably mentioned. customed to come to parliament or not No historian speaks of representatives in the time of the king's ancestors; and appearing for the people, or uses the let right be done to them, vocatis evocanword citizen or burgess in describing di, si necesse fuerit." I do not trans. those present in parliament. Such con- late these words, concerning the sense vincing, though negative evidence is not of which there has been some dispute, to be invalidated by some general and though not apparently very material to ambiguous phrases, whether in writs and the principal subject.* records or in historians.t Those monk- This is, in my opinion, by far the most ish annalists are poor authorities upon plausible testimony for the early repreany point where their language is to be sentation of boroughs. The burgesses delicately measured. But it is hardly of St. Albans claim a prescriptive right possible, that writing circumstantially, as from the usage of all past times, and Roger de Hoveden and Matthew Paris more especially those of the late Edward sometimes did, concerning proceedings in and his ancestors. Could this be alleparliament, they could have failed to men- ged, it has been said, of a privilege at the Lion the commons in unequivocal expres- of Edward I.? Brady, who obvidate. of the commons, are deserving ustensively in repelling it. It was observst. Albans. es of St. Albans complained to ed, however, by Madox, that the petition the council, in the eighth year of St. Albans contains two very singular of Edward II., that, although they held allegations: it asserts that the town was bf the king in capite, and ought to at- part of the king's demesne, whereas it tend his parliaments whenever they are had invariably belonged to the adjoining summoned, by two of their number, in- abbey; and that its burgesses held by stead of all other services, as had been the tenure of attending parliament, intheir custom in all past times, which ser- stead of all other services, contrary to vices the said burgesses and their prede- all analogy, and without parallel in the censors had performed as well in the condition of any tenant in capite throughtime of the late King Edward and his an- out the kingdom. "It is no wonder, cestors, as in that of the present king therefore," says Hume, "that a petition until the parliament now sitting, the which advances two falsehoods should names of their deputies having been con- contain one historical mistake, which instantly enrolled in chancery, yet the deed am-nunts only to an inaccurate exsherriff of Hertfordshire, at the instigation pression," But it must be confessed, that we cannot so easily set aside the * The only apparent exception to this is in the whole authority of this record. For letter addressed to the pope by the parliament of whatever assurance the people of St. 1246, the salutation of which runs thus: Barones, Albans might show in asserting what was proceres, et magnates, ac
nobiles portuum maris hab- itatores, necnon et clerus et populus universus, sa- untrue, the king's council must have lutem.-Matt. Paris, p. 696. It is plain, I think, from these words, that
somb of the chief inhabi- of any towns had been admitted into tants of the Cinque-ports, at that
time very flourish- parliament. If the lawful birth of the ing towns, were present in this
parliament. But House of Commons were in 1295, as is'whether they sat as representatives, or
by a pecu- maintained by Brady and his disciples, is l ar writ of summons is not so evident; and
the latter may be the more probable hypothesis of the it conceivable that, in 1315, the council
two. would have received a petition, claiming t Thus Matthew Paris tells us, that in 1247, the
the elective franchise by prescription whole kingdom, regni totius universitas, repaired a

Page 368 ~86~ IF EUROPE DURING THE MIDDLE AGES. (CiAPr Vts Axnd have,.er'rrtd to
to the rolls cf chance- secbly was opened by the king.* This ry to inqire whether this had been
used anomalous convention was neverthele-E in the days of the king's:rogenitors i I one means
of establishing the represent confess that I see no answer which can ative system, and, to an
inquirer free easily be given to this objection by such from technical prejudice, is little less Ps
adopt tl'. latest epoch of borough rep- important than a regular parliament.'sertation, namely,
the parliament of Nor have we long to look even for this. 13 E. I. But they are by no means In
the same year, about eight months eqially conclusive against the supposi- after the councils at
Northampton and tion, that the communities of cities and York, writs were issued summoning
to a towns, having been first introduced into parliament at Shrewsbury two citizens the
legislature during Leicester's usurpa- from London, and as many from each of tio, in the forty-
ninth year of Henry twenty other considerable towns.t It is III., were summoned, not perhaps uni-
a slight cavil to object that these were formly, but without any long intermis- not directed
as usual to the sheriff of sion, to succeeding parliaments. There each county, but to the
magistrates of is a strong presumption, from the lan- each place. Though a very imperfect,
guage of a contemporary historian, that this was a regular and unequivocal repthey sat in the
parliament of 1269, four resentation of the commons in parliayears after that convened by
Leicester.* ment. But their attendance seems to It is more unequivocally stated by anoth- have
intermitted from this time to the er annalist, that they were present in the twenty-third year of
Edward's reign. first parliament of Edward I., held in Those to whom the petition of St.
Al1271.t Nor does a similar inference bans is not satisfactory, will Barnstaple want some
degree of support from the hardly yield their conviction to preambles of the statute of
Marlebridge that of Barnstaple. This town set forth in 51 H. III., of Westminster I., in the in the
eighteenth of Edward III., that, third, and of Glocester, in the sixth among other franchises
granted to them year of Edward I.t And the writs are by a charter of Athelstan, they had ever
extent which summon every city, bor- since exercised the right of sending two ough, and
market town to send two dep- burgesses to parliament. The said char. uties to a council in the
eleventh year of ter indeed was unfortunately mislaid, his reign. I call this a council, for it and
the prayer of their petition was to undoubtedly was not a parliament. The obtain one of the like
import in its stead. sheriffs were directed to summon per- Barnstaple, it must be observed, was
a tonally all who held more than twenty town belonging to Lord Audley, and had pounds a year
of the crown, as well as actually returned members ever since four knights for each county
invested the twenty-third of Edward I. Upon an wish full powers to act for the commons
inquisition directed by the king to be thereof. The knights and burgesses made into the truth of
these allegations, thus chosen, as well as the clergy within it was found that "the burgesses of
the province of Canterbury, minet at said town were'wont to send two burNorthampton;
those within the province gessses to parliament for the commonalof York, at that city. And
neither asevesques, abbes, priors, countes, barons, et tout le comminalty de la terre illonques summones. The * Convocatis universis Anglia prelatis et mag- statute of Glocester runs,
apelles les plus dis Ilatibus, necnon cunctarum regni sui civitatum et cretes de son royaume, auxibien des grandes come burgorun potentioribus.-Wikes, in Gale, xv. des meinders. These preambles seem to have Scriptores, t. ii., p. 88. I am indebted to Hody on satisfied Mr. Prynne that the commons were then Convocations for this reference, which seems to represented, though the writs are wanting; and have escaped most of our constitutional writers. certainly no one could be less disposed to exag. t Hoc anno.... convenerunt archiepiscopi, gerate their antiquity. —2d Register, p. 30. apilcopi, comites et barones, abbates et priores, * Brady's Hist. of England, vol. ii., Appendix et de quolibet comitatu quatuor milites, et de Carte, vol. ii., p. 257. quAlibet civitate quatuor. —Annales Waverleien- t This is commonly denominated the parliaNes in Gale, t. ii., p. 227. I was led to this pas- ment of Acton Burnell; the clergy and commons sage by Atterbury. Rights of Convocations, p. having sat in that town, while the barons passed 310, where some other authorities, less unques- judgment upon David, prince of Wales, at tionable, are adduced for the same purpose. Bo:h Shrewsbury. The towns which were honouxed this assembly, and that mentioned by Wikes in with the privilege of representation., lid may con 1269, were certainly parliaments, and acted as sequently be supposed to have been at that time such, particularly the former, though summoned the most considerable in England, were YorI, for purposes not strictly parliamentary. Carlisle, Scarborough, Nottingham, Grimsby, Lin t The statute of Marlebridge is said to be made coln, Northampton, Lynn, Yarmouth, Colchester, convocatis discretionibus, tam majoribus qu'm mi. Norwich, Chester, Shrewsbury, Worcester, Merc.,orbjus; that of Westminster primer, par sor. ford, Bristol, Canterbury, Winchester:,; and Exe onsei et par l'essentements des arcievesques. ter. —Rymer, t. ii., p. 247.

Page 369 t of the borl'gh;" but nothing appeared in the second of Henry V., which will be as to the pretended charter of Athelstan, quoted hereafter, they affirm trat " the or the liberties which it was alleged to commune of the land is, and ever has contain.'rhe burgesses, dissatisfied with been, a member of parliament."* And this in-qu.st, prevailed that another should the consenting suffrage of our older law. oe taken, which certainly answered bet- books must be placed in the same scale:. ier their wishes. The second jury found The first gainsayers, I think, were Calnm that Barnstaple was a free borough from den and Sir Henry Spelman, who, upon time im1lemorial; that the burgesses had probing the antiquities of our coustitu enjoyed under a charter of Athelstan, tion somewhat more exactly than their which had been casually lost, certain predecessors, declared that they could ~franchises by them enumerated, and par- find no signs of the commons in parliaticularly that they should send two bur- ment till the forty- ninth of Henry III. gesses to parliament; and that it would Prynne, some years afterward, with not be to the king's prejudice, if he much vigour and learning, maintained should grant them a fresh charter ill the same argument, and Brady completed terms equally ample w-ith that of his the victory. But the current doctrine of predecessor Athelstan. But the follow- Westminster Hall, and still more of the ing year we have another writ and an- two chambers of parliament, was cerother inquest, the former reciting that tainly much against these antiquaries; the second return had been unduly and and it passed at one time for a surrender fraudulently made; and the latter ex- of popular principles, and almost a breach expressly contradicting the previous in- of privilege, to dispute the lineal descent quest in many points, and especially find- of the house of commons from the witing no proof of Athelstan's supposed tenagemot.t A'darter. Comparing the various parts The true ground of these pretensions of this business, we shall probably be in- to antiquity was a very well founded perduced to agree with Willis, that it was suasion, that no
other argument would but an attempt of the inhabitants of be so conclusive to ordinary minds, or cut Barnstaple to withdraw themselves from short so effectually all encroachments of the jurisdiction of their lord. For the prerogative. Thes populace of every right of returning burgesses, though it is country, but none so much as the Engthe main point of our inquiries, was by lish, easily grasp the notion of right. no means the most prominent part of meaning thereby something positive and Jheir petition, which rather went to es- definite; while the maxims of expediency bablish some civil privileges of devising or theoretical reasoning pats slightly their tenements and electing their own mayor. The first and fairest return finds * Rot. Parl., vol. iv., p. 22. only that they were accustomed to send t Though such an argument would not be cos toarlia, which a usag elusive, it might afford some ground for hesitatiol members to parliament, which a usage if the royal burghs of Scotland were actually rep of fifty years (from 23 E. 1. to 18 E. III.) resent in their parliament more than half a cen was fully sufficient to establish, without tury before the date assigned to the first repre' en search into more remote antiquity. * tation of English towns. Lord Hailes concludes It hlas, however, probably occurred to from a passage in Fordun, ; that, as early as 1211, burgesses gave suit and presence in the great the reader of these two cases, St. Albans council of the king's vassals; though the contrary and Barnstaple, that the representation has been asserted with much confidence by various of thle commons in parliament was not authors."-Annals of Scotland, vol. i., p. 139. Fortreated as a novelty, even in times little dun's words, however, so far from importing that to ii which we have' been.. they formed a member of the legislature, which posterior to those ir) whichwe have been perhaps Lord Hailes did no; mean by the quaint supposing it to have originated. In this expression "gave suit and. presence," do not aptconsists, I think, the sole strength of the pear to me conclusive to prove that they were acop~ poiste argument. An act in the fifth tually present. Hoc anno Rex Scotira Willelmus magnum tenuit consiliro. Ubi, petito ab optiyear of Richard 11. declares, that if any magnum tenut conilm. Ubi, petito ab opti. — r.f. >hsrc~ BI.'eclsrs.matibus auxilio, promiserunt se daturos decem sheriff shall leave out of his returns any mille marcas; prwnter burgenses regni, qui sex mile ities or boroughs which be bound, and lia prormiserunt. Those who know the brief and.3 old time were wont to come to the incorrect style of chronicles will not think it un parliament, he shall be punished as was likely that the offer of 6000 marks by the burgesses accustomed to be done in the like case was not made in parliament, but In consequence accustomedC. to be done in the like case of separate requisitions from the crown. Pink. in time past.t In the memorable asser- erton is of opinion, that the magistrates of royal tion of legislative right by the commons burghs might upon this, and perhaps other occa sions, have attended at the bar of parliament with Willis, Notitia Parliamentaria, vol. ii., p. 312. their offers of money. But the deputies ot towin Lyttleton's Hist. of Hen. II., vol. iv. p. 89. do riot appear as a part of parliament'.l 1326 - t 5 Ric. 11., stat. 2, c. iv. Hist. of cotland, vol i., p. 352.; 371 a
granted by the Conqueror to the persuasion that the king would take their men of Kent was devised; when Andrew money if they refused it, or from inability Horn filled his Mirror of Justices with it to withstand the plausible reasons of fictitious tales of Alfred; and, above all, his ministers, or from the private influence when the "method of holding parlia- ence to which the leaders of every popments in the time of Ethelred" was fab- ular assembly have been accessible, much ricated, about the end of Richard II.'s more was granted in subsidies after the reign; an imposture which was not too representation of the towns commenced, gross to deceive Sir Edward Coke. than had ever been extorted in tallages. There is no great difficulty in answer- To grant money was therefore the Causes of ing the question, why the dep- main object of their meeting; and if the summoning uties of boroughs were finally exigencies of the administration could eputies and permanently ingrafted upon have been relieved without subsidies, the orugs.-'arliament by Edward I.* The citizens and burgesses might still have government was becoming con- sat at home, and obeyed the laws which stantly more attentive to the wealth that a council of prelates and barons enacted commerce brought into the kingdom, and for their government. But it is a difficult the towns were becoming more flourish- question, whether the king and the peers ing and more independent. But, chiefly, designed to make room for them, as it there was a much stronger spirit of gen- were, in legislation; and whether the eral liberty, and a greater discontent at power of the purse drew after it immediately violent acts of prerogative, from the era ately, or only by degrees, those indispenof Magna Charta; after which authentic sable rights of consenting to laws which recognition of free principles, many acts, they now possess. There are no suffiwhich had seemed before but the regular ciant means of solving this doubt during exercise of authority, were looked upon the reign of Edward I. The writ in 22 E. as infringements of the subject's right. I. directs two knights to be chosen cune Among these the custom of setting tal- plena potestate pro se et tota communi. lages at discretion would naturally ap- tate comitatus praedicti, ad consulendumr ear the most intolerable; and men were et consentiendum pro se et communitate unwilling to remember that the burgesses illa, his quae comites, barones, et procerea who paid them were indebted for the pradicti concorditer ordinaverint in praemissis. The same words are inserted in the writ of 26 E. 1. r,ions absolutely unconstitutional, they In that of 28 E. I. the knights are directed might perhaps excite louder murmurs to be sent cum plena. potestate audiendi et faciendi qube ibidem ordinari conti* These expressions cannot appear too strong. gerint pro communi commodo. Several But it is very remarkable, that to the parliament others of the same reign have the words of 18 Edward III., the writs appear to have sum- ad faciendum. The difficulty is to promoted none of the towns, but only the counties. — Willis, Notit. Parliament., vol. i., Preface, p. 13. pronounce whether this term is to be interPrynne's Register, 3d part, p. 144. Yet the citi- preted in the sense of performing or of zens and burgesses are once, but only once, named enacting; whether the representatives of as present in the parliamentary roll; and there is, in general, a chasm in place of their names, where the different ranks present are enumerated.-Rot. * Tallages were imposed without consent at Parl., vol. ii., p. 146. A subsidy was granted at parliament in 17 E. I., Wykes, p. 117; and in 3% this parliament; so that, if the citizens and bur- E. I., Brady's Hist. of Eng., vol. ii. In the lattel gesses -were really not summoned, it is by far the instance the king also gave leave to the lay and most violent stretch of power during the reign of spiritual nobility to set a tallage on their own ten Edward III. But I know of no collateral evidence ants. This was subsequent to the Confirmati q illustrate or disprove it. Chartarum, and unquestionably illegal.
the commons were merely to learn from and a tenth.* These distinct grants in the lords what was to be done, or to bear on distinct grantors; for it is not to be their part in advising upon it. The ear- imagined that the commons intermeddled liest writ, that of 22 E. I., certainly im- in those affecting the lords, or the lords plies the latter; and I do not know that in those of the commons. In fact, howamvy of the rest are conclusive to the con- ever, there is abundant proof of their trary. In the reign of Edward II., the separate existence long before the seven-words ad consentiendum alone, or ad teenth of Edward III., which is the epoen faciendurr et consentiendum, begin; and assigned by Carte, t or even the sixth of from that of Edward III. this form has that king, which has been chosen by been constantly used.* It must still some other writers. Thus the commons however be highly questionable, whether sat at Acton Burnell in the eleventh of the commons, who had so recently taken Edward T., while the upper house was at their place in parliament, gave any thing Shrewsbury. In the eighth of Edward more than a constructive assent to the II., " the commons of England complain laws enacted during this reign. They to the king and his council," &c. T These are not even named in the preamble of must surely have been the commons as any statute till the last year of Edward sembled in parliament, for who else could I. Upon more than one occasion, the thus have entitled themselves. In the sheriffs were directed to return the same nineteenth of the same king, we find members who had sat in the last parlia- several petitions, evidently proceeding ment, unless prevented by death or in- from the body of the commons in parliafrimity. t ment, and complaining of public griev It has blen a very prevailing opinion, ances.— The roll of 1 E. III. though At what that parliament was not divided mutilated, is conclusive to show that time parlia- into two houses at the first ad-separate petitions were then presented ment was - divided into mission of the commons. If by the commons, according to the regu. twohouses. by this is only meant that the lar usage of subsequent times. ll And, commons did not occupy a separate cham- indeed, the preamble of 1 E. III., stat. 2, * till some time in the reign of Edward is apparently capable of no other infer- :II., the proposition, true or false, will ence. be of little Iornance. They may have As the knights of shires correspond to sat at the bottom of Westminster Hall, the lower nobility of other feudal coun while the lords occupied the upper end. tries, we have less cause to be surprised But that they were ever intermingled in that they belonged originally to the same voting aptpears inconsistent with likeli- branch of parliament as the barons, than hood and authority. The usual object at their subsequent intermixture with of calling a parliament was to impose men so inferior in station as the citizens taxes; and these, for many years after aid burgesses. It is by no means easy the introduction of the commons, were to define the pdint ot time when thisdislaid in different proportions upon the tribution was settled; but I think it may. three --states of the realm. Thus in the be inferred from the rolls of parliament, 23 E I., the earls, barons, and knights that the houses were divided, as they are gave the king an eleventh, the clergy a at present, in the eighth, ninth, and ninetenth; while he obtained a seventh from teenth years of Edward II.— This a the citizens and burgesses; in the twenty- pears, however, beyond doubt, in the fourth of the same king, the two former first of Edward III."* Yet in the sixth of these orders gave a twelfth, the last of the same prince, though the knights an eighth; in the thirty-third year, a and burgesses are expressly mentioned thirtieth was the grant of the barons and to have consulted together, the former knights, and of the clergy, a twentieth of taxed themselves in a smaller rate of the cities and towns: in the first of Ed- subsidy than the latter.' t ward II., the counties paid a twentieth, The proper business of the house of the towns a fifteenth; in the sixth of commons was to petition for redress of Edward III., the rates were a fifteenth grievances, as much as to provide for the necessities of the crown. in the 0 Prynne's 2d Register. It may be remarked, that writs of summons to great councils never ran * Brady's Hist.

Parliamentary Ilstorl u tes could not be passed in such assemblies.-Id., vol. i., p. 234..92. [Rot. Parl., v. i., p. 289. Q Id., p. 430. 1 28 E. I., in Prynne's 4th Register, p. 12; 9 E. II Id., vol. ii., p. 7.'~ Id.. p. 289, 3,1, K1M (I, (a great council), p. 48. 1 Id., p. 5 tt d p, p. f9, A a2

Page 372 372 EUROPE DURING THE MIDDLE AGES. [CRAP X Ili prudent fict;on of English law, no wrong what were the complaints of tLe cm is supposed to proceed from the source mons of England, and their notions of of right. The throne is fixed upon a right, in 1309.

I have chosen, on this-as pinnacle, which perpetual beams of truth on other occasions, to translate very lit.-rned justice irradiate, though corruption erally, at the expense of some stiffn~cs, and partiality may occupy the middle and perhaps obscurity in language. region, and cast their c(hill shade upon "The good people of the kingdom Sho all below. In his high court of parlia- are come hither to parliament, pray our mnent, a king of England was to learn lord the king that he will, if it please where injustice had been unpunished, him, have regard to his poor subjects, and where right had been delayed. The who are much aggrieved by reason that common courts of law, if they were suf- they are not governed as they should be; ficiently honest, were not sufficiently especially as to the articles of the Great strong to redress the subject's injuries, Charter; and for this, if it please him, where the officers of the crown or the they pray remedy. Besides which they nobles interfered. To parliament he pray their lord the king to hear what has looked as the great remedial court for long aggrieved his people, and still does relief of private as well as public griev- so from day to day, on the part of those ances. For this cause it was ordained who call themselves his officers, and to in the fifth of Edward II., that the king amend it, if he pleases." The articles. should hold a parliament once, or, if eleven in number, are to the following necessary, twice every year; "that the purport:-I. That the king's purveyors pleas which have been thus delayed, and seize great quantities of victuals without those where the justices. have differed, payment; 2. That new customs ale set may be brought to a close."* And a onwine, cloth, and other imports; 3. That short act of 4 Edward III., which was the current coin is not so good a;3 for not very strictly regarded, provides that merly;* 4, 5. That the steward and mar;a parliament shall be held "every year, shal enlarge their jurisdiction teyona otl oftener, if need be."t By what per- measure to the oppression of the people; sons, and under what limitations, this 6. That the commons find none to rejurisdiction in parliament was exercised, ceive petitions addressed to the council; will come under our future consideration. 7. That the collectors of the king's dues The efficacy of a king's personal char- (pemours des prises) in towns and at fairs acter, in so imperfect a state of govern- take more than is lawful; 8. That men ment, was never more strongly exempli- are delayed in their civil suits by wuits of fied than in the two first Edwards. The protection; 9. That felons escape punfather, a little before his death, had hum- ishment by procuring charters of parbled his boldest opponents among the no- don; 10. That the constables of the bility; and as for the commons, so far king's castles take cognizance of contfrom claiming a right of remonstrating, mon pleas; 11. That the king's escheat. we have seen cause to doubt whether they or oust men of lands held by good. title, Edward II. were accounted effectual mem- under pretence of an inquest of office.t Petitions of bers of the legislature for any These articles display in a short corn parliament duringhis purposes but taxation. But in pass the nature of those grievances reign. the very second year of the which existed under almost all the son's reign, they granted the twenty-fifth princes of the Plantagenet dynasty, and penny of their goods, "upon this condi- are spread over the rolls of parliament tion, that the king should take advice for more than a
century after this time, and grant redress upon certain articles Edward gave the amplest assurances of wherein they are aggrieved." These putting an end to them all; except in were answered at the ensuing parlia- one instance, the augmented customs cn ment, and are entered, with the king's imports, to which he answered rather respective promises of redress, upon the evasively, that he would take them off roll. It will be worth while to extract till he should perceive whether himself part of this record, that we may see and his people derived advantage from so doing, and act thereupon as he should * Rot. Parl., vol. i, p. 285. t 4 E. III., c. 14. Annual sessions of parlia- * This article is so expressed as l.o make it ap ment seem fully to satisfy the words, and still pear that the grievance was the high price of corn more the spirit of this act, and of 36 E. III., c. 10; modities. But as this was the natural effect of a which, however, are repealed by implication from degraded currency, and the whole tenour of thee the provisions of 6 W. III., c. 2. But it was very articles relates to abuses of government, I think it rare under the Plantagenet dynasty for a parlia- must have meant what I have said in the teat mron to continue more than a vear. i Prvnne's 2d Register, n 68

Page 373 rART III.] ENGLISH CONSTITUTION. 373 be advised. Accordingly, the next year, this proceeding, however vilecnt, bears hte issued writs to collect these new evident marks of having been conducted customs again. But the Lords Ordiners by persons conversant in law, the menlt superseded the writs, having entirely ab- tion of the commons may be deemed a rogated all illegal impositions.* It does testimony to their constitutional righ iot appear, however, that, regard had to of participation with the peers in making lie times, there was any thing very ty- provision for a temporary defect of what. -annical in Edward's government. He ever nature in the executive government. set tallages sometimes, like his father. During the long and prosperous reign on his demesne towns without assent of of Edward III., the efforts of Edward III parliament.t In the nineteenth year parliament in behalf of their TheomDf his reign, the commons show, that country were rewarded with lish severa'whereas we and our ancestors have success, in establishing upon a rights. given many tallages to the king's ances- firm footing three essential principles of tors to obtain the charter of the forest, our government; the illegality of raising which charter we have had confirmed money without consent; the necessity by the present king, paying him large- that the two houses should concur for ly on our part; yet the king's officers of any alterations in the law; and, lastly, the forest seize on lands, and destroy the right of the commons to inquire ditches, and oppress the people, for which into public abuses, and to impeach public they pray remedy, for the sake of God counsellors. By exhibiting proofs of and his father's soul." They complain at each of these from parliamentary rec the same time of arbitrary imprisonnent. ords, I shall be able to substantiate the against the law of the land.t To both progressive improvement of our free these petitions the king returned a prom- constitution, which was principally conise of redress; and they complete the solidated during the reigns of Edward III.,catalogue of customary grievances in this and his two next successors. Brady inperiod of our constitution. deed, Carte, and the authors of the ParDuring the reign of Edward 11. the limentary History, have trod already rolls of parliament are imperfect, and over this ground; but none of the three we have not much assistance from other can be considered as familiar to the gensources. The assent of the commons, erality of readers, and I may at least which frequently is not specified in the take credit for a sincerer love of liberty statutes of this age, appears in two re- than any of their writings display. markable and revolutionary proceedings, In the sixth year of Edward III. a parthe appointment of the Lords Ordainers liament was called to provide for the in 1312,~ and, that of Prince Edward as emergency of an Irish rebell-"Remonstranguardian of the realm in the rebellion ion; wherein, "because the ces against which ended in the king's dethronement. king could not send troops
and inolney with In the former case, it indicates that the money to Ireland without the out
consent aristocratic party then combined against aid of his people, the prelates, earls, the crown
were desirous of conciliating barons, and other great men, and the popularity: An historian
relates, that knights of shires,,and all the commons, some of the ccommons were consulted some
of the ordinanceons to be made onsulted the assent of the whole commonality of the realm there
upon the ordinances to be made for the being, unanimously elected the said duke to be
reformation of government. I In the lat- guardian of the said kingdom; so that the said ter case,
the deposition of Edward II., I duke and guardian should rule and govern the am satisfied, that
the commons assent said realm, in the name and by the authority of the was pretended in order
to give more king his father, he being thus absent." But the king being taken and brought back
into England, speciousness to the transaction.- But as the power thus delegated to the guardian
ceased of course; whereupon the Bishop of Hereford was ~ Prynne's 2d Register, p. 75. sent to
press the king to permit that the great seal, t Madox, Firma Burgi, p. 6. Rot. Parl., vol. i., which
he had with him, the prince having only v 449. used his private seal, should be used in all
things I Rot. Parl., vol. i., p. 430. Q Id., p. 281. that required it. Accordingly the king sent the 1
Walsingham, p. 97. great seal to the queen and prince. The bishop is' A record, which may be
read in Brady's His- said to have been thus commissioned to fetch the,ory of England, vol. ii.,
Append., p. 66, and in seal by the prince and queen, and by the said pre Rtymler, t. iv., p. 1237,
relative to the proceedings lates and peers, with the assent of the said commonon Edward II.'s
flight into Wales and subsequent alty then being at Hereford. It is plain that these decention,
recites " that the kings having left his were mere words of course; for no parliament kingdom
without government, and gone away with had been convoked, and no proper representatives
notorious enemies of the queen, prince, and realm; could have been either at Bristol or
Hereford. divers prelates, earls, barons, and knights then be- However, this is a very curious
record, inasmuch mg at Bristol, in the presence of the said queen as it proves the importance
attached to ti e ferrma mnd duke (Prince Edward, d.;ke of Cornwall). bu of the constitution at
this period

Page 374 374 EUROPE DURING THE AM DDLE AGES. (LHAPV. VIII of their free.will,
for the said purpose, with the people of their respective coun and also in order that the king
might ties, to procure the grant of a reasonable live of his own, and not vex his people aid in
the next parliament.* They de by excessive prises, nor in other man- manded also that the
imposition on wool nler, grant to him the fifteenth penny, to and lead should be taken as it used
to be Levy of the commons,* and the tenth in former times, "inasmuch as it is ei. from the
cities, towns, and royal de- hanced without assent of.he commonsl mesnes. And the king, at the
request or of the lords, as we understand; and of the same, in ease of his people, grants if it be
otherwise demanded, that any that the commissions lately made to one of the commons may
refuse it (le certain persons assig'ned to set tallages puisse arester), without being troubled on
on cities, towns, and demesnes through- that account (saunz estre chalang6").+ cut England,
shall be immediately repeal- Wool, however, the staple export of.ed; and that in time to come
he will that age, was too easy. and tempting a not set such tallage, except as it. has prey to be
relinquished by a prince en been done in the time of his ancestors, gaged in an empoverishing
war. Seven and as he may reasonably do."t years afterward, in 20 E. III.,we find the These
concluding words are of danger- commons praying that the great subsidy ous implication, and
certainly it was not of forty shillings upon the sack of wool the intention of Edward, inferior to
none be taken off; and the old custom paid as of his predecessors in the love of power,
heretofore was assented to and granted to divest himself of that eminent prerog- The
government spoke this time in a tative, which, however illegally since the more authoritative
tone. "As to this Confirmatio Chartarum, had been exer-
point (the answer runs), the prelate
and cised by them all. But the parliament others, seeing in what need the king stood took no
notice of this reservation, and of an aid before his passage beyond sea, continued with
unshaken perseverance to to recover his rights, and defend his kinginsist on this incontestable
and funda-
dom of England, consented, with the mental right, which he was prone enough
concurrence of the merchants, that he to violate. should have, in aid of his said war, and in In
the thirteenth year of this reign, the defence of his said kingdom, forty shillords gave their
answer to commission-
lings of subsidy for each sa(k of wool ers sent to open the parliament,
and to that should be exported beyond sea fox treat with them on the king's part, in a two years
to come. And upon this grant sealed roll. This contained a grant of divers merchants have made
many ad. the tenth sheaf., fleece, and lamb. But, vances to our lord the king, in aid of his before
gave it, they took care to war; for which cause this subsidy canhave letters patent showed
them, by not be repealed without assent of the which the commissioners had power " to king
and his lords."t grant some graces to the great and It is probable that Edward's counselsmall of
the kingdom.".-" And the said lors wished to establish a distinction, long lords," the roll
proceeds to say, "will, afterward revived by those of James I., that the imposition (maletoste)
which between customs levied en merchandise now again has been levied upon wool be at the
ports and internal taxes. The entirely abolished, that the old customa-
statute entitled
Confirmatio Chartarum ry duty be kept, and that they may have had manifestly taken away the
prerogait by charter, and by enrolment in par-
tive of imposing the latter, which indeed liament,
that such custom be never have never extended beyond the tenants more levied, and that this
grant now of the royal demesne. But its language made to the king, or any other made in was
not quite so explicit as to the former, time past, shall not turn hereafter to their although no
reasonable doubt could be charge nor be drawn into precedent." entertained that theintention of
thelegisThe commons, who gave their answers lature was to abrogate-every species of .n a
separate roll, declared that they imposition unauthorized by parliament. could grant no subsidy
without consult-
The thirtieth section of Magna Charta ing their constituents; and therefore had
provided that foreign merchants begged that another parliament might be should be free from
all tributes, except summoned, and in the meantime they the ancient customs; and it was
strange would endeavour, by using persuasion to suppose that natives were excluded from the
benefit of that enactment. Yet * "La commonalte" seems in this place to mean the tenants of
land, or commons of the counties, in contradistinction to citizens and bur- * Rot. Parl., vo. ii.,
p. 104. gesses - Rot Parl., v. ii., p. 66. + Id. ihid. i Id., p. 161

Page 375] At III.] ENGLISH CONST"I JTION. 375 owing to the ambiguous and elliptical
that of preventing the crown froir, claim. style so frequent in our older laws, this ing these
usurpations as uncontested pre. was open to disputation and could perhaps rogatives. The roll ot
parli ament in the only be explained by usage. Edward I., next two years, the 21st and 22d of
Edin despite of both these statutes, had ward III., is full of the same complaints set a duty of
threepence in the pound on one side, and the same allegations of upon goods imported by
merchant stran- necessity on the other.* In the latter year gers. This imposition was noticed as a
the commons grant a subsidy, on condi.
grievance in the third year of his succes-
tion that no illegal levying of money sor, and repealed by the lords ordainers. should take place, with
several othei It was revived however by Edward III., remedial provisions; " and that these and
continued to be levied ever after- conditions should be entered on the roll ward.* of parliament,
as a matter of record, by Edward was led by the necessities of which they may have remedy, if
any his unjust and expensive war into anoth-
thing should be attempted to the coner arbitrary
encroachment, of which we trary in time to come." From this year find as many complaints as
of his pecuni- the complaints: of extortion become raary extortions. The commons pray, in
er less frequent; and soon afterward a the same parliament of 20 E. III., that statute was
passed, " That no man should commissions should not issue for the fu- be constrained to find
men-at-arms, hobeture out of chancery, to charge the peo- lers, nor archers, other than those
which ple with providing men-at-arms, hobelers hold by such services, if it be not by (or light
cavalry), archers, victuals, or in common assent and grant made in parliaannly other manner,
without consent of ment."t Yet even in the last year of parliament. It is replied to this petition,
Edward's reign, when the boundaries of that " it is notorious how in many parlia- prerogative
and the rights of parliament ments the lords and commons had prom- were better ascertained,
the king lays a ised to aid the king in his quarrel with sort of claim to impose charges upon his
their bodies and goods as far as was in subjects in cases of great necessity and their power;
wherefore the said lords, for the defence of his kingdom.T But this seeing the necessity in
which the king more humble language indicates a change stood of having aid of men-at-arms,
hobe- in the spirit of government, which. after lers, and archers, before his passage to long
fretting impatiently at the curb, be, recover his rights beyond sea, and to de- gan at length to
acknowledge the confend his realm of England, ordained, that trolling hand of law. such as had
five pounds a year or more These are the chief instances of a in land on this side of Trent,
should fur- struggle between the crown and connish men-at-arms, hobelers, and archers, mons
as to arbitrary taxation; but there according to the proportion of the land are two remarkable
proceedings in the they held, to attend the king at his cost; 45th and 46th of Edward, which,
though and some who would neither go them- they would not have been endured in selves nor
find others in their stead, were later times, are rather anomalies arising willing to give the king
werewithal out of the unsettled state of the constituhe might provide himself with some in tion
and the recency of parliamentary their place. And thus the thing has been rights, than mere
encroachments of the done, and no otherwise. And the king prerogative. In the former year,
parliawills, that henceforth what has been thus ment had granted a subsidy of fifty thoudone in
this necessity be not drawn into sand pounds, to be collected by an assessconsequence or
example."t ment of twenty-two shillings and threeThe corimons were not abashed by pence
upon every parish, on a presumpthese arbitrary pretensions; they knew tion that the parishes in
England amount-. that by incessant remonstrances they ed to forty-five thousand, whereas they
should gain at least one essential point, were hardly a fifth of that number. This amazing
mistake was not discovered till * Case of impositions in Howell's State Trials, the parliament
had been dissolved. Upon vol. ii., p. 371-519; particularly the argument of its detection, the
king summoned a great Mrr, Hakewill. Hale's Treatise on the Customs, council,Q consisting of
one krght, citizen in Hargrave's Tracts, vol. i. Edward III. imposed another duty on cloth ex-
and burgess, named by himself out of ported, onthe pretence that as the wool must have two
that had been returned to the last paid a tax, he had a right to place the wrought and unwrougk,
article on an equality. The commons * Rot. Parl., p. 161, 166, 201 renlonstrated against this;
but it was not repealed. t 25 E. III., strtl Y., c. 8. This took place about 22 E. III.-Hale's

Page 376 376 EUnt'E DURING THE MIDDLE AGES. [Ch-AP. VIlIt parliament'Io this
assembly the chan- These petitions, with the respective ar; Allor set forth the deficiency of the
last swers made to them in the king-s name subsidy, and proved by the certificates of were
drawn up after the end of the ses.Il the bishops in England how strangely sion in the form of
laws, and entered the parliament had miscalculated the upon the statute-roll. But here it must
number of parishes; whereupon they be remarked, that the petitions were ticreased the
parochial assessment by often extremely qualified and altered by their own authority to one
hundred and the answer, insomuch that many statutes sixteen shillings.* It is obvious that the
of this and some later reigns by no main intention of parliament was carried means express the
true sense of the cominto effect by this irregularity, which mons. Sometimes they contented
themseems to have been the subject of no selves with showing their grievance and complaint.
In the next parliament, a praying remedy from the king and his still more objectionable
measure was re- council. Of this one eminent instance sorted to; after the petitions of the com-
is the great statute of treasons. In the mons had been answered, and the knights petition
whereon this act is founded, it is dismissed, the citizens and burgesses merely prayed that,
"whereas the king's wr.ere convened before the Prince of justices in different counties adjudge
perWales and the lords in a room near the sonlls endicted before them to be traitors white
chamber, and solicited to renew for sundry matters not known by the their subsidy of forty
shillings upon the commons to be treaso n, it would please tun of wine, and sixpence in the
pound the king by his council, and by the great upon other imports, for safe convoy of and wise
men of the land, to declare shipping, during one year more; to which what are treasons in this
present parliathey assented; "and so departed."t men. The answer to this petition conTh!:
second constitutional principle es- tains the existing statute, as a declaraThe coi. tablished in
the reign of Ed- tion on the king's part.* But there is no currence of ward III. was, that the king
and appearance that it received the direct asbot.in houegsla- two houses of parliament in sent
of the lower house. In the next tion conjunction possessed exclu- reigns we shall find
more remarkable insary. siVely the right of legislation. stances of assuming a consent which
was I aws were now declared to be made by never positively given. the king at the request of
the commons, The statute of treasons, however, was and by the assent of the lords and pre-
supposed to be declaratory of the ancient lates. Such at least was the general law; in permanent
and material innovaform, though for many subsequent ages tions, a more direct concurrence of
all there was no invariable fegularity in this the estates was probably required. A respect. The
commons, who till'this new statute, to be perpetually inceorpcreign were rarely mentioned,
were now rated with the law of England, was reas rarely omitted in the enacting clause. garded
as no light matter. It was a very In fact, it is evident from the, rolls of common answer to a
petition of the comparliament, that statutes were almost mons, in the early part of this reign,
that always founded upon their petition.1 it could not be granted without making a new law.
After the parliament of 14 E. * Rot. Parl., p. 304. III., a certain number of prelates, barons, t
Idem, p. 310. In the mode of levying sub- and counsellors, with twelve knights and sidies, a
remarkable improvement took place ear- six burgesses, were appointed to sit from ly in the
reign of Edward III. Originally two in order such petitions chief taxers were appointed by the
king for eacho turn such petitions county, who named twelve persons in every hun- and
answers as were fit to be perpetual dred:to assess the moveable estate of all inhabi- into a
statute; but for such as were of a tants according to its real value. But in 8 E. III., temporary
nature, the king issued his leton complaint of parliament, that these taxers were ters patent.t
This reluctance to innoo partial, commissioners were sent round to com- ne pound with every
town and parish for a gross sum, vate wit ty, and to swell the which was fiom thenceforth the
fixed quota of sub- number of laws which all were bound to sidy, and raised by the inhabitants
themselves.- know and obey with an accumulation of Brady on Boroughs, p. 81. transitory
enactments, led apparently to ] Laws appear to have been drawn up and po- the distinction
between statues di posed to the two houses by the king, down to the statutus dis time of
Edward I. -Hale's Hist. of Common Law, ald ordinanes. The latte r are torud p. 16. indeed
defined by some law-fromora Sometimes the representatives of particular yers to be regulations
proceed-naes. places address separate petitions to the king and.. council; as the citizens of
London, the commons most part very numerous. In the roll of 50 Eiw of Devonshire, &c.
These are intermingled with III. they amount to 140. the general petitions, and both together are for the * Rot. Parl., p. 239 t Idem, r 113

ENGLISH CONSTITUTION. 377 mg from the king and lords, without con- that article under pain of death, inflict curence of the commons. But if this sundry other penalties, create jurisdicbe applicable to some ordinances, it is tions, and, in short, have the effect of certain that the word, even when op- a new and important law. After they posed to statute, with which it is often were passed, the deputies of the comsynonymous, sometimes denotes an act mons granted a subsidy for three years, of the whole legislature. In the 37th of complained of grievances, and received Edward III.,when divers sumptuary reg- answers, as if in a regular parliament. ulations against excess of apparel were But they were aware that these proceed. made in full parliament, " it was demand- ings partook of some irregularity, and ed of theo lords and commons, inasmuch endeavoured, as was their constant methas the matter of their petitions was novel od, to keep up the legal forms of the and unheard of before, whether they constitution. In the last petition of this would have them granted by way of or- council, the commons pray, " because dinance or of statute. They answered many articles touching the state of the that it would be best to have them by king, and common profit of his kingdom, way of ordinance and not of statute, in have been agreed by him, the prelates, order that any thing which should need lords, and commons'of his land, at this amendment might be amended at the council, that the said articles may be re, next parliament."* So much scruple did cited at the next parliament, and entered they entertain about tampering with the upon the roll; for this cause, that ordistatute law of the land. nances and agreements made iii council Ordinances, which, if it were not for are not of record, as if they had been their partial or temporary operation, made in a general parliament." This could not well be distinguished from accordingly was done at the ensuing par laws,t were often established in great liament, when these ordinances were excouncils. These assemblies, which fre- pressly confirmed, and directed to be quently occurred in Edward's reign, were "holden for a statute to endure al hardly distinguishable, except in name, ways."X from parliaments, being constituted not It must be confessed, that the disconcelly of those who were regularly sum- tidn between ordinances and statutes is moned to the house of lords, but of dep- very obscure, and perhaps no precise uties from counties, cities, and boroughs. and uniform principle can be laid down Several places that never returned bur- about it. But it sufficiently appears that gesses to parliament have sent deputies ~whatever provisions altered the common to some of these councils.t The most law or any former statute, and were enremarkable of these was that held in the tered upon the statute- roll, transmitted 27th of Edward II., consisting of one to the sheriffs, and promulgated to the knight for each county, and of deputies people as general obligatory enactments, from all the cities and boroughs, wherein were holden to require the positive asthe ordinances of the staple were estab- sent of both houses of parliament, duly lished. These were previously agreed and formally summoned. upon by the king and lords, and copies Before we leave this subject, it will be given, one to the knights, another to the proper to take notice of a remarkable burgesses. The roll tells us, that they stretch of prerogative, which, if drawn gave their opinion in writing to the coun- into precedent, would have effectually cil, after much deliberation, and that this subverted this principle of parliamentary was read and discussed by the great men. consent in legislation. In the 15th of These ordinances fix the staple of wool Edward III., petitions were presented of in particular places within England, pro- a bolder and more innovating cast than hibit English merchants from exporting was acceptable to the court; that no peer Rot. Pashould be put to answer for any trespass, a Rot. Parl., p. 280. ~ except before his peers; that commist "If there be any difference between an ordi- except before his peerssigned to exa mine nanice
and a statute, as some have collected, it is soes should be assigned to examine but only this, that an ordinance is but temporary the accounts of such as had received till confirmed and made perpetual; but a statute is public moneys; that the judges and minperpetual at first, and so have some ordinances also isters should be sworn to observe the been."-Whitelocke on Parliamentary Writ, vol.Gret Charter and othel laws; and that ii., p. 297. See Rot. Parl., vol. iii., p. 17; vol. iv.,Ge should be a oe w;in o lw dt p. 35. they should be appointed in parliament. J These may be found in Willis's Notitia Parlia- The last of these u as probably the most inertaria. In 28 E. I., the universities were sum- obnoxious; but the king, unwilling to de. mor ed to send members to a great council, in or- fer a supply which was granted merely der so defend the king's rig t to the kingdom of -- Scotland.- -1 Prvnne.' Rot. Parl., p. 253. 2.57
time, after affixed; and that it appeared to the earls, their petitions had been answered, " it
barons, and other learned persons of his was showed to the lords and commons kingdom, with
whom he had consulted, by Bartholomew de Burghersh, the king's hat as the said statute had
not proceed- chamberlain, how a treaty had been set Id from his own good-will, it was null, on
foot between the king and his advertnd could not have the name or force of sary of France; and
how he had good law.4 This revocation of a statute, as hope of a final and agreeable issue with
the price of which a subsidy had been God's help; to which he would not come granted, was a
gross infringement of law, without assent of the lords and commons. and undoubtedly passed
for such at that Wherefore the said chamberlain inquired time; for the right was already clear,
on the king's part of the said lords and though the remedy was not always at- commons whether
they would assent and tainable, Two years afterward Ed- agree to the peace, in case it might be
ward met his parliament, when that ob- had by treaty between the parties. To noxious statute
was formally repealed. which the said commons with one voice Notwithstanding the king's
unwilling- replied, that whatever end it should please the king and lords to make of the * Rot.
Parl., p. 131. t Id., p. 128. treaty, would be agreeable to them. On t Rymer, t. v., p. 282. This
instrument betrays which answer the chamberlain said to In its language Edward's
consciousness of the vio- ent sles he was taking, and his wish to excuse it * Rymer, t. v., p.
165. t Id., p. 148, %s m i:h as possible.. 1 21 E. JII., p. 165.

Page 379 .ART III.t. ENGLISH CONSTITUION. 379.he commmons, then you will assent to
a cendency of the Duke of Lancaster antr perpetual treaty of peace if it can be had. Alice
Perrers. The former, a man or And the said commons answered at once more ambition than his
capacity seems and unanimously, yes, yes."* The lords to have warranted, even incurred the
suswere not so diffident. Their great sta- picion of meditating to set aside the heir tion as
hereditary counsellors gave them of the crown, when the Black Prince weight in all
deliberations of govern- should have sunk into the grave. Wheth. ment; and they seem to have
pretended er he was wronged or not by these con to a negative voice in the question of jectures,
they certainly appear o have peace. At least they answer, upon the operated on those most
concerned to proposals made by David, king of Scots, take alarm at them. A parliament met in
1368, which were submitted to them in April, 1376, wherein the general unin parliament, that,
" saving to the said popularity of the king's administration, David and his heirs the articles
contained or the influence of the Prince of Wales, therein, they saw no way of making a led to
very remarkable consequences." treaty which would not openly turn to After granting a subsidy,
the commons, the disherison of the king and his heirs, " considering the evils of the country, to
which they would on no account as- through so many wars and other causes, sent; and so
departed for that day."" A end that the officers now in the king's few years before they had
made a sim- service are insufficient without further as. ilar answei to some other propositions
sistance for so great a charge, pray that from Scotland.t It is not improbable, the council be
strengthened by the addithat in both these cases they acted with tion of ten or twelve bishops,
lords, and the concurrence and at the instigation of I others, to be constantly at hand, so that the
king; but the precedents might have no business of weight should be despatchbeen remembered
in other circumstances. ed without the consent of all; nor smallA third important acquisition of
the er matters without that of four or six."j Right of the house of commons during this The king
pretended to come with alacrity commons to reign was the establishment of into this measure,
which was followed inquire into their right to investigate and by a strict restraint on them and
all other ~pbli. abU chastise the abuses of adminis- officers from taking presents in the course
tration. In the fourteenth of of their duty. After this, "the said coni Edward IIT., a committee of
the lords' mons appeared in parliament, protesting house had been appointed to examine the
that they had the same good-will as ever accounts of persons responsible for the to assist the king with their lives and for receipt of the last subsidy; but it does tunes; but that it seemed to them, i! not appear that the commons were con- their said liege lord had always possessed cerned in this.~ The unfortunate statute about him faithful counsellors and good of the next year contained a similar pro- officers, he would have been so rich that vision, which was annulled with the rest. he would have had no need of charging Mahry years elapsed before the commons his commons with subsidy or tallage, tried the force of their vindictive arm.

considering the great. ransoms of the We must pass onward an entire generation French and Scotch kings, and of so of man, and look at the parliament as- many other prisoners; and that it apsembled in the fiftioth of Edward III. peared to be for the private advantage Nothing memorable as to the interfe- of some near the king, and of others by rence of the commons in government their collusion, that the king and kingdom occurs before, unless it be their request, are so empooverished, and the commons In the forty-fifth of the king, that no so ruined. And they promised the king clergyman should be made chancellor, that if he would do speedy justice on treasurer, or other great officer; to which such as should be found guilty, and take the king answered, that he would do from them what law and reason permit, what best pleased his council.II It will be remembered by every one * Most of our general historians have slurred Parliament who has read our history, that over this important session. The lest view, per of 50 E.- I.- in the latter years of Edward's haps, of its secret history will be found in Lowtl'e life, his fame was tarnished by the as- Life of Wykeham; an instructive and elegant work, only to be blamed for marks of that aca. ~ 28 E. III., p. 261. demical point of honour, which makes a fellow of t Id., p. 295. Carte says, " the lords and com- a college too indiscriminate an encomiast of its mons giving this advice separately, declared," &c. founder. Another modern book may be named -Hist. of England, vol. ii.., p. 518. I can find no win some commendation, though very inferior in mention of the commons doing this in' the roll of its execution, Godwin's Life of Chaucer, of which parliament. i Rymer, t. v., p.?69. the Duke of Lancaster is the political hero.' 6 Id.. p. 1.! Id., p. 304. t Rymer, t. v m 322.

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popular assemblies ever afford friend and creature of the Duke of Lan- against arbitrary power, when deprived caster. Nor was this parliament at all of regular leaders and the consciousness nice in touching a point where kings least of mutual fidelity. endure their interference. An ordinance The policy adopted by the Prince of was made, that "whereas many women Wales and Earl of March, in employing prosecute the suits of others in courts the house of commons as an engine of of justice by way of maintenance, and to attack against an obnoxious ministry, get profit thereby, which is displeasing to was perfectly novel, and indicates a senthe king, he forbids any woman hence- sible change in the character of our conforward, and especially Alice Perrers, to stitution. In the reign of Edward II. do so, on pain of the said Alice forfeiting parliament had little share in resisting all her goods, and suffering banishment the government; much more was effected from the kingdom."t by the barons, through risings of their The part which the Prince of Wales, feudal tenantry. Fifty years of authority who had ever been distinguished for his better respected, of law better enforced, respectful demeanour towards Edward, had rendered these more perilous, and of bore in this unprecedented opposition, is a more violent appearance than formerly. strong evidence of the jealousy with A surer resource presented itself in the which he regarded the Duke of Lancas- increased weight of the lower house in ter; and it was led in the house of cor- parliament. And this indirect aristocratmons by Peter de la Mare, a servant of ical influence gave a surprising impulse the Earl of March, who, by his marriage to that assembly, and particularly tended with Philippa, heiress of Lionel, duke to establish beyond question its control of Clarence, stood next after the young over public abuses. It is less just to renrince Richard in lineal succession to mark, that it also tended to preserve the the crown. The proceedings of this ses- relation and harmony between each part sion were indeed highly popular. But no and the other, and to prevent that jarring house of commons would have gone such of emulation and jealousy, which, though.engths on the mere support of popular generally found in the division of power opinions, unless instigated and encoura- between a noble and a popular estate, has ged by higher authority. Without this, scarcely ever caused a dissension, extheir petitions might perhaps have ob- cept in cases of little moment, between tained, for the sake of subsidy, an im- our two houses of parliament l mediate consent; but those who took ___ the lead in preparing them must have re- * Anonym. Hist. Edw. iii., ad calcem Hening-. maintained unsheltered after a dissolution, ford, pp. 444, 448. Walsingham gives a different to abide the vengeance of the crown, reason, p. 192. with no assurance that another parlia- t Rot. Parl.,p.374. Not more than six or seven of the knights who had sat in the last parliament were returned to this, as appears by the writs in * Rvmer t. v. p. 3 33 f Id., p. 329- Prynne's 4th Register, a. 302, 311.
should any way be diverted the young king, a large proportion of the from the purposes of the war. Accordknights who had sat ill that which im- ingly Walworth and Philpot, two eminent peached the Lancasterian party were re- citizens of London, were appointed to turned.* Peter de la Mare, now releas- this office and sworn in parliament to its ed from prison, was elected speaker; a execution.* dignity which, according to some, he had But whether through the wastefulness filled in the Good Parliament, as that of of government, or rather because Edthe fiftieth of Edward II. was popular- ward's legacy, the French war, like a ly styled; though the rolls do not men- ruinous and interminable lawsuit ex. tion either him or any other as bearing hausted all public contributions, there that honourable name before Sir Thomas was an equally craving demand for subHungerford in the parliament of the fol- edy at the next meeting of parliament. lowing year.t The prosecution against The commons now made: more serious Alice Perrers was now revived; not, as stand. The speaker, Sir.ames Picker. far as appears, by direct impeachment of ing, after the protestation against giving the commons; but articles were exhibit- offence, which has since become moeore ed against her in the house of lords on matter of form than perhaps it was then the king's part, for breaking the ordi- considered, reminded the lords of the nance made against her intermeddling at council of a promise made to the last court; upon which she received judg- parliament, that, if they would help the ment of banishment and forfeiture At king for once with a large subsidy so as the request of the lower house, the lords to enable him to undertake an expedition in the king's name appointed nine per- against the enemy, he trusted not to call sons of different ranks; three bishops, on them again, but to support the war two earls, two bannerets, and two bache- from his own revenues; in faith of which lords, to be a permanent council about the promise there had been granted the larking, so that no business of importance gest sum that any king of England had should be transacted without their unani- ever been suffered to levy within so short mous consent. The king was even cornm- a time, to the utmost loss and inconvepelled to consent that, during his minor- nience of the commons; part of which ity, the chancellor, treasurer, judges, and ought still to remain in the treasury, and other chief officers should be made in render it unnecessary to burden anew parliament; by which provision, combi- the exhausted people. To this Scrope, ned with that of the parliamentary coun- lord-steward of the household, protesting cil, the whole executive government was that he knew not of any such promise, transferred to the two houses. A peti- made answer by order of the king, that, tion that none might be employed in the saving the honour and reverence of our king's service, nor belong to his council, lord the king and the lords there proswho had been formerly accused upon ent, the commons did not speak truth in good grounds, struck at Lord Latimer, asserting that part of the last subsidy who had retained some degree of power should be still in the treasury; lit being notorious that every penny ); d gone into * Walsingham, p. 200, says pene omnes; but the the hands of Walworth and Philpot, ap. tist published in Prynne's 4th Register induces me to qualify this loose expression. Alice Perrers had pointed and sworn treasurers in the last bribed, he tells us, many of the lords, and all the parliament, to receive and expend it upon lawyers of England; yet by the perseverance of the purposes of the war, for which they these knights she was convicted. ~ Rot. Parl., vol. ii., p. 374. 1,.. v sol iii., p. L2. * Rot. Parl., vol. lit., p. 12.
the king in parliament or months after the last, wherein the king, out of parliament by the commons, any without waiting for a petition, informed account had afterward been rendered to the commons that the treasurers were the commons, or to any other except the ready to exhibit their accounts before king and his officers, yet the king, to gratify them, of his own accord, without do- ing it by way of right, would have Wal- made to the last parliament. Nine perworth, along with certain persons of the sons of different ranks were appointed at council, exhibit to them in writing a clear the request of the commons to investi- gate the state of the revenue, and the disar- ray condition that this should never be position which had been made of the late used as a precedent, nor inferred to be king's personal estate. They ended by done otherwise than by the king's spon- taneous concession, which they pretended taneous. The commons were to think adequate to the supply required.* again urged to provide for the public de- But in those times no one possessed any fence, being their own concern as much statistical knowledge, and every calcula- tion which required it was subject to enormous error, of which we have seen an eminent example.t In five or six peers might come to them, in the next parliament (3 Ric. II.) it was set order to discuss this question of subsidy. forth that only ~22,000 had been col- lected by the poll-tax, which they pretended adequate to the supply required.* In those times the commoners were subject to considerable duties,* apologi* * Rot. Parl., p. 57. f See ante, p. 375. - Nevertheless, the commons repeated it in tnee Rot. Parl., F.5-38 schedule of petitions; and received an evasiva
mission as requested was made out to plundered and wasted by sea and land, three prelates, three earls, three banner- without any relief. Which calamities etc, three knights, and three citizens.* the said poor commons, who lately used After guarding thus, as they conceived, to live in honour and prosperity, call no against malversation, but in effect rath- longer endure. A.nd to speak the real er protecting their posterity than them- these injuries lately done to the selves, the commons prolonged the last poorer commons more than they ever imposition on wool and leather for an- suffered before, caused them to rise, and other year. to commit the mischief done in their late It Would be but repetition to make ex- riot; and there is still cause to fear.racts from the rolls of the two next greater evils, if sufficient remedy be not years; we have still the same tale; de- timely provided against the outrages and mand of subsidy on one side, remon- oppressions aforesaid. Wherefore may strance and endeavours at reformation on it please our lord the king, and the noble the other. After the tremendous insur- peers of the realm now assembled in this rection of the villeins, in 1382, a parlia- parliament, to provide such remedy and ment was convened to advise about re- as to the said administration, pealing the charters of general manumis- that the state and dignity of the king In sion, extorted from the king by the pres- the first place, and of the lords may be sure of circumstances. In this measure preserved, as the commons have always all concurred; but the commons were not desired, and the commons may be put in afraid to say that the late risings had been peace; removing, as soon as they can be provoked by the burdens which a prodi- practices which have led to the last liberation," they said, "that unless the rising, or else none can imagine that administration of the kingdom were this kingdom can longer subsist without speedily reformed, the kingdom itself greater misfortunes than it ever endured. swould be utterly lost and ruined for ever, And for God's sake let it not be forgot. and therein their lord the king, with all ten, that there be put about the king and the peers and commons, which God for- of his council the, best lords and knights bid. For true it is that there are such that can be found in the kingdom. defects in the said administration, as well" "And be it known (the entry proceeds) about the king's person and his house- that after the king our lord, with the hold, as in his courts of justice; and peers of the realm and his council, had ny grievous oppressions in the country taken advice upon these requests made through maintainers of suits, who are, as to him for his good and his kingdom's it were, kings in the country, that right as it really appeared to him, willed and and law are come to nothing, and the poor granted, that certain bishops, lords, and commons are from time to time so pil- others should be appointed to survey, laged and ruined, partly by the king's pur- and examine in privy council bol.Ih the veyors of the household, and others who government of the king's person and of pay nothing for what they take, partly by his household, and to suggest proper the subsidies and tallages raised upon remedies wherever necessary, and rethem, and besides by the oppressive be- port them to the king. And it was said havour of the servants of the king and by the peers in parliament, that as it other lords, and especially of the afore- seemed to them, if reform of government said maintainers of suits, that they are were to take place throughout the kingreduced to greater poverty and discom- dom, it should begin by the chief member, fort than ever they were before. And which is the king himself, and so from moreover, though great sums have been person to person, as well churchmen a.s continually granted by and levied upon others, and place to place, from higher to them for the defence of the kingdom, lower, without sparing any degree."* A yet they are not the better defended considerable number of commissioners against their enemies, but every year are were accordingly appointed, whether by the king alone or in
parliament does not swear, referring to an ordinance made in the first appear; the latter, however, as more parliament of the king, the application of which is probable. They seem indefinite, p. 379 probable. They seem to have made * See ante, p. 377. In Rymer, t. viii., p. 250, the some progress in the work of rfirmaarchbishop of York's name appears among these tion, for we find that the officers of the commissioners, which makes their number sixteen. housekeeping were sworn to obset'vu'hish but it is plain by the instrument that only fifteen......
*a're m'reat to be appointed. * Rot. Parl. 5 R il. r> 100

Page 384 984 EUROPE DURING THE MIDDLE AGES. [CHFP VIu; regulations. But in all likelihood these I The character of Richard II. was nob were soon neglected. developing itself, and the hopes Character w It is not wonderful, that with such feel- excited by his remarkable pres- Richari' ilgs of resentment towards the crown, ence of mind in confronting the rioters in the common's were backward In granting Blackheath were rapidly destroyed. Not subsidies. Perhaps the king would not that he was wanting in capacity, as has have obta;ned one at all if lie had not been sometimes imagined. For if we withheld his charter of pardon for all of-measure intellectual power by the great ences committed during the insurrec- est exertion it ever displays, rather than Lion. This was absolutely necessary to by its average results, Richard IJ. was a zstore quiet among the people; and man of considerable talents. He posthough the members of the commons had sessed, along with much dissimulation, a certainly not been insurgents, yet inevi- decisive promptitude in seizing the cripitable irregularities had occurred in quel- cal moment'for action. Of this quality, ling the tumults, which would have put besides his celebrated behaviour towards them too much in the power of those un- the insurgents, he gave striking evidence worthy nien who filled the benches of in several circumstances which we shall justice under Richard. The king de- have shortly to notice. But his ordinary declared that it was unusual to grant a par- conduct belied the abilities which on dopn without a subsidy; the commons these rare occasions shone forth, and still answered that they would consider rendered them ineffectual for his securi about the matter; and the king instantly ty. Extreme pride and violence, with all Adjoined that he would consider about inordinate partiality for the most worthhls pardon (s'aviseroit de sa dite grace) less favourites, were his predominant till they had done what they ought. characteristics. In the latter quality, They renewed at length the usual tax on and in the events of his reign, he forms wool and leather.* a pretty exact parallel to Edward II TPhis extraordinary assumption of pow- Scropc, lord chancellor, who had been er by the commons was not merely ow- appointed in parliament, and was underring to the king's poverty. It was en- stood to be irremovable without its con couraged by the natural feebleness of a currence, lost the great seal for refusing disunited government. The high rank to set it to some prodigal grants. Upon and ambitious spirit of Lancaster gave a slight quarrel with Archbishop Courthim no little influence, though contending ney, the king ordered his temporalities to with many enemies at court, as well as be seized, the execution of which Mithe ill-will of the people. Thomas of chael de la Pole, his new chancellor, and Woodstock, the king's youngest uncle, a favourite of his own, could hardly premore able and turbulent than Lancaster, vent. This was accompanied with inde. became, as he grew older, an eager cent and outrageous expressions of an. competitor for power, which he sought ger, unworthy of his station and of those through the channel of popularity. The whom he insulted.* earls of March, Arundel, and Warwick Though no king could be less respect.. bore a considerable part, and were'the able than Richard, yet the con- I-e acquires favourites of parliament. Even Lancas- stitution invested a sovereign inore power ter, after a few years, seems to have fal- with such ample prerogative, on his a len into popular courses, and recovered that it was far less easy to re- jority. some share of public esteem. He was sist his personal exercise of power than at the
head of the reforming commission the unsettled councils of a minority. In the fifth of 
Richard II., though he the parliament 6 R. II., sess. 2, the com had been studiously excluded 
from those mons pray certain lords whom, they Preceding. We cannot hope to disentan-
name, to be assigned as their advisers. of the intrigues of this remote age, as This had been permitted 
in the two last o which our records are of no service, sessions without exception.t But the And 
the chroniclers are very slightly in-
king, in granting their request, reserved f orded. So far as 
we may conjecture, Lancaster, finding his situation insecure Whether the populace changed 
their opinion of at court, began to solicit the favour of the him, I know not. He was still disliked 
by them commons, whose hatred of the admin-
two years before. The insurgents of 1382 are 
said to have compelled men to swear that they would: stratation abated their former hostility to-
obeys King Richard and the commons, and that the y would wards him. t would accept no king 
t The commons granted a subsidy, 7 R If. to. Rot. Parl., 5 R. II., p. 100. 6 II., seas a support 
Lancaster's war in Castile.-lt P., p84. o. 134.
parliamentary impeachment: of reform. usual intemperance, answered that he and more remarkable, from the eminence would not for their request remove the nence of the person attacked, than that meanest scullion from his kitchen. They of Lord Latimer, in the fiftieth year of returned a positive refusal to proceed on any public business until the king should appear personally in parliament and dis- Upon full consideration, I am much inclined appear personally in parliament, and dis- to give credit to this passage of Knyghton as to place the chancellor. The king required the main facts; and, perhaps, even the speech of forty knights to be deputed from the rest, Glocester and the Bishop of Ely is more likely to to inform him clearly of their wishes. have been made public by them, than invented by But the commons declined a proposal, in so jejunse an historian. Walsingham indeed says nothing of the matter; but he is so unequally in which they feared, or affected to fear, formed, and so frequently defective, that we can some treachery. At length the Duke of draw no strong inference from his silence. What Glocester, and Arundel, bishop of Ely, most weighs with me is that parliament met on were commissioned to speak the sense Oct. 1, 1387, and was not dissolved till Nov. 28; a of parliament, and they delivered it, if longer period than the business done in it seems to of parliament, and they delivered it, if have required; and also that Suffolk, who opened we may still believe what we read, ia the session as chancellor, is styled "darrein chancellor" in the articles of impeachment against him; * Rot. Parl., 9 R. II., p. 145. t Id., p. 205. fo that he must have been removed in the interval, 4 Id., p. 213. It is however asserted in the arti- which tallies with Knyghton's story. Besides, it tCes of impeachment against Suffolk, and admitted is plain, from the famous question subsequently Dy his defence, that nine lords had been appointed put by the king to his judges at Nottingham, thai In the last parliament, vlz., 9 R. II., to inquire both the right of retiring without a regular dissolu. into the state of the household, and reform what- tion and the precedent of Edward II. had been dis ever was amiss. But nothing of this appears in cussed in parliament, which does not appear any the roll. where else than in Knyghton. m Knyghton, in Twysden, x. Script., col 2680. t Rot. Parl., vol. iii. p. 219 B 1,"
its and unsuccessfully applied to the public prerogatives were not likely to be unne-service. No voice of his people, until ii cessarily impaired. In fact, the principle spoke in thunder, would stop an intoxl of this commission, without looking cated boy in the wasteful career of dissi back at the precedents in the reign of pation. He loved festivals and pageant, John, Henry III., and Edward II., which the prevailing folly of his time, with unu yet were not without their weight as sual frivolity; and his ordinary living in, constitutional analogies, was merely that represented as beyond comparison morf which the commons had repeatedly main-showy and sumptuous than even that ot tained during the minority of the present his magnificent and chivalrous predeces king, and which had produced the former sor. Acts of parliament were no ade commissions of reform in the third and quate barriers to his misgovernment fifth years of his reign. These were "Of what avail are statutes," says Wal upon the whole nearly the same in their singham, "since the king with his privy operation. It must be owned there was council is wont to abolish what para more extensive sway virtually given to liament has just enacted."* The conte the lords now appointed, by the penal- stant prayer of the commons in every ties imposdd on any who should endeav- session, that former statutes might be our to obstruct what they might advise; kept in force, is no slight presumption the design as well as tendency of which that they were not secure of being rew was no doubt to throw the whole admin- garded. It may be true, that Edward istration into their hands during the peri- III.'s government had been full as arbiod of this commission. trary, though not so unwise, as his grandThose who have written our history son's; but this is the strongest argu with more or less of a tory bias exclam ment, that nothing less than an extraoragainst this parliamentary commission dinary remedy could preserve the still as an unwarrantable violation of the unstable liberties of England. king's sovereignty, and even impartial The best plea that could be made for men are struck at first sight by a mneas- Richardwashis inexperience, andthemisur that seems to overset the natural guided suggestions of favourites.'Phis, balance of our constitution. But it however, made it more necessary to rewould be unfair to blame either those move those false advisers, and to surply that inexperience. Unquestionably the befoArticles had been exhibited by the chancellor choice of ministers is reposed in the sovybefore the peers, in the seventh of the king, against Spencer, bishop of Norwich, who had led a con- ereign; a trust, like every other attribute siderable army into a disastrous expedition against of legitimate power, for the public good; the Flemings, adherents to the antipope Clement, not, what no legitimate power can eve, in the schism. This crusade had been exceeding- be, the instrument of selfishness or ca my popular, but its ill success had the usual effect. The commons were not parties in this proceeding. -Rot. Parl., p 53 + Id., p. 22! * Rot Parl., p. 281

Page 387 {at T III.] ENGLISH CONSTITUTION. 3A7 price. There is something more sacred nothing done therein should be A^swers of than the prerogative, or even than the in prejudice of his rights; a re- the judges co.stitution; the public weal, for which servation not unusual when toRichard's all powers are granted, and to which they any remarkable concession was questions. must all be referred. For this public made, but which could not decently be weal it is confessed to be sometimes ne- interpreted, whatever he might mean, as cessary to shake the possessor of the a dissent from the statute just passed. throne out of his seat; could it never be Some months had intervened, when the permitted to suspend, though but indi- king, who had already released Suffolk rectly and for a time, the positive exer- from prison and restored him to his fa cise of misapplied prerogatives't He has vour, procured from the judges whom he learned in a very different school from had summoned to Nottingham a most myself, who denies to parliament at the convenient set of answers to questions present day a preventive as well as vin- concerning the late proceedings in pardictive control over the administration
liament. Tresilian and Belknap, chief of affairs; a right of resisting, by those justices of the
King's Bench and Conmeans which lie within its sphere, the mon Pleas, with several other
judges, appointment of unfit ministers. These gave it under their seals, that the late means are
now indirect; they need not statute and commission were derogatory to be the less effectual,
and they are to the prerogative; that all who procured certainly more salutary on that account. it
to be passed, or persuaded or compell
But we must not make our notions of the ed the king to
consent to it, were guilty constitution, in its perfect symmetry of of treason; that the kings
business must manhood, the measure of its infantine pro- be proceeded upon before any other
in portions, nor expect from a parliament parliament; that he may put an end to just struggling
into life, and "pawing to the session at his pleasure; that his minget free its hinder parts," the
regularity isters cannot be impeached without his of definite and habitual power. consent; that
any members of parlia It is assumed rather too lightly by ment contravening the three last
articles some of those historians to whom I have incur the penalties of treason, and
espealluded, that these commissioners, though cially he who moved for the sentence of but
appointed for a twelvemonth, design- deposition against Edward II. to be read; ed to retain
longer, or would not in fact and that the judgment against the Earl have surrendered their
authority. There of Suffolk might be revoked as altogether is certainly a danger in these
delegations erroneous. of pre-eminent trust; but I think it more These answers, perhaps extorted
by formidable in a republican form than menaces, as all the judges ex- Subsequent under such
a government as our own. cept Tresilian protested before revolution. The spirit of the people,
the letter of the the next parliament, were for the most law, were toth so decidedly monarchical,
part servile and unconstitutional. The that no glaring attempt of the commis- indignation which
they excited, and the tioners to keep the helm continually in measures successfully taken to
withstand their hands, though it had been in the the king's designs, belong to general hisking's
name, would have had a fair prob- tory; but I shall pass slightly over that ability of success.
And an oligarchy season of turbulence, which afforded no of fourteen persons, different in rank
legitimate precedent to our constitutional and profession, even if we should impute annals. Of
the five lords appellants as criminal designs to all of them, was ill they were called, Glocester,
Derby, Notcalculated for permanent union. Indeed, tingham, Warwick, and Arundel, the three
the facility with which Richard reassu- former, at least, have little claim to our med his full
powers two years afterward, esteem; but in every age, it is the sophism when misconduct had
rendered his cir- of malignant and peevish men to traduce cumstances far more unfavourable,
gives the cause of freedom itself, on account the corroboration of experience to this of the
interested motives by which its reasoning. By yielding to the will of ostensible advocates have
frequently been his parliament, and to a temporary sus- actuated. The parliament, who had the
pension of prerogative, this unfortunate country thoroughly with them, acted no prince might
probably have reigned long doubt honestly, but with an inattention to and peacefully; the
contrary course of the rules of law, culpable indeed, yet from acting led eventually to his
deposition which the most civilized of their succesand miserable death. sors, in the heat of
passion and triumph, Before the dissolution of parliament, have scarcely been exempt. Whether
Richard made a verbal protestation, that all with whom they dealt severely, some Bb2
parliament, but by cusation should be alleged against them. Every class of the people, to stand by The commons, after a day's deliberation the lords appellants, we find him, after probably to make their approbation apter about a year, suddenly annihilating pear more solemn, declared in full part their pretensions, and snatching the reins of the cause of this event is among the many and that they held them to have faithful obscurities that attend the history of his ly discharged their duties. The king reigned. It was conducted with a spirit instated them accordingly; with a protand activity which broke out two or three estation that this should not be made a times in the course of his imprudent life; precedent, and that it was his right to but we may conjecture that he had the change his servants at pleasure,* advantage of disunion among his ene- But this summer season was not to last miers. For some years after this, the for ever. Richard had but dis- Disnion king's administration was prudent. The sembled with those concerned among some great seal, which he took away from in the transactions of 1388, leading Archbishop Arundel, he gave to Wyke- none of whom he could ever peers. ham, bishop of Winchester, another forgive. These lords in lapse of time member of the reforming commission, were divided among each other. The but a man of great moderation and polit-earls of Derby and Nottingham were ical experience. Some time after he re- brought into the king's interest. The stored the seal to Arundel, and reinstated Earl of Arundel came to an open breach the Duke of Glocester in the council. with the Duke of Lancaster, whose parSee, Duke of Lancaster, who had been don he was compelled to ask for an un. absent during the transactions of the founded accusation in parliament. Glotenth and eleventh years of the king, in cester's ungoverned ambition, elated Dyn prosecution of his Castilian war, formed popularity, could not brook the ascend a link between the parties, and seems to ency of his brother Lancaster, who wan have maintained some share of public much less odious to the king. He had favour. constantly urged and defended the conThere was now a more apparent har- cession of Guienne to this prince, to be mony between the court and held for life, reserving only his liege hom Greater- the parliament. It seems to age to Richard as king of France;T a tween the have been tacitly agreed that grant as unpopular among the natives pking amint they should not interfere with of that country as it was derogatory to the king's household expenses; the crown; but Lancaster was not much and they gratified him in a point where indebted to his brother for assistance, his honour had been most wounded, de- which was only given in order to diminclaring his prerogative to be as high and ish his influence in England. The truce unimpaired as that of his predecessors, with France, and the king's French mar-and repealing the pretended statute by riage, which Lancaster supported, were virtue of which Edward II. was said to passionately opposed by Glocester. And have been deposed.t They were provi- the latter had given keener provocation, dent enough, however, to grant condi- by speaking contemptuously of that mistional subsidies, to be levied only in case alliance with Katherine Swineford, which of a royal expedition against the enemy; contaminated the blood of Plantagenet. and several were accordingly remitted To the parliament summoned in the 20th by proclamation, this condition not being of Richard, one object of which was to fulfilled. Richard never ventured to re- legitimate the Duke of Lancaster's antecall his favourites, though he testified his nuptial children by this lady, neither Glounabated affection for Vere by a pompous cester nor Arundel would repair. There passed in this assembly something re* The judgment against Simon de Burley, one markable, as it exhibits not only the arof those who were executed on this occasion, upon bitary temper of the king, a point by no impeachment of the commons, was reversed under Henry IV.; a fair presumption of its injustice. — * Rot. Parl., 13 R. II., p. 258 Rot. Parl., vol. iii., p. 464. f Id., 17 R. II., p. 313. + Rot Parl., 14 Rt II., p 279 15 R. If.. p. 286. t Rvmer, t. vii., p. 583. 659.
ENGLISH CONSTITUTION: 3t4u means doubtful, but the inefficiency of tions in the king. They surrendered the commons to resist it, without support obnoxious bill, with its proposer, ont from political confederacies of the nobility. Thomas Haxey, and with great humility. The circumstances are thus related made excuse, that they never designed to in the record, give offence to his majesty, nor to interfere. During the session, the king sent for fere with his household or attendants, R. Chard's the lords into parliament one knowing well that such things do not be. prosecution afternoon, and told them how long to them, but to the king alone; but of Haxey. he had heard of certain articles merely to draw his attention, that he of complaint made by the commons in might act therein as should please him conference with them a few days before, best. The king forgave these pitiful supsome of which appeared to the king pliants; but Haxey was adjudged in parliament to suffer death as a traitor. As, and commanded the chancellor to inform however, he was a clerk, the Archbishop him fully as to this. The chancellor of Canterbury, at the head of the preaaccordingly related the whole matter, lates, obtained of the king that his life which consisted of four alleged grievan- might be spared, and that they might ces; namely, that sheriffs and escheators, have the custody of his person; protestnotwithstanding a statute, are continued ing that this was not claimed by way of In their offices beyond a year,* that the right, but merely of the king's grace.t Scottish marches were not well kept; This was an open defiance of parlia that the statute against wearing great men's liveries was disregarded; and, last- er. For it would be impossible to con ly, that the excessive charges of the tend, that after the repeated instances o: king's household ought to be diminished, control over public expenditure by the arising from the multitude of bishops and commons since the 50th of Edward III., of ladies who are there maintained at his this principle was novel and unauthorized cost. by the constitution; or that the right of Upon this information the king de- free speech demanded by them in every clared to the lords, that through God's parliament was not a real and indisputa gift he is by lineal right of inheritance ble privilege. The king, however, was king of England, and will have the royal- completely successful, and hav- Arbitrary ty and freedom of his crown, from which ing proved the feebleness of measures of some of these articles derogate. The the commons, fell next upon the king. first petition, that sheriffs should never those he more dreaded. By a skilful remain in office beyond a year, he re- piece of treachery he seized the Duke jected; but, passing lightly over the rest, of Glocester, and spread consternation he among all his party. A parliament was who are his lieges, should take on them- summoned, in which the only struggle selves to make any ordinance respecting was to outdo the king's wishes, and thus his royal person or household, or those to efface their former transgressions.1 whom he might please to have about him. He enjoined, therefore, the lord. to de- * The church would perhaps have interfered in dare plainly to the commons his pleas- behalf of Haxey, if he had only received the tonsure. But it seems that he was actually in orders; ure in this matter; and especially direct- for the record calls him Sir Thomas Haxey, a title ed the. Duke of Lancaster to make the at that time regularly given to the parson of a parspeaker give up the name of the person ish. If this be so, it is a remarkable authority for who presented a bill for this last article the clergy's capacity of sitting in parliament. j~ if~ the lower house. f Rot. Parl., 20 R. II., p. 339. In Henry IV.'s his the lower house. first parliament, the commons petitioned for Hax. The commons were in no state to re- ey's restoration, and truly say, that his sentence sist this unexpected promptitude of an a> was en aneantissement des custumes de la commune, p. 434. His judgment was reversed by both * Hume has represented this as if the commons houses, as having past de volonte du Roy Richard had petitioned for the continuance of sheriffs be- en contre droit, et la course quel avoir est yvond y a year, and grounds upon this mistake part en parlement, p. 480. There
can be no doubt with of his defence of Richard II. (note to vol. ii., p. 270, any man who looks attentively at the passages 4to. edit.) For this he refers to Cotton's Abridg- relative to Haxey, that he was a member of parment; whether rightly or not I cannot say, being liament; though this was questioned a few years little acquainted with that inaccurate book, upon ago by the committee of the house of commons which it is unfortunate that Humne relied so much. who made a report on the right of the clergy to be The passage from Walsingham in the same note elected; a right which, I am inclined to believe, is also wholly perverted, as the reader will discov- did exist down to the Reformation, as the grounds er without further observation. An historian must alleged for Nowell's expulsion in the first of Mary be strangely warped, who quotes a passage expli- besides this instance of Haxey, conspire to prove, eitly complaining of illegal ac-~s in order t minfer though it has since been lost by disuse. that t'nase cry acts were lega.. t This assembly, if we may trust tiesn arany

Page 390: 900 EUROPE DURING THE MIDDLE AGES [C.AP. Vilr Glocester who had been murdered at mentioned above were, I suppose, pri. Calais, was attainted after his death; vate petitions to the king's council in par. Arundel was beheaded, his brother the liament, which had been frequently de. Archbishop of Canterbury deposed and spatched after a dissolution. For in the banished, Warwick and Cobham sent be- statute which establishes this commis. yond sea. The commission of the tenth, sion, 21 R. I.I., c. 16, no powers are corn the proceedings in parliament of the mitted but those of examining petitions eleventh year of the king, were annulled. which, if it does not confirm the charge The answers of the judges to mne ques- afterward alleged against Richard of faltions put at Nottingham, which had been sifying the parliament roll, must at least punished with death and exile, were pro- be considered as limiting and explaining nounced by parliament to be just and le- the terms of the latter. Such a trust had gal. It was declared high treason to pro- been committed to some lords of the cure the repeal of any judgment against council eight years before, in very peacepersons therein impeached. Their issue ful times; and it was even requested male were disabled from ever sitting in that the same might be done in future parliament, or holding place in council. parliaments.* But it is obvious what a These violent ordinances, as if the pre- latitude this gave to a prevailing faction. cedent they were then overturning had These eighteen commissioners, or some not shielded itself with the same sane- of them (for there were who disliked the tuon, were sworn to by parliament upon turn of affairs), usurped the full rights of the cross of Canterbury, and confirmed the legislature, which undoubtedly were by a national oath, with the penalty of only delegated in respect of business alexcommunication denounced against its ready commenced.t They imposed an infringers. Of those recorded to have perpetual oath on prelates and lords fol bound themselves by this adjuration to all time to come, to be taken before ob Richard, far the greater part had touched taining livery of their lands, that they the same relies for Glocester and Arun- would maintain the statutes and ordidp,I tell years before, and two years after- nances made by this parliament, or " af. ward swore allegiance to Henry of Lan- terward by the lords and knights havin8 caster.* power committed to them by the same." In the fervour of prosecution this par- They declared it high treason to disobey liament could hardly go beyond that their ordinances. They anulled the pawhose acts they were annulling; and tents of the dukes of Hereford and Nor. each is alike unworthy to be remembered folk, and adjudged Henry Bowet, the for. in the way of precedent. But the leaders mer's chaplain, who had advised him to of the former, though vindictive and tur- petition for his inheritance, to the penal. bulent, had a concern for the public in- ties of treason.t And thus, having ob. terest; and after punishing their enemies, left the government upon its right * Rot. Parl., 13 R. II., p. C56. foundation. In this all regard for liberty t This proceeding was made one of the articles was
extinct; and the commons set the of charge against Richard in the following terms: dangerous precedent of granting the king Item, in ariamento ultimo celebrate apud Saloa subsidy upon wool during his life This piam, em Rex proponens opprimere populum suum, rocuravit subtiliter et fecit concedi, quod remarkable act of severity was accompa- de consesasu omnium statuum nied by another, less unexampled, but, regni sui remaneret apud quardam certas personas as it proved, of more ruinous tendency. ad terminandum, dissolute parliamento, certas peThe petitions of the commons not having titiones in eodem parliamento porrectas protunc been answered during the session, which minimne expeditas. Cujus concessionis colore personm sic deputata processerunt ad alia generaliter they were always anxious to conclude, a parliamentum illud tangehtia: et hoe de voluntate commission was granted for twelve peers regis; in derogationem status parliamenti, et in and six commoners to sit after the dissolu- magnum incommodum totius regni et peniciosum tion, and x coexaminersi answer, and fully exemplum. Et ut super factis eorum hujsmodL aliquem colorum et auctoritatem viderentur habere, determine as well all the said petitions, rex fecit rotulos parliameti provoto suo mutari et and the matters therein comprised, as all deleri, contra effecturn conse-rsionis praedictar. — other matters and things moved in the Rot. Parl., 1 H. IV., vol. iii., p. 18. Whether the king's presence, and all things incident last accusation, of altering the parliamentary roll, thereto notb yet determined, as shall seem e true or not, there is enough left in it to prove thereto not yet determined, as shall seem every thing I have asserted in the text. From this best to them."t The " other matters" it is sufficiently manifest how unfairly Carte and Hume have drawn a parallel between this self mons author of the life of Richard II., published deputed legislative commission, and that appc inted by Hearne, was surrounded by the king's troops, by parliament to reform the adm.unsthation elee e p. 133. years before. * Rot. Parl., 21 R. 11., p. 347. i Id.. a. 369). l. Rot. Parl., 1 H. IV., vol. iii., 3 ).'., a8.5
two years was Necessity at the king's feet. Of the political mys-
terious which this reign affords, none is the same principles that cost sing
more inexplicable than the quarrel of James II. his throne, it was unquestion-
Necessity at the king's feet. Of the political mys-
terious which this reign affords, none is the same principles that cost sing
more inexplicable than the quarrel of James II. his throne, it was unquestion-
Necessity at the king's feet. Of the political mys-
terious which this reign affords, none is the same principles that cost sing
extreme urgency as sion. and those who might still ad- leave no security for the common weal here to him in no condition to support but the deposition of a reigning prince, his authority. But the sincere concur- there rests any positive obligation upon rence which most of the prelates and the estates of the realm to fill his place nobility, with the mass of the people, with the nearest heir. A revolution of gave t6 changes that could not have this kind seems rather to defeat and been otherwise effected by one so un- confound all prior titles, though in the provided with foreign support as Henry, new settlement it will commonly be pruposes'this revolution to have been, if dent, as well as equitable, to treat them not an indispensable, yet a national act, with some regard. Were this otherwise, and should prevent our considering the it would be hard to say why William Lancastrian kings as usurpers of the III. reigned to the exclusion of Anne, or throne. Nothing indeed looks so much even of the Pretender, who had surely like usurpation in the whole transaction committed no offence at that time; or as Henry's remarkable challenge of the why (if such indeed be the true con. crown, insinuating, though not avowing, struction of the Act of Settlement) the as Hume has justly animadverted upon more distant branches of the royal stock, it, a false and ridiculous title by right descendants of Henry VII. and earlier line of descent, a. -ne equally unwar- kings, have been cut off from their hope rantable by conquest.'Ilne course of of succession by the restriction to the proceedings. is worthy of notice. As heirs of the Princess Sophia. the renunciation of Richard might well In this revolution of 1399 there was as pass for the effect of compulsion, there remarkable an attention shown to the forwas a strong reason for propping up its malities of the constitution, allowance instability by a solemn deposition from made for the men and the times, as in the throne, founded upon specific charges that of 1688. The parliament was not of misgovernment. Again, as the right opened by commission; no one took the of dethroning a monarch was nowhere office of president; the commons did not found in the law, it was equally requisite adjourn to their own chamber; they to support this assumption of power by chose no speaker; the name of parliaan actual abdication. But as neither one ment was not taken, but that only of esnor the other filled theDuke of Lancas- tates of the realm. But as it would have ter's wishes, who was not contented been a violation of constitutional princiwith owing a crown to election, nor ples to assume aparliamentary character seemed altogether to account for the ex- without the king's commission, though elusion of the house of March, he devi- summoned by his writ, so it was still soed this claim, which was preferred in more essential to limit their exercise of the vacancy of the throne, Richard's ces- power to the necessity of circumstances. sion having been read and approved in Upon the cession of the king, as upon his parliament, and the sentence of depo- death, the parliament was no more; its sition, " out of abundant caution, and to existence, as the council of the sovereign, being dependant up,n his will. The * It s fair to observe, that Froissart's testimony actual convention summoned by the writs maken most in favour of the king, or rather against his enemies, where it is most valuable, that is, in of Richard could not legally become th his account of what he heard in the English court parliament of Henry; and the validity of in 1395, 1. iv., c. 62, where he gives a very differ- a statute declaring it to be such would ent character of the Duke of Gloc ester. In genoral, this writer is ill informed of English affairs, ntc i ladeserving to be quented as an authority. * Rot. Parl., i. 423
Yret Henry was too well pleased; and lastly, in establishing their own with his friends to part with them so immunities and privileges. readily; and he had much to effect be- 1. The pretence of levying money fore the fervour of their spirits should without consent of parliament expired abate. Hence an expedient was devised with Edward III., who had asserted it, as of issuing writs for a new parliament, re- we have seen, in the very last year of turnable in six days. These neither were his reign. A great council of lords and nor could be complied with; but the same prelates, summoned in the second year members as had deposed Richard sat in of his successor, declared that they could the new parliament, which was regularly advise no remedy for the king's necessity opened by Henry's commissioner, as if ties, without laying taxes on the people, they had been duly elected.* In this which could only be granted in parliacontrivance, more than in all the rest, we ment.* Nor was Richard ever accuse may trace the hand of lawyers. of illegal tallages, the frequent theme of If we look back from the accession of -remonstrance under Edward, unless we Retrospect Henry IV. to that of his prede- may conjecture that this charge is imrf the prog- cessor, the constitutional au- plied in an act (11 R. II., c. 9), which anress of the constitution thority of the house of com- nuls all impositions on wool and leather, under Rich- mons will be perceived to have without consent of parliament, if any urd II. made surprising progress du- there be.t Doubtless his innocence in this ring the course of twenty-two years. Of respect was the effect of weakness; and the three capital points in contest while if the revolution of 1399 had not put an Edward reigned, that money could not endto his newly-acquired despotism, this, be levied, or laws enacted, without the like every other right of his people, commons' consent, and that the adminis- would have been swept away. A less tration of government was subject to palpable means of evading the consent their inspection and control, the first was of the commons was by the extortion of absolutely decided in their favour, the loans, and harassing those who refused second was at least perfectly admitted in to pay by summonses before the council. principle, and the last was confirmed by These loans, the frequent resource of frequent exercise. The commons had arbitrary sovereigns in later time., are acquired two additional engines of irn- first complained of in an early parliament mense efficiency; one, the right of di- of Richard II.; and a petition is granted recting the application of subsidies, and that no man shall be compelled to lend the calling accountants before them; the king money.t But how little this was other, that of impeaching the king's min- regarded we may infer from a writ diisters for misconduct. All these vigor- rected in 1386 to some prasons in Boston, ous shoots of liberty throve more and enjoining them to assess every person Its advances more under the three kings of who had goods and chattels to the amount under the the house of Lancaster, and of twenty pounds, in his proportion. of Launsesefr drew such strength and nour- two hundred pounds, which the town had ishment from the generous promised to lend the king; and giving heart of England, that in after times and an assurance that this shall be deducted in a less prosperous season, though from the next subsidy to be granted by checked and obstructed in their growth, parliament. Among other extraordinary neither the blasts of arbitrary power piarts of this letter is a menace of forfeitcould break them off, nor the mildew of ing life, limbs, and property, held out servile opinion cause them to wither. I against such as should not obey these shall trace the progress of parliament till commissioners. { After his triumph over the civil wars of York and Lancaster; 1, in maintaining the exclusive right of tax- * 2 R. II., p. 50. ation; 2, in directing and checking the t It is positively laid down by the assertors of public expenditure; 3, in making sup- civil liberty in the great case of impositions (Howell's State Trials, vol. ii., p. 443, 507), that no precedents for arbitrary taxation of exports or * If proof could be required of any thing so self- imports occur from the accession of Richard II. tc evident as that these assemblies consisted of ex- the reign of Mary. actly the same persons, it may be found in their: 2 R. II., p. 62. This did
lot Fnd its way to tht writs of expenses, as published by Prynne, 4th statute book. Register, n.
450. { Ryme-, t. vii., p. 54a.

Page 394 EUROPE DURING THE MIDDLE AGES LCarp. V'", The popular party
towards the end of his dition that it; snoaL i be expended ir, reign, he ot.ained large sums in
this the defence of the kingdom, and Ilo t way. otherwise, as Thomas Lord Furnival Under the
Lancastrian kings, there is and Sir John Pelham, ordained treasure-s much less appearance of
raising money of war for this parliament, to receive in an unparliamentary course. Henry the
said subsidies, shall account and anLV. obtained an aid from a great council swer to the
commons at the next parli;in the year 1400; but they did not pre- ment. These treasurers were
sworn in tend to charge any besides themselves; parliament to execute their trust.* i though it
seems that some towns after- similar precaution was adopted in the ward gave the king a
contribution.* A next session.t few years afterward, he directs the sher- 3. The commons made
a bold attempt tiffs to call on the richest men in their in the second year of Henry Attenmpt to
counties to advance the money voted by IV. to give the strongest securi- make supparliament.
This, if any compulsion was ty to their claims of redress, ly Ydedrend threatened, is an instance
of overstrained by inverting the usual course of griev prerogative, though consonant to the of
parliamentary proceedings. antes. practice of the late reign.t There is, It was usual to answer
their petitions however, an instance of very arbitrary on the last day of the session, which
conduct with respect to a grant of money put an end to all further discussion in the minority of
Henry VI. A subsidy upon them, and prevented their making had been granted by parliament
upon the redress of grievances a necessary goods imported, under certain restrictions condition
of supply. They now requestin favour of the merchants, with a provi- ed that an answer might
be given before sion, that if these conditions be not ob- they made their grant of subsidy. This
served on the king's part, then the grant was one of the articles which Richard should be void
and of no effect.; But II.'s judges had declared it high treason an entry is made on the roll of the
next to attempt. Henry was not inclined to parliament, that "whereas some disputes make a
concession which would virtualhave arisen about the grant of the last ly have removed the
chief impediment subsidy; it is declared by the Duke of to the ascendency of parliament. He
Bedford and other lords in parliament, first said that he would consult with the with advice of
the judges and others learn- lords, and answer according to their aded in the law, that the said
subsidy was at vice. On the last day of the session all events to be collected and levied for the
commons were informed, that " it had the king's use; notwithstanding any con- never been
known, in the time of his anditions in the grant of the said subsidy cestors, that they should
have their peticontained."~ The commons, however, tions answered before they had done all in
making the grant of a fresh subsidy in their business in parliament, whether of this parliament,
renewed their former granting money or any other concern; conditions, with the addition of
another, wherefore the king will not alter the that "it ne no part thereof be beset ne good
customs and usages of ancient dispensed to no other use, but only in times."T and for the
defense of the said roialme."II Notwithstanding the just views these 2. The right of granting
supplies would parliaments appear generally to have en Appropri- have been very incomplete,
had tertained of their power over the public ation of it not been accompanied with purse, that of
the third of Henry V. folupplies. that of directing their application. lowed a precedent from the
worst times This principle of appropriating public of Richard II., by granting the king a moneys
began, as we have seen, in the subsidy on wool and leather during his minority of Richard; and
was among life.~ This, an historian tells us, Henry the best fruits of that period. It was IV. had
vainly laboured to obtain;II but steadily maintained under the new dy- the taking of Harfleur
intoxicated the nasty. The parliament of 6 H. IV. English with new dreams of conquest in
granted two fifteenths and two tenths, France, which their good sense and conwith a tax on
skins and wool, on con-stitutional jealousy were not firm enough to resist. The continued
expenses of the * Carte, vol. ii., p. 640. Sir M. Hale observes war, however, prevented this
grant from that he finds no complaints of illegal impositions becoming so dangerous as it might
have under the kings of the house of Lancaster.-Har- been in a season of tranquillity. Henry
Walsirgham, p. 379

Page 395 Plxt 111 - ENGLISH CONSTITUTION. 395 V., like his father, convoked
parliament mons pray, that the s t. ute for driving almost in every year of his reign. aliens out of
the kingdom be executeu 4. It had long been out of all question, The king assents, saving his
prerogative, Legislative that the legislature consisted of and his right of dispensing with it
when rights or the king, lords, and commons; he pleased. To which the commons the
commons es- or, in stricter language, that the replied, that their intention was never tablished.
king could not make or repeal otherwise, nor, by God's help, evel statutes without the consent
of parlia- should be. At the same time one Rees ment. But this fundamental maxim was ap
Thomas petitions the king to modify still frequently defeated by various acts or dispense with
the statute prohibiting of evasion or violence; which, though Welshmen from purchasing lands
in protested against as illegal, it was a diffi- England, or the English towns in Wales, cult task
to prevent. The king some- which the king grants. In the same partimes exerted a power of
suspending the lhament the commons pray that no grant observance of statutes; as in the ninth
or protection be made to any one in conof Richard II., when a petition that all travention of the
statute of provisors, statutes might be confirmed is granted saving the king's prerogative. He
merewith an exception as to one passed in ly answers, " Let the statutes be observthe last
parliament, forbidding the judges ed:" evading any allusion to his dispento take fees, or give
counsel in cases sing power.* where the king was a party; which, It has been observed under
the reign I because it was too severe, and needs of Edward III., that the practice of
leavdeclaration, the king would have of no ing statutes to be drawn up by the effect till it
should be declared in parlia- judges, from the petition and answer ment."*. The apprehension
of this dis- jointly, after a dissolution of parliament, pensing prerogative and sense of its ille-
presented an opportunity of falsifying gality are manifested by the wary terms the intention of
the legislature, whereof wherein the commons, in one of Rich- advantage was often taken.
Some very ard's parliaments, " assent that the king remarkable instances of this fraud oc made
such sufferance respecting the curred in the succeeding reigns. statute of provisors as shall
seem rea- An ordinance was put upon the roll of sonable to him, so that the said statute
parliament, in the fifth of Richard II., be not repealed; and moreover that the empowering
sheriffs of counties to arrest commons may disagree thereto at the preachers of heresy and their
abetters, next parliament, and resort to the stat- and detain them in prison until they ute;" with a
protestation that this as- should justify themselves before the sent, which is a novelty, and
never done church. This was introduced into the before, shall not be drawn into prece- statues
of the year; but the assent of dent; praying the king that this pro- lords and commons is not
expressed. In testation may be entered on the roll of the next parliament, the commons,
reciparliament.t A petition in one of Henry ting this ordinance, declare that it was IV.'s
parliaments, to limit the number never assented to or granted by them, of attorneys, and forbid
filazers and pro- but what had been proposed in this matthonotaries from practising, having
been ter was without their concurrence (that answered favourably as to the first point, is, as I
conceive, had been rejected by we find a marginal entry in the roll that them), and pray that this
statute be anthe prince and council had respited the nulled, for it was never their intent to
execution of this act.1 bind themselves or their descendants to Thle dispensing power, as
exercised in the bishops more than their ancestors Dispensing favour of individuals, is quite
had been bound in times past. The king power of of a different character from returned an
answer agreeing to this pethe crown this general suspension of stat- tion. Nevertheless the
pretended statutes, but indirectly weakens the sov- ute was untouched, and remains still ereignty of the legislature. This pow- among our laws:t unrepealed, except er was exerted, and
even recognised, throughout all the reigns of the Plantagenets. In the first of Henry V. the com- 4 5 R. II., stat. 2, c. 5; Rot. Parl., 6 R. Ii., p 141. Some other
these unfair practices are adthe margin upon this statute 8 R. II., c. 3, that it duced by Ruff head
in his preface to the Statutes, is repealed, but does not take notice what sort of and in Prynne's
preface to Cotton's Abridgment repeal it had. of the Records. The act 13 R. II., stat. 1, c. 15, t
15 R. II., p. 285. See too 16 R. II., p. 301, that the king's castles and jails which had been where
the same power is renewed in H. IV.'s separated from the body of the adjoining counties
partliments. t 13 H. IV., p. 643. should be reuinited to them, is not foLceded up r

Page 396 396 EUIROPE DURING THE MIDDLE AGES. LCHAF. VII., by desuetude, and
by inference from the the English language. I shall present its acts of much later times.
venerable orthography without change. This commendable reluctance of the'Oure soverain lord, youre humble and commons to let the clergy forge chains trewe lieges that ben come for the
do for them produced, as there is much ap- mune of youre lond bysechyn onto youre pearance, a similar violation of their le- rizt riztwesnesse, That so as hit hath gislative rights in
the next reign. The ever be thair libte and fredom, that thar statute against heresy in the second
of sholde no statut no lawe be made offlasse Henry IV. is not grounded upon any pe- than they
yaf therto their assent: contition of the commons, but only upon one sideringe that the comune
of youre lond, of the clergy. It is said to be enacted the whiche that is, and ever hath be, a by
consent of the lords, but no notice is membre of youre parlemente, ben as well taken of the
lower house in the parlia- assenters as peticioners, that fro this ment roll, though the statute
recting the tyme foreward, by compleynte of the petition asserts the commons to have comune
of any myschief axknyge remejoined in it.* The petition and the stat- die by mouthe of their
speker for the co-:te are both in Latin, which is unusual mune, other ellys by petition writen,
that in the laws of this time. In a subse- ther never be no lawe made theruppon, quent petition
of the commons, this act and engrossed as statut and lawe, nother is styled " the statute made in
the second by addicions, nother by diminucions, by var of your majesty's reign, at the re- no
manner of terme ne termes, the whiche quest of the prelates and clergy of your that sholde
chaunge the sentence, and the kingdom;" which affords a presumption entente axked by the
speker mouthe, or that it had no regular assent of parlia- the petitions beforesaid yeven up yn
wriment.t And the spirit of the- commons tyng by the manere forsaid, withoute asdurning this
whole reign being remark- sent of the forsaid comune. Considerably hostile to the church, it
would have inge our sovereign lord, that it is not in been hardly possible to obtain their con- no wyse the entente of youre comunes, sent to so penal a law against heresy. zif yet be so that they
axke you by spekSeveral of their petitions seem designed yng, or by wriytng, two thynges or
three, indirectly to weaken its efficacy.T or as manye as theym lust: But that ever These
infringements of their most es- it stande in the freedom of youre hie resential right were resisted
by the com- galie, to graunte whiche of thoo that you mons in various ways, according to the
lust, and to werune the remanent. measure of their power. In the fifth of "The kyng of his grace
especial grauntRichard II., they request the lords to let eth that fro hensforth nothyng be
enacted them see a certain ordinance before it is to the peticions of his comune, that be engrossed.~ At another time they pro- contrarie of hir askyng, wharby they cured some of their own members, as shuld be bounde without their assent. well as peers, to be present at engrossing Savyng alwey to our liege lord his real the roll. At length they spoke out une- princatif, to graunte and denye what quivocally in a memorable petition, which, him lust of their petitions and askynges besides its intrinsic importance, is de- aforesaide."* serving of notice as the earliest instance Notwithstanding the fulness of this asin which the house of commons adopted sent to so important a petition, vic find no vestige of either among the statutes, any petition that appears on the roll; and probably and the whole transaction is unnoticed by making search other instances equally flagrant by those historians who have not looked might be discovered. 7 aht be disccvered. into our original records. If the com* There had been, however, a petition of the ilto our original records. If the comcommons on the same subject, expressed in very pilers of the statute-roll were able to keep general terms, on which this terrible superstruc- out of it the very provision that was in tule might artfully be raised, p. 474. tended to check their fraudulent machit P. 626. nations it was in vain tohope for redress t We find a remarkable petition in 8 H. IV., tended to check their fraudulent machit P. 474. tended to check their fraudulent machit P. 626. nations it was in vain tohope for redress t

5. If the strength of the commons had our constitution, was gradually introdu- lain merely in the weakness Interference red In Henry VI.'s reign.t of the crown, it might be in- of parliament From the first years of Henry V., ferred that such harassing in- altexpendithough not, I think, earlier, the com- terference with the adminis- ture. commons began to concern themselves with
tration of affairs, as the youthful and frivolous Richard was compelled to endure, or council. The nature of the jurisdiction exercised by the latter would be treat-

* Henry VI. and Edward IV. in some cases passed-chiefs contributed to this alienation of ed bills with sundry provisions annexed by them. their attachment. The commons re- selves. Thus the act for resumption of grants, 4 quested, in the fifth of his reigns that cer E. IV., was encumbered with 289 clauses in a- the vour of so many persons whom the king meant to tain persons might be removed from the exempt from its operation; and the same was done court; the lords concurred in displacing in other acts of the same description.-Rot. Parl., four of these, one being the king's coinvol. v., p. 517. fessor.

Henry came down to parliament t The variations of each statute, as now printed, and excused these four persons, as know from the parliamentary roll, whether in form or. substance, are noticed in Cotton's Abridgment. It ing no special cause why they should be may be worth while to consult the preface to Ruff- removed; yet, well understanding that head's edition of the Statutes, where this subject what the lords and commmons should oris treated at some length. dain would be for his and his kingdom's Perhaps the triple division of our legislature may interest, and therefore anxious to -combe dated from this innovation. For as it is impossible to deny that, while the king promulgated a form himself to their wishes, consented statute founded upon a mere petition, he was him- to the said ordinance, and charged the. self the real legislator, so I think it is equally fair persons in question to leave his palace to assert, notwithstanding the formal preamble of could do as much by any our statutes, that laws brought into either house adding that he wold do as much by any of parliament in a perfect shape, and receiving first other about his person whom he should the assent of lords and commons, and finally that find to have incurred the ill affection of of the king, who has no power to modify them, his people.1 It was in the same session must be deemed to proceed, and derive their effica- that the Archbishop of Canterbury was cy, from the joint concurrence of all the three. It commanded to declare before the lords is said indeed at a much earlier time, that le ley de la terre est fait en parlement par le roi, et les seig. neurs espirituels et temporels, et tout la commui- 8 H. V., vol. iv., p. 127. naut6 du royaume.-Rot. Parl., vol. iii., p. 293. t The house of commons thanked the king foi But this I must allow was in the violent session pardoning Northumberland, whom, as it proved of 11 Ric, 11., the constitutional authority of which he had just cause to suspec. —5 H. IV., p. Wr, m not to ce highly prized t 5 H IV., p). 595.
so that every should be heard." No judicial officer, one might be paid, and declared that the nor
any in the revenue or household, to money granted by the commons for the enjoy his place for
life or term of years. war should be received by treasurers ap- No petition to be presented to the
king pointed in parliament, and disbursed by by any of his household at times when them for
no other purpose, unless in case the council were not sitting. The council rebellion. At the
request of the com- cil to determine nothing cognizable at mons, he named the members of his pri-
common law, unless for a reasonable vy council; and did the same, with some cause and
with consent of the judges.variation of persons, two years afterward. The statutes regulating
purveyance were These, though not nominated with the affirmed; abuses of various kinds in
the express consent, seem to have had the council and in courts of justice enumeraapprobation
of the commons; for a sub- ted and forbidden; elections of knights sidy is granted in 7 IH. IV.,
among other for counties put under regulation. The causes, for "the great trust that the council
and officers of state were sworn commons have in the lords lately chosen, to observe the
common law, and all stat. and ordained to be of the king's continual utes, those especially just
enacted.* council, that there shall be better man- It must strike every reader that these agment
than heretofore."* provisions were of themselves a noble In the sixth year of Henry, the parlia-
fabric of constitutional liberty, and hardly ment, which Sir E. Coke derides as un- perhaps
inferior to the petition of right learned, because lawyers were excluded under Charles I. We
cannot account for from it, proceeded to a resumption of the submission ofHenry to conditions
grants, and a prohibition of alienating the far more derogatory than ever were imancient
inheritance of the crown without posed on Richard, because the secret consent of parliament; in
order to ease politics of his reign are very imperfectly the commons of taxes, and that the king
understood. Towards its close he man might live on his own.j This was a fa- ifested more
vigour. The speaker, Six vourite, though rather chimerical project. Thomas Chaucer, having
made the usual In a later parliament, it was requested petition for liberty of speech, the king
that the king would take his council's ad- answered that he might speak as others vice how to
keep within his own revenue. had done in the time of his (Henry's) anHe answered that he
would willingly com- cestors and his own, but not otherwise: ply, as soon as it should be in his
power.1 for he would by no means have any inBut no parliament came near, in the novation,
but be as much at his liberty number and boldness of its demands, to as any of his ancestors
had ever been. that held in the eighth year of Henry IV. Some time after he sent a message to
The commons presented thirty-one arti- the commons, complaining of a law passcles, none of
which the king ventured to ed at the last parliament, infringing his refuse, though pressing very
severely liberty and prerogative, which he reupon his prerogative. He was to name quested
their consent to repeal. To this sixteen counsellors, by whose advice he the commons agreed,
and received the was solely to be guided, none of them to king's thanks, who declared at the
same be dismissed without conviction of misde- time that he would keep as much freemeanor.
The chancellor and privy seal dom and prerogative as any of his anto pass no grants or other
matter, contra- cestors. It does not appear what was ry to law. Any persons about the court the
particular subject of complaint; but stirring up the king or queen's minds there had been much
of the same re. against their subjects and duly convicted monstrating spirit in the last
parliament, thereof to lose their offices and be fined. that was manifested on preceding occaThe
king's ordinary revenue was wholly ob- sions. The commons, however, for reappropriated to his
household and the sons we cannot explain, were rather dispayment of his debts; no grant of
ward- mayed. Before their dissolution thatoy petition the king, that, whereas he was * Rot.
Parl., v. iii., p. 529, 568, 573. petition the king that, whereas he t Id. p 547. t 13 H. IV., p 624.
* Rot. Parl., 8 H. IV.. p 585
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39b reported to be offended at some of his prayer, to which the guardian declined to subjects in this and in the preceding par- accede, evidently sprang from the appre- liament, he would openly declare that he hensions, excited in their minds by the held them all for loyal subjects. Henry treaty of Troyes, that England might begranted this "of his special grace;" and come a province of the French crown, thus concluded his reign more trium- which led them to obtain a renewal of phantly with respect to his domestic bat- the statute of Edward III., declaring the ties he had gone through it.* independence of this kingdom.* Power deemed to be ill gotten is natu- It has been seen already, that even Itenry V. rally precarious; and the instance Edward III. consulted his par- Parliament his popu- of Henry IV. has been well quoted liament upon the expediency consulted larity. to prove that public liberty flour- of negotiations for peace; o public ashes with a bad title in the sovereign. though at that time the comNone of our kings seem to have been mons had not acquired boldness enough less beloved; and indeed he had little to tender their advice. In Richard II.'s claim to affection. But what men denied reign they answered to a similar propo to the reigning king, they poured in full sition with a little more confidence, that measure upon the heir of his throne, the dangers each way were so considerThe virtues of the Prince of Wales are ble they dared not decide, though an honalmost invidiously eulogized by those ourable peace would be the greatest comparliaments who treat harshly his fa- fort they could have; and concluded by ther; and these records afford a strong hoping that the king would not engage to presumption that some early petulance do homage for Calais or the conquered or riot has been much exaggerated by country. The parliament of the tenth the vulgar minds of our chroniclers. One of his reign was expressly summoned in can scarcely understand at least, that a order to advise concerning the king's prince, who was three years engaged in intended expedition beyond sea; a great quelling the dangerous insurrection of council, which had previously been as Glendour, and who, in the latter time of sembled at Oxford, having declared thei his father's reign, presided at the council, incompetence to consent to this measure was so lost in a cloud of low debauchery without the advice of parliament. Ye as common fame represents. Loved a few years afterward, on a similar ref he certainly was throughout his life, as erence, the commons rather declined to so intrepid, affable, and generous a tem- give any opinion.0 They confirmed the per well deserved; and this sentiment league of Henry V. with the Emperor was heightened to admiration by suc- Sigismund II. And the treaty of Troyes, cesses still more rapid and dazzling than which was so fundamentally to change those of Edward III. During his reign the situation of Henry and his successors, there scarcely appears any vestige of obtained, as it evidently required, the dissatisfaction in parliament; a circum- sanction of both houses of parliament.~5 stance very honourable, whether we as— These precedents conspiring with the cribe it to the justice of his administra- weakness of the executive government, tion, or to the affection of his people. -in the minority of Henry VI., to fling an Perhaps two exceptions, though they are increase, of influence into the scale of rather one in spirit, might be made: the the commons, they made their concurfirst, a petition to the Duke of Glocester, rence necessary to all important business, then holding parliament as guardian of both of a foreign and domestic nature. England, that he would move the king Thus commissioners were appointed to and queen to return, as speedily as might treat of the deliverance of the King of please them, in relief and comfort of the Scots, the dutchesses of Bedford and Glocommons;~ the second, a request that cester were made denizens, and mediators their petitions might not be sent to the were appointed to reconcile the dukes of king beyond sea, but altogether deter- Glocester and Burgundy, by authority mined "6 within this kingdom of England of the three estates assembled in parliaduring this parliament;" and that this ment.** Leave was given to the dukes ordinance might be of force in all future of Bedford and Glocester, and others in parliaments to
beheld in England. This the king's behalf, to treat of peace with France, by both houses of parliament, is * 13 H. IV., p. 648, 658. t Rot. Parl., vol. iii., p. 549, 568, 574, 611. This passage was written before I was aware * S H. V., vol. iv., p. 130. that the same -opinion had been elaborately main- t 7 R. II., vol. iii., p. 170. t Id. ibid., p. 215. tained by Mr. Luders, in one of his valuable essays - 17 R. II., p. 315. -upon points of constitutional history. 11 4 H. V., vol. iv., p. 98. If Id. ibid., p. 135 4 8 H. V., vol. iv., p. 125. 11 Id. ibid., p. 128. * Rot. Parl], vol. iv., p. 211, 242, 217.

Page 400 o00 EUROPE DURING THE IIDDLE AGES [CHrA. Vllt pursuance of an article in the treaty of fore the lords. * Inl Suffolk's case the Troyes, that no treaty should be set on commons seem to have proceeded by bill toot with the dauphin without consent of attainder, or at least to have designed of the three estates of both realms. * the judgment against that minister to tie This article was afterward repealed. t the act of the whole legislature. For Some complaints are made by the they delivered a bill containing articles commons, even during the first years of against him to the lords, with a request Henry's minority, that the king's subjects that they would pray the king's majesty underwent arbitrary imprisonment, and to enact that bill in parliament, and that were vexed by summonses before the the said duke might be proceeded against council, and by the newly-invented writ upon the said articles in parliament ac. of subpoena out of chancery. T But these cording to the law and custom of Eng. are not so common as formerly; and, so land. These articles contained charges far as the rolls lead us to any inference, of high treason; chiefly relating to his there was less injustice committed by the conduct in France, which, whether treagovernment under Henry VI. and his sonable or not, seems to have beengrossfather than at any former period. Waste- ly against the honour and advantage of fulness indeed might justly be imputed to the crown. At a later day, the commons the regency, who had scandalously lav- meanor. To the former he made a demately led to an act for resuming all fence, in presence of the king as well grants since his accession, founded upon as the lords, both spiritual and temporal; a public declaration of the great officers and indeed the articles of impeachment of the crown, that his debts amounted to were directly addressed to the king, ~372,000, and the annual expense of the which gave him a reasonable pretext to household to ~24,000, while the ordinary interfere in the judgment. But, from aprevenue was not more than ~5000.11 prehension, as it is said, that Suffolk 6. But before this time the sky had be- could not escape conviction upon at least gun to darken, and discontent with the some part of these charges, Henry antiactual administration pervaded every cipated with no slight irregularity the rank. The causes of this are familiar; course of legal trial; and summoning the cnepeachments the unpopularity of the king's peers into a private chamber, informed if ministers. marriage with Margaret of the Duke of Suffolk, by mouth of his Anjou, and her impolitic violence in the chancellor, that, inasmuch as he had not conduct of affairs, particularly the impu- put himself upon his peerage, but submitted murder of the people's favourite, the ted wholly to the royal pleasure, the king, Duke of Glocester. This provoked an acquitting him of the first articles containattack upon her own creature, the Duke ing matter of treason, by his own advice of Suffolk. Impeachment had lain still, and not that of the lords, nor by way ol like a sword in the scabbard, since the. judgment, not being in. a place where accession of Henry IV.; when the com- judgment could be delivered, banished mons; though not preferring formal arti- him for five -years from his dominions. cles of accusation, had petitioned the The lords then pient besought the king king that Justice Rickhill, who had been to let their protest appear on record, tatL employed to take the Duke of Gloces- neither they nor their posterity might ter's confession at Calais, and the lords lose their rights of peerage by this preceappellants of
Richard II.'s last parlia- dent. It was justly considered as an arment, should be put on their
defence be- bitrary stretch of prerogative, in order to defeat the privileges of parliament, and * Rot. Parl., vol. iv., p. 371. screen a favourite minister from punish23 H. VI., vol. v., p. 102. There is rather a ment. But the course of proceeding by curious instance in 3 H. VI., of the jealously with bill of attainer, instead of regular imwhich the commons regarded any
proceedings in parliament, where they were not concerned. A peachment, was not judiciously
chosen controversy arose between the earls marshal and by the commons.t - of Warwick
respecting their precedence; founded 7. Privilege of parliament, an extensive upca the royal
blood of the first, and long posses- and singular branch of our con- Privilege of sion of the
second. In this the commons could stitutional law, begins to attract Parliament not affect to
interfere judicially; but they found a attention underthe Lancastri singular way of meddling, by
petitioning the king attention under the Lancastri princes. to confer the dukedom of No-folk
on the earl It is true indeed, that we can trace long marshal, vol. iv., p. 273. before bl records,

Page  401 P'ART 111. ] EkNLISH CONSTITUTION. 40.probability as to times whose records
liament, and to demand Thorp's release have not survived, one considerable im- It was alleged
by the Duke of York's munity, a freedom from arrest for persons council, that the trespass done
by Thorp transacting the king's business in his na- was since the beginning of the parliational
council.* Several authorities may ment, and the judgment thereon given in be found in Mr.
Hatsell's precedents; of time of vacation, and not during the sitwhich one, in the 9th of Edward
II., is ting. The lords referred the question to conclusive.t But in those rude times, the judges,
who said, after deliberation, members of parliament were not always that " they ought not to
answer to that respected by the officers executing legal question, for it hath not be used
aforeprocess, and still less by the violators of tyme, that the judges should in any wise law.
After several remonstrances, which determine the privilege of this high court the crown had
evaded,$ the commons ob- of parliament; for it is so high and so tained the statute 11 H. VI., c.
11, for mighty in his nature, that it may make the punishment of such as assault any on law,
and that that is law it may make no their way to the parliament, giving double law; and the
determination and knowldamages to the party.~ They had more edge of that privilege
belongeth to the difficulty in establishing, notwithstanding lords of the parliament, and not to
the the old precedents in their favour, an im- justices." They went on, however, after munity
from all criminal process, except observing that a general writ of supersein charges of treason,
felony, and breach deas of all processes upon ground of of the peace, which is their present
privilege had not been known, to say, measure of privilege. The truth was, that, "if any person
that is a member of that with a right pretty clearly recog- this high court of parliament be
arrested nised, as is admitted by the judges in in such cases as be not for treason ur fel Thorp's
case, the house of commons had ony, or surety of the peace, or for a con no regular compulsory
process at their demnation had before the parliament, it command. In the cases of Lark, servant
is used that all such persons should be of a member, in the 8th of Henry VI.,11 released of such
arrests and make an at and of Clerke, himself a burgess, in the torney, so that they may have
their free. 39th of the same king,~ it was thought dom and li)erty, freely to intend upon the
necessary to effect their release from a parliament." civil axecution by special acts of parlia-
Notwithstanding this answer of the ment. The commons, in a former in- judges, it was
concluded by the lords stance, endeavoured to make the law that Thorp should remain in
prison, withgeneral, that no members nor their ser- out regarding the alleged privilege; and
vants might be taken, except for treason, the commons were directed in the king's felony, and
breach of peace; but the king name to proceed " with all goodly haste put a negative upon this part of their pe- ind speed" to the election of a new tition. speaker. It is curious to observe, that The most celebrated, however, of these the commons, forgetting their grievances, early cases of privilege is that of Thomas or content to drop them, made such haste Thorp, speaker of the commons in 31 H. and speed according to this command, VI. This person, who wxas moreover a that they presented a new speaker for abaron of the exchequer, had been impris- probation the next day.* oned on an execution at suit of the Duke This case, as has been strongly said, of York. The commons sent some of was begotten by the iniquity of the times. their members to complain of a violation The state was verging fast towards civil of privilege to the king and lords in par- war; and Thorp, who afterward distinguished himself for the Lancastrian cause, * If this were to rest upon antiquity of prece- was an inveterate enemy of the Duke of dent, one might be produced that would challenge York. That prince seems to have been all competition. In the laws of Ethelbert, the first swayed a little from his usual temper in Christian king of Kent, at the end of the sixth century, we find this provision: "If the king call his procuring so unwarrantable a determinapeople to him (i. e. in the wittenagemot), and any tion. In the reign of Edward IV., the one does an injury to one of them, let him pay a commons claimed privilege against any fine."-Wilkins, Leges Anglo-Saxon., p. 2. civil suit during the time of their session; * Hatsell, vol. i., p. 12. t Rot. Payl.. 5 H. IV., p. 541. but they had recourse, as before, to a ~ The clergy had got a little precedence in this. particular act of parliament to obtain a An act passed 8 H. VI., c. 1, granting privilege writ of supersedeas in favour of one Afrom arrest for themselves and servants on their well, a member, who had been sued nvay to convocation. I1 Rot. Parl., vol. iv., p. 357. * Rot. Parl., -'ol. v., p. 239. Hatsell's Prece ~ Id.. vol. v., p. 374. dents, p 29. en r
which question it was tion sh.all be thought convenient and rea-

This imprisonment of Young, considering the necessity of the king on

however, had happened six years before, on one side, and the poverty of his people in

consequence of a motion made by him, on the other, no less aid could be suffi-

that the king

time, the cient than one tenth and a half from Duke of York might be declared

heir-ap-

cities and towns, and one fifteenth and a parent to the crown. In the present ses-

from all other lay persons; and besion, when the duke was protector, he sides, to grant a

continuance of the sub. thought it well-timed to prefer his claim sidy on wool, woolfells, and

leather, and to remuneration.t of three shillings on the tun (of wine), There is a remarkable

precedent in the and twelve pence on the pound (of other 9th of Henry IV., and perhaps the

earliest merchandise), from Michaelmas next ena

or up for two years thenceforth. Where. liametary law; that the commons pos-

by command of our said lord the sess an exclusive right of originating king, a message was sent to

the commoney bills, and that the king ought not mons of this parliament, to cause a certo take

notice of matters pending in par-

tain number of their body to come before liament. A quarrel

broke out between our said lord the king and the lords, in the two houses upon this ground; and

as order to hear and report to their Comwe have not before seen the commons panions what

they should be commanded venture to clash openly with their supe-

by our said lord the king.

And upon this riors, the circumstance is for this addi-

the said commons sent into the presence.

And upon this case, for he mentions that of Strickland, in 1571, as he earliest instance

of the crown's interference writh freedom of soeecch in parliament, vol. i., p 85. * This

parliament sat at Glocester.
mons, and agreed by the lords: thirdly, in like manner it shall be lawful for the that the lower house of parliament is commons, on their part, to debate to- not, in proper language, an estate of the gether concerning the said condition and realm, but rather the image and repremeredies. Provided always, that neither sentative of the commons of England; the lords on their part, nor the commons who, being the third estate, with the noon theirs, do make any report to our said bility and clergy, make up, and constitute lord the king of any grant granted by the the people of this kingdom and liege subcommons, and agreed to by the lords, nor jects of the crown.* of the communications of the said grant, before that the said lords and commons * A notion is entertained by many people, arnd are of one accord and agreement in this not without the authority of some very respecta natter, and then in manner and form ac- ble names, that the king is one of the three estates ~matter, an heanendfrma-of the realm, the lords spiritual and temporal customed, that is tv9 say, by the mouth of forming together the second, as the commons irr the speaker of the said commons for the parliament do the third. This is contradicted by time being, to the end that the said lords the general tenour of our ancient records and law. and commons may have what they desire books; and indeed the analogy of other govern. ments ought to have the greatest weight, even if (avoir puissent leur gree) of our said more reason for doubt appeared upon the face of lord the king. Our said lord the king our own authorities. But the instances where the willing, moreover, by the consent of the three estates are declared or implied to be the no said lords, that the communication had bility, clergy, and commons, or at least their rep in.this present parient as above be resentatives in parliament, are too numerous for in this present parliament as abovete bet insertion. This land standeth, says the Chancelnot drawn into precedent in time to lor Stillington, in7th Edward IV., by three states, come, nor be turned to the prejudice or and above that one principal, that is, to wit, lords derogation of the liberty of the estate, for spiritual, lords temporal, and commons, and over which the said commons are now come, that, state royal, as our sovereign lord the king.Rot. Parl., vol. v., p. 622. Thus too it is declared neither in this present parliament, nor in that the treaty of Staples in 1492 was to be conany other time to come. But wills that firmed per tres status regni Angliae rite et debite himself, and all the other estates, should convocatos, videlicet per prelatos et clerum, nobibe as free as they were before. Also, les et communitates eRusdem regni.-Rymer, t. the said last day of parliament, the said Xii., p. 508. I will not, however, suppress one passage, and speaker prayed our said lord the king on the only instance that nas occurred in my reading, the part of the said commons, that he where the king does appear to have been reckoned would grant the said commons, that they among the three estates. he commons say, in should depart in as great liberty as other the 2d of Henry IV., that the states of the realm may be compared to a trinity, that is, the king, the commons had done before. To which lords spiritual and temporal, and the commons. — the king answered, that this pleased him Rot. Parl., vol. iii., p. 459. In this expression, weil, and that at all times it had been his however, the sense shows, that by estates of the desire."* realm they meant members, or necessary parts of Every attentive reader will discover the parliament. Whitelocke, on the Parliamentary Writ, vol. ii., this remarkable passage to illustrate sev- p. 43, argues at length, that the three estates are eral points of constitutional law. For king, lords, and commons, which seems to have hence it may be perceived: first, that been a current doctrine among the popularlawyers of the seventeenth century. His reasoning is chiefly grounded on the baronial tenure of bishops, * Rot. Parl., v. iii., p. 611 the validity of acts passed against their consent c"
house; and indeed some that the states of parliament were come acts of Henry V., which do not appeal together for the common profit of the to be grounded on any petition, may be king and kingdom, and for unanimity's suspected, from the manner of their insake and general consent; and therefore section in the rolls of parliament, to have he was sure the commons would not at
been proposed on the king's part to the tempt nor say any thing but what should commons.* But there is one manifest be fitting and conducive to unanimity; instance in the 18th of Henry VI., where commanding them to meet together, and the king requested the commons to give communicate for the public service.* their authority to such regulation as it was not only in money bills that the his council might have provided for reoriginating power was supposed to reside dressing the abuse of purveyance; to in the commons. The course of pro- which they assented. ceedings in parliament, as has been If we are to choose constitutional pre seen, from the commencement at least cedents from seasons of tranquillity rath. of Edward III.'s reign, was that the er than disturbance, which surely is the commons presented petitions, which the only means of preserving justice or conlords by themselves, or with the assistance of the council, having duly consid- Stat. 2 H. V., c. 6, 7, 8, 9. 4 H. VI., c. 7. act the sanction of the knih ing Iwas noti- f Rot. Parl., vol. v., p. 7. It appears by a caa ered, the sanction of the king was noti- in the year-book of the thirty-third of Henry VI.; fled or withheld. This was so much ac- that, where the lords made only some minor alter cording to usage, that, on one occasion, ations in a bill sent up to them from the commons when the commons requested the advice even if it related to a grant of money, the custom *of the other house on a matter before was not to remand it for their assent to the amend. ment. —Brooke's Abridgment: Parliament. 4. them, it was answered, that the ancient The passage is worth extracting, in order to illuscustom and form of parliament had ever trate the course of proceeding in parliament at been for the commons to report their that time. Case fuit que Sir J. P. fuit attaint de owln opinion to the king and lords, and certeyn trespas par acte de parliament, dont lee not to the contrary; asid the king would commons furent assentus, que sil ne vient eins pe ot to the contiel jour que i forfeytera tiel summe, et les seign hhave the ancient and laudable usages of eurs done plus longe jour, et le bil nient rebailo al parliament maintained.t It is singular commons arrere; et per Kirby, clerk des roles del that, in the terror of innovation, the lords parliament, l'use del parliament est, que si bit did not discover how materially this vient primes a les commons, et ils passent ceeo, it usage of parliament took off from their est use dendorser ceeo en tiel forinne; Soit bayle as usage of parliament took off from their seigniors; et si les seigniorsne le roy ne alteront le own legislative influence. The rule, bil, donques est use a l'verce del parliament destre enrol saunz endorser ceeo... Et si and other arguments of the same kind; which les seignors volent alter un bit in ceo que poet esmight go to prove that there are only at present toyre ore le bil, ils poyent saunz remandre ceeo al two estates, but can never turn the king into commons, come siles commons graunte poundage one. pur quatuor ans, et les grantent nisi par deux ans, The Source of this error is an inattention to the ceeo ne serra rebayle at commons; mes si les com1)rimaryf sense of the word estate (status), which mons grauntent nisl pur deux ans, et les seigneurs means an order or condition into which men are pur quatre ans, la ceoo serra reliver al commons, et classed by the institutions of society. It is only in en cest case loes seigniors doyent faire un sedule de a-secondary, or rather an elliptical application, that lour intent, ou dendorser le bil en ceste forme, it can be referred to their representatives in parlia- Les seigneurs ceeo assentent pur durer par quatuor ment or national councils. The lords temporal, ans; et quant les commons ount le bil arrere, et ne indeed, of England are identical with the estate volent assenter a ceeo, ceeo ne poet estre un actre, of the nobility; but the house of commons is not, mes si jes commons volent assenter, donques ils strictly speaking, the estate of commonalty, to inlsseur leurs respons sur le mercett ne basse deins which its members belong, and from which they le bil en tiel forme, Les commons sont assentans al are deputed.
So the whole body of the clergy are sedul des seigniors, a mesme cesty bil annexe, et properly speaking one of the estates, and are de- donques sera bayle ad clerke del parliament, ut scribed as such in the older authorities, 21 Ric. supra. Et si un bil soit primes liver al seigniors, II., Rot. Parl., v. iii., p. 348, though latterly the et le bil passe eux, ils ne usont de favre ascun enlords spiritual in parliament acquired, with less dorsement, mess de mitter le bil as commons, et correctness, that appellatiofi.-Hody on Convoca- donques si le bil passe les commons, il est use tions, p. 426. The bishops, indeed, may be said destre issint endorce, Les commons sont assent constructively to represent the whole of the cler- ants, et ceo prove que il ad passe les seigniors de. gy, with whose grievances they are supposed to be vant, et leur assent est a cest passer del seigniors; best acquainted, and whose rights it is their pecu- et ideo cest acte supra nest bon, pur coo quo ne liar duty to defend. And I do not find that the in- fuit rebaile as commons. ferior clergy had any other representation in the A singular assertion is made in the year-book 21 cortes of Castile and Aragon, where the ecclesi- E. IV., p. 48 (Maynard's edit.), that a subsidy asticat order was always counted among the es- granted by the commons without assent ( f the tates of the realm. peers is good enough. This cannot surely have * P 623. t Rot. Parl., 5 R. II., p. 100. been law at that time
petition. This is the first whatever gloss Sir E. Coke may put upon instance of the commons being noticed it, was never intended to bear any rela- in matters of election. But the next tion to the privileges of the lower house. case is more material: in the 5th of Hen I, the commons prayed the king and passage so strongly if it had not been lords in parliament, that because the writ made the basis of extravagant assertions of summons to parliament was not suffia to the privileges of parliament; the cienly returned by the sheriff of Rut spirit of which exaggerations might not land, this matter might be examined in be ill adapted to the times wherein Sir E. parliament, and in case of default found Coke lived, though I think they produced therein, an exemplary, punishment might at several later periods no slight mis- be inflicted; whereupon the lords sent chief, some consequences of which we for the sheriff and Oneby, the knight remay still have to experience. turned, as well as for Thorp, who had been The want of all judicial authority, ei- duly elected, and having examined into Contested ther to issue process or to exam- the facts of the case, directed the return to elections ine witnesses, together with the be amended, by the insertion of Thorp's ernidee- 1usual shortness of sessions, de- name, and committed the sheriff to the prived the house of commons of Fleet, till he should pay a fine at the what is now considered one of its most king's pleasure. The last passage that fundamental privileges, the cognizance I can produce is from the roll of 18 H. nf disputed elections. Upon a false re- VI., where " it is considered by the king turn by the sheriff, there was no remedy with the advice and assent of the lords but through the king or his council. Six instances only, I believe, occur during the * Glanvil's Renorts of Elections, edit. 1774. In troduction, p, 12. t 4 Pryne, p. 261i. Glanvil's Reports, ibid., fiom Pryne. * Rot. Farl. vol. iii., p. 244. Id. ibid. C(noke's 4th Institute, p. 15. i Ibid., and Rot. Parl., vol. iii.. p. 530.

Page 406 JOG E(JROPI? DURING THE MIDDLE AGES. Lt HP. Vin spiritual and temporal," that whereas no some degree of confirmation from the knights have been returned for Cam- later statute, 8 H. VI., c..7, which, rebridgshire, the sheriff shall be directed, citing that " elections of knights of shires by another writ, to hold a court and to have now of late been made by very proceed to an election, proclaiming that great, outrageous, and excessive number no person shall come armed, nor any tu- of people dwelling within the same counmultulous proceeding take place; some- ties, of the which most part was people thing of which sort appears to have ob- of small substance and of no value," constructed the execution of the first writ. fines the elective franchise to freeholders It is to be noticed that the commons are of lands or tenements to the value of not so much as named in this entry.* forty shillings. But several provisions were made by stat- The representation of towns in parlia. ute under the Lancastrian kings, when ment was founded upon two Elections of seats in parliament became much more principles; of consent to public Burgesses. an object of competition than before, to burdens and of advice in public measchheck the partiality of the sheriffs in ma- ures, especially such as related to trade king undue returns. One act (11 H. IV., and shipping. Upon both these accounts c. 1) gives the justices of assize power it was natural for the kings who first to inquire into this matter, and inflicts a summoned them to parliament, little forepenalty of one hundred pounds on the seeing that such half-emancipated burghsheriff. Another (6 H. VI., c. 4) miti- ers would ever clip the loftiest plumes gates the rigour of the former, so far as of their prerogative, to make these asto permit the sheriff or the knights re- semble numerous, and summon memturned by him to traverse the inquests bers from every town of consideration before the justices; that is, to be heard in the kingdom. Thus the writ of 23 E. in their own defence, which, it seems, I. directs the sheriffs to cause deputies had not been permitted to them. An- to be elected to a general council from other (23 H. VI., c. 1A) gives an addi- every city, borough,
and trading town tional penalty upon false returns to the And although the last words are omitted party aggrieved. These statutes con- in subsequent writs, yet their spirit was spire with many other testimonies to preserved; many towns having constant mnanifest the rising importance of the ly returned members to parliament by house of commons, and the eagerness regular summons from thre sheriffs, with which gentlemen of landed estates which were no chartered boroughs, noT (whatever might be the case in petty had apparently any other claim than their oroughs) sought for a share in the na- populousness or commerce. These are tional representation. now called boroughs by prescription.* Whoever may have been the original Tn whom voters for county representa- tion; so that it is not easy to perceive what differ of tives, the first statute that regu- ence there could be between summoned and un voting for, summoned suiters. And if the words are supposed knights re- lates their election, so far from to glance at the private summonses to afew friends, sided. limiting the privilege to tenants by means of which the sheriffs were accustomed in capite, appears to place it upon a very to procure a clandestine election, one can hardly large and democratical foundation. For imagine that such persons would be styled "duly (as conceive, though not without summoned." It is not unlikely, however, that (as I rather conceive, though not without these large expressions were inadvertently used), not only all freeholders, and that they led to that inundation of voters with but all persons whatever present at the out property, which rendered the subsequent ac county-court, were declared or rendered of Henry VI. necessary. That of Henry IV. has capable of voting for the knight of their itself been occasioned by an opposite evil, the cioe s capabale t of voting for the knight of th elect:in of knights by a few persons in the name shire. Such at least seems to be the of the county. inference from the expressions of 7 H. Yet the consequence of the statute of Henry IV., c. 15, " all who are there present, as was not to let in too many voters, or to render elec well suiter duly summoned for that tions tumultuous, in the largest of English coun sAnd this a tives, whatever it might be in others. Prynne has cause as others."t And this acquires published some singular sheriffs'indentures for the county of York, which were sealed t 3 Prynne's Register, p. 187. This hypothesis, by a few persons calling themselves the attorneys though embraced by Prynne, is, I confess, much of some peers and ladies, who, as far as appears, opposed to general opinion; and a very respectable had solely returned the knights of that shire.-3 living writer treats such an interpretation of the Prynne, p. 152. What degree of weight these statute 7 H. IV. as chimerical. The words cited anomalous returns ought to possess, I leave to the in the text " as others," mean only, according to reader. him, suiter not duly summoned.-Heywood on * The majority of prescriptive'boroughs hawe Elections, vol. i., p. 20. But, as I presume, the prescriptive corporations which carry the legac summons to freehollers was by general proclama- which's not always the moral prosumptio
parliament among the other to commit in executing this trust. Though representatives of the commons. They parliaments met almost every year, and are usually specified distinctly from the there could be no mistake in so notoriety other classes of representatives in grants on a fact, it was the continual practice of subsidies throughout the parliaments of sheriffs to omit boroughs that had of the two first Edwards, till, about the been in recent habit of electing memNovember of the Third's reign, they bers, and to return upon the writ that were confounded with ordinary burgesses- there were no more within their county ses.* This is the foundation of that par- Thus, in the 12th of Edward III., the sherticular species of elective franchise inci- iff of Wiltshire, after returning two citident to what we denominate burgage zens for Salisbury, and burgesses for two tenure; which, however, is not confined boroughs, concludes with these words: to the ancient demesne of the crown.t " There are no other cities or boroughs The proper constituents therefore of within my bailiwick." Yet in fact eight the citizens and burgesses in parliament other towns had sent members to preappear to have been-1. All chartered ceding parliaments. So in the 6th of boroughs, whether they derived their Edward II., the sheriff of Bucks declared privileges from the crown or from a that he had no borough within his county mesne lord, as several in Cornwall did except Wycomb; though Wendover, Ag. from Richard, king of the Romans;t 2. mondescham, and Marlow had twice made All towns which were the ancient or the returns since that king's accession.* And actual demesne of the crown; 3. All from this cause alone it has happened contcidrable places, though unincorpo- that many towns called boroughs, and rated, which could afford to defray the having acharter and constitution as such, expenses of their representatives, and have never returned members to parliahad a notable interest in the public wel- ment; some of which are now among fare. But no parliament ever perfectly the most considerable in England, as corresponcted with this theory. The Leeds, Birmingham, and A Macclesfield.t It has been suggested, indeed, by Bra original charter. But " many boroughs and towns dy,J that these returns may not appear so ar. England have burgesses by prescription, that false and collusive if we suppose the sheriffs never wereincorporated."—Ch. J. Hobart in Duniff to mean only that there were no resgannon Case, Hobart's Reports, p. 15. And Mr. ident burgesses within these boroughs L uders thinks, I know not how justly, that in the age of Edward I., which is most to our immediate to be returned, or that the expense of purpose, " there were not perhaps thirty corpora- their wages would be too heavy for the tions in the kingdom."—Reports of Elections, vol. place to support. And no doubt the lati., p. 98. But I must allow that, in the opinion of ter plea whether implied or not in the remany sound lawyers, the representation of unchar-h ether implied or not in the retered, or at least unincorporated boroughs, was rath- turn, was very frequently an inducement er a real privilege, and founded upon tenure, than to the sheriffs to spare the smaller borone arising out of their share in public contributions. -Ch. J. Holt in Ashby v. White, 2 Ld. Raymond, * Brady on Boroughs, p. 110. 3 Prynne, p.231. 951. Heywood on Borough Elections, p. 11. This The latter even argues that this power of omitting inquiry is very obscure; and perhaps the more so, ancient boroughs was legally vested in the sheriff because the learning directed towards it has more before the 5th of Richard II., and though the lan frequently been that of advocates pleading for their guage of that act implies the contrary of this posiclients than of unbiased antiquaries. If this be tion, yet it is more than probable that most of our kept in view, the lover of constitutional history parliamentary boroughs by prescription, especially will find much information in several of the re- such as were then unincorporated, are indebted pored cases on controverted elections; particu- for their privileges to the exercise of the sheriff's arly those of Tewksbury and Liskeard in Peck. discretion; not founded on partiality, which would well's Reports, vol. i. rather have led him to omit them, but on the broad * Brady on Boroughs, p. 75,'0, and 163. Case principle that they were sufficiently opulent and f Tewksbury, in Peckwell',eports, vol. i., p. important
to send representatives to parliament. 178. t Willis, Ne titia Parliamentaria, vol. i., preface. t Littleton, s. 162, 163. Brady, p. 97. p. 3F. f P. 117

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08 EUROPE DURING THE MIDDLE AGES. [UIAP. VIII oughs. The wages of knights were four turns that they had no boroughs within shillings a day, levied on all freeholders, their county, though Wigan, Liverpool, or at least on all holding by knight-ser- and Preston were such, alleged at length vice, within the county.* Those of bur- that none ought to be called upon on agesesses were half that sum;t but even this count of their poverty. This return was pittance was raised with reluctance and constantly made, from 36 E. III. to the difficulty from miserable burghers, little reign of Henry VI.* soliciitous about political franchises. Pov- The elective fianshise was deemed by erty, indeed, seems to have been accepted the boroughs no privilege or Reluctance as a legal excuse. In the 6th of E. II., blessing, but rather, during the of boroughs the sheriff of Northumberland returns to chief part of this period, an in- to seed the writ of summons, that all his knights tolerable grievance. Where they members. are not sufficient to protect the county; could not persuade the sheriff to omit and in the 1st of E. III., that they were sending his writ to them, they set it at too much ravaged by their enemies to defiance by sending no return. And this send any members to parliament.s The seldom failed to succeed, so that after sheriffs of Lancashire, after several re- one or two refusals to comply, which brought no punishment upon them, they * It is a perplexing question, whether freehold-were left in quiet enjoyment of their in ers in soccage were liable to contribute towards significance. The town of Torrington the wages of knights; and authorities might be in D ev onshire, went farther, and obtainngtn produced on both sides. The more probable sup-in Devonshire, vent farther and obtained position is that they were not exempted. See the a charter of exemption from sending burvarious petitions relating to the payment of wages gesses, grounded upon what the charter in Prynne's fourth Register. This is not uncon- asserts to appear on the rolls of chancenected with the question as to their right of suffrage. See ante, p. 360. Freeholders within fran-hises made repeated endeavours to exempt them- before the 21st of E. 1. This is absoselves from payment of wages. Thus in 9 H. IV. lutely false, and is a proof how little it was settled by parliament, that, to put an end to can rely upon the veracity of records the disputes on this subject between the people of Torrington having made not less than Cambridgeshire and those of the Isle of Ely, the I latter should pay 2001. and be quit in future of all twenty-two returns before that time. charges on that account.-Rot. Parl., vol. iv., p. is curious, that in spite of this charer, tht 383. By this means the inhabitants of that fran-town sent members to the two ensuin[ chise seem to have purchased the right of suffrage, parliaments, and then ceased for ever.4 which they still enjoy, though not, I suppose, suit-Richard II gave the inhabitants of Col ers to the county-court. In most other franchises, inh tnt b and in many cities erected into distinct counties, chester adispensation from returningburthe same privilege of voting for knights of the gesses for five years, in consideration of shire is practically exercised; but whether this the expenses they had incurred in fortithas not proceeded as much from the tendency ofying the town.T But this immunity, returning officers and of parliament to favour the from whatever rason, was not regarde, right of election in doubtful cases, as from the merits of their pretensions, may be a question. Colchester having continued to make ret The wages of knights and burgesses were first turns as before. reduced to this certain sum by the writs De levan- The partiality of sheriffs in leaving out dis expensis, 16 E. II.-Prynne's fourth Register, boroughs which were accustomed in old p. 53. These were issued at the request of those who had served after the dissolution of parliament, time to come to the parliament, was reand included a certain number of days, according pressed, as far as law could repress it, by to the distance of the county whence they came, a statute of Richard II., which
imposed a for going and returning. It appears by these that fine on them for such neglect, and upon thirty-five or forty miles were reckoned a day'sber of parliament who should jourley; which may correct the exaggerated no- any mesero is t B iu tions of bad roads and tardy locomotions that are absent himself from his duty.~ But it is, sometimes entertained.-See Prynne's fourth part, I think, highly probable, that a great part and Willis's Notitia Parliarnentaria, passim. of those who were elected from the borThe latest entries of writs for expenses in the ouhs did not trouble themselves with ate c.ose rolls are of 2 H. V.; but they may be proved to ghdinotrulteslvswha. have issued much longer; and Prynne traces them tendance in parliament. The sherifflevel to the end of Henry VIII.'s reign, p. 495. With- found it necessary to take sureties for out the formality of this writ, a very few instances their execution of so burdensome a du,v of towns remunerating their burgesses for attend- whose names it was usual, down to thie ance in parliament are known to have occurred in later times. Andrew Marvel is commonly said to have been the last who received this honourable upon the writ along with those of the salary. A modern book asserts that wages were elected|| This expedient is not likely to paid in some Cornish boroughs as late as the eighteenth century.-Lyson's Cornwall, preface, p. * 4 Prynne, p. 31', t Id., p. 320. xxxii.; but the passage quoted in proof of this is $ 3 Prylize, p. 241. ( 5 W. II., stat. 1., c. 4. vot precise enough to s:poort a unlikely a fact. 11 Lude:s's R2ports,'ol. i., p. 15. Sometimes J 3 Prynne, p.!65. an elected bu'gess abolutely refused to go to par
complaints, seems to afford an inference by delegation from the rest. The con-
that it had begun
in the reign of Edward sent, however, of the inferior freemen III. Besides several petitions of
we may easily believe to have been commons, that none but knights or repumerely
nominal; and from being nomi-
table squires should be returned for nal, it would in many
places come by de-
shires, an ordinance was made in the gree not to be required at all; the cor-
forty-sixth of his reign that no lawyer poration, specially so denominated, or practising in the
king's court, nor sheriff municipal government, acquiring by during his shrievalty, be returned
knight length of usage an exclusive privilege in for a county; because these lawyers put
election of members of parliament, as forward many petitions in the name of they did in local
administration. This, the commons, which only concerned their at least, appears to me a more
probable clients.T This probably was truly alhypothesis than that of Dr. Brady, who leged, as
we may guess from the vast limits the original right of election in all number of proposals for
changing the corporate boroughs to the aldermen or course of legal process which fill the other
capital burgesses.T The members of the house of com-
* Willis, Notitia Parliamentaria, vc iii.,
p. 96, Members of mons, from this occasionaldis- &c. 3 Prynne, p. 224, &c. the Hhouse use of
ancient boroughs, as f In 4 Edw. II., the sheriff of Rutl made this of comlons. well as from
the creation of return: Eligii feci in pleno comitatu, lot, duorum new ones, underwent some
fluctuation militum, eo quod milites non sunt in hoc comitatu new onew s, underwent some
uctuationcommorantes, duos homines de comitatu Rutland, during the period subject to our
review. de discretioribus et ad laborandum potestioribus, Two hundred citizens and burgesses
sat &c.-3 Prynne, p. 170. But this deficiem cy of ac in the parliament held by Edward I. in
tual knights soon became very common. In 19 E II. there were twenty-eight members,eturned lia4e-
*, and drove his constituents ta a fresh from shires who were not knights, and but twen choice
3 Prynne, p. 277. ty-seven who were such. The former had at this * 3 Prynne, p. 252. time
only two shillings or three shillilrgs a day of Idem, p. 257, de assensu totius comnunita-
their wages, while the real knights had four shil.,as predictae elegerunt R. W., so in several other
lings.-4 Prynne, p. 53, 74. But in the next reig.,rstdnces quoted in the ensuing pages. their
wages were put on a level * Bradv on Boroughs p. 132, &c. t Rot. Parl., vol. ii., p. 310.
most sure to escape with impu- Influence ol is almost a solitary instance in the law nity. They were sometimes the crown of England, wherein the principle of de- also countenanced, or rather in- upon them. suetude has been avowedly set up against stigated by the crown, which, having rean unrepealed enactment. I am not covered in Edward II.'s reign the prerog aware, at least, of any other, which not ative of naming the sheriffs, surrendered only the house of commons, but the court by an act of his father,I filled that office of king's bench has deemed itself at lib- with its creatures, and constantly disreerty to declare unfit to be observed.i garded the statute forbidding their conEven at the time when it was enacted, tinuance beyond ayear. Without searchLhe law had probably, as such, very little ing for every passage that might illus- ffect. But still the plurality of elections trate the interference of the crown in elec. were made, according to ancient usage tions, I will mention two or three leading as well as statute, out of the constituent instances. When Richard II. was medibody. The contrary instances were ex- tating to overturn the famous commisesceptions to the rule; but exceptions in- sion of reform, he sent for some of the creasing continually, till they subverted sheriffs, and required them to permit no the rule itself. Pryne has remarked, knight or burgess to be elected to the that we chiefly find Cornish surnames next parliament without the approbation among the representatives of Cornwall, of the king and his council. The sheriffs and those of northern families among the replied, that the commons would mainreturns from the north. Nor do the tain their ancient privilege of electing members for shires and towns seem to have been much interchanged; the names Register, p. 1184. A letter in that authentic and of the former belonging to. the most an- interesting accession to our knowledge of ancient cient families, while those of the latter times, the Paston collection, shows that eager have a more plebeian cast.t In the reign canvass was sometimes made by country gentle men in Edward IV.'s reign to represent boroughs. of Edward IV., and not before, a very few This letter throws light at the same time on the of the burgesses bear the addition of es- creation or revival of boroughs. The writer tells quire in the returns; which became uni- Sir John Paston: "If ye miss to be burgess of vrsal iln the middle of the succeeding Malden, and my lord chamberlain will, ye may be veral in the iddleofthesutury.cceeding in another place; there be a dozen towns in Eng land that choose no burgess which ought to do it; ye may be set in for one of those towns an' ye be a I H. V., c. 1. friended." This was in 1472, vol. ii., p. 107. t See the case of Dublin university, in the first * Glanvil's Reports of Elections, edit. 1774. In volume of Peckwell's Reports of contested elec- troduction, p. xii. tions. Note D., p. 53. The statute itself was re- t Pryne's 3d Register, p. 171. pealed by 14 G. IIM., c. 58. t 28 E. I., c. 8. 9 E. II. It is said that the i By 23 H. VI., c. 15, none but gentlemen born, sheriff was elected by the people of his country in generous a nativitate, are capable of sitting in par- the Anglo-Saxon period; no instance of this, how liament as knights of counties; ar election was ever, according to Lord Lyttleton, occurs after the eet aside 39 H. VI., because the person returned conquest. Shrievalties were commonly sold bj was not of gentle birth.-Prynne's id Reg., p. 161. the Norman kings.-Hist of Henry II., vol ii., p 4 Willis, Notitia Parliamentaria. Pryne's 4th 921.
to be members of the le This is rendered probable by a petition gislature, they paid relief as
barons, they presented to it by the sheriffs, praying might be challenged on juries, and, as I
indemnity for all which they had done in presume, by parity of reasoning, were relation thereto
counter to law.t An entitled to trial by their peerage. These act passed according to their
prayer, and lower barons, or, more commonly, tenin confirmation of elections. A few ants by
parcels of baronies,* may be years before, in 1455, a singular letter dimly traced to the latter
years of Edunder the king's signet is addressed to ward III.t But many of them were suc the
sheriffs, reciting that " we be enfourm- cessively summoned to parliament, and ed there is busy
labour made in sondry thus recovered the former lustre of their wises by certaine persons for
the che- rank; while the rest fell gradually into syng of the said knights...... of which the station
of commoners, as tenants by labour we marvaille greatly, insomuche simple knight-service. as
it is nothing to the honour of the la- As tenure without summons did not borers, but ayenst their
worship; it is entitle any one to the privileges Baronial also ayenst the lawes of the lande," with
of a lord of parliament, so no tenure required for more to that effect; and enjoining the spiritual
person at least ought to lordsspirsheriffs to let elections be free and the have been summoned
without itual. peace kept.~ There was certainly no baronial tenure. The prior of St. James
reason to wonder that a parliament, at Northampton, having been summoned, which was to
shift the virtual sovereign- in the twelfth of Edward II., was dis. ty of the kingdom into the
hands of one charged upon his petition, because he whose claims were known to extend held
nothing of the king by barony, but much farther, should be the object of tol- only in
frankalmoign. The prior of Brid& erably warm contests. Thus in the Pas- lington, after frequent
summonses, was ton letters, we find several proofs of the finally left out, with an entry made in
the importance attached to parliamentary roll'that he held nothing of the king. elections by the
highest nobility.l Thre abbot of Leicester had been called The house of lords, as we left it in the
to fifty parliaments: yet, in the 25th of Consti- reign of Henry III., was entirely tion of the
composed of such persons hold- ~ Baronies were often divided by descent among Loruse of
ing lands by barony as were sum- females into many parts, each retaining its characmoned by
particular writ of par- ter as a fractional member of a barony. The tenliam.~ Tenure and
summons were ants in such case were said to hold of the king by both essential at this time in
order to the third, fourth, or twentieth part of a barony, and did service or paid relief in such
proportion. render any one a lord of parliament; the t Madox, Baronia Anglica, p. 42 and 58.
West's first by the ancient constitution of our Inquiry, p. 28, 33. That a baron could only be
feudal monarchy from the conquest; the tried by his fellow-barons, was probably a rule as old
as the trial per pais of a commoner. In 4 E. * Vita Ricardi II., p. 85. III., Sir Simon Bereford
having been accused be. t Otterbourne, p. 191. He says of the knights fore the lords in
parliament of aiding and advising returned on this occasion, that they were not elect- Mortimer
in his treasons, they declared with one ed per communitatem ut mos excit, sed per regi- voice
that he was not their peer; wherefore they am voluntatem. were not bound to judge him as a
peer of the land; t Prynne's 2d Reg., p. 141. Rot. Parl., vol. v., but inasmuch as it was notorious
that he had been p. 367. 6 ld., p. 450. concerned in usurpation of royal powers and mur 11 Vol.
the lords, as judges of parliament, by assent of lh6 ~ Upon this dry and obscure subject of
inquiry, king in parliament, awarded and adjudged him to the nature and constitution of the
house of lords be hanged. A like sentence, with a like protesta during this period, I have been
much indebted to tion, was passed on Mautravers and Gournay the first part of Prynne's
Register, and to West's There is a very remarkable anomaly in the case of Inquiry into the
manner of creating peers; which, Lord Berkley, who, though undoubtedly a baron. though
written with a party motive, to serve the his ancestors having been summoned from the ear
ministry of 1719 in the peerage bill, deserves, for liest date of writs, put himself on his trial in
par the perspicuity of the method and style, to be reck- liament by twelve knights of the county
of Glo oned among the best of our constit.vional disserta- cester.-R-ot, Par]., vol. ii., p. 53.
Rymer, t. iv tions. p'3 4

Page  412 bl11 EUROPE DURING THE MIDDLE AGES. [CHAP. VIP Edward III., he
obtained a charter of per- aristocracy, it is a problem of much diffi petual exemption, reciting
that he held culty to distinguish these from the terrino lands or tenements of the crown by torial
barons. As the latter honours debarony, or any such service as bound him scended to female
heirs, they passed into to attend parliaments or councils.* But new families and new names, so
that woE gleat irregularities prevailed in the rolls can hardly decide of one summoned for of
chancery, from which the writs to the first time to parliament, that he did spiritual and temporal
peers were taken; not inherit the possession of a feudal arising in part, perhaps, from
negligence, barony. Husbands of baronial heisses in part from wilful perversio: so that were
almost invariably summoned in many abbots and priors, who like these their wives' right,
though frequently by had no baronial tenure, were summoned their own names. They even sat
after at times and subsequently omitted, of the death of their wives, as tenants by whose actual
exemption we have no the courtesy.* Again, as lands, though record. Out of one hundred and
twen- not the subject of frequent transfer, were, ty-two abbots and forty-one priors, who
especially before the statute de donis, at some time or other sat in parliament, not inalienable,
we cannot positively as. but twenty-five of the former and two sume that all the right heirs of
original of the latter were constantly summoned; barons had preserved those estates upon the
names of forty occur only once, and which their barony had depended.t If those of thirty-six
others not more than we judge, however, by the lists of those five times.t Their want of
baronial te- summoned, according to the best means nure, in all probability, prevented the rep-
in our power, it will appear that the regettion of writs which accident or occa- ular barons by
tenure were all along very sion had caused to issue.4 far more numerous than those called by
The ancient temporal peers are sup- writ: and that, from the end of Edward Barons posed to
have been intermingled III.'s reign, no spiritual persons, and few alled by with persons who
held nothing of if any laymen, except peers created by writ. the crown by barony, but attended
patent, were summoned to parliament, in parliament solely by virtue of the who did not hold
territorial baronies.4 king's prerogative exercised in the writ With respect to those who were
inof summons.~ These have been called depted for their seats among the lords barons by writ;
and it seems to be denied by no one, that, at least under the three * Collins's Proceedings on
Claims of Baronies, first Edwards, there were some of this p. 24 and 73. description in
parliament. But after all t Prynne speaks of " the alienation of baronies the labours of Dugdale
and others in by sale, gift, or marriage, after which the new pur. tracing the genealogies of our
ancient chasers were summoned instead," as if it frequently happened.-1st Register, p. 239. And
several instances. are mentioned in the Bergavenny case * Prynne, p. 142, &c. West's Inquiry.
(Collins's Proceedings, p. 113), where land-barot Prynne, p. 141. nies having been entailed by
the owners on their t It is worthy of observation, that the spiritual heirs male, the heirs general
have been excluded peers summoned to parliament were in general from inheriting the dignity.
considerably more numerous than the temporal.- It is well known, notwithstanding these
ancient Prynne, p. 114. This appears, among other causes, precedents, that the modern doctrine
does not ad to have saved the church from that sweeping ref- mit any right in the purchaser of a
territorial peelormation of its wealth, and perhaps of its doc- age, such as Arundel, to a writ of
summons, or trines, which the commons were thoroughly in- consequently to any privilege as a
lord of parlia. clined to make under Richard It. and Henry IV. ment. But it might be a
speculative question, Thus the reduction of the spiritual lords by the whether such a purchaser
could not become a real dissolution of monasteries was indispensably re-though unparliamentary baron, and entitled as such averted to bring the ecclesiastical order into due to a trial by the peers. For though the king, assubjection to the state, sisted, if he please, by the advice of the house of ~ Perhaps it can hardly be said that the king's lords, is finally and exclusively to decide upon prerogative compelled the party summoned, not claims to parliamentary privileges, yet the dignity being a tenant by barony, to take his seat. But of peerage, whether derived under ancient tenure though several spiritual persons appear to have or a royal patent, is vested in the possessor by act been discharged from attendance on account of of law, whereof the ordinary courts of justice may their holding nothing by barony, as has been justly incidentally take cognizance. See the case of R observed, yet there is, I believe, no instance of any v. Knowles, Salkeld's Reports, p. 509, the principalyman's making such an application. The terms ples of which will never be controverted by any of the ancient writ of summons, however, in fide et'one acquainted with the original constitution of hoauagio quibus nobis tenemini, afford a presump. this country. tioe! that a feudal tenure was, in construction of t Prynne's 1st Register, p. 237. This must be law, the basis of every lord's attendance in parlia- understood to mean that no new families were rment. This form was not finally changed to the summoned; for the descendants of some who asc present, in fide et ligentiA, till the 46th of Edw. III. not supposed to have held land'hsornia AsR' w- Q, -Prvnne's Jst Register, p. 2g06. stantly be found in later lists.

Page  413 NE&RT ill.] ENGLISH CONSTITUTION. 411 to the king's writ, there are two materi- party for its completion. But this dis. al questions; whether they acquired an tinction could be supported by nothing hereditary nobility by virtue of the writ: except long usage. If, however, we reand, if this be determined against them, cur to the practice of former times, we whether they had a decisive, or merely a shall find that no less than ninety-eight deliberative voice in the house. Now, laymen were summoned once only to for the first question, it seems that, if the parliament, none of their names occur. writ of summons conferred an estate of ring afterward; and fifty others two, inheritance, it must have done so either by three, or four times. Some were convirtue of its terms, or by established con- stantly summoned during their lives, struction and precedent. But the writ none of whose posterity ever attained contains no words by which such an es- that honour.* The course of proceedtate can in law be limited; it summons ing, therefore, previous to the accession the person addressed to attend in parlia- of Henry VII., by no means warrants ment in order to give his advice on the the doctrine which was held in the lat. public business, but by no means implies ter end of Elizabeth's reign,t and has that his advice will be required of his since been too fully established by reherirs, or even of himself, on any other peated precedents to be shaken by any occasion. The strongest expression is reasoning. The foregoing observations "vobiscum et cveteris praelatis, magnati- relate to the more ancient history of our bus et proceribus," which appears to constitution, and to the plain matter of place the party on a sort of level with fact as to those times, without considerthe peers. But the word magnates and ing what political cause there might be procercs are used very largely in ancient to prevent the crown from introducing language, and, down to the time of Ed- occasional counsellors into the house of ward III., comprehend the king's ordina- lords. Nor It is manifest by many passages in can these, at any rate, be construed to these records, that bannerets Bannerets pass an inheritance, which, in the grant were frequently summoned to summon of a private person, much more of the the upper house of parliament, houe othf king, would require express words of constituting a distinct class in-lords. limitation. In a single instance, the ferior to barons, though generally named writ of summons to Sir Henry de Brom- together, and ultimately confounded with flete (27 H. VI.), we
find these remarka- them. Barons are distinguished by the ble words: Volumus enim vos et
haere- appellation of Sire, bannerets have only des vestros masculos de corpore vestro that of
Monsieur, as le Sire de Berkeley, legitime exeuntes barones de Vescy ex- le Sire de Fitzwalter,
was the lineal heir of the ancient barony the 7th of Richard II., Thomas Camoys de Vesey.*
And if it were true that the having been elected knight of the shire writ of summons conveyed a
barony of for Surrey, the king addresses a writ to itself, there seems no occasion to have the
sheriff, directing him to proceed to introduced these extraordinary words of a new election,
cum hujusmodi bannerecreation or revival. Indeed there is less retti ante htec tempora in milites
comitanecessity to urge these arguments from tus ratione alicujus parliamenti eligi minthe
nature of the writ, because the mod- ime consueverunt. Camoys was sumern doctrine, which is
entirely opposite moned by writ to the saite parliament. to what has'here been suggested,
asserts It has been inferred from hence by Sel. that no one is ennobled by the mere den that he
was a baron, and that the summons, unless he has rendered it op- word banneret is merely
synonymous~ erative by taking his seat in parliament; - distinguishing it in this from a patent
of * Pryne's 1st Register, p. 232. Elsyne, who strenuously contends against the writ of
summons peerage,t which requires no act of the conferring an hereditary nobility, is of opinion
th24 the party summoned was never omitted in subse* West's Inquiry. Prynne, who takes
rather quent parliaments, and consequently was a peer lower ground than West, and was not
aware of for life, p. 43. But more regard is due to Prynne'a Sir Henry de Bromflete's descent,
admits that a latter inquiries. writ of-summons to any one, naming him baron, or t Case of
Willoughby, Collins, p. 8: of Dacres dominus, as Baroni de Greystoke, Domino de p. 41: of
Abergavenny, p. 119. But see the case Furnival, did give an inheritable peerage; not so a of
Grey de Ruthyn, p. 222 and 230, where the con writ generally worded, naming the party knight
trary position is stated by Selden upon bettre 3r esquire, unless he held by barony. grounds. t
Lord Abergavenny's case, 12 Coke's Reports; t Rot. Par\],. vol. ii., p. 147, 309; vol. iii., p. 10C,

Page 414 t14 EUROPE DURING THE MIDDLE AGES [CACP. VRit But this is contradicted
by too many ever they might allow them to assist ir, passages. Bannerets had so far been their
debates. But I am much more inconsidered as commoners some years be- dined to suppose that
they were in all fore, that they could not be challenged respects on an equality with other peers
on juries.* But they seem to have during their actual attendance in parliabeenl more highly
estimated at the date ment. For, 1. They are summoned by of this writ, the same writ as the rest,
and their names The distinction however between bar- are confused among them in the lists;
os and bannerets died away by degrees. whereas the judges and ordinary counr In the 2d of
Henry VI.,t Scrop of Bolton sellors are called by a separate writ, vo is called le Sire de Scrop; a
proof that bihcum et cweteris de consilio nostro, and he was then reckoned among the barons.
their names are entered after those of The bannerets do not often appear after- the peers.* 2.
Some, who do not appear ward by that appellation as members of to have held land-baronies,
were conthe upper house. Bannerets, qr, as they stantly summoned from father to son, are
called, banrents, are enumerated and thus became hereditary lords of par among the orders of
Scottish nobility in the year 1428, when the statute
directing right, which probably was the foundation the common lairds or tenants in capite to of
extending the same privilege athersend representatives was enacted; and ward to the
descendants of all who had a moderate historian justly calls them once been summoned. There
is no evian intermediate order between the peers dene that the family of Scrope, for ex-, and
lairds. Perhaps a consideration of ample, which was eminent under Edward these facts, which have frequently been III. and subsequent kings, and gave rise overlooked, may tend in some measure to two branches, the lords of Bolton and to explain the occasional discontinuance, Masham, inherited any territorial hon. or sometimes the entire cessation, of our. It is very difficult to obtain any writs of summons to an individual or his direct proof as to the right of voting, bedescendants; since we may conceive cause the rolls of parliament do not take that bannerets, being of a dignity much notice of any debates; but there happens inferior to that of barons, had no such inheritable nobility in their blood as ren- * West, whose business it was to represent the dered their parliamentary privileges a barons by writ as mere assistants without suffrage, matter of right. But whether all those cites the writ to them rather disingenuously, as if it ran vobiscum et cum prelatis, magnatibus ac who, without any baronial tenure, receiv-

Prynne, however, from whom West has borbelonged to the order of bannerets, I rowed a great part of his arguments, does not seem cannot pretend to affirm: though some to go the length of denying the right of suffrage passages in the rolls might rather lead to to persons so summoned.-lst Register, p. 237. t These descended from two persons, each nasuch a su

med Geoffrey le Scrope, chief-justices of K. B. and The second question relates to the right C. B. at the beginning of Edward III.'s reign. The of suffrage possessed by these temporary name of one of them is once found among the bar members of the upper house. It might ons, but I presume this to have'been an accident or mistake in the roll, as he is frequently mentioned seem plausible certainly to conceive, that afterward among the judges. Scrope, chief-justhe real and ancient aristocracy would not tice of K. B., was made a banneret in 14 E. III. permit their powers to. be impaired by He was the father of Henry Scrope of Mashain, a numbering the votes of such as the king considerable person in Edward III. and Richard might please to send among them how- II.'s government, whose grandson,.Lord Scrope of Masham, was beheaded for a conspiracy against Henry V. There was a family of Scrupe as old opinion that bannerets in the lords' house were the as the reign of Henry II.; but it is not clear, not same as barons, may seem to call on me for some withstanding Dugdale's assertion, that the Scropes contrary authorities, in order to support my own descended from them, or at least that they held assertion, besides the passages above quoted from the same lands: nor were the Scropes barons, as the rolls, of which he would' naturally be sup- appears by their paying a relief of only sixty marks posed a more competent judge. I refer therefore for three knights' fees.-Dugdale's Baronage, p. to Spelman's Glossary, p. 74; Whitelocke on Par- 654. liamentary Writ, vol. i., p. 313; and Elsyng's The want of consistency in old records throws Method of holding parliaments, p. 65. much additional difficulty over this intricate sub* Puis un fut chaleng6 puree qu'il fut a ban- ject. Thus Scrope of Masham. though certainly liere, et non allocatcur, car s'il soit a banniere, et a baron, and tried next year by the peers, is called ne tient pas par baronie, il sera en l'assise.-Year- Chevalier in an instrument of 1 H. V. —Rmer, t book, 22 Edw. III., fol. 18, a. apud West's Inquiry, ix., p. 13. So, in the indictment against Sir John p. 22. Oldcastle, he is constantly styled knight, thoug,'t Rot. Parl., vol. iv., p. 201. he had been summoned several times as Lord Con. t Pinkerton's Hiist. of Scotland. vol. i., p. 35" 3 ha 1, in right of his wife, who inherited that bar and 365.' 3 -Rot. Parl., vol. iv., p. 107

Page  415 t'ART Itl.] ENGLISH CONSTITUTION. 4 5 Lo exist one remarkable passage, inwhich proceeded from the whole legislat-ze the suffrages of the lords are individual- As a question of fact, indeed, it might be ty specified. In the first parliament of doubted whether, in many proceedings Henry IV., they were requested by the where this expression is used, and espe. Earl of Northumberland to declare what cially in the creation pf peers, the assent should
be done with the late King Rich- of the commons was specifically and de.. ard. The lords then present agreed that liberately given. It seems hardly corn. he should be detained in safe custody; sonant to the circumstances of their orand on account of the importance of this der under Edward III. to suppose the ei matter, it seems to have been thought ne- sanction necessary, in what seemed, ca cessary to enter their names upon the little to concern their interest. Yet tieve roll in these words The names of the is an instance, in the fortieth year of that lords concurring in their answer to the prince, where the lords individually, and said question here follow; to wit, the the commons with one voice, are declaArchbishop of Canterbury, and fourteen red to have consented, at the king's reother bishops; seven abbots; the Prince quest, that the Lord de Coucy, who had of Wales, the Duke of York, and six married his daughter, and was already earls; nineteen barons, styled thus: le possessed of estates in England, might be Sire de Roos, or le Sire de Grey de Ru- raised to the dignity of an earl, whenevthy. Thus far the entry has nothing er the king should determine what earlsingular; but then follow these nine dom he would confer upon him.* Under names: Monsieur Henry Percy, Mon- Richard II., the marquisate of Dublin is sieur Richard Scrop, le Sire Fitz-hugh, le granted to Vere by full consent of all the Sire de Bergeveny, le Sire de Lomley, le estates. But this instrument, besides the Baron de Greystock, le Baron,de Hilton, unusual name of dignity, contained an Monsieur Thomas le Sire de Grey de Ru- er the king should confer upon him. Monsieur Henry Percy, Mon- Richard II., the marquisate of Dublin is sieur Richard Scrop, le Sire Fitz-hugh, le granted to Vere by full consent of all the Sire de Bergeveny, le Sire de Lomley, le estates. But this instrument, besides the Baron de Greystock, le Baron,de Hilton, unusual name of dignity, contained an Monsieur Thomas frpyngham, Monsieur Mayhewe Gournay. Of Ireland. In the same reign Lancastei these nine, five were undoubtedly bar- was made Duke of Guienne, and the ons, from whatever cause misplaced in Duke of York's son created Earl of Rut. order. Scrop was summoned by writ; land, to hold during his father's life but his title of Monsieur, by which he is The consent of the lords and commons is invariably denominated, would of itself expressed in their patents, and they are create a strong suspicion that he was no entered upon the roll of parliament.4 baron. and in another place we find him Henry V. created his brothers dukes ol reckoned among the bannerets. The Bedford and Glocester, by request of the other three do not appear to have been lords and commons.~ But the patent of summoned, their writs probably being Sir John Cornwall, in the 10th of Henry lost. One of them, Sir Thomas Erpyng- VI., declares him to be made Lord Fan. ham, a statesman well known in the his- hope, "by consent of the lords, in the tory of those times, is said to have been presence of the three estates of parliaa banneret;* certainly he was not a bar- ment;" as if it were designed to show on. It is not unlikely that the two oth- that the commons had not a legislative ers, Henry Percy (Hotspur), and Gour- voice in the creation of peers.11 nay, an officer of the household, were The mention I have made of creating also bannerets; they cannot at least be peers by act of parliament has And by supposed to be barons, neither were they partly anticipated the modern form patent. ever summoned to any subsequent par- of letters patent, with which the other liament.' Yet in the only record we pos- was nearly allied. The first instance of sess of votes actually given in the house a barony conferred by patent was in the of lords, they appear to have been reck- tenth year of Richard II., when Sir John oned among the rest.t Holt, a judge of the Common Pleas, was The next method of conferring an hon- created Lord Beauchamp of KidderminCreation of our of peerage was by creation ster. Holt's patent, however, passed peers by in parliament. This was adopt- while Richard was endeavouring to act statute. ed by Edward III. in several in- in an arbitrary manner; and in fact he stands, though always, I believe, for the never sat in parliament, having been at.. higher titles of duke or earl. It is laid tainted in that of the next year by the down by lawyers, that whatever the king name of Sir John Holt. In a number of is said, in an ancient record, to have done subsequent patents down to the reign af in full parliament, must be taken to have Henry VII., the assent of parliament is Rot. Parl., vol. ii., p. 290. * lomefi.)'s Hist. of Norfolk, vol. iii. p. 645 t Id., vol. iii., p. 209. t Id... 263, 204.'folio edit.). 4Rot. Parl., v. iii., p 427, 6 Id.,ol. iv., p. 17. I Id., p. 401
EUROPE DURING THE MIDDLE AGES.

t (JAP. VIII. expressed, though it frequently happens dared not take it without their consent, but no mention of it occurs in the par-

In the double parliament, if so we may layimantary roll. And, in some instances, call it, summoned in the eleventh of Edith's roll speaks to the consent of parlia-

ward I. to meet at Northampton andissent, where the patent itself is silent.* York, and divided according to the two

It is now perhaps scarcely known by ecclesiastical provinces, the proctors of Clergy sum-

many persons not unversed in chapters for each province, but not those moned to the constitution of their coun-

of the diocesan clergy, were summoned in the par-

try, that, besides the bishops through a royal writ addressed to the and baronial abbots, the infi-archbishops.

Upon account of the ab. rior clergy were regularly summoned at'sence of any deputies from the lower every parliament. In the writ of sum-

clergy, these assemblies refused to grant inons to a bishop, he is still directed to a subsidy. The proctors of both descrip-

tions appear to have been summoned by the archdeacon of his diocese, with one the prwemunientes clause in the 22d, 23d, proctor from the chapter of the former, 24th,

28th, and 35th years of the same and two from the body of his clergy, to king; but in some other parlaments of attend with him at the place of meeting. his reign the praemunientes clause

is This might, by an inobservant reader, be omitted.* The same irregularity continued

with the summons to the ued under his successor; and the conconvocation, which is composed of the stant usage of inserting this clause in the same constituent parts, and, by modern bishop's

writ is dated from the twentyusage, is made to assemble on the same eighth of Edward III.

day. But it may easily be distinguish-

that the convoca-

resistance may in the writ to each bishop, proceeds from have defeated the accomplishment of

this the crown, and enjoins the attendance intention.T We find an entry upon the of the clergy at the national council of roll of his parliament at Carlisle, con parliament.

The first unequivocal instance of rep-

to it by the several dioceses of the king resentatives appearing for the lower dom. This may be reckoned a clear clergy is in the year 1255, when they are proof of their parliamentary attendance expressly named by the author of the An-

during his reign under the prwemunientes nals of Burton.1 They preceded, there-

clause; since the province of Canterbury fore, by a few years, the house of corn-

not have been present in convocamons; but the introduction of each was tion at a city beyond its limits.~ And founded upon the same principle. The indeed if we were to found our judgment king required the clergy's money,~ but merely on the language used in these writs, it would be hard to resist a very * West's Inquiry, p. 65. This writer does not strange paradox, that the clergy were not allow that the king possessed the prerogative of only one of the three estates of the realm, creating new peers without consent of parliament. but as essential a member of the legisla

But Pryme (1st Register, p. 225), who generally ture by their representatives as the comadopts the same theory of peerage as West, strong-

They are summoned in the early asserts the contrary; and the party views of the latter's treatise, which I mentioned above, should - be kept in sight. It was his object to prove, that * Hody, p. 386. Atterbury, p. 222. the pen ting bill to limit the members of the peer-

Hody, p. 391. age was conformable to the original constitution. t Gilbert's Hilt. of Exchequer, p. 47. t Hody's History of Convocations, p.

t. ii., p. 355. that, "according to the tenour of the king's writ and uldy, p. 345. Atterbury (Rights of Convocations, the ancient customs of the realm, they might have p. 295, 315) endeavours to show that the clergy had room and place, and be associated with the commn. been represented in parliament from the conquest, mons in the nether house of this present parlia. as well as before it. Many of the passages he ment, as members of the commonwealth and the quotes are very inconclusive; but possibly there king's most humble subjects."-Burnet's Hist. of may be some weight in one from Matthew Paris, Reformation, vol. ii., Appendix, No. 17. This as. ad ann. 1247, and two or three writs of the reign sertion that the clergy had ever been associated as A Henry III. one body with the commons is not borne out b). Hody, p. 381. Atterburv's Rights of Convo- any thing that appears on our records, and is cor ations, p. 221. t-ad dictAd by many passages. Dut it is said ti'm

Page 417 "aNh 1.] ENGLISH CONSTITUTION Or. 41 lest year extant (23 E. I.), ad tractandum, sceptre of judicial sovereignty, they sooi ordinandum et faciendum nobiscum, et began to control the spiritual jurisdic cum creteris praelatis, proceribus, ac allis tion, and to establish the inherent su. incollis regni nostri; in that of the next premacy of the common law. From this year, ad ordinandum de quantitate et time an inveterate animosity subsisted modo subsidii; in that of the twenty- between the two courts, the vestiges o' eighth, ad, faciendum et consentiendum which have only been effaced by the lil his, quwe tunc de communi consilio ordi- eral wisdom of modern age.: The gert nari contigerit. In later times, it ran eral love of the common law, however sometimes ad facienduin et consentien- with the great weight of its professors ill dum, sometimes only ad consentiendum; the king's council and in parliament, kept which, from the fifth of Richard II., has the clergy in surprising subjection. Nonie been the term invariably adopted. * Now, of our kings after Henry III. were bigas it is usual to infer froth the same words, ots; and the constant tone of the com. when introduced into the writs for elec- mons serves to show, that the English tion of the commons, that they possessed nation was thoroughly averse to ecclesian enacting power implied in the words astical influence, whether of their own td faciendum, or at least to deduce the church or the see of Rome. necessity of their assent from the words It was natural therefore to withstand ad consentiendum, it should seem to fol- the interference of the clergy summoned low that the clergy were invested, as a to parliament in legislation, as mluch as branch of the parliament, with rights no that of the spiritual court in temporal juless extensive. It is to be considered risdiction. With the ordinary subjects, how we can reconcile these apparent at- indeed, of legislation they had little contributes of political power with the un- cern. The. oppressions of the king's questionable facts, that almost all laws, purveyors.'or escheators, or officers of even while they continued to attend, the forests, the abuses or defects of the were passed without their concurrence, common law, the regulations necessary and that, after some time, they ceased for trading towns and seaports, were altogether to comply with the writ.t matters that touched them not, and tc The solution of this difficulty can only which their consent was never required. be found in that estrangement from the And, as they well knew there was no decommon law and the temporal courts;, sign in summoning their attendance but which the clergy throughout Europe to. obtain money, it was with great rewere disposed to affect. In this coun- luctance that they obeyed the royal writ, try, their ambition defeated its own ends; which was generally obliged to be enand while they endeavoured by privileges forced by an archiepiscopal mandate.* and immunities to separate themselves Thus, instead of an assembly of deputies from the people, they did not perceive from an estate of the realm, they became that the line of demarcation thus strongly a synod or convocation. And it seemm traced would cut them off from the sym- probable that in most, if not all, instances pathy of common interests. Everything where the clergy are said in
the roll of which they could call of ecclesiastical parliament to have presented their peticognizance was drawn into their own tions, or are otherwise mentioned as a courts; while the administration of what deliberative body, we should suppose the they contemned as a barbarous system, convocation alone of the province of the temporal law of the land, fell into the Canterbury to be intended. For that of hands of lay judges. But these were York seems to have been always considmen not less subtle, not less ambitious, ered inferior, and even ancillary to not less attached to their profession than themselves; and wielding, as they did in * Hody, p. 396, 403, &c. In 1314, the clergy the courts of Westminster, the delegated protest even against the recital of the king's writ to the archbishop, directing him to summon the the clergy were actually so united with the com- clergy of his province, in his letters mandatory, de mons in the Irish parliament till the reformation. — claring that the English clergy had not been acGilbert's Hist. of the Exchequer, p. 57. customed, nor ought by right, to be convoked by * Hody, p. 392. the king's authority.-Atterbury, p. 230. t The praemunientes clause in a bishop's writ of t Hody, p. 425. Atterbury, p. 42, 233. The summons was so far regarded down to the Reform- latter seems to think that the clergy of both provation, that proctors were elected, and their names inces never actually met in a national council or eturned upon the writ; though the clergy never house of parliament, under the praemunientes writ attended from the beginning of the fifteenth cen- after the reign of Edward II., though the proctor turly, and gave their money only in convocation. were duly returned. But Hody does not go quite Since the Reformation, the clause has been pre- so far, and Atterbury had a particular motive tr served for form merely in the writ.-Wilkins, Dis- enhance the influence of the convocation for Can sertatio ubi supra.' terburv O d
said to have presented their schedule of haps so decisively proved by any later petitions, which appear upon the roll, and record. But in the eighteenth of the three of which are the foundation of statsame reign several petitions of the clergy utes unassented to in all probability by the are granted by the king and his council, commons. I If the clergy of both proved on the roll of parliament, and inces were actually present, as is here even the statute roll, and in some re-asserted, it must of course have been. as prospects are still part of our law.'To a house of parliament, and not of convo these it seems highly probable that the cation. It rather seems, so far as we commons gave no assent; and they may can trust to the phraseology of records, be reckoned among the other infringe- that the clergy sat also in a national assembly of their legislative rights. It is sembly under the king's writ in the scarcely inable that in the same parliament ord year of the same king.~ Upon other the commons, as if apprehensive of what occasions during the same reign, where was in preparation, besought the king the representatives of the clergy are althat no petition of the clergy might be luded to as a deliberative body, sitting at granted till he and his council should the same time with the parliament, it is have considered whether it would turn to impossible to ascertain its constitution; the prejudice of the lords or commons.~ and indeed, even from those already cited, A series of petitions from the clergy, we cannot draw, any positive inference.II in the twenty-fifth of Edward III., had b the twenty-fifth of Edward Iolft., had c P. 368. The word they is ambiguous; White,not probably anyeal assent of the com- -.. locke (on Parliamentary Writ, vol. ii., p. 346) in mons, though it is once mentioned in the terprets it of the commons: I should rather sup enacting words, when they were drawn pose it to mean the clergy. into a statute.J Indeed, the petitions cor- t 50 E. III., c. 4 and 5. respond so little with the general senti:- Rot. Parl., vol. iii., p. 25. A nostre tres ex cellent seigneur le roy suppliont humblemont see ment of hostility towards ecclesiastical devote oratours, les prelats et la clergie de la province de Canterbirs et d'Everwyk, stat. I R. II. * Atterbury, p. 46. c. 13, 14, 15. But see Hody, p. 425; Atterbtry, t Rot. Parl., vol. ii., p. 64, 65. p. 329. { Rot. Parl., vol. iii., p. 37. t 18 E. III., stat. 3. Rot. Parl., vol. ii., p. 151. 11 It might be argued, from a passage in the par This is the parliament in which it is very doubtful liament-roll of 21 R. II., that the clergy of both whether any deputies from cities and boroughs provinces were not only resent, but that they were had a place. The pretended statutes were there- accounde'i an essential tart of parliament in tem fore every way null; being falsely imputed to an poral matters, which is contrary to the whole ten. incomplete parliament. our of our laws. The commons are there saic Ib d It 25 E. III., stat. 3. to have prayed, ttat " whereas many iudgmentV
commons relative to spiritual matters—lord of manor. But the original instituters, however frequently proposed, in few instances, having been designed for: ends of or no instances obtained the king’s assent state, police, and revenue, full as much so as to pass into statutes, unless ap- as for the determination of private suits proved by the convocation.* But, on the still preserved the most eminent parts other hand, scarcely any temporal laws of its authority. For the king’s ordinary appear to have passed by the concurrence or privy council, which is the usual style of the clergy. Two instances only, so from the reign of Edward I., seems to far as I know, are on record: the parlia- have been no other than the king’s court ment held in the ltk of Richard II. is (curia regis) of older times, being coniannulled by that inthe twenty-first of his posed of the same persons, and having reign,; with the assent of the lords spir- in a principal degree, the same subjecttual and temporal, and the proctors of the of deliberation. It consisted of the chit clergy, and the commons;"—and the ministers; as the chancellor, treasurer statute entailing the crown on the chil- lord steward, lord admiral, lord marshal the keeper of the privy seal, the chain and ordinances formerly made in parliament had been, treasurer and comptroller of the been annulled, because the estate of clergy had not household,' the chancellor of the exche — been present thereat, the prelates and clergy might quer, the master of the wardrobe; and make a proxy with sufficient power to consent in the ms s ewar e an their name to all things done in this parliament. of the judges, king’s sergeant and attorWhereupon the spiritual lords agreed to intrust ney-general, the master' of the rolls, and their powers to Sir Thomas Percy, and gave him justices in eyre, who at that time were a procuration, commencing in the following words: not the same as the judges at Westmin-’ Nos Thomas Cantuar’ et Robertus Ebor’ archi- ster. When all these were called togeth episopi, ac prelati et cleru utruiusque provincine Cantuar’ et Ebor’ jure ecclesiarum. nostrarum et temporali- er, it was a full council; but where th~ un earundem habentes jus interessendi in singulis par- business was of a more contracted nature, liamentis domini nostri regis et regni Anglima pro those only who were fittest to advise tempore celebrandis, necnon tractandi et expediendi were summoned; the chancellor and in eisem quantum ad singula in instanti parlia- for matters of law the offers mento pro statu et honor domini nostri regis, nec- judges, for matters of law; the officers non regalas sum, ac quiete, pace, et tranquillitate of state for what concerned the revenue regni judicialiter justificandis, venerabili viro do- or household. mmno Thorn de Percy militi, nostram plenarie The business of this council, out of committimus potestatern." At may be perceived by these expressions, and more unequivocally by parliament, may be reduced to two heads the nature of the case, that it was the judicial its deliberative office, as a council of adpower of parliament which the spiritual lords del- vice, and its decisive power of jurisdicgated to their proxy.. Many impeachments for tior. With respect to the first, it obvi. capital offences were coming on, at which, by ously comprehended all subjects of polittheir canons, the bishops could not assist. But itsusly comprehended all subjects of polte can never be conceived that the inferior clergy ical deliberation, which were usually rehad any share in this high judicature. And, upon ferred to it by'the king: this being in fac looking attentively at the words above printed in the administration or governing council of italics, it will be evident that the spiritual lords state, the distinction of a cabinet being inholding by barony are the only persons designated; whatever may have been meant by the singular phrase, as applied to them, cleru utruiusque pro- * Rot. Parl., vol. iii., p. 582. Atterbury, p. 61. vinciae.-Rot. Parl., vol. iii., p. 3t8. t The ensuing sketch of the jurisdiction exer * Atterbury, p. 346. cised by the king's council has been chiefly derives t 21 Rich. II., c. 12. Burnet's Hst. of Refor- from Sir Matthew Hale's Treatise of the Juris nation (vol. ii., p. 47) led me to his act which I diction of the Lords' House in Parliament, publi.h kad overlooked. ed by Mt. Hargrave. Dd2
Valltroduced in comparatively modern times. But there were likewise a vast number Richard was determined to govern. of petitions continually presented to the council, upon which they proceeded no some instances founded upon particular farther than to sort, as it were, and for acts of parliament, giving it power to hear ward them by endorsement to the proper and determine certain causes. Many pecourts, or advise the suiter what remedy petitions likewise were referred to it from he had to seek. Thus some petitions parliament, especially where they were are answered, "this cannot be done left unanswered by reason of a dissolu. without a new law;" some were turned lion. But, independently of this deleover to the regular court, as the chancery gared authority, it is certain that the or king's bench; some of greater mo- king's council did anciently exercise, as lent were endorsed to be heard "before well out of parliament as in it, a very the great council;" some, concerning great jurisdiction, both in causes crimithe king's interest, were referred to the nal and civil. Some, however, have conchancery, or select persons of the coun- tended, that whatever they did in this cil. respect was illegal, and an encroachment The coercive authority exercised by upon the common law and Magna Charta. this standing council of the king was far And be the common law what it may, it more important. It may be divided into seems an indisputable violation of the acts legislative and judicial. As for the charter, in its most admirable and essenfirst, many ordinances were made in tial article, to drag men in questions of council; sometimes upon request of the their freehold or liberty before a tribucommons in parliament, who felt them- nal which neither granted. them a trial selves better qualified to state a griev- by their peers, nor always respected the ance than a remedy; sometimes without law of the land. Against this usurpation any pretence, unless the usage of govern- the patriots of those times never ceased ment, in the infancy of our constitution, to lift their voices A statute of the fifth maybe thought to afford one. These were year of Edward,1. provides that no always of a temporary or partial nature, man shall be attached, nor his property and were considered as regulations not seized into the king's hands against the sufficiently important to demand a new form.of the great charter and the law of statute. Thus, in the second year of Rich- the land. In the twenty-fifth of the same ard II., the council, after hearing read the king, it was enacted, that " none shall be statute-roll of an act recently passed, taken by petition or suggestion to the conferring a criminal jurisdiction in cer- king or his council, unless it be by entain cases upon justices of the peace, de- dictment or presentment, or by writ ori;lared that the intention of parliament, ginal at the common law, nor shall be put though not clearly expressed therein, had out of his franchise or freehold, unless been to extend that jurisdiction to certain he be duly put to answer, and forejudged other cases omitted, which accordingly of the same by due course of law."* they caused to be inserted in the commis- This was repeated in a short act of the sions made to these justices under the twenty-eighth of his reign; but both, in great seal.* But they frequently so all probability, were treated with neglect; much exceeded what the growing spirit for another was passed some years afterof public liberty would permit, that it ward, providing that no man shall be put gave rise to complaint in parliament. to answer without presentment before The commons petition, in 13 R. II., that justices, or matter of record, or by due "neither the chancellor nor the king's process and writ original according to the council, after the close of parliament, old law of the land. The answer to the may make any ordinance against the petition whereon this statute is grounded, common law, or. the ancient customs of the land, or the statutes made heretofore * 25 E. III., stat. 5, c. 4. See the petition Rot. or to be made in this parliament; but Parl., vol. ii., p. 228, which extends farther than the king's answer or the statute. Probably this that the common law have its course for fifth statute of the 25th of Edward III. is the most all the people, and no judgment be ren- extensively
beneficial act in the whole body of our dered without due legal process." The laws. It established certainty in treasons, regu. king answers, "Let it be done as has lated purveyance, prohibited arbitrary imprisonbeen usual heretofore, saving the prerog-Lment, and the determination of pleas of freehold been usual heretofore, saving the prerog- before the council, took away the compulsory fimid ative; and if any one is aggrieved, let ing of men-at-arms and other roops, confirmed the him show it specially, and right shall be reasonable aid of the king's enants fixr-.l by 3 E done him."t This unsatisfactory an- I., and provided that the king's proter t'ri should ot. Pr-., vol. iii., pnot hinder civil process or execution. Rot. Parl., vol. iii., p 84. Id., p. 266. t 28 E. Ill., c. 3.

Page 421 PART III.] ENGLISH CONSTI' UTION. 42 In the parliament-roll, expressly declares que use, or usufructuary, against his fe this to be an article of the great charter.* offees, the court of chancery undertook Nothing, however, would prevail on the to enforce this species of contract by council to surrender so eminent a power, process of its own.*. and, though usurped, yet of so long a' Such was the nature of the king's ordi continuance. Cases of arbitrary impris- nary council in itself, as the organ of his onment frequently occurred, and were executive sovereignty; and such the juremonstrted against by the commons. risdiction which it habitually exercised. The right of every Freeman in that car- But it is also to be considered in its reia-. dinal point was as indubitable, legally tion to the parliament, during whose ses3peaking, as at this day; but the courts sion, either singly, or in conjunction with of law were afraid to exercise their re- the lords' house, it was particularly con medial functions in defiance of so power- spicuous. The great officers of state, ful a tribunal. After the accession of whether peers or not, the judges, the the Lancastrian family, these, like other king's sergeant, and attorney-general, grievances, became rather less frequent; were, from the earliest times, as the but the commons remonstrate several latter still. continue.to be, summoned by times, even in the minority of Henry Vi., special writs to the.upper house., But against the council's interference in mat- while the writ of a peer runs, ad tractanter cognizable at common law.t In dum nobiscum et cum caeteris praelatis, these later times, the civil jurisdiction magnatibus et proceribus; that directed of the council was principally exercised to one of the judges is only, ad tractanin conjunction with the chancery, and dum nobiscum et cum caeteris de consilio accordingly they are generally named nostro; and the seats of the latter are together in the complaint. The chan- upon the woolsacks at one extremity of cellor having the great seal in his custody, the house. the council usually borrowed its process In the reigns of Edward I. and II., the from his court. !This was returnable into council appear to have been the regular chancery even where the business was advisers of the king in passing laws, to depending before the council. Nor were which the houses of parliament had asthe two jurisdictions less intimately allied sented. The preambles of most statutes in their character; each being of an equi- during this period express their.concmturable nature; and equity, as then prac- rence. Thus, the statute Westm. I. is tised, being little less than innovation and said to be the act of the king, by his encroachment on the course of law. council, and by the assent of archbishops, This part, long since the most important, bishops, abbots, priors, earls, barons, and of the chancellor's judicial function, can- all the commonalty of the realm being not be traced beyond the time of Richard hither summoned. The statute of es.. [I., when the practice of feoffments to cheaters, 29 E. I., is said to be agreed by uses having been introduced, without *the council, enumerating their names, all any legal remedy to secure the cestui whom appear to be judges or public officers. Still more striking conclusions are * 42 E. III., c. 3, and Rot. Parl., vol. ii., p. 295. to be drawn from the petitions addressed It is not surprising that the king's council should to the council by both houses of parliahave persisted in these transgressions of their law-n the th of dward. here
ful authority, when we find a similar jurisdiction usurped by the officers of inferior persons. Com- are four petitions from the commons to plaint is made in the 18th of Richard II., that men the king and his council, one from the were compelled to answer before the council of divers lords and ladies, for their freeholds and other * Hale's Jurisdiction of Lords' House, p. 46. matters cognizable at common law, and a remedy Coke, 2 Inst., p. 553. The last author places this for this abuse is given by petition in chancery, stat. a little later. There is a petition of the commons, 15 R. II., c. 12. This act is confirmed with a pen- in the roll of the 4th of Henry IV.; p. 511- that alty on its contraveners the next year.-16 R. II., whereas many grantees and feoffees in trust for c. 2. The private jails which some lords were per- their grantors and feoffers, alienate or charge the mitied by law to possess, and for which there was tenements granted, in which case there is no remedy, always a provision in their castles, enabled them to unless one is ordered by parliament, that the king render this oppressive jurisdiction effectual.

and lords would provide a remedy. This petition t Rot. Parl., 17 R. II., vol. iii., p. 319; 4 H. IV., is referred to the king's council to advise of a rem-. p. 507; 1 H. VI., vol. iv., p. 189; 3 H. VI., p. 292; edy against the ensuing parliament. It may per 8 H. VI. p. 343; 10 H. VI., p. 403; 15 H. VI., p. haps be inferred from hence, that the writ of sub 501. T: one of these (10 H. VI.), "that none pcena out of chancery had not yet been applied to should be put to answer for his freehold in parlia- protect the cestui que use. But it is equally pos. ment, nor betoe any court or council where such sible to the commrons, being disinclined to what things are not cognizable by the law of the land," they would deem an illegal innovation, were enthe king gave a denial. As it was less usual to deavouring to reduce these fiduciary estates within refusal promises of this kind than to forget them the pale of the common law, as was afterward Oc:r ward, I do not understand the motive of this. done by the statute of uses.
find that private judges and rest of the council into shade, petitions for redress were, even under and took the decisive jurisdiction entirely Edward I., presented to the lords in par- to themselves, making use of their forliaient as much as to the ordinary coun- mer colleagues but as assistants and adcil. The parliament was considered a visers, as they still continue to be held high court of justice, where relief was to in all the judicial proceedings of that lbe given in cases where the course of house. law was obstructed, as well as where it Those statutes which restrain the was defective. Hence the intermission king's ordinary council from disturbing of parliaments was looked upon as a de- men in their freehold rights, or questionlay of justice, and their annual meeting ing them for misdemeanors, have an is demanded upon that ground. "The equal application to the lords' house in king," says Fleta, "has his court in -his parliament, though we do not frequently council, in his parliaments, in the pres- meet with complaints of the encroachence of bishops, earls, barons, lords, and ments made by that assembly. There was, other wise men, where the doubtful cases however, one class of cases tacitly exof judgments are resolved, and new rem- eluded from the operation of those acts, edies are provided against new injuries, in which the coercive jurisdiction of this and justice is rendered to every man ac- -high tribunal had great convenience; cording to his desert."t In the third year namely, where the ordinary course of of Edward II., receivers of petitions justice was so much obstructed by the began to be appointed at the opening of defending party, through riots, combina every parliament, who usually transmit- tions of maintenance, or overawing influted them to the ordinary, but in some in- ence, that no inferior court would find its stances to the great council. These re- process obeyed. Those ages, disfigured ceivers were commonly three for Eng- in their quietest season- by rapine and land, and three for Ireland, Wales, Gas- oppression, afforded no small number of cony, and other foreign dominions. cases that called for this interposition of There were likewise two corresponding a paramount authority.* They do not classes of auditors, or triers of petitions. These consisted partly of bishops or * This is remarkably expressed in one of the peers, partly of judges and, other mem- articles agreed in parliament 8 H. VI., for the reg bers of the council; and they seem to ulation of the council. "Item, that alle the billel that comprehend matters terminable atte the com mon lawe. shall be remitted ther to be determin * Rot. Parl., v. i., p. 416. t Id., 1. ii., c. 2. ed; but if so be that the discretion of the coup
of the legislature.* But these barriers which were then daily pushed were attainders of treason,
which it aside with impunity. aeemed gracious and solemn to reverse There is a material
distinction to be tain the most authentic manner. Certainly ken between the exercise of the
king's the commons had neither by the nature undeniable prerogative, however repugof our
constitution, nor the practice of nant to our improved principles of freeparliament, any right of
intermeddling in dom, and the abuse or extension of it to judicature; save where something was
oppressive purposes. For we cannot required beyond the existing law, or fairly consider as part
of our ancient where, as in the statute of treasons, an constitution what the parliament was
authority of that kind was particularly perpetually remonstrating against, and reserved to both
houses. This is fully the statute-book is full of enactments to acknowledged by themselves in
the first repress. Doubtless the continual accquiyear of Henry IV.t - But their influence escence
of a nation in arbitrary governupon the balance of government became ment may ultimately
destroy all privi. so commanding ina few years afterward, leges of positive institution, and
leave that they contrived, as has been men- them to recover, by such means as optioned
already, to have petitions directed portunity shall offer, the natural and into them rather than to
the lords or coun- prescribable rights for which human socil, and to transmit them either with a
cieties were established. And this may tacit approbation, or in the form of acts, perhaps be the
case at present with many to the upper house. Perhaps this en- European kingdoms. But it
would be croachment of the commons may have necessary to shut our eyes with
delibercontributed to the disuse of the lords' ju- ate prejudice against the whole tenour
risdiction, who would rather relinquish of the most unquestionable authorities, their ancient and
honourable, but labori- against the petitions of the commons, the ous function, than share it
with such bold acts of the legislature, the testimony of usurners. historians and lawyers, before
we could assert that England acquiesced in those seil fele to grete myght on that o syde, and
un- abuses and oppressions, which it must be myght on tha other, or elles other cause resona-t.
bre yat shal move him."-Rot. Parl., vol. iv., p. 343. The word prerogative is of a peculiar * The
judgment against Mortimer was reversed import, and scarcely understood by those a, the suit of
his son, 28 E. III., because he had who come from the studies of political not been put on his
trial. The peers had adjudged philosophy. We cannot define it by any him to death in his
absence, upon common notoriety of his guilt.-4 E. III., p. 53. In the same theory of executive
functions. All these session of 28 E. III., the Earl of Arundel's attain- may be comprehended in
it, but also a der was also reversed, which had passed in 1 E. gloat deal more. It is bestperhaps
to be.II., when Mortimer was at the height of his pow- understood by its derivation; and- has sr.
These precedents taken together, seem to been said to be that law in case of the,ave resulted
from no partiality, but a true sense yf justice in respect of treasons, animated by the king*
which is law in no case of the sub. ecent statute.-Rot. Parl., vol i., p. 256. Rolt Parl!. vol. iii., p.
427. * Bl.ckstone's Com. from Finch, vjl. i c 7.

Page 424 424 EUIROPE DURING TH2] MIDDLE AGES. }CHAP. VIII ft.: Of the higher
and more sovereign to an empty exchequer This gave prerogatives I shall here say nothing: rise
Ao a number of petitions front the they result from the nature of a mon- commons, upon which
statutes were archy, and have nothing very peculiar in often framed; but the evil was almost
their character. But. the smaller rights incurable in its nature, and never ceased of the crown
showv better the original till.that prerogative was itself abolished. lineaments of our
constitution. It is Purveyance, as I have already said, may said commonly enough, that all
preroga- serve to distinguish the defects from the, tives are given for the subject's good. I
abuses of our constitution. It was a re must confess that no part of this asser- proach to the law,
that men should be tion corresponds with my view of the compelled to send their goods
without subject. It neither appears to me that their consent; it was a reproach to the these prerogatives were ever given, nor administration, that they were deprived that they necessarily redound to the of them without payment. subject's good. Prerogative, in its old The right of purchasing men's goods sense, might be defined an advantage 'ob- for the use of the king was extended by tained by the crown over the subject, a sort of analogy to their labour. Thus in cases where their interests came into Edward III. announces to all sheriffs, th.. competition, by reason of its greater William of Walsingham had a commission. This sprang from the nature sion to collect as many painters as migh. of the Norman government, which rath- suffice for " our works in St. Stephen's er resembled a scramble of wild beasts, chapel, Westminster, to be at our wages where the strongest takes the best share, as long as shall be necessary," and to than a system founded upon principles of arrest and keep in prison all who should common utility. And, modified as the refuse or be refractory; and enjoins them exercise of most prerogatives has been to lend their assistance.t Windsor Casby the more liberal tone which now-per- tie owes its massive magnificence to la vades our course of government, who- bourers impressed from every part of the ever attends to the common practice of kingdom.: There is even a commission courts of justice, and, still more, whoev- from Edward IV. to take as many- worker consults the law-books, will not only men in gold as were wanting, and era be astonished at their extent and multi- ploy them at the king's cost upon the plicity, but very frequently at their in- trappings of himself and his household.t justice and severity. Another class of abuses intimately The real prerogatives that might for- connected with unquestionable, Abuses of Purvey- merly be exerted were sometimes though oppressive, rights of the feudal ance. of so injurious a nature, that we crown, originated in the feudal rights. can hardly separate them from their tenure which bound all the lands of the abuse: a striking instance is that of pur- kingdom. The king had indisputably a veyance, which will at once illustrate the right to the wasrdship of his tenants in definition above given of a prerogative, chivalry, and to the escheats or forfeitthe limits within which it was to be ex- ures of persons dying without heirs or erced, and its tendency to transgress attained for treason. But his officers, unthem. This was a right of purchasing der pretence of wardship, took posses. whatever was necessary for the'kig's sion of lands not hell immediately of the household, at a fair price, in preference to every competitor, and without the consent of the owner. By the same pre- Edw. I., enjoining them to se.d up'a certain numrogative, carriages and horses were im- ber of beves, sheep, capons, &c. for the king's pressed for the: king's journeys, and coronation.-Rymer, vol. ii., p P51. By the statute lodgings'provided for' his attendants. 21 Edw. III., c. 12, goods taker. by'be purveyors were to be paid for on the spot, fnder twenty This was defended on a pretext ofneces- shillings value, or within three months time if sity, or at least of great convenience above that value. But it is not tò be imagined to the sovereign, and was both of high that this law was or could be observed.. antiquity and universal practice through- Edward III., impelled' by the exigences of his out Europe But the royal purveyors French war, went still greater lengths,.and seised hdth utospe But themptonya dyou large quantities of wool," which he san beyond had the utmost temptation, anddoubt- sea, as well as provisions for the supply e'l' his arless no small store of precedents, to my. ' In both cases the proprietors had tales, or stretch this power beyond its legal other securities; but their despair of obtsining boundary; and not only to fix their own payment gave rise, in 1338, to an insurrection. There is a singular apologetical letter of Edwar-i price too low, but to seize what they to the archbishops on this occasion.-Rymer, t.} wanted without any payment at all, or p. 10. See also p. 73, and Knyghton, col. 2570. fwith tallies wh'ch were carried in vain t Rymer, t. vi., p. 417. t Id., t. xi., 852
PART III.1 ENGL. SH CONSTITUTION

The crown, claimed escheats where a right contracts or trespasses. This is no bartir existed, and seized estates as forfeit—illustration of the state in which our con ed which were protected by the statute stitution stood under the Plantagenets. of entail. The real owner had no rem- No colour of right or of supreme prerog. edy against this dispossession, but to pre- active was set up to justify a procedure fer his petition of right in chancery, or, so manifestly repugnant to the great charwhich was probably more effectual, to ter. For all remonstrances against these procure a remonstrance of the house of encroachments, the king gave promises commons in his favour. Even where in return; and a statute was enacted, in justice was finally rendered to him, he the 13th of Richard II., declaring the had no recompense for his damages; and bounds of the constable and marshal's the escheaters were not less likely to re- jurisdiction.* It could not be denied, peat an iniquity by which they could not therefore, that all infringements of these personally suffer. acknowledged limits were illegal, even The charter of the forests, granted by if they had a hundred fold more actual Forest laws. Henry III. along with Magna precedents in their favour than can be Charta,* had been designed to supposed. But the abuse by no means crush the flagitious system of oppres- ceased after the parsing of this statute, sion, which prevailed in those favourite as several subsequent petitions, that it haunts of the Norman kings. They had might be better regarded, will, evince. still, however, their peculiar jurisdiction, One, as it contains a special instance, I though; from the time at least of Edward'shall insert. It is of the fifth year of III., subject in some measure to the con- Henry IV. "On several supplications trol of the King's Bench.-t The forest- and petitions made by the commons in ers, I suppose, might find a compensation parliament to our lord the king for Benfors their want of the common law, in net Wilman, who is accused by certain that easy and licentious way of life which of his ill wishers, and detained in prison, they affected; but the neighbouring cul- and put to answer before' the constable tivators. frequently suffered from the and marshal, against the statutes and the king's officers, who attempted to recover common law of England, our said lord the those adjacent lands, or, as they were king, by the advice and assent of the lords called, purlieus, which had been disaf- in parliament, granted that the said Benforested by the charter, and protected net should be treated according to the by frequent perambulations. Many peti- statutes and common law of England, tions of the commons relate to this griev- notwithstanding any commission to the ane. contrary, or accusation against him made The constable and marshal of Eng- before the constable and marshal." And Jurisdiction land possessed a jurisdiction, a'writ was sent to the justices’ of the of Constable the proper limits whereof were king's bench, with a copy of this article and Marshal. sufficiently narrow, as it seems from the roll of parliament, directing them to have extended only to appeals of trea- to proceed as they shall see fit according son committed beyond sea, which were to the laws and customs of England.t determined by combat, and to military It must appear remarkable, that, in a offences within the realm. But these case so manifestly within their compehigh officers frequently took upon them tence, the court of king's bench should to inquire of treasons and felonies cog- not have issued a writ of habeas corpus, nizable at common law, and even of civil without waiting for what may be considered as a particular act of parliament. * Matthew Paris asserts that John granted a But it is a natural effect of an arbitrary separate forest-charter, and supports his position administration of government, to intimiby inserting that of Henry III. at full length. In date courts of justice.T A negative arfact, the clauses relating to the forest were incorporated with the great charter of John. Such an * 13 R. II., c. 2. t Rot. Parl., vol. iii., p. 530. error as this shows the precariousness of histor- t The apprehension of this compliant spirit in ical testimony, even where it seems to be best the ministers of justice led to an excellent act in grounded. 2 E. III., c. 8, that the judges shall not omit to do t Coke, 4th Inst., p 294. The forest
domain of right for any command under the great or privy the king, says the author of the Dialogue on the seal. And the conduct of Richard II., who sought Exchequer under Henry II., is governed by its own absolute power by corrupting or intimidating them, laws, not founded on the common law of the land, produced another statute in the eleventh year of but the voluntary enactment of princes; so that his reign (c. 10), providing that neither letters of the whatever is done by that law is reckoned not legal king's signet nor of the privy seal should from in itself, but legal according to forest law, p. 29, thenceforth be sent in disturbance of the law. An non justum absolute, sed justum secundam legem ordinance of Charles V., king of France, in 1369 foresta dicatur. I believe my translation of justum directs the parliament of Paris to pay no regari tc,s right; for he is not writing satirically a: y letters under his seal suspending the cnurse a.
independence and integrity and received at his hands the office of chancellor. It must never be forgotten.* Cotton's Posthuma, I p. 221. Howell's State that in a treatise purposely composed for Trials, vol. iii., p. 1. Hume quotes a grant of the office of constable to the Earl of Rivers in 7 Edw. the instruction of one who hoped to reign IV., and infers, unwarrantably enough, that "its over England, the limitations of government was in direct contradistinction to Magna Charta; and it is evident that no regular liberty Fortescue, as some succeeding lawyers could subsist with it. It involved a full dictatorial power, continually subsisting in the state."-Hist. of England, c. 22. But by the very words of this prerogative. patent the jurisdiction given was only over such " A king of England cannot at his causes qua in curia constabularii Anglia ab anti- pleasures make any alterations in the laws of the land, for the Fortescue's aliquo tempore citra, tractari, audiri, examinari, of his is natural as aut decidi consueverunt aut jure debuerant aut de- nature of his government is not to the English Conspicuously, in the statute 13 Ric. II., c. 2, that de- it been merely regal, he would smilution. The constable's jurisdiction. And the chief have a power to make what innovations criminal matter reserved by law to the court of this officer was treason committed out of the kingdom. An violent and revolutionary seasons, such as the the kingdom, impose tallages and other commencement of Edward IV.'s reign, some per- hardships upon the people, whether they sons were tried by martial law before the constable. would or no, without their consent, which But in general, the exercise of criminal justice by sort of government the civil laws point this tribunal, though one of the abuses of the times, cannot be said to warrant the strong lan- out when they declare, Quod principi plaguage adopted by Hume. cuir, legis habet vigorum But it is much...
laws. Rejoice, therefore, my good representing the English constitution prince, that such is the law of the king— from the earliest times as nearly arrived domn to which you are to inherit, because at its present perfection, conspired with it will afford, both to yourself and sub-certain prepossessions of his own to lead jects, the greatest security and satisfac— this eminent historian into an equally erition.** roneous system on the opposite side. The two great divisions of civil rule, And as he traced the stream backwards, the absolute, or regal, as he calls it, and and came last to the times of the Planthe political, Fortescue proceeds to de— tagenet dynasty, with opinions already due from the several originals of con— biased and even pledged to the world in quest and compact. Concerning the lat— his volumes of earlier publication, he was ter, he declares emphatically, a truth not prone to seize hold of and even exaggeralways palatable to princes, that such ate every circumstance that indicated governments were instituted by the peo— immature civilization, and law perverted pie and for the people's good; quoting or infringed.T To this his ignorance of St. Augustine for a similar definition of a t:olitical society. "As the, head of a As the head of a Fortescue, De Laudibus Legum Anglia,, c. 13. body natural cannot change its nerves f The latter treatise having been written under and sinews, cannot deny to the several Edward IV., whom Fortescue, as a restored Lan. parts their proper energy, their due pro— castrian, would be anxious not to offend, and whom portion and aliment of blood, neither can in fact he took some pains to conciliate both in this and other writings, it is evident that the prin king, who is the head of a body politic, ciples of limited monarchy were as fully recognised change the laws thereof, nor take from in his reign, whatever particular acts of violence the people what is theirs by right against might occur, as they had been under the Lancas their consent. Thus you have, sir, the trian princes. formal institution of every political king— dt The following is one example of these preju dices: In the 9th of Richard II. a tax on wool dom, from whence you may guess at the granted till the ensuing feast of St. John Baptist, power which a king may exercise with was to be intermitted from thence to that of St respect to the laws and the subject. For Peter, and then to recommence; that it might not he is appointed to protect his subjects in be claimed as a right.-Rot. Parl., vol. iii., p. 214. Mr. Hume has noticed this provismon, as " showing their lives, properties, and laws; for this an accuracy beyond what was to be expected in very end and purpose he has the delega— those rude times."
In this epithet we see the tion of power from the people, and ho has foundation of his mistakes. The age of Richard,.o just claim to any other power but II. might perhaps be called rude in some respects. But assuredly, in prudent and circumspect percep. tion of consequences, and an accurate use of lan * "ortescue. De LiCdibus Legum Anglia?, c. 9. guage,fore could be:o reason why it should be
crimes, fixed un- Lord Scrop, in 1415, if it be true, accordalterably by custom, allowed nothing
to ing to Carte and Hume, that they were vindictiveness and indignation. - There not heard in
their defence. But whether hardly occurs an- example of any one this is to be absolutely
inferred from the being notoriously put to death without record,* is perhaps open to question.
form of trial, except in moments of -fla- There seems at least to have been.no grant civil war.'
If the right' of juries sufficient motive for. such an irregularity; were sometimes evaded by
irregular ju- their participation in a treasonable conrisdictions, they were at least held sacred
spiracy being manifest from their own by the courts of law: and through all confession. The
proceedings against;he vicissitudes of civil liberty, no one Sir John Mortimer in the 2d of
Henry ever questioned the primary right of VI.t are called by Hume highly irregular every
freeman, handed down from his and illegal. They were, however, by act Saxon forefathers, to
the trial by his of attainder, which cannot well be styled peers. A just regard for public safety
illegal. Nor are they to be considered as prescribes the necessity of severe penal- severe.
Mortimer had broken out of ties against rebellion and conspiracy; the Tower, where he was
confined on a but the interpretation of these offences, charge of treason. This was a capital
when intrusted to sovereigns and their felony at common law; and the chief irconsellors, has
been the most tremen- regularity seems to have consisted in dou instrument of despotic power.
In having recourse to parliament in order to rude ages, even though a general spirit attain him
of treason, when he had al- of political liberty may prevail, the legal ready forfeited-his life by
another crime. character of treason will'commonly be I would not willingly attribute to the
undefined; nor is it the disposition of prevalence of tory'dispositions what lawyers to give
greater accuracy to this may be explained otherwise the progpart of criminal jurisprudence. The
na- ress which Mr. Hume's historical theory ture of treason appears to have been as to our
constitution has-been gradually subject to much uncertainty in England making since its
publication. The:tg before the statute. of Edward III. If of opinion, which, since the
Revolution, and indeed since the reign of James I... deemed inferior to our own. If Mr. Hume
had had been flowing so strongly in favour of ever deigned to glance at the legal decisions re-
the antiquity of our liberties, now seems, ported in the Year-books of those times, he would
have been surprised, not only at the utmost accu- among the higher and more literary racy, but
at a subtle refinement in verbal logic, classes, to set pretty decidedly the other which none of
his own metaphysical treatises way. Though we may still sometimes could surpass. hear a
demagogue chattering about the * During the famous process against the knights wittenagemot,
it is far amore usual to find templars in the reign of Edward II., the Archbish- op of York,
having taken the examination of cer- sensible and liberal men who look on tain templars in his
province, felt some doubts, Magna Charta itself as the result of an which he propounded to
several monasteries and uninteresting squabbles between the king livines. Most of these relate to
the main subject. and his barons. Acts of force and inBut one question, fitter indeed for lawyers
than:heologians, was, whereas many would not confess justice, which strike the cursory
inquirer, without torture, whether he might make use of especially if he' derives his knowiedgei
his means, licet hoc in regno Anglice'nunquam visum from modern compilations more than
fuerit vel auditum? Et si torquendi sunt, utrum the average tenour of events, are selected per
clericEs vel laicos? Et dato, qupd nullus o and displayed as fair edn6 toelai inveniri valeat in
Anglia, utrum pro tor. toribus fittendumn sit, ad partes transmarinas? VWalt. Itemingfol 1, p.
a privileged orth that our superior security is tar less ow- der was peculiar to England. In many
ign to positive law than to the control kingdoms the royal prerogative was at which is exercised
over government by least equally limited The statutes of public opinion through the general use
of Aragon are more full of remedial provisprinting, and to the diffusion of liberal ions. The rigb
of opposing a tyranni principles in policy through the same cal government by arms was more fr,-s means. Thus, disgusted at a contrast quently. asserted in Castile. But Dn. which it was
hardly candid to institute, where else did the people possess oy we turn away from the records
that at- law, and I think, upon the whole, in effest the real, though imperfect, freedom fect, so
much security for their personal of our ancestors; and are willing to be freedom and property..
Accordingly; the persuaded that the whole scheme of Eng- middling ranks flourished
remarkably, lish polity, till the commons took on not only in commercial towns, but among
themselves to assert their natural rights the cultivators of the soil. " There is against James I.,
was at best but a mock- scarce a small village," says Sir J. Forery of popular privileges, hardly recog-
tes, " in which you may not find a nised in theory, and never regarded in knight, an
esquire, or some substantial effect. householder (paterfamilias), *commonly This system, when
striped of those called a frankleyn,* possessed of consislavish inferences that Brady and
Carte erable estate; besides others who are attempted to build upon it, admits per- called
freeholders, and many yeomen of haps of no essential objection but its estates sufficient to
make a substantial want of historical truth. God forbid that jury." I would, however, point out
our rights to just and free government more particularly two causes which had should be tried
by a jury of antiquaries! a very leading. efficacy in the gradual deYet it is a generous pride that
inter- velopinent of our constitution; first, the twines the consciousness of hereditary schemes
of continental ambition in which freedom with the memory of our ances- our government was
long engaged; sectors; and no trifling argument against ondly, the manner in which feudal
Ilrlnthoselihleseen- indifferent in its cause, ciples of insubordination and resistance that the
character of the bravest and were modified by the prerogatives of the most virtuous among
nations has not de- early Norman kings. pended upon the accidents of race or - 1. At,th' epoch
when William the climate, but been gradually wrought by Conqueror ascended the throne,
hardly the plastic influence of civil rights, any other power was possessed by the transmitted as
a prescriptive inheritance King of France than what he inherited through a long course of
generations. from the great fiefs of the Capetian fain. By what means the English acquired ily..
War with such a potentate was not causes tend- and preserved this political lib- exceedingly to
be dreaded, and William. ing to form erty, which, even in the fif- besides his immense revenue,
could emthe constitu- teenth century, was the admi- plfy the feudal services of his vassals,
ration of judicious foreigners,* which were extended by him to contils a very rational and
interesting inquiry. nental expeditions. These circumstanTheir own serious and steady
attachment ces were not essentially changed till to the laws must always be reckoned after the
loss of Normandy; for the acamong the principal causes of this bles- quisitions of Henry II.
kept him fully on sing. The civil equality of all freemen an equality with the French crown, and
below the rank of peerage, and the sub- the dilapidation which had taken place in jecction of
peers themselves to the impartial arm of justice, and to a just share in * By a frankleyn in this
place we are to under ctaribofjution ed to br a n- stand what we call a country squire, like the
contribution to public burdens, advan- frankley of Chaucer; for the word esquire in zages
unknown to other countries, tended Fortescue's time was only used ni its limited to identify the
interests and to assimilate sense, for the sons of peers and kn:ghts, cr such as the feelings of the
aristocracy with those had obtained the title by creatio. or,one other of the people; classes
whose dissension legalmeans. The mention of Chaucer leads me to add, that and jealousy have
been in many instances the prologue to his Canterbury Tales is of itself a __: --- ~ continual
testimony to the plenteous and comfort Philip de Comines takes several opportunities able
situation of the middle ranks in England, as of testifying his esteem for the English govern-
well as to that fearless independence and frequent merit. See particularly l. iv., c. i., and i. v.,
c. originality of character among them; which liber' sir and comp,'tence have conspired to
produce

Page 430 430 EURO E DURING THE MIDDLE AGES. rCHAP. VrH the royal demesnes was
compensated than one session within the year.-Hiere by several arbitrary resources that filled
the representatives of England learned the exchequer of these monarchs. But the habit of
remonstrance and conditionin the reigns of John and Henry III., the al supply; and though, in
the meridian position of England, or rather of its sov- of Edward's age and vigour, they often
ereign, with respect to France, under- failed of immediate redress, yet they went a very
disadvantageous change. gradually swelled the statute-roll with The loss of Normandy severed
the con- provisions to secure their country's freenexion between the English nobility and dom;
and acquiring self-confidence by \the continent; they had no longer es- mutual intercourse, and
sense of the pubtates to defend, and took not sufficient lic opinion, they became able, before
the interest in the concerns of Guinne to end of Edward's reign, and still more in light for that
province at their own cost. that of his grandson, to control, prevent, Their feudal service was
now commuted and punish the abuses of administration. for an escuage, which fell very short
Of all these proud and sovereign privithe expenses incurred in a protracted leges, the right.of
refusing supply was campaign. Tallages of royal towns and the keystone. But for the long
wars in demesne lands, extortion of money from which our kings were involved, at first the
Jews, every feudal abuse and oppres- ny their possession of Guinne, and aferstion, were tried
in vain to replenish the ward by their pretensions upon the crown treasury, which the defence
of Eleanor's of France, it would have been easy inheritance against the increased energy to
suppress remonstrances by avoiding of France was constantly exhausting. to assemble
parliament. For it must be Even in the most arbitrary reigns, a gen- confessed, that an authority
was given to eral tax upon landholders, in any cases the king's proclamations, and to
ordinanbut those prescribed by the feudal law, ces of the council, which differed but..had not
been ventured; and the standing little from legislative power, and would bulwark of Magna
Charta, as well as the very soon have been interpreted by comfeebleness andunpopularity of
Henry III., pleasant courts of justice to give themm made it more dangerous to violate an the full
extent of statutes. established principle. Subsidies were It is common indeed to assert, that the
therefore constantly required; but for liberties of England were bought wvith these it was
necessary for the king to the blood of our forefathers. This is a meet parliament, to hear their
com- very magnanimous boast; and in some plaints, and, if he could not elude, to ac- degree is
consonant enough to the truth. qiesce in their petitions. These neces- But it is far more
generally accurate to cities came still more urgently upon Ed- say, that they were purchased by
money. ward I., whose ambitious spirit could not A great proportion of our best laws,
inpatiently endure the encroachments of eluding Magna Charta itself, as it now Philip the Fair,
a rival not less ambitious, stands confirmed by Henry III., were, in but certainly less
distinguished by per- the most literal sense, obtained by a pesonal prowess than himself. What
ad- cuniary bargain with the crown. In vantage the friends of liberty reaped many parliaments
of Edward III. and from this ardour for continental warfare, Richard II. this sale of redress is
chafis strongly seen in the circumstances at- fered for as distinctly, and with as little tending
the Confirmation of the Char- apparent sense of disgrace, as the most ters. legitirnmate
business between two merBut after this statute had rendered all chants would be transacted. So
little lallases without consent of parliament was there of voluntary benevolence in illegal,
though it did not for some time what the loyal courtesy of our constituprevent their being
occasionally imposed, tion styles concessions from the throne; it was still more difficult to carry on and so little title have these sovereigns, war with France or Scotland, to keep on though we cannot reftise our admiration foot naval armaments, or even to pre- to the generous virtues of Edwvard III. serve the courtly magnificence which and Henry V., to claim the gratitude of that age of chivalry affected, without posterity as the benefactors of their perpetual recurrence to the house of people! commons. Edward III. very little con- 2. The relation established between a suited the interests of his prerogative lord and his vassal, by the feudal tenure, when he stretched forth his hand to far from containing principles of any seize the phantom of a crown in France. servile and implicit obedience, permitted Rt compelled him to assemble parliament the compact to be dissolved in case of its almost annually, and often to hold more violation by either party This extend

Page 431 IAART II.j EtNGLISH CONSTITUTION. 43i ed as much to the sovereign as to inferi- possessions, and every other mode, til. or lords; the authority of the former in the wrong shall be repaired to their sat. France, where the system most flour- isfaction; saving our person, and our ished, being for several ages rather feu-. queen and children. And when:t shall dal than political. If a vassal was ag- be repaired they shall obey us as begrieved, and if justice was denied him, he fore."* It is amusing to see the consent a defiance, that is, a renunciation of mon law of distress introduced upon this fealty to the king, and was entitled to gigantic scale; and the capture of the enforcer redress at the point of his king's castles treated as analogous to im, sword. It -then became a contest of pounding a neighbour's horse for breakstrength as between two independent po- ing fences. tentates, and was terminated by treaty. A very curious illustration of this feuadvantageous or otherwise, according to dal principle is found in the conduct of the fortune of war. This privilege, William, earl of Pembroke, one of the suited enough to the situation of France, greatest names in our ancient history, the great peers of which did not origi- towards Henry III. The kinghaddefied nally intend to admit more than a nomi- him, which was tantamount to a declaran supremacy in the house of Capet, tion of war; alleging that he had made was evidently less compatible with the an inroad upon the royal domains. Pemregular monarchy of England. The broke maintained that he was not the agstern natures of William the Conqueror gressor, that the, king had denied him and his successors kept in control the justice, and been the first to invade his mutinous spirit of their nobles, and reap- territory; on which account he had ed the profit of feudal tenures, without thought himself absolved from his homsubmitting to their reciprocal obligations, age, and at liberty to use force against They counteracted, if I may so say, the the malignity of the royal advisers. centrifugal force of that system by the " Nor would it be for the king's honour," application of a stronger poweir; by the earl adds, " that I should submit to preserving order, administering justice, his will against reason, whereby I should checking the'growth of baronial influ- rather do wrong to him and to that jus. ence and riches, with habitual activity, tice which he is bound to administer to, vigilance, and severity. Still, however, wards his people: and I should give an there remained the original: principle, ill example to all men in deserting justice.hat allegiance depended conditionally and right with his mistaken upon good treatment, and that an appeal will. For this would show that I loved (might be lawfully made to arms against my worldly wealth better than justice." an oppressive government. Nor was These words, with whatever dignity exths, we may be sure, left for extreme pressed, it may be objected, prove only necessity, or thought to require a long the disposition of an angry and revolted enduring forbearance. In modern times, earl. But even Henry fully admitted the a king compelled by his subjects' swords right of taking arms against himself, if.o abandon any pretension would be sup- he had meditated his vassal's destruction, posed to have ceased to reign; and the and
disputed only the application of this express recognition of such a right as maxim to the Earl of Pembroke. That of insurrection has been justly these feudal notions, which placed the deemed inconsistent with the majesty of moral obligation of allegiance very low, law. But ruder ages had ruder senti- acting under a weighty pressure from the ments. Force was necessary to repel real strength of the crown, were favour force; and men accustomed to see the able to constitutional liberty. The great king's authority defied by private riot vassals of France and Germany aimed at were not much shocked when it was re- living independently on their fiefs, with sisted'in defence of public freedom. no further concern for the rest than as The Great Charter of John was secured useful allies having a common interest by the election of twenty-five barons, as against the crown.'But in' England, as conservators of the compact. If the king, there was no prospect of throwing off or the justiciary in his absence, should subjection, the barons endeavoured only transgress any article, any four might de- to lighten its burden, fixing limits to premand reparation, and on denial carry rogative by law, and securing their ob. their complaint to the rest of their body. service by parliamentary remonstran"And those barons, with -all the corm- ces or by dint of arms. Hence, as all inons of the land, shall restrain and an- Brady's Hist., vol. i., Appendix, p. 14 lioy us by every means in their power; t Matt. Paris, p. 330 Lvtleton'a Hist. of Hei That is, by seizing our castles, lands, and ry If., vol. iv., n. 41.

Page 432 432 EUROIE DURING THE MIDDLE AG~S. LU IrAP. Vii rebellions ill England were directed only to preserve this aristocrati.' influence to coerce the government, or, at the ut- which riches and ancestry of themelvemost, to change the succession of the rendered so formidable. Such was the crown, without the smallest tendency to maintenance of suits, or confedecacies separation. they did not impair the na- for the purpose of supporting each other's tional strength, nor destroy the charac- claims in litigation, which was the subter of the constitution. in all these con- ject of frequent complaints in parliament.entions, it is remarkable that the people and gave rise to several prohibitory stat. and clergy siddd with the nobles against utes. By help of such, confederacies the throne. No individuals are so pop- parties were enabled to make violent en ular with the monkish annalists, who tries upon the lands they claimed, which speak the language of the populace, as the law itself could hardly be said to disSimon, earl of Leicester, Thomas, earl courage.* Even proceedings in courts of Lancaster, and Thomas, duke of of justice were often liable to intimidaGlocester, all turbulent opposers of the tion and influence.t A practice much royal authority, and probably little de- allied to confederacies of maintenance, serving of their panegyrics. Very few though. ostensibly more harmlbss, was English historians of the middle ages are that of giving liveries to all retainers of advocates of prerogative. This may be a noble family; but it had an obvious ascribed both to the equality of our laws, tendency to preserve that spirit of facand to the interest which the aristocracy tious attachments and animosities, which found in courting popular favour when it is the general policy of a wise governcommitted against so formidable an ad- m.ent to dissipate. From the first year versary as the king. And even now, of Richard II. we find continual mention when the stream that once was hurried of this custom, with many legal provisalong gullies, and.dashed down precipices, ions against it, but it was never abolhardly betrays, upon its broad and tran- ished till the reign of Henry VII.T quil Bosom, the motion that actuates it, quil oosom, the motion that actuates it, * If a man was disseed of his land, he might it must still be accounted a singular hap- enter upon the disseisor and reinstate himself withpiness of our constitution, that all ranks out course of law. In what case this right of en graduating harmoniously into one anoth- try was taken away, or tolled, as it was expressed er, the interests of peers and common- by the death or alienation of the disseisor, is a sub. srs are radically interwoven; each in a ject extensive enough to occupy two chapters of rs
are radically interwoven; each in a Lyttleton. What pertains to our inquiry is, that by certain sense distinguishable, but not bal- an entry, in the old law books, we must understand anced like opposite weights, not separa- an actual repossession of the disseisee, not a suit ted like discordant fluids, not to be se- in ejectment, as it is now interpreted, but which in cured by insolence or jealousy, but by a comparatively modern proceeding. The first mutual adherence and recinrocal infin- remedy, says Britton, of the disseisee is to collect a body of his friends (recoiller amys et force), aad ences. without delay to cast out the disseisors, or at least From the time of Edward I., the feudal to maintain himself in possession along with them. Influence system and all the feelings con- c. 44. This entry ought indeed, by 5 Rich. II., Which the nected with it declined very rap- stat. i., c. 8, to be made peaceably; and the jus state of idl But th bli y l tices might assemble the posse comitatus, to immanners y But wat the nobility ostprison persons entering on lands by violence (15 gave the ill the number of their military Ric. II., c. 2), but these laws imply the facts that nobility. tenants was in some degree com- made them necessary. pensated by the state of manners. The t No lord or other person, by 20 Ric. If., c. 3, higher class of them, who took the chief was permitted to sit on the bench with the justices of assize. Trials were sometimes overawed by share in public affairs, were exceedingly armed parties, who endeavoured to prevent their opulent; and their mode of life gave adversaries from appearing.-Paston Letters, vol. wealth an incredibly greater efficacy than iii., p. 119. it possesses at present. Gentlemen of -T From a passage in the Paston Letters (vol. ii. large estates and good familieswho had p. 23), it appears that, far from these acts being re large estates and good families, who had garded, it was considered as a mark of respect to attached themselves to these great peers, the king, when he came into a county, for the no. who bore offices, which we should call blemen and gentry to meet him with as many at. menial, in their households, and sent tendants in livery as they could muster. Sir Johr heir cirn theitr forehduatn wer Paston was to provide twenty men in their livery their children thither for education, were gowns, and the Duke of Norfolk two hundred of course ready to follow their banner in'his illustrates the well-known story of Henry rising, without much inquiry into the VIi. and the Earl of Oxford, and shows the mean cause. Still less would the vast body of and oppressive conduct of the king in'hat affair tenants, and their retainers, who were which Hume has pretended to justify. In the first of Edward IV. it is said in the roll a fed at the castle in time of peace, refuse parliament (vol. v., p.407), that " by yeving of liv to carry their pikes and staves into, the eries and signes, contrary to the statutes and ordi field of battle. Manv devices were used I nances made afo more, maintet-naunce of quarreol

Page 433 PART II.) ENGLISH CONS'IIT"U"ION Thkese associations under powerful the earliest times a sort of national crime..ealient chiefs were only incidentally Capital punishments, though very fre. rabits of beneficial as they tended to with- quent, made little impression on a bold tapiee. stand the abuses of prerogative. and licentious crew, who had at least.the In their more usual course, they were sympathy of those who had nothing to designed to thwart the legitimate exer- lose on their side, and flattering lrojs. cise of the king's government in the ad- pects of impunity. We know howt long ministration of the laws. All Europe the outlaws of Sherwood lived in tradiwas a scene of intestine anarchy during tion; men who. like some of their betthe middle ages; and though England ters, have been permitted to redeem by was far less exposed to the scourge of a few acts of generosity the just igi.:; private war than most nations on the miny of extensive crimes. These, in. continent, we should find, could we re- deed, were the heroes of vulgar applause; cover the local annals of every country, but when such a judge as Sir John Forsuch an accumulation of petty rapine and rescue could exult that more Englishmen tumult, as would almost alienate us from were hanged for robbery
in one year the liberty which served to engender it. than French in seven, and that "if an This
was the common tenour of manners, Englishman be poor, and see another sometimes so much
aggravated as to find having riches, which may be taken from a place in general history,* more
often him by might, he will not spare to do attested by records, during the three cen-
do. It may be perceived how thoroughbreds that the house of Plantagenet sat by these sentiments had
pervaded the on the throne. Disseisin, or forcible dis- public mind. possession of freeholds,
makes one of Such robbers, I have said, had flatter he most considerable articles in our ing
prospects of impunity. Be.t:idem the -aw-books.t Hlighway robbery was from general want of
communicatioll, which made otewto ho had fled from his own extortion, robberies, murders
been multiplied and neighborhood tolerably secure, they had continued within this reame, to
the grete disturb-
to the advantage of extensive forests to faaunce and inquietation of the same."
icate their depredations, and prevent * Thus, to select one passage out of many; Eodem anno
(1332) quidam maligni, fuli quorum- detection. When outlawed, or brought dam magnatum
prwesidio, regis adolescetiam sper-
to trial, the worst offenders could frenentes, et regnum
perturbare intendentes, in tan-
emora et saltus occupa-
which defeated justice in the moment runt, ita quod toti regno
terrori essent.-Walsingham, p. i32. of her blow.t Nor were the nobility t I am aware that in
many, probably a great majority of reported cases, this word was techni-
A remarkable instance of violent disseisin aally used, where some unwarranted conveyance, amounting in effect to a
private war, may be found such as a feofmiment by the tenant for life, was held in the Paston
Letters, occupying most of the fourth to have wrought a disseisin; or where the plain-
volume. One of the Paston family, claiming a tiff was allowed, for the purpose of a more con-
right to Caister Castle, kept possession against the ieniemll remedy, to feign himself disseized, which
Duke of Norfolk, who brought a large force, and was called disseisin by election. But several
laid a regular siege to the place, till it surrendered proofs might oe brought from the
parliamentary for want of provisions. Two of the besiegers were petitions. and I doubt not, if
nearly looked at, from killed. It does not appear that any legal measures the year-books, that in
other cases there was an were taken to prevent or punish this outrage. actual and violent
expulsion. And the definition * Difference between an Absolute and Limited of disseisin in all
the old writers, such as Britton Monarchy, p. 99. and Littleton, is obviously framed upon its
primary i The manner in which these were obtained, in meaning of violent dispossession,
which the word spite of law, may be noticed among the violent had probably acquired long
before the more peacea- courses of prerogative. By statute 2 E. III., c. 2, ble disseisins, if I may
use the expression, became confirmed by 10 E. III., c. 2, the king's power of the subject of the
remedy by assize. granting pardons was taken away, except in cases of I would speak with
deferece of Lord Mansfield's homicide per mfortuniurnm. Another act, 14 E. III., elaborate
judgment in Taylor dem. Atkins v. c. 15, reciting that the former laws in this ispec Horde, 1
Burrow, 107, &c.; but some positions in have not been kept, declares that all pardons con it
appear to me rather too strongly stated; and trary to them shall be holden as null. This, how
particularly, that the acceptance of the disseisor as ever, was disregarded like the rest; and the
com tenant by the lord was necessary to render the dis-
mons began tacitly to recede from
them, and en seisin complete; a condition which I have not deavoured to compromise the
question with the found hinted in any law-book.-See Butler's note crown. By 27 E. III., stat. 1,
c. 2, without advert on Co. Litt., p. 330; where that eminent lawyer in to the existing
provisions, which may therefore expresses similar doubts as to Lord Mansfield's seem to be
repealed by implication, it is enacted that seasoning. It may however be remarked, that in every
charter of pardon, granted at any one's constructive or elective disseisins, being of a tech-
suggestion, the suggestor's name and the grounds nical nature, were more likely to produce
cases in of his suggestion shall be expressed, that if the he year-books, than those accompanied
with acs-saime be found untrue, it may be disallowed. And tual violence, which would commonly turn only in 13 R. II., stat. 2, c. 1, we are surprised to find Dav mutters of fact, ana be determined by a jury. the commons requesting that pardons might no, Ee

Page 434 434 EUROPL DURING THE MIDDlB 4AGES. [CHAP. VIII ashamed to patronise men guilty of eve-tainted by the oath of jurors, which had ry crime. Several proofs of this occur rather suffer robberies on strangers tc in the rolls. Thus, for example, in the pass without punishment, than indite the 22d of Edward III., the commons pray, offenders, of whom great part be people that' whereas it is notorious how rob- of the same country, or at least, if the bers and malefactors infest the country, offenders be of another country, the re. the king would charge the great men of cevers be of places near," enacts that the land that none such be maintained hue and cry shall be made upon the comn by them, privily or openly, but that they mission of a robbery, and that the hun lend assistance to arrest and take such dred shall remain answerable for the ill doers."* damage unless the felons be brought to It is perhaps the most meritorious part justice. It may be inferred from this of Edward I.'s government, that he bent provision, that the ancient law of frankall his power to restrain these breaches pledge, though retained longer in form, of tranquillity. One of his salutary pro- had lost its efficiency. By the same act, visions is still in constant use, the statute no stranger or suspicious person was to of coroners. Another more extensive, lodge even in the suburbs of towns; the and, though partly obsolete, the founda- gates were to be kept locked from sunset tion of modern laws, is the statute of to sunrising; every host to be answeraWinton, which, reciting that, "from day ble for his guest; the highways to be to day robberies, murders, burnings, and cleared of trees and underwood for two theft be more often used than they have hundred feet on each side; and every been heretofore, and felons cannot be at- man to keep arms, according to his substance, in readiness to follow the sheriff be granted, as if the subject were wholly unknown to the law; the king protesting in reply that he on hue and cry raised after felons.* will save his liberty and regality, as his progenitors The last provision indicates that the robhad done before, but conceding some regulations, bers plundered the country in formidable far less remedial than what were provided already bands. One of these, in a subsequent by the 27th of Edward II. Pardons make a pretty part of Edward's reign, burnt the town large head in Brooke's Abridgment, and were un- of Boston during a fair and obtained a doubtedly granted without scruple by every one of our kings. A pardon obtained in a case of pecu- vast booty, though their leader had the liar atrocity is the subject of a specific remonstrance ill fortune not to escape the gallows. in 23 H. VI., Rot. Parl., vol. v., p. 111. The preservation of order throughout* Rot. Parl., vol. ii., p. 201. A strange policy, the country was originally intrusted, no for which no rational cause can be alleged, kept Wales, and even Cheshire, distinct from the rest only to the sheriff, coroner, and consta of the kingdom. Nothing could be more injurious bles, but to certain magistrates, called to the adjacent countries. Upon the credit of their conservators of the peace. These, in immunity from the jurisdiction of theking's courts, conformity to the democratic character the people of Cheshire broke with armed bands into the neighbouring counties, and perpetrated all the of our Saxon government, were elected crinmes in their power.-Rot. Parl., vol. iii., p. 81, by the freeholders in their county-court.t 201, 440. Stat. 1 H. IV., c. 18. As to the Welsh But Edward I. issued commissions to frontier, it was constantly almost in a state of war, carry into effect the statute of Winton; which a very little good sense and benevolence in and from the beginning of Edward III's any of our shepherds would have easily prevented, by admitting the conquered people to partake in reign, the appointment of conservators equal privileges with their fellow-subjects. Instead was vested in the crown, their authority of this, they satisfied themselves with aggravating gradually enlarged
by a series of statute mischief by granting legal reprisals upon utes, and their title changed to
that of Welshmen.–Stat. 2 H. IV., c. 16. Welshmen j were absolutely excluded from bearing
office in justices. They were empowered to imWales. The English living in the English towns
prison and punish all rioters and other ofof Wales earnestly petition, 23 H. VI., Rot. Parl.,
fenders, and such as they should find by vol. v., p. 104, 154, that this exclusion maybe kept
endictment, or suspicion, to be reputed in force. Complaints of the disorderly state of the
thieves or vagabonds; and to take sure vol. vi., p. 8. ties for good behaviour from persons of It is
curious that, so early as 15 Edw. II., a writ evil fame.T Such a jurisdiction was hard. was
addressed to the Earl of Arundel, justiciary of Wales, directing him to cause twenty-four
discreet * The statute of Winton was confirmed.;rad persons to be chosen from the north, and
as many proclaimed afresh by the sheriffs, 7 R. II., c. 6, at from the south of that principality, to
serve in par- ter an era of great disorder. liament.-Rot. Parl., vol. i., p. 456. And we find t
Blackstone, vol. i., c. 9. Carte, vol. ii., p.'203. a similar writ in the 20th of the same king.- t 1 E.
III., stat. ii., c. 16; 4 E. III., c. 2, 34 E. Pryme's Reg., 4th part, p. 60. Willis says, that III., c. 1; 7
R. II., c. 5. The institution crxcited a he has seen a return to one of these precedents, much good
deal of ill-will, even before thee strong acta obliterated, but from which it appears that Con.
were passed. Many petitions of the crmrabaS is way, Beaumaris, and Carnarvon returned mem-
the 28th E. III., and other years, co:nw:li.ai. of it.-. Ders. — N *titia Parliaments:aria, vol. i,
bastard of a nief, or very material degree to illustrate the female villein, was born in servitude; and where progress of society, with which civil liberty and regular government are closely of a nief, even though married to a freeman, wetl connected. These are, first, the servi- villeins, 1. iv., c. 21, and see Beame's translation of Glanvil, p. 109. But Littleton lays down an opposite doctrine, that a bastard was necessarily free their gradual emancipation from that because, being the child of no father in the condition; and, secondly, the continual temptation of law, he could not be presumed to in, increase of commercial intercourse with her servitude from any one; and makes no disso- foreign countries. But as the latter topic is to as to the parent's residence.-Sect. 188. I merely take notice of this change in the law bewill fall more conveniently into the next tween the reigns of Henry III. and Edward IV. as part of this work, I shall postpone its an instance of the bias which the judges showed in consideration for the present. favour of personal freedom. Another, if we can In a former passage I have remarked rely upon it, is more important. In the reign of Villanage of of the Anglo-Saxon ceorls, that Henry II., a freeman marrying a nief and settling Villanage of of the Anglo-Saxon ceorls, that on a villein tenement, lost the privileges of freethe peas- neither their situation nor that dom during the time of his occupation; legem terIts nature of their descendants for the ear- roe quasi amittit.-Glanvil, I. v., c. 6. This and gradual lier reigns after the conquest was consonant to the customs of some other counextinction. appears to have been mere ser- tries, some of which went farther, and treated such a person for ever as a villein. But, on the vitude. But from the time of Henry II., contrary, we find in Britton a century later, that as we learn from Glanvil, the villein so the nief herself by such a marriage became free du called was absolutely dependant upon his ring the coverture, c. 31. lord's will, compelled to unlimited servi- t I must confess that I have some doubts low ces, and destitute of property, not only far this was law at the epoch of Magna Charta. ces, and destitute of property, not only Glanvil and Bracton both speak of the status vilein the land he held for his maintenance, nagii as opposed to that of liberty, and seem to conbut in his own acquisitions.t If a villein sider it as a civil condition, not a merely personal relation. The civil law and the French treatise of * Rot. Pail., vol. iii., p. 65. It may be observed Beaumanoir hold the same language. And Si, that this act, 2 E. II., c. 16, was not founded on a Robert Cotton maintains without hesita tion, that petition, but on the king's answer; so that the villeins are not within the 29th section of Magna commons wele not real parties to it, and according- Charta, " being excluded by the word liber."-Cotly call it an ordinance in their present petition. ton's Posthuma, p. 223. Britton, however, a little This naturally increased their animosity in ti eating after Bracton, says that in an action the villein is le as an infringement of the su'ect's right answerable to all men, and all men to him, p. 79. + Glanvil, I. v., c. 5. And later judges, in favorem libertatis, gave thie Ee 2
manner of differ- possessed; for such was the condition of ence; the distinction was merely tech- his tenure. But his chattels were nical, and affected only the mode of cure from seizure, his person from injRpleading.t The term, in gross, is appro- ry, and he might leave the land whenepriated in our legal language to property er he pleased.* held absolutely, and without reference to From so disadvantageous a condition any other. Thus it is applied to rights as this of villanage, it may cause some of advowson or of common, when pos- surprise that the peasantry of England sessed simply, and not as incident to should have ever emerged. The law any particular lands. And there can be incapacitating a villein from acquiring no doubt that it was used in the same property, placed, one would imagine, sense for the possession of a villein. an insurmountable barrier in the way of But there was a class of persons, some- his enfranchisement. It followed from times inaccurately confounded with vil- thence, and is positively said by Glan. leins, whom it is more important to sep- vil, that a villein could not buy his freearate. Villanage had a double sense, as dom, because the price he tendered it related to persons or to lands. As all would already belong to his lord.t And men were free or villeins, so all lands even in the case of free tenants in villan. age, it is not easy to comprehend how construction to the villein's situation, which must their uncertain and unbounded services therefore be considered as the clear law of Eng- could ever pass into slight pecuniary com. land in the fourteenth and fifteenth centuries. mutations; much less how they could * Littleton, sect. 189, 190, speaks only of an ap- come to maintain themselves in their peal in the two former cases; but an endictment is a fortiori; and he says, sect. 194, that an endict- lands, and mock the lord with a nominal ment, though not an appeal, lies against the lord tenure according to the custom of the for maiming his villein. manor. f Gurdon on Courts Baron, p. 592, supposes the This, like many others relating to the villein in gross to have been the Lazzus or Servus of early times, a domestic serf, and of an inferior progress of society, is a very obscure inspecies to the cultivator or villein regardant. Un- quiry. We can trace the pedigree of luckily, Bracton and Littleton do not confirm this princes, fill up the catalogue of towns notion, which would be convenient enough; forin besieged and provinces desolated, de, Domesday Book there is a marked distinction be- scribe even the whole pageantry of cortween the Servi and Villani. Blackstone expresses himself inaccurately when he says the villein onations and festivals, but we cannot rein gross was annexed to the person of the lord, and cover the genuine history of mankind. transferable by deed from one owner to another. It has passed away with slight and parBy this means indeed, a villein regardant would be- tial notice by contemporary M ritors; and come a villein in gross, but all villeins were alike liable to be sold by their owners.- Littleton, sect. our most patient industry can hardly at 181. Blomefield's Norfolk, vol. iii., p. 860. Mr. present put together enough of the fragHargrave supposes that villeins in gross were nev- ments to suggest a tolerably clear repreeer numerous (Case of Somerset, Howell's State sentation of ancient manners and social Trials, vol. xx., p. 42); drawing this inference from life. I cannot profess to underke what the few cases relative to them that occur in the Year-books. And certainly the form of a writ de would require a command of books as nativitate probanda, and the peculiar evidence it well as leisure beyond my reach; but required, which may be found in Fitzherbert's Na- the following observations may tend a, tura Brevium, or in Mr. H.'s argument, are only little to illustrate our immediate subjecl, applicable to the other species. It is a doubtful point, whether a freeman could, in contemplation of the gradual extinction of villanage. law, become a villein in gross; though his con- If we take what may be conside-red at fession in a court of record, upon a suit already the simplest case, that of a manor divided commenced (for this was requisite), would estop into demesne lands of the lord's occupahim from claiming his liberty; and hence Bracton speaks of this proceeding as a mode by which a * Bracton, 1. ii., c. 8.; v., c. 28. Littlebn, sees'reeman m'rght fall into servitur 172. t Glanvil. 1. is. e a
Some of these perhaps might be villeins elns, performing all the services of agricul- but free tenants in villanage culture for him, it is obvious that his in- were still more likely to obtain this pre terest was to maintain just so many of cision in their services; and from claim these as his estate required for its culti- ing a customary right to be entered in the vation., Land, the cheapest of articles, court-roll upon the same terms as their was the price of their labour; and though predecessors, prevailed at length to get the law did not compel him to pay this copies of it for their security.* Proofs or any other price, yet necessity, repair- of this remarkable transformation from ing in some degree the law's injustice, tenants in villanage to copyholders are made those pretty secure of food and found in the reign of Henry III. I do dwellings who were to give the strength not know, however, that they were proof their arms for his advantage. But in tected, at so early an epoch, in the poscourse of time, as alienations of small session of their estates. But it is said in parcels of manors to free tenants came the year-book of the 42d of Edward III.-to prevail, the proprietors of land were to be " admitted for clear law, that if the placed in a new situation relatively to its customary tenant or copyholder does not cultivators. The tenements in villanage, perform his services, the lord may seize whether by law or usage, were never hisland as forfeited."t It seems implied separated from the lordship, while its do- herein, that so long as the copyholder did main was reduced to a smaller extent, continue to perform the regular stipulathrough sub-infeudations, sales, or de- tions of his tenure, the lord was not at mises for valuable rent. The purchasers liberty to divest him of his estate; and under these alienations had occasion for this is said to be confirmed by a passage labourers; and these would be free ser- in Britton, which has escaped my search; vants in respect of such employers, though Littleton intimates that copy.. though in villanage to their original lord. holders could have no remedy against As he demanded less of their labour their lord.T However, in the reign of through the diminution of his domain, Edward IV., this was put out of doubt by they had more to spare for other mas- the judges, who permitted the copyholder to bring his action of trespass against the? leins and the lands they held by that ten- lord for dispossession. ure, became hired labourers in husbandry While some of the more fortunate vilfor the greater part of the year. It is leins crept up into property as well as true that all their earnings were at the freedom under the name of copyholders, lord's disposal, and that he might have the greater part enfranchised themselves made a profit of their labour when he in a different manner. The law, which ceased to require it for his own land. treated them so harshly, did not take But this, which the rapacity of more commercial times would have instantly sug- villein's land. In Gissing manor, 39 E. III.- the heutantl sup - jury present, that W. G., a villein by blood, was a gested, might escape a feudal superior, rebeland ungrateful towards his lord, for which all who, wealthy beyond his wants, and his tenements were seized. His offence was the guarded by the haughtiness of ancestry having said that the lord kept four stolen sheep in against the love-of such pitiful gains, was his field.-Blomefield's Norfolk, vol. i., p. 114. better pleased to win the affection of his * Gurdon on Courts Baron, p. 574. ft Brooke's Abridgm. Tenant par copie, I. By dependants than to improve his fortune the extent-roll of the manor of Brisingham in at their expense. Norfolk in 1254, it appears that there were then The services of villanage were grad- ninety-four copyholders and six cottagers in virtually rendered less onerous and uncer- lanage; the former performing many, but determinate services of labour for the lord.-Blouin etain. Those of husbandry indeed are field's Norfolk, vol. i., p. 34. naturally uniform, and might be antici- Littl., sect. 77. A copyholder without legal pated with no small exactness. Lords of remedy may seem little better than a tenant in generous tempers granted indulgences, mere villanage, except in name. But though from which were eithers intended to be, or the relation between the
lord and copyholder the which were either intended to be, or latter might not be permitted to
sue his superior, readily became perpetual. And thus, in yet it does not follow that he might not
bring his the time of Edward I., we find the ten- action against any person acting under the
lord's ants in some manors bound only to stated direction, in which the defendant could not set
up services, as recorded in the lord's book.* an illegal authority; just as, although no writ runs
against the king, his ministers or officers tre not justified in acting under his command contrary
to * Dugdale's Warwickshire apud Eden's State law. I wish this note to be considered as
correct of the Poor, vol. i., p. 13. A passage in another ing one on p. 88 of this work, where I
have saie local history rather seems to indicate, that some that a similar law in France rendered
the distinct kind of delinquency was usually alleged, and some tion between a serf and an
hommte de poote little ceremony emplayved before the lord entered on the more than
theoretical.

Page 438 313S EUROPE DURING THE MIDDLE AGES. [CHIAP. ce' away the means
of escape, nor was this hear of them on a granl scale in an or. a matter of difficulty in such a
country dinance made by Edward III., in the as England. To this indeed the unequal twenty-
third year of his reign. This was progression of agriculture and population just after the
dreadful pestilence of 1348, in different counties would have nat- and it recites that the number
of workurally contributed. Men emigrated, as men and servants having been greatly they
always must, in search of cheap- reduced by that calamity, the remainder ness or employment,
according to the demanded excessive wages from their tide of human necessities. But the vil-
employers. Such an enhancement in lein, who had no additional motive to the price of labour,
though founded exurge his steps away from his native acty on the same principles as regulate
place, might well hope to be forgotten or the value of any other commodity, is too
undiscovered when he breathed a freer frequently treated as a sort of crime by air, and engaged
his voluntary labour to lawgivers, who seem to grudge the poor a distant master. The lord had
indeed that transient melioration of their lot, an action against him; but there was so which the
progress of population, or othlittle communication between remote er analogous circumstances,
will, without parts of the country, that it might be any interference, very rapidly take away.
deemed his fault or singular ill-fortune if This ordinance therefore enacts that he were
compelled to defend himself. every man in England, of whatever conEven in that case, the law
inclined to dition, bond or free, of able body, and favour him; and so many obstacles were
within sixty years of age, not living of thrown in the way of these suits to re- his own nor by
any trade, shall be obliclaim fugitive villeins, that they could ged, when required, to serve any
master not have operated materially to retard who is willing to hire him at such wages their
general enfranchisement.* In one as were usually paid three years since, case indeed, that of
unmolested residence or for some time preceding; provided for a year and a day within a
walled city that the lords of villeins or tenants in vilor borough, the villein became free, and
lanage shall have the preference of their the lord was absolutely barred of his labour, so that
they retain no more than remedy. This provision is contained shall be necessary for them. More
than even in the laws of William the Conquer- these old wages is strictly forbidden to or, as
contained in Hoveden, and if it be be offered, as well as demanded. No not an interpolation,
may be supposed to one is permitted, under colour of charity, have had a view to strengthen the
popu- to give alms to a beggar. And, to make lation of those places which were de- some
compensation to the inferior classes signed for garrisons. This law, whether for these severities,
a clause is inserted, of William or not, is unequivocally men- as wise, just, and practicable as
the rest, tioned by Glanvil.t Nor was it a mere for the sale of provisions at reasonable letter.
According to a record in the 6th prices.* of Edward II., Sir John Clavering sued This ordinance
met with so little reeighteen villeins of his manor of Cossey, gard, that a statute was made in parliafor withdrawing themselves therefrom ment two years after, fixing the wages with their chattels; whereupon’ a writ of all artificers and husbandmen, with rewas directed to them; but six of the gard to the nature and season of their lanumber claimed to be freemen, alleging bour. From this time it became a frethe Conqueror's charter, and offering to quent complaint of the commons, that the prove that they had lived in Norwich, statute of labourers was not kept. The paying scot and lot, about thirty years; king had in this case, probably, no other which claim was admitted.4 reason for leaving their grievance unreBy such means a large proportion of dressed, than his inability to change the the peasantry, before the middle of the order of Providence. A silent alteration fourteenth century, had become hired had been wrought in the condition and labourers instead of villeins. We first character of the lower classes during the reign of Edward III. This was the ef* See t- rules of pleading and evidence in fact of increased knowledge and refinequestions of villanage fully stated in Mr. Har- ment, which had been making a considgrave's argument in the case of Somerset.-How- erable progress for full half a century, ell's State Trials, vol. xx., p. 38. t L. vS, c. 5., p though they did not readily permeate the ~ Blomefield's Norfolk, vol. i., p. 657. I know cold region of poverty and ignorance. It,t) how far this privilege was supposed to be im- was natural that the country people, or paired bythe statute 34 E. III.c. 11; which how- outlandish folk, as they were called ever might, I should conceive, very well stand,long with it. * Stat. 23 E. III.
same teachers, plaints of the refractoriness with which the lower secular clergy; and however
villeins and tenants in villanage received distinct we may think a religious ref-
their due
services;* and the exigences ormation from a civil anarchy, there was of government led to the
fatal poll-tax a good deal common in the language, by of a groat, which was the proximate
which the populace were inflamed to cause of the insurrection. By the deeither one or the other.
Even the script- mands of these rioters, we perceive that tural moralities which were then
exhibit- territorial servitude was far from exed, and whichbecame the foundation of tinct: but it
should not be hastily concluour theatre, afforded fuel to the spirit of sed that they were all
personal villeins, sition. The common original, and for a large proportion were
Kntishcommon destination of mankind, with men, to whom that condition could not every
other lesson of equality which re- have applied; it being a good bar to a ligion supplies to
humble or to console, writ de nativitate probanda, that the parwere displayed with coarse and
glaring ty's father was born in the county of features in these representations. The Kent.t
familiarity of such ideas has deadened singham, p. 288. This implies no reflection upon their
effect upon our minds; but when Wicliffe, any more than the crimes of the anabapa rude
peasant, surprisingly destitute of tists in Munster do upon Luther. Every one religious
instruction during that corrupt knows the distich of John Ball, which compreage of the church,
was led at once to hends the essence of religious democracy: —,hese impressive truths, we
cannot be "When Adam delved and Eve span, astonished at the intoxication of mind Where
was then the gentleman?" The sermon of this priest, as related by Walsing. ham, p. 275, derives
its argument for equality from the common origin of the species. He is said to ~ I have been
more influenced by natural proba- have been a disciple of Wicliffe.-Terner's Hist. bilitles than
testimony, in ascribing this effect to of England, vol. ii., p. 420. Wicliffe's innovations, because
the historians are * Stat. 1 R. II., c. 6; Rot. Parl., sol. iii., p. 21. prejudiced witnesses against
him. Several of t 30 E. I., in Fitzherbert. Villanage, apu. them dlp -so to the connexion between
his:.pin- Lambard's Perambulation of Ker.t p. 632. Su ions and _e cbellion of 1382; especially
Wal- net on Gavelkind, p. 72.

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tremendous rebellion, it records, and there seems to have been a might be expected that the
legislature rapid tendency to its entire abolition. vvould use little indulgence towards the But
the fifteenth century is barren of ma.,ower commons. Such unhappy tumults terials; and we
can only infer, that as the are doubly misciehous, not more from same causes which in
Edward III.'s time the immediate calamities that attend had converted a large portion of the
peasthem, than from the fear and hatred of antry into free labourers, still continued the people
which they generate in the to operate, they must silently have exe elevated classes. The general
charter tinguished the whole system of persona of manumission extorted from the king and
territorial se.rlvltude. The latter in by the rioters at Blackheath was annul- deed was essentially
changed by the es led by proclamation to the sheriffs;* andablishment of the law of copyhold.
this revocation approved by the lords I cannot presume to conjecture in what and commons in
parliament, who added, degree voluntary manumission is to be as was very true, that such
enfranchise- reckoned among the means that contribment could not be made without their uted
to the abolition of villanage. Char. consent; "which they would never give ters of
enfranchisement were very comnto save themselves from perishing alto- mon upon the
continent. They may gether in one day."t Riots were turn- perhaps have been less so in
England. etl into treason by a law of the same Indeed, the statute de donis must have
parliament.1 By a very harsh statute in operated very injuriously to prevent the the 12th of
Richard II., no servant or la- enfranchisement of villeins regardant, bourer could depart, even at
the expiration, who were entailed along with the land. The reason for this is that the hundred in Instances, however, occur from time to time during which he lived, without permission under time; and we cannot expect to discover the king's seal; nor might any who many. One appears as early as the 15th had been bred to husbandry till twelve year of Henry III., who grants to all years old exercise any other calling. A persons born or to be born within his vil few years afterward, the commons petitioned that villeins might not put their from all villanage in body and blood, pay children to school, in order to advancing an aid of twenty shillings to knight them by the church; "and this for the the king's eldest son, and six shillings a nonour of all the freemen of the king-year as a quit rent." So, in the 12th dom." In the same parliament they of Edward III., certain of the king's vil complained that villeins fly to cities and leins are enfranchised on payment of a boroughs, whence their masters cannot fine. In strictness of law, a fine from recover them; and, if they attempt it, the villein for the sake of enfranchiseare hindered by the people: and prayed ment was nugatory, since all he could that the lords might seize their villains in possess was already at his lord's disposal. such places, without regard to the fran- But custom and equity might easily inchises thereof. But in both these peti- produce different maxims; and it was tions the king put in a negative. I plainly for the lord's interest to encourage From henceforward we find little no- his tenants in the acquisition of money Aice taken of villanage in parliamentary to redeem themselves, rather than to quench the exertions of their industry * Rymrer, t. vii., p. 316, &c. The king holds by availing himself of an extreme right. this bitter language to the villeins of Essex, after Deeds of enfranchisement occur in the the death of Tyler and execution of the other reigns of Mary and Elizabeth; and perleaders had disconcerted them; Rustici quidem haps a commission of the latter princess fuistis et estis, in bondagio permanebitis, non ut hactenus, sed incomparabiliter viliori, &c.-Wal- in 1574, directing the enfranchisement singham, p. 269. of her bondmen and bondwomen on cert Rot. Parl., vol. iii., p. 100. tain manors upon payment of a fine, is t 5 R. II., c. 7. The words are, riot et rumour n'autres semblables; rather a general way of creating a new treason: but panic puts an end to * Blomefield's Norfolk, vol. iii. p. 571. Jealousy. f Rymrer, t. v., p. 44. 6 12 R. II, c. 3. T Gurdon on Courts Baron, p. 590. MsdoI l Rot. Parl., 15 R. II., vol. lii., p. 294, 296. Formulare Anglicanurn, p. 420. Barrixtgon on The statute 7 H. IV., c. 17, enacts that no one Ancient Statutes, p. 278. It is said in a modern shall put his son or daughter apprentice to any book, that villanage was very rare in Scotland, and trade in a borough, unless he have land or rent to even that no instance exists in records, of an es. the value of twenty shillings a year, but that any tate sold with the labourers and their families at. one may put his children to school. The reason tached to the soil.-Pinkerton's Hist. of Scotland, assigned is tee scarcity of labourers in husbandry, vol. i., p. 147. But Mr. Chalmers, in his Caledo. in consequence of people living in pland appren- nia, has brought several proofs that this assertion twing their children. is too general.

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more usually during the the inglorious discomfiture of our arms termed, by way of temporary absence of in France, was not perhaps a calamitous substitutes. They were usu- our kings in period. The country grew more wealthy: ally nominated by the king France: the law was, on the whole, better ob- without consent of parliament; and their served; the power of parliament more office carried with it the right of exercicocomplete and effectual than in preceding sing all the prerogatives of the crown. It times. But Henry's weakness of under- was of course determined by the king's standing becoming evident as he reached return; and a distinct statute was necesmanhood, rendered his reign a perpetual sary, in the reign of Henry V., to provide minority. His marriage with a princess that a parliament called by the guardian of strong mind, but ambitious &nd vindic- of the realm during the king's absence tive, rather tended to weaken the gov- should not be dissolved by that event.* ernment and to accelerate his downfall; The most remarkable circumstance at a certain reverence that had been paid to tending those lieutenancies was, that the) the gentleness of the king's disposition were sometimes conferred on the heir being overcome by her unpopularity. By apparent during his infancy. The Black degrees Henry's natural feebleness de- Prince, then Duke of Cornwall, was left generated almost into fatuity; and this guardian of the realm in 1339, when he unhappy condition seems to have over- was but ten years old;t and Richard his taken him nearly about the time when it son, when still younger, in 1372, during becan ie an arduous task to withstand the Edward III.'s last expedition into France.** assault in preparation against his govern- These do not however bear a very close mment. This may properly introduce a analogy to regencies in the strictest great constitutional subject, to which sense, or substitutions during the natural some peculiar circumstances of our own incapacity of the sovereign. Of such age have imperiously directed the con- there had been several instances, before sideration of parliament. Though the it became necessary to supply the defi proceedings of 1788 and 1810 are un- ciency arising from Henry's derange doubtedly precedents of far more author- ment. 1. At the death of John, At the ac ity than any that can be derived from William, earl of Pembroke as- cessionof our ancient history, yet as the seal of sumed the title of rector regis Henry IIt., the legislature has not yet been set upon et regni, with the consent of the loyal this controversy, it is not perhaps alto- barons who had just proclaimed the young getter beyond the possibility of future king, and probably conducted the govdiscussion; and at least it cannot be un- ernment in a great measure by their adinteresting to look back on those parallel vice.~ But the circumstances were too or analogous cases, by which the deliber- critical, and the time is too remote, to ations of parliament upon the question give this precedent any material weight. of regency were guided. 2. Edward I. being in Sicily at of Edward While the kings of England retained his father's death, the nobility L; met at the Temple church, as we are in. - Barrington, ubi supra, from Rymer. formed by a contemporay writer, and, t There are several later cases reported,wherein formed by a ontempw grery writer, and, villanage was pleaded, and one of them as late as after making a new great seal, appointed the 15th of James I.-(Noy, p. 27.) See Hargrave's the Archbishop of York, Edward, earl of argument, State Trials, vol. xx., p. 41. But these Cornwall, and the Earl of Glocester, to are so briefly stated, that it is difficult in general to be ministers and guardians of the realm; understand them. It is obvious, however, that who accordingly conducted the admini judgment was in no case given in favour of the plea; so that we can infer nothing as to the actual continuance of villanage. * 8 H. V., c. 1. It is remarkable, and may be deemed by some t This prince having been sent to Antwerp, six persons a proof of legal pedantry, that Sir E. Coke, commissioners were appointed to open parliament. while he dilates on the law of villanage, never in- ~Rot. Parl., 13 E. III., vol. ii. p. 107. tiostes that it was became antiquated. Rymer, t. vi., p. 748. ~ Malt Peris, u 2,4
king's coronation. July 16, 1377, without It is here observable, that the
Earl of whose concurrence no public measure Cornwall, though nearest prince of the was to be
carried into effect. I have blood, was not supposed to enjoy any su- mentioned in another place
tions introduced from time to time by was
associated with two other nobles. parliament, which might itself be deemed But while the
crown itself was haraty a great council of regency during the acknowledged to be
unquestionably he- first years of Richard. reditary, it would be strange if any no- 5. The next
instance is at the acces tion of such a right to the regency had sion of Henry VI. This prince of
Henry Jectn entertained. 3.. At the accession was but nine months old at his Vl. of Edward of
Edward III., then fourteen father's death; and whether from a more II.; years old, the
parliament, which evident incapacity for the conduct of was immediately summoned,
nominated government in his case than in that of four bishops, four earls, and six barons
Richard II., or from the progress of cons as a standing council, at the head of stitutional
principles in the forty years which the Earl of Lancaster seems to elapsed since the latter's
accession, fa: have been placed, to advise the king in more regularity and deliberation were all
business of government. It was an shown in supplying the defect in the ex article in the charge
of treason, or, as it ecutive authority. Upon the news ar was then styled, of accroaching royal
riving that Henry V. was dead, severa, power, against Mortimer, that he inter- lords spiritual
and temporal assembled, meddling in the king's household without on account of the imminent
necessity, in the assent of this council.t They may order to preserve peace, and provide for be
deemed therefore a sort of parliament- the exercise of officers appertaining to any regency,
though the duration of their the king. These peers accordingly ifunctions does not seem to be
defined. sued commissions to judges, sheriffs, esf Richard 4-. The proceedings at the com-
cheators, and others, for various purposes, 1I.; mencement of the next reign and writs for a new
parliament. This are more worthy of attention. Edward was opened by commission under the
III. dying June 21, 1377, the keepers of great seal directed to the Duke of Glocesthe great seal
next day, in absence of the ter, in the usual form, and with the king's chancellor beyond sea,
gave it into the test.* Some ordinances were made in young king's hands before his council.
this parliament by the Duke of GlocesHe eimmediately delivered it to the Duke ter as
commissioner, and some in the of Lancaster, and the duke to Sir Nicho- king's name. The acts
of the peers, who (as Bonde for safe custody. Four days had taken on themselves the administra
afterward, the king in council delivered tion; and summoned parliament, were the seal to the
bishop of St. Davids, who confirmed. On the twenty-seventh day affixed it the same day to
divers letters of its session, it is entered upon the roll, patent.1 Richard was at this time ten that
the king, "considering his tender years and six months old; an age cer- age, and inability to
direct in person the tainly very unfit for the personal execu- concerns of his realm, by assent of
lords tion of sovereign authority. Yet he was and commons, appoints the Duke of Bedsupposed
capable of reigning without the ford, or, in his absence beyond sea, the aid of a regency. This
might be in vir- Duke of Glocester, to be protector and;ue of a sort of magic ascribed by law-
defender of the kingdom and English yers to the great seal, the possession of church, and the
king's chief counsellor." which bars all further inquiry, and ren- Letters patent were made out
to this efders any government legal. The prac- fe: the appointment being however extice of
modern times, requiring the con- pressly during the king's pleasure. Sixtant exercise of the
sign manual, has teen counsellors were named in parlia made a public confession of incapacity
ment to assist the protector in his admin necessary in many cases, where it might istration; and
their concurrence was have been concealed or overlooked in made necessary to the removal
and ap earlier periods of the constitution. But pointment of officers, except some infethough no
one was invested with the of-rior patronage specifically reserved to flee of regent, a council of twelve was the protector. In all important business named by the prelates and peers at the that should pass by order of council, this whole or major part were to be present; Matt. Westmonast. ap. Brady's History of but if it were such matter that the king England, vol.'i., p. 1. t Rot. Parl. vol. ii., p. 52, t Rymner, t. vii., p. 171 * Rot. Parl., vol. iv., p. 169.

Page 443] ENGLISH CONSTITUTION §.j7 hath been accustomed to be counselled land. Howe were it, that it be no of, that then the said lords proceed not thought, that any such thing wittingi wy therein without the advice of my lords proceeded of your intent; and neverthe.of Bedford or Glocester."* A. few more less to keep peace and traniquility, and counsellors were added by the next par- to the intent to ease and appease you, it liament, and divers regulations estab- was advised and appointed by authority lished for their observance.t of the king, assenting the three estates This arrangement was in contraven- of this land, that ye in absence of my tion of the late king's testament, which lord your brother of Bedford, should be had conferred the regency on the Duke chief of the king's council, and devised of Glocester, in exclusion of his elder unto you a name different from other brother. But the nature and spirit of counsellors, not the name of tutor, lieuthese proceedings will be better under- tenant, governor, nor of regent, nor no stood by a remarkable passage in a roll name that should import authority ot of a iater parliament; where the house governance of the land, but the name of of lords, in answer to a request of Glo- protector and defensor, which importeth cester, that he might know what authori- personal duty of attendance to the acty he possessed as protector, remind him tual defence of the land, as well against that in the first parliament of the king,$ enemies outward, if case required, as " ye desired to have had ye governance against rebels inward, if any were, that of yis land; affermyng yat hit belonged God forbid; granting you therewith cerunto you of rygzt, as well byye mene of tain power, the which is specified and your birth, as by ye laste wylle of ye contained in an act of the said parliakyn g was your broyer, whome God ment, to endure as long as it liked the assole; alleggyng for you such groundes king. In the which if the intent of the and motyves as it was yought to your dis- said estates had been, that ye more powercetion made for your intent; whereupon, er and authority should have had, more the lords spiritual and temporal assembled should have been expressed therein; to there in parliament, among which were the which appointment, ordinance, and there my lorde your uncles, the Bishop act, ye then agreed you as for your per. of Winchester that now liveth, and the son, making nevertheless protestation, Duke of Exeter, and your cousin the that it was not your intent in any wise to Earl of March that be gone to God, and deroge, or do prejudice unto my lord of Warwick, and other in great number your brother of Bedford by your said that now live, had great and long delib- agreement, as toward any right that he eration and advice, searched precedents would pretend or claim in the gov of the governail of the land in time and ernance of this land, and as toward any case semblable, when kings of this land pre- eminence that you might have or be. have been tender of age, took also infor- long unto you as chief of council, it is mation of the laws of the land, of such plainly declared in the said act and artipersons as be notably learned therein, cles, subscribed by my said Lord of Bedand finally found your said desire not ford, by yourself, and the other lords of caused nor grounded in precedent, nor the council. But as in parliament to in the law of the land; the which the which ye be called upon your faith and king that dead is, in his life nor might by ligeance as Duke of Glocester, as other his last will nor otherwise allege, change, lords be, and not otherwise, we know no nor abroge, without the assent of the power nor authority that ye have, other three estates, nor commit or grant to than ye as Duke of Glocester should any person governance or rule of this have, the king being in parliament, at land longer than he lived; but on that years of
mest discretion: We marvail other behalf, the said lords found your ing with all our hearts that considering said desire not according with the laws the open declaration of the authority and of this land, and against the right and power belonging to my Lord of Bedford, freedome of the estates of the same and to you in his absence, and also te - the king's council, subscribed purely and Rot. Parl., vol. iv., p. 174, 176. t ld., p. 201. simply by my said Lord of Bedford, and: I follow the orthography of the roll, which I hope will not be inconvenient to the reader. Why by you, that you should in any wise be this orthography, from obsolete and difficult, so stirred or moved not to content you frequently becomes almost modern, as will appear therewith or to pretend you any other: in the course of these extracts, I cannot conjec-Namely considering that the king, blesture. The usual irregularity of ancient spelling is sed be our lord, is sith the time of the hardly sufficient to account for such variations; but if there be any error, it belongs to the super- said power granted unto you, far gone intendents of that publication, and is not mine; and grown in person, in wit, and under

Page 444 EUROPE DURING THE MIDDLE AGES. [CHAP. VII stand.ng, and like with the grace of that exceedingly limited authority which God to occupy his own royal power had been delegated to the protector could within few years: and forasmuch con- not have impaired the strength of governsidering the things and causes abovesaid, ment. This was conducted as before by and other many that long were to write, a selfish and disunited council; but the We lords aforesaid pray, exhort, and re- king's name was sufficient to legalize quire you, to content you with the power their measures, nor does any objection above said and declared, of the which my appear to have been made in parliament lord your brother of Bedford, the king's to such a mockery of the name of moneldest uncle, contented him; and that ye archy. none larger power desire, will, nor use; In the year 1454, the thirty-second & ' giving you this that is aboven written Henry's reign, his unhappy mal- Henry's for our answer to your foresaid demand, ady, transmitted perhaps from mental de the which we will dwell and abide with, his maternal grandfather, assu- rangemen withouten variance or changing. Over med so decided a character of derangethis beseeching and praying you in our ment or imbecility, that parliament could most humble and lowly wise, and also no longer conceal from itself the neces requiring you in the king's name, that ye, sity of a more efficient ruler. This as according to the king's commandment, sembly, which had been continued by contained in his writ sent unto you in successive prorogations for nearly a year, that behalp, come to this his iar~uent par- met at Westminster on the 14th of Febliament, and intend to the good effect ruary, when the session was opened by and speed of matters to be demesned and the Duke of York as king's commissiontreated in the same, like as of right ye er. Kemp, archbishop of Canterbury and owe to do.* chancellor of England, dying soon afterIt is evident that this plain, or rather ward, it was judged proper to acquaint rude address to the Duke of Glocester, the king at Windsor by a deputation of waas dictated by the prevalence of Cardi- twelve lords with this and other subjects nal Beaufort's party in council and par- concerning his government. In fact, per. liament. But the transactions in the for- haps this was a pretext chosen in order mer parliament are not unfairly repre- to ascertain his real condition. These sented; and comparing them with the peers reported to the lords' house two passage extracted above, we may per- days afterward, that they had opened to haps be entitled to infer: 1. That the his majesty the several articles of their king does not possess any constitutional message, but " could get no answer ne prerogative of appointing a regent during sign for no prayer ne desire," though they the minority of his successor; and 2. repeated their endeavours at three differThat neither the heir presumptive, nor ent interviews. This report, with the inany other person, is entitled to exercise struction on which it was founded, was, the royal prerogative during the king's at their prayer,
entered of record in parinfancy (or, by parity of reasoning, his liament. Upon so authentic a
Duke of infirmity), nor to any title that conveys testimony of their sovereign's York made
them; the sole right of determining the infirmity, the peers, adjourning protector. persons by
whom, and fixing the limita- two days for solemnity or deliberation, tions under which, the
executive govern- "elected and nominated Richard, duke ment shall be conducted in the king's
of York, to be protector and defender of name and behalf, devolving upon the the realm of
England during the king's great council of parliament. pleasure." The duke, protesting his
The expression used in the lords' ad- sufficiency, requested, " that in this pres. dress to the
Duke of Glocester relative ent parliament, and by authority thereof, to the young king, that he
was far gone it be enacted, that of yourself and of your and grown in person, wit, and
understand- ful and mere disposition, ye desire, name, ing, was not thrown out in mere flattery.
and call me to the said name and charge In two years the party hostile to Gloces- and that of
any presumption of myself, I ter's influence had gained ground enough take them not upon me,
but only of the to abrogate his office of protector, leav- due and humble obeisance that I owe to
ing only the honorary title of chief coun- do unto the king, our most dread and sovsello-r.t For
this the king's coronation, ereign lord, and to you the peerage of this at eight years of age, was
thought a fair land, in whom, by the occasion of the inpretence; and undoubtedly the loss of
firmed of our said sovereign lord, resteth the exercise of his authority, whose no * Rot. Parl., 6
H. VI., vol. iv., p. 326, ble commandments I am as ready to per Id, B H. VT., p. 336. form and
obey as any of his liegeman

Page 445 'VARI 11W.] ENGLISH IONSTITUTION. 441 alive, and that at such time as it
shall In this session little was done except replease our blessed Creator to restore his newing
the strongest oaths ot allegiance most noble person to healthful disposi- to Henry and his
family. But the two tion, it shall like you so to declare and houses meeting again after a
prorogation notify to his good grace" To this prot- to November 12, during which time the
estation the lords answered, that for his Duke of York had strengthened his parand their
discharge an act of parliament ty, and was appointed by commission the should be made,
conformably to that en- king's lieutenant to open the parliament acted in the king's infancy,
since they a proposition was made by the commons, were compelled by an equal necessity that
"whereas the king had deputed the again to choose and name a protector Duke of York as his
commissioner to and defender. And to the Duke of York's proceed in this parliament, it was
though, request to be informed how far the pow- by the commons, that if the king lhereaf. er
and authority of his charge should ter could not attend to the protection of extend, they replied,
that he should be the country, an able person should be ap. chief of the king's council, and
"devised pointed protector, to whom they might therefore to the said duke a name differ- have
recourse for redress of injuries; ent from other counsellors, not the name especially as great
disturbances had lateof tutor, lieutenant, governor, nor of re- ly arised in the west through the
feuds gent, nor no name that shall import au- of the Earl of Devonshire and Lord Bonthority of
governance of the land; but the vile."* The Archbishop of Canterbury said name of protector
and defensor;" answered for the lords, that they would and so forth, according to the language
take into consideration what the comof their former address to the Duke of mons had
suggested. Two days afterGlocester. An act was passed accord- ward, the latter appeared again
with a re ingley, constituting the Duke of York pro- quest conveyed nearly in the same terms.
tector of the church and kingdom, and Upon their leaving the chamber, the chief counsellor of
the king during the archbishop, who was also chancellor, mo-atter's pleasure; or until the
Prince of ved the peers to answer what should be Wales should attain years of discretion, done
in respect of the request of the com. on whom the said dignity was immedi- mons; adding that,
"it is understood ately to devolve. The patronage of cer- that they will not further proceed in mattain spiritual benefices was reserved to ters of parliament to the time that they the protector, according to the precedent have answer to their desire and request." of the king's minority, which parliament This naturally ended in the reappoint was resolved to follow in every par- tment of the Duke of York to his charge ular. * of protector. The commons indeed were It maybe conjectured, by the provision determined to bear no delay. As if ig. made in favour of the Prince of Wales, norant of what had been resolved in conthen only two years old, that the king's sequence of their second request, they condition was supposed to be beyond urged it a third time on the next day of hope of restoration. But in about nine meeting; and received for answer that months he recovered sufficient speech "the king our said sovereign lord, by the and recollection to supersede the Duke advice and assent of his lords spiritual of York's protectorate.t The succeed- and temporal being in this present parliaing transactions are matter of familiar, ment, had named and desired the Duke though not, perhaps, very perspicuous of York to be protector and defensor of history. The king was a prisoner in his this land." It is worthy of notice, that enemies' hands after the affair at St. Al- in these words, and indeed in effect, as baas,T when parliament met in July, 1455. appears by the whole transaction, the - house of peers assumed an exclusive * Rot. Parl., vol. v., p. 241. right of choosing the protector, though in t Paston Letters, vol. i., p. 81. The proofs of the act passed to ratify their election, the sound mind given in this letter are not very deci- asset, as a matter of course, rive, but the wits of sovereigns are never weighed commons' assent, as a matter of course, in golden scales. is introduced. The last year's precedent t This may seem an improper appellation for was followed in the present instance, exwhat is usually termed a battle, wherein 5000 men cepting a remarkable deviation; instead are said to have fallen. But I rely here upon my of the words during the ki's pleas faithful guide, the Paston Letters, p. 100, one of which, written immediately after the engagement, says that only six score were killed. Surely this probable. Whethamstede, himself abbot of St. Al testimony outweighs a thousand ordinary chroni- bans at the time, makes the Duke of York's armn cler. And the nature of the action, which was a but 3000 fighting men, p. 352. sudden attack on the town of St. Albans, without * See some account of these in Pasten Letters ariv pitched combat, renders the larger number im- vol. i., p. 114.

Page 446 446 EUROPF, DURING THE MIDDLE AGES. [CHAP. VJI nre," the duke was to hold his office " un- a while at the conspiracy planned by his hil he should be discharged of it by the brother-in-law the Earl of Cambridge and lords in parliament."* Lord Scrop of Masham to place the crown This extraordinary clause, and the on his head, that magnanimous prince slight allegations on which it was thought gave him a free pardon, and never testi fit to substitute a vicegerent for the fled any displeasure. The present Duke reigning monarch, are sufficient to prove, of York was honoured by Henry VI. with even if the common historians were si- the highest trusts in France and Ireland; lent, that whatever passed as to this sec- such as Beaufort and Glocester could ond protectorate of the Duke of York never have dreamed of conferring on was altogether of a revolutionary com- him, if his title to the crown had not been plexion. In the actual circumstances of reckoned obsolete. It has been very civil blood already spilled and the king in pertinently remarked, that the crime percaptivity, we may justly wonder that so petrated by Margaret and her counsellors much regard was shown to the regular in the death of the Duke of Glocester was forms and precedents of the constitution. the destruction of the house of LanciaBut the duke's natural moderation will ter.* From this time the Duke of York, account for part of this, and the temper next heir in presumption while the king of the lords for much more. That as- was childless, might innocently contemsembly appears for the
most part to have plate the prospect of royalty; and when been faithfully attached to the house of such ideas had long been passing through Lancaster. The partisans of Richard his mind, we may judge how reluctantly were found in the commons and among the birth of Prince Edward, nine years the populace. Several months elapsed after Henry's marriage, would be admitted after the victory of St. Albans, before an to disturb them. The queen's administration was thus made to set aside a tion unpopular, careless of national intersovereign, not labouring, so far as we ests, and partial to his inveterate enemy, know, under any more notorious infr- the Duke of Somerset; the king incapacity than before. It then originated in ble of exciting fear or respect; himself the commons, and seems to have receiv- conscious of powerful alliances and uni' ed but an unwilling consent from the versal favour; all these circumstances upper house.

Even in constituting the combined could hardly fail to nourish Duke of York protector over the head these opinions of hereditary right, which of Henry, whom all men despaired of he must have imbibed from his infancy. ever seeing in a state to face the dangers The Duke of York preserved through of such a season, the lords did not forget the critical season of rebellion such mod-,he rights of his son. By this latter in- eration and humanity, that we may par strument, as well as by that of the pre- don him that bias in favour of his own ceding year, the duke's office was to pretensions to which he became himself cease upon the Prince of Wales arriving a victim. Margaret perhaps, by her sanat the age of discretion. guinary violence in the Coventry parlia

But what had been long propagated in ment of 1460, where the duke and all his Duke of secret, soon became familiar to adherents were attainted, left him not the York's the public ear; that the Duke choice of remaining a subject with impulaiam to the of York laid claim to the throne. nity. But with us, who are to weigh crown. He was unquestionably heir these ancient factions in the balance on general of the royal line, through his wisdom and justice, there should be no mother, Anne, daughter of Roger Morti- hesitation in deciding that the house of mer, earl of March, son of Philippa, Lancaster were lawful sovereigns of daughter of Lionel, duke of Clarence, England. I am indeed astonished, that third son of Edward III. Roger Morti-

not only such historians as Carte, who mer's eldest son, Edmund, had been de- wrote undisguisedly upon a Jacobite sysldlaed heir presumptive by Richard II.; tem, but even men of juster principles, but his infancy during the revolution that have been inadvertent enough to mention placed Henry IV. on the throne had the right of the house of York. If the caused his pretensions to be passed over original consent of the nation, if three in silence. The new king, however, was descents of the crown, if repeated acts induced, by a jealousy natural to his situ- of parliament, if oaths of allegiance from ation, to detain the Earl of March in custody. Henry V. restored his liberty; * Hall, p. 210. and though he had certainly connived for t The ill-will of York and the queen began M early as 1449, as we learn from an unequirocal tew timony, a letter of that date in the Piston collec * Rot. Parl, vol. v., p. 284-290. tion. vol i., p. 26.
has been more fatal to test, yet the strength of the trians and the peace of mankind, than that which Yorkists lay in London and the Yorkists. regards a nation of subjects as a family's neighbouring counties, and generally private inheritance. For, as this opinion among the middling and lower people. induces reigning princes and their cour- And this is what might naturally be extiers to look on the people as made only pected. For notions of hereditary right to obey them, so when the tide of events take easy hold of the populace, who feel has swept them from their thrones, it be- an honest sympathy for those whom they gets a fond hope of restoration, a sense consider as injured; while men of noble of injury and of imprescriptible rights, birth and high station have a keener sense which give the show of justice to fresh of personal duty to their sovereign, and disturbances of public ordel and rebell- of the baseness of deserting their al. ions against established authority. Even legiance. Notwithstanding the wide in cases of unjust conquest, which are far spreading influence of the Nevils, most stronger than any domestic revolution, of the nobility were well affected to the time heals the injury of wounded inde- reigning dynasty. We have seen how, pendence, the forced submission to a vic- reluctantly they acquiesced in the second torious enemy is changed into spontane- protectorate of the Duke of York, aftel our allegiance to a sovereign, and the the battle of St. Albans. Thirty-two laws of God and nature enjoin the obe- temporal peers took an oath of fealty to dience that is challenged by reciprocal Henry and his issue in the Coventry par. benefits. But far more does every na- liament of 1460, which attainted the tional government, however violent in Duke of York and the earls of Warwick its origin, become legitimate, when uni- and Salisbury.* And, in the memorable versally obeyed and justly exercised, circumstances of the duke's claim personthe possession drawing after it the right; ally made in parliament, it seems mani. not certainly that success can alter the fest that the lords complied not only moral character of actions, or privilege with hesitation, but unwillingness; and in usurpation before the tribunal of human fact testified their respect and duty for opinion, or in the pages of history, but Henry by confirming the crown to himn that the recognition of a government during his life.t The rose of Lancaster by the people is the binding pledge of blushed upon the banners of the Staf their allegiance so long as its corre- fords, the Percies, the Veres, the Hol sponding duties are fulfilled.* And thus lands, and the Courtneys. All these il. the law of England has been held to lustrous families lay crushed for a time annex the subject's fidelity to the reign- under the ruins of their party. But the ing monarch, by whatever title he may course of fortune, which has too great a have ascended the throne, and whoever mastery over crowns and sceptres to be else may be its claimant.t But the stat- controlled by men's affections, invested ute of 11th of Henry VII., c. 1, has furnished an unequivocal commentary upon Rot. Parl., vol. v., p. 351. this principle; when, al--luding to the con-t Rot. Parl., p. 375. This entry in the roll is this principle; when, alluding to the con- highly interesting and important. It ought to be read in preference to any of our historians. Hume, * Upon this great question the fourth discourse who drew from inferior sources, is not altogether In Sir Michael Foster's Reports ought particularly accurate. Yet one remarkable circumstance, told to be read Strange doctrines have been revived by Hall and other chroniclers, that the Duke ofately, and though not exactly referred to the con- York stood by the throne, as if to claim it, though stitution of this country, yet, as general principles, omitted entirely in the roll, is confirmed by Wheth easily applicable to it; which, a century since, amstede, abbot of St. Albans, who was probably would have tended to shake the present family in then present (p. 484, edit. Hearne). This shows dhe throne. that we should only doubt and not reject, unless t Hlale'm Pleas of the Cr wn, vol. i., p. 61, 101 upon real grounds of suspicion, the assertions Xt (dit 1736) secondary writers.
448 EUROPE DURING THE MIDDLE AGES. [CHAP. VII. Edward IV. with a possession, which the would be cautious how they resisted a general consent of the nation both sanct- king of their own creation, while the tioned and secured. This was effected hopes of their adversaries were only dor. in no slight degree by the furious spirit mant. And indeed, without relying oil of Margaret, who began a system of ex- this supposition, it is commonly seen, formation by acts of attainder, and ex- that when temporary circumstances have ecution of prisoners, that created abhor- given a king the means of acting in disre- And the barbarities of her northern army, very difficult undertaking for them to rew hom she led towards London after the cover a liberty which has no security so battle of Wakefield, lost the Lancastrian effectual possession. cause its former friends,* and might just- Besides the several proceedings against ly convince reflecting men, that it were the Lancastrian party, which might be better to risk the chances of a new dy- extenuated by the common pretences, renasty, than trust the kingdom to an ex- taliation of similar proscriptions, security asperated faction. for the actual government' or just pun. A period of obscurity and confusion ishment of rebellion against a legitimate Edward IV. ensues, during which we have heir, there are several reputed instances as little insight into constitu- of violence and barbarity in the reign of tional as general history. There are no Edward IV., which have not such plaucontemporary chroniclers of any value, sible excuses. Every one knows the and the rolls of parliament, by whose common stories of the citizen who was light we have hitherto steered, become attainted of treason for an idle speech mere registers of private bills, or of peti- that he would make his son heir to the tions relating to commerce. The reign crown, the house where he dwelt; and of Edward IV. is the first during which of Thomas Burdett. who wished the no statute was passed for the redress of horns of his stag in the belly of him grievances or maintenance of the sub- who had advised the king to shoot it. ject's liberty. Nor is there, if I am cor- Of the former I can assert nothing, rect, a single petition of this nature upon I do not believe it to be accurately re the roll. Whether it were that the com- ported. But certainly the accusationmons had lost too much of their ancient against Burdett, however iniquitous, was courage to present any remonstrances, not confined to these frivolous words, or that a wilful omission has viti ated the which indeed do not appear in his enrecord, is hard to determine; but we cer- dictment,* or in a passage relative to his tainly must not imagine, that a govern- conviction in the roll of parliament. ment cemented with blood poured on the Burdett was a servant and friend of the scaffold as well as in the field, under a Duke of Clarence, and sacrificed as a passionate and unprincipled sovereign, preliminary victim. It was an article would afford no scope for the just ani- chage against Clarence that he had. madversion of parliament.t The reign attempted to persuade the people that of Edward IV. was a reign of terror. "Thomas Burdett his servant, which was One half of the noble families had been lawfully and truly attainted of treason, thinned by proscription; and though gen- was wrongfully put to death."t There erally restored in blood by the reversal could indeed be no more oppressive of their attainders, a measure certainly usage inflicted upon meaner persons than deserving of much approbation, were this attainer of the Duke of Clarence, still under the eyes of vigilant and invet- an act for which a brother could not be erate enemies. The opposite faction pardoned had he been guilty; and which deepens the shadow of a tyrannical age, * The abbey of St. Albans was stripped by the if, as it seems, his offence towards Edqueen and her army after the second battle foughtward was but levity and rashness. at that place, Feb. 17, 1461; which changed Whethamstede, the abbot and historiographer, from a vio- * See in Cro. Car. 120, the endictment against ent Lancastrian into a Yorkist. His chance of Burdett for compassing the king's death and fo, party is quite sudden, and amusing enough. See that purpose conspiring with Stacie and Blake t, too
the Paston Letters, vol. i., p. 206. Yet the calculate his nativity and his son's, ad sciemund
Paston family were originally Lancastrian, and re- quando idem rex et Edwardus ejus filius
morienturned to that side in 1470. tur: Also for the same end dispersing divers rhymes t There
are several instances of violence and and ballads de murmurationibus, seditionibus et
oppression apparent on the rolls during this reign, proditoriis excitationibus, factas et fabricatas
apud but not proceeding from the crown. One of a re. Holbourn, to the intent that the people
might markable nature, vol. v., p. 173, was brought for- withdraw their love from the king and
desert him ward to throw an odium on the Duke of Clarence, ac erga ipsum regem levarent, ad
finalem destruc who had been concerned in it. Several passages tionem ipsorum regis ac

Page 449 aRT 111.] ENGLIS/H CONSTITUTION. 44U But whatever acts of injustice we
may ulence. According to Sir John Fertes attribute. from authority or conjecture, to cue, nearly
one fifth of the whole king Edward's government, it was very far dom had come to the king's
hand by forfrom being unpopular. His love cf pleas- feiture, at some time or other since the ure,
his affability, his courage, and beauty, commencement of his reign.* Many in. gave him a
credit with his subjects which deed of these lands had been restored, he had no real virtue to
challenge. This and others lavished away in grants, but.:estored him to the throne, even against
the surplus revenue must still have been the prodigious influence of Warwick, and
considerable. compelled Henry VII. to treat his mem- Edward IV. was the first who practised
ory with respect, and acknowledge him a new method of taking his subjects' as a lawful king.*
The latter years of money without consent of parliament, his reign were passed in repose at
horne under the plausible name of benevolenafter scenes of unparalleled convulsions, ces.
These came in place of the still and in peace abroad after more than a more plausible loans of
former monarchs, century of expensive warfare. His de- and were principally levied on the
wealnands of subsidy were therefore moder- thy traders. Though no complaint apate, and
easily defrayed by a nation who pears In the parliamentary records of his were making rapid
advances towards op- reign, which, as has been observed, comThe rolls of Henry V.'s first
parliament are plain of nothing, the illegality was unfull of an absurdconfusion in thought and
language, doubtedly felt and resented. In the rewhich is rendered odious by the purposes to
which markable address to Richard by that it is applied. Both Henry VI. and Edward IV. are
tumultuary meeting which invited him consideredaslawful kings; exceptin oneinstance, to
assume the crown, we find, among where Alan Cotterell, petitioning for the reversal general
assertions of the state's decay of his attainder, speaks of Edward "late called through
misgovernment, tho following Edward IV." (vol. vi., p. 290). But this is only the language of a
private Lancastrian. And Henry strong passage: "For certainly we be VI. passes for having
been king during his short determined rather to aventure and correstoration in 1470, when
Edward had been nine mitte us to the perill of owre lyfs and years upon the throne. For the Earl
of Oxford is joardieof deth, than to lyve in such said to have bern attainted "Ifor the true
allegiance pardie eth, than to lyve i and service he owed and did to Henry VI., at thrldome and
bondage as we have lyved Barnet field and otherwise" (p. 281). This might long tyme
heretofore oppressed and inbe reasonable enough on the true principle that jured by extortions
and newe impositions, allegiance is due to a king de facto; if indeed we ayenst the lawes of
God and man, and the could determine who was the king de facto on the li morning of the
battle of Barnet. But this princi- old polie, and laws of this ple was not fairly recognised.
Richard III. is al- realme, whereny every Englishman is in. ways called, "in deed and not in
right, King of herited."t Accordingly, in Richard III.'s England." Nor was this merely founded
on his only parliament, an act was passed, usurpation as against his nephew. For that un-
which, after reciting in the strongest fortunate boy is little better treated, and in the act of resumption, I H. VII., while Edward IV. is terms the grievances lately endured, styled "late king," appears only with the denomi- abrogates and annuls for ever all exac- nation of Edward his son, late called Edward tions under the name of benevolence. t V., p. 336. Who then was
king after the death of Edward IV.? And was his son really illegiti- least not directly impaired by the usurmate, as a usurping uncle pretended? Or did the crime of Richard, though punished in him, patition of Richard. But from an act so enure to the benefit of Henry? These were points deeply tainted with moral guilt, as well which, like the fate of the young princes in the as so violent in all its circumstances, no Tower, he chose to wrap in discreet silence. But substantial benefit was likely to spring. the first question he seems to have answered in Whatever difficulty there may be, and his own favour. For Richard himself, Howard, Whatever difficulty there may be, and 1 duke of Norfolk, Lord Lovel, and some others, are confess it is not easy to be surmounted, attainted (p. 276), for'traiterously intending, corn- in deciding upon the fate of Richard's passing, and imagining' the death of Henry; of nephews after they were immured in course before or at the battle of Bosworth; and the Tower, the more public parts of the while his right, unsupported by possession, could have rested only on an hereditary title, which it transaction bear unequivocal testimony was an insult to the nation to prefer. These mon- to his ambitious usurpation. It would strous proceedings explain the necessity of that therefore be foreign to the purpose o' conservative statute to which I have already allu- this chapter to dwell upon his assumption ded, which passed in the eleventh year of his reign, of the regency, or upon the sort of elecand afforded as much security for men following the plain line of rallying round the standard of their tion, however curious and remarkable, country as mere law can offer. There is some ex- which gave a pretended authority to his traoardinary reasoning upon this act in Carte's His- usurpation of the throne. Neither of tory, vol. ii., p. 844, for the purpose of proving that the adherents of George II. would not be protected * Diff. of Absolute and Limited Monarchy, p. 83 R, v it on the restoration of the true blood. t Rot. Parl., vol. vi., p. 241.: 1 R. III., e2

Page 450 Jo0 EUROPE DURING THE MIDDLE AGFS LCnIAP. IX these has ever been alleged by any their usual rigour, and es ablish a large party in the way of constitutional prece- revenue by continual precedents upon a dent. system of universal and prescriptive ex At this epuoh I terminate these inqui- tortion. But the Norman and English onclusion. ries into the English constitu- races, each unfit to endure oppression, tion; a sketch very imperfect I forgetting their animosities in a common fear and unsatisfactory, but which may interest, enforce by arms the concession at least answer the purpose of fixing the of a great charter of liberties. Privile. reader's attention on the principal ob- ges, wrested from one faithless monarch, jeets, and of guiding him to the purest are preserved with continual vigilance fountains of constitutional kno wledge. against the machinations of another; the From the accession of the house of Tu- rights of the people become more precise, dor a new period is to be dated in our and their spirit more magnanimous, duhistory; far more prosperous in the dif- ring the long reign of Henry III. With fusion of opulence and the preservation greater ambition and greater abilities of general order than the preceding, but than his father, Edward I. attempts in less distinguished by the spirit of free- vain to govern in an arbitrary manner, dom and jealousy of tyrannical power. and has the mortification of seeing his We have seen, through the twilight of prerogative fettered by still more imporour Anglo-Saxon records, a form of civil tant limitations. The great council of policy established by our ancestors, the nation is opened to the representamarked, like the kindred governments tives of the commons. They proceed of the continent, with aboriginal Teu- by slow and cautious steps to remonstrate tonic features;
barbarous indeed, and against public grievances, to check the sufficient for the great ends of society, abuses of administration, and sometimes but capable and worthy of the improve- to chastise public delinquency in the offiment it has received, because actuated by cers of the crown. A number of remea sound and vital spirit, the love of free- dial provisions are added to the statutes; doni and of justice. From these princ- every Englishman learns to remember ples arose that venerable institution, that he is the citizen of a free state, and which none but a free and simple people to claim the common law as his birth.. could have conceived, trial by peers; an right, even though the violence of power institution common in some degree to should interrupt its enjoyment. It were other nations, but which, more widely a strange misrepresentation of history to extended, more strictly retained, and bet- assert that the constitution had attained ter modified among ourselves, has be- any thing like a perfect state in the fifcome perhaps the first, certainly among teenth century; but I know not whether the first, of our securities against arbitra- there are any essential privileges of our ry government. We have seen a foreign countrymen, any fundamental securities conqueror and his descendants trample against arbitrary power, so far as they almost alike upon the prostrate nation, depend upon positive institution, which and upon those who had been companion- may not be traced to the time when the ions of their victory, introduce the ser- house of Plantagenet filled the English vitudes of feudal law with more than throne. CHAPTER IX. ON THE STATE OF SOCIETY IN EUROPE DURING THE MIDDLE AGES. PART I. Agriculture-of Internal and Foreign Trade down to the End of the Eleventh Century. —Im Introduction.-Decline of Literature in the latter provemement of Europe dated from that Age period of the Roman Empire.- Its Causes. — Corruption of the Latin Language.-Means by IT has been the object of every precewhich it was effected.-Formation of new Lan- guages.-General Ignorance of the Dark Ages.- the civil revolutions of states during the Scarcity of Books.-Causes that prevented the period of the middle ages, or to invest total Extinction of Learning.-Prevalence of gate, with rather more minute attention. Superstition and Fanaticism.- General Corruption of Religion.-Monasteries-their Effects.- their political institutions. There rePilgrimages — Tove of Field Sports.-State of mains a large tract to be explored, if we

Page 451 ART 1.] STArE OF SOCIETY. 451 would compleat the circle of historical slowly progressive, that interest which information, and give to our knowledge attends a more perfect development of that copiousness and clear perception human capacities, and more brilliant adwhich arise from comprehending a sub- vances in improvement. The first moiject under numerous relations. The ety indeed of these ten ages is almost philosophy of history embraces far more absolutely barren, and presents little but than the wars and treaties, the factions a catalogue of evils. The subversion of and cabals of common political nar- the Roman empire, and devastation of its ration; it extends to whatever illustrates provinces by barbarous nations, either the character of the human species in a immediately preceded, or were coinciparticular period, to their reasonings and dent with the commencement of the sentiments, their arts and industry. Nor middle period. We begin in darkness is this comprehensive survey merely in- and calamity; and though the shadows teresting to the speculative philosopher; grow fainter as we advance, yet we are without it, the statesman would form to break off our pursuit as the morning very erroneous estimates of events, and breathes upon us, and the twilight red find himself constantly misled in any an- dens into the lustre of day. alogical application of them to present No circumstance is so prominent on circumstances. Nor is it an uncommon the first survey of society du- Decline of source of error to neglect the general ring the earlier centuries of this learning in signs of the times, and to deduce a prog- period as the depth of ignorance Roman em notic from some partial coincidence in which it was immersed; and pire. with past
events, where a more enlarged as from this, more than any single cause) comparison of all the
facts that ought to the moral and social evils which those enter into the combination would
destroy ages experienced appear to have been the whole parallel. The philosophical derived
and perpetuated, it deserves to student, however, will not follow the occupy the first place in
the arrangement antiquary into his minute details; and of our present subject. We must not
though it is hard to say what may not altogether ascribe the ruin of literature supply matter for a
reflecting mind, there to the barbarian destroyers of the Roman is alw~ays some danger of
losing sight of empire. So gradual, and apparently so grand objects in historical disquisition,
irretrievable a decay, had long before by too laborious a research into trifles. spread over all
liberal studies, that it is I may possibly be thought to furnish, in impossible to pronounce
whether they some instances, an example of the error would not have been almost equally ex[
condemn. But in the choice and dis- tinguished if the august throne of the position of topics to
which the present Cesars had been left to moulder by its chapter relates, some have been
omitted intrinsic weakness. Under the paternal on account of their comparative insignif-
sovereignty of Marcus Aurelius, the ap-.cance, and others on account of their proaching
declension of learning might want of connexion with the leading sub- be scarcely perceptible to
an incurious ject. Even of those treated I can only observer. There was much indeed to
undertake to give a transient view; and distinguish his times from those of Aumust bespeak the
reader's candour to re- gustus; much lost in originality of gemember, that passages which, 
separately nius, in correctness of taste, in the mastaken, may often appear superficial, are terly
conception and consummate finish but parts of the context of a single chap- of art, in purity of
the Latin, and even ier, as the chapter itself is of an entire of the Greek language. But there
were work. men who made the age famous, grave The Middle Ages, according to the di-
lawyers, judicious historians, wise phivision I have adopted, comprise about losophers; the
name of learning was one thousand years, from the invasion of honourable, its professors were
encoulFrance by Clovis to that of Naples by aged; and along the vast surface of the Charles
VIII. This period. considered Roman empire there was perhaps a greatas to the state of society, 
has been es- er number, whose minds were cultivated teemed dark through ignorance, and bar-
by intellectual discipline, than under the barous through poverty and want of re- more brilliant
reign of the first emperor. finement. And although this character It is not, I think, very easy to
give a is much less applicable to the two last perfectly satisfactory solution of Its causs.
centuries of the period than to those the rapid downfall of literature which preceded its
commencement, yet between the ages of Antonine and of we cannot expect to feel, in respect
of Diocletian. Perhaps the prosperous con. tges at beps1 impperfectly civilized and dition of the
empire from Trajan to Mar. Ff,
there were no with the country. If these are the great writers, but even few names of in- sources which nourish literature, we different writers have been recovered by should naturally expect that they must the diligence of modern inquiry.* Law have become scanty or dry when learnneglected, philosophy perverted till it be- ing languishes or expires. Accordingly, came contemptible, history nearly silent, in the later ages of the Roman empire, a the Latin tongue growing rapidly barba- general indifference towards the cultivarous, poetry rarely and feebly attempted, tion of letters became the characteristic art more and more vitiatiated; such were of its inhabitants. Laws were indeed the symptoms by which the age previous enacted by Constantine, Julian, Theodoto Constantine announced the decline sius, and other emperors, for the encour of human intellect. If we cannot fully agement of learned men and the promoaccount for this unhappy change, as I tion of liberal education. But these have observed, we must, however, assign laws, which would not perhaps have much weight to the degradation of Rome been thought necessary in better times, and Italy in the system of Severus and were unavailing to counteract the leth to his successors, to the admissiof bar- argy of ignorance in which even the nabarians into the military and even civil tive citizens of the empire were content. dignities of the empire, to the discou- ed to repose. This alienation of menl aging influence of provincial and illiterate from their national literature may doubtsovereigns, and to the calamities which less be imputed, in some measure, to its followed for half a century the first inva- own demerits. A jargon of mystical phision of the Goths and the defeat of De- losphy, half fanaticism and half impos. cius. To this sickly condition of litera- ture, a barren and inflated eloquence, a ture the fourth century supplied no per- frivolous philology, were not among manent remedy. If under the house those charms of wisdom by which man of Constantine the Roman world suf- is to be diverted from pleasure or arousfered rather less from civil warfare or ed from indolence. barbarous invasions than in the prece- In this temper of the public mind, tkere ding age, yet every other cause of de- was little probability that new composicline just enumerated prevailed with ag- tions of excellence would be produced, gravated force; and the fourth century and much doubt whether the old would set in storms, sufficiently destructive in be preserved. Since the invention of themselves, and ominous of those calam- printing, the absolute extinction of any ities which humbled the majesty of Rome considerable work seems a danger too at the commencement of the ensuing pe- improbable for apprehension. The press riod, and overwhelmed the Western Em- pours forth in a few days a thousand volpire in absolute and final ruin before its umes, which scattered, like seed in the termination. air, over the republic of Europe, could The diffusion of literature is perfectly hardly be destroyed without the extirpadistinguishable from its advancement, and tion of its inhabitants. But in the times whatever obscurity we may find in ex- of antiquity, manuscripts were copied plaining the variations of the one, there with cost, labour, and delay;,, and if the are a few simple causes which seem to diffusion of knowledge be measured by the multiplication of books, no unfair * The authors of Histoire Littéraire de la standard, the most golden ages of ancient France, t. i., can only find three writers of Gaul, learning could never bear the least commno inconsiderable part of the Roman empire, men- with the tioned upon any authority: two of whom are now parson three last centuries lost. In the preceding century the numbei was The destruction of a few libraries by ac considerably greater cidental fire, the desolation of a few proY.
no inducement to multi- during these two centuries must have diply, exposed to similar
military casualties in suc- verted studious minds from profane l iterceeding times. ature, and narrowed
more and more the We are warranted by good authorities circle of that knowledge which they
were to assign, as a collateral cause of this ir- desiring to attain. retrievable revolution, the
neglect of hea- The torrent of irrational superstitions then literature by the Christian church.
which carried all before it in the fifth I am not versed enough in ecclesiastical century, and the
progress of ascetic enwriters to estimate the degree of this thusiasm, had an influence still more
deneg.ect; nor am I disposed to deny that cidedly inimical to learning. I cannot the mischief
was beyond recovery before indeed conceive any state of society the accession of Constantine.
From the more adverse to the intellectual improve, primitive ages, however, it seems that a
ment of mankind, than one w-hich admit. dislike of pagan learning was pretty gen- ted of no
middle line between gross dis eral among Christians. Many of the fa- soluteness and fanatical
mortificationi. thers undoubtedly were accomplished in An equable tone of public morals,
social liberal studies, and we are indebted to' and humane, verging neither to voluptuthem for
valuable fragments of authors ushness nor austerity, seems the most whom we have lost. But
the literary adapted to genius, or at least to letters, character of the church is not to be mea-
as it is to individual comfort and national ured by that of its more illustrious lead-
prosperity.
After the introduction. of ers. Proscribed and persecuted, the monkery and its unsocial theory
of duedarly Christians had not perhaps access ties, the serious and reflecting part of to the public
schools, nor inclination to mankind, on whom science most relies, studies which seemed, very
excusably, were turned to habits which, in the most uncongenial to the character of their pro-
favourable view, could not quicken the fession. Their prejudices, however, sur-
mental energies; and it might be a vived the establishment of Christianity. difficult question, whether
the cultivators The fourth council of Carthage, in 398, and admirers of useful literature were
prohibited the reading of secular books less likely to be found among the profit by bishops.
Jerome plainly condemns gate citizens of Rome and their barbarian the study of them, except
for pious ends. conquerors, or the melancholy recluses All physical science, especially, was
held of the wilderness. in avowed contempt, as inconsistent with Such therefore was the state
of learnrevealed truths. Nor do there appear to ing before the subversion of the Western have
been any canons made in favour of Empire. And we may form some notion learning, or any
restriction on the ordi- how little probability there was of its nation of persons absolutely
illiterate.* producing any excellent fruits, even if There was, indeed, abundance of what is that
revolution had never occurred, by called theological learning displayed in considering what
took place in Greece the controversies of the fourth and fifth during the subsequent ages;
where, alcenturies. And those who admire such though there was some attention shown
disputations may consider the principal to preserve the best monuments of anti champions in
them as contributing to the quity, and diligence in compiling fromr glory, or at least retarding
the decline of them, yet no one original writer of aty literature. But I believe rather that po-
superior merit arose, and learning, though lemical disputes will be found not only plunged but
for a short period into mere to corrupt the genuine spirit of religion, darkness, may be said to
have languished but to degrade and contract the faculties. in a middle region of twilight for the
What keenness and subtlety these may greater part of a thousand years. sometimes acquire by
such exercise is But not to delay ourselves in this spec. more like that worldly shrewdness we
ulation, the final settlement of barbarous see in men whose trade it is to outwit nations in Gaul,
Spain, and Italy consummated the ruin of literature. Their first * Mosheim, Cent. 4.
Tiraboschi endeavours to irruptions were uniformly attended with elevate higher the learning
of the early Christians, devastation; and if some of the Gothic t. ii., p. 328. Jortin, however,
asserts that many kings, after their establishment, proved of the bishops in the general councils
of Ephesus te stbin, e and Chalcedon could not write their names.-Re- humane and civilizd
civilized sovereigns, yet the marka on Ecclesi st. Hist., vol. ii., p. 417. nation gloried in its original rudeness

4.54 EUROPE DURING THE MIDDLE AGES [(,IA. IA and vieN ed with no unreasonable disdain frontier, which brings the natives of that arts which had neither preserved, their principality into contact with English. cultivators from. corruption, nor raised men. Nor did the Romaris ever estabi them from servitude. Theodoric, the lish their language, I know not whether most famous of the Ostrogoth kings in they wished to do so, in this island, as Italy, could not write his name, and is we perceive by that stubborn British said to have restrained his countrymen tongue which has survived two con from attending those schools of learning, quests.* by which he, or rather.perhaps his min- In Gaul and in Spain, however, they ister Cassiodorus, endeavoured to re-.did succeed, as the present state of the vive the studies of his Italian subjects. French and peninsular languages renders Scarcely one of the barbarians, so long undeniable, though by gradual changes, as they continued unconfused with the and not, as the Benedictine authors of native inhabitants, acquired the slightest the Histoire Litteraire de la France tincture of letters; and the praise of seem to imagine, by a sudden and arbi equal ignorance was soon aspired to and trary innovation.t This is neither posattained by the entire mass of the Roman sible in itself, nor agreeable to the testilaity. They, however, could hardly have mony of Irenaeus, bishop of Lyons, at divested themselves so completely of all the end of the second century, who laacquaintance with even the elements of ments the necessity of learning Celtic.t learning, if the language in which books But although the inhabitants of these were written had not ceased to be their provinces came at length to make use of natural dialect. This remarkable change Latin so completely as their motherin the speech of France, Spain, and Italy, tongue, that few vestiges of their origiis most intimately connected. with the nal Celtic could perhaps be discovered in extinction of learning; and there is their common speech, it does not follow enough of obscurity, as well as of inter- that they spoke with the pure pronuncia. est, in the subject, to deserve some dis- tion of Italians, far less with that confor. ufission. mity to the written sounds, which we aslt is obvious, on the most.cursory sume to be essential to the expression Corruption of view of the French and Span- of Latin words. theLatinlan- ish languages, that they, as It appears to be taken for granted tha" guage. - well as the Italian, are derived the Romans pronounced their Ancient Lat from one common source, the Latin. language as we do at present, in pronunci That must therefore have been at some so far at least as the enuncia- ation. period, and certainly not since the estab- tion of all the consonants, however Me lishment of the barbarous nations in may admit our deviations from the clas Spain and Gaul, substituted in ordinary sical. standard in propriety of sounds use for the original dialects of those and in measure of tinle. Yet the examcountries, which are generally supposed pie of our own language and of the French to have been Celtic, not essentially dif- might show us that orthography may befering from that which is spoken in come a very inadequate representative Wales and Ireland. Rome, says Augustin, imposed not only her yoke, but her * Gibbon roundly asserts, "that the language language, upon conquered nations. The of Virgil and Cicero, though with some inevita. success of such an attempt is indeed ble mixture of corruption, was so universally remarkable. Though it is the natu- adopted in Africa, Spain, Gaul, Great Britain, and svery remarkable. Though it is the natu-Pannonia, that the faint traces of the Punic or Celral effect of conquest, or even of com- tic idioms were preserved only in the mountains mercial intercourse, to ingraft fresh or among the peasants."-Decline and Fall, vol. i., words and foreign idioms on the stock p. 60 (8vo. edit.). For Britainhe quotes Tacitus's of the original lang-usage, yet the entire Life of Agricola as his voucher. But the only passage in this work that gives the least colour to disuse of the latter, and adoption of
one Gibbon's assertion, is one in which Agricola is said radically different, scarcely takes place to have encouraged the children of British chief in the lapse of a far longer period than tains to acquire a taste for liberal studies, and to that of the Roman dominion in Gaul. have succeeded so much by judicious commendation. Thus in part of Brittany the people tion of their abilities, ut qui mode linguam R> Thus, in part of Brittany, the people manam abnuebant, eloquentiam concupiscerent (c speak a language which has perhaps 21). This, it is sufficiently obvious, is very differ. sustained no essential alteration from ent from the national adoption of Latin as a moth the revolution of two thousand years; er-tongue. and we know how steadily another Cel- t T. vii., preface. tic dialect has kept its ground in Wales, by M.It ppears by a passage quoted froi the digest M. Bonamy, WMm. de lAcad. des Inscriptions, notwithstanding English laws and gov--t. xxiN., p. 589, that Celtic was spoken in Gaul, ot erment, and the long line of contiguous at least parts of it, as well as Punic in Africa.

Page 455 'ART I.] STATE Of SOCIETY. 45, jf pronunciation. It is indeed capable The first syllable of ille is repeatedly of proof, that in the purest ages of Latin- shortened, and indeed nothing is more ity, some variation existed between these usual in Terence than this license; two. Those numerous changes in spell- whence we may collect how ready this ing which distinguish the same words word was for abbreviation into the in the poetry of Ennius and of Virgil are French and Italian articles. V. The last best explained by the, supposition of letter of apud is cut off, seen. i., v. 120, their being accommodated to the current and seen. ii., v. 8. VI. Hodie is used as pronunciation. Harsh combinations of a pyrrhichius, in seen. ii., v. 11. VII. etters, softened down through delicacy Lastly, there is a clear instance of a of ear or rapidity of utterance, gradual- short syllable, the antepenultimate of ly lost their place in the written lan- impulerim, lengthened on account of the guage. Thus exfregit and adrogavit as- accent, at the 118th verse of the first4 sumed a form representing their more scene. liquid sound; and auctor was latterly These licenses are in all probability spelled autor, which has been followed in chiefly colloquial, and would not Its corrupt. French and Italian. Autor was probably have been adopted in public har- tion by the so pronounced at all times; and the or- angues, to which the precepts populace, thography was afterward corrected or of rhetorical writers commonly relate. corrupted, which ever we please to say, But if the more elegant language of the according to the sound. We have the Romans, since such we must suppose to best authority to assert, that the final m have been copied by Terence for his was very faintly pronounced, rather, it higher characters, differed so much in orseems, as a rest and short interval between dinary discourse from their orthography, two syllables, than an articulate letter; it is probable that the vulgar went into nor indeed can we conceive upon what much greater deviations. The popular other ground it was subject to elision be- pronunciation errs generally, we might fore a vowel in verse; since we cannot say perhaps invariably, by abbreviation suppose that the nice ears of Rome of words, and by liquefying consonants, would have submitted to a capricious as is natural to the rapidity of colloquial rule of poetry, for which Greece pre- speech.* It is by their knowledge of orsented no analogy.* thography and etymology that the more A decisive proof, in my opinion, of the educated part of the community are pre-eviation which took place, through the served from these corrupt modes of prorapidity of ordinary elocution, from the nunciation. There is always, therefore, a strict laws of enunciation, may be found standard by which common speech may in the metre of Terence. His verses, be rectified; and in proportion to the dinition which are absolutely refractory to the fusion of knowledge and politeness, the common laws of prosody, may be readi- deviations from it will be more slight and ly scanned by the application of this gradual. But in distant prov- and thepro. principle. Thus, in the first act of the incels. Heautontimnorumenos, a part selected at
language itself is but of recent introduction, I have found, I. Vowels con- tion, many more changes may be extracted or dropped, so as to shorten the pected to occur. Even in France and word by a syllable; in rei, vid, diutius, England, there are provincial dialects, ei, solius, earnius, sua, divitias, senex, which, if written with all their anomalies voluvtatern, illius, semel; II. The pro- of pronunciation as well as idiom, would celeu!,atic foot, or four short syllables, seem strangely out of unison with the instead of the dactyl; seen. i., v. 59, 783, regular language; and in Italy, as is well 76, 88, 109; seen. it., v. 36; III. The elision of s in words ending with us, or * The following passale of Quintilian is an ev is short, and sometimes even of the idence both of the omission of harsh or superfluwhole syllable, before the next word be- ous letters by the best speakers, and of the or the giving K with a vowel; in seen. i., v. 30, rupt abbreviation usual with theworst. Dilacida 81, 98, 101, 116,119;i seen. ii*, V.n.' I. vero erit pronunciatio primum, si verba tota exe8, 98, 101, _ 11119; seen. it., v. _28. _IV. gerit, quorum pars devorari, pars destitui solet, plerisque extremas syllabas non proferentibus, Atque sadevn illa litera, quoties ultima est, et dum priorurn sono indulgent. Ut est autern vocalem verbi sequentis ita contingit, ut in earn necessaria verborum explanatio, ita omnes comtransire possit, etiam si scribitur, tamen parum putare et velut adnumerare literas, molestum et exprimitur, ut AMultzum ille, et Quantum erat; odiosum.-Nam et vocales frequentissimae coeadeo ut pene cujusdamnovelitere sonumreddat. unt, et consonantium quaydam insequente vocali Neque enim eximitur, sed obscuratur, et tantdm dissimulantur; utriusque exemplum posuimus; aliqua inter duos vocales velut nota est, ne ipswe Multum ille et terris. Vitatur etiam durior.m toean.-Quintilian, Institut., I. ix., c. 4, p. 585, inter se congressus, unde pelleait et collekit, ol ed'lit. Capperonier. qulla alio loc dicta sunt, 1. ii., c. 8, p. 696.

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%5(} EUROPE DURING THE MIDDLE AGES. CH'. tLA Known, tje'verieties of dialect are still these derivative laiguages from populal more striking. Now in an advancing Latin has been considerably less than it state of society, and especially with appears. In the purest ages of Latinity, such a vigorous political circulation as the citizens of Rome itself made use of we experience in England; language will many terms which we deem barbarous, constantly approximate to uniformity, as and of many idioms which we should reprovraional expressions are more and jeet as modern. That highly complicamore rejected for incorrectness or inele- ted grammar, which the best writers emgance. But where literature is on the ployed, was too elliptical and obscure, too decline, and public misfortunes contract deficient in the connecting parts of the circle of those who are soticitous speech, for general use. We cannot in about refinement, as in the last ages of deed ascertain in what degree the vulgar the Roman empire, there will be no Latin differed from that of Cicero or longer any definite standard of living Seneca. It would be highly absurd to speech, nor any general desire to con- imagine, as some are said to have done, form to it, if one could be found; and that modern Italian was spoken at Rome thus the vicious corruptions of the vulgar under Augustus.* But I believe it may will entirely predominate. The niceties be asserted, not only that much the of ancient idiom will be totally lost; greater part of those words in the preswhile new idioms will be formed out of ent language of Italy, which strike us as violations of grammar sanctoi,)ed by incapable of a Latin etymology, are in usage, which, among a civilized lpeople, fact derived from those current in the would have been proscribed at their ap- Augustan Age, but that very many pearance, phrases which offended nicer ears pre Such appears to have been the prog- vailed in the same vernacular speech, ress of corruption in the Latin language. and. have passed from thence into the The adoption of words from the Teu- modern French and Italian. Such, for tonic dialects of the barbarians, which example, was the frequent use of prepotook place very freely, would not of it- sitions, to indicate a relation between self have destroyed the character
of that two parts of a sentence which a classical language, though it sullied its purity. The writer would have made to depend on worst law Latin of the middle ages is mere inflection. still Latin, if its barbarous terms have From the difficulty of retaining a right been bent to the regulari. Inflcations. It is discrimination of tense seems to have possible, on the other hand, to write proceeded the active auxiliary verb. It whole pages of Italian, wherein every is possible that this was borrowed from word shall be of unequivocal Latin deri- the Teutonic languages of the barbarians, vation, though the character and person- and accommodated both by them and by ality, if I may so say, of the language be the natives to words of Latin origin. entirely dissimilar.. But, as I conceive, The passive auxiliary is obtained by a the loss of literature took away the only very ready resolution of any tense ir check upon arbitrary pronunciation and that mood, and has not been altogether upon erroneous grammar. Each people dispensed with even in Greek, while in innovated through caprice, imitation of Latin it is used much more frequently their neighbours, or some of those inde- It is not quite so easy to perceive th( sciable causes which dispose the or- propriety of the active habeo or teneo, gans of different nations to different one or both of which all modern lan sounds. The French melted down the guages have adopted as their auxiliaries middle consonants; the Italians omitted the final. Corruptions arising out of ig- *Tiraboschi (Storia dell. Lett. Ital., t. iii., pref. onorance were mingled with those of pro- ace, p. v.) imputes this paradox to Bembo and nunciation. It would have been marvel- Quadrio; but I can hardly believe that either of them could maintain it in a literal sense. Ious if illiterate and semi-barbarous pro- t M. Bonamy, in an essay printed in MMm. do vincials had preserved that delicate pre- l'Acad6mie des Inscriptions, t. xxiv., has produced cision in using the inflcations of tenses, several proofs of this from the classical writers on which our best scholars do not clearly agriculture and other arts, though some of his instances are not in point, as any schoolboy would attain. The common speech of any peo- have told him. This essay, which, by some acci ple whose language is highly complicated dent, had escaped my notice till I had nearly fin will be full of solecisms. The French ished the observations in my text, contains, I think, inflcations X re not comparable in number the best view that I have seen of the process of or delicacy to the Latin, and yet the vul- transition by which Latin was changed into Frenc] and Italian. Add, however, the preface to Tira gar confuse their most ordinary forms. boschi's third volume, and the thurty-second dissel But, in all probability, the variation of tation of Muratori.

Page 457 PART I.] STATE OF SOCIETY. 4i5 al conjugating the vel.. But in some Itis not improbable that Commod:anua instances this analysis is not improper; may have written in Africa, the province and it may be supposed that nations, in which, more than any, the purity of careless of etymology or correctness, Latin was debased. At the end of the applied the same verb by a rude analogy fourth century, St. Augustin assailed his to cases where it ought not strictly to old enemies, the Donatists, with nearly have been employed.* the same arms that Commodianus had Next to the changes founded on pro- wielded against heathenism. But as the. nunciation, and to the substitution of refined and various music of hexameters auxiliary verbs for inflcations, the usage was unlikely to be relished by the vulgar, of the definite and indefinite articles in he prudently adopted a different measnouns appears the most considerable step ure.* All the nations of Europe seem to in the tralnsmutation of Latin into its de- love the trochaic verse; it was frequent rivative languages. None but Latin, I on the Greek and Roman stage; it is believe, has ever wanted this part of more common than any other in the popspeech; and the defect to which custom ular poetry of modern languages. This reconciled the Romans, would be an in- proceeds from its simplicity, its livelisuperable stumbling-blockto nations who ness, and its ready accommodation to were to translate their original idiom into dancing and
music. In St. Austin's that language. A coarse expedient of poem, he united to a trochaic measure applying unus ipse or ille to the purposes the novel attraction of rhyme. of an article might perhaps be no unfre- As Africa must have lost all regard to quent vulgarism of the provincials; and the rules of measure in the fourth centuryafter the Teutonic tribes brought in their ry, so it appears that Gaul was not more own grammar, it was natural that a cor- correct in the -two next ages. A poem ruption should become universal, which addressed by Auspicius, bishop of Toul, in fact supplied a real and essential defi- to Count Arbogastes, of earlier date ciency. probably than the invasion of Clovis, That the quantity of Latin syllables is Pronuncia. neglected, or rather lost in mod- Prefatio nostra viam erranti demonstrat, tion no erl pronunciation, seems to be Respectumque bonum, cum venerit saeculi meta longer regu- generally admitted. Whether 2Eternum fieri, quod discrendat inscia corda. lated by indeed the ancient Romans, in Ego similiter erravi tempore multo, quantity. t y their ordinay speaking, distin- Fana prosequendo, parentibus insciis ipsis. g h the measure of spyllables with Abstuli me tandem inde, legendo de lege. guished the measure of syllables with Testificor Dominum, doleo, proh! civica turba such uniform musical accuracy as we Inscia quod perdit, peigens deos qunrere vanos imagine, giving a certain time to those Ob ea perdoctus ign'jros instruo verum. termed long, and exactly half that dur- Commodianus however did not keep up to this ex tion to the short, might perhaps be ques.- cellence in every part. Some of his lines are no lioned; though this was probably done, reducible to any pronunciation, without the sum mary rules of Procrustes; as for instanceor attempted to be done, by every reader Paratus ad eptlas. et refugiscere praecepta; or of poetry. Certainly, however, the laws Capillos inficitis. oculos luligine relinitis. of quantity were forgotten, and an ac- It must be owned that his text is exceedingly centual pronunciation came to predomi- corrupt, and I should not despair of seeing a truly nate, before Latin had ceased to be a liv- critical editor improve his lines into unblemished hexameters. Till this time arrives, however, we ing language. A Christian writer, named must consider him either as utterly ignorant of Commodianus, who lived before the end metrical distinctions, or at least as aware that the of the third century, according to some, populace whom he addressed did not observe them or, as others think, in the reign of Con- in speaking. Commodianus is published by Dawes at the end of his edition of Minucius Felix. Some stantinte, has left us a philologicalcurios- specimens are quoted in Harris's Philological In ity, in a series of attacks on the pagan quiries. superstitions, composed in what are * ArchTeologia, vol. xiv.. p. 188. The following meant to be verses, regulated by accent are the first lines:instead of quantity, exactly as we read Abundantia peccatorum solet fratres contabarbe; Virgil at present.t Propter hoc Dominus noster voluit nos praemonere Comparans regnum ccelorum reticulo misso in mare, * See Lanzi, Saggio della Lingua Etrusca, t. i., Congreganti multos pisces, omne genus hinc et c. 431; MWm. de l'Acad. des Inscr., t. xxiv., p. inde, 632. Quos cum traxissent ad littus, tune coeperunt sep t No description can give so adequate a notion arare, of this extraordinary performance as a short speci- Bonos in vasa miserunt, reliquos malos in mare. mnen. Take the introductory lines; which really, This trash seems below the level of Augustin prejudices of education agart, by no means in- but it could not have'en mqnch later than h1 harmonionlse - age
name) by legitimate Roman tic and vulgar style, that the reader may metre. In the next century, Gregory of be excited to imitation. Not that these Tours informs us that Chilperic attempt-legends were actually perused by the ed to write Latin verses; but the lines populace, for the very art of reading was could not be reconciled to any division confined to a few. But they were read of feet; his ignorance having confounded publicly in the churches, and probably long and short syllables together. Now with a pronunciation accommodated to Chilperic must have learned to speak the corruptions of ordinary language. Latin like other kings of the Franks, and Still the Latin syntax must have been a smatterer in several kinds of litera-tolerably understood; and we may theretore. If Chilperic therefore was not fore say that Latin had not ceased to be master of these distinctions, we may con-a living language in Gaul during the sevclude that the bishops and other Romans enth century. Faults indeed against the with whom he conversed did not observe rules of grammar, as well as unusual them; and that his blunders in versifica- idioms, perpetually occur in the best tion arose from ignorance of rules, which, writers of the Merovingian period, such however fit to be preserved in poetry, as Gregory of Tours; while charters were entirely obsolete in the living Latin drawn up by less expert scholars deviate of his age. Indeed, the frequency of false much farther from purity.T quantities in the poets even of the fifth, The corrupt provincial idiom became but much more of the sixth century, is gradually more and more dissimilar to palpable. Fortunatus is quite full of grammatical Latin; and the lingua Rothem. This seems a decisive proof that mana rustica, as the vulgar patois (to the ancient pronunciation was lost. Avi- borrow a word that I cannot well transtus tells us, even at the beginning of the late) had been called, acquired a distinct same age, that few preserved the proper character as a new language in the eighth measure of syllables in singing. Yet he century. Latinorthography, which had was Bishop of Vienne, where a purer been hitherto pretty well maintained in oronation might be expected than in books, though not always in charters, the remoter parts of Gaul.t gave way to a new spelling, conformably Defective, however, as it had become to the current pronunciation. Thus we Change of in respect of pronunciation, Lat-find lui, for illius, in the Formularies of Latin into in was still spoken in France Marculfus; and Tu lo juva in a liturgy Romance. during the sixth and seventh cen-of Charlemagne's age, for Tu illum juva. turies. We have compositions of that When this barrier was once broken time, intended for the people, in gram-down, such a deluge of innovation pormatical language. A song is still extant, ed in, that all the characteristics of Latin rhyme and loose accentual measure, in were effaced in writing as well as written upon a victory of Clotaire II. speaking, and the existence of a new over the Saxons in 622, and obviously in-language became undeniable. In a countended for circulation among the people.~cilig held at Tours in 813, the bishops are ordered to have certain homilies of the * Recueil des Historiens, t. i., p. 815; it begins e the following manner: —.n the following manner. De Clotario est canere regis Francorum, Pracelso expectabili bis Arbogasto comiti Qui ivi pugnare cum gente Saxonurn, Auspicius, qui diligo, salutem dico plurimam. Quam graviter provenisset missis Saxonum, Magnas ecelesti Domino rependo corde gratias Si non fuisset inclitus Faro de gentre BurgundiQuod te Tullensi Droxime magnum in urbe vidi- onum. M6s. * Prwecavendum est, neo ad aures populi minus Multis me tuis artibus lIetificabas antea, aliquid intelligibile proferatur.-M6m. de l'Acad., t. Sed nunc fecisti maximo me exultare gaudio. xvii., p. 712. t Chilpericus rex.... confecit duos libros, quo- t Rustico et plebeio sermone propter exemplum ram versiculi debiles nullis pedibus subsistere et imitationem, id. ibid. possunt: in quibus, dum non intelligebat, pro lon-t Hist. Littéraire de la France, t. iii., p. 5. M6m. gis syllabas breves posuit, et pro brevibus longas de l'Academie, t. xxiv., p. 617 Nouveau Traito statuebat, l. vi., c. 46. de Diplomatique, t. iv., p. 485. t M6m. de 1 Academie des Inscriptions, t. xvii. 0 Hist. Litteraire de la France, t. vii., p. 12. Hist. Litteraire de la France, t. ii., p. 28. The editors say that it is mentioned by name even Q One stanza of this song will suffice to show in the seventh
century, which is very natural, as that the Latin language was yet -inchanged.- the corruption of Latin had then become striking.

Page 459: ART I. STATE OF SOCIETY. 45b lathers ti-auslated into the rustic Roman, books had been accessible to thenl, were as well as the German tongue.* After reduced to abandon pursuits that could:his it is unnecessary to multiply proofs only be cultivated through a kind of ed of the change which Latin had; under- ucation not easily within their reach gone. Schools, confined to cathedrals and mon. In Italy, the progressive corruptions of asteries, and exclusively designed for the as corrup- the Latin language were anal- purposes of religion, afforded no encour. t ion in Ogos to those which occurred agement or opportunities to the laity.† Italy. in France, though we do not find The worst effect was, that, as the newlyin writings any unequivocal specimens formed languages were hardly made use of a new formation at so early a period. of in writing, Latin being still preserved but the old inscriptions, even of the in all legal instruments and public corre. fourth and fifth centuries, are full of sol- spondence, the very use of letters, as ecisms and corrupt orthography. In le- well as of books, was forgotten. For gal instruments under the Lombard kings, many centuries, to sum up the account the Latin inflections are indeed used, but of ignorance in a word, it was rare for a with so little regard to Propriety that it is layman, of whatever rank, to know how obvious the writers had not the slightest to sign his name.† Their charters, till tincture of grammatical knowledge. This the use of seals became general, were observation extends to a very large pro- subscribed with the mark of the cross. portion of such documents down to the Still more extraordinary it was to find twelfth century, and is as applicable to one who had any tincture of learning France and Spain as is it to Italy. In Even admitting every indistinct comthese charters the peculiar characteris- mendation of a monkish biographer (with tics of Italian orthography and grammar whom a knowledge of church-music frequently appear. Thus we find, in the would pass for literature).T we could eighth century, diveatis for debeatis, da make out a very short list of scholars. for de in the ablative, avendi for habendi, None certainly were more distinguished dava for dabat, cedo a deo, and ad eccle- as such than Charlemagne and Alfred. sia, among many similar corruptions.† But the former, unless we reject a very Latin was so changed, it is said by a plain testimony, was incapable of wri writer of Charlemagne's age, that scarce- ting;— and Alfred found difficulty in ma ly any part of it was popularly known. king a translation from the pastoral in Italy indeed had suffered more than struction of St. Gregory, on account of France itself by invasion, and was re- his imperfect knowledge of Latin. Il duced to a lower state of barbarism. Whatever mention, therefore, we find though probably from the greater dis- of learning and the learned during these tinctness of pronunciation habitual to the Italians, they lost less of their original * Histoire Litteraire de la France, t. vi., p. 20 language than the French. I do not Muratori, Dissert. xliii. t Nouveau Traité de Diplomatique, t. ii., p. 419. find, however, in the writers who. have This became, the editors say, much less unusual treated this subject, any express evi- about the end of the thirteenth century; a pretty dence of a vulgar language distinct from late period! A few signatures to deeds appear in Latin earlier than the close of the tenth the fourteenth century; in the next they are more frequent.—Ibid. The emperor Frederick Barbacentury, when it is said in the epitaph of rossa could not read (Struvius, Corpus Hist. Ger Pope Gregory V., who died in 999, that man., t. i., p. 377), nor John, king of Bohemia, in the he instructed the people in three dialects; middle of the fourteenth century (Sismondi, t. v., -the Frankish or German, the vulgar, p. 205), nor Philip the Hardy, king of France, al and the Latin. though the son of St. Louis.—(Velly, t. vi., p and the Latin.+ 426.) When Latin had thus ceased to be a t Louis IV., king of France, laughing at Fulk; Ignorance living language, the whole treas- count of Anjou, who sang anthems among the
conce-ury of knowledge was locked up choristers at Tours, received the following pithy quent from the eyes of the people, epistle from his learned vassal: Noveritis, domine, the dis-e o quod rex illiteratus est asinus coronatus. Gesto use of Thefew who might have im- Comitu n Andegavensis. In the same bookt Latin. bided a taste for literature, if Geoffrey, father of our Henry II., is said to be op time literatus; which perhaps imports little more. * Mem. de l'Acad. des Insc., t. xvii. See two learning than his ancestor Fulk possessed. Mem:)irs in this volume by Du C]os and Le Bceuf, { The passage in Eginhard which has occa especially the latter, as well as that already men- sioned so much dispute speaks for itself: Tenta tioned in t. xxiv., p. 582, by M. Bonamy. bat et scribere, tabulasque et codicillos ad hoc in t Muratori, Dissert. i. and xliii. lecticula sub cervicalibus circumferre solebat, ut, § Usus Francisca, vulgari, et voce Latina cum vacuum tempus esset, manum effigisndis lit Institutit populos eloquio triplici. eris assuefaceret; sed parum prospere successit Fontanini dell' Eloquenza Italiana, p. 15. Mu- labor preposterus ac ser6 inchoatus. Patori, Dissert. xxxii. 11 Spelmnan, Vit. Alfred., Append.

Page 460 EUROPE DURING THE MIDD.AE AGES. t[ur~. Ir dark aoes. must be understood to relate of a thousand in Spain, about the age o1 only to such as were within the pale of Charlemagne, could address address a commor clergy, which indeed was -pretty ex- letter of salutation to another.* In Eng tenseive, and comprehended many who land, Alfred declares that he could no. did not exercise the offices of religious recollect a single priest south of the ministry. But even the clergy were, Thames (the most civilized part of Eng (br a long period, not very materially su- land), at the time of his accession, who 3erior, as a body, to the uninstructed la- understood the ordinary prayers, or could ty. An inconceivable cloud of igno- translate Latin into his mother tongue.:ance overspread the whole face of the Nor was this better in the time of DunThurch, hardly broken by a few glimmer- stan, when, it is said, none of the clergy ing lights, who owe almost the whole of knew how to write or translate a Latin their distinction to the surrounding dark- letter.T The homilies which they preachness. In the sixth century, the best wri- ed were compiled for their use by some ters in Latin were scarcely read;' and bishops, from former works of the same perhaps from the middle of this age to kind, or the writings of the fathers. the eleventh, there was, in a general This universal ignorance was renderview of literature, little difference to be ed unavoidable, among other Scarcityof discerned. If we look more accurately, causes, by the scarcity of books, books. there will appear certain gradual shades which could only be procured at an imof twilight on each side of the greatest mense price. From the conquest of Alobscurity. France reached her lowest exandria by the Saracens at the beginpoint at the beginning of the eighth cen- ning of the seventh century, when the tury; but England was at that time more Egyptian papyrus almost ceased to be respec(table, and did not fall into complete imported into Europe, to the close of the degradation till the middle of the ninth. tenth, about which time the art of maThere could be nothing more deplorable king paper from cotton rags seems to have t.hn the state of letters in Italy and in been introduced, there were no materials England during the succeeding century; for writing except parchment, a subout France seems to have been uniform- stance too expensive to be readily spared ty, though very slowly, progressive from for mere purposes of literature.~ Hence the time of Charlemagne.t t P Of this prevailing ignorance it is easy * Mabillon, De Re Diplomatics, p. 55. to produce abundant testimony. Con- t Spelman, Vit. Alfred., Append. The whole drift of Alfred's preface to this translation is to detracts were made verbally, for want of fend the expediency of rendering books into Eng notaries capable of drawing up charters; lish, on account of the general ignorance of Latin. and these, when written, were frequently The zeal which this excellent prince shows for lit. barbarous and ungrammatical to an in- erature is delightful. Let us endeavour, he says, credible degree. or
some considerable that all the English youth, especially the children of those who are freeborn, and can educate them intervals scarcely any monumenf of lit- may learn to read English before they take to any erature has been preserved, except a few employment. Afterward, such as please may be jejune chronicles, the vilest legends of instructed in Latin. Before the Danish invasion saints, or verses equally destitute of spirit indeed, he tells us, churches were well furnished siwit books; but the priests got little good from and metre. In almost every council, the them, being written in a foreign language which ignorance of the clergy forms a subject they could not understand. for reproach. It is asserted, by one held J Mabilloii, De Re Diplomatica, p. 55. Ordeti. in 992, that scarcely a single person was cus Vitalis, a more candid judge of our unfortu. to be found in Roxme itself who knew the nate ancestors than other contemporary annalists, ne e says, that the English were, at the conquest, rude first elements of letters. T Not one priest and almost illiterate, which he ascribes to the Danish invasion.-Du Chesne, Hist. Norm. Script., + Hist. Littéraire de la France, t. iii., p. 5. p. 518. However, Ingulfus tells us, that the libraThese four dark centuries, the eighth, ninth, ry of Croyland contained above three hundred vol. tenth, and eleventh, occupy five large quarto vol- umes, till the unfortunate fire that destroyed that umes of the Literaiy History of France, by the abbey in 1091. —Gale, xv. Scriptores, t. i., 93. fathers of St. Maur. But the most useful part Such a library was very extraordinary in the elevwill be found in the general view at the coin- enth century, and could not have been equalled for mencement of each volume; the remainder is ta- some ages afterward. Ingulfus mentions at the ken up with biographies, into which the reader same time a nadir, as he calls it, or planetarium, may dive at random, and sometimes bring up a cu- executed in various metals. This had been preriuous fact. sented to Abbot Turketul in the tenth century by a Tiraboschi, Storia della Letteratura, t. iii., and king of France, and was, I make no doubt, of Ara. MIuratorl's forty-third Dissertation, are good au- thorsities for the condition of letters in Italy; but I ~ Parchment was so scarce that none could be cannot easily give references to al.;he books procured about 1120 for an illuminated copy of the which I have consulted. Bible.-Warton's Hist. of English Poetry, Dissert. I Tiraboschi, t, iii., p 1Q9, II I suppose the deficiency was of skins beautifu
needed not to be invigorated and a number of inferior names, become by the imitation of antiquity. But the real giants of learning in their uncrirical memory of Greece and Rome would panegyrics. But one might justly say, have been feebly preserved by tradition. that ignorance is the smallest defect of and the monuments of those nations the writers of these dark ages. Several might have excited, on the return of cives of them were tolerably acquainted with ilization, that vague sentiment of speccubooks; but that wherein they are uni- lation and wonder with which men now formly deficient is original argument or contemplate Persepolis or the Pyramids. expression. Almost every one is a com- It is not, however, from religion simply piler of scraps from the fathers, or from that we have derived this advantage, but such semi-classical authors as Boethius, from religion as it was modified in the Cassiodorus, or Martianus Capella.* In- dark ages. Such is the complex recipro deed I am not aware that there appeared cation of good and evil in the dispensamore than two really considerable men tions of Providence, that we may assert, with only an apparent paradox, that, had enough for this purpose; it cannot be meant that religion been more pure, it would have there was no parchment for legal instruments. been less permanent, and that ChristianManuscripts written on papyrus, as may be sup- ity has been preserved by means of its posed from the fragility of the material, as well as corruptions. The sole hope for literature the difficulty of procuring it, are of extreme rarity. depended on the Latin language; and I That in the British Museum, being a charter to a church at Ravenna in 572, is in every respect the do not see why that should not have most curious; and indeed both Mabillon and Mu- been lost, if three circumstances in the ratori seem never to have seen any thing written prevailing religious system, all of which on papyrus; though they trace its occasional use we are justly accustomed to disapprove, down to the eleventh or twelfth centuries. —Mabil- had not conspired to maintain it; the Ion, De Re Diploniatica, I. ii. Muratori, Antichita Italiane, Dissert. xliii., p. 602. But the authors of papal supremacy, the monastic instituthe Nouveau Traité de Diplomatique speak of sev- tions, and the use of a Latin liturgy. 1. era. manuscripts on this material as extant in A continual intercourse was kept up in France and Italy.-T. i., p. 493. consequence of the first, between Rome As to the general scarcity and high price of books and the several nations of europe; her in the middle ages, Robertson (Introduction to Hist. and the several nations of Europe; he Charles V., note x.) and Warton, in the above cited laws were received by the bishops, her dissertation, not to quote authors less accessible, legates presided in counc:ls; so that a have collected some of the leading facts; to whom I refer the reader. * John Scotus, who, it is almost needless to say * Lest I should seem to have spoken too per- must not be confounded with the still more famous emptorily, I wish it to be understood that I pre- metaphysician Duns Scotus, lived under Charles tend to hardly any direct acquaintance with these the Bald, in the middle of the ninth century. Sil writ.rs, and found my censure on the authority of vester II. died in 1003. Whether he first brought others, chiefly indeed on the admissions of those the Arabic numeration into Europe. as has been who are too disposed to.all into a strain of pane- commonly said, seems uncertain; it was at least gyr-See Hlstolro Littgraire de la France, t. iv., not much practised for some centuries after his p. 281 et alibi. death.
or like foul animals of night, were tions. of a convent. The monasteries were propagated and nourished. It would be subjected to strict rules of discipline, and very unsatisfactory to exhibit a few spe. held out, at the worst, more opportunii cinens of this odious brood, when the ties for study than the secular clergy pos- real character of those times is only to sessed, and fewer for worldly dissipa- be judged by their accumulated multitions. But their most important service tude. In every age, it would be easy to was as secure repositories for books. select proofs of irrational superstition, All our manuscripts have been preserved which, separately considered, seem to in this manner, and could hardly have degrade mankind from its level in the descended us by any other channel; creation; and perhaps the contemporaat least there were intervals when I do ries of Swedeborg and Southcote have not conceive that any royal or private no right to look very contemptuously libraries existed. 3. Monasteries, how- upon the fanaticism of their ancestors. ever, would probably have contributed There are many books from which a suf very little towards the preservation of fecient number of instances may be collelating, if the Scriptures and the liturgy lected to show the absurdity and ignohad been translated out of Latin when rance of the middle ages in this respect. that language ceased to be intelligible. I shall only mention two, as affording Every rational principle of religious wor- more general evidence than any local or ship called for such a change; but it obscure superstition. In the tenth cen would have been made at the expense of tury, an opinion prevailed everywhere posterity. One might presume, if such that the end of the world was approachrefined conjectures were consistent with ing. Many charters begin with these historical caution, that the more learn-words: " As the world is now drawing to ed and sagacious ecclesiastics of those its close." An army marching under the times, deploing the gradual corruption Emperor Otho I. was so terrified by an of the Latin tongue, and the danger of its eclipse of the sun, which it conceived to absolute extinction, were induced to main- announce this consummation, as to distain it as a sacred language, and the de- perse hastily on all sides. As this notion positary, as it were, of that truth and that seems to have been founded on some science which would be lost in the bar- confused theory of the millennium, it nat. barous dialects of the vulgar. But a sim- urally died away when the seasons propper explanation is found in the radical ceded in the eleventh century with their dislike of innovation which is natural to usual regularity.* A far more remarkaan established clergy. Nor did they want ble and permanent superstition was the as good pretexts, on the ground of conve- appeal to heaven In judicial controvernience, as are commonly alleged by the sies, whether through the means of comopponents of reform. They were habit- bat or of ordeal. The principle of these uated to the Latin words of the church- was the same; but in the former, it was service, which had become, by this as- mingled with feelings independent of resociation, the readiest instruments of de- ligion; the natural dictates of resentment votion, and with the majesty of which in a brave man unjustly accused, and the the Romance jargon could bear no com- sympathy of a warlike people with the parison. Their musical chants were display of skill and intrepidity. These, adapted to these sounds, and their hymns in course of time, almost obliterated the depended for metrical effect on the primary character of judicial combat, and marked accents and powerful rhymes ultimately changed it into the modern which the Latin language affords. The duel, in which assuredly there is no mixvulgate Latin of the Bible was still more ture of superstition.t But, in the various venerable. It was like a copy of a lost original; and a copy attested by one of * Robertson, Introduction to Hist. Charles V. the mnost eminent fathers, and by the gen- note 13. Schmidt, Hist. des Allemands, t. ii., p eral consent of the church. These are 380. Hist. Littdraire de la France, t. vi. t Duelling, in the modern sense of the word, ex certainly no adequate excuses for keep- elusive of casual frays and single combat during ing the T eople:.nr ignC-ance; an(d the war, was unknown before the sixteenth century
463 tests of innocence which were called or- But
the religious igEnoia-ice of the middeals, this stood undisguised and unqual- dle ages
sometimes burst out in Enthusias tfied. It is not necessary to describe ebullitions of epidemical enthe- tic risings what is so well known; the ceremonies siasm, more remarkable than these su
of trial by handling hot iron, by plunging perstititious usages, though proceeding iL he arm into
boiling fluids, by floating or fact from similar causes. For enthusi. sinking in cold water, or by
swallowing asm is little else than superstition put in a piece of consecrated bread. It is ob-
motion, and is equally founded on a strong servable that, as the interference of conviction of
supernatural agency withHeaven was relied upon as a matter of out any just conception of its
nature. course, it seems to have been reckoned Nor has any denomination of Christians nearly
indifferent, whether such a test was produced, or even sanctioned, more faadopted as must,
humanly considered, ab- naticism than the church of Rome.* solve all the guilty, or one that
must con- These epidemical phrensies, however, viet all the innocent. The ordeals of hot to
which I am alluding, were merely tuiron or water were, however, more com- multuous, though
certainly fostered by monly used; and it has been a perplex- the creed of perpetual miracles,
which ing question, by what dexterity these tre- the clergy inculcated, and drawing a mendous
proofs were eluded. They seem legitimate precedent for religious insurat least to have placed
the decision of rection from the crusades. For these, all judicial controversies in the hands of
among their other evil consequences, the clergy, who must have known the seem to have have
principally excited a wild secret, whatever that might be, of sat- fanaticism that did not sleep
for several isfying the spectators that an accused centuries.t person had held a mass of burning
iron The first conspicuous appearance of it with impunity. For several centuries this was in the
reign of Philip Augustus, when mode of investigation was in great re- the mercenary troops,
dismissed from pute, though not without opposition from the pay of that prince and of Henry
II., some eminent bishops. It does discredit committed the greatest outrages in the to the
memory of Charlemagne that he south of France. One Durand, a carpenwas one of its warmest
advocates.* But ter, deluded, it is said, by a contrived apthe judicial combat, which indeed
might pearance of the Virgin, put himself at the be reckoned one species of ordeal, grad- head
of an army of the populace, in orially put an end to the rest; and as the der to destroy these
marauders. His church acquired better notions of law, and a code of her own, she strenuously
to explain them. For example, a writer in the Ar exerted herself against all these barba-chaeologia, vol. xv., p. 172, has shown that Emma, rcus superstitions.t queen of Edward the
Confessor, did not perform her trial by stepping between, as Blackstone ima But we find one
anecdote, which seems to illus- gines, but upon nine redhot ploughshares. But trate its
derivation from the judicial combat. The he seems not aware that the whole story is
unsupdukes of Lancaster and Brunswick, having some ported by any contemporary or even
respectable differences, agreed to decide them by duel before testimony. A similar anecdote is
related of Cune-.Tohn, king of France. The lists were prepared gunda, wife of the Emperor
Henry II., which probwith the solemnity of a real trial by battle; but ably gave rise to that of
Emma. There are, how the king interfered to prevent the engagement.- ever, medicaments, as is
well known, that protect Villaret, t. ix., p. 71. The barbarous practice of the skin to a certain
degree against the effect of wearing swords as a part of domestic dress, which fire. This
phenomenon would pass for miracu tended very much to the frequency of duelling, lous, and
form the basis of those exaggerated stot was not introduced till the latter part of the fif- ries in
monkish books. teenth century. I can only find one print in * Besides the original lives of
popish saints, and Montfaucon's Monuments of the French monar- especially that of St. Francis
in Wadding's Annales chy where a sword is worn without armour before Minorum, the reader
will find amusement in Bishop the reign of Charles VIII.: though a few, as early Lavington's
Enthusiasm of Methodists and Papists as the reign of Charles VI., have short daggers in compared. their girdles. The exception is a figure of Charles the Debonair, a man, as I have noticed in posed of children, and commanded by a child, set another place, not inferior, as a legislator, to his out for the purpose of recovering the Holy Land father, ibid., p. 668. They came for the most part from Germany, and Ordeals were not actually abolished in France, reached Genoa without harm. But finding there notwithstanding the law of Louis above mention- an obstacle which their imperfect knowledge of ed, so late as the eleventh century.-Bouquet, t. geography had not anticipated, they soon disPersed ni., p. 430; nor in England till the reign of Hen- in various directions. Thirty thousand arrived al

III. Some of the stories we read, wherein ac- Marseilles, where part were murdered, part proba cused persons have passed triumphantly through bly starved, and the rest sold to the Saracens.taese severe proofs, are perplexing enough: and Annali di Muratori, A D. 1211. Velly, Hist. de perhaps it is safer, as wel? as easier to deny than France, t. iv., p. 20;fi

Page 464 064 EUROPE DURING THE MIDDLE AGES. ("tHAp. IX "ollowcrs vere styled Brethren of the entirely confined to it, there twere exam White Caps, from the linen coverings of ples in the middle ages of an epidemica:hetr heads. They bound themselves not religious lunacy, from which no clas, to play at dice, nor frequent taverns; to was exempt. One of these occumee wear no affected clothing, to avoid per- about the year 1260, when a multitude jury and vain swearing. After some of every rank, age, and sex, marching twc successes over the plunderers, they went by two in procession along the streets so far as to forbid the lords to take any and public roads, mingled groans and dues from their vassals, on pain of incur- dolorous hymns with the sound of leath. ring the indignation of the brotherhood. ern scourges which they exercised upon It may easily be imagined that they were their naked backs. From this mark of soon entirely discomfited, so that no one penitence, which, as it bears at least all dared to own that he had belonged to the appearance of sincerity, is not unthem. * common in the church of Rome, they During the captivity of St. Louis in acquired the name of Flagellants. Their Egypt, a more extensive and terrible fer- career began, it is said, at Perugia, whence inent broke out in Flanders, and spread they spread over the rest of Italy, and from thence over great part of France. into Germany and Poland. As this sponAn impostor declared himself commis- taneous fanaticism met with no encourence by the Virgin to preach a crusade, agement from the church, and was prm.. not to the rich and noble, who, for their dently discountenanced by the civil mapride, had been rejected of God, but the gistrate, it died away in a very short poor. His disciples were called Pastou- time.* But it is more surprising, that, reaux, the simplicity of shepherds having after almost a century and a half of exposed them more readily to this delu- continual improvement and illumination, sion. In a short time they were swelled another irruption of popular extravagance:y the confluence of abundant streams to burst out under circumstances exceeding. a moving mass of a hundred thousand ly similar.t In the month of August, men, divided into companies, with ban- 1399, says a contemporary historian, ners bearing a; cross and a lamb, and there appeared all over Italy a descrip2om nmanded by the impostor's lieuten- tion of persons called Bianchi, from the ants. He assumed a priestly character, white linen vestments that they wore. preaching, absolving, annulling marriages. They passed from province to province, At Amiens, Bourges, Orleans, and Paris and from city to city, crying out Miseri-.itself, he was received as a divine prophet. cordia! with their faces covered and Even the regent Blanche, for a time, was bent towards the ground, and bearing led away by the popular tide. His main before them a great crucifix. Their contopic was reproach
of the clergy for their stant song was, Stabat Mater dolorosa idleness and corruption, a theme well. This lasted three months; and whoever adapted to the ears of the people, who did not attend their procession was rehah long been uttering similar strains of puted a heretic. Almost every Italian complaint. In some towns his followers writer of the time takes notice of these massacred the priests and plundered the Bianchi; and Muratori ascribes a remonasteries. The government at length markable reformation of manners (though began to exert itself; and the public sen- certainly a very transient one) to their timent turning against the authors of so influence.} Nor were they confined to much confusion, this rabble was put to the Italy, though no such meritorious exersword or dissipated. Seventy years af- tions are reputed to them in other counterward, an insurrection almost exactly tries. In France, their practice of covparallel to this burst out under the same pretence of a crusade. These insurgents * Velly, t. v., p. 279. Du Cange, Verberatio. too bore the name of Pastoureaux, and Gr t. Something of a similar kind is mentioned by too bore the name of Pastoureaux, and G. Villani, under the year 1310, 1. viii., c. 122. their short career was distinguished by a G Annal. Mediolan. in Murat. Script. Rer. Ital., general massacre of the Jews.T t. xvi., p. 832. G. Stella, Ann. Genuens., t. xvii., p But though the contagion of fanaticism 1072. Chron. Foroliviense, t. xix., p. 874. Ann. spreads much more rapidly among the Bonincontri, t. xx., p. 79. populace, and in moderr. times is almost ~ Dissert. 75. Sudden transitions from profli. gate to austere manners were so common among individuals, that we cannot be surprised at theii ~ Velly, t. iii., p, 295. Du Cange, v. Capuciati. sometimes becoming in a manner national. Aza t Id., Hist. de France, t. v., p. 7. Du Cange, v. rius, a chronicler of Milan, after describing the al t'ast.orielli. most incredible dissoluteness of Pavia, gives an ac. I II., t. viii., p. 99. The continuator of Nangis count of an instantaneous reformation wrought b] ways, sicur fumus suti5 eva. lut tota illa commotio. the preaching of a certain friar This was abom SDicilegium, t iii., o. 77 1360 -Script. Rer. Ital, t. xvi., p. 37.5
those the delusion to such an enormous pitch, times, on the contrary, they appeared that it was as difficult to trace, we may only as perpetual intercessors, so goodsay without exaggeration, the real reli- natured and so powerful, that a sinner gion of the Gospel in the popular belief was more emphatically foolish than he is of the laity, as the real history of Charle- usually represented, if he failed to secure magne in the romance of Turpin. It himself against any bad consequence-. must not be supposed that these absurd- For a little attention to the saints, and ities were produced, as well as nour- especially to the Virgin, with due liberalised, by ignorance. In most cases they ity to their servants, had saved, we would were the work of deliberate imposture. be told, so many of the most atrocious Every cathedral or monastery had its delinquents, that he might equitably pretutelar saint, and every saint his legend, sume upon similar luck in his own case. fabricated in order to enrich the church- This monstrous superstition grew to es under his protection, by exaggerating its height in the twelfth century. For his virtues, his miracles, and consequent- the advance that learning then made was ly his power of serving those who paid by no means sufficient to counteract the liberally for his patronage. T Many of vast increase of monasteries, and the opthose saints were imaginary persons; portunities which the greater cultivation sometimes a blundered inscription added of modern languages afforded for the difa name to the calendar; and sometimes, fusion of legendary tales. It was now it is said, a heathen god was surprised at too that the veneration paid to the Virgirn, tha company to which he was introduced, in early times very great, rose to an aiand the rites with which he was honour- most exclusive idolatry. It is difficult to ad.~ conceive the stupid absurdity, and the It would not be consonant to the na- disgusting profaneness of those stories, Mischiefes ture of the present work, to which were invented by the monks to do arising from dwell upon the erroneousness her honour. A few examples have been thrown into a note.* * Villaret, t. xii., p. 327. t Rot. Parl., v. iii., p. 428. * Le Grand d'Aussy has given us, in the fifth vol $ This is confessed by the authors of Histoire ume of his Fabliaux, several of the religious tales Litteraire de la France, t. ii., p. 4, and indeed by which the monks endeavoured to withdraw the many Catholic writers. I need not quote Mo- people from romances of chivalry. The following sheim, who more than confirms every word of my specimens will a:. undantly confirm my assertions text. which may perhaps appear harsh and extravagant M liddleton's Letter from Rome. If some of to the reader. ou0r eloquent countrymen's positions should be dis- There was a man whose occupation was highputed, there are still abundant Catholic testimo- way robbery; but, whenever he set out on any such nies, thatimagineant saints have been canonized. expedition, he was careful to address a playei ta Cg
executioner was compelled to release the religious ethics of the middle ages; his victim, acknowledging the miracle. The thief and, in the relief of indigence, it may, retired into a monastery, which is always the ter- upon the whole, be asserted, that the initiation of these del;verances. on b srt th e At the monastery ox St. Peter, near Cologne, monks did not fall short of their profeslived a monk perfectly dissolute and irreligious, sion.* This eleemosynary spirit, indeed, but very devout towards the Apostle. Unluckily, remarkably distinguishes both Christianhe died suddenly without confession. The fiends ity and Mahometanism from the moral came as usual to seize his soul. St. Peter. vexed at losing so faithful a votary, besought God to ad-systems of Greece and Rome, which mit the monk into Paradise. His prayer was re- were very deficient in general humanity fused, and though the whole body of saints, apos- and sympathy with suffering. Nor do we ties, angels, and martyrs joined at his request to find in any single instance during ancient make interest, it was of no avail. In this extremit- times, if mistake not, those public inty he had recourse to the Mother of God. " Fair i f I mistake n ot, t hose public inlady," he said, " my monk is lost if you do not in- stitutions for the alleviation of human terfere for him; but what is impossible for us will miseries, which have long been scattered be but sport to you, if you please to assist us. Your over every part of Europe. The virtues s(,.l, if you but speak a word, must yield, since it is of the monks assumed a still higher char. in your power to command him." The Queen ater stood Mother assented, and, followed by all the virgins, acter when they stood forward as promoved towards her Son. He who had himself tectors of the oppressed. By an estab. given the precept, Honour thy father and thy moth- lished law, founded on very ancient su. - er, no sooner saw his own parent approach, than he perstition, the precincts of a church af. lose to receive her; and, taking her hand, forced sanctuary to accused persons, inquired her wishes. The rest may be easily con- Unde jectured. Compare the gross stupidity, or rather Under a due administration of justice, the atrocious impiety of this tale, with the pure the- this privilege would have been simply ism of the Arabian Nights, and judge whether the and constantly mischievous, as we prop. Deity was better worshipped at Cologne or at Bag. erly consider it to be in those countries dad. where it still subsists. But in the rapine It is unnecessary to multiply instances of this where it still subsists. But in the rapine kind. In one tale the Virgin takes the shape of a and tumult of the middle ages, the right nun, who had eloped from the convent, and per- of sanctuary might as often be a shield forms her duties ten years, till, tired of a liber- to innocence as an immunity to crime. tine life, she returns unsuspected. This was in We can hardly regret, in reflecting on the consideration of her having never omitted to say desolating iolence which prevailed, that an Ave as she passed the Virgin's image. In an- desolatig volencewhich prevailed, that other, a gentleman, in love with a handsome widow, consents, at the instigation of a sorcerer, to but saved by a donation he had formerly made to renounce God and the saints, but cannot be per- the Virgin, p. 290. suaded to give up the Virgin, well knowing that, * I am inclined to acquiesce in this general if he kept her his friend, he should obtain pardon )pinion; yet an account of expenses at Bolton through her means. Accordingly, she inspired his Abbey, about the reign of Edward II., published in mistress with so much passion, that he married Whitaker's History of Craven, p. 51, makes a very her within a few days. scanty show of almsgiving in this opulent monas. These tales, it may be said, were the production tery. Much, however, was no doubt given in rict of ignorant men, and circulated among the popu- uals. But it is a strange error to conceive that lace: Certainly they would have excited contempt English monasteries before the dissolution fed the and indignation in the more enlightened clergy. indigent part of the nation, and gave that genetII But I am concerned with the general character of relief which the poor-laws are intended to afford. religious notions among the people'; and for this Piers Plowman is indeed a satirist; but lie it is better to take such popular compositions, plainlycharges the monks with ant of charity. adapt-d to what the laity already believed, than
Little had lordes to do to give landes from theli the writings of comparatively learned andt reflect- heires, ing men. However, stories of the same cast are To religious that have no ruthe though it lain or freouert in the monkish historians. Matthew Par- their aultres; is, one of the most respectable of that class, and In niany places there the parsons be themself at no friend to the covetousness or relaxed lives of ease, *the priesthood, tells us of a knight who was on the Of the poor they have no pitie, and that is thme woint of being danined for frequenting tournamer ts, poor charitie.

Page 467 'h., j STRAT.E -F SOCIETY. 67 thel. should Ila ze been some green spots communities, as well as individuals, to in th., wilderness, where the feeble and whom none of these reproaches would the persecuted could find refuge. How apply. In the very best view, however, must this right have enhanced the ven- that can be taken of monasteries, their eration for religious institutions! How existence is deeply injurious to the gengladly must the victims of internal war- ural morals of a nation. They withdraw fare have turned their eyes from the men of pure conduct and conscientious sanc- filled in retirement; but, in the strict tenancy was never withheld. A son of rules of monastic life, and under the inChilperic, king of France, having fled to fluence of a grovelling superstition, their that of Tours, his father threatened to virtue lost all its usefulness. They fell ravage all the lands of the church unless implicitly into the snares of crafty priests, they gave him up. Gregory, the histo- who made submission to the church not rian, bishop of the city, replied in the only the condition, but the measure of all name of his clergy, that Christians could praise. He is a good Christian, says not be guilty of an act unheard of among Eligius, a saint of the seventh century, pagans. The king was as good as his who comes frequently to church; who word, and did not spare the estate of the presents an oblation that it may be ofchurch, but dared not infringe its privi- fered to God on the altar; who does not leges. He had indeed previously ad- taste the fruits of his land tillhe has condensed a letter to St. Martin, which was secrated a part of them to God; who can laid on his tomb in the church, request- repeat the Creed or the Lord's Prayer. ing permission to take away his son by Redeem your souls from punishment force; but the honest saint returned no while it is in your power; offer presents answer.* and tithes to churches, light candles in The virtues, indeed, or supposed vir- holly places as much as you can afford, Vices of the tues, which had induced a cred- come more frequently to church, implore monks and ulous generation to enrich so the protection of the saints; for, if you clergy. many of the monastic orders, observe these things, you may come with were not long preserved. We must re- security at the day of judgment to say, ict, in the excess of our candour, all Give unto us, Lord, for we have given testimonies that the middle ages present, unto thee.* from the solemn declaration of councils, and reports of judicial inquiry, to the gian of considerable eminence at the beginning of casual evidence of common fame in the the fifteenth century, speaks of nunneries in the.casual evidence of common famae in the following terms: Quid aliud sunt hoc tempore ballad or romance, if we would extenu- puellarum monasteria, nisi qumadam non dico Dei ate the general corruption of those insti- Sanctuarium, sed Veneris exeracta prostitula, sed tutions. In vain new rules of discipline lascivorum et impudicorum juvenum ad libidines were devised, or the old corrected by reexplendas receptacula' ut idem sit hodie puellam elare, quod et public6 ad scortandum exposere.forms. Many of their worst vices grew William Prynne, from whose records, vol. ii.,
p. so naturally out of their mode of life, that 229, I have taken this passage, quotes it on occaa stricter discipline could have no ten- sion of a charter of King John, banishing thirty dency to extirpate them. Such were the nuns of Ambresbury into different convents, prop. frauds I have already noticed, and the ter vita su c turpitudinem. * Mosheim, cent. vii., c. 3. Robertson has whole scheme of hypocritical austerities. quoted this passage, to whom perhaps I am immeTheir extreme licentiousness was some- diately indebted for it.-Hist. Charles V., vol. i., times hardly concealed by the cowl of note 11. sanctity. I know not by what, right we I leave this passage as it stood in former editions. But it is due to justice that this extract should disbelieve the reports of the visit- from Eligius should never be quoted in future, as ation under Henry VIII., entering as they the translator of Mosheim has induced Robertson do into a multitude of specific charges, and many others, as well as myself, tc do. Dr. both probable in their nature and conso- Lingard has pointed out tha- it is a very imperieic; nant to the unanimous opinion of the representation of what'Eligius has written; for though he has dwelled on these devotional prac world.t Doubtless there were many tices as parts of the definition of a good Christian he certainly adds a great deal more to'which no FSchmidt, Hist. des Allemar.ds, t. i., p. 374. one could object. Yet no one is in fact to blame t See Fosbrooke's British n.onachism, vol. i., for this misrepresentation, which, being contained p 127, and vol. ii..p. 8, for a farrago of evidence in popular books, has. gone forth so widely. Moagainst the monks. Clemangis Drench theolo- sheim, as will appear on referring to him, did An G g-2

Page 468 t68 EUROPE DURING THE MIDDLE AGES. [CHAP. I1 With such a defini on of the Christian in comparison with just opinions ix character, it is not surprising that any speculative points. On the other hand: fraud and injustice became honourable vices are forgiven to those who are zeal. when it contributed to the riches of the ous in the faith. I speak too gently, and clergy and glory of their order. Their with a view to later times; in treating frauds, however, were less atrocious than of the dark ages, it would be more cor. the savage bigotry with which they main- rect to say that crimes were commelndtained their own system and infected the ed. Thus Gregory of Tours, a saint of laity. In Saxony, Poland, Lithuania, and the church, after relating a most atrothe countries on the Baltic Sea, a san- cious story of Clovis, the murder of a guinary persecution extirpated the origi- prince whom he had previously instiganal idolatry. The Jews were every- ted to parricide, continues the sentence: where the objects of popular insult and " For God daily subdued his enemies to oppression, frequently of a general mas- his hand, and increased his kingdom; sacre, though protected, it must be con- because he walked before him in uprightfessed, by the laws of the church, as well ness, and did what was pleasing in his as, in general, by temporal princes.* Of eyes."-* the crusades it is only necessary to re- It is a frequent complaint of ecclesias. peat, that they began in a tremendous tical writers, that the rigorous Commuta eruption of fanaticism, and ceased only penances, imposed by the prim- tionof because that spirit could not be constant- itive canons upon delinquents, penances. ly kept alive. A similar influence pro- were commuted in a laxer state of dis. duced the devastation of Languedoc, the cipline for less severe atonements, and stakes and scaffolds of the Inquisition, ultimately indeed for money.t Wemust and rooted in the religious theory of Eu- not, however, regret that the clergy r.)pe those maxims of intolerance which should have lost the power of compelling i; has so slowly, and still, perhaps, so im- men to abstain fifteen years from cating perfectly, renounced. meat, or to stand exposed.o public de From no other cause are the dictates rision at the gates of a church. Such of sound reason and the moral sense of implicit submissiveness could only have mankind more confused than by this nar- produced superstition and hypocrisy row theological bigotry. For as it must among the laity, and prepared the road often happen that men, to whom the ar -for a
tyranny not less oppressive than ruggance of a prevailing faction imputes that of India or ancient Egypt. Indeed, religious error, are exemplary for their the two earliest instances of ecclesiastical performance of moral duties, these vir- cal interference with the rights of sovtes gradually cease to make their ereigns, namely, the deposition of Wamproper impression, and are depreciated ha in Spain, and that of Louis the Deboby the rigidly orthodox, as of little value nair, were founded upon this austere system of penitence. But it is true that a quote the passage as containing a complete defini- repentance redeemed by money, or portion of the Christian character. His translator, Maclaine, mistook this, and wrote, in consequence, * Greg. Tur., 1. ii., c. 40. Of Theodebert, the severe note which Robertson has copied. I grandson of Clovis, the same historian says, mag have seen the whole passage in D'Archery's Spici- num et in omni bonitate praecipuum reddidit. In legium (vol. v., p. 213, 4to. edit.), and can testify the next paragraph we find a story of his having that Dr. Lingard is perfectly correct. Upon the two wives, and looking so tenderly on the daughwhole, this is a striking proof how dangerous it is ter of one of them, that her mother tossed her over to take any authorities at second hand.-Note to a bridge into the river, 1. iii., c. 25. This indeed iu Fourth Edition. a trifle to the passage in the text. There are con * Mr. Turner has collected many curious facts in real proofs of immorality in the monkish historyrelative to the condition of the Jews, especially in ans. In the history of Ramsey Abbey, one of our England.-Hist. of England, vol. ii., p. 95. Others best documents for Anglo-Saxon times, we have an may be found dispersed in Velly's History of anecdote of a bishop who made a Danish nobleman France; and many in the Spanish writers, Mari- drunk that he might cheat him of an estate, which ana and Zurita. The following are from Vais- is told with much approbation.-Gale, Script. An. sette's History of Languedoc. It was the custom glic., t. i., p. 441. Walter de Hemingford recounts at Toulouse to give a blow on the face to a Jew with excessive delig,: the well-known story of the every Easter; this was commuted in the twelfth Jews who were persuaded by the captain of their century for a tribute, t. ii., p. 151. At Beziros an- vessel to walk on the sands at low water, till the other usage prevailed, that of attacking the Jews' rising tide drowned them; and adds that the cap. houses with stones from Palm Sunday to Easter. tain was both pardoned and rewarded for it by the No other weapon was to be used; but it generally king, gratiam promeruit et prwmium. This is a produced bloodshed. The populace were regularly mistake, inasmuch as he was hanged; but it ex, instigated to the assault by a sermon from the hibits the cha,'acter of the historian.- Hemingford bishop. At length a prelate wiser than the rest p. 21. abolished this ancient practice, but not without re- t Fleury, Troisi~me dincours sur l'Histoire Rc.iving a good sumn from the Jews, p. 485. Idesistique.

Page 469 eARr I.] STATE OF SOCIETY. 469 formed by a substitute, could have no And this certainly was among the charsalutary effect on the sinner; and some acteristics of every nation for many of the modes of atonement which the centuries. church most approved were particularly It is easy to infer the degradation of hostile to public morals. None was so society during the dark ages from Degrada. usual as pilgrimage, whether to Jerusa- the state of religion and police. tion of lem or Rome, which were the great ob- Certainly there are a few great morals., jects of devotion; or to the shrine of landmarks of moral distinctions so deepsome national saint, a James of Compos- ly fixed in human nature, that no degree tella, a David, or a Thomas Becket. of rudeness can destroy, nor even any This licensed vagrancy was naturally superstition remove them. Wherevef productive o' dissoluteness, especially an extreme corruption has, in any par among the women. Our English ladies, ticular society, defaced these sacred in their zeal to obtain the spiritual treas- archetypes that are given to guide and ures of Rome, are said to have relaxed correct the sentiments of mankind, it' the necessary caution
about one that in the course of Providence that the sowas in their own custody.* There is ciety
itself should perish by internal dis. a capitulary of Charlemagne directed cord or the sword of a
conqueror. In against itinerant penitents, who probably the worst ages of Europe there must
considered the iron chain around their have existed the seeds of social virtues, necks an
expiation of future as well as of fidelity, gratitude, and disinterested past offences; 
sufficient at least to preserve the The crusades may be considered as public approbation of
more elevated prirmartial pilgrimages on an enormous ciples than the public conduct
displayed. scdxc, and their influence upon general Without these imperishable elements,
morality seems to have been altogether there could have been no restoration of pernicious.
Those who served under the moral energies; nothing upon which the cross would not indeed
have lived reformed faith, revived knowledge, re. very virtuously at home; but the confi-
newed law, could exercise their nourishdenc? in their own merits, which the ing influences.
But history, which reiprinciple of such expeditions inspired, flects only the more prominent
features must have aggravated the ferocity. and of society, cannot exhibit the virtues that
dissoluteness of their ancient habits. were scarcely able to struggle through Several historians
attest the deprivation the general deprivation. I am aware of morals which existed both among
the that a tone of exaggerated declamation crusaders and in the states formed out of is at all
times usual with those who la their conquests.1 ment the vices of their own time; and While
religion had thus lost almost writers of the middle ages are in abunWant of every quality that
renders it con- dant need of allowance on this score. law. ducive to the good order of soci-
Nor is it reasonable to found any inferety, the control of human law was still ences as to the general
condition of sociless efficacious. But this part of my ety on single instances of crimes, how.
subject has been anticipated in other ever atrocious, especially when commitpassages of the,
present work; and I ted under the influence of violent passshall only glance at the want of
regular sion. Such enormities are the fruit of subordination, which rendered legislative every
age, and none is to be measured and judicial edicts a dead letter, and at by them. They make,
however, a strong the incessant private warfare, rendered impression at the moment, and thus
find legitimate by the usages of most conti- a place in contemporary annals, from nental
nations. Such hostilities, con- which modern writers are commonly ducted, as they must
usually have been, glad to extract whatever may seem to with injustice and cruelty, Could not
fail throw light upon manners. I shall thereto produce a degree of rapacious feroci- fore abstain
from producing any particuty in the general disposition of a people. lar cases of dissoluteness
should weaken a general proposition by t Du Cange, v. Peregrinatio. Non sinanturva- offering
an imperfect induction to supgari isti nudi cum ferro, qui dicunt se data pmni- port it, and shall
content myself with oDtentia ire vagantes. Melius videtur, ut si aliquid inconsuemt et capitale
crimen commiserint, in serving, that times to which men someuno loco permanearnt laborantes
et, servientes et times appeal, as to a golden period, were poenitentiam agentes, secundum quod
canonica iis far inferior in every moral comparison to Imposltum sit. those in which we are
thrown.* One t I. de Vitriaco, in Gesta Dei per Francos, t. i. ~illani, 1. vii, c. 144. * Henry has
talren pains in drawing a picture

Page 470 470 EUROPE DURING THE MIDDLE AGES. I',HAP. iM crime. as more
universal and character- version to the ancients, became from tht istic than others, may be
particularly no- fourth century an equally delightful occu ticed. All writers agree in the preva-
pation.* From the Salique and other bar lence of judicial perjury. It seems to barous codes of
the fifth century to thi have almost invariably escaped human close of the period under our
review punishment; and the barriers of super- every age would furnish testimony to th4 stition
were in this, as in every other in-ruling passion for these two species of stance, too feeble to prevent the corn-chase, or, as they were sometimes called mission of crimes. Many of the proofs the mysteries of woods and rivers. A by ordeal were applied to witnesses as knight seldom stirred from his house with well as those whom they accused; and out a falcon on his wrist or a greyhound undoubtedly trial by combat was pre-followed him. Thus are Harold and served, in a considerable degree, on ac-his attendants represented, in the famous count of the difficulty experienced in se-tapestry of Bayeux. And in the monu curing a just cause against the perjury ments of those who died anywhere by witnesses. Robert, king of France, on the field of battle, it is usual to find perceiving how frequently men forswore the greyhound lying at their feet, or the themselves upon the relics of saints, and bird upon* their wrists. Nor are the less shocked, apparently, at the crime tombs of ladies without their falcon; for than at the sacrilege, caused an empty this diversion being of less danger and reliquary of crystal to be used, that those fatigue than the chase, was shared by the who touched it might incur less guilt in delic sex. fact, though not in intention. Such an It was impossible to repress the eager anecdote characterizes both the man and ness with which the clergy, especially the times.* after the barbarians were tempted by The favourite diversions of the middle rich bishoprics to take upon them the sa-love of ages, in the intervals of war, cred functions, rushed into these secular field sports. were those of hunting and amusements. Prohibitions of councils, hawking. The former must in all coun-however frequently repeated, produced tries be a source of pleasure: but't little effect. In some instances, a pareceems to have been enjoyed in modera-
ticular monastery obtained a dispensation by the Greeks and the Romans. With tion. Thus that of St. Denis, in 774, rep. the northern invaders, however, it was resented to Charlemagne that the flesh rather. a predominant appetite than an of hunted animals was salutary for sick amusement; it was their pride and their monks, and that their skins would serve ornament, the theme of their songs, the to bind the books in the library.T Reaobject of their laws, and the business of sons equally cogent, we may presume, their lives. Falconry, unknown as a di-could not be wanting in every other case. As the bishops and abbots were perfectly not very favourable, of Anglo-Saxon manners.- feudal lords, and often did not scruple to Book II., chap. 7. This perhaps is the best chap- lead their vassals into the field, it was not ter, as the volume is the best volume, of his une-to be expected that they should debar qual work. His account of the Anglo-Saxons is themselves of an innocent pastime. It derived in a great degree from William of Malms-was hardly such indeed, when practised bury, who does not spare them. Their civil histo-hardly such indeed, when practised ry, indeed, and their laws speak sufficiently against at the expense of others. Alexander the character of that people. But the Normans III., by a letter to the clergy of Berkhad little more to boast of in respect of moral cor-shire, dispenses with their keeping the rectness.' Theirluxurious and dissolute habits are archdeacon in dogs and hawks during as much noticed' as their insolence; et peccati cujusdam, ab hoc solo admodum alieni, flagrasse in-his visitation. This season gave jovial famiA testantur veteres.-Vid. Ordericus Vitalis, ecclesiastics an opportunity of trying p. 602. Johann. Sarisburiensls Policraticus, p. different countries.: An archbishop of 194. Velly, Hist. de France, t. iii., p. 59. -The York, in 1321, seems to have carried a state of manners in France under the two first train of two hundred persons, who were races of kings, and in Italy both under' the Lom-n. bards and the subsequent dynasties, may be col-maintained at the expense of the abbeys lected from their histories, their laws, and:those on his road, and to have hunted with a miscellaneous facts which books of every descrip-pack of hounds from parish to parish. I lion contain. Neither Velly, nor Muratori, Dissert. 23, is so satisfactory as we might desire. * Velly, Hist. de France, t. ii., p. 335. It has * Muratori, Dissert. 23, t. i., p. 306. (Italian.)been observed, that Quid mores sine legibus? is as Beckman's Hist.'of Inventions, vol. i., p. 319. Vie ust a question as that of Horace; and that bad privée des Franqais, t. ii., p. 1. laws must produce
bad morals. The strange prac- t Vie privee des Franqais, t. i., p. 320; t. ii. p. 11 rice of requiring numerous compurgators to prove $ Idem, t. i.,' p. 324. ~ Rvmer, t. i.,'j. 61. the innocence of an accused person had a most II Whitaker's Hist. of Criven n 340, aild ct obvious tendency to increase perjury. Whalley, p. 171.

Page 471] STATE OF SOCIETY. The third council of Lateran, in 1180, must have had on agriculture, it is eas3 had prohibited this amusement on such to conjecture. The levelling of forests journeys, and restricted bishops to a train the draining of morasses, and the extir. of forty or fifty horses.* pation of mischievous animals which in. Though hunting had ceased to be a ne- habit them, are the first objects of mana'l cessary means of. procuring food, it was labour in reclaiming the earth to its use; a very convenient resource, on which the and these were forbidden by a landed wholesomeness and comfort, as well as aristocracy, whose control over tLe progthe luxury of the table depended. Be- res of agricultural improvement was fore the natural pastures were improved, unlimited, and who had not yet learned and new kinds of fodder for cattle dis- to sacrifice their pleasures to their ava covered, it was impossible to maintain rice. the summer stock during the cold sea- These habits of the rich, and the mis son. Hence a portion of it was regularly erable servitude of those who Bad stats of slaughtered and salted for winter provis- cultivated the land, rendered agriculture. ion. We may suppose, that when no al- its fertility unavailing. Predial servitude ternative was offered but these salted indeed, in some of its modifications, has meats, even the leanest venison was de- always been the great bar to improvevoured with relish. There was some- ment. In the agricultural economy of what more excuse, therefore, for the se- Rome, the labouring husbandman, a meverity with which the lords of forests nial slave of some wealthy senator, had and manors preserved the beasts of not even that qualified interest in the soil chase, than if they had been considered which the tenure of villanage afforded to as merely objects of sport. The laws thepeasant of feudal ages. Italy, thererelating to preservation of game were fore, a country presenting many natural in every country uncommonly rigorous. impediments, was but imperfectly reThe formed in England that odious duced into cultivation before the irrupsystem of forest-laws which distinguish- tion of the barbarians.* That revolution 3d the tyranny of our Norman kings. destroyed agriculture with every other Capital punishment for killing a stag or art, and succeeding calamities during fiveo wild boar was frequent, and perhaps war- or six centuries, left the finest regions ranted by law., until the charter of John.t of Europe unfruitful and desolate. There The French code was less severe, but are but two possible modes in which the even Henry IV. enacted the pain of death produce of the earth can be increased; against the repeated offence of chasing one by rendering fresh land serviceable; deer in the royal forests. The privilege the other by improving the fertility of of hunting was reserved to the nobility that which is already cultivated. The till the reign of Louis IX., who extended last is only attainable by the application it in some degree to persons of lower of capital and of skill to agriculture: birth.t neither' of which could be expected in This excessive passion for the sports the ruder ages of society. The former of the field produced those evils which is, to a certain extent, always practicable are apt to result from it; a strenuous while waste lands remain; but it was idleness, which disdained all useful occu- checked by laws hostile to improvement, pations, and an oppressive spirit towards such as the manorial and commonable the peasantry. The devastation con- rights in England, and by the general mitted under the pretence of destroying tone of manners. wild animals, which had been already Till the reign of Charlemagne there prited in their depredations, is noticed were no towns in Germany, except a in serious authors, and has also been the few that had been erected on the Rhine topic of popular ballads.\ What effect this revolution, to which it did not perhaps a little con* Velly, Hist. (le France, t.
iii., p. 236. tribute.—(See Young's Travels in France.) The John of Salisbury inveighs against the game—monstrous privilege of free-warren (monstrous, I la--ws of his age, with an odd transition from the mean, when not originally founded upon the propGospel to the Pandects. Nec veriti sunt hominem erty of the soil) is recognised by our own laws, pro una bestiola perdere, quem unigenitus Dei Fi--though in this age it is rest often that a court and Jius sanguine redemit suo. Quae fera naturae jury will sustain its exercise. Sir Walter Scott's aunt, et de jure occupantium fiunt, sibi audet hu--ballad of the Wild Huntsman, from a German ori. mavia temeritas vindicare, &c.-Policraticus, p. 18. ginal, is well known; and I believe there are sev $ Le Grand, Vie privee des Franqais, t. i., p. 325: eral others in that country not dissimilar in subject 0 For the injuries which this people sustained * Muratori, Dissert. 21. This dissertation con from the seignorial. rights of the chase in the elev- tains ample evidence of the wretched state of cul. enth century, see the Recueil des Historiens, in the ture in Italy, at least in the northern parts, both valuable preface to the eleventh volume, p. 181. i before the irruption of the barbarians, and, -in t TThis continued to be felt in France down to the Inuch greater degree, under the Lombard kings.

Page 472 EUROPE DURING THE MIDDLE AGES. r(cHAP. IX and Danube by the Romans. A house traffic; the insecurity of Ilio e;able wealth, with its stables and farm-buildings, sur- and difficulty of accumulating it; the igrounded by a hedge or enclosure, was norance of mutual wants; the peril of called a court, or, as we find it in our robbery in conveying merchandise, and raw-books, a curtilage; the toft or home- the certainty of extortion. In the dostead of a more genuine English dialect. mains of every lord, a toll was to be paid One of these, with the adjacent domain of in passing his bridge, or along his higharable fields and woods, had the name of way, or at his market.* These customs. a villa or manse. Several manses com- equitable and necessary in their principosed a march; and several marches ple, became in practice oppressive, beformed apagus, or district.* From these cause they were arbitrary, and renewed elements in the progress of population, in every petty territory which the road arose villages and towns. In France might intersect. Several of Charleundoubtedly there were always cities of magne's capitularies repeat complaints some importance. Country parishes of these exactions, and endeavour to contained several manses or farms of abolish such tolls as were not founded on arable land, around a common pasture, prescription.s One of them rather amuwhere every one was bound by custom to singly illustrates the modesty and modfeed his cattle.t eration of the landholders. It is enacted The condition even of internal trade that no one shall be compelled to go out Of inter- was hardly preferable to that of of his way in order to pay toll at. a parnal trade. agriculture. There is not a ves- ticular bridge, when he can -cross the tige perhaps to be discovered for several river more conveniently at another centuries of any considerable manufac- place-. These provisions, like most ture; I mean of working up articles of others of that age, were unlikely to procommon utility to an extent beyond what duce much amendment. It was only the necessities of an adjacent district re- the milder species, however, of feudal quired.1 Rich men kept domestic arti- lords who were content with the tribute sans among their servants; even kings, of merchants. The more ravenous dein the ninth century, had their clothes scended from their fortresses to pillage made by the women upon their farms: the wealthy traveller, or shared in the but the peasantry must have been suppli- spoil of inferior plunderers, whom they ed with garments and implements of la- both protected and instigated. Proofs bour by purchase, and every town, it can- occur, even in the later periods of the not be doubted, had its weaver, its smith, middle ages, when government had reand its currier. But there were almost gained its energy, and civilization had insuperable impediments to any extended made considerable progress, of public robberies
systematically perpetrated by * Schmidt, Hist. des Allem., t. i., p. 408. The men of noble rank.
In the more savage following passage seems to illustrate Schmidt's times, before the twelfth
century, they account of German villages in the ninth century, were probably too frequent to
excite though relating to a different age and country. much attention. It was a custom in "A
toft," says Dr. Whitaker, "is a homestead in a village, so called from the small tufts of maple,
some places to waylay travellers, and elm, ash, and other wood, with which dwelling- not only
to plunder, but to sell them as houses were anciently overhung. Even now it is slaves, or
compel them to pay a ransom. impossible to enter Craven without being struck Harold, son of
Godwin, having been with the insulated homesteads, surrounded by their wrecked on the coast
of Ponthieu, was little garths, and overhung with tufts of trees. imprisoned by the lord, says an
histori These are the genuine tofts and crofts of our an-mprisoned by the lord, says a cestors,
with the substitution only of stone to the according to the custom of that territowooden crocks
and thatched roofs of antiquity." ry.~ Germany appears to have been: -Hist. of Craven, p. 380.
upon the whole, the country where down-'f It is laid down in the Speculum Saxonicum, a right
robbery was most unscrupulously collection of feudal customs which prevailed overy was most
unscrupulousl most of Germany, that no one might have a sep- practised by the great. Their
castles, arate pasture for his cattle unless he possessed erected on almost inaccessible heights
three mansi.-Du Cange, Mansus. There seems to have been a price paid, I suppose to the lord,
for * Du Cange, Pedagium, Pontaticum, Teloia agistment in the common pasture. um,
Mercatum, Stallagium, Lastagium, &c. qt The only mention of a manufacture, as early f Baluz.
Capit., p. 621, et alibi. The ninth or tenth centuries, that I remember to t Ut nullus cogatur ad
pontem ire ad flumura have met with, is in Schmidt, t. ii., p. 146, who transeundum propter
telonei causas quando ille in says, that cloths were exported from Friseland to alio loco
compendiosius illud flumen transire po-. England and other parts. He quotes no authori- test, p.
764, et alibi. ty, but I am satisfied that he has not advanced the Q Eadmer apud Recueil des
i., p. 411; t. ii., p. 116. a domino terram captivitati addicitur.

Page 473 kaJnI 1.1 STATE 01 SOCIETY 473 -among the woods, became the secure re- ver,
by which, as none was like y to re receptacles of predatory bands, who spread turn, the
circulating money of Europe.error over the country. From these was probably less in the
eleventh cen"arbarian lords of the dark ages, as from ry than at the subversion of the Roman
living model, the romancers are said to empire; furs, which were obtained from nave drawn
their giants and other disloy- the Sc avonian countries; and arms, the a1 enemies of true
chivalry. Robbery sale of which to pagans or Saracens was indeed is the constant theme both of
the vainly prohibited by Charlemagne and by Capitulares arid of the Anglo-Saxon the Holy
See.* A more scandalous traf. laws; one has more reason to wonder at fic, and one that still
more fitly called fox the intrepid thirst of lucre, which indu- prohibitory laws, was carried on in
slaves ced a very few merchants to exchange It is an humiliating proof of the degrathe products
of different regions, than to dation of Christendom, that the Veneask why no general spirit of
conmer- tians were reduced to purchase the lux cial activity prevailed. uries of Asia by
supplying the slave Under all these circumstances, it is market of the Saracens.t Their apology
And of for- obvious that very little oriental would perhaps have been, that these eign com-
trade could have existed in these were purchased from their heathen neigh merce. western
countries of Europe. bours; but a slave-dealer was probably Destitute as they have been
created, not very inquisitive as to the faith or ori speaking comparatively, of national pro- gin
of his victim. This trade was not ductions fit for exportation, their inven- peculiar to Venice. In
England it was tion and industry are the great resources very common, even after the conquest,
from which they can supply the demands to export slaves to Ireland; till, in the of the east.

Before any manufactures reign of Henry II., the Irish came to a were established in Europe, her non-importation agreement, which put a mercial intercourse with Egypt and Asia stop to the practice.: must of necessity have been very trifling; From this state of degradation and because, whatever inclination she might poverty all the countries of Europe have feel to enjoy the luxuries of those genial recovered, with a progression in some regions, she wanted the means of obtain-respects tolerably uniform, in others ing them. It is not therefore necessary more unequal; and the course of their to rest the miserable condition of oriental improvement more gradual, and less decommerce upon the Saracen conquests, because the poverty of Europe is an ade- that any dealer presuming to export their fine clothes should be flogged.-Luitprandi Opera, p quate cause; and, in fact, what little traf- 155, edit. Antwerp, 1640. fic remained was carried on with no ma- * Baluz. Capitul., p. 775. One cf:le main aderial inconvenience through the channel vantages which the Christian nations possessed of Constantinople. Venice took the lead over the Saracens was the coat of mail, and other defensive armour; so that this prohibition was n trading with Greece and more eastern. founded upon very good politica. reasons. countries.* Amalfi had the second place t Schmidt, Hist. des Allem., t. ii., p. 146. Heein the commerce of those dark ages. ren, sur l'Influence des Croisades, p. 316. In BaThese cities imported, besides natural luze we find a law of Carloman, brother to Charleproductions, the fine clothes of Constan- magne; Ut mancipia Christiana paganis non ventinopl; yt, as this traffic seems to have dantur.-Capitularia, t. i., p. 150, vide quoque, p. tinople; yet, as this traffic seems to have 361. been illicit, it was not probably exten- 2 William of Malmesbury accuses the Anglosive.t Their exports were gold and sil- Saxon nobility of selling their female servants, even when pregnant by them, as slaves to foreign * Heeren has frequently referred to a work pub- ers, p. 102. I hope there were not many of these fished in 1789, by Marini, entitled Storia civile e Yaricoes; and should not perhaps have given credit politica del Commerzio de' Veneziani, which casts to an historian, rather prejudiced against the Eng a new light upon the early relations of Venice with lish, if I had not found too much authority for the the east. Of this book I know nothing; but a general practice. In the canons of a council at memoir by De Guignes, in the thirty-seventh vol- London, in 1102, we read: Let no one from hence nine of the Academy of Inscriptions, on the com- forth presume to carry on that wicked' traffic, by m-erce of France with the east before the crusades, which men of England have hitherto been sold like is singularly unproductive; the fault of the sub- brute animals.-Wilkins's Concilia, t. i., p. 383. ject, not of the author. And Giraldus Cambrensis says that the English t There is an odd passage in Luitprand's relation before the conquest were generally in the habit of his embassy from the Emperor Otho to Nice- selling their children and other relations to be phorus Phocas. The Greeks making a display of slaves in Ireland, without having even the pretext their dress, he sold them that in Lombardy the of distress or famine, till the irish, in a national common people wore as good clothes as they. synod, agreed to emancipate all the English slavea How, they said, can you procure them? Through in the kingdom, id., p. 471. This seems to have the Venetian and Amaldtan dealers, he replied, been designed to take away all pretext for the who gain their subsistence by selling them to us. threatened invasion of Henry II. —I.yttleton, vol TL foolish Greeks were very angry, and declared iii., p 70
comprehending those commencement of this restoration has tries which border on the Baltic, the usually been dated from about tile close German, and the Atlantic oceans, another, of the eleventh century; though it is un-those situated around the Mediterranean necessary to observe, that the subject Sea. During the four centuries which does not admit of anything approxima-preceded the discovery of America, and ting to chronological accuracy. It may especially the two former of them, this therefore be sometimes not improper to separation was more remarkable than at distinguish the six first of the ten centu-present, inasmuch as their intercourse, ries, which the present work embraces, either by land or sea, was extremely limUnder the appellation of the dark ages; ited. To the first region belonged the an epithet which I do not extend to the Netherlands, the coasts of France, Ger twelfth and three following. In tracing many, and Scandinavia, and the maritime the decline of society from the sub-districts of England. In the second we version of the Roman empire, we have may class the provinces of Valencia and been led, not without connexion, from ig-Austria, those of Provence and Lannorance to superstition, from superstition guedoc, and the whole of Italy, to vice and lawlessness, and from thence 1. The former, or northern division, a general rudeness and poverty. I shall was first animated by the VWTollen pursue an inverted order in passing along woollen manufacture of Flan-manufacture the ascending scale, and class the vari-ders. It is not easy either to of Flanders. ous improvements which took place be-discover the early beginnings of this, or to tween the twelfth and fifteenth centuries account for its rapid advancement. The under three principal heads, as they re-fertility of that province and its facilities late to the wealth, the manners, or the of interior navigation.were doubtless taste end learning of Europe. Different necessary causes; but there must have arrangements might probably be suggest-been some temporary encouragement ed, equally natural and convenient; but from the personal character of its soverin the disposition of topics that have not eigns, or other accidental circumstances. always an unbroken connexion with each Several testimonies to the flourishing other, no method can be prescribed as condition of Flemish manufactures occur absolutely more scientific than the rest. in the twelfth century, and some might That which I have adopted appears to perhaps be found even earlier.* A wrime as philosophical and as little liable to ter of the thirteenth asserts that all the transitions as any other world was clothed from English wool wrought in Flanders.t This indeed is an exaggerated vaunt; but the Flemish stuffs were probably sold wherever the PART II. sea or a navigable river permitted them to be carried. Cologne was the chief Progress of Commercial Improvement in Germany, trading city upon the Rhine; and its Flanders, and England.-In the North of Europe. merchants, who had been considerable -In the Countries upon the Mediterranean Sea. even under the Emperor Henry IV., es-Maritime Laws.-Usury.-Banking Compa-tablished a factory at London in 1220. nies. -Progress of Refinement in Manners. - The woollen manufacture, notwithstandingDomestic Architecture. - Ecclesiastical Architecture.-State of Agriculture in England. — ing frequent wars and the impolitic reguValue of Money.-Improvement of the Moral lations of magistrates,$ continued to Character of Society —its Causes. - Police.Changes in Religious Opinion. —Various Sects. * Macpherson's Annals of Commerce, vol. i., p. — Chivalry-its Progress, Character, and Influ- 270. Meyer ascribes the origin of Flemish trade to Baldwin, count of Flanders, in 958, who established their markets at Bruges and other cities. -1. The Study of Civil markets at Bruges and other cities. Exchanges Law.-2. Institution of Universities-their Cele-were in that age, he says, chiefly effected by barbarity. - Scholastic Philosophy. —3. Cultivation ter, little money circulating in Flanders.-Annales of Modern Languages. — Provenqal Poets. — Flandrici, fol. 18 (edit. 1561). Norman Poets.-French Prose Writers.-Italian t Matthew Westmonast. apud Macpherson"F early Poets in that Language. - Dante. - Annals of Commerce, vol. i., p. 415. Petrarch.-English Language-its Progress. — t Such regulations scared away those Flemish Chaucer.-4. Revival of
Classical Learning.—weavers who brought their art into England under Latin writers of the Twelfth Century.—Litera- Edward III.—Macpherson, p. 467, 494, 546. Of the Fourteenth Century. —G’ sek Litera- years later, the magistrates of Ghent are said its Restoration in Italy. -Invention of by Meyer (Annales Flandrici, fol. 156) to have im Printing. posed a tax on every loom. Though the seditious
Froissart, Comines. occasionally fell, a mutual alienation had + It contained, according to Ludovico Guicciar- been produced by the trade of the former dini, 35,000 houses, and the circuit of its walls was people with Scotland, a trade too lucra45,640 Roman feet.-Description des Pais Bas, p. 350, &c. (edit. 1609). Part of this enclosure was * Blomefield, the historian of Norfolk, thinks not built upon. The population of Ghent is reck- that a colony of Flemings settled as early as this oned by Guicciardini at 70,000, but in his time it reign at Worsted, a village in that county, and ima. had greatly declined. It is certainly, however, mortaiized its name by their manufacture. It soon much'exaggerated by earlier historiars. And I en- reached Norwich, though not conspicuous till the tertain some doubt as to Guicciardini's estimate of reign of Edward I.-Hist. of Norfolk, vol. ii. Macthe numberof houses. Ifatleasthewas accurate, pherson speaks of it for the first time in 1327. more than half of the city must since have been There were several gilds of weavers in the time of demolished or become uninhabited, which its pres- Henry II.-Lytleton, vol. ii., p. 174. ent appearance does not indicate; for Ghent, though t Macpherson's Annals of Commerce, vol. i., p. not very'flourishing, by no means'presents the de- 412, from Walter Hemingford. I am considerably cay and dilapidation of an Italian town. ~ indebted to this laborious and useful publication ~ G0icciardini, p. 262. M6m. de Comines, 1. v., which has superseded that of Anderson. c. 17. Meyer.-fol. 354. Macpherson's Annals of T Rymer, t. ii., p. 32, 50, 737, 849, 965 i. ili., o Coomamerce, vol i., p. 647, 651. 533, 1106, et alibi.

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EUROPE DURING THE MIDDLE AGES. LC(HAP. IX tive to be resigned at the King of Eng- The occupation of a merchant became!and's request.* An early instance of honourable; and notwithstanding the natthat conflicting selfishness of belligerants ural jealousy of the two classes, he was and neutrals, which was destined to ag- placed in some measure on a footing with gravate the animosities and misfortunes landed proprietors. By the statute of of our own time!t apparel, in 37 Edw. III., merchants and A more prosperous era began with Ed- artificers who had five hundred pounds English ward III., the father, as he value in goods and chattels might use the woollen man- may almost be called, of Eng- same dress as squires of one hundred ufacture. lish commerce, a title not in- pounds a year. And those who were deed more glorious, butbly which he may worth more than this might dress like perhaps claim more of our gratitude than men of double that estate. Wool was as the hero of Crecy. In 1331, he took still the principal article of export and advantage of discontents among the source of revenue. Subsides granted manufacturerosof Flanders to invite them by every parliament upon this article as settlers into his dominions.1 They were, on account of the scarcity of brought the finer manufacture of woollen money, commonly taken in kind. To cloths, which had been unknown in Eng- prevent evasion of this duty seems to land. The discontents alluded to rehave been the principle of those multiasulted from the monopolizing spirit of rious regulations, which fix the staple, their corporations, who oppressed all ar- or market for wool, in certain towns tisans without the pale of their commu- either in England, or, more commonly, oir nity. The history of corporations brings the continent. To these all wool was te home to our minds one cardinal truth, be carried, and the tax was there colb that political institutions have very fre- lected. It is not easy, however, to conquently but a relative and temporary useprehend the drift of all the provisions re. fulness, and that what forwarded im- lating to the staple, many of which tend provedment during one part of its course, to benefit foreign at the expense of Engmay prove to it in time a most pernicious lish merchants. By degrees, the exporobstac le. Corporations in England, we tation of woollen cloths increased so as may be sure, wanted nothing of their to diminish that of the raw material, but usual character; and it cost Edward no the latter was not absolutely prohibited little trouble to protect his colonists
from during the period under review;* althe selfishness, and from the blind na- though some restrictions were imposed tionality of the vulgar.- The emigration upon it by Edward IV. For a much earof Flemish weavers into England contin-りer statute, in the 11th of Edward III., ued during this reign, and we find it men- making the exportation of wool a capital tioned at intervals for more than a cen- felony, was in its terms provisional, until turv. it should be otherwise ordered by the Commerce now became, next to lib- council; and the king almost immediateIncrease of ert, the leading object of par- ly set it aside. J English liament. For the greater part commerce. of our statutes from the acces- * In 1409, woollen cloths formed great part of Edward III. bear relation to this our exports, and were extensively used over Spain ari and Italy. And in 1449, English cloths having subject; not always well devised, or lib- been prohibited by the Duke of Burgundy, it was eral, or consistent, but by no means enacted, that, until he should repeal this ordinance, worse in those respects than such as no merchandise of his dominions should be admit. have been enacted in subsequent ages. ted into England.-27 H. VI., c. 1. The system of prohibiting the import of foreign wrought goods was acted upon very extensively in Edward IV.'s E Rymer, t. iii., p. 759. A Flemish factory was reign. established at Berwick about 1286.-Macpherson. t Stat. 11 E. III., c. 1. Blackstone says that h1 1295, Edward I. made masters of neutral transporting wool out of the kingdom, to the detriships in English ports find security not to trade ment of our staple manufacture, was forbidden at with France.-Rymer, t. ii., p. 679. common law (vol. iv., c. 19), not recollecting that R Eymer, t. iv., p. 591, &c. Fuller draws a no- we had nostaple manufactures in the ages when table picture of the inducements held out to the the common law was fortned, and that tne export Flemings. " Here they should feed on fat beef and of wool was almost the only means by which this mutton, till nothing but their fulness should stint coun'ry procured silver, or any other article of their stomachs; their beds should be good, and which it stood in need from the continent. In fact their bedfellows better, seeing the richest yeomen the landholders were so far from neglecting this in England would not disdain to marry their source of their wealth, that a minimum was fixed day ghters unto them, and such the English beau- upon it by a statute of 1343'(repealed indeed the ties that the most envious foreigners could not but next year, 18 E. III., c. 3), below which price It commend them."-Fuller's Church History, quoted was not to be sold; from a maudable apprehension, 11 Blomefield's Hist. of Norfolk. as it seems, that foreigners were getting it too Rvmer, t. v., p. 137, 430, 540 cheap, And this was revived in the 32d of H. VI

Page 477 AIART 11.1 STATE OF SOCIETY. 47; A manufacturing district, as we see in had only been known er.)ugh to be dread Manufac- our own country, sends out, as ed. In the middle of the eleventh cences of it were, suckers into all its tury, a native of Bremen, and a writer Fre nce and neighbourhood. Accordingly, much superior to most others of his time, Geiman y. the woollen manufacture spread was almost entirely ignorant of the ge from Flanders along the banks of the ography of the Baltic; doubting whether Rhine, and into the northernprovinces of any one had reached Russia by that France.* I am not, however, prepared sea, and reckoning Esthonia and Cour. to trace its history in these regions. In land among its islands.* But in one Germany, the privileges conceded by hundred years more, the maritime re. Henry V. to the free cities, and especial- gions of Mecklenburg and Pomerania, ly to their artisans, gave a soul to indus- inhabited by a tribe of heathen Sclavo try; though the central parts of the em- nians, were subdued by some German pire were, for many reasons, very ill cal- princes; and the Teutonic order some culated for commercial enterprise during time afterward, having conquered Prusthe middle ages.t But the French towns sia, extended a line of at least comparawere never so much emancipated from tive civilization as far as the Gulf of
Finarbitrary power as those of Germany or land. The first town erected on the Flanders; and the evils of exorbitant tax- coasts of the Baltic was Lubec, which owes its foundation to Adolphus, count of Holstein, in 1140. After several viol manufactures in France. That of cissitudes, it became independent of any linen made some progress; but this work sovereign but the emperor in the thirteenth century. Hamburgh and Bremen, labour of female servants. The manufactures of Flanders and Holstein, emulated the prosperity of Lubec; Baltic England found a market not only in these adjacent countries, but in of its bishop in 1225. A colony from a part of Europe which for many ages Bremen founded Riga in Livonia, about 1162. The city of Dantzic grew into im though the act is not printed among the statutes. That of cissitudes, it became independent of any linen made some progress; but this work sovereign but the emperor in the thirteenth century. Hamburgh and Bremen, labour of female servants. The manufactures of Flanders and Holstein, emulated the prosperity of Lubec; Baltic England found a market not only in these adjacent countries, but in of its bishop in 1225. A colony from a part of Europe which for many ages Bremen founded Riga in Livonia, about 1162. The city of Dantzic grew into im though the act is not printed among the statutes.

Port about the end of the following -Rot. Parl., t. v., p. 275. The exportation of sheep was prohibited in 1338.-Rymer, t. v., p. century. Koningsberg was founded by 36; and by act of parliament in 1425. —3 H. VI., c. Ottocar, king of Bohemia, in the same 2. But this did not prevent our improving the age. worl of a foreign country to our own loss. It is But the real importance of these cities worthy of notice, that English wool was superior is to be dated from their famous union to any other for fineness during these ages. Henry TI., in his patent to the Weavers' Company, directs into the Hanseatic confederacy. Thle that if any weaver mingled Spanish wool with origin of this is rather obscure, but it English, it should be burnt by the lord mayor.- may certainly be nearly referred in point Macpherson, p. 382. An Englishflock, transported of time to the middle of the thirteenth into Spain about 1348, is said to have been the source of the fine Spanish wool, ibid., p. 539. But century,t and accounted for by the nethe superiority of English wool, even as late as cessity of mutual defence, which piracy 1438, is proved by the laws of Barcelona, forbidding by sea and pillage by land had taught the its adulteration, p. 654. Another exportation of merchants of Germany. The nobles enEnglish sheep to Spain took place about 1465, in deavoured to obstruct the formation of consequence of a commercial treaty.-Ryner, t. deavoured to obstruc the formation of xi., p. 534, et alibi. In return, Spain supplied this league, which indeed was in great England with horses, her breed of which was reck- measure designed to withstand their exoned the best in Europe; so that the exchange actions. It powerfully maintained the was tolerably fair.-Macpherson, p. 596. The best influence which the free imperial cities horses had been very dear in England, being imported from Spain and Italy, ibid. were at this time acquiring. Eighty of * Schmidt, t. iv., p. 18. the most considerable places constituted - Considerable woollen manufactures appear to the Hanseatic confederacy, divided into have existed in Picardy about 1315. —Macpherson, four colleges, whereof Lubec, Cologne, ad annum. Capmany, t. iii., part 2, p. 151. Brunswik, t The sheriffs of Wiltshire and Sussex are di- and Dantzic were the leading lected, in 1253, to purchase for the king 1000 ells of towns. Lubec held the chief rank, and fine linen, lineae telae pulchras et delicate. This became, as it were, the patriarchal see Macpherson supposes to be of domestic manufac- of the league; whose province It was to ture, which, however, is not demonstrable. Linen preside in all general discussions for was made at that time in Flanders; and as late as 1417, the fine linen used in England was imported from France and the Low Cour.tries.-Macpher- * Adam Bremensis, de Situ Daniae, p. 13. (El. son, from Rymer, t. ix., p. 334. Velly's history is zevir edit.) defective in giving no account of the French com- t Schmidt, t. iv., p. 8. Macpherson, p. 392. merce and manufactures, or at least none that is at The latter writer thinhs they -were not known bl all satisfactory. - the name of Hanse so early.
trade and even the internal wealth of league had four principal factories in for- England reached so much higher a pitch eign parts, at London, Bruges, Bergen, in the reign of the last mentioned king and Novogorod; endowed by the sover- than at any former period, that we may eigns of those cities with considerable perceive the wars of York and Lancaster privileges, to which every merchant be- to have produced no very serious effect longing to a Hanseatic town was anti- on national prosperity. Some battles tled.* In England the German guildhall were doubtless sanguinary; but the loss or factory was established by concession of lives in battle is soon repaired by a of Henry III.; and in later periods, the flourishing nation; and the devastation Hanse traders were favoured above many occasioned by armies was both partial others in the capricious vacillations of and transitory. our mercantile policy.t The English had - A commercial intercourse between also their factories on the Baltic coast as these northern and southern Intercourse far as Prussia, and in the dominions of regions of Europe began about with the Denmark.t the early part of the fourteenth south of This opening of a northern market century, or, at most, a little Europe. powerfully accelerated the growth of our sooner. Until, indeed, the use of the; Rapid prog- own commercial opulence, ex- magnet was thoroughly understood, and fess of Eng- pecially after the woollen man- a competent skill in marine architecture, ash trade. ufacture had begun to thrive. as well as navigation, acquired, the ItalFrom about the middle of the fourteenth ian merchants were scarce likely to atcentury, we find continual evidences of a tempt a voyage perilous in itself, and rapid increase in wealth. Thus, in 1363, rendered more formidable by the imaginPicard, who had been lord mayor some ary difficulties which had been supposed years before, entertained Edward III to attendan expedition beyond the straits and the Black Prince, the kings of of Hercules. But the English, accus. France, Scotland, and Cyprus, with many tomed to their own rough seas, were al. of the nobility, at his own house in the ways more intrepid, and probably more Vintry, and presented them with hand- skilful navigators. Though it was ex-;ome gifts.) Philpot, another eminent tremely rare, even in the fifteenth cent citizen in Richard II.'s time, when the tury, for an English trading vessel to aptrade of England was considerably an- pear in the Mediterranean,t yet a famous uoyed by privateers, hired 1000 armed men, and despatched them to sea, where * Macpherson, p. 667. they took fifteen Spanish vessels with f Richard III., in 1485, appointed a Florentine their prizes. We find Richard obtaining merchant to be English consul at Pisa. on the a great deal from private merchants and ground that some of his subjects intended to trade trading towns. In 1379 he got ~5000 to Italy.-Macpherson, p. 705, from Rymer. Perhaps we cannot positively prove the existence of a from London, 1000 marks from Bristol, Mediterranean trade at an earlier time; and even and in proportion from smaller places. this instrument is not conclusive. But a considin London gave ~4000 more, and erable presumption arises from two documents in 10,000 marks in 1397.~a The latter sum Rymer, of the year 1412, which inform us of a marks was obtained also for the coronation of great shipment of wool and other goods made by was obtained also for the coronation of some merchants of London for the Mediterranean Henry VI.** Nor were the contributions under supercargoes, whom, it being a new under of individuals contemptible, considering taking, the king expressly recommended to the the high value of money. Hinde, a citi- Genoese republic. But that people, impelled probzen of London, lent to Henry IV. ~2000 ably by commercial jealousy, seized the vessels and their cargoes; which induced the king to in 1407, and Whittington one half of that grant the owners letters of reprisal against all Gesum. The merchants of the staple ad- noese property. —Rymer, t. viii., p. 717, 773. vanced ~4000 at the same time.f-y Our Though it is not perhaps evident that the vessels commerce continued to be regularly and were English, the circumstances render it highly probable. The bad success, however, of this atrapidly progressive during the fifteenth tempt might prevent its imitation. A Greek ancentury. The famous Canynges of Bris- thor, about the beginning of the fifteenth century, tol, under Henry
VI. and Edward IV., reckons the IyyXirvot among the nations who traded to a port in the Archipelago.—Gibbon, vol Pfeffel, t. i., p. 443. Schmidt, t. iv., p. 18; t. xii., p. 52. But these enumerations are generally r., p. 512. Macpherson's Annals, vol. i., p. 693. swelled by vanity or the love of exaggeration; and t Macpherson, vol. i., passim. a few English sailors on board a foreign vessel t Rymer, t. viii., p. 360. would justify the assertion. Benjamin of Tudela, Macpherson (who quotes Sto-v), p. 415. a Jewish traveller, pretends that the port of Alex Walsingham, p. 211. andria, about 1160, contained vessels not only from ~ Rymer, t. viii., p. 210, 341; t viii., p. 9. England, but from Russia, and even Cracow — d* Id. t. x., p. 461. tt Id t. viii., p. 483 Harris's Voyages, vol. i., p. 554.

Page 479 -ART il.] STATE OF SOCIETY military armament, that was destined for I of this city to have filled up the interva the crusade of Richard I., displayed at a I between two periods of civilization. in very early time the seamanship of our neither of which she was destined to be countrymen. In the reign of Edward distinguished. Scarcely known before II., we find mention in Rymer's collec- the end of the sixth century, Amalfi ran tion of Genoese ships trading to Flanders a brilliant career, as a free and trading and England. His son was very solicit- republic, which was checked by the arms Dus to preserve the friendship of that op-.of a conqueror in the middle of the ulent republic; and it is by his letters to twelfth. Since her subjugation by Roger, his senate, or by royal orders restoring king of Sicily, the naine of a people ships unjustly seized, that we come by a I who for a while connected Europe with knowledge of those facts which histori- Asia has hardly been repeated, except ans neglect to relate. Pisa shared a lit- for two discoveries falsely imputed to tile in this traffic, and Venice more consid- them, those of the Pandects and of the erably; but Genoa was beyond all com- petition at the head of Italian commerce But the'decline of Amalfi was amply in these seas during the fourteenth cen- compensated to the rest of Italy Pisa, Genoa, tury. In the next, her general decline by the constant elevation of Venice. left it more open to her rival; but I Pisa, Genoa, and Venice in the twelfth doubt whether Venice ever maintain- and ensuing ages. The crusades led ined so strong a connexion with England. mediately to this growing prosperity of Through London, and Bruges, their chief the commercial cities. Besides the profit station in Flanders, the merchants of It- accruing from so many naval armaments aly and of Spain transported oriental which they supplied, and the continual produce to the farthest parts of the north, passage of private adventurers in their The inhabitants of the Baltic coast were vessels, they were enabled to open a stimulated by the desire of precious lux- more extensive channel of oriental traffic uries which they had never known; and than had hitherto been known. Thevar these wants, though selfish and frivolous, three Italian republics enjoyed immunrare the means by which nations acquire ties in the Christian principalities of civility, and the earth is rendered fruitful Syria; possessing separate quarters in of its produce. As the carriers of this Acre, Tripoli, and other cities, where trade. the Hanseatic merchants resident they were governed by their own laws in England and Flanders derived prof- and magistrates. Though the progress its through which eventually, of course, of commerce must, from the condition those countries were enriched. It seems of European industry, have been slow, it that the Italian vessels unloaded at the was uninterrupted; and the settlements marts of London or Bruges, and that in Palestine were becoming important as such parts of their cargoes as were in- factories, a use of which Godfrey and tended for a more northern trade came Urban little dreamed, when they weie there into the hands of the German mer- lost through the guilt and imprudence of chants. In the reign of Henry VI., Eng- their inhabitants.* Villani laments the land carried on a pretty considerable traf- injury sustained by commerce in consefic with the countries around the Medi- quence of the capture of Acre, " situated, terranean, for whose
commodities her as it was, on the coast of the Mediterrawool and woollen clothes enabled her to nean, in the centre of Syria, and, as we pay. might say, of the habitable world, a haven. The commerce of the southern division, for all merchandise, both from the east Commerce though it did not, I think, pro- and the west, which all the nations of of the Med- duce more extensively benei- the earth frequented for this trade. "it terranean cial effects upon the progress of countries. society was both earlier an Partibus innumeris ac plurimus urbe moratur society, was both earlier and Nauta, maris ccelique vias ape-ire peritus. more splendid than that of England and Huc et Alexandri diversa ferur.tur ab urbe, the neighbouring countries. Besides Regis et Antiochi. Haec [etiam?] freta plulirra Venice, which has been mentioned al- transit. Amalfi ready, Amalfi kept up the commer- Hic Arabes, Indi, Siculi noscuntur, et Afri. amalfi. ready, Amalfi kept up the commer- Hac gens est totumrn prope nobilitata per orbem, cial intercourse of Christendom Et mercanda ferens, et amans mercata referre. with the Saracen countries before the * The inhabitants of Acre were noted, in an age first crusade.* It was the singular fate not very pure, for the excess of their vices. In 1291- they plundered some of the subjects of a * The Amalfitans are thus described by Willia-: neighbouring Mahometan prince, and refusing rep of Apulia, apud Muratori, Dissert. 30. aration, the city was besieged and taken by storm Urbs hac dives opum, populoque refera videtur -Muratori, ad ann. Gibbon, c. 59 Nu]]la magis locuples argento, vestitus, auro, t Villani, I eii.. c. 144.
and the cultivation of mulberry obtained similar immunities. This pow-
ries was enforced by their laws. T WooledAl and enterprising state, in the four-
len stuffs, though the trade was perhaps teenth century, sometimes the enemy of less conspicuous than that of Flanders, the
Byzantine court, maintained its in- and though many of the coarser kinds dependent settlement
at Pera. From were imported from thence, employed a thence she spread her sails into the Eux-
multitude of workmen in Italy, Catalonia, ine, and, planting a colony at Caffa in the and the
south of France. Among the Crimea, extended a line of commerce trading companies into
which the midwith the interior regions of Asia, which even the skill and spirit of Aoar own
times the Black Sea. Et ipsa quidem Tanaim it visura, even the skill and spirit of our own times
nostri enim mans navigatio non ultra tenditur, nostri enim maris navigatio non ultra tenditur
have not yet been able to revive. eorum vero aliqui, quos hoc fert, illic iter [institu. ent] earn
egressuri, nec antea substituti, quim * Macpherson, p. 490. Gange et Caucaso superato, ad
Indos atque ex. t Capmany, Memorias Historicas, t. iii., prefacing, tremos Seres et Orientalem
perveniat Oceanum p. 11; and part 2, p. 131. His authority is Bal-
En quo ardens et
inexplebilis habendi sitis homi aucci Pegalotti, a Florentine writer upon cont-
mentes
rapit!-Petrarchae Opera, Senil., 1. ii. merce about 1340, whose work I have never seen. ep. 3, p.
760, edit. 1581. It apppars from Balducci that the route to China * Hist. de Languedoc, t. iii., p.
531; t. iv., p was from Azoph to Astrakan, and thence by a va- 517. Mem. de l'Acad. des
Inscriptions, t. xxxvii. riety of places which cannot be found in modern t Capmany, Memorias
Historicas de Barcelona, maps, to Carnbalu, probably Pekin, the capital city t. i., part 2. See
particularly p. 36. of China, which he describes as being one hundred I Muratori, Dissert. 30.
Denina, Rivoluzione miles in circumference. The journey was of rath-
d'Italia, 1. xiv., c. 11.
The latter writer is of opin er more than eight months, going and returning; ion that mulberries
were not cultivated as an im and he assures us it was perfectly secure, not only portant object
till after 1500, nor even to any great for caravans, but for a single traveller with a couple extent
till after 1500; the Italian manufacturers,of interpreters and a servant. *The Venetians had
buying most of their silk from Spain or the Levant also a settlement in the Crimea, and appear,
by a ~ The history of Italian states, and especially passage in Petrarch's letters, to have
possessed Florence, will speak for the first country. Cap some of the trade through Tartary. In a
letter many attests the woollen manufacture of the see. written from Venice, after extolling in
too rhetor- ond.-Mem. Hist. de Barcel., t. i., part 3, p. 7, &c.; ical a manner the commerce of
that republic, he and Vaissette'that of Carcasonne and its vicinit, mentions a particular ship that
he' jiust sailed for -Hist. de Lang., t. iv., p. 517.
and Provins, a French poet, who lived about Italy do not supply, and enriched the merthe year 1200, or, at the latest, under St. chants by means of whose capital the exLouis, describes it in the most unequivo- ports of London and of Alexandria were cal language. James de Vitry, a bishop conveyed into each other's harbours. in Palestine, before the middle of the The usual risks of navigation, and those thirteenth century, and Guido Guinizzelli, incident to commercial adven- Maritime an Italian poet of the same time, are ture, produce a variety of ques- equally explicit. The French, as well as in every system of jurisprudence, as Italians, claim the discovery as their which, though always to be determined, own; but whether it was due to either as far as possible, by principles of natuof these nations, or rather learned from ral justice, must in many cases depend their intercourse with the Saracens, is upon established customs. These custrot easily to be ascertained.' For some toms of maritime law were anciently reduced into a code by the Rhodians, ant. * None were admitted to the rank of burgesses the Roman emperors preserved or rein the towns of Aragon who used any manual formed the constitutions of that republic trade, with the exception of dealers in fine cloths. The woollen manufacture of Spain did not at any time become a considerable article of export, nor dition of this early jurisprudence survived even supply the internal consumption, as Capmany the decline of commerce in the darker has well shown.-Memorias Historicas, t. iii., p. ages; but after it began to recover it325, et seq., and Edinburgh Review, vol. x. self neces reco t Boucher, the French translator of 11 Consolato, sity sgested, or recollection del Mare, says, that Edrissi, a Saracen geographer, I prompted, a scheme of regulations rewho lived about 1100, gives an account, though in! sembling in some degree, but much more a confused manner, of the polarity of the magnet, enlarged than those of antiquity. This t. ii., p. 280. However, the lines of Guiot de Pro. was formed into a written code, li Convins are decisive. These are quoted in Hist. Lit- sldeManomuhari, po tiraire de la France, t. ix., p. 199; M6m. de l'Acad. solato del Mare, not much earlier, proba des Inscript., t. xxi., p. 192, and several other bly, than the middle of the thirteenth century, and its promulgation seems canzone quoted by Ginguen6, Hist. Littérale de rather to have proceeded from the citItalie, t.qi., p. 413. n zens of Barcelona than from those of In quelle parti sotto tramontana, Pisa or Venice, who have also claimed Sono li monti della calamita, Che dan virtue all' aere to be the first legislators of the sea.* Di trerre it ferro; ma perche lontana, Vole di simil pietra aver aita, It is a singular circumstance, and only to be exA far la adoperare, plained by the obstinacy with which men are apt 132 dirizzar lo ageo i ver la stella." to reject improvement, that the magnetic needle We cannot be diverted by the nonsensical theory was not generally adopted in navigation till very these lines contain, from perceiving the positive long after the discovery of its properties; and evenr testimony of the last verse to the poet's knowledge after their peculiar importance had been perce, rof the polarity of the magnet. But, if any doubt ed. The writers of the thirteenth century wlc could remain, Tiraboschi, t. iv., p. 171, has fully mention the polarity of the needle, mention also its established, from a series of passages, that this use in navigation; yet Capmany has found no disphenomenon was well known in the thirteenth tinct proof of its employment till 1403, and does not century, and puts an end altogether to the preten- believe that it was frequently on board Mediterr. sions of Flavio Gioja, if such a person ever existed. nean ships at the latter part of the preceding age. See also Macpherson's Annals, p. 364 and 418. It -Memorias Historicas, t. iii., p. 70. Perhaps is provoking to find an historian like Robertson as- however he has inferred too much from his nega serting without hesitation, that this citizen of Amalfi tive proof; and this subject seems open to further was the inventor of the compass, and thus accred- inquiry. itnmg an error which:.ad long before been detected. * P- ucher supposes it to have teen Coropllod ai H h
Besides regulations simply mercantile, or aus anarchy which so long resisted this system has defined the mutual rights coercive authority of civil magistrates, of neutral and belligerent vessels, and the sea held out even more temptation thus laid the basis of the positive law and more impunity than the land; and of nations in its most important and dis- when the laws had regained their soveaputed cases. The King of France and eighty, and neither robbery nor private Count of Provence solemnly acceded to warfare was any longer tolerated, there this maritime code, which hence acqui- remained that great common of mankind, red a binding force within the Mediterran- unclaimed by any king, and the liberty near Sea; and in most respects, the law of the sea was another name for the seaman of Europe is at present con-curity of plunderers. A pirate, in a welld forable to its provisions. A set of reg- armed, quick-sailing vessel, must feel, I ulations, chiefly borrowed from the Con- suppose, the enjoyments of his exempsolato, was compiled in France under tion from control more exquisitely than the reign of Louis IX., and prevailed in any other freebooter; and darting along their own country. These have been de- the bosom of the ocean, under the nominated the laws of Oleron, from an impartial radius of the heavens, may icle story that they were enacted by deride the dark concealments and hurRichard I., while his expedition to the ried flights of the forest robber. His Holy Land lay at anchor in that island.* occupation is indeed extingished by Nor was the north without its peculiar the civilization of later ages, or concde of maritime jurisprudence; name- fined to distant climates. But in the ly, the ordinances of Wisbuy, a town in thirteenth and fourteenth centuries, a the isle of Gothland, principally compiled rich vessel was never secure from att from those of Oleron, before the year tack; and neither restitution nor punish1400, by which the Baltic traders were mrent of the criminals was to be obtained governed.t from governments who sometimes fearThere was abundant reason for establish- ed the plunderer and sometimes conFrequency lishing among maritime nations nived at the offence.* Mere piracy, piracy. some theory of mutual rights, however, was not the only danger. The and for securing the redress of injuries, maritime towns of Flanders, France, and as far as possible, by means of acknowl- England, like the free republics of Italy. edged tribunals. In that state of barba- prosecuted their own quarrels by arms, without asking the leave of their respect. Barcelona about 900; but his reasoning are in- ive sovereigns. This practice, Law of conclusive, t. i., p. 72; andindeed Barcelonaat that exactly analogous to that of pri- reprisals time was little, if at all, better than a fishing-town. vate war in the feudal system, more than Some arguments might be drawin favour of Pisa once involved the kings of France and from the expressions of Henry IV.'s charter granted to that city in 1081. Consuetudines, quas ha- England n hostlity.- But where th bent de mari, sic iis observabimu,3 sicut illorum est quarrel did not proceed to such a length consuetudo.-Muratori, Dissert. 45. Giannone as absolutely to engage two opposite seems to think the collection was compiled about towns, a modification of this ancient the reign of Louis IX., 1. xi., c. 6. Capmany, the right of revenge formed part of the regu last Spanish editor, whose authority ought perhaps to outweigh every other, asserts, and seems to lar law of nations, under the name of reprove them to have been enacted by the mercantile prisals. Whoever was plundered or inmagistrates of Barcelona, under the reign of James jured by the inhabitants of another town the Conqueror, which is much the same period.-obtained authority from his own magis-'Codigo de las Costrumbres maritimas de Barcelona, Madrid, 1791.) But, by whatever nation they were reduced into their present form, these laws person belonging to it, until his loss were certainly the ancient and established usages should be compensated. This law of of the Mediterranean states; and Pisa may very probably have taken a great share in first practi * Hugh Despenser seized a Genoese vessel val sing what a century or two afterward was render- ued at 14,300 marks, for which no restitution wai ed more precise
supposes them A. D. 1336. toberegisters cf actual decisions. t The Cinque Ports and other
trading towns ore t I have onlj the authority of Boucher for re- England were in a state of
constant hostility with ferring the Ordinances of Wisbuy to the year their opposite neighbours
during the reigns of Ed. 1400. Beckman imagines them to be older than ward I. and II. One
might quote almost half the those of Oleron. But Wisbuy was not enclosed by instruments in
Rymer in proof (f these conflicts, a wall till 1288, a proof that it could not have been and of
those with the mariners of Norway and Den previously a to wn of much importance. It flour-
mark. Sometimes mutual envy produced frays ished chiefly in the first part of the fourteenth
cen- between different English towns. Thue, in 125t, tuiy, and was at that time an independent
repub- the Winchelsea mariners attacked a Yarmouth ic; but fell under the yoke of Denmark
before galley, and killed some of aer men.-Mutt Paxio the etn of the same age. apudr
Macpherson

Page  483 CART I.] S i'ATE OF SOCIETY. 182 reprisal was not confined to maritime
principal nor surety." Henry III. had places. It prevailed in Lombardy, and previously granted a
charter to the burrprobably in the Gerinan cities. Thus, if gesses of Lubec, that they should not
be a citizen of Modena was robbed by a Bo- arrested for the debt of any of their coulognese,
he complained to the magis- trymen, unless the magistrates of Lubec trates of thle former city,
who represent- neglected to compel payment.* But by ed the case to those of Bologna,
demand- a variety of grants from Edward II., the ing redress. If this were not immadi-
privileges of English subjects under the ately granted, letters of reprisals were statute of
Westminster were extended to issued, to plunder the territory of Bo- most foreign nations.t
This unjust relona till the injured party should be re- sponsibility had not been confined to
s civil imbursed by sale of the spoil.* In the cases.'One of a company of Italian merlaws of
Marseilles it is declared, "If a chants, the Spini, having killed a man foreigner take any thing
from a citizen the officers of justice seized the bodies of Marseilles, and he who has jurisdic-
and effects of all the rest.T ion over the said debtor or unjust taker If, under all these obstacles,
whether does not cause right to be done in the created by barbarous manners, Great prorl same,
the rector or consuls, at the peti- by national prejudice, or by the its of trade, tion of the said
citizen, shall grant him fraudulent and arbitrary measures of prinrepsals upon all the goods of
the said ces, the merchants of different countries debtor or unjust taker, and also upon the
became so opulent as almost to rivAM the goods, of others, who are under the juris- ancient
nobility, it must be ascribed to diction of him who ought to do justice, the greatness of their
commercial profits. and would not, to the said citizen of Mar- The trading companies possessed
either seilles."t Edward III. remonstrates, in a positive or a virtual monopoly, and held an
instrument published by Rymer, the keys of those eastern regions, for the against letters of
marca granted by the luxuries of which the progressive refineKing of Aragon to one Berenger
de la ment of manners produced an increasing Tone, who had been robbed by an Eng- demand.
It is not easy to determine the ish pirate of ~2000; alleging that, inas- average rate of profit;~
but we know that much as he had always been ready to the interest of money was exceed- And
high give redress to the party, it seemed to ingly high throughout the middle rate of his
counsellors that there was no just ages. At Verona, in 1228, it was interest. cause for reprisals
upon the king's or his fixed by law at twelve and a half per subjects' property.: This passage is
so cent.; at Modena, in 1270, it seems to far curious, as it asserts the existence of have been as
high as twenty.II The rea customary law of nations, the knowl- public of Genoa, towards the
end of the edge of which was already a sort of fourteenth century, when Italy had grown
learning. Sir E. Coke speaks of this wealthy, paid only from seven to ten per right of private
reprisals as if it still ex- cent. to her creditors.~' But in France isted;~ and, in fact, there are instances and England the rate was far more opof granting such letters as late as the pressive. An ordinance of Philip the reign of Charles the First. Fair, in 1311, allows twenty per cent. afA practice founded on the same prin- ter the first year of the loan.** Under Liability of ciples as reprisal, though rather Henry III., according to Matthew Paris, aliens for less violent, was that of attach- the debtor paid ten per cent. every two each other's ing the goods or persons of res-months,tt but this is absolutely incredible ident foreigners for the debts of their countrymen. This indeed. in Eng- Rymer, t. i., p. 839. t Idem, t. iii., p. 458, 647, 678, et ini a. See too land, was not confined to foreigners until the ordinances of the staple, in 27 Edw. III., which the statute of Westminster 1., c. 23, which confirm this among other privileges, and contain enacts that "no stranger who is of this manifold evidence of the regard paid to commerce realm shall be distrained in any town or that reign. market for a dsbt wherein he is neither quer, c. xxii., p. 891. Madox, ist. Exh7. ~ In the remarkable speech of the Doge Moceni' a Murattel, Dissert. 53. go, quoted in another place, p. 177, the annual + Du Cange, voc. Lauduin. profit made by Venice on her Inercantile capital is t Rymer, t. iv., p. 576. Videtur sapientibus et reckoned at forty ner cent. peritis, quod causa, de jure, non subfuit marcham (l Muratori, Dissert. 16. seu reprisaliam in nostris, seu subditorum nostro- ~T Bizarri Hist. Genuens, p. 797. The rate of dis rum, bonis concedendi. See too a case of neutral count on bills, which may not have exactly cor. goods on board an enemy's vessel claimed by the responded to the average annual interest of m'bney.'wners, and a legal distinction taken in favour of was ten per cent. at Barcelona in 1435.- Cap tle captors, t. vi., p. 14. many, t. i., p. 209. 0 27 F.. III., stat. ii., c. 17. 2 Ins', p. 205. *0 Du Cange, v. Usura.' t Muratori, Diss, 18 H h 2

Page 484 ~ EUROPE DURING THE MIDDLE AGES. [CHAP. IX as a general practice. This was not debts due to the children of Israel el - merely owing to scarcity of money, but cept a part which they ietained as the to the discouragement which a strange price of their bounty. One is at a loss prejudice opposed to one of the most use- to conceive the process of reasoning in ful and legitimate branches of commerce. an ordinance of St. Louis, where, "for Usury, or lending money for profit, was the salvation of his own soul and those treated as a crime by the theologians of of his ancestors, he releases to all Christhe middle ages; and though the super- tians a third part of what was owing stition has been eradicated, some part of by them to Jews."** Not content with1 the prejudice remains in our legislation. such edicts, the kings of France someMoney This trade in money, and indeed times banished the whole nation from dealirgsof a great part of inland trade in their dominions, seizing their effects at the Jews. general, had originally fallen to the same time; and a season of alternathe Jews, who were noted for their usury tive severity and toleration continued till so early as the sixth century.* For sev- under Charles VI. they were finally ex eral subsequent ages they continued to pelled from the kingdom, where they employ their capital and industry to the never afterward possessed any legal set, same advantage, with little molestation tement.t In England they were not so from the clergy, who always tolerated harshly treated; but they became less their avowed and national infidelity, and remarkable for riches after the thirteenth often with some encouragement from century. This decline of the Jews was princes. In the twelfth century we find owing to the transference of their trade them not only possessed of landed prop- in money to other hands. In the early tery in Languedoc, and cultivating the part of the thirteenth century the merstudies of medicine and Rabbinical liter- chants of Lombardy of the south of ature in their own academy at Montpe- Francet took up the business of remitler, under the protection of the Count of ting money by bills of exchange,~ and Toulouse, but invested with civil offices.t of making profit upon loans. The utility Raymond Roger,
viscount of Carcas—of this was found so great, especially by sonne, directs a writ "to his bailiffs the Italian clergy, who thus il an easy Christian and Jewish." It was one of manner drew the income of their tranlsthe conditions imposed by the church on alpine benefices, that, in spite of much the Count of Toulouse, that he should al- obloquy, the Lombard usurers established low no Jews to possess magistracy in his themselves in every country; and the dominions.~ In Spain they were placed general progress of commerce wore off by some of the municipal laws on the the bigotry that had obstructed their footing of Christians, with respect to the reception. A distinction was mnade becomposition for their lives, and seem in tween moderate and exorbitant interest; no other European country to have been and though the casuists did not acquiesce so numerous or considerable.II The diligence and expertness of this people in all * Martenne, Thesaurus Anecdotorum, t. i, pl. pecuniary dealings recommended them 984. to princes who were solicitous about the t Velly, t. iv., p. 136. improvement of their revenue. We find t The city of Cahors, in Quercy, the modern department of the Lot, produced a tribe of moneyan article in the general charter of priv- dealers. The Caursini are almost as often noticed ileges granted by Peter III. of Aragon, in as the Lombards.-See the article in Du Cange. 1283, that no Jew should hold the office In Lombardy, Asti, a city of no great note in other of a bayle or judge. And two kings of respects, was famous for the same department of Castile, Alonzo XI. and Peter the Cruel, commerce. incurred much odium by employing Jew- Q There were three species of paper credit in incurred much odium by employing Jew- ) the dealings of merchants: 1. General letters of ish ministers in their treasury. But, in credit, not directed to any one, which are not un other parts of Europe, their condition common in the Levant; 2. Orders to pay money had, before that time, begun to change to a particular person; 3. Bills of exchange regu for the worse; partly from the fanatical larly notoiable.-Boucher, t. ii., p. 621. Instances about of the first are mentioned by Macpherson about spirit of the crusades, which prompted 1200, p. 367. The second species was introduced the populace to massacre, and partly by the Jews about 1183 (Capmany, t. i., p. 297), from the jealousy which their opulence but it may be doubtful whether the last stage of excited. Kings, in order to gain money the progress was reached nearly so soon. Ar. in. d popu.run strument in Rymer, however, of the year 1364 (t. Rnd popularity at once, abolished te vi, p.495), mentions liters cambitoriw, which scerr to have been negotiable bills; and by 1400 they * Greg. Turon., i. iv. were drawn in sets, and worded exactly as a t Hist. de Languedoc, t. ii., p. 517; t. iii., p. 531 present-Macpherson, p. 614, and Beckman, His r Id., t. iii., p. 121. ~ Id., p. 163 tory of Inventions, vol. iii., p. 430, give front Cap I Marina, Ensayo Historico-Critico, p 143 many an actual precedent of a hill dated in 14t04

Page 485 ;PRT 11.T STATE OF SOCIETY. 4. In this,egal regulation, yet it satisfied, zens, to whom the revenues were pledgerd even ill superstitious times, the coniscien- for repayment. The republic of Florence ces of provident traders.* The Italian had set a recent, though not a very enAhankers were frequently allowed to farm couraging example of a public loan, to the customs in England, as a security, defray the expense of her war against perhaps, for loans which were not very Mastino della Scala, in 1336. The chief punctually repaid.t In 1345, the Bardi mercantile firms, as well as individua' at Floren2e the greatest company in citizens, furnished money on an assign. Italy, became bankrupt, Edward III. ment of the taxes, receiving fifteen pe. owing them in principal and interest cent. interest; which appears to h: ve 900,000 gold florins. Another, the Pe- been above the rate of private usury,* ruzzi, failed at the same time, being The state was not unreasonably consideredors to Edward for 600,000 florins. ered a worse debtor than some of hei The King of Sicily owed 100,000 florins citizens; for in a few years these loans to each of these bankers. Their failure were consolidated into a general fuind,
or involved, of course, a multitude of Flor- monte, with some deduction from the capentine citizens, and was a heavy misfor- ital, and a great diminution of interest; tune to the state.

But Banks of tedfor the accommodation of pri- I have not found that these creditors Genoa and vate merchants, is said to have formed at Florence a corporate body, or others. been that of Barcelona, in 1401. ~ took any part, as such, in the affairs of The banks of Venice and Genoa were the republic. The case was different at of a different description. Although the Genoa. As a security at least for their former of these two has the advantage interest, the subscribers to public loans of greater antiquity, having been formed, were permitted to receive the produce as we are told, in the twelfth century, of the taxes by their own collectors, yet its early history is not so clear as paying the excess into the treasury. that of Genoa, nor its political impor- The number and distinct classes of these tance so remarkable, however similar subscribers becoming at length inconve might be its origin. During the wars nient, they were formed about the year of Genoa in the fourteenth century, she 1407 into a single corporation, called the had borrowed large sums of private citi- Bank of St. George, which was from that time the sole national creditor and * Usury was looked upon with horror by our The government of this was English divines long after the reformation. Fleury, mortgagee. in his Institutions au Droit Ecclesiastique, t. ii., p. intrusted to eight *protectors. It sooun 129, has shown the subterfuges to which men had became almost independent of the state. recourse in order to evade this prohibition. It is Every senator, on his admission, swore an unhajtpy truth, that great part of the attention to maintain the privileges of the bank devoted to the best of sciences, ethics and juris- which were confirmed by the pope, and prudence, has been employed to weaken principles that ought never to have been acknowledged. even by the emperor. The bank inferOne species of usury, and that of the highest im- posed its advice in every measure of portance to commerce, was always permitted, on government, and generally, as is admittance of the risk that attended it. This was marine assurance, which could not have existed ted, to the public advantage. It equipuntil money was considered in itself as a source ped armaments at its own expense, one of profit. The earliest regulations on the subject of which subdued the Island of Corsica; of assurance are those of Barcelona in 1433; but and this acquisition, like those of our the practice was, of:course, earlier than these, great Indian corporation, was long subthouth not of great antiquity. It is not mentioned in the Consolato del Mare, nor in any of the Han- ject to a company of merchants, without seatic laws of the fourteenth century.-Beckman, any interference of the mother country.t vol. i., p. 388. This author, not being aware of the The increasing wealth of Europe, Barcelonese laws on this subject published by whether derived from internal Increase of Capmany, supposes the first provisions regulating marine assurance to have been made at Florence n 1523. merce, displayed itself in more pend. e. 4. Macpherson, p. 487, et alibi. They had prob- expensive consumption, and greater re ably excellent bargains: in 1329 the Bardi farmed finements of domestic life. But these all the customs in England for 201. a day. But, effects were for a, long time very grad, in 1282, the customs had produted 84111., and half ual, each generation niaking a few steps a century of great improvement had elapsed. -Villani, 1. xii., c. 55, 87. He calls these two banking-houses the pillars which sustained great. G. Villani, 1. xi., c. 4. rart of the commerce of Christendom. t Matt. Villani, p. 227 (in Muratori, Script. Rei Q Capmany, t. i., p. 213. Ital., t. xiv.). 11 Macpherson, p. 341, from Sanuto. The bank $ Bizarri Hist. Genuens., p. 797 (Antwerp. 1579; of Venice is referred to 11" I. Machiavelli, Storia Fiorelna, l. vi;i
It is not till the latter half of the thirteenth century that an accelerated impulse appeared. The just queen, covered with blue velvet, and government and suppression of disorder sprinkled with lilies of gold, astonished under St. Louis, and the peaceful temper the citizens of Naples.* Provence had of his brother Alfonzo, count of Toulouse enjoyed a long tranquillity, the natural and Poitou, gave France leisure to avail source of luxurious magnificence; and herself of her admirable fertility. Eng- Italy, now liberated from the yoke of the land, that to a soil not perhaps inferior empire, soon reaped the same fruit of a to that of France, united the inestimable condition more easy and peaceful than advantage of an insular position, and was had been her lot for several ages. Dante invigorated, above all, by her free consti- speaks of the change of manners at Flortution, and the steady industriousness of ence, from simplicity and virtue to reher people, rose with a pretty uniform finement and dissoluteness, in terms very motion from the time of Edward I. It- nearly similar to those quoted above.taly, though the better days of freedom Through the fourteenth century, had passed away in most of her repub- there continued to be a rapid but steady lics, made a rapid transition from simipli- progression in England, of what we may city to refinement. "In those times," denominate elegance, improvement, or says a writer about the year 1300, speak- luxury; and if this was for a time susing of the age of Frederick II., "the pended in France, it must be ascribed to manners of the Italians were rude. A the unusual calamities- which befell that mnan and his wife ate off the same plate. country under Philip of Valois and his There was no wooden-handled knives, son. Just before the breaking out of the nor more than one or two drinking-cups English wars, an excessive fondness for in the house. Candles of wax or tallow dress is said to have distinguished no: were unknown: a servant held a torch only the higher ranks, but the bur'gers, during supper. The clothes of men whose foolish emulation at least indicates were of leather unlined: scarcely any their easy circumstances.t Modes oJ gold or silver was seen on their dress. dress hardly perhaps deserve our notice The common people ate flesh but three on their own account; yet, so far as their times a week, and kept their clothes. Many did not drink wine in diffused wealth, we should not overlook summer. A small stock of corn seemed either the invectives bestowed by the riches. The *portions of women were clergy on the fantastic extravagances of small; their dress, even after marriage, fashion, or the sumptuary laws by which was simple. The pride of men was to it was endeavoured to restrain them. be well provided with arms and horses; The principle of sumptuary laws was that of the nobility to have lofty towers, partly derived from the small Sumptuary of which all the cities in Italy were full. republics of antiquity, which laws. But now frugality has been changed for might perhaps require that security for sumptuousness; every thing exquisite is public spirit, and equal rights; partly sought after in dress: gold, silver, pearls, from the austere and injudicious theory. silks, and rich furs. Foreign wines and rich meats are required. Hence usury, * Murat., Dissert. 23. rapine, fraud., tyranny,"&c. This pas- t Bellincioul Berti vid’ io andar cinto Di cuojo e d'oso, e venir dallo specchio sage is supported by other testimonies La donna sua senza’l viso dipinto. nearly of the same time. The conquest E vidi quel di Nerli, e quel del Vecchio of Naples by Charles of Anjou, in 1266, Esser contenti alla pelle scoverta, E sue donne al fiso ed al pennechio. + Ricobaldus Ferrarensis, apud Murat., Dissert. Paradis., canto xv. 23. Francise. Pippinus, ibidem. Mcratori en- See too the rest of this canto. But this is put deavours to extenuate the authority of this passage, in the month of Cacciaguida, the poet's ancestor, on account of some more ancient writers who com- who lived in the former half of
The twelfth century. Plain of the luxury of their times, and of some par-

tial instances of magnificence and expense. But 1250, when the
times of wealth and turbulence be. Ricobaldi alludes, as Muratori himself admits, to the gan at
Florence. mode of living in the middle ranks, and not to that $ Velly. t. viii., p. 352. The second
continuator of courts, which in all ages might occasionally dis-
of Nangis vehemently inveighs
against the long play considerable splendour. I see nothing to beards and short breeches of his
age; after the inweaken so explicit a testimony of a contemporary, troduction of which
novelties, he judiciously ob. which in fact is confirmed by many writers of the serves, the
French were much more disposed to run next age, who, according to the practice of Italian
away from their enemies than before. —Spicilo chroniclersa have copied it as their own. giu,
t. iii., p. 105.

Page 487 'PART 11'. STATE OF SOCIETY 4- - ci religion disseminated by the clergy. in a
state of poverty at this period, V hiich These prejudice united to render all in- they concealed
by an affection of ornament as general comforts odious under ment; while our English
yeomanry and the name of luxury; and a third motive, tradesmen were more anxious to inv-
igomore powerful than either, the jealousy rate their bodies by a generous diet, that, with which
the great regard any thing to dwell in well-furnished houses, or to like imitation in those
beneath them, co- find comfort in cleanliness and elegance.* operated to produce a sort of
restrictive The German cities, however, had acquicode in the laws of Europe. Some of red with
liberty the spirit of improvement these regulations are more ancient; but and industry From the
time that Henry the chief part were enacted, both in V. admitted their artisans to the
priviFrance and England, during the four- leges of free burghers, they became more teenth
century; extending to expenses and more prosperous;t while the steadiof the table as well as
apparel. The ness and frugality of the German charfirst statute of this description in our own
acter compensated for some disadvantacountry was, however, repealed the next ges arising out
of their inland situation. year;* and subsequent provisions were Spire, Nuremberg, Ratisbon,
and Augs entirely disregarded by a nation which burg, were not indeed like the rich marveled
liberty and commerce too much kets of London and Bruges, nor could to obey laws conceived
in a spirit hostile their burghers rival the princely merto both. Laws indeed designed by those
chants of Italy; but they enjoyed the governments to restrain the extravagance blessings of
competence diffused over a of their subjects, may well justify the se- large class of industrious
freemen; and were indignation which Adam Smith has in the fifteenth century, one of the
polipoured upon all such interference with test Italians could extol their splendid private
expenditure. The kings of France and well-furnished dwellings, their rich and England were
undoubtedly more apparel, their easy and affluent mode of egregious spendthrifts than any
others living, the security of their rights, and just in their dominions; and contributed far
equality of their laws.t more by their love of pageantry to excite a taste for dissipation in their
people, * These English, said the Spaniards who came a- ts fodspinn eiover with Philip II.,
have their houses made of than by their ordinances to repress it. sticks and dirt, but they fare
commonly so well as Mussus, an historian of Placentia, has the king.-Harrison's Description of
Britain, pre Domesti, left a pretty copious account of fixed to Holingshed, vol. i., p. 315 (edit.
1807). manners the prevailing manners among t Pfeffel, t. i., p. 293. of Italy. his countrymen
about 1388, and. Eneas Sylvius, de Moribus Germanorunl This treatise is an amplified
panegyrick upon Ger expressly contrasts their more luxurious many, and contains several
curious passages: they living with the style of their ancestors must be taken perhaps with some
allowance; for seventy years before; when, as we have the drift of the whole is to persuade the
Germans seen, they had already made considera- that so rich and noble a country could afford
a lit tie money for the poor pope. Civitates quas vocant ble steps towards refinement. This pas-
liberas, cur, Imperatori solam subjiciuntur, cujus sage is highly interesting; because it jugum
est instar libertatis; nec profect6 usquam shows the regular tenour of domestic gentium tanta
libertas est, quanta fruuntur hujuseconomy in an Italian city, rather than cemodi civitates.'
Nam populi quos Itali vocant a mere display of individual magnifi-
liberos, hi potissimam
serviunt, sive Venetias infects collected spectes, sive Florentiam aut Caenas, in quibus cicenses,
as in most of the Facts c ect es, practer paucos qui reliquos ducent, loco man by our own and
the French antiquaries. cipiorum habentur. Cum nec rebus sui uti, utli. But it is nmuch too
long for insertion in bet, vel fari qua velint, et gravissimis opprimuntur this place.t No other
country, perhaps, pecuniarum exactionibus. Apud Germanos omnia lomta sunt, omnia jucunda;
nemo suis privatur could exhibit so fair a picture off:middle bonis. Salva cuique sua haereditas
est, nulli nisi life: in France, the burgners and.even nocenti magistratusnocent. Nec apud eos
factiothe inferior gentry were for the most part nes sicut apud Italas urbes grassantur. Sunt
autem supra centum civitates hAc libertate fruentes, p. 1058. * 37 E. III. Rep. 38 E. III. Several
other In another part of his work p. 719, he gives a statutes of a similar nature were passed in
this specious account of Vienna. The houses, he says, and the ensuing reign. In France there
were had glass windows and iron doors. Fenestra unsumptuary laws as old as Charlemagne,
prohibiting dique vitreae perlucent, et ostia plerumque ferrea. or taxing the use of furs; but the
first extensive In domibus multa et munda supellex. Alta dornus regulation was under Philip
the Fair.-Velly, t. magnifica visuntur. Unum id dedecori est, vii., p. 6i; t. xi., p. 190. These
attempts to re- quod tecta plerumque tigno contegunt, pauca la strain what cannot be restrained
continued even tere. Caetera aedificia muro lapideo consistunt. down to 1700. —De la Mare,
Trait6 de la Police, t. Pictet domus et exteriuset interius splendent. Ci i., 1. iii. vitatis populus
50,000 communicantium creditur. I f Muratori, Antic.kith Italiane, Dissert. 23, t. i., suppose
this gives at least double for the total popo 325. ulation. He -oceoeds to represent the manners
oi
great gateway, which led to the inner Castles in the Archweologia.* Of these ballium or
courtyard. Thus at Tun:- I shall make free use in the following bridge Castle, this part of which
is referparagraphs. red by Mr. King to the beginniing of the The most ancient buildings which
we thirteenth century, there was a room can trace in this island, after the depar- twenty-eight
feet by sixteen on each ture of the Romans, were circular tow- side of the gateway; another
above, ofers of no great size, whereof many re- the same dimensions, with an interme main in
Scotland; erected either on a diate room over the entrance; and one natural eminence, or on an
artificial large apartment on a second floor occumnround of earth. Such are Conisborough pying
the whole space, and intended for Castle in Yorkshire, and Castleton in state. The windows in
this class of cas Derbyshire, built perhaps before the con- tles were still little better than
loopholes quest.t To the lower chambers of those on the basement story, but in the upper
gloomy keeps there was no admission of rooms often large and beautifully ornamentalight or air,
except through long narrow mented, though always looking inwards loopholes and an aperture
in the roof. to the court. Edward I. introduced a Regular windows were made in the upper more
splendid and convenient style of castles, containing many habitable tow the ei:y in a less
favourable point of view, charging with communicating apartments the citizens with gluttony
and libertinism, the nobility with oppression, the judges with corruption, Conway and
Carnarvon will be familial &c. Vienna probably had the vices of a flourishing examples. The
next innovation was the city; but the love of amplification in so rhetorical castle-palace; of
which Windsor, if not a writer as AEneas Sylvius weakens the value of quite the earliest, is the
most magnificent his testimony, on whichever side it is given. instance. Alnwick, Naworth,
Harewood, * Vols. iv. and vi. t Mr. Lysmons refers Castleton to the age of Will- Spofforth,
Kenilworth, and Warwick, iam the Conqueror, but without giving any reasons. were all built
upon this scheme during -Lysons's Derbyshire, p. cccxxvi. Mr. King had the. fourteenth
century, but subsequent satisfied himself that it was built during the Hep- enlargements have
rendered caution netarchy, and even before the conversion of the Sax-'ns to Christianity; but in
this he gave the reins, cessary to distinguish their original reas usual, to his imagination, wch
as much ex- mains. "The odd mixture," says Mr ceeded h;s learning as the latter did his
judgment. King, " of convenience and magnificence Conisborough should seem, by the name,
to have with cautious designs for protection and been a roval residence, which it certainly
never defence, was after the conquest. But if the engravings of and with the Inconveniences of
the decorative parts in Archaeologia, vol. vi., p. 244, the form ~r c)nfined plan of a close forare
not remarkably inaccurate, the architecture is tress, is very striking." The provisions too elegant
for the Danes. much more for the un- for defence became now, however, little converted
Saxons. Both these castles are enclosed by a court or ballium, with a fortified entrance, *
Wlitaker's Hist of Whalley. Lysons's Cum like tho.se erec.ted hv the Normans. rerland p. ccvi.
the construction of manorial their turrets and battlements, to erect houses, especially in the western coun which a royal license was necessary, but tics, and other parts where that material their defensive strength could only have is easily procured. - Gradually, even in availed against a sudden affray or attempt timber buildings, the intervals of the at' forcible dispossession. They were al- main beams, which now became perpendicular, not throwing off their curved the circumference of the first, when there springers till they reached a considerable were two, being occupied by the offices height, were occupied by stone walls, or, and servants' rooms, that of the second where stone was expensive, by mortar by the state-apartments. Regular quad- or plaster, intersected by horizontal or rangular houses, not castellated, were diagonal beams, grooved into the princisometimes built during the same age, and pal piers. This mode of building conunder Henry VII. became universal in tinued for a long time, and is still familiar the superior style of domestic archite- iar to our eyes in the older streets of the ture. The quadrangular form, as well metropolis and other towns, and in many from security and convenience as from parts of the country. Early in the fourimitation of conventual houses, which teenth century, the art of building with were always constructed upon that mod- bIrick, which had been lost since the Roel, was generally preferred; even where man dominion, was introduced, probably the dwelling-house, as indeed was usual, from Flanders. Though several edifices only took up one side of the enclosure, of that age are constructed with this ma and the remaining three contained the tial, it did not come into general use offices, stables, and farm-buildings, with till the reign of Henry VI.~ Many con walls of communication. Several very old siderable houses as well as public build. parsonages appear to have been built in ings were erected with bricks during his this manner. It is, however, very diffi- reign and that of Edward IV., chiefly in cult to discover any fragments of houses the eastern counties, where the deficieninhabited by the gentry before the reign, cy of stone was most experienced. Few, at soonest, of Edward III., or even to if any, brick mansion- houses of the fif.. trace them by engravings in the older to- teenth century exist, except in a dilapipographical works; not only from the di- dated state; but Queen's College and lapidations of time, but because very fe'w Clare Hall at Cambridge, and part of considerable mansions had been erected Eton College, are subsisting witnesses to by that class. A great part of England the durability of the material as it was affords no stone fit for building; and the then employed. vast, though unfortunately not inexhaust- It is an error to suppose Meannessof ible resources of her oak forests, were that the English gentry were ordinaryman easily applied to less durable and magnif- lodged in stately or even in sion-houses, icejit structures. A frame of massive timber, independent of walls, and resem- I Whitaker's Hist. of Whalley. bling the inverted hull of a large ship, t Lyttleton, t. iv., p. 130. formed the skeleton, as it were, of an an- comm Harrison saltys excephat hhere andf the houses of t cient hall; the principal beams springing country towns, were made of stone, p. 314. Thea from'the ground naturally curved, and was about 1570. Q Hist. of Whalley. I1 The ancient manours and iouses of oul gen * The ruins of Herstmonceux are, I believe, tlemen, says Harrison, are yet, and for the most tolerably authentic remains of Henry VI.'s age, part, of strong timber, in framing whereof our car but a modern antiquary asserts that only one of penters have been and are worthily preferred be the courts at Haddon Hall is of he fiftee ith cen- fore those of like science among all utner nations sury -Lysons's Derbyshire. Howbeit such as are lately builded are either ot t Archaeologia, vol. vi. b:ick or hard stone, or both, p. 316. t Bloinefield'8 Norfolk, vol. iii p 242 I Archa( logia, vol i., p. 143; vol. iv., p. 91,
inferi- ings mentioned before the reign of or to those of their descendants in Charles VII., and
very few of so early a capacity as they were in convenience. date.t Jacques Cceur, a far- The usual arrangement consisted of an chant, unjustly persecuted by that prince, entrance-
passage running through the had a handsome house at Paris, as well house, with a hall on one
side, a parlour as another at Beaumont-sur-Oise.t It is neyond, and one or two chambers above,
obvious that the long calamities which iled on the opposite side a kitchen, pan-
France endured before the expulsion of iry, and other offices.* Such was the the English must have retarded
this ordinary manor-house of the fifteenth eminent branch of national improveand sixteenth
centuries, as appears not ment. only from the documents and engravings, Even in Italy, where, from,
the size of but, as to the latter period, from the build- her cities and social refinements of
her ings themselves, sometimes, though not inhabitants, greater elegance and splenvery
frequently, occupied by families dour in building were justly to be expectof consideration,
more often converted ed, the domestic architecture of the midinto farmhouses or distinct
tenements. dle ages did not attain any perfection. Larger structures were erected by men In
several towns the houses were cover. of great estates during the reigns of ed with thatch, and
suffered consequent. Henry VI. and Edward IV.; but very ly from destructive fires. Costanzo, a
few can be traced higher; and such has Neapolitan historian near the end of the been the effect
of time, still more through sixteenth century, remarks the change the advance or decline of
families, and of manners that had occurred since the the progress of architectural improve-
reign of Joanna II., one hundred and rient, than the natural decay of these fifty years before.
The great families buildings. that I should conceive it diffi- under the queen expended all their
wealth cult to name a house in England, still in- on their retainers, and placed their chief
habited by a gentleman, and not belong- pride in bringing them into the field. ing to the order
of castles, the principal They were ill lodged, not sumptuously apartments of which are older
than the clothed, nor luxurious in their tables. reign of Henry VII. The instances at The house
of Caracciola, high steward least must be extremely few.t- of that princess, one of the most
powerFrance by no means appears to have ful subjects that ever existed, having mlae a greater
progress than our own fallen into the hands of persons incomcountry in domestic architecture.
Except parably below his station, had been enfortified castles, I do not find in the work larged
by them, as insufficient for their of a very miscellaneous, but apparently accommodation.s If
such were the case in the city of Naples so late as the begin* Hist. of Whalley. In Strutt's View
of Man- ning of the fifteenth century, we may ners we have an inventory of furniture in the
house of Mr. Richard Fermor, ancestor of the Earl * Melanges tires d'une grande bibliothique,
par of Pomfret, at Easton, in Northamptonshire, and M. de Paulmny, t. iii., et xxxi. It is to be
regretted another in that of Sir Adrian Foskewe. Both that Le Grand d'Aussy never completed
that part these houses appear to have been of the dimen- of. his Vie privée des Français which
was to have sions and arrangement mentioned. And even in comprehended the history of civil
architecture. houses of a more ample extent, the bisection of Villaret has slightly noticed its
state about 1380, the ground-plot by an entrance-passage was, I be- t. ii., p. 141.:ive,
universal, and is a proof of antiquity. Had- t Chenonceaux in Touraine was built by a don Hall
and Penshurst still display this ancient nephew of Chancellor Duprat; Gaillon in the
dearrangement, which has been altered in some old partment of Eure by Cardinal Amboise;
both at houses. About the reign of James I., or perhaps a the beginning of the sixteenth century.
These little sooner, architects began to perceive the ad- are now considered, in their ruins, as
among the ditional grandeur of entering the great hall at most ancient houses in France. A work
by Du once, cerceau (Les plus excellens Batimens de France 4 Single rooms, windows,
doorways, &c., of an 1607) gives accurate engravings of thirty houses; earlier date may
perhaps not unfrequently be but, with one or two exceptions, they seem all to found; but such
instances are always to be verified have been built in the sixteenth century. Even in by their
intrinsic evidence, not by the tradition of that age, defence was naturally an object in contemporaneous place. The most remarkable fragment of early structuring a French mansion-house; and where rebuilding which I have anywhere found mentioned fence is to be regarded, splendour and convenience is at a house in Berkshire, called Appleton, where must give way. The name of chateau was not there exists a sort of prodigy, an entrance-passage retained without meaning. with circular arches in the Saxon style, which was not there exists a sort of prodigy, an entrance-passage retained without meaning. For the prosperity must probably be as old as the reign of Henry II. and downfall of Jacques Cœur, see Villaret, t. xvi. No other private house in England, as I conceive, p. 11; but more especially Mem. de l'Acad. d V Il can boast of such a monument of antiquity.

Ly- script., t. xx., p. 509. sons's Beikshire p. 212 234. 6 Giannone, Ist. di Napoli., iii., D. 280

Page 491 'aJtr ii. STATE 01 SOCIEIrY 49 guess how mean were the habitations in ampler dimensions, were generally less polished parts of Europe. orated in a similar manner. Yet glass it The two most essential improvements said not to have been employed in the Invention of in architecture during this pe- domestic architecture of France before chimneys riod, one of which had been the fourteenth century:* and its introd glass missed by the sagacity of duction into England was probably by no Greece and Rome, were chin- means earlier. Nor indeed did it come neys and glass windows. Nothing ap- into general use during the period of the parently can be more simple than the middle ages. Glazed windows were con. former; yet the wisdom of ancient times sidered as moveable furniture, and prob had been content to let the smoke escape ably bore a high price. When the earls by an aperture in the centre of the roof; of Northumberland, as late as the reign and a discovery, of which Vitruvius had of Elizabeth, left Alnwick Castle, the not a glimpse, was made perhaps in this windows were taken out of their frames country, by some forgotten semi-barbari- and carefully laid by t an. About the middle of the fourteenth But if the domestic buildings of the century the use of chimneys is distinctly fifteenth century would not seem Furniture mentioned in England and in Italy; but very spacious or convenient at othouses they are found in several of our castles present, far less would this luxurious which bear a much older date.*" This generation be content with their internal country seems to have lost very early accommodations. A gentleman's house the art of making glass, which was pre- containing three or four beds was extraserved in France, whence artificers were ordinarily well provided; few probably brought into England to furnish the win- had more than two. The walls were dows in some new churches during the commonly bare, without wainscot or ever. seventh century.1 It is said that in the plaster; except that some great houses reign of Henry III., a few ecclesiastical were furnished with hangings, an(c thai buildings had glazed windows.1 Suger, perhaps hardly so soon as the reign of however, a century before, had adorned Edward IV. It is unnecessary to add, his great work, the abbey of St. Denis, that neither libraries of books nor pictures with: windov's, not only glazed, but paint- could have found a place among furni. ed;~ and I presume that other churches ture. Silver plate was very rare, and of the same class, both in France and hardly used for the table. A few inven. England, especially after the lancet- tories of furniture that still remain ex shaped window had yielded to one of habit a miserable deficiency.1 And this _ was incomparably greater in private gen* Muratori, Antich. Ital., Dissert. 25, p. 390. tlemen's houses than among citizens, and Beckman, in his History of Inventions, vol. i., a especially foreign merchants. We have work of very great research, cannot trace any ex- an inventory of the goods belonging to plicit mention of chimneys beyond the writings of Contari John Villani, wherein however they are not noticed Contar, a ric Venetian trader., at his as a new invention. Piers Plowman, a few years house in St. Botolph's Lane, A. D. 1481. later than Villani, speaks of a " chambre with a There appear to have been no less than' chimney" in which rich men usually dined. But ten
beds, and glass windows are especially noticed as moveable furniture. No year 1311, there is a charge pro faciendo camino in the account-book of Bolton Abbey, under the mention of chairs or the rector's house of Gargrave.-Whitaker's Hist. mention however is made of chairs or of Craven, p. 331. This may, I think, have been looking-glasses. If we compare this only an iron stove or firepan; though Dr. W., without hesitation, translates it a chimney. How- * Paulmy, t. iii., p. 132. Villaret, t. xi., p. 141 ever, Mr. King, in his observations on ancient cas- Macpherson, t. 679. les, Archaeol., vol. vi., and Mr. Strutt, in his View of Northumberland Household Book, preface, of Manners, vol. i., describes chimneys in p. 16. Bishop Percy says, on the authority of Har of a very old construction. That at Conisborough rison, that glass was not commonly used in the in Yorkshire is peculiarly worthy of attention, and reign of Henry VIII carries back this important invention to a remote: See some curious valuations of furniture and antiquity. Chimneys are still more modern in stock in trade at Colchester in 1296 and 1301. France; and seem, according to Paulmy, to have Eden's Introd. t State of the Poor, p. 20 and come into common use since the middle of the 25, from the rolls of parliament. A carpenter's seventeenth century. Jadis nos pores n'avoient stock was valued at a shilling, and consisted of five qu'un unique chauffoir, qui etoit commun a toute tools. Other tradesmen were almost as poor; but une famille, et quelquefois a plusieurs, t. iii., p. a Tanner's stock, if there is no mistake, was worth 133. In another place, however, he says; I parait 91. 7s. 10d., more than ten times any other. Tanners que les tuyaux de chiminées étaient ddja tres en were principal tradesmen, the chief par' of dress usage en France. t. xxx., p. 232. being made of leather. A few silver:ups and t Du Cange, v. Vitre de. Bentham's History of spoons are the only articles of plate; and as the fly, p. 22. former are valued but at one or two shillings, they t Matt. Paris. Vitwe Abbatum St. Alb. 122. had, I suppose, but a little silver on the rim. 4 Recueildes Hist., t. xii., p. 101. 6' Nicholl's Illus'ra'tions, p. 119. In this work
arrangement. Cottages in among several interesting facts of the same class, England seem to have generally consist we have another inventory of the goods of "John ed of a single room, without division of Port, late the king's servant," who lied about stories. Chimneys were unknown in 1524; he seems to have been a man of some con- such dwellings till the early part of Elishteris a hall, parlour, buttery, and kitchen, abeth's reign, when a very rapid and sen-,vith two chambers, and one smaller, on the floor sible improvement took place in the conmhove; a napery, or linen room, and three garrets, forts of our yeomanry and cottagers. I besides a shop, which was probably detached. It must be remembered, that I have in. There were five bedsteads in the house, and on the whole a great deal of furniture for those times;ordesed this disadvantageous Eclesiasmuch more than I have seen in any other inven- representation of civil architec- tical architory. His plate is valued at 941.; his jewels at ture. 231.; his funeral expenses come to 731. 6s. 8d., erty and backwardness in the refineP. II 9., ments of life. Considered in its higher * Whitaker's Hist. of Craven, p. 289. A better notion of the accommodations usual in the rank departments, that art is the principal immediately below may be collected from two boast of the middle ages. The common inventories published by Strutt, one of Mr. Fer- buildings, especially those of a public mor's house at Easton, the other Sir Adrian kind, Were constructed with skill and at Foskewes.-I have mentioned the size of these gentlemen's houses already. In the former, the tention to durability. The castellated parlour had wainscot, a table, and a few chairs; style displays these qualities in' greater the chambers above had two best beds, and there perfection; the means are well adapted was one servant's bed; but the inferior servants to their objects, and its imposing granhad only mattresses on the floor. The best chai- deur though chiefly resulting no doubbers had window-shutters and curtains. Mr. Fermor, being a merchant, was probably better sup- from massiveness and historical associated than the neighbouring gentry. His plate, tion, sometimes indicates a degree of however, consisted only of sixteen spoons, and a few goblets and ale-pots. Sir Adrian Foskewe's. A* n. Sylv. apud Schmidt, Hist. des Allem., t. opulence appears to have been greater; he had a iiii., p. 127. service of silver plate, and his parlour was fur. t Crescentius in Commodum Ruralium. (Lo nished with hangings. This was in 1539; it is not vani*e, absque anno.) This old edition contains to be imagined that a knight of the shire a hundred many coarse wooden cuts; possibly takenfrom the years before would have rivalled even this scanty illuminations which Paulmy found in his manu. provision of moveables.-Strutt's View of Man- script. ners, vol. iii., p. 63. These details, trilling as they 4 Harrison's account of England, prefixed te may appear, are absolutely necessary in order to Hollingshed's Chronicles. Chimneys were not give all idea with some precision of a state of na- used in the farmhouses of Cheshire till within tional wealth so totally different from the present. forty years of the publication of King's Vale-roya. t Cuperent tam egregi6 Scotorum reges qumrr (1656); the fire was in the midst of the house mediocres N urembergwa cives habitare.-mEgn. Sylv. against a hob of clay, and the oxen lived undet the.,u 1 Schmidt His' des Allem., t. v., p. 510. same roof.-Whitaker's Crtven, p 334

Page 493 'ART Ih.] STATE OF SOCIETY. 49 architectural genius in the conception. the middle of the twelfth century. this But the most remarkable works of this manner began to g.ve place to what is art are the religious edifices erected in improperly denominated the Gothic aithe twelfth and three following centuries. chitecture;* of which the po'nted arch These structures, uniting sublimity in formed by the segments of two intergeneral composition with the beauties of secting semicircles, struck from points variety and form, intricacy of parts, skil- equidistant from the centre of a common ful or at least fortunate effects of shadow diameter, has been deemed the essential and light, and in some instances with ex- characteristic. We are
not concerned at extraordinary mechanical science, are naturally apt to lead those antiquaries who gminated in France or Germany, Italy or are most conversant with them into too England, since it was certainly almost partial estimates of the times wherein simultaneous in all these countries; nor they were founded. They certainly are accustomed to behold the fairest side of those of our Anglo-Norman cathedrals are generative picture. It was the favourite and ally an imitation of the Tuscan shaft, the builders most honourable employment of ecclesiastical wealth, to erect, to enlarge, to support, though Corinthian foliage is common in siatical wealth, to erect, to enlarge, to the capitals, especially those of smaller ornamenrepair, to decorate cathedral and con-tal columns. In fact, the Roman architecture is ventual churches. An immense capital universally acknowledged to have produced what must have been expended upon these we call the Saxon or Norman; but it is remarkable buildings in England between the con-ble that it should have been adopted, with no variabuildings in England between the orn-tion but that of the singular horseshoe arch, by the quest and the reformation. And it is Moors of Spain. pleasing to observe how the seeds of The Gothic, or pointed arch, though very uncom genius, hidden as it were under the frost mon in the genuine Saracenic of Spain and the of that dreary winter, began to bud to Levant, may be found in some prints from eastern buildings; and is particularly striking in the facade the first sunshine of encouragement. In of the great mosque at Lucknow, in Salt's designs the darkest period of the middle ages, for Lord Valentia's Travels. The pointed arch especially after the Scandinavian incur-buildings in the Holy Land have all been traced to sions into Franlce and England, ecclesi- the age of the crusades. Some arches, if they astical architecture, though always far deserve the name, that have been referred to this class, are not pointed by their constriction, more advanced than any other art, be- but rendered such by cutting off and hollowing the spoke the rudeness and poverty of the projections of horizontal stones. times It began towards the latter part * Gibbon has asserted, what might justify this of the eleventh century, when tranquilli-appellation, that " the image of Theodoric's palace at Verona, still extant on a coin, represents the ty, at least as to former enemies, was re-oldest and most authentic model of Gothic architecture; and some degree of learning re- ture," vol. vii., p. 33. For this he refers to Maffei, appeared, to assume a more noble ap- Verona Illustrata, p. 31, where we find an engraving. The Anglo-Norman cathe- ving, not indeed of a coin, but of a seal; the build drals were perhaps as much distinguished ing represented on which is in a totally dissimilar ---. style. The following passages in Cassiodorus, for above other works of man in their own which I am indebted to M. Ginguen6, Hist. Litt6r. age, as the more splendid edifices of a de l'Italie, t. i., p. 55, would be more to the purlater period. The science manifested in pose; Quid dicamus columnarum Junecae proce. them is not however very great; and ritatem? moles illassublimissinmas fabricarumqua si quibusdam erectis hastilibus contineri. These their style, though by no means destitute columns of reedy slenderness, so well described by of lesser beauties, is upon the whole an juneca proceritas, are said to be found in the cathe. awkward imitation of Roman architec-drals of Montreale in Sicily, built in the eighth cen. ture, or perhaps more immediately of the tory. —Knight's Principles of Taste, p. 162. They Saracensie buildings in Spain, ad those ination of Gothic, which is usually confined to the of the lower Greek empire.* But about pointed arch style. t The famous abbot Suger, minister of Louis * The Saracenic architecture was once con- VI., rebuilt St. Denis about 1140. The cathedral ceived to have been the parent of the Gothic. But of Laon is said to have been dedicated in 1114. The pointed arch does not occur, I believe, in any Hist. Littéraire de la France, t. ix., p. 220. I do Moorish buildings; while the great mosque of Cor-not know in what style the latter of these churches dova, built in the eighth century, resembles, ex- is built, but the former is, or rather was, Gothic. cept by its superior beauty and magnificence, one Notre
Dame at Paris was begun soon after the mid. of our oldest cathedrals; the nave of Gloucester for die of the twelfth century, and completed unde: example, or Durham. Even the vaulting is simi-
St. Louis. M6!anges tirés d'une grande biblicth. lar, and seems to indicate some imitation,
though que, t. xxxi., p. 108. In England the earliest spe. perhaps of a common model. Compare
Archao- cimen I have seen of pointed arches is in a print of logia, vol. xvii., plate 1 and 2. with
Murphy's Ara- St. Botolph's priory at Colchester, said by Struto bian Antiquities, plate 5. The
pillars indeed at to have been built in 1110.-View of Manners, vol Cordova are of the
Corinthian order, perfectly ex- i., plate 30. These are apertures formed by exca ecuted. if we
may trust the engraving, and the vating the space contained by the intersection of work I
presume, of Christian architects; while semicircular or Saxon arches...hich are perpet

Page 494 494 EUROPE DURING THE MIDDLE AGES. LCHiAP. ix from what source it
was derived; a ques- I any local circumstances, or the capri tion of no small difficulty. I would
only cious taste of a single nation. venture to remark, that whatever may be It would be a
pleasing t sk to trace thought of the origin of the pointed arch, with satisfactory exactness the
Agriculture for which there is more than one mode slow, and almost perhaps insen- in some
deof accounting, we must perceive a very sible progress of agriculture and gree prooriental
character in the vast profusion internal improvement during the gressive. of ornament,
especially on the exterior latter period of the middle ages. But no surface, which is as
distinguishing a mark diligence could recover the unrecorded of Gothic buildings as their
arches, and history of a single village; though consilcontributes in an eminent degree both to
erable attention has of late been paid to their beauties and to their defects. This this interesting
subject by those antiquaindeed is rather applicable to the later ries who, though sometimes
affecting to than the earlier stage of architecture, despise the lights of modern philosophy, and
rather to continental than English are unconsciously guided by their efful churches. Amiens is
in a far more florid gence. I have already adverted to the style than Salisbury, though a contem-
wretched condition of agriculture during porary structure. The Gothic species of the prevalence
of feudal tenures, as well architecture is thought by some to have as before their general
establishment.* reached its perfection, considered as an Yet, even in the least civilized ages,
there object of taste, by the middle of the four- were not wanting partial encouragements teenth
century, or at least to have lost something of its excellence by the cor- fortunately been treated
only by panegyrist or careaing part of the next age; an effect luminators, both equally
mendacious. I do not of its early and rapid cultivation, since wish to pry into the mysteries of
the craft; but it arts appear to have, like individuals, their would be interesting to know more of
their history natural progress and decay. kYet this during the period when they were literally
archi natural progress and decay. Yet this tects. They are charged by an act of parliament,
seems, if true at all, only applicable to 3 H. VI., c. 1, with fixing the price of their labour
England; since the cathedrals of Co- in their annual chapters, contrary to the statute of logne
and Milan, perhaps the most distin- labourers, and such chapters are consequently prohibited.
This is their first persecution; they have guished monuments of this architecture, since
undergone others, and are perhaps reserved are both of the fifteenth century. The for still more.
It is remarkable that masons were mechanical execution, at least, continued never legally
incorporated, like other traders; their to improve, and is so far beyond the ap- bond of union
being stronger than any charter parent intellectual powers of those times, The article Masonry,
in the Encyclopaedia Britan nica, is worth reading. that some have ascribed the principal ec- * I
cannot resist the pleasure of transcribing a clesiastical structures to the fraternity of lively and
eloquent passage from Dr. Whitaker. freemasons, depositaries of a concealed " Could a
curious observer of the present day carry and traditionary science. There is proba- himself nine
or ten centuries back, and ranging the bly some ground for this opinion; and summit of Pendle, survey the forked vale of Calder on one side, and the bolder margins of Ribble and the earlier archives of that mysterious Hadder on the other, instead of populous towns association, if they existed, might illus- and villages, the castle, the old tower-built house, trate the progress of Gothic architecture, the elegant modern mansion, the artificial plants and perhaps reveal its origin. The re- tion, the enclosed park and pleasure-ground: instead of uninterrupted enclosures, which have driv markable change into this new style, that en sterility almost to the summit of the fells, how was almost contemporaneous in every great must then have been the contrast, when, part of Europe,* cannot be explained by ranging either at a distance or immediately be neath, his eye must have caught vast tracts of for est-ground, stagnating with bog or darkened by na usually disposed, by way of ornament, on the outer tive woods, where the wild ox, the roe, the stag. as well as inner surface of old churches, so as to and the wolf, had scarcely learned the supremacy cut each other, and consequently to produce the of man, when, directing his view to the intermedifigure of a Gothic arch; and if there is no mistake ate spaces, to the windings of the valleys, or the in the date, they are probably among the most an- expanse of plains beneath, he could only have discient of that style in Europe. Those at the church tinguished a few insulated patches of culture, each of St. Cross near Winchester are of the reign of encircling a village of wretched cabins, among Stephen; and, generally speaking, the pointed which would still be remarked one rude mansion style, especially in vaulting, the most important of wood, scarcely equal in comfort to a modern object in the construction of a building, is not con- cottage, yet then rising proudly eminent above the sidered as older than Henry II. The nave of Can- rest, where the Saxon lord, surrounded by his terbury cathedral, of the erection of which by a faithful cotarii, enjoyed a rude and solitary indefrench architect about 1176 we have a fulh ac- pendence, owning no superior but his sovereig:a." — count in Gervase (Twysden, Decem Scriptores, Hist. of Whalley, p. 133. About a fourteenth part olt. 1289), and the Temple church, dedicated in of this parish of Whalley was cultivated at the 1183, are the most ancient Englishbuildings alto- time of Domesday. This proportion, however, gether in the Gothic manner, would be no means hold in the counties south oa * The curious subject of freemasonry has ui- Trent.

Page  495  PR.T II.j STATE OF S)CIETAY. 494 to cultivation, and the ameliorati.ng prin- There cannot be a more striking proof ciple of human industry struggled against of the low condition of English agricul destructive revolutions and barbarous dis- ture in the eleventh century, than is csx order. The devastation of war from the hibited by Domesday book. Though al. fifth to the eleventh century rendered most all England had been partially cul land the least costly of all gifts, though tivated, and we find nearly the same ma, it must ever be the most truly valuable nors, except in the north, which exist al and permanent. Many of the grants to present, yet the value and extent of culb monasteries, which strike us as enor- tivated ground are inconceivably small. inous, were of districts absolutely wast- With every allowance for the inacurred, which would probably have been re- cies and partialities ot those by whom claimed by no other means. We owe that famous survey was com.pleted,* we the agricultural restoration of great part are lost in amazement at the constant of Europe to the monks. They chose, recurrence of two or three carucat'os for the sake of retirement, secluded re- in demesne, with folklands occupied by gions, which they cultivated with the ten or a dozen villeins, valued altogether labour of their hands.* Several char- at forty shillings, as the return of a manor, ters are extant, granted to convents, which now would yield a competent inand sometimes to laymen, of lands which come to a gentleman. If Domesday book they had recovered from a desert condi- can be considered as even approaching to tion, after the ravages of the Saracens.t
accuracy in respect of these estimates, ag Some districts were allotted to a body of riculture must certainly have made a very Spanish colonists, who emigrated, in the material progress in the four succeeding reign of Louis the Debonair, in search of centuries. This, however, is rendered a Christian sovereign.$ Nor' is this the probable by other documents. Ingulfus, only instance of agricultural colonies. abbot of Croyland under the Conqueror, Charlemagne transplanted part of his supplies an early and interesting evidence conquered Saxons into Flanders, a coun- of improvement. Richard de Rules, lord try at that time almost unpeopled; and, of Deeping, he tells us, being fond of agat a much later period, there was a re- riculture, obtained permission from thi markable reflux from the same country, abbey to enclose a large portion of marsh or rather from Holland, to the coasts of for the purpose of separate pasture, exthe Baltic Sea. In the twelfth century, eluding the Welland by a strong dike, great numbers of Dutch colonists settled upon which he erected a town, and ren. along the whole line between the Ems dering those stagnant fens a garden of and the Vistula. They obtained grants Eden.t In imitation of this spirited culof uncultivated land on condition of fixed tivator, the inhabitants of Spalding and rents, and were governed by their own some neighbouring villages, by a comlaws under magistrates of their own elec- mon resolution, divided their marshes:ion. among them; when some converting -ion. them to tillage, some reserving them fon "Of the Anglo-Saxon husbandry we may re- meadow, others leaving them in pasture mark," says Mr. Turner, i that Domesday Survey found a rich soil for every purpose. The gives us some indication that the cultivation of the church lands was much superior to that of any cessive, and connected with political as well as other order of society. They have much less wood physical causes of greater permanence. The first ipon them, and less common of pasture; and what instrument in which they are mentioned is a grant they had appears often in smaller and more irregu- from the Bishop of Hamburgh in 1106. This cololar pieces; while their meadow was more abun- ny has affected the local usages, as well as the dedant, and in more numerous distributions."-Hist. nominations of things and places along the northof Anglo-Saxons, vol. ii., p. 167. ern coast of Germany. It must be presumed that t Thus, in Marca Hispanica, Appendix, p. 770, a large proportion of the emigrants were diverted we have a grant from Lothaire I. in 834, to a per- from agriculture to people the commercial cities son and his brother, of lands which their father, ab which grew up in the twelfth century upon that eremo in Septimania t.rahens, had possessed by a coast. charter of Charlemagne. See too p. 773, and' Ingulfus tells us that the commissioners were other places. Du Cange, v. Eremus, gives also a pious enough to favour Croyland, returning its few instances. possessions inaccurately, both as tc measurement t Du Cange, v. Aprisio. Baluze, Capitularia, t. and value; non ad verumn pretium, nec ad verusi., p. 549. They were permitted to decide petty spatio nostrum monasterium librabant miseri. aits among themselves, but for more important corditer, praeaventes in futurum regis exactioni natters were to repair to the county-court. A lib- bus, p. 79. I may just observe. by-the-way, that eral policy runs through the whole charter. See Ingulfus gives the plain meaning of the word more on the sarle subject, id., p. 569. Domesday, which has been disputed. The boaA 9 I owe this fact to Mf. Heeren, Essai sur l'influ- was so called, he says, pro sua generalitate omnis encedes Croisades, p. 226. An inundation in their tenementa totius terra integra continent; thatis, own country is supposed to have immediately pro- it was as general and conclusive as the I Ist judg ducti this e'nigration bhut it was probably suc- ment will,o it 1 Gale xv. crri;t., p 7"
surveys The rent of land is not to be overlooked in the history of differed of course materially; sixpence social progress. By the statute of Mer- an acre seems to have been about the ton, in the 20B0th of Henry III., the lord is average for arable land in the thirteenth permitted to approve, that is, to enclose, century,* though meadow-was at double the waste lands of his manor, provided or treble that sum. But the landlords he slave sufficient common or pasture for were naturally solicitous to augment a the freeholders. Higden, a writer who revenue that became more and more in-.ived about the time of Richard II., says, adequate to their luxuries. They grew in reference to the number of hydes and attentive to agricultural concerns, and vills of England at the conquest, that by perceived that a high rate of produce. clearing of woods and ploughing up against which their less enlightened anwastes, there were many more of each cestors had been used to clamour, would in his age than formerly.t And it might bring much more into their coffers than be easily presumed, independently of it took away. The exportation of corn proof, that woods were cleared, marshes had been absolutely prohibited. But the drained, and wastes brought into tillage, statute of the 15th Henry VI., c. 92, reciduring the long period that the house of ting that " on this account farmers, and Plantagenet sat on the throne. From others who use husbandry, -cannot sell manorial surveys indeed, and similar in-their corn but at a low price, to the great great-art. The condition of dif- exceed 6s. 8d. in value, or that of barley feroet counties, however, was very far 3s. The price of wool was fixed in the from being alike, and in general the nor- thirty second year of the same reign at a them and western parts of England were minimum, below which no person was the most backward.: suffered to buy it, though he might give The culture of arable land was very more; t a provision neither wise nor equiimperfect. Fleta remarks, in the reign table, but obviously suggested by the of Edward I. or II., that unless an acre same motive. Whether the rents of land yielded more than six bushels of corn, were augmented in any degree through the farmer would be a loser and the land these measures, I have not perceived; yield no rent.~ And Sir John Cullum, their great rise took place in the reign of from very minute accounts, has calcula- Henry VIII., or rather afterward.s The ted that nine or ten bushels were a full usual price of land under Edward IV. average crop on an acre of wheat. An seems to have been ten years purchase.~ amazing excess of tillage accompanied, It may easily be presumed that an Engand partly, I suppose, produced this im-lish writer can furnish very lit- Its condition perfect cultivation. In Hawsted, for ex- the state in l rance ample, under Edward 1., there were thir- of agriculture in foreign coun- and Italy. teen or fourteen hundred acres of arable, tries. In such works relating to France, and only forty-five of meadow ground. as have fallen within my reach, I have A similar disproportion occurs almost in- found nothing satisfactory, and cannot variably in every account we possess.Il pretend to determine whether the natuThis seems inconsistent with the low ral tendency of mankind to ameliorate price of cattle. But we must recollect their condition had a greater influence in that the common pasture, often the most promoting agriculture, or the vices inherent in the actual order of society, and C* ommuni plebicisco viritim inter se divisenter, et quidam suas portiones agricolantes, quidam ad * I infer this from a number of passages in feenum conservantes, quidam ut prius ad pasturam Blomefield, Cullum, and other writers. Hearne duorum animalium separaliter jacere permittentes, says that an acre was often called Solidata terra; terram pinguem et uberem repererunt, p. 94. because the yearly rent of one on the best land was t 1 Gale, xv. Script., p. 201. a shilling.-Lib. Nig. Scacc., p. 31. + A good deal of information upon the former t Rot. Parl., vol. v., p. 275. 6;ate of agriculture.will be found in Cullum's His- t A passage in Bishop Latimer's sermons, too tory Sf Hawsted. Blomefield's Norfolk is in this often quoted to require repetition, shows that land respect among the most
valuable of our local his- was much underlet about the end of the fifteenth tories. Sir Frederick
Eden, in the first part of his century. His father, he says, kept half a dozen excellent work on
the poor, has collected several nusbandmen, and milked thirty cows, on a farm ot woresting
facts. 6 L. ii., c. 8. three or four pounds a year. It is not surprnsng 11 Cullum, p 10C. 220.
Eden's State of Poor, that 1e lived as plentifully es his son describes ec., p 48. NV nitak.r's
(‘riven, p 45, 3’6. t Rymer, t. xii., p. 204.

Page 497 ranT 11.1 STATE OF SOCIETY. 409 those public misfortunes to whiq that
ignorant. Crescentius dAiates upon hor Kingdom was exposed, in retarding it.* ticulture, and
gives a pretty long list oi The state of Italy was far different; the herbs both esculent and
medicinal.* His rich Lombard plains, still more fertili- notions about the ornamental
department zed by irrigation, became a garden, and are rather beyond what we should
exagriculture seems to have reached the pect, and I do not know that his scheme excellence
which it still retains. The of a flower-garden could be much amendconstant warfare indeed of
neighbouring ed. His general arrangements, which cities is not very favourable to industry; are
minutely detailed with evident fondand upon this account we might incline ness for the subject,
would of course ap to place the greatest territoria' improve- pear too formal at present; yet less
so ment of Lombardy at an era ratner poste- than those of subsequent times; and rior to that of
her republican government; though acquainted with what is called but from this it primarily
sprung; and the topiary art, that of training or cutting without the subjugation of the feudal ar-
trees into regular figures, he does no' istocracy, and that perpetual demand seem to run into its
extravagance. Reg upon the fertility of the earth which an ular gardens, according to Paulmy,
were increasing population of citizens produ- not made in France till the sixteenth or ced, the
valley of the Po would not have even seventeenth century;t yet one is yielded more to human
labour than it had said to have existed at the Louvre, of done for several preceding centuries.t
much older construction.t England, I Though Lombardy was extremely popu- believe, had
nothing of the ornamental!9us in the thirteenth and fourteenth cen- kind, unless it were some
trees regularly turies, she exported large quantities of disposed in the orchard of a monastery
corn.t The very curious treatise of Cres- Even the common horticultural art for 2entius exhibits
the full details of Italian culinary purposes, though not entirely husbandry about 1300, and
might afford neglected, since the produce of gardens an interesting comparison to those who is
sometimes mentioned in ancient deeds are acquainted with its present state. had not been
cultivated with much at That state, indeed, in many parts of Italy, tertion.~ The esculent
vegetables now displays no symptoms of decline. But most in use were introduced in the reign
whatever mysterious influence of soil or of Elizabeth, and some sorts a great deal climate has
scattered the seeds of death later. on the western regions of Tuscany, had I should leave this
slight survey of econot manifested itself in the middle ages. nomical history still more im-
Changesin Among uninhabitable plains, the travel- perfect, were I to make no ob- value of ler
is struck by the ruins of innumerable servation on the relative values loney. castles and
villages, monuments of a time of money. Without something like prewhen pestilence was
either unfelt, or had cision in our notions upon this subject, evat least not forbade the residence
of man- ery statistical inquiry becomes a source kind. Volterra, whose deserted walls of
confusion and error. But considerlook down upon that tainted solitude, able difficulties attend
the discussion, was once a small but free republic; Sie- These arise principally fi om two
causes; na, round whom, though less depopula- the inaccuracy or partial representations ted,
the malignant influence hovers, was of historical writers, on whom we are once almost the rival
of Florence. So accustomed too implicitly to rely, and melancholy and apparently irresistible a
the change of manners, which renders a decline of culture and population through certain
command over articles of purphysical causes, as seems to have grad- chase less adequate to our wants than it usually overspread a large portion of Italy, was in former ages. has not perhaps been experienced in any. The first of these difficulties is capable other part of Europe, unless we except of being removed by a circumspect use Iceland. of authorities. When this part of

The Italians of the fourteenth century ticl history began to excite attention, Gardening. seem to have paid some atten- which was hardly perhaps before the publication to an art, of which, both as lication of Bishop Fleetwood's Chronicon related to cultivation and to architecture, Preciosum, so few authentic documents our own forefathers were almost entirely had been published with respect to prices, that inquirers were glad to have recourse * Velley and Villaret scarcely mention the subject; and Le Grand merely tells us that it was en- * Denina, 1. vi. tirely neglected; but the details of such an art t Idem, t. iii., p. 145; t. xxxi., p. 258. even in its state of neglect might be interesting. $ De la Mare, Traité de la Police, t. iii., p. 380 + Muratori, Dissert. 21. t Denina, 1. xi., c. 7. Q Eden's State of Poor, vol. p..51

Page 498 49s EUROPE DURING THE MIDDLE AGES. [CHAP. IX to historias, even when not contempo- very superficial and erroneous inqui. rary, for such facts as they had thought ries.* fit to record. But these historians were I is by no means required that I sometimes too distant from the times sho.uld here offer such a table of values, concerning which they wrote, and too which, as to every country except Eng. careless in their general character, to land, I have no means of constructing merit much regard; and even when con- and which, even as to England, would be temporary, were often credulous, remote subject to many difficulties. But a read from the concerns of the world, and, at er unaccustomed to these investigations the best, more apt to register some ex- ought to have some assistance in comtraordinary phenomenon of scarcity or paring the prices of ancient times with cheapness, than the average rate of pe- those of his own. I will therefore, withcuniary dealings. The one ought, in my out attempting to ascend very high, for opinion, to be absolutely rejected as tes- we have really no sufficient data as to timonies, the other to be sparingly and the period immediately subsequent to the diffidently admitted.* For it is no longer conquest, much less that which precenecessary to lean upon such uncertain ded, endeavour at a sort of approximawitnesses. During the last century a tion for the thirteenth and fifteenth cen very laudable industry has been shown turies. In the reigns of Henry III. and by antiquaries in the publication of ac- Edward I., previously to the first debaso count-books belonging to private persons, ment of the coin by the latter in 1301, registers of expenses in convents, returns the ordinary price of a quarter of wheat of markets, valuations of goods, tavern- appears to have been about four shillings, bills, and, in short, every document, how- and that of barley and oats in proporrever trifling in itself, by which this im- tion. A sheep was rather sold high at a portant subject can be illustrated. A suf- shilling, and an ox might be reckoned at ficient number of such authorities, pro- ten or twelve.t The value of cattle is of ving the ordinary tenour of prices, rather course dependant upon their breed and than any remarkable deviations from it, condition; and we have unluckily no are the true basis of a table, by which all early account of butcher's meat; but, we changes in the value of money should be can hardly take a less multiple than measured. I have little doubt but that about thirty for animal food, and eighteen such a table might be constructed from or twenty for corn, in order to bring the the data we possess, with tolerable ex- prices of the thirteenth century to a actness, sufficient at least to supersede level with those of the present day.4 one often quoted by political economists, Combining the two, and setting the combut which appears to be founded upon parative dearness of cloth against the cheapness of fuel and many other artiSir F. Eden, whose table of prices, though cles, we may perhaps consider any capable of some improvement, is per' ts the best given sum under Henry and that has appeared, would, I think,
havp acted better, by omitting all references to mert Historians, I. as equivalent in general command and relying entirely on regular documents. I do not, however, include local histories, such as the * The table of comparative values by Sir George Annals of Dunstable, when they record the mar- Shuckburgh (Philosoph. Transact. for 1798, p. ket-prices of their neighbourhood, in respect of 196) is strangely incompatible with every result to which the book last mentioned is almost in the na- which my own reading has led me. It is the hasty ture of a register. Dr. Whitaker remarks the in- attempt of a man accustomed to different studies; exactness of Stowe, who says that wheat sold in and one can neither pardon the presumption of ob. London, A. D. 1514, at 20s. a quarter; whereas it truding such a slovenly performance on a subject appears to have been at 9s. in Lancashire, where it where the utmost diligence was required, nor the was always dearer than in the metropolis.-Hist. affectation with which he apologizes for "descend. of Whalley, p. 97. It is an odd mistake, onto which ilg from the dignity of philosophy." Sir F. Eden has fallen, when he asserts and argues t Blomefield's History of Norfolk, and Sir T. Cul. on the supposition, that the price of wheat fluctua- furnish several pieces even at ted, in the thirteenth century, from ls. to 61. 8s. a this early period. Most of them are collected by quarter, vol. i., p. 18. Certainly, if any chronicle Sir F. Eden. Fleta reckons four shillings the nad mentioned such a price as the latter, equiva- average price of a quarter of wheat in his time, L lent to 1501. at present, we should either suppose ii., c. 84. This writer has a digressicn on aglic!ll. ture, whence, however, less is to be coiiected than exaggeration. But, in fact, the author has, through we should expect. haste, mistaken 6s. 8d. for 61. 8s., as will appear by t The fluctuations of price have unfortunately referring to his own table of prices, where it is set been so great of late years, that it is almost as difdown rightly. It is observed by Mr. Macpherson, ficult to determine one side of our equation as the a very competent judge, that the arithmetical state- other. Any reader, however, has it in his power ments of the best historians of the middle ages are to correct my proportions, and adopt a greater ox seldom correct, owing partly to their neglect of ex- less multiple, according to his own estimate of amination, and partly to blunders of transcribers. — current prices, or the changes that may take place Annals of Commerce, vol. i., p. 423 1 from the time when this is written [1816].

Page 499 PART II.] STAFE OF1 SOCIETY. 499 over con.modit'es to about twenty-four when we would bring the general value or twenty-five times their nominal value of money in this reign to our present at present. Under Henry VI. the coin standard.* had lost one third of its weight in silver, But after ascertaining the proportional which caused a proportional increase of values of money at different periods by a money prices;* but, so far as I can per- comparison of the prices in several of ceive, there had been no diminution in the chief articles of expenditure, which L e value of that metal. VWe have not is the only fair process, we shall somemuch information as to the fertility of times be surprised at incidental facts of the mines which supplied Europe during this class which seem irreducible to any the middle ages; but it is probable that rule. These difficulties arise not so the drain of silver towards the East, much from the relative scarcity of particjoined to the ostentatious splendour of ular commodities, which it is for the courts, might fully absorb the usual most part easy to explain, as from the produce. By the statute 15 H. VI., c. 2, change in manners and in the usual the price up to which wheat might be mode of living. We have reached in exported is fixed at Cs. 8d., a point no this age so high a pitch of luxury, that doubt above the average; and the private we can hardly believe or comprehend the documents of that period, which are suf- frugality of ancient times; and have in ficiently numerous, lead to a similar re- general formed mistaken notions as to sult.t Sixteen will be a proper multiple, the habits of expenditure which then prevailed.
Accustomed to judge of feudal * I have sometimes been surprised at the facility and chivalrous ages by works of fiction, with which prices adjusted themselves to the or by historians who embellished their quantity of silver contained in the current coin, in writings with accounts of occasional fes ages which appear too ignorant and too little commercial for the application of this mercantile prin- tivals and tournaments, and sometimes ciple. But the extensive dealings of the Jewish inattentive enough to transfer the manand Lombard usurers, who had many debtors in ners of the seventeenth to the fourteenth almost all parts of the country, would of itself in- century, we are not at all aware of the produce a knowledge, that silver, not its stamp, usual siplicity with hich the gentry was the measure of value. I have mentioned in snpliety with whch the gentry another place (vol. i., p. 185) the heavy discontents lived under Edward I. or even Henry excited by this debasement of the coin in France; VI. They drank little wine; they had but the more gradual enhancement of nominal prices no foreign luxuries; they rarely or never in England seems to have prevented any strong kept male servants, except for husbandmanifestations of a similar spirit at the successive reductions in value which the coin experienced from the year 1300. The connexion however be- the price, were indifferent; they seldom tween commodities and silver was well understood. travelled beyond their county. And Wykes, an annalist of Edward I.'s age, tells us even their hospitality must have been that the Jews clipped our coin till it retained grly limited, if the vaue of manors hardly half its due weight, the effect of which was a general enhancement of prices and decline of were really no greater than we find it in foreign trade: Mercatores transmarini cum merci- many surveys. Twenty-four seems a moniis suis regnumm Angliae minus solito frequenta- sufficient multiple when we would raise bant; necnon quod omnimoda venalium genera incomparabiliter solito fuerunt cariora.-2 Gale, xv. * I insert the following comparative table of Script., p. 107. Another chronicler of the same English money from Sir Frederick Eden. Th6 age complains of bad foreign money, alloyed with unit, or present value, refers of course to that of copper; nec erat in quatuor aut quinque ex iiis the shilling before the last coinage, which redu pondus unius denarii argenti.....Eratque pessi ced it. mum szeulum pro tall moneta, et fiebant commu Value of pound tations plurimme in emphtione et venditione rerum. sterling present Proportion. Edward, as the historian informs us, bought in this money. bad money at a rate below its value, in order to make a profit; and fined some persons who inter- Conquest, 1066 2 18 11 2.906 fered with his traffic.-W. Hemingford, ad ann. 28 E. I., 1300 2 17 5 2.871 1299. 18 E. III., 1344 2 12 5~ 2.622 t These will chiefly be found in Sir F. Eden's 20 E. III., 1346 2 11 8 2.583 table of prices; the following may be added from 27 E. III., 1353 2 6 6 2.325 the account-book of a convent between 1415 and 13 H. IV., 1412 1 18 9 1.937 1425. Wheat varied from 4s. to 6s. —barley from 4 E. IV., 1464 1 11 0 1.55 3s. 2d. to 4s. 10d.-oats from Is. 8d. to 2s. 4d.- 18 H. VIII., 1527 1 7 6l 1.378 oxen from 12s. to 16s.-sheep from Is. 2d. to ls. 34 H. VIII., 1543 1 3 31 1.163 4d.-butter ad. per lb.-eggs twenty-five for ld.- 36 H. VIII., 1545 0 13 11-.698 cheese id. per lb.-Lansdowne MSS., vol. i., Nos. 37 H. VIII., 1546 0 9 3] 0.466 28 and 25. These prices do not always agree with 5 E. VI., 1551 0 4 773 0.232 those given in other documents of equal authority 6 E. VI., 1552 1 0 63 1.028 in the same period; but the value of provisions 1 Mary, 1553 i 0 5i 1.024 varied in different countries, and still more so in 2 Eliz., 1560 1 0 8 1.033 eifferen' seasons of the year 43 Eliz., 1601 1 0 0 1.000 1 i2
a single manor would seldom have ple ages. It would seem rather strange enjoyed more. A knight who possessed that a young lady should learn needle ~150 per annum passed for, extremely work and good-breeding in a family of rich.* Yet this was not equal in com-
superior rank, paying for her board; yet -hand over commodities to ~4000 at such was the
laudable custom of the fif-present. But this income was compara-
teeenth and even sixteenth
centuries, as tively free from taxation, and its expendi-
we perceive by the Paston Letters, and
ture lightened by the services of his vil-
earlier authorities.*,eins. Such a person, however,
must There is one very unpleasing remark have been among the most'opulent of which every
one who attends to Labourers country gentlemen. Sir John Fortescue the subject of prices will
be in-
better paid speaks of five pounds a year as "a fair duced to make, that the labour-
the pound, which I
pense of a scholar at the university in suppose was about the truth, a
labourer 1514 was but five pounds annually, we earning threepence a day, or eighteen should
err in supposing that he had the pence in the week, could buy a bushel of liberal
accommodation which the present wheat at six shillings the quarter, and age deems
indispensable, but consider twenty-four pounds of meat for his fam
how much could be
afforded for about ily. A labourer at present, earning twelve sixty pounds, which will be not far
from shillings a week, can only buy half a the proportion. And what would a bushel of wheat at
eighty shillings the modern lawyer say to the following en-
quarter, and twelve pounds of meat
at try in the churchwarden's accounts of St. sevenpence. Several acts of parliament Margaret,
Westminster, for 1476: " Also regulate the wages that might be paid to Roger Fylpott,
learned in the labourers of different kinds. Thus the law, for his counsel giving, 3s. 8d., with
statute of labourers, in 1350, fixed the fourpence for his dinner?" Though wages of reapers
during harvest at threelfifteen times the fee might not seem alto-
ence a day without diet, equal
to five shilling ucharder inadequate at present, five shillings lings at present; that of 23 H. VI., c. 12,
would hardly furnish the table of a bar-
in 1444, fixed the reapers' wages at fiverister, even if
the fastidiousness of our pence, and those of common workmen in building at 3-d., equal to 6s.
8d. and * Macpherson's Annals, p. 424. from Matt. 4s. 8d.; that of 11 H. VII., c. 22, in 1496,
Paris. leaves the wages of labourers in harvest t Difference of Limited and Absolute Monarchy,
as before, but rather increases those of p. 133. ordinary workmen. The yearly wages t Hist. of
Hawsted, p. 141 of a chief hind or shepherd, by the act of 9 Nicholl's Illustrations, p. 2. One
fact of this of a chief hind or shepherd, by t act of zlass did, I own, stagger me. The great Earl
of 1444, were 1. 4s., equivalent to about Warwick writes to a private gentleman, Sir 20;
those of a common servant in hus-Thomas Tudenham, begging the loan of ten or bandry, 18s.
4d., with meat and drink; twenty pounds to make up a sum he had to pay. they were
somewhat augmented by the -Paston Letters, vol. i., p. 84. What way shall statute of 1496. Yet,
although these we make this commensurate to the present value of money? But an ingenious
friend suggested, what I do not question is the case, that this was * Paston Letters, vol. i., p.
244. Cullum's one of many letters addressed to the adherents of Hawsted, p. 182. Warwick, in
order to raise by their contributions a t Hist. of Hawsted, p. 228. considerable sum. It is
curious, in this light, as T See these. rates more at length in E:den's State an illustration of manners. If the Poor, ol. i., p.'2, &c.

Page 501 PART 11.J STATE OF SOCIETY. 50 wages are regulated as a maximum, by did nc much exceed 2,300,0L00 souls acts of parliament, which may naturally about abie fifth of the results upon the last be supposed to have had a view rather enumeration, an increase with which that towards diminishing than enhancing the of the fruits of the earth cannot be sups current rate, I am not fully convinced posed to have kept an even pace.* that they were not rather beyond it; pri- The second head to which I referi ed vate accounts at least do not always cor- the improvements of European Improverespond with these statutable prices.* societyinthe latterperiodof the ment in the And it is necessary to remember, that the middle ages, comprehends sev- actor of uncertainty of employment, natural to eral changes, not always con- Europe. so imperfect a state of husbandry, must nsted with each other, which contributed have diminished the labourers' means of to inspire a more elevated tone of moral subsistence. Extreme dearth, not more sentiment, or at least to restrain the comowing to adverse seasons than to improv- mission of crimes. But the general efident consumption, was frequently en- fect of these upon the human character dured.t But, after every allowance of is neither so distinctly to be traced, nor this kind, I should find it difficult to resist can it be arranged with so much attention the conclusion, that however the labourer to chronology as the progress of comhas derived benefit from the cheapness mercial wealth, or of the arts that depend of manufactured commodities, and from upon it. We cannot, from any past exmany inventions of common utility, he is perience, indulge the pleasing vision of a much inferior in ability to support a farn- constant and parallel relation between ily to his ancestors three or four centu- the moral and intellectual energies, the ris ago. I know not why some have virtues and the civilization of mankind. supposed that meat was a luxury seldom Nor is any problem connected with phiobtained by the labourer. Doubtless he losophical history more difficult than to could not have procured as much as he compare the relative characters of differpleased. B3ut, from the greater cheap- ent generations, especially if we include ness of cattle, as compared with corn, it a large geographical surface in our estiseems to follow, that a more considera- mate. Refinement has its evils as well;le portion of his ordinary diet consisted as barbarism; the virtues that elevate a of animal food than at present. It was nation in one century pass in the next to remarked by Sir John Fortescue, that the a different region; vice changes its form English lived far more upon animal diet without losing its essence; the marked than their rivals the French; and it was features of individual character stand out natural to ascribe their superior strength in relief from the surface of history, and courage to this cause.t I should mislead our judgment as to the general feel much satisfaction in being convinced course of manners; while political revothat no deterioration in the state of the lutions and a bad constitution of governlabouring classes has really taken place; ment may always undermine or subvert yet it cannot, I think, appear extraordi- the improvements to which more favournary to those who reflect, that the whole able circumstances have contributed. In population of England, in the year 1377, comparing, therefore, the fifteenth with the twelfth century, no one would deny * In the Archaiologia, vol. xviii., p. 281, we have the vast increase of navigation and mana bailiff's account of expenses in 1387, where it ap- ufactures, the superior refinement of pears that a ploughman had sixpence a week, and manners, the greater diffusion of literafive shillings a year, with an allowance of diet; ture. But should I assert that man had which seems to have been only pottage. These wages are certainly not more than fifteen shillings raised himself in the latter period above a week in present value; which, though materially the moral degradation of a more barbarablow the average rate of agricultural labour, is ous age, I might
be met by the question less so than some of the statutes would lead us to whether history bears witness to any expect. Of her facts may be found of a similar greater excesses of rapine and inhuman nature. greater excesses of rapine and nhuman t See that singular book, Piers Plowman's Vis- ity than in the wars of France and Engon, p. 145 (Whitaker's edition), for the different land under Charles VII., or whether the manodes of living before and after harvest. The rough patriotism and fervid passions of oassage may be found in Ellis's Specimens, vol. i., the Lombards in the twelfth century. 151. _ Fortescue's Difference between Abs. and Lim. Monarchy, p. 19. The passages in Fortescue * Besides the books to which I have occasion which bear on his favourite theme, the liberty and ally referred, Mr. Ellis's Specimens of English consequent happiness of the English, are very im-. Poetry, vol. i., chap. 13, contain a short digression, portant, and triumphantly refute those superficial but from well-selected materials, on the private lif writers who would make us believe that they were of the English in the middling and lower lank set of beggarly slaves about the fifteenth century

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Page 502 EUROPE DURING IHE MIDDLE AGES. [C'IAp. 1X wre not better than the systematic be said that lawless rapine was perfectly Treachery of their servile descendants restrained even at the end of the fifteenth three hundred years afterward. The century, a sensible amendment had been proposition must therefore be greatly everywhere experienced. Private war limited; yet we can scarcely hesitate to fare, the licensed robbery of feudal manadmit, upon a comprehensive view, that ners, had been subjected to so many morthere were several changes during the tifications by the kings of France, and esfour last of the middle ages, which must pecially by St. Louis, that it can hardly naturally have tended to produce, and be traced beyond the fourteenth century. some of which did unequivocally produce, In Germany and Spain it lasted longer; a meliorating effect, within the sphere of but the various associations for maintain their operation, upon the moral character ing tranquillity in the former country had of society. considerably diminished its violence beThe first, and perhaps the most impor- fore the great national measure of public Elevation of tant of these, was the gradual peace adopted under Maximilian.* A.;fs:he lower elevation of those whom unjust of outrage committed by powerful men ranks. systems of polity had long de- became less frequent as the executive pressed; of the people itself, as opposed government acquired more strength to to the small number of rich and noble, by chastise them. We read that St. Louis, the abolition or desuetude of domestic the best of French kings, imposed a fine and predial servitude, and by the privi- upon the Lord of Vernon for permitting a leges extended to corporate towns. The merchant to be robbed in his territory condition of slavery is indeed perfectly between sunrise and sunset. For, by the consistent with the observance of moral customary law, though in general ill oblications; yet reason and experience served, the lord was bound to keep the will justify the sentence of Homer, that roads free from depredators in the daylie who loses his liberty loses half his time, in consideration of the tollhe receiv virtue. Those who have acquired, or ed from passengers. The same princenay hope to acquire, property of their was with difficulty prevented from passing own, are most likely to respect that of a capital sentence on Enguerrand de Couothers; those whom law protects as a cy, a baron of France, for a murder. parent are most willing to yield her a Charles the Fair actually put to death a filial obedience; those who have much nobleman of Languedoc for a series of to gain by the good-will of their fellow- robberies, notwithstanding the intercescitizens are most interested in the pres- sion of the provincial nobility. The evration of an honourable character. I towns established a police of their own have been led, in different parts of the for internal security, and rendered thempresent work, to consider these great selves formidable to neighbouring plun. revolutions in the order of society under other relations than that of their moral * Besides
the German historians, see Du Cange, efficacy; and it will therefore be unnecessary to dwell upon them; especially for the confederacies in the empire, cessary to appear to have been merely voluntary associations. as this efficacy is indeterminate, though, and perhaps directed as much towards the prevention of robbery except by its scale; and facts. where this was so considerably reduced, the two facts. We may reckon, in the next place, was a distinct institution for the maintenance of Police, among the causes of moral im- pece, the kingdom being divided into unions of provement, a more regular admin- istration, with a chief officer, called Supraunetaristraction of justice according to fixed us, at their head-Du Cange, v. Juncta. t
du Henaull, Abr66 Chronol.' l'an 1255. The in laws, and a more effectual police. Wheth-
stitutions of Louis IX. and his successors relating er the courts of judicature were guided to police, form a part, though rather a smaller palt by the feudal customs or the Roman law, than we should expect from the title, of an im it was necessary for them to resolve lit- mense work, replete with miscellaneous informa gated questions with precision and uni- tion, by Delamare, Trait.6 de la Police, 4,ols. in folio. A sketch of them may be found in Velly, t. formity. Hence a more distinct theory v., p. 349; t. xviii., p. 437. of justice and good faith was gradually, t Velvy, t. v., p. 162, where this incident is told in apprehended; and the moral sentiments ar. interesting manner from William de Nangis. of mankind were corrected, as on such Boulainvilliers has taken an extraordinary view of subjects they often require to be, by the king's behaviour. — Hist. de l'Ancient Gouverne rs, subjects they often require to be, by ment, t. i., p. 26. In his eyes princes and plene clearer and better grounded inferences were made to be the slaves of a feudal aristoc of reasoning. Again, though it cannot be racy. O Velly, t. viii., p. 132.

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iPil Llj STATE OP SOCIE'I. Y.) derers. Finally though not before the cherished through the vicissitudes of reign of Louis XI., an armed force was ages, in spite of persecution and conestablished for the preservation of power. Their plausible and widely exlice,* Various means were adopted in tended system had been in early times England to prevent robberies, which in- connected with the name of Christianity. deed were not so frequently perpetrated however incompatible with its doctrines as they were on the continent, by men and its history. After a pretty long obscuof high condition. None of these, per- rity, the Manichean theory revived with haps, had so much efficacy as the fre- some modification in the western parts quent sessions of judges under commis- of Armenia, and was propagated in the sions of jail delivery. But the spirit of eighth and ninth centuries by a sect dethis country has never brooked that co- nominated Paulicians. Their tenets are ercive police which cannot exist without not to be collected with absolute cerbreaking in upon personal liberty by irk- tainty from the mouths of their adversasome regulations and discretionary exer- ries, and no apology of their own surcise of power; the sure instrument of vives. There seems, however, to be tyranny, which renders civil privileges sufficient evidence that the Paulicians, at once nugatory and insecure, and by though professing to acknowledge and which we should dearly purchase some even to study the apostolical writings, real benefits connected with its slavish ascribed the creation of the world to an discipline. evil deity, whom they supposed also to I have some difficulty in adverting to be the author of the Jewish law, and Religious another source of moral im- consequently rejected all the Old Testasects. movement during this period, the ment. Believing, with the ancient Gnos growth of religious opinions adverse to tics, that our Saviour was clothed on those of the established church, both on earth with an impassive celestial
account of its great obscurity, and be- they denied the reality of his death cause many of
these heresies were mixed up with an excessive fanaticism. But * The most authentic account
of the Paulicians they fixed themselves so deeply in the is found in a little treatise of Petrus
Siculus, who lived about 870, under Basil the Macedonian. He hearts of the inferior and more
nume- lived b een emp loyed on an embassy to Tephrico, ous classes, they bore, generally
speak- the principal town of these heretics, so that he ing, so immediate a relation to the state
might easily be well informed; and, though he is of manners, and they illustrate so much
sufficiently bigoted, I do not see any reason to queathat more visible and eminent revolution
the general truth of his testimony, especially as it tallies so well with what we learn of the
prewhich ultimately arose out of them in the decessors and successors of the Paulicians. They
sixteenth century, that I must reckon had rejected several of the Manichean doctrines, these
among the most interesting phe- those, I believe, which were borrowed from the nomena in the
progress of European so- Oriental, Gnostic, and Cabbalistic philosophy of emanation; and
therefore readily condemned Ma e. nes, rroOypw avaOezpasruot Mavr!ra. But they. re. Many
ages elapsed, during which no tained his capital errors, so far as regarded the remarkable
instance occurs of a popular principle of dualism, which he had taken from deviation from the
prescribed line of be- Zerdusht's religion, and the consequences he had lied; and pious
Catholics console them- derived from it. Petrus Siculus enumerates six Paulician heresies. 1.
Theymaintained the existstheselves by reflecting that their forefathers, ance of two deities; the one
evil, and the creator in those times of ignorance, slept at least of this world, the other good,
called rarrep EcrspavioS, the sleep of orthodoxy, and that their the author of that which is to
come. 2. They re darkness was interrupted by no false fused to worship the Virgin, and asserted
that darknlightess of human reasoningt But from Christ brought his body from Heaven. 3. They
lights of human reasoning. But from rejected the Lord's Supper: 4. And the adoration the
twelfth century this can no longer be of the cross. 5. They denied the authority of the their
boast. An inundation c f heresy Old Testament, but admitted the New, except the broke in that
age upon the church, epistles of St. Peter, and perhaps the Apocalypse. which no persecution
was able thor- 6. They did not acknowledge the order of priests. There seems every reason to
suppose that the oughsly to repress, till it finally over- Paulicians, notwithstanding their
mistakes, were spread half the surface of Europe. Of endowed with sincere and zealous piety,
and stuthis religious innovation we must seek the dious of the Scriptures. A Paulician woman
asked commencement in a different part of the a young man if he had read the Gospels; he
replied. globe. The Mannicenes afford an emi- that laymen were not permitted to do so, but
only the clergy: seK tFs-v ftv rao, KoULiK0o5 861 Te7ra gent example of that durable
attachment avaytVwaKEr, et. rl r o0e cPoepe ktovoat, p. 57. A curious to a traditional creed,
which so many proof that the Scriptures were already forbidden in ancient sects, especially in
the East, have the Greek church, which, I am inclined to believe, notwithstanding the leniency
with which Protest * Velly, t. xviii., p. 437. ant writers have treated it, was always more com
Fleurv, 3lie Discours stir l'Hist. Eccles. rupt and more intolerant than the Latin

Page 504 804 EUR()PE DURING THEh MIDDLE AGES [CuH. 13 and resurrection These
errors exposed country, and especially: its souther. Chem to a long and cruel persecution, and
eastern provinces, they became curing which a colony of exiles was conspicuous under a
variety of names planted by one of the Greek emperors in such as Catharists, Picards, Paterins,
but Bulgaria.* From this settlement they above all, Albigenses. It is beyond 2 silently
promulgated their Manichean doubt that many of these sectaries owed creed over the western
regions of Chris- their origin to the Paulicians, the appeltendom, A large part of the commerce
lation of Bulgarians was distinctively be. of those countries with Constantinople stowed upon
them; and, according to was carried on for several centuries by some writers, they acknowledged a prithe channel of the Danube. This opened mate or patriarch resident in that counan immediate intercourse with the Pau- try.* The tenets ascribed to them by all licians, who may be traced up that river contemporary authorities coincide so rethrough Hungary and Bavaria, some- markably with those held by the Paulitimes taking the route of Lombardy into cians, and in earlier times by the ManiSwisseland France.t In the last cheans, that I do not see how we can reasonably deny what is confirmed by * Gibbon, c. 54. This chapter of the historian separate and uncontradictory testimoof the Decline and Fall upon the Paulicians ap- nies, and contains no intrinsic want of pears to be accurate, as well as luminous, and is at probability. t least far superior to any modern work on the subject. trines prevailed more in the neighbourhood of Albi t It is generally agreed that the Manicheans than elsewhere. The main position is, that alarge from Bulgaria did not penetrate into the west of part of the Languedocian heretics against whom Europe before the year 1000; and they seem to the crusade was directed had imbibed the Paulian have been in small numbers till about 1140. We cian opinions. If any one chooses rather to call find them, however, early in the eleventh century. them Catharists, it will not be material. Under the reign of Robert, in 1007, several heretics * Mat. Paris, p. 267. (A. D. 1223.) Circa dies were burnt at Orleans for tenets which are repre- istos, haeretici Albigenses constituerunt sibi Ansented as Manichean.-Velly, t. ii., p. 307. These tipapam in finibus Bulgarorum, Croatica et Dalare said to have been imported from Italy; and the matiae, nomine Bartholommeum, &c. We are ashteresy began to strike root in that country about sured by good authorities that Bosnia was full of the same time.-Muratori, Dissert. 60.-(Antichita Manicheans and Arians as late as the middle of the Italiane, t. iii., p. 304.) The Italian Manicheans fifteenth century.-A-Eneas Sylvius, p. 107. Spon were generally called Paterini, the meaning of danus, ad ann. 1460. Mosheim. which word has never been explained. We find t There has been so prevalent a disposition few traces of them in France at this time; but among English divines to vindicate not only the about the beginning of the twelfth century, Gui- morals and sincerity, but the orthodoxy of these bert, bishop of Soissons, describes the heretics of Albigenses, that I deem it necessary to confirm that city, who denied the reality of the death and what I have said in the text by some authorities, resurrection of Jesus Christ, and rejected the sacra- especially as few readers have it in their power to ments.-Hist. Litteraire de la France, t. x., p. 451. examine this very obscure subject. Petrus MoBefore the middle of that age, the Cathari, Henri- nachus, a Cistercian monk, who wrote a history of cians, Petrobussians, and others appear, and the the crusades against the Alblgenses, gives an acnew opinions attracted universal notice. Some of count of the tenets maintained by the different these sectaries, however, were not Manicheans.- heretical sects. Many of them asserted two prinMosheim, vol. iii., p. 116. ciples or creative beings; a good one for things The acts of the inquisition of Toulouse, pub- invisible, an evil one for things visible; the former lished by Limborch, from an ancient manuscript author of the New Testament, the latter of the (stolen, as I presume, though certainly not byhim- Old. Novurn Testamentum benigno deo, vetus self, out of the archives of that city), contain many vero maligno attribuebant; et illud omnin6 repu additional proofs that the Albigenses held the diabant, procter quasdam auctoritates, quas de Ve Manichean doctrine. Limborch himself will guide teri Tlestante, Novo sunt insertae, quas ob Novl the reader to the principal passages, p. 30. In ireve entiam Testamenti, recipere dignum mstim facta, the proof of Manicheism among the heretics bant. A vast number of strange errors are imputed of the twelfth century is so strong (for I have con- thm, most of which are not mentioned by Alatined myself to those of Languedoc, and could nus, a more dispassionate writer.-Du Chesne, easily have brought other testimony as to the Scriptores Francorum, t. v., p. 556. This Alanus Cathari), that I should never have thought of ar-. de Insulis, whose treatise against heretics, written guing the point, but for the confidence of
some about 1200, was published by Masson at Lyons in modern ecclesiastical writers. What can we think 1612, has left, I think, conclusive evidence of the of one who says, "It was not unusual to stigmatize Manicheism of the Albigenses. He states their ar new sects with the odious name of Manichees, gument upon every disputed point as fairly as pos though I know no evidence that there were any real sible, though his refutation is of course more at remains of that ancient sect in the twelfth cen- length. It appears that great discrepancies of tury."-Milner's History of the Church, vol. iii., p. opinion existed among these heretics, Lut the gen 380. Though this writer was by no means learn- eral tenour of their doctrines is evidently Mani ed enough for the task he undertook, he could not chean. Aiunt hereticum tempus nostri quod duo be ignorant of facts related by Mosheim and other sunt principia rerum, principium lucis et principium common historians. tenebrarum, &c. This opinion, strange as we may I will only add, In order to obviate cavilling, think it, was supported by Scriptural texts; so in that I use the word Albigenses for the Manichean sufficient is a mere acquaintance with the sacred sects, without pretending to assert that their doc- writings to secure unlearned and prejudiced mi.nds

Page  505 PART li.] STATE OF SOCIETY. But though the derivation of these her-

According to others, the original XVa; etics called Albigenses from Bulgaria is denses were a race of uncorrputed shep sufficiently proved, it is by no means to herds, who, in the valleys of the Alps be concluded that all who incurred the had shaken off, or perhaps never learned, same imputation either derived their faith the system of superstition on which the from the same country, or had adopted Catholic church depended for its ascendhe Manichean theory of the Paulicians. ency. I am not certain whether their From the very invectives of their ene- existence can be distinctly traced beyond mies, and the acts of the inquisition, it is the preaching of Waldo, but it is well manifet that almost every shade of het- known that the proper seat of: the Walerodoxy was found among these dissi- denses or Vaudois has long continued to dents, till it vanished in a single protest- be in certain valleys of Piedmont. These ation against the wealth and tyranny of pious and innocent sectaries, of whom the clergy. Those who were absolutely the very monkish historians speak well, free from any taint of Manicheism are appear to have nearly resembled the prdperly called Waldenses; a name per- modern Moravians. They had ministers petually confounded in later times with of their own appointment, and denied that of Albigenses, but distinguishing a the lawfulness of oaths and of capital sect probably of separate origin, and at least of different teets. origihese, according against heretics is an attack upon the WValdenses, east of different tenets. These, according expressly derives them from Waldo. Petrus Mo Waldenses. to the majority of writers, took nachus does the same. These seem strong author their appellation from Peter ities, as it is not easy to perceive what advantage Waldo, a merchant of Lyons, the parent, they could derive from misrepresentation. It has about the year 1160, of a congregation o~f been, however, a position zealously maintained by some modern writers of respectable name, that the seceders from the church, who spread people of the valleys had preserved a pure faith very rapidly over France and Germany.* for several ages before the appearance of Waldo. from the wildest perversions of their meaning I have read what is advanced on this head by Lefrome deied the wildreality of Christ's body of their meaning! rs ger (Histoire des Eglises Vaudoises), and by Allix his eing the Son ofreality of Christ's body; others (Remarks on the Ecclesiastical History of the his being the Son of God; many the resurrection Churches of Piedmont), but without finding any of the body; some even of a future state. They Churches of Piedmont), but without finding any of h asserted in general the Mosaic law to have pro- sufficient proof for this supposition, which, neverceeded from the devil, poving this by the crimes theless, is not to be rejected as absolutely improbcommitted during its dispensation, and by the words able. Their best argument is deduced from ard ncient
poem called La Noble Loiden, an original of St. Paul, "the law entered that sin might abound." They rejected infant baptism, but were divided as to the reason; some saying that infants could not sin, and do not need baptism; others, 1100, more than half a century before the appearance of Waldo. But the lines that contain the that they could not be saved without faith, and date are loosely expressed, and may very well suit consequently that it was useless. They held sin with any epoch before the termination of the after baptism to be irremissible. It does not appear twelfth epoch before the termination of the then rejected either of the sacraments. They laid great stress upon the imposition of hands. Ben ha mil et cent ans comple mentarment which seems to have been their distinctive rite. Che fu scritta loro que sen al derier temp One circumstance, which both Alanus and Rob- Eleven hundred years are now gone and past, ertus Monachus mention, and which other author- Since thus it was written; these times are the last. ities confirm, is their division into two classes; the I have found, however, a passage in a late work, Perfect, and the Credentes, or Consolati, both of which remarkably illustrates the antiquity of Al which appellations are used. The former abstain- pine protestantism, if we may depend on the date ed from animal food and from marriage, and led in it assigns to the quotation. Mr. Planta's History every respect an austere life. The latter were a of Swisserland, p. 93, 4to edit., contains the follow. kind of lay brethren, living in a secular manner. ing note. " A curious passage, singularly descrip This distinction is thoroughly Manichean, and tive of the character of the Swiss, has lately beer leaves no doubt as to the origin of the Albigenses. discovered in a MS. chronicle of the abbey of Cor. See Beausobre, Hist. du Manichidisme, t. ii., p. vey, which appears to have been written about the 762 and 777. This candid writer represents the beginning of the twelfth century. Religionemnos early Manicheans as a harmless and austere set tram, et omnium Latinae ecclesie Christianorum of enthusiasts, exactly what the Paulicians and fidem, laici ex SuaviA, Suicia, et Bavari humiliare Albigenses appear to have been in succeeding ages. voluerunt; homines seducti ab antiqua progenie. As many calumnies were vented against one as the simplicium hominum, qui Alpes et viciniam habitantes. tant, et semper amant antiqua. In Suaviam, Ba * The contemporary writers seem uniformly to variam et Italian borealem ssepe intrant illorum represent Waldo as the founder of the Waldenses; (ex Suicia) mercatores, qui biblia ediscunt memo and I am roat aware that they refer the locality of riter, et ritus ecclesiis aversantur, quds credunt esst that sect to the valleys of Piedmont, between Ex- novos. Nolunt imagines venerari, reliquias sanc. liles and Pignerol (see Leger's map), which have torum aversantur, olera comedunt, rar6 mastican so long been distinguished as the native country of tes carnem, alii nunquam. Appellamus eos idcir the vaudois. In the acts of the inquisition, we cd Manichaeos. Horum quidam ab Hungaria ad find Waldenses, sive pauperes de Lugduno, used eos convenerunt," &c. It is a pity that the quotaas equivalei t terms; and it can hardly be doubted tion has been broken off, as it might have illus hat the poor men of Lyons were the disciples of trated the connexion of tLe Bulgarians with thes Waldo. Alanus, the second book of whose treatise sectaries
people. * genses: especially as Protestant writers I have already had occasion to relate considering all the enemies of Rome as the severe persecution which nearly ex- their friends, have been apt to place the terminated the Albigenses of Languedoc opinions of these sectaries in a very false at the close of the twelfth century, and light. In the course of time, undoubtedly, involved the counts of Toulouse in their the system of their Paulician teachers ruin. The Catharists, a fraternity of the would have yielded, if the inquisitors had same Paulician origin, more dispersed admitted the experiment, to a more acthan the Albigenses, had previously sus-
curate study of the Scriptures, and to the tained a similar trial. Their belief was knowledge which they would have uncertainly a compound of strange errors bibed from the church itself. And, in with truth; but it was attended by quali-
fact, we find that the peculiar tenets of ties of a far superior lustre to orthodoxy, Manicheism died away after the middle by a sincerity, a piety, and a self-devo- of the thirteenth century, although a tion, that almost purified the age in which spirit of dissent from the established they lived.t It is always important to creed broke out in abundant instances during the two subsequent ages. * The Waldenses were always considered as We are in general deprived of explicit much less erroneous in their tenets than the Albi-
testimonies in tracing the revolutions of genses or Manicheans. Erant pratera alii here- popular opinion. Much must therefore tici, says Robert Monachus in the passage above be left to conjectur quoted, qui Waldenses dicebantur, a quodam Wal- e; but I am inclined dio nomine Lugudensi. Hi quidem mali erant, to attribute a very extensive effect to the sed comparatione aliorum haereticorum long6 mi- preaching of these heretics. They apnus perversi; in multis enim nobiscum convenie-
and dissenterbant. The only faults the same period, in Spain., Lombardy, he seems to impute to them are the denial of the Flanders, lawfulness of oaths and capital punishment, and Germany, and England, as well the wearing wooden shoes. By this peculiarity of as France. Thirty unhappy persons conwooden sandals (sabots) they got the name of victed of denying the sacraments, are Sabbatati or Insabbatati.-Du Cange.) William said to have perished at Oxford by cold du Puy, another historian of the same time, makes a similar distinction. Erant quidam Ariani, qui- Regnier, who had lived among them, and became dam Manichami, quidam etiam Waldenses sive Lug- afterward an inquisitor, does them justice in this dunenses, qui licet inter se dissides, omnes tamen respect.-See Turner's History of England for sevin animarum perniciem contra fidem Catholicam era-
other proofs of this. It must be confessed, conspirabant; et illi quidem Waldenses contra ali- that the Catharists are not free from the imputa. os acutissim6 disputant.-Du Chesne, t. v., p. 666. tion of promiscuous licentiousness. But whether Alanus, in his second book, where he treats of the this was a mere calumny, or partly founded upon Waldenses, charges them principally with disre- truth, I cannot determine. Their prototypes, the garding the authority of the church and preaching ancient Gnostics, are said to have been divided without aregular mission. It is evident, however, into two parties, the austere and the relaxed; both from the acts of the Inquisition, that they denied condemning marriage for opposite reasons. Ala. the existence of purgatory; and I should suppose nus, in the book above quoted, seems to have that, even at that time, they had thrown off most taken up several vulgar prejudices against the of the popish system of doctrine, which is so near-
Cathari. He gives an etymology of their name ly connected with clerical wealth and power. The i catta; quia osculantur posteriora catti; in cujus difference made in these records between the Wal- specie, ut aiunt, appararet iis Lucifer, p. 146. This denses and the Manichean sects, shows that the notable charge was brought afterward against the imputations cast upon the latter were not indiscrim- Templars, inate calumnies. See Limborch, p. 201 and 228. As to the Waldenses, their innocence is out of The History of Languedoc, by Vaisssette and all doubt. No book can be written in a more edi. Vich, contains a very good account of the sectsa- fying manner than La Noble Loiqon, of which large ties in that country; but I have not immediate ac- extracts are
given by Leger, in his Histoire des Eglises Vaudoises. Four lines are quoted by Vol. found of the distinction between the Waldenses taine (Hist. Universelle, c. 69) as a specimen of and Albigenses in t. iii., p. 466. But I am satisfied the Provengal language, though they belong rather hat no one who has looked at the original author- to the patois of the valleys. But as he has not ities will dispute the proposition. These Benedic- copied them rightly, and as they illustrate the subtin historians represent the Henricians, an early junct of this note, I shall repeat them here from sect of reformers, condemned by the council of Leger, p. 28. L.mbez, in 1165, as Manichees. Mosheimconsid-Que sel se troba alcun bon quo vollia amnar Die ers them as of the Vaudois school. They appeared e terner Jeshu Xrist, some time before Waldo. Que non vollia maudire, ni jura, nl mentir, t The general testimony of their enemies to the Ni avoutrar, ni aucire, ni penre de l'autruy, purity of morals among the Languedocian and Ni venjar se de li sio enemie, Ly neew sectaries is abundantly sufficient. One I111 dison quel es Vaudes e degne de murir

Page 507 P.r, 11.1 ~STATE OF SOCIETY. 507 and famine in the reign of Henry 11. pendent discussion of their religious!ysIn every country the new sects appear tern. A curious illustration of this is to have spread chiefly among the lower furnished by one of the letters oi Inno. people; which, while it accounts for the cent III. He had been informed by the imperfect notice of historians, indicates Bishop of Metz, as he states to the clergy a more substantial influence upon the of the diocess, that no small multitude ol moral condition of society than the con- laymen and women having procured a version of a few nobles or ecclesiastics.* translation of the gospels, epistles of St. But even where men did not absolutely Paul, the psalter, Job, and other books enlist under the banners of any new sect, of Scripture, to be made for them into they were stimulated by the temper of French, meet in secret conventicles to their age to a more zealous and inde- hear them read, and preach to each other, avoiding the company of those who do * It would bedeficult to specify all the dispersed not join in their devotion, and having authorities which attest the existence of the sects been reprimanded for this by some of derived from the Waldenses and Paulicians in the their parish priests, have withstood them, twelfth, thirteenth, and fourteenth centuries. Besides Mosheim, who has paid considerable atten- alleging reasons from the Scriptures why tion to the subject, I would mention some articles they should not be so forbidden. Some in Du Cange which supply gleanings; namely, of them too deride the ignorance of their Beghardi, Bulgari, Lollardi, Paterini, Picardi, Pifli, ministers, and maintain that their own Populicani. books teach them more than they can Upon the subject of the Waldenses and Albigenses generally, I have borrowed some light from learn from'the pulpit, and that they can Mr. Turner's History of England, vol. ii., p. 377, express it better. Although the desire 393. This learned writer has seen some books that of reading the Scriptures, Innocent prohave not fallen into my way; and I am indebted to ceeds is rather praiseworthy than repc eeds, is rather praiseworthy than rephim for a knowledge of Alanus's treatise, which I have since read. At the same time I must observe, rehensible, yet they are to be blamed for that Mr. Turner has not perceived the essential frequenting secret assemblies, for usurdistinction between the two leading sects. ing the office of preaching, deriding their The name of Albigenses does not frequently own ministers, and scorning the company occur after the middle of the thirteenth century; ow n ministers, and sconcour in their novelmpny but the Waldenses, or sects bearing that denomination, were dispersed over Europe. As a term ties. He presses the bishop and chapof different reproach was derived from the word ter to discover the author of this transBulgarian, so vauderie, or the profession of the lation, which could not have been made Vaudois, was sometimes applied to witchcraft, without a knowledge of letters, and what Thus, in the proceedings of the Chambre Brulante at Arras, in 1459, against persons
accused of sorcery, his intentions, and what degree of cery, their crime is denominated vauderie. The orthodoxy and respect for the Holy See fullest account of this remarkable story is found in those who used it possessed. This let the Memoirs of Du Clercq, first published in the ter of Illnecent III., however consider general collection of Historical Memoirs, t. ix., ing the nature of the man, p.is sufficient 430, 471. It exhibits a complete parallel to the ing the nature of the man, is sufficiently events that happened in 1682 at Salem, in New- temperate and conciliatory. It seems England. A few obscure persons were accused of not to have answered its end; for in vauderie, or witchcraft. After their condemnation, another letter he complains that some which was founded on confessions obtained hy tor- members of this little association contour, and afterward retracted, an epidemical conta- tinued refractory, and refused to obey gion of superstition dread was diffused all around. Numbers were arrested, burnt alive by order of a either the bishop or the pope.* tribunal instituted for the detection of this offence, In the eighth and ninth centuries, or detained in prison; so that no person in Arras when the Vulgate had ceased to be genthought himself safe. It was believed that many in were accused for the sake of their possessions, erally telligible, there is no reason to which were confiscated to the use of the church. suspect any intention in the church to At length the Duke of Burgundy interfered, and deprive the laity of the Scriptures. put a stop to the persecutions. The whole narra- Translations were freely made into the wive in Du Clercq is interesting, as a curious docu. vernacular languages, and perhaps read ment of the tyranny of bigots, and of the facilityread with which it is turned to private ends. in churches, although the acts of saints To return to the Wallenses: the principal course were generally deemed more instructive. of their emigration is said to have been into Bohe- Louis the Debonair is said to have mia, where, in the fifteenth century, thename was caused a German version of the New come by one of the seceding sects. By theirpro- Testament to be made. Offrid, in the fession of faith, presented to Ladislaus Posthurnus, it appears that they acknowledged the corporal pres-pels, oi ence in the eucharist, but rejected purgatory and other Romish doctrines. See it in the Fasciculus * Opera Innocent. III., p. 468, 537. A transla Rerum expetendarum et fugiendarum, a collection tion of the Bible had been made by direction o. of treatises illustrating the origin of the Reforma- Peter Waldo; but whether this used in Lorraria tion, originally published at Cologne in 1535, and was the same, does not appear. Metz was full of reprinted at London in 1690. the Vaudois, as we find by other authorities.

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508 EUROPE DURING THE MIDDLE AGES. CGdAP. IA rather abridged them, into German verse. produced an extensive reformation. 13ul This work is still extant, and is in sev- their virtues were by no means free from eral respects an object of curiosity.* In some unsocial qualities, in which, as the eleventh or twelfth century, we find well as in their superior attributes, the translations of the Psalms, Job, and the Lollards bear a very close resemblance Maccabees into French.t But after the to the Puritans of Elizabeth's reign: a diffusion of heretical opinions, or, what moroseness that proscribed all cheerful was much the same thing, of free inquiry, amusements, an uncharitable malignity it became expedient to secure the ortho- that made no distinction in condemning dox faith from lawless interpretation. the established clergy, and a narrow preAccordingly the council of Toulouse, in judice that applied the rules of the Jew1229, prohibited the laity from posses- ish law to modern institutions.* Some sing the Scriptures; and this precaution of their principles were far more dangerwas frequently repeated. upon subsequent ours to the good order of society, and occasions. cannot justly be ascribed to the Puritans, The ecclesiastical history of the thir- though they grew afterward out of the teenth or fourteenth centuries teems same soil. Such was the notion, which with new sectaries and schismatics, va- is imputed also to the Albigenses, that rious in their aberrations of opinion, but
civil magistrates lose their right to govall concurring in detestation of the estab- ern by committing sin, or, as it was quaintlished church.t They endured severe ly expressed in the seventeenth century, persecutions with a sincerity and firm- that dominion is founded in grace. These ness which in any cause ought to com- extravagances, however, do not belong mand respect. But in general we find to the learned and politic Wicliffe, howan extravagant fanaticism among them; ever they might be adopted by some of and I do not know how to look for any his enthusiastic disciples.t Fostered by amelioration of society from the Fran- the general ill-will towards the church ciscan seceders, who quibbled about the his principles made vast progress in property of things consumed by use, or England, and, unlike those of earlier from the mystical visionaries of different sectaries, were embraced by men of appellations, whose moral practice was rank and civil influence. Notwithstanding sometimes more than equivocal. Those ing the check they sustained by the san who feel any curiosity about such sub- guinary law of Henry IV., it is highly jects, which are by no means unimpor- probable that multitudes secretly cherishtant, as they illustrate the history of the ed them down to the era of the Reformhuman mind, will find them treated very ation. fully by Mosheim. But the original From England the spirit of religious sourses of information are not always innovation was propagated into iussites o a cesible in this country, and the re- Bohemia; for though John Huss Bohemia. search would perhaps be more fatiguong was very far from embracing all the docthan profitable. trinal systems of Wicliffe, it is manifest I shall, for an opposite reason, pass that his zeal had been quickened by the Lollards of lightly over the great revolution England. in religious opinion wrought in * Walsingham, p. 238. Lewis's Life of Pea England by Wicliffe, which will gen- cock, p. 65. Bishop Peacock's answerto the Lol erally be familiar to the reader from our lards of his time contains passages well worthy of common historians. Nor am I concern- Hooker, both for weight of matter and dignity of ed to treat of theological inquiries, or to style, setting forth the necessity and importance of " the moral law of kinde, or moral philosophie," in write a history of the church. Consid- opposition to those who derive all morality from ered in its effect upon manners, the sole revelation. point which these pages have in view, This great man fell afterward under the dis the preaching of this new sect certainly pleasure of the church for propositions, not indeed heretical, but repugnant to her scheme of spiritual power. He asserted indirectly the right of pri. Schilteri Thesaurus Antiq. Teutonicorum, vate judgment, and wrote on theological subects t. ii. in English, which gave much offence. In fact, t Mem. de l'Acad. des Inscript., t. xvii., p. 720. Peacock seems to have hoped that his acute reat The application of the visions of the Apoca- soning would convince the people, without requi. lypse to the corruptions of Rome has commonly ring an implicit faith. But he greatly misunderbeen said to have been first made by the Francis- stood the principle of an infallible church. Lewan seceders. But it may be traced higher, and is is's Life of Peacock does justice to his character, remarkably pointed out by Dante. which, I need not say, is unfairly represented by Di voi pastor s' accorse'l Vangelista, such historians as Collier, and such antiquaries as Quando colei, chi siede sovra 1' acque, Thomas Hearne. Puttaneggar co' regi a lui ò vista. t Lewis's Life of Wicliffe, p. 115. Lenfart Infenmo, cant. xix. Hist. du Concile de Constance, t. i., p. 21 T.
ential effect to the schism of the Hussites, love of liberty or religious zeal has ever at least in its immediate results, and in imparted, was equalled by the exquisite the country where it appeared. Though sense of honour which this institution some degree of sympathy with their preserved. cause is inspired by resentment at the ill It appears probable, that the custom of faith of their adversaries, and by the as- receiving arms at the age of Its origin sociations of civil and religious liberty, manhood with some solemnity, we cannot estimate the Taborites and was of immemorial antiquity among the other sectaries of that description but as nations that overthrew the Roman em ferocious and desperate fanatics. For it is mentioned by Tacitus that haps beyond the confines of Bohemia, have prevailed among their German an more substantial good may have been cestors; and his expressions might hav( produced by the influence of its reforma- been used with no great variation to de tion, and a better tone of morals inspired scribe the actual ceremonies of knight into Germany. But I must again repeat, hood. There was even in that remott that upon this obscure and ambiguous age a sort of public trial as to the fitnesr subject I assert nothing definitely, and of the candidate, which, though perhaps little with confidence. The tendencies confined to his bodily strength and activi of religious dissent in the four ages be- ty, might be the germe of that refined in fore the Reformation appear to have gen- vestigation which was thought necessarj erally conducd towards the moral im- in the perfect stage of chivalry. Proofs provement of mankind; and facts of this though rare and incidental, might be ad nature occupy a far greater space in a duced to show, that in the time of Charle philosophical view of society during that magne, and even earlier, the sons of period than we might at first imagine; monarchs at least did not assume manl) but every one who is disposed to prose- arms without a regular investiture. Ant cute this inquiry will assign their charac- in the eleventh century, it is evident that ter according to the result of his own this was a general practice. investigations. This ceremony, however, would perBut the best school of moral discipline haps of itself have done little towards Institution which the middle ages afforded forming that intrinsic principle which of chivalry, was the institution of chivalry. characterized the genuine chivalry. Bui There is something perhaps to allow for in the reign of Charlemagne we find E the partiality of modern writers upon this military distinction, that appears, in fact interesting subject; yet our most skepti- as well as in name, to have given birth to cal criticism must assign a decisive influ- that institution. Certain feudal tenants, ence to this great source of human im- and I suppose also alodial proprietors, movimiento The more deeply it is con- were bound to serve on horseback, sidered, the more we shall become sensi- equipped with the coat of mail. These ble of its importance. were called Caballarii, from which the There are, if I may so say, three pow- word chevaliers is an obvious cerrup* Huss does not appear to have rejected any of * Nihil neque publics neque private rei nisi ar the peculiar tenets of popery.-Lenfant, p. 414. He mati agunt. Sed arma sumere non ante ciumquam embraced, like Wicliffe, the predestinarian system moris, qu m civitas suffecturum probaverit. Turn of Augustin, without pausing at any of those infer- in ipso concilio, vel principum aliquis, vel pater, ences, apparently deducible from it, which, in the vel propinquus scuto framefque juvenem ornant; heads of enthusiasts, may produce such extensive haec apud eos toga, hic primus juventae honoros; ante mischief. These were maintained by Huss (id., p. hoc domuis pars videntur, mox reipublice.-De 328), though not perhaps so crudely as by Luther. Moribus German., c. 13. Every thing relative to the history and doctrine of t William of Mahnsbury says that Alfred ecir Huss and'his followers will be found in Lenfant's ferred knighthood on Athelstan, donatim chla three works, on the councils of Pisa, Constance, myde coccineim, gemmato balteo, ense Saxonico and Basle. cumvagina aurea, 1. ii., c. 6. St. Palaye (Memcires + Lenfant, Hist. de la Guerre des Hussites et du sur la Chevalerie, p. 2) mentions
other instances Co., cile le Bas. e.-Schmidt, Hist. des Allemands, which may also be found in Du Cange's Glossary -, v. Arma, and in his 22d dissertation in Joinville.

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EUROPE DURING THE MIDDLE ACES. CHAP. IA tion.* But he who fought on horseback, tclnss, so widely remote from each other, and had been invested with peculiar arms seem to partake of that moral energy, in a solemn manner, wanted nothing which, among European nations, far remore to render him a knight. Chivalry mote from both of them, was excited by therefore may, in a general sense, be re- the spirit of chivalry. But the most ferred to the age of Charlemagne. We beautiful picture that was ever portrayed may however go farther, and observe of this character is the Achilles of Hothat these distinctive advantages above mer, the representative of chivalry in its ordinary combatants were probably the most general form, with all its sincerity sources of that remarkable valour and and unyielding rectitude, all its courtetha that keen thirst for glory which became sies and munificence. Calmly indifferthe essential attributes of a knightly ent to the cause in which he is engaged, character. For confidence in our skill and contemplating with a serious and and strength is the usual foundation of unshaken look the premature death that courage: it is by feeling ourselves able awaits him, his heart only beats for glory to surmount common dangers, that we and friendship. To this sublime characbecome adventurous enough to encounter ter, bating that imaginary completion by those of a more extraordinary nature, which the creations of the poet, like and to which more glory is attached. those of the sculptor, transcend all single The reputation of superior personal works of nature, there were probably prowess, so difficult to be attained in the many parallels in the ages of chivalry. course of modern warfare, and so liable especially before a set education and the to erroneous representations, was al- refinements of society had altered a little ways within the reach of the stoutest the natural unadulterated warrior of a ru knight, and was founded on claims der period. One illustrious example from which could be measured with much ac- this earlier age is the Cid Ruy Diaz, curacy. Such is the subordination and whose history has fortunately been pre mutual dependance in a modern army, served much at length in several chrsni'that every man must be content to divide cles of ancient date, and in one valuable his glory with his comrades, his general, poem; and though I will not say that the or his soldiers. But the soul of chivalry Spanish hero is altogether a counterpart was individual honour, coveted in so en- of Achilles in gracefulness and urbanity, tire and absolute a perfection, that it yet was he inferior to none that ever must not be shared with an army or a lived in frankness, honour, and magnanat;on. Most of the virtues it inspired nimity.* were what we may call independent, as opposed to those which are founded upon virtues, which possibly were rather exaggerated ov social relations. The knights-errant of earlier writers. romance perform their best exploits from a * Since this passage was written, I have found the love of renown, or from a sort of ab parallel drawn by Mr. Sharon Turner, in his valthe love of renown, or fronl a sort of ab- uable History of England, between Achilles and stract sense of justice, rather than from Richard Coeur de Lion; the superior justness of any solicitude to promote the happiness which I readily acknowledge. The real hero does of mankind. If these springs of action not indeed excite so much interest in me as the are less generally beneficial, they are, poetical; but the marks of resemblance are very r striking, whether we consider their passions, their however, more connected with elevation talents, their virtues, their vices, or the waste ot of character than the systematic pru- their heroism. dence of men accustomed to social life. The two principal persons in the Iliad, if I may This solitary and independent spirit of digress into the observation, appear to me repre sentatives of the heroic character in its two lea, chivalry, dwelling, as it were, upon aing varieties; of the energy which has its sole rock, and disdaining injustice or false- principle of action within itself, and of that
which hood from the consciousness of internal borrows its impulse from external relations; of
the dignity, without any calculation of their spirit of honour, in short, and of patriotism. As
consequences, is not unlike what we I every sentiment of Achilles is independent and, self-
supported, so those of Hector all bear refer3sometimes read of Arabian chiefs or the ence to his
kindred and his country. The ardour North American Indians. These na- of the one might have
been extinguished for war; of nourishment in Thessaly; but that of the other might, we fancy,
have never been kindled but for " Comites et vassalli nostri qui benefici habere the dangers of
Troy. Peace could have brought noscuntur, et caballarii omnes ad placitum nostrum no delight
to the one but from the memory of war; veniant bene preparati.-Capitularia, A. D. 807, war had
no alleviation to the other but from the,n Baluze, t. i., p. 460. images of peace. Compare, for
every example, the two f We must take for this the more favourable speeches, beginning II. Z., 441,
and II. 11., 49; or represzntations of the Indian nations. A deteri- rather compare the two
characters throughout the orating intercourse with Europeans, or a race of Iliad. So wonderfully
were those two great springs European extraction, has tender to efface those of human
sympathy, v'innsly interest'ng accord
eraly his soldiers or stipendiary troops. A knight. But this was derided by the Those who could afford to exert their Normans as effeminacy, and seems to valour without recompense were like the have proceeded from the extreme devoknights of whom we read in romance, tions of the English before the conquest.* who served a foreign master through We can hardly perceive, indeed, why the love, or thirst of glory, or gratitude. assumption of arms to be used in butchThe extreme poverty of the lower noble- ering mankind should be treated as a ty, arising from the subdivision of fiefs, religious ceremony. The clergy, to do and the politic generosity of rich. lords, them justice, constantly opposed the made this connexion as strong as that private wars in which the courage of of territorial dependance. A younger those ages wasted itself; and all bloodbrother, leaving the paternal estate, in shed was subjei t in strictness to a cawhich he took a slender share, might nonical pence. But the purposes for look to wealth and dignity in the service which men bore arms in a crusade so of a powerful count. Knighthood, which sanctified their use, that chivalry acquired he could not claim as his legal right, be- the character as much of a religious as a came the object of his chief ambition. military institution. For many centuIt raised him in the scale of society, ries, the recovery of the Holy Land was equalling him in dress, in arms, and in constantly at the heart of a brave and title, to the rich landholders. As it was superstitious nobility; and every knaignt due to his merit, it did much more than - ___ ___ ___ * Ingulfus in Gale, xv. Scriptores, t., {.; ing to the diversity of our tempers, first touched William Rufus, however, was knighte? re, / rch vy that ancient patriarch, bishop Lanfranc, which le<4ks as if the the, ,r s,e & quo, ceu fonte perenni, was not absolutely repugnant to the Nerr tr,rmz Vatum Pieriis ora rigantum aquis. tice.
...narkable characteristic of the Northern as if by the spell of enchantment, that aations. The German women were high ineffable grace over beauty which the spirited and virtuous; qualities which choice and arrangement of dress are calmight be causes or consequences of culated to bestow. Courtesy had always the veneration with which they were been the proper attribute of knighthood regarded. I am not sure that we could protection of the weak its legitimate duty trace very minutely the condition of but these were heightened to a pitch of won.en for the period between the sub- enthusiasm when woman became theii version of the Roman empire and the object. There was little jealousy showr first crusade; but apparently man did not in the treatment of that sex, at least ir. grossly abuse his superiority; and in France, the fountain of chivalry; they point of civil rights, and even as to -the were present at festivals, at tournaments inheritance of property, the two sexes and sat promiscuously in the halls of thel were placed perhaps as nearly on a level castle. The romance of Perceforest (and as the nature of such warlike societies romances have always been deemed good would admit. There seems, however, to witnesses as to manners) tells of a feast have been more roughness in the social where eight hundred knights had each of intercourse between the sexes than we them a lady eating off his plate.* For to find in later periods. The spirit of gal- eat off the same plate was a usual mark lantry, which became so animating a of gallantry or friendship. principle of chivalry, must be ascribed to Next therefore, or even equal to devote the progressive refinement of society du- tion, stood gallantry among the priniring the twelfth and two succeeding cun- ples of knighthood. But all comparison turies. In a rude state of manners, as between the two was saved by blending alnong the lower people in all ages, them together. The love of God and woman has not full scope to display the ladies was enjoined as a single duty. He who was faithful and true to his mis. Du Carge, v. Miles, and 22d Dissertation on. So. Palaye, Mdm sur la Chevalerie, part * Y eut huit cens chevaliers sôant a table; et si ii. A curious original illustration of this, as well n'y eust celui qui n'eust une dame ou une pucelle as of other chivalrous principles, will be found in a son ecuelle. In Lancelot du Lac, a lady who?Ordene de Chevalerie, a long metrical romance was troubled with a jealous husband complains published in Barbazan's Faoliaux, t. i., p. 59 (edit. that it was a long time since a knight..ad eatet oif 180s). her plate.-Le Grand, t. i., p. 24.
chivalry that all in his company no right to profane the name of religion; were gainers."* It
were to be wished but its union with valour was at least that the sympathy of love and valour
had more natural, and became so intimate, always been as honourable. But the that the same
word has served to express morals of chivalry, we cannot deny, were both qualities. In the
French and Eng- not pure. In the amusing fictions which lish wars especially, the knights of
each seem to have been the only popular readcountry brought to that serious conflict ing of the
middle ages, there reigns a little spirit of romantic attachment which centious spirit, not of that
slighter kind had been cherished in the hours of peace. which is usual in such compositions, but
They fought at Poitiers or Verneuil as indicating a general dissoluteness in the they had fought
at tournaments, bearing intercourse of the sexes. This has often over their armour scarves and
deVICES, been noticed of Boccaccio and the early as the livery of their mistresses, and as-
Italian novelists; but it equally characterting the paramount beauty of her they terrized the tales
and romances of France, served, in vaunting challenges towards whether metrical or in prose,
and all the the enemy. Thus, in the middle of a poetry of the Troubadours.t The violakeen
skirmish at Cherbourg, the squad- tion of marriage-vows passes in them for rons remained
motionless, while one an incontestable privilege of the brave knight challenged to a single
combat the and the fair; and an accomplished knight most amorous of the adversaries. Such
seems to have enjoyed as undoubted prea defiance was soon accepted; and the rogatives, by
general consent of opinion, battle only recommenced when one of as were claimed by the
brilliant courtiers the champions had lost his life for his of Louis XV. love.~ In the first
campaign of Edward's But neither that emulous valour which war, some young English knights
wore a chivalry excited, nor the religion and covering over one eye, vowing, for the gallantry
which were its animating prinsake of their ladies, never to see with ciples, alloyed as the latter
were by the both till they should have signalized corruption of those ages, could have rentheir
prowess in the field.li These ex- dered its minsttution materially conducive travagances of
chivalry are so common to the moral improvement of society that they form part of its general
charac- There were, however, excellences of a Ler, and prove how far a course of action very
high class which it equally encouraged. In the books professedly written * Le Grand, Fabliaux,
t. iii., p. 438. St. Palaye, to lay-down the duties of knighthood, they t. i., p. 41. I quote St.
Palaye's Memoirs from the appear to spread over the whole compass fi rst edition in 1759,
which is not the best. t Statuimus, qld omnis homo, sive miles sive aius, qui iverit cum
domina generosA, salvus sit * St. ilayle, p. 268. itque securus, nisi fuerit homicida.-De Marca,
t The romances will speak for themselves; and Marca Hispanica, p. 1428. the character of the.
Provenqal morality may be t Le Grand, t. i., p. 120. St. Palaye, -t. i., p. 13, collected from
Millot, Hist. des Troubadours, pas. 31, 221. Fabliaax, Romances, &c., passim. sim; and from
Sismondi, Litterature du Midi, t. i. 4 St. Palaye, p, 2 2 11 Froissart, p. 33. p. 179, &c. See too
St. Palave, t. ii., p. 62 and 69 K k
they referred their models of Besides the grace which this beautiful fictitious heroism to the existing standard virtue threw over the habits of social of moral approbation; a rule which, if life, it softened down the natural rought generally falls short of what reason ness of war, and gradually introduced and religion prescribe, is always beyond that indulgent treatment of prisoners the average tenour of human conduct. which was almost unknown to antiquity. From these and from history itself we Instances of this kind are continual in the may infer the tendency of chivalry to el- late period of the middle ages. An Ital. evate and purify the moral feelings. ian writer blames the soldier who wound. Three virtues may particularly be no- ed Eccelin, the famous tyrant of Padua, virtues ticed, as essential, in the estima- after he was taken. He deserved, says deemed es- tion of mankind, to the charac- he, no praise, but rather the greatest insential to ter of a knight; loyalty, courte- famy for his baseness; since it is as vile uvalry. sy,- and.munificence. an act to wound a prisoner, whether noThe first of these, in its original sense, ble or otherwise, as to strike a dead loyalty. may be defined, fidelity to engage- body.* Considering the crimes of Ecce. ments; whether actual promises, lin, this sentiment is a remarkable proof or such tacit obligations as bound a vas- of generosity. The behaviour of Ed. sal to--his lord, and a subject to his prince. ward III. to Eustace de Ribaumont, aftI was applied also, and in the utmost the capture of Calais, and that, still more strictness, to the fidelity of a lover to- exquisitely beautiful, of the Black Prince wards the lady. he served. Breach of to his royalprisoner at Poitiers, are such: faith, and especially of an express prom- eminent instances of chivalrous virtue, ise, was held a disgrace that no valour that I omit to repeat them only because could redeem. False, perjured, disloyal, they are so well known. Those great recreant, were the epithets which he princes, too, might be imagined to have must be compelled to endure who had soared far above the ordinary track of swerved from a plighted engagement, mankind.. But, in truth, the knights who even'towards an enemy. This is one of surrounded them and imitated their exthe most striking changes produced by cellences were only inferior in oppurtuchi- vally. Treachery, the usual vice of nities of displaying the same virtue. savage as well as corrupt nations, be- After the battle of Poitiers, " the English came infamous during the vigour of that and. Gascon, knights." says Froissart, discipline. As personal rather than na- " having entertained theirprisomers, went tional feelings actuated its heroes, they home each of them with the knights or never felt that hatred, much less that squires he had taken, whom he then quesfear of their enemies, which blind men tioned upon their, honour, what ransom to the heinousness of ill faith. In the they could pay without inconvenience, wars of Edward III., originating in no and easily gave them credit; and it was real animosity, the spirit of honourable common for men to say that they would as well as courteous behaviour towards not straighten any knight or squire, so the foe seems to have arrived at its high- that he should not live well and kec uap est point. Though avarice may have his honour."t Liberality indeed, and been the primary motive of ransoming prisoners, instead of putting them to' Non laudem meruit, sed summen potius oppro death, their permission to return home brium vilitatis; namn idem facinus est putandum on the word of honour, in order to pro- captumnobilemvel ignobilem offendere, vel ferire, qu&m gladio cardere cadaver.-Rolandinus in cure the stipulated sum, an indulgence Script. Rer. Ital., t. viii., p. 351. never refused, could only be founded on t Froissart, 1. i., c. 161. He remarks in another experienced confidence in the principles place, that all English and French gentlemen treat their prisoners well; not so the Germans, whe put them in fetters, in order to extort more mone v * St. Palaye, part ii. c 136
such matters inculcate the duty of scattering incidents, their wealth with profusion, especially the characteristic virtues of chivalry towards minstrels, pilgrims, and the poor—bear so much resemblance to Resemer members of their own order. The those which eastern writers of chivalrous last, who were pretty numerous, had a the same period extol, that I am to eastern constant right to succour from the opu-lent; the castle of every lord, who re-ope of having derived some improvespected the ties of knighthood, was open ment from imitation of Asia. Though with more than usual hospitality to the the crusades began in abhorrence of in traveller whose armour announced his fidelis, this sentiment wore off in some dignity, though it might also conceal his degree before their cessation; and the poverty.* regular intercourse of commerce, some Valour, loyalty, courtesy, munificence, times of alliance, between the Christians formed collectively the character of Palestine and the Saracens, must have Justice- of an accomplished knight, so far removed part of the prejudice, while exas was displayed in the ordinary tenour perience of their enemy's courage and of his life, reflecting these virtues as an generosity in war would with those unsullied mirror. Yet something more gallant knights serve to lighten the rewas required for the perfect idea of chiv- maimder. The romancers expatiate with alry, and enjoined by its principles; an pleasure on the merits of Saladin, who active sense of justice, an ardent indig- actually received the honour of knighthood against wrong, a determination of hood from Hugh of Tabaria his prisoner, courage to its best end, the prevention or An ancient poem, entitled the Order of redress of injury. It grew up as a salutary Chivalry, is founded upon this story, and tary antidote in the midst of poisons, contains a circumstantial account of the while scarce any law but that of the ceremonies, as well as duties, which the strongest obtained regard, and the rights institution required.* One or two other of territorial property, which are only instances of a similar kind bear witness right as they conduct to general good, to the veneration in which the name of became the means of general oppression. knight was held among the eastern nations. The real condition of society, it has tions. And certainly, excepting that that sometimes been thought, might suggest mantic gallantry towards women, which stories of knight-errantry, which were their customs would not admit, the Mawrought up into the popular romances hometan chieftains were for the most part of the middle ages. A baron, abusing abundantly qualified to fulfill the duties the advantage of an inaccessible castle of European chivalry. Their manners in the fastnesses of the Black Forest or had been polished and courteous, while the Alps, to pillage the neighbourhood, the western kingdoms were comparaand confine travellers in his dungeon, tively barbarous. though neither a giant nor a Saracen. The principles of chivalry were not, I was a monster not less formidable, and think, naturally productive of Evils produced could perhaps as little be destroyed many evils. For it is unjust by the spirit of without the aid of disinterested bravery. to class those acts of oppression among the abuses of cannot rationally be conceived to have knighthood, which were committed in had any existence beyond the precincts spite of its regulations, and were only of romance. Yet there seems no im-prevented by them from becoming more probability in supposing that a knight, extensive. The license of times so injourneying through uncivilized regions perfectly civilized could not be expected in his way to the Holy Land or to the to yield to institutions which. like those court of a foreign sovereign, might find of religion, fell prodigiously short in their themself engaged in adventures not very practical result of the reformation which they were designed to work.:

Man's + st. Palaye, part iv., p. 312, 367, &c. Le guilt and frailty have never admitted Grand, Fabliaux, t. i., p. 115, 167. It was the custom in Great Britain (says the romance of Perce- more than a partial corrective. But some forest, speaking of course in an imaginary history), bad consequences may be more fairly that noblemen and ladies placed a helmet on the ascribed to the very nature of chivalry. highest point of their castles, as a sign that all per-I have already
mentioned the dissolute. cons of such rank travelling that road might boldly enter their houses like their own. —St. Palaye, D. 367. * Fabliaux de Bartaesan. t E k 2

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Europe during the Middle Ages. LCRae. 1IX ness which almost unavoidably resulted for the respect in which it was held from the prevailing tone of gallantry throughout Europe. But several collat. And yet we sometimes find, in the wri- eral circumstances served to invigorate tings of those times, a spirit of pure but its spirit. Besides the poulse efficacity exaggerated sentiment; and the most with which the poetry and romance of fanciful refinements of passion are min- the middle ages stimulated those sugled by the same poets with the coarsest ceptible minds which were alive to no immorality. An undue thirst for mili- other literature, we may enumerate foul tary renown was another fault that chiv- distinct causes tending to the promotion alry must have nourished; and the love of chivalry. of war, sufficiently pernicious in any The first of these was the regulai shape, was more founded, as I have ob- scheme of education, according Regular ed served, on personal feelings of honour, to which the sons of gentlemen, ucation for and less on public spirit, than in the citi- from the age of seven years, knighthood. zens of free states. A third reproach were brought up in the castles of supe. may be made to the character of knight- rior lords, where they at once learned the hood, that it widened the separation be- whole discipline of their future profees between the different classes of society, sion, and imibed its emulous and enthau confirmed that aristocratical spirit siastic spirit. This was an inestimable adof high birth, by which the large mass of vantage to the poorer nobility, who could mankind were kept in unjust degradation.

Compare the generosity of Edward III. dren the accomplishments of their statowards Eustace de Ribaumont at the lion. From seven to fourteen these siege of Calais, with the harshness of boys were called pages or varlets; at his conduct towards the citizens. This fourteen they bore the name of esquire. They were instructed in the manageville, who was himself imbued with the ment of arms, in the art of horsemanship full spirit of chivalry, and felt like the in exercises of strength and activity. best and bravest of his age. He is They became accustomed to obedience speaking of Henry, count of Champagne, and courteous demeanour, serving their who acquired, says he, very deservedly, lord or lady in offices which had not yet the surname of Liberal, and adduces the become derogatory to honourable birth, following proof of it. A poor knight im- and striving to please visiers, and esplored of him on his knees one day as cially ladies, at the ball or banquet. much money as would serve to marry his Thus placed in the centre of all that two daughters. One Arthault de Nogent, could awaken their imaginations, the a rich burgess, willing to rid the count of creed of chivalrous gallantry, superstithis importunity, but rather awkward, we tion, or honour, must have made indelmost own, in the turn of his argument, ble impressions. Panting for the glory said to the petitioner, My lord has al- which neither their strength nor the es ready given away so much that he has ablished rules permitted them to antici nothing left. Sir Villain, replied Henry, pate, the young scions of chivalry attend turning round to him, you do not speak ed their masters to the tournament, and truth in saying that I have nothing left even to the battle, and riveted with a to give when I have got yourself. Here, sigh the armour they were forbidden to Sir Knight, I give you this man, and war- * rant your possession of him. Then, says It was the constant policy of sover Joinville, the poor knight was not at all eigns to encourage this institu- Encourage confounded, but seized hold of the bur- tion, which furnished them with ment of gess fast by the collar, and told him he faithful supports, and counter- Tournashould not go till he had ransomed him- acted the independent spirit of ments. self. And in the end he was forced to feudal tenure. Hence they displayed pay a ransom of five hundred pounds. lavish magnificence in festivals and tour
simple-minded writer who brings nainents, which may be reckoned a sechis evidence of the Count of Chaim- ond means of keeping up the tone of pagne's liberality is not at all struck chivalrous feeling. The kings of France with the facility of a virtue that is exer- and England held solemn or plenary cised at the cost of others.* courts at the great festivals, or at other There is perhaps enough in the nature times, where the name of knight was Circumstan- of this institution, and its con- always a title to admittance; and 1he ees tending geniality to the habits of a masque of chivalry, if I may use the,x-. to promote it. warlike generation, to account pression, was acted in pageants and ~er. * oinvil.e in Collection des M6moires, t. i., p. 43. * St. Palaye, part i.

Page 517  ART 1j S rATE OF SOCIETY. 517 emonies, fantastical enough in our ap- Victory in a tournament was litt.e lesE prehension, but well calculated for those glorious, and perhaps at the molnen, heated understandings. Here the pea- more exquisitely. felt, than in the field; cock and the pheasant birds of high since no battle could assemble such wit fame in romance, receivaed the homage nesses of valour. " Honour to the sons of all true knights.* The most singular of the brave" resounded amid the din of festival of this kind was that celebrated martial music from the lips of the minby Philip, duke of Burgundy, in 1453. strels, as the conqueror advanced to reln the midst of the banquet a pageant ceive the prize from his queen or his was introduced, representing the calami- mistress; while the surrounding multitous state of religion in consequence of tude acknowledged in his prowess of that the recent capture of Constantinople. day an augury of triumphs that might in This was followed by the appearance of more serious contests be blended with a pheasant, which was laid before the those of his country. * duke, and to which the knights present Both honorary and substantial privia(lressed their vows to undertake a cru- leges belonged to the condition Privileges sade, in the following very characteristic of knighthood, and had of course of knightpreamble: I swear before God my crea- a material tendency to preserve hood. tor in the first place, and the glorious its credit. B knight was distinguished Virgin his mother, and next before the auroan oy ris crestea neimeb, his weighty ladies and the pheasant.t Tournaments armour whether of mail or plate, bearwere a still more powerful incentive to ing his heraldic coat, by his gilded spurs, emulation. These may be considered his horse barded with iron or clothed in to have arisen about the middle of. the housing of gold; at home by richer silks eleventh century; for though every mar- and more costly furs than were permittial people have found diversion in repre- ted to squires, and by the appropriated senting the image of war, yet the name colour of scarlet. He was addressed by of tournaments, and the laws that regu- titles of more respect.t Many civil o flated them, cannot be traced any higher.t flees, by rule of usage, were confined to Every scenic performance of modern his order. But perhaps its chief privitimes must be tame in comparison of lege was to form one distinct class of these animating combats. At a tourna- nobility, extending itself throughout great ment, the space enclosed within the lists part of Europe, and almost independent, was surrounded by sovereign princes and as to its rights and dignities, of any par. their noblest barons, by knights of estab- ticular sovereign. Whoever had been lished renown, and all that rank and legitimately dubbed a knight in one beauty had most distinguished among country, became, as it were, a citizen of the fair. Covered with steel, and known universal chivalry, and might assume only by their emblazoned shield, or by most of its privileges in any.other. Nor the favours of their mistresses, a still did he require the act of a sovereign to prouder bearing, the combatants rushed be thus distinguished. It was a fundaforward to a strife without enmity, but mental principle that any knight might not without danger. Though their weap- confer the order; responsible only in his ons were pointless, and sometimes only own reputation if he used lightly so high of wood, though they were bound by a prerogative. But as
all the distinctions the laws of tournaments to strike only of rank might have’ been confounded if upon the strong armour of the trunk, or, this right had been without limit, it was as it was called, between the four limbs, an equally fundamental rule, that it those impetuous conflicts often termina- could only be exercised in favour of ted in wounds and death. The church go-

defense (her excomminications in vain * st. Palaye, part ii. and part iii. au commence against so wanton an exposure to peril; ment. Du Cange, Dissert. 6 and 7: and Glossa but it was more easy for her to excite ry, v. Torneamentum. Le Grand, Fabliaux, t. i., han to restrain that martial enthusiasm. p. 184. -t St. Palaye, part iv. Selden’s Titles of IK-n* Du Cange, 5me Dissertation sur Joinville. St. our, p. 806. There was not, however, so much Palaye, t. i., p. 87, 118. Le Grand, t. i., p. 14. distinction in England as in France. ft St. Palaye, t. i., p. 191. t St. Palaye, vol. i., p. 70, has forgotten to make t Godfrey de Preuilly, a French knight, is said this distinction. It is, however, capable of abun. by several contemporary writers to have invented dant proof. Gunther, in his poem called Ligurin tournaments; which must of course be understood us, observes of the Milanese republic: In a limited sense. The Germans ascribe them to Quoslibet ex humili vulgo, quod Gallia fodum Henry the Fowler; but this, according to Du Judicat, accingi gladio concedit equestri. Oange, is on no authority.-6me Dissertation sur Otho of Frisingen expresses the same in prose. It Joinvi.e., is Paid, in the Establishments of St. Louis, that L

Page 518 118 EUROPE DURING THE MIDDLE AGES. [CHAP. IA The piiiiileges annexed to chivalry itary service. After armies Connexion wore of ocular advantage to the vavas-
which we may call compara- with miu:sors, or inferior gentry, as they tended tively regular, had superseded tary service to counterbalance the influence which in a great degree the feudal miterioral wealth threw into the scale litia, princes were anxious to bid high for of their feudal suzerains. - Knighthood the service of knights, the best equipped brought these two classes nearly to a and bravest warriors of the time, or, level; and it is owing perhaps in no small whose prowess the fate of battfs nwa, degree to this institution, that the lower for a long period justly supposed to de. nobility saved themselves, notwithstand- pend. War brought into relief the genIng their poverty, from being confounded erous virtues of chivalry, and gave lustre with the common'people. to its distinctive privileges. The rank -Lastly, the customs of chivalry were was sought with enthusiastic emulation, maintained by their’connexion with mil-
through heroic achievements, to which, rather than to mere wealth and station, any one not being a gentleman on the father' side it was considered to belong. In the was knighted, the king or baron in whose territory wars of France and England, by far the he resides may hack off his spurs on a dunghill,. c. 130..The Count de Nevers, having knighted a most splendid period of this institution, a person who was not noble ex parte paterna, was promotion'of knights followed every scufined in the king's court. The king, however cess, besides the innumerable cases (Philip lii.), confirmed the knighthood.-Daniel, where the same honour rewarded indiHist. de la Milice Franqoise, p. 98. Fuit propos- vedual bravery.* It may here be mentumn (says a passage quoted by Daniel) contra comitem Flandriensem, quod non poterat, nec debebat tioned, that an honorary distinction was facere de villano militem, sine auctoritate regis, made between' knights-bannerets and ibid. Statuimus, says James I. of Aragon, in 1234, bachelors.t The former were the rich. ut nullusfaciat militem nisi filium militis.–Marca est and best accompanied No Hispanica, p. 1428. Selden, Titles of Honour, p. annghs592, produces other evidence to the same effect. man could properly be a ban- bannerets And the Emperor Sigismund, having -conferred nert unless he possessed a lors. knighthood, during his stay at Paris in 1415, on a certain estate, and could bring person incompetent to receive it for want of nobili- a certain number of lances into the field.ty, the French were indignant at his conduct, as
His distinguishing mark was the square assumption of sovereignty.-Villaret, t. xiii., p.

We are told, however, by Giannone, 1. xx., banner, carried by a squire at the point c.

3, that nobility was not in fact required for re- of his lance; while the knight bachelor ceiving
chivalry at Naples, though it was in had only the coronet or pointed pendant France., W hen a
banneret was created, the genThe privilege of every knight to associate e a qualified persons to
the order at his pleasure, last- eral cut off this pendant to render it ed very long in France;
certainly down to the square.i But this distinction, however it English wars of Charles VII.
(Monstrelet, part ii., folio 50), and, if I am not mistaken, down to the * St. Palaye, part iii.,
passim. time of Francis I. But in England, where The word bachelor has been commonly de
spirit of independence did not prevail so much rived from bas chevalier, in opposition to
banneret. among the nobility, it soon ceased. Selden men- But this, however plausible, is
unlikely to be right. tions one remarkable instance in a writ of the 29th We do not find any
authority for the expression year of Henry III., summoning tenants in capite t has chevalier, nor
any equivalent in Latin, baccacome and receive knighthood from the king, ad re- laureus
certainly not suggesting that sense; and it cipiendum a nobis arma militaria, and tenants t is
strange that the corruption should obliterat ev. mesne lords to be knighted by whomsoever
they ery trace of the original term. Bachelor is a very pleased, ad - recipiendum arma de
quibuscunque old word, and is used in early French poetry for a voluerint.~~Titles' of Honour,
p. 792. But soon young man, as bachelette is for a girl. So also in after this time it became an
established principle Chaucer, of our law, that no subject can confer knighthood except by the
king's authority. Thus Edward A yonge squire, III. grants to a burgess of Lyndia in Guienne (I
lover, and a lusty bachelor." know not what place this is) the privilege of le-; Du Cange,
Dissertation 9me sur Joinville. The ceiving that rank at the hands of any knight, his number of
men-at-arms whom a banneret ought to want of noble birth notwithstanding.-Rymer, t.
commiand was properly fifty. But Olivier de la v., p. 623. It seems, however, that a different
law Marche speaks of twenty-five as sufficient; and it obtained in some places. Twenty-three
of the appears that, in fact, knights-banneret often did not chief inhabitants of Beaucaire, partly
knights, bring so many. partly burgesses, certified, in 1298, that the im- ~ Ibid. Olivier de la
Marche (Collection dea memorial usage of Beaucaire and of Provence had M6moires, t. viii.,
p. 337) gives a particular exam been, for burgesses. to receive knighthood at the pie of this; and
makes a distinction between the hands of noblemen, without the prince's permis- bachelor,
created a banneret on account of his eission.-Vaissette, Hist. de Languedoc, t. iii., p. 530. tate,
and the hereditary banneret, who took a pub. Burgesses in the great commercial towns were lic
opportunity of requesting the sovereign to uncolnsidered as of a superior class to the roturiers,
fold his family banner, which he had before borne and possessed a kind of demi-nobility.
Charles wound round his lance. The first was said relever V. appears to have conceded a
similar indulgence banniere; the second, entreer en banniere. This to the citizens of Paris.-
Villaret, t. x., p. 2t8. difference is more fully explained by Danlel, Hist

Page 519 ! ART 11. STÂTE OF SOCIF' Y 51~ elevated tile banneret, gave him no claim
have been perceptible; but the militato military command, except over his own ry art had not
been sufficiently studied to dependants or men-at-arms. Chandos overcome the prejudices of
men eager for was still a knight-bachelor when he led individual distinction. Tournaments
bepart of the Prince of Wales s army into came less frequent; and, after the fatal Spain. He first
raised his banner at the accident of Henry II., were entirely disbattle of Navarette; and the
narration continued in France. Notwithstanding that Froissart gives of the ceremony will the
convulsions of the religious wars, the illustate the manners of chivalry, and sixteenth
centurywas more tranquil than the character of that admirable hero, the any that had preceded;
and thus a large conqueror of Du Guesclin and pride of part of the nobility passed their lives in English chivalry, whose fame with pos- pacific habits, and, if they assumed the terity has been a little overshadowed by honours of chivalry, forgot their natural his master's laurels.* What seems more connexion with military prowess. This extraordinary is, that mere squires had is far more applicable to England, where, frequently the command over knights except from the reign of Edward III. to Proofs of this are almost continual in that of Henry VI., chivalry, as a military Froissart. But the vast estimation in institution, seems not to have found a which men held the dignity of knight- very congenial soil.* To these circum- hood led them sometimes to defer it for stances, immediately affecting the milita great part of their lives, in hope of signal- reason and literature, which exploit. made ignorance discreditable even in a These appear to have been the chief soldier, and exposed the follies of De- means of nourishing the princis- mance to a ridicule which they were chivalry. ples of chivalry among the nobil- very ill calculated to endure. ity of Europe. But, notwithstanding all The spirit of chivalry left behind it a encouragement, it underwent the usual more valuable successor. The character destiny of human institutions. St. Palaye, of knight gradually subsided in that of to whom we are indebted for so vivid apic- gentleman; and the one distinguishe ture of ancient manners, ascribes the de- European society in the sixteenth A dine of chivalry in France to the prof- seventeenth centuries, as much as the sion with which the order was lavished other did in the preceding ages. A jeal under Charles VI., the establishment of our sense of honour, less romantic, bui the companies of ordonnance by Charles equally elevated, a ceremonious gallantry VII., and to the extension of knightly and politeness, a strictness in devotional honours to lawyers and other men of observances, a high pride of birth, and civil occupation by Francis I. The but the feeling of independence upon any soverreal principle of decay was something eign for the dignity it gave, a sympathy different from these three subordinate for martial honour, though more subdued circumstances, unless so far as it may bear some relation to the second. It * The prerogative exercised by the kings of was the invention of gunpowder that England of compelling men sufficiently qualified in point of estate to take on them the honour of eventually overthrew chivalry. From knighthood, was inconsistent with the true spirit the time when the use of fire- arms be- of chivalry. This began, according to Lord Lytton, under Henry III.-Hist. of Henry II., voL tention, under Henry III.-Hist. of Henry II., voL ii., p. 238. Independently of this, several causes physical force was reduced to a very tended to render England less under the influence.subordinate place in the accomplishments of chivalrous principles than France or Germany; subordinate place in the accomplishments such as her comparatively peaceful state, the of a soldier. The advantages of a disci- smaller share she took in the crusades, her inferi plined infantry became more sensible; ority in romances of knight- errantry, but, above all, and the lancers, who continued till almost the democratical character of her laws and governthe end of the sixteenth century to ment. Still this is only to be understood relatively to the two other countries above named; for chiv. charge in a long line, felt the punishment alry was always in high repute among us, nor,..l of their presumption and indiscipline. any nation produce more admirable specimens of Even in the wars of Edward III., the dis- itS excellences. advantaogeous tactics of chivalry must I am not minutely acquainted with the state of chivalry in Spain, where it seems to have flourished I considerably. Italy, except in Naples, and perhaps de la Milice Franqoise, p. 116. Chandos's banner Piedmont, displayed little of its spirit; which was unfolded, not cut, at Navarette. We read neither suited the free republics of the twelfth and sometimes of esquire-bannerets, that is 7f banner thirteenth, nor the jealous tyrannies of the follow ets by descent, not yet knigh'ed. ing centuries. Yet even here we find enough to * Froissart, part i., c. 241. furnish Muratori with materials for his 53d Jissar + M6m. sur la Chevale-'.art v. tation.
530 EUROPE DURING THE MIDDLE AGES. CRAP LX by civil habits, are the
lineaments which I labour.* These have diffusc so genera prove an indisputable descent. The
cav- an acquaintance with the literature of aliers of Charles I. were genuine suc- the middle
ages, thli; 1 must, in treating censors of Edward's knights; and the the subject, either co.npile
secondary in. resemblance is much more striking if formation from well-known books, or we
ascend to the civil wars of the League. enter upon a vast field of reading, with Time has effaced
much also of this gen- little hope of improving upon what has telementy, as it did before of the
chival- been already said, or even acquiring credit rous character. From the latter part of for
original research. I shall therefore the seventeenth century, its vigour and confuse myself to
four points: the study purity have undergone a tacit decay, and of civil law; the institution of
universiyielded, perhaps in every country, to in- ties; the application of modern languages
creas- The Roman law had been nominally ousness in others, the modes of life in preserved ever
since the de- Civil law. great cities, and the levelling customs of struction of the empire; and a
social intercourse.* great portion of the inhabitants of France It is now time to pass to a very
differ- and Spain, as well as Italy, were governraurent subject. The third head ed by its
provisions. But this was a era. nder which I classed the im- mere compilation from the
Theodosian provements of society during the four code; which itself contained only the last
centuries of the middle ages, was more recent laws promulgated after the that of literature. But
I must apprize establishment of Christianity, with some.he reader not to expect any general
fragments from earlier collections. It view of literary history, even in the most was made by
order of Alaric, king of the abbreviated manner. Such an epitome Visigoths, about the year
500, and it is would not only be necessarily superficial, frequently confounded with the
TheodoMut foreign, in many of its details, to the sian code by writers of the dark ages.t
iuposes of this chapter, which, attempt- The code of Justinian, reduced into sysLng to develop
the circumstances that tem after the separation of the two forgave a new complexion to society,
con- mer countries from the Greek empire, siders literature only so far as it exer- never
obtained any authority in them; cis a general and powerful influence. nor was it received in
the part of Italy The private researches, therefore, of a subject to the Lombards. But that this
single scholar, unproductive of any ma- body of laws was absolutely unknown in terial effect
in his generation, ought not the West during any period seems to to arrest us, nor indeed would
series have been too hastily supposed. Some of biographical notices, into which liter- of the
more eminent ecclesiastics, as ary history is apt to fall, be very instruc- Hinemar and Ivon of
Chartres, occasiontive to a philosophical inquirer. But I ally refer to it, and bear witness to the
have still a more decisive reason against regard which the Roman church had taking a large
range of literary history uniformly paid to its decisions.t into the compass of this work, founded
The revival of the study of jurispruon the many contributions which have dence, as derived
from the laws of Jusbeen made within the last forty years to tinian, has generally been ascribed
to the that department, some of them even discovery made of a copy of the Pan since the
commencement of my own dects at. Amalfi, in 1135, when that city was taken by the Pisans.
This fact, * The well-known Memoirs of St. Palaye are though not improbable, seems not to
the best-repository of interesting and illustrative facts respecting chivalry. Possibly he may
have relied a little too much on romances, whose pic- * Four very recent publications (not to
mentien tures will naturally be overcharged. Froissart that of Buhle on modern philosophy)
enter much himself has somewhat of this partial tendency, and at large into the middle
literature; those of M. the manners of chivalrous times (lo not make so Ginguen6 and M.
Sismondi, the History of Eng fair an appearance in Monstrelet. In the Memoirs land by Mr.
Sharon Turner, and the Literart of la Tremouille (Collect. des MWm., t. xiv., p. History of the Middle Ages by Mr. Berington. All 169), we have perhaps the earliest delineation from of these contain more or less useful information the life of those severe and stately virtues in high- and judicious remarks; but that of Ginguené is born ladies, of which our own country furnishes among the most learned and important works of so many examples in the sixteenth and seventeenth this century. I have no hesitation to prefer it, as centuries, and which were derived from the influ- far as its subjects extend, to Tiraboschi. ence of chivalrous principles. And those of Bayard t Heineccius, Hist. Juris German., c. i., s. 15. in the same collection (t. xiv. and xv.) are a beau- I Giannone, 1. iv., c. 6 Selden, ad Fletawr tiful exhibition of the best effects of that discipline. p. 1 )71.

Page 521 efAR7 11.1 STATE OF SOCIETY 521 rest upon sufficient evidence.* But its I were to return, could only satisfy the truth is the less material, as it appears suiters, and those who surrounded their to be unequivocally proved that the study tribunal, by proving the conformity of of Justinian's system had recommenced their sentences to acknowledged authori. before that era. Early in the twelfth fies. And the practice of alleging rea. century, a professor named Irneriust sons in giving judgment would of itself opened a school of civil law at Bologna, introduce some uniformity of decision where tie commented, if not on the Pan- and some adherence to great rules ol de- cts, yet on the other books, the Insti- justice in the most arbitrary tribunals; tutes and Code, which were sufficient to while, on the other hand, those of a free teach the principles and inspire the love country lose part of their title to respect, of that comprehensive jurisprudence and of their tendency to maintain right, The study of law, having thus revived, whenever, either in civil or criminal made a surprising progress; within fifty questions, the mere sentence of a judge years Lombardy was full of lawyers, on is pronounced without explanation of its whom Frederick Barbarossa and Alex- motives. ander III., so hostile in every other re- The fame of this renovated jurisprupspect, conspired to shower honours and dence spread very rapidly from Italy privileges. The schools of Bologna were over other parts of Europe. Students pre-eminent throughout this century for flocked from all parts of Bologna; and legal learning. There seem also to have some eminent masters of that school rebeen seminaries at Modena and Mantua; peated its lessons in distant countries. nor was any considerable city without One of these, Placentinus, explained the distinguished civilians. In the next age digest at Montpelier before the end of they became still more numerous, and the twelfth century; and the collection their professors more conspicuous, and of Justinian soon came to supersede the universities arose at Naples, Padua, and Theodosian code in the dominions of other places, where the Roman law was Toulouse.* Its study continued to flourthe object of peculiar regard.+ ish in the universities of both these cit. There is apparently great justice in ies; and hence the Roman law, as it is the opinion of Tiraboschi, that by acqui- exhibited in the system of Justinian, beting internal freedom and the right of de- came the rule of all tribunals in the terminating controversies by magistrates southern provinces of France. Its auof their own election, the Italian cities thority in Spain is equally great, or at were led to require a more extensive and least is only disputed by that of the canaccurate code of written laws than they onists;t and it forms the acknowledged had hitherto possessed. These munici- basis of decision in all the Germanic trial judges were chosen from among the bunals, sparingly modified by the ancient citizens, and the succession to offices feudal customaries, which the jurists of was usually so rapid, that almost every the empire reduce within narrow bounds.t freeman might expect in his turn to par- In the northern parts of France, where take in the public government, and con- the legal standard was sought in local sequently in the administration of jus- customs, the civil law met naturally with tice. The latter had always
indeed been less regard. But the code of St. Louis exercised in the sight of the people by
borrows from that treasury many of its the count and his assessors under the provisions, and it
was constantly cited in Lombard and Carolingian sovereigns; pleadings before the parliament
of Paris, but the laws were rude, the proceedings either as obligatory by way of authority,
tumultuary, and the decisions perverted or at least as written wisdom, to which by violence.
The spirit of liberty begot great deference was shown. Yet its a stronger sense of right; and
right, it was soon perceived, could only be se-* Tiraboschi, t. v. Vaissette, Hist. de Langue
cured by a common standard. Magis-doc, t. ii., p. 517; t. iii., p. 527; t. iv., p. 504. t Duck, De
Usu Juris civilis, 1. ii., c. 6. trates holding temporary offices, and Duck, De Usu Jurs s. ii.,c. 2.
little elevated, in those simple times, O Idem, 1. ii., c. 5, s. 30, 31. Fleury, Hist. di above the

citizens among whom they Droit Franqois, p. 74 (prefixed to Argonu, Institutions au Droit
Franqois, edit. 1787) says that it was * riraboschi,'. iii., p. 359. Ginguen6, Hist. a great question
among lawyers, and still undecl Litt. de l'Italie, i i., p. 155. ded (i. e., in 1674), whether the
Roman law was t Irnerius is sometimes called (Guarnenus, the common law in the pays
coutumiers, as te sometimes Warnerius; the German W is changed those points wherein
their.local customs were si into Gu by the, Italians, and occasionally omitted, lent. And, if I
understand Denisart (Dictionnair, especially in latinizing, for the sake of euphony or des
Decisions, art. Droit-6crit), the affirmative pie purity. vailed. It is plain, at least by the Causes
C6lebres t Tiraboschi, t. iv., p. 38, t. v., p. 55. that appeal was continually made to the
principles

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I to dwell will not be altogether similar. The can civilians on the forgotten teachers of a on law, fabricated only for a usurpation little re- science that is likely soon to be that can never be restored, will become, garded. forgotten. These elder profes- absolutely useless, as if it had never exsors of Roman jurisprudence are infect- isted; like a spacious city in the wildered, as we are told, with the faults and ig- ness, though not so splendid and interestnorance of their time; failing in the ex- ing as Palmyra. But the code of Justposition of ancient law through incorrect- tinian, stripped of its impurer alloy, and ness of manuscripts and want of subsid- of the tedious glosses of its commentary learning, or perverting their sense tors, will form the basis of other systems, through the verbal subtleties of scholas- mingling, as we may hope, with the tic philosophy. It appears that, even a new institutions of philosophical legislahlundred years since, neither Azzo and tors, continue to influence the social relations of mankind, long after its direct auof the civil law in the factums of Parisian advo- thory shall have been abrogated. The cates. ruins of ancient Rome supplied the mate* Crevier, I-st. de l'Universit de Paris, t. i., p. rials of a new city; and the fragments 316; t. ii., p. 275. of her law, which have alrea f Johan. Salisburiensis, apud Selden ad Fletam, which have already been p. 1082. wrought into the recent codes of France t Selden, ubi supra, p. 1095-1104. This pas- and Prussia, will probably, under other sages is worthy of attention. Yet, notwithstanding names guide far distant generations by Selden's authority, I am not satisfied that he has st not extenuated the effect of Bracton's predilection the sagacity of Modestinus and Ulpiant for the maxims of Roman jurisprudence. No early lawyer has contributed so much to form our own * Gravina, Origines Juris civilis, p. 196. system as Bracton; and if his definitions and rules t Those, if any such there be, who feel some cu are sometimes borrowed from the civilians, as - ill riosity about the civilians of the middle ages, will admit, our common law may have indirectly-e- find a concise and elegant account in Gravina, De ceived greater modification from that influence Origine Juris civilis, p. 166-206.-Lips., 1708.) than its professors were ready to acknowledge, or Tiraboschi contains perhaps more information; but even than they knew. A full view of this subject his prolixity, on a theme so unimportant, is very is still, I think, a desideratum in the history of wearisome. Of what use could he think it to disEnglish law, which it would illustrate in a very in- cuss the dates of all transactions in the lives of [estering manner. Bartolus and Baldus (to say nothing of obscure! 4 Duck De Usu Juris civiles, I. i., c 87. names) when nobody was left to care whet Baldu!
Debonair and Charles of its professors. In the year 1100, we the Bald, were also encouragers of let- find William of Champeaux teaching ters; and the schools of Lyons, Fulda, logic, and apparently some higher parts Corvey, Rheims, and some other cities, of philosophy, with much credit. But might be said to flourish in the ninth cen- this preceptor was eclipsed by his discitury.1 In these were taught the trivium ple, afterward his rival and adversary, and quadrivium, a long established divis- Peter Abelard, to whose brilliant ion of sciences; the first comprehending and hardy genius the university grammar, or what we now call philology, of Paris appears to be indebted for its logic, and rhetoric; the second music, rapid advancement. Abelard was almost arithmetic, geometry, and astronomy.-- the first who awakened: nankind in the But in those ages scarcely anybody mas- ages of darkness to a sympathy with in. tered the latter four; and to be perfect tellectual excellence. His bold theories, in the three former was exceedingly not the less attractive perhaps for tread rare. All those studies, however, were ing upon the bounds of heresy, his im referred to theology, and that in the nar- prudent vanity, that scorned the regurowest manner; music, for example, be- larly acquired reputation of older men, ing reduced to church chanting, and as- allured a multitude of disciples, who tronomy to the calculation of Easter.1 would never have listened to an ordinary Alcuin forbade the Latin poets to be teacher. It is said, that twenty cardiread;-- this discouragement of secu- nals and fifty bishops had been among lar learning was very general;* though his hearers.t Even in the wilderness, some, as for instance Raban, permitted a were he had erected the monastery of slight tincture of it, as subsidiary to reli- Paraclete, he was surrounded by enthusiastic instruction.** siastic admirers, relinquishing the luxuand Bartolus were? Besides this fault, it is evi- ries, if so they might be called, of Paris dent that Tiraboschi knew very little of law, and for the coarse living and imperfect achad not read the civilians of whom he treats; commodation that which retirement could -whereas Gravina discusses their merits not only afford.t But the whole of Abelard's life with legal knowledge, but with an acuteness of was the shipwreck of genius; and of criticism, which, to say the truth, Tiraboschi never genius both the source of his own cashows except on a date or a name. g * Ante ipsum dominum Carolum regem in Gal- lamities and unserviceable to posterity. jia nullumfuit studium liberalium artium. Mona- There are few lives of literary men more chus EngolismEnsis, apud Launoy, De Scholis per interesting, or more diversified by suc. occidentem instauratis, p. 5. See too Histoire Litt6raire, p. 217, &c. Q This division of the sciences is ascribed to St. One of Abelard's pupilswas Peter Lomi Augustin; and was certainly established early in bard, afterward archbishop of Paris, and the sixth century -Brucker, Historia Critica Philosophiae, t. iii., p. 597 chief of the cathedral school at Fulda, in the ninth Li Schmidt, Hist. des Allemands, t. ii., p. 126. cer.ury. * Crevier, p. 66. ~ Crevier, Hist. de l'Univ. de Paris, t. i., p. 28. t Crevier, p. 171. Brucker, p. 677 Tirabes *~ Brucker, t. iii, p. 612 Raban Maurus was chi, t. iii., p 275. t Brucker, p. 750.

Page 524 t~Z4 EUROPE DURING THE MIDDLE AGES. IUHAP. IX author of a work called the Book of Sen- the Confessor. There follows an inter. tences, which obtained the highest au- val of above a century, during which we thority among the scholastic disputants. have, I believe, no contemporary eviThe resort of students to Paris became dence of its continuance. But in the continually greater; they appear, before reign of Stephen, Vacarius read lectures the year 1169, to have been divided into there upon civil law; and it is
reasonations;* and probably they had an elect- ble to suppose that a foreigner would ed
rector and voluntary rules of disci- not have chosen that city if he had not pline about the same
time. This, how- found a seminary of learning already ever, is not decisively proved; but in
established. It was probably inconsid. the lastyear of the twelfth century, they erable, and might
have been interrupted obtained their earliest charter from Philip during some part of the
preceding centuAligustus.t ry.* In the reign of Henry II., or at The opinion which ascribes the
found- least of Richard I., Oxford became a University ation of the university of Ox- very
flourishing university, and in 1201, Df Oxford. ford to Alfred, if it cannot be according to
Wood, contained 3000 maintained as a truth, contains no intrin- scholars.t The earliest charters
were sic marks of error. Ingulfus, abbot of granted by John. Croyland, in the earliest authentic pas- If it were necessary to construe the sage that can be adduced to this point,J word university
in the strict University declares that he was sent from Westmin- sense of a legal incorporation,
of Bologna ster to the school at Oxford, where he Bologna might lay claim to a highei learned
Aristotle, and the two first antiquity than either Paris or Oxford. nooks of Tully's rhetoric.- Since a There are a few vestiges of studies pur school for dialectics and rhetoric subsist- sued
in that city even in the eleventh ed at Oxford, a town of but middling century;t but early in the
next, the revisize, and not the seat of a bishop, we are val of the Roman jurisprudence as has
naturally led to refer its foundation to been already noticed, brought a throng one of our kings;
and none who had of scholars round the chairs of its profesreigned after Alfred appears likely
to sors. Frederick Barbarossa, in 1158, by have manifested such zeal for learning. his authentic
or rescript entitled Habita, However, it is evident that the school took these under his
protection, and perof Oxford was frequented under Edward mitted them to be tried in civil suits
by their own judges. This exemption from a he faculty of arts in the university of Paris the
ordinary tribunals, and even from was divided into four nations; those of France,naturally
Picardy, Normandy, and England. These had those of the church, was naturally covet distinct
suffrages in the affairs of the university, ed by other academies; it was granted and
consequently, when united, outnumbered the to the university of Paris by its earliest three
higher faculties of theology, law, and medi- charter from Philip Augustus, Encouragezine. In
1169, Henry If. of England offers to re- and to Oxford by John. From ment given fer his
dispute with Becket to the provinces of the byive school of Paris. this time the golden age of uni-
to universit Crevier, t. i., p. 279. The first statute regula- versities commenced; and it is
ning the discipline of the university was given by hard to say whether they were favoured
Robert de Cour.on, legate of Honorius III., in most by their sovereigns or by the see 1215, id.,
p. 296.: No one probably would choose to rely on a passage found in one manuscript of
Asserius, of struggles with the municipal authoriwhich has all appearance of an interpolation. It
ties, and with the bishops of their several is evident, from an anecdote in Wood's History of
cities, wherein they were sometimes the Oxford, vol. i., p. 23 (Gutch's edition), that Cam-
aggressors, and generally the conquerors den did not believe in the authenticity of this pas-
From ill parts of Europe students resort sage, though he thought proper to insert it in the parts
of Europe students resortBritannia. ed to these renowned seats of learning ~ The mention of
Aristotle at so early a period might seem to throw some suspicion on this pas- * It may be
remarked, that John of Salisbury, sage. But it i1 impossible to detach it from the who wrote in
the first years of Henry II. i reign, cor.text-; and the works of Aristotle intended by since his
Policraticus is dedicated to Becket, belIngtilifus were translations of parts of his logic by fore he
became archbishop, makes no mention of Boethius and Victorin.-Brucker, p. 678. A pas-
Oxford, which he would probably have done if it sage indeed in Peter of Blois's continuation of
In- had been an eminent seat of learning at that time. gulfos, where the study of Averroes is
said to f Wood's Hist. and Antiquities of Oxford, p. have taken place at Cdmbridge some years
before 177. The Benedictins of St. Maur say that there he was born, is of a different
complexion, and was an eminent school of canon law at Oxford must of course be rejected as spurious. In the about the end of the twelfth century, to which Gesta Comitum and Fulk, count of many students repaired from Paris.-Hist. Litt. de Anjou, who lived about 920, is said to have been la France, t. ix., p. 216. Ailled Aristotelici et Ciceronianis ratiocination- 1 Tiraboschi, t. iii., p. 259, et alibi. Muratori os, Disseert, 43

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STATE OF SOCIETY. b52 with an eagerness for instruction which students, in consequence of the nationmay astonish those who reflect how little ality of the Bohemians and the Hussite of what we now deem useful could be schism, gave rise to that of Leipsic.* imparted. At Oxford, under Henry III., The fifteenth century produced several it is said that there were 30,000 scholars; new academical foundations in France an exaggeration which seems to imply and Spain. that the real number was very great.* A large proportion of scholars, in most A respectable contemporary writer as- of those institutions, were drawn by the serts that there were full 10,000 at Bo- love of science from foreign countries. logna about the same time.t I have not The chief universities had their own parobserved any numerical statement as to ticular departments of excellence. Paris Paris during this age; but there can be was unrivalled for scholastic theology; no doubt that it was more frequented Bologna and Orleans, and afterward than any other. At the death of Charles Bourges, for jurisprudence; Montpelier VII., in 1453, it contained 25,000 stu- for medicine. Though national prejudices.: In the thirteenth century, other ces, as in the case of Prague, sometimes universities sprang up in different coun- interfered with this free resort of fortresses: Padua and Naples, under the pat-eigners to places of education, it was in ronage of Frederick II., a zealous and general a wise policy of government, as useful friend to letters,~ Toulouse and well as of the universities themselves, to Montpelier, Cambridge and Salamanca. Il encourage it. The thirty-fifth article of Orleans, which had long been distin- the peace of Bretigni provides for the guished as a school of civil law, received restoration of former privileges to stuthe privileges of incorporation early in dents respectively in the French and Engthe fourteenth century; and Angers be- lish universities.t Various letters patfore the expiration of the same age.--ent will be found in Rymer's collection, Prague, the earliest and most eminent securing to Scottish as well as French of German universities, was founded in natives a safe passage to their place of 1350; a secession from thence of Saxon education. The English nation, including however the Flemings and Germans,t * "But among these," says Anthony Wood, "a had a separate vote in the faculty of arts company of varlets, who pretended to be scholars, at Paris. But foreign students were not, shuffled themselves in, and did act much villany in I believe, so numerous in the English the university by thieving, whoring, quarrelling, academies. &c. They lived under no discipline, neither had If endowments and privileges are the they tutors; but only, for fashion sake, would sometimes thrust themselves into the schools at ordi- means of quickening a zeal for letters, nary lectures, and when they went to perform any they were liberally bestowed in the three mischief, then would they be accounted scholars, last of the middle ages. Crevier enumerthat so they might free themselves from the juris- ates fifteen colleges, founded in the unidiction of the burghers," p. 206. If we allow three Paris du varlets to one scholar, the university will still have versity o g the thirteenth ceneeen very fully frequented by the latter. tury, besides one or two of a still earlier t Tiraboschi, t. iv., p. 47. Azarius, about the date. Two only, or at most three, exmiddle of the fourteenth century, says, the number isted in that age at Oxford, and but one was about 13,000 in his time.-Mnratori, Script. at Cambridge. In the next two centuRer. Ital., t. xvi., p. 325. riethese universities could boast, as $ Villaret, Hist. de France, t. xvi., p. 341. This ries, these universities could boast, as may perhaps require to be taken with allowance. every one knows, of many splendid But Paris owes a great part of its
buildings on the foundations; though much exceeded in southern bank of the Seine to the university. The number by those of Paris. Considered students are said to have been about 12,000 before 1480-Crevier t.iv., p.410. as ecclesiastical institutions, it is not 1480. —Crevier, t. iv., p. 410. Q Tiraboschi, t. iv., p. 43 and 46. surprising that the universities obtained, II The earliest authentic mention of Cambridge according to the spirit of their age, an as a place of learning, if I mistake not, is in Mat- exclusive cognizance of civil or criminal they Paris, who informs us, that in 1209, John suits affecting their members. This having caused three clerks of Oxford to be hanged on suspicion of murder, the whole body of scholars jurisdiction was, however, local as web left that city, an- emigrated, some to Cambridge, as personal, and in reality encroach. some to Reading, in order to carry on their studies ed on the regular police of their c:ties. (p: 191, edit. 1684). But it may be conjectured, At Paris the privilege turned to a flagrant with sonre probability, that they were led to a abuse, and gave rise to many scandaloug town so distant as Cambridge by the previous establishment of academical instruction in that place. contentions.- Still more valuable adThe incorporation of Cambridge is in 1231 (15 Hen. 111.), so that there is no great difference in the legal * Pfeffel, Abre6g Chronologique de l'Hist de antiquity of our two universities. l'Allemagne, p. 550, 607. Jr Crevier, Hist. de l'Univesit6 de Paris, t. ii., p. t Rymer, t. vi., p. 292. t Crevier, t 11., p. 3 216 t. iii., p. 14C 4 C fevier and Villaret, passim

Page 526 ~5S2 EUROPE DURING THE MIDDI, AGES.,CHAP. LA vantages were those relating to ecclesi- work, condemned at first by the decrees astical preferments, of which a large number of popes and councils, on account of its proportion was reserved in France to supposed tendency to atheism, acquired academical graduates. Something of by degrees an influence, to which even:ne same sort, though less extensive, popes and councils were obliged to may still be placed in the rules respect- yield. The Mendicant Friars, establishing plurality of benefices in our English ed throughout Europe in the thirteenth century, greatly contributed to promote This remarkable and almost sudden the Aristotelian philosophy; and its finaa Causes of transition from a total indiffer- reception into the orthodox system of their celeb- ence to all intellectual pursuits the church may chiefly be ascribed to rity. cannot be ascribed perhaps to Thomas Aquinas, the boast of the Doany general causes. The restoration of minican order, and certainly the most the civil, and the formation of the canon distinguished metaphysician of the midlaw, were indeed eminently conducive to dle ages. His authority silenced all scrut, and a large proportion of scholars in ples as to that of Aristotle, and the two most universities confined themselves philosophers were treated with equally o jurisprudence. But the chief attrac- implicit deference by the later schoolScholastic tition to the studious was the men.* philosophy. new scholastic philosophy. The This scholastic philosophy, so famous.ove of contention, especially with such for several ages, has since passed away arms as the art of dialectics supplies to and been forgotten. The history of literan acute understanding, is natural nature, like that of empire, is full of revoenough to mankind. That of specula- lutions. Our public libraries are cemeting upon the mysterious questions of teries of departed reputation; and the metaphysics and theology is not less so. dust accumulating upon their untouched These disputes and speculations, howev- volumes speaks as forcibly as the grass Or, appear to have excited little interest, that waves over the ruins of Babylon. till, after the middle of the eleventh cen- Few, very few, for a hundred years past, tury, Roscelin, a professor of logic, re- have broken the repose of the immense vived the old question of the Grecian works of the schoolmen. None perhaps schools respecting universal ideas, the in our own country have acquainted themreality of which he denied. This kindled selves particularly with their contents. a spirit of metaphysical discussion, which Leibnitz, however, expressed a wish that
Lanfranc and Anselm, successively archbishops of Canterbury, kept alive; and losophy would undertake to extract the in the next century, Abelard and Peter Lombard, especially the latter, completed the scholastic system of philosophizing, and of metaphysicians trained in the ichoflaristot stem s to p ha ng the same school. Of these, Averroes, a native of Cordova, who died early in the thirteenth century, partly known in the eleventh century, was the most eminent. It would be curious to although that of Augustin was perhaps examine more minutely than has hitherto been in higher estimation; in the twelfth it done the original writings of these famous men, obtained more decisive influence. His which no doubt have suffered in translation. A passage in Al Gazel, which Mr. Turner has ren metaphysics, to which the logic might dered from the Latin, with all the disadvantage or be considered as preparatory, were intro- a double remove from the author's words, appears duced through translations from the Ara- to state the argument in favour of that class of logic, and perhaps also from the Greek, nominalists, called conceptualists (the only realists early in the ensuing century) - This who remain in the present age), with more clear early in the ensuing century. * This ness'and precision than any thing I have seen from the schoolmen. Al Gazel died in 1126, and conse* Brucker, Hist. Crit. Philosophiee, t. iii., p. 678. quently might have suggested this theory to Abet Id., ibid. Tiraboschi conceives that the trans- lard, which however is not probable.- Turner's lations of Aristotle made by command of Frederick list. of England, vol. i., p. 513. II. were directly from the Greek, t. iv., p. 145; and * Brucker, Hist. Crit. Philosophi.e, t. iii. I censures Brucker for the contrary opinion. Buhle, have found no better guide than Brucker. But he however (Hist. de la Philosophie Moderne, t. i., p. confesses himself not to have read the original 696), appears to agree with Brucker. It is almost writings of the scholastics; an admission which certain that versions were made from the Arabic every reader will perceive to be quite necessary Aristotle: which itself was not immediately taken Consequently, he gives us rather a verbose decia from the Greek, but from a Syriac medium.- Gin- mation against their philosophy, than any clear guen6, Hlist. Litt. de l'Italie, t. i., p. 212 (on the view of its character. Of the valuable works lateauthority of M. Langl6s). ly published in Germany on the history of Philoso. It was not only a knowledge of Aristotle that phy, I have only seen that of Buhle, which did not..he scholastics of Europe derived from the Arabic fall into my hands till I had nearly written these.anguage. His writings had produced in the flour- pages. Tiedeman and Tenneman are, 1 beliese, Spirz Mahometan kingdoms a vast rlrmer of I still untranslated.
Even with the slight knowl- But I must observe in return, that their edge we possess of their tenets, there theology was equally injurious to their appear through the cloud of repulsive metaphysics. Their disputes continually technical barbarisms rays of metaphysics turned upon questions either involving ical genius which this age ought not absurdity and contradiction, or at best to despise. Thus, in the works of Anselm is found the celebrated argument of Those who assert the greatest antiquity Des Cartes for the existence of a Deity, of the Roman Catholic doctrine as to the deduced from the idea of an infinitely real presence, allow that both the word perfect being. One great object that and the definition of transubstantiation most of the schoolmen had in view was are owing to the scholastic writers. Their to establish the principles of natural the- subtleties were not always so well reology by abstract reasoning. This rea- ceived. They reasoned at imminent soning was doubtless liable to great diffi- peril of being charged with heresy, which culties. But a modern writer, who Roscelin, Abelard, Lombard, and Ock seems tolerably acquainted with the sub.. ham, did not escape. In the virulent ject, assures us that it would be difficult factions that arose out of their metaphysto mention any theoretical argument to ical quarrels, either party was eager to trove the divine attributes, or any objec- exposes its adversary to detractive and tion capable of being raised against the persecution. The nominalists were acproof, which we do not find in some of cused, one hardly sees why, with redu the scholastic philosophers.* The most cing, like Sabellius, the persons of the celebrated subjects of discussion, and Trinity to modal distinctions. The Realthose on which this class of reasoners were most divided, were the reality of article in the Edinburgh Review, No. LIII., p universal ideas, considered as extrinsic 204, gives, from Tenneman, a more favourable ac. to the human mind, and the freedom of count of Ockham to the human mind, and the freedom of Perhaps I may have imagined the scholastics te will. These have not ceased to occupy be more forgotten than they really are. Within a the thoughts of metaphysicians; but it short time, I have met with four living English will generally be allowed that the preva- writers who have read parts of Thomas Aquinas. lence of the Realists in the former ques- Mr. Turner, Mr. Berington, Mr. Coleridge, and does not give a favourable impres- the Edinburgh Reviewer. Still I cannot bring my tlon does no t give a favourable impre self to think that there are four more in this coun sion of the scholastic system.t try who could say the same. Certain portions however, of his writings are still read in the course * Buhle, Hist. de la Philos. Moderne, t. i., p. of instruction of some Catholic universities. 723. This author raises, upon the whole, a favour- * Roger Bacon, by far the truest philosopher of able notion of Anselm and Aquinas; but he hard- the middle ages, complains of the ignorance ot ly notices any other. Aristotle's translators. Every translator, he ob t Mr. Turner has, with his characteristic spirit of serves, ought to understand his author's subject, enterprise, examined some of the writings of our and the two languages from which and into which chief English schoolmen, Duns Scotus and Ock- he is to render the work. But none hitherto, ex ham (IHist. of Eng., vol. i.), and even given us some cept Boethius, have sufficiently known the lan extracts from them. They seem to me very friv. guages; nor has one, except Robert Grístete (the:lous, so far as I can collect their meaning. Ock. famous bishop of Lincoln), had a competent ac.-tam, in particular, falls very short of what I had ex- quaince with science. The rest make egregi. pected; and his nominalism is strangely different ous errors in both respects. And there is so much irom that of Berkeley. We can hardly reckon a misapprehension and obscurity in the Aristotelitz, nan in the right, who is so by accident, and thro.gh writings as thus translated, that no one under sorptistical reasoning. However, a well- known stands them.-Opus Maius, p 45.
pretence, incurred the telian school.* But this unproductive,rmputation of holding a language
that sa- waste of the faculties could not last fol Couried of atheism.* In the controversy ever.
Men discovered that the),ad giv which the Dominicans and Franciscans, er. their time for the
promise of wisdom, disc;ples respectively of Thomas Aqui- and been cheated in the bargain.
What nas and Duns Scotus, maintained about John of Salisbury observes of the Paris grace and
free-will, it was of course still ian dialectitians in his own time, that af. more easy to deal in
mutual reproaches ter several years absence he found them of heterodoxy. But the schoolmen
were not a step advanced, and still employed in general prudent enough not to defy the in
urging and parrying the same argtcensures of the church; and the popes, ments, was equally
applicable to the pe. in return for the support they gave to all riod of centuries. After three or
four exclent pretensions of the Holy See, hundred years, the scholastics had nCg connived at
this factious wrangling, which untied a single knot, nor added one unthreatened no serious
mischief, as it did quivocal truth to the domain of philos not proceed from any independent
spirit ophy. As this became more evident, thn of research. Yet, with all their apparent
enthusiasm for that kind of learning de. conformity to the received creed, there clined; after the
middle of the fourteenth was, as might be expected from the cir- century, few distinguished
teachers aroso cumstances, a great deal of real deviation among the schoolmen; and at the
revival from orthodoxy, and even of infidelity. of letters, their pretended science had The
scholastic mode of dispute, admit- no advocates left but among the prejudi ting of no
termination, and producing no ced or ignorant adherents of established conviction, was the sure
cause of skep- systems. How different is the state of' ticism; and the system of Aristotle,
genuine philosophy, the zeal for which especially with the commentators of will never wear out
by length of time oi Averroes, bore an aspect very unfavourable to natural religion.t The
Aristote.- * This mystical philosophy appears to have I eer; lian philosophy, even in the hands
of the introduced into Europe by John Scotus, wll orr. Buhle treats as the founder of the
scholastic phimaster, was like a barren tree, that con- losophy; though, as it made no sensible
progreE cealb its want of fruit by profusion of for two centuries after his time, it seems more r
at leaves. But the scholastic ontology was ural to give that credit to Roscelin and AnselmL
much worse. What could be more tri- Scotus, or Erigena, as he is perhaps more frequent. fling
than disquisitions about the nature ly called, took up, through the medium of a spuri. of angels,
thermdeofoprous work, ascribed to Dionysius the Areopagite. of angels, their modes of
operation, their that remarkable system, which has from time im means of conversing, or (for
these were memorial prevailed in some schools of the East, distinguishled) the morning and
evening wherein all external phenomena, as well as all state 6ot their understandings 4$ Into
such subordinate intelects, are considered as emanating tfollieo their schoolmen appear Into
have from the Supreme Being, into whose essence they lie the schoolmen appear to h are
hereafter to be absorbed. This system, repro. launched, partly because there was less duced
under various modifications, and cotnbined danger of running against a heresy in a with
various theories of philosophy and religion, matter where the church had defined so is perhaps
the most congenial to the spirit of soli. little; partly from their presumpti ary speculation, and
consequently the most 3x. - tensively diffused of any which those high themes which disdained
all inquiries into the hu- have engendered. It originated, no doubt, in sub.t man mind, as merely
a part of physics; lime conceptions of Divine omnipotence and ubi and in no small degree
through a spirit quity. But clearness of expression, or indeed of of mystical fanaticism, derived
from the ideas, being not easily connected with mysticism oriental philosophy, and the latter
Pla- the language of philosophers adopting the theor) tonists wphichso ble, nded with lat Pl of
emanation is often hardly distinguishable from tonists, which blended itself with the that of the
pantheists. Brucker, very unjustly, as cold-blooded technicalities of the Aristotelian philosophy.

I imagine from the passages he quotes, accuses John Erigena of pantheism. (Hist. Crit. Philos., * Brucker, p. 733, 912. Mr. Turner has fallen p. 620.) The charge would, however, be better into some confusion as to this point, and supposes grounded against some whose style might deceive the nominalist system to have had a pantheistical unaccustomed reader. In fact, the philosophy tendency, not clearly apprehending its characteristics, of emanation leads very nearly to the doctrine of tics, p. 512. a universal substance, which begot the atheistic t Petrarch gives a curious account of the irreligious system of Spinoza, and which appears to have region that prevailed among the learned at Venice vived with similar consequences among the metaphysicians of Padua, in consequence of their unbounded ad- physicians of Germany. How very closely the mirroring for Aristotle and Averroes. One of this language of this oriental philosophy, or even of school, conversing with him, after expressing much that which regards the Deity as the soul of the con tempt for the Apostles and Fathers, exclaimed: world, may verge upon pantheism, will be per Utinam tu Averroim pati posses, ut videres quanto ceived (without the trouble of reading the first ille tuis his nugatoribus major.sit! —Mem. de Pe- book of Cudworth) from two famous passages of tLtrque, t. iii., p. 759.'I iraboschi, t. v., p. 162. Virgil and Lucan. — Georg., i. iv., v. 219 and Pha t Brueke, rr P9R. Fstia, l. viii., v. NIS B.

V,ajr ij; STATE OF SOCIETY. 5 change of fashion, bL cause the inquirer, as far as the A:rabians kniew v i extending unrestrained by authGrity, is perpetually to quadratic equations, was actually in cheered by the discovery of truth in re- the hands of scme Italians at the cornsearches which the boundless riches of mencement of the same age, and pre nature seem to render indefinitely pro- served for almost three hundred years as gressive! a secret, though without any conception Yet, upon a general consideration, the of its importance. As abstract mathe. attention paid in the universities to matics require no collateral aid, these scholastic philosophy may be deemed a may reach the highest perfection ill source of improvement in the intellectu-ages of general barbarism; and there al character, when we compare it with seems to be no reason why, if the course the perfect ignorance of some preceding of study had been directed that way, ages. Whether the same industry would there should not have arisen a Newton not have been more profitably directed, or a La Place, instead of an Aquinas or if the love of metaphysics had not in- an Ockham. The knowledge displayed tervened, is another question. Philolo- by Roger Bacon and by Albertus Maggy, or the principles of good taste, de- nus, even in the mixed mathematics, generated through the prevalence of under every disadvantage from the imschool logic. The Latin compositions perfection of instruments and the want of the twelfth century are better than of recorded experience, are sufficiennt tc those of the three that followed; at inspire us with regret that their contem least on the northern side of the Alps. poraries were more inclined to astonish I do not, however, conceive that any ment than to emulation. These qualities seem to require acertain chance of being burnt as a heretic, harmonious correspondence in the tone the natural philosopher was in not less of manners, before they can establish a jeopardy as a magician.* prevalent influence over literature. A. A far more substantial cause of intel more real evil was the diverting studios sectual improvement was the Cultivation men from mathematical science. Early development of those new lan- of the new In the twelfth century, several persons, guages that sprang out of the languag8s. chiefly English, had brought into Europe corruption of Latin. For three or foul some of the Arabian writings on geomc- centuries after what was called the rotry and physics.
In the thirteenth the manse tongue was spoken in France, works of Euclid were commented upon there remain but few vestiges of its em by Campano;* and Roger Bacon was ployment in writing; though we cannot fully acquainted with them. Algebra, draw an absolute inference from our want of proof, and a critic of much au* Taraboschi, t. iv., p. 150. thyrotary supposes translations to have t There is a very copious and sensible account been made into it for religious purposes if Roger Bacon in Wood's History of Oxford, vol. from the time of Charleagne. Division i., p. 332 (Gutch's edition). I am a little surprised During this period the lan- ihe romance that Antony should have found out Bacon's merit. It is like an oyster judging of a line-of-battle ship. guage was split into two very tongue into But I ought not to gibe at the poor antiquary when separate dialects, the regions two dialects. lie shows good sense. of which may be considered, though by The resemblance between Roger Bacon and his no means stctly, as divided by the greater namesake is very remarkable. Whether Lord Bacon ever read the Opus Majus, I know not, but it is singular that his favourite quaint expres- eam inveniat via experiential; quia multa habent sion, prerogativa scientiarum, should be found in argumenta ad scibilia, sed quia non habent experithat work, though not used with the same allusion entiam, negligent ea, neque vitant nociva nee to the Roman comitia. And whoever reads the persequuntur bona. Si enim aliquis homo, qui nun sixth part of the Opus Majus, upon experimental quam vidit ignem, probavit per argumenta suffivien science, must be struck by it as the prototype, in tia quod ignis comtariit et ladit res et destruit r un spirit, of the Novum Organum. The same san- quampropter hoc qdesceret animus audienti.. net. guine and sometimes rash confidence in the effect ignem. vitaret antequam poneret manual xel relr of physical discoveries, the same fondness for ex- combustiblem ad ignem, ut per experientiam properiment, the same preference of inductive to ab- baret quod argumentum edocebat.; sed assuvStA ex stract reasoning, pervade both works. Roger Ba- perientia combustionis certificatur animus et qur con's philosophical spirit may be illustrated by the escit in fulgore veritatis, quo argumentuln non sui following passage: Duo sunt modi cognoscendi; ficit, sed experientia. p. 446. scilicet per argumentum et experimtum. Ar- * See the fate of Cecco d'Ascoll in Tiraboschl gumentum concludit et facit nos conducere ques- t. v., p. 174. tlonem; sed non certificat neque removet dubita- t Le Bceuf M&r.. de l'Af.ad. des u:script I tionem ut quiescat animus in intuitu veritatis, nisi xvii.. p. 711
poet of Provence. ebrated Troubadours, whose Nor can we deem those fantastical sofame depends far less on their positive lemnities, styled Courts of Love, where excellence than on the darkness of pre- ridicous questions of metaphysical gal- cating ages, on. the temporary sensation lantry were debated by poetical advot.,ev excited, and their permanent influ- cates, under the presidency and arbitraet,ce on the state of European poetry. tion of certain ladies, much calculated From William, count of Poitou, the ear- to bring forward any genuine excellence. liest troubadour on record, who died in They illustrate, however, what is snore 1126, to their extinction about the end immediately my own object, the general of the next century, there were probably ardour for poetry, and the manners of several hundred of these versifiers in the those chivalrous ages.t language of Provence, though not al- The great reputation acquired by Ite ways natives of France. Millot has troubadours, and panegyrics Their p.et,published the lives of one hundred and lavished on some of them by calcharacter forty-two, besides the names of many Dante and Petrarch, excited a curios more whose history is unknown; and a ity among literary mnen which has beet still greater number, it cannot be doubt- a good deal disappointed by further ac ed, are unknown by name. Among quaintance. A.n excellent French anti those poets are reckoned a king of Eng- quarian of the last age, La Curne de St land (Richard I.), two of Aragon, one of Palaye, spent great part of his life i} Sicily, a dauphin of Auvergne, a count of accumulating manuscripts of Provendae Foix, a prince of Orange, many noble- poetry, very little of which had ever bete men, and several ladies. One can hard- printed. Translations from part of this ly pretend to account for this sudden and collection, with memorials of the writers transitory love of verse; but it is mani- were published by Millot; and we cer. festly one symptom of the rapid impulse tainly do not often meet with passages which the human mind received in the in his three volumes which give us any twelfth century, and contemporaneous poetical pleasures. Some of the original with the severer studies that began to poems have since been published, and flourish in the universities. It was en- the extracts made from them by the recouraged by the prosperity of Langue- cent historians of southern literature are doc and Provence, undisturbed, comparatively with other countries, by internal * De Sade, Vie de Pftrarque, t. i., p. 155. Sis mondi, Litt. du Midi, t. i., p. 228. * Gregorius, cognomento Bechada, de Castro t For the Courts of Love, see De Sade, Vie de de Turribus, professione miles, subtilissimi ingenii Petrарque, t. ii., note 19. Le Grand, Fabliaux, t..vir, aliquantulum imbutus literis, horum gesta i.,p. 270. Roqulefcrt, Etat de la Poesie F'rançoise preliorum materna lingua rythmo vulgari, ut pop- p. 94. I have never had patience to look at the ulus pleniter inteligert, ingens volumen decenter older writers who Lave treated this tiresome sub composuit, et ut vera et faceta verba proferret, duo- ject It is a satisfactioqn to reflect, that the coun decim annorum spatium super hoc opus operam de- try which has prodt.ced nroro emnt;ent and origi dit. Ne vero vilesceret propter verbum vulgare, non nal poets than any other has never been infected sine praecepto episcopi Eustorgii, et consilio Gau- by the fopperie3 of academies and their prizes. berti Normanni hoc opus aggressus est. I tran- Such an institution as the Society deg'l; Arcdi scribe this from M. Heeren's Essai sur les Croi- could at no time have endured publh r'dicule in sades, p. 447; whose reference is to Lab5), Biblio- England for a fortnight. theca nova MSS t. ii, p. 296, t H'stoire Lit. des Troubadours. Fanre t774
are found among their lect of all France having previously re works. There seems a general
defi- sembled that of Languedoc, This hytiency of imag.nation, and especially of pothesis may
not be indisputable; but that vivid description which distinguishes the question is not likely to
be settled, works of genius in the rudest period of as scarcely any written specimens of society.
In the poetry of sentiment, romance, even of that age, have surtheir favourite province, they
seldom at- vived.* In the eleventh century, among tain any natural expression, and conse-
other more obscure productions both in quently produce no interest. I speak, of prose and metre,
there appears what, if course, on the presumption that the best unquestioned as to authenticity,
would be specimens have been exhibited by those a valuable monument of this language; who
have undertaken the task. It must the laws of William the Conqueror, be allowed, however, that
we cannot These are preserved in a manuscript of judge of the troubadours at a greater dis-
Ingulfus's History of Croyland, a blank advantage than through the prose trans- being left in
other copies where they lations of Millot. Their poetry was en- should be inserted.t They are
written tire.ly of that class which is allied to in an idiom so far removed from the music, and
excites the fancy or feelings Provensal, that one would be disposed rather by the power of
sound than any to think the separation between these stimulancy of imagery and passion. Pos-
two species of romance of older standing sessing a flexible and harmonious lan-
than is
commonly allowed. But it has guage, they invented a variety of metri- been thought probable
that these laws. r.al arrangements, perfectly new to the which in fact were a mere repetition
ofnations of Europe. The Latin hymns those of Edward the Confessor, were were striking, but
monotonous, the metre originally published in Anglo-Saxon, the of the northern French
unvaried; but in only language intelligible to the people, Provencal poetry almost every length
of and translated, at a subsequent period verse, from two syllables to twelve, and by some
Norman monk into French.4 the most intricate disposition of rhymes, This, indeed, is not quite
satisfactory, as were at the choice of the troubadour. it would have been more natural for such
The canzoni, the sestine, all the lyric a transcripter to have rendered them into metres of Italy
and Spain, were bor- Latin; and neither William nor his sucrewed from his treasury. With such
a censors were accustomed to promulgate command of poetical sounds, it was natu-
any of
their ordinances in the vernacular ral that he should inspire delight into language of England.
ears not yet rendered familiar to the artifices of verse; and even now the frag- not imputable to
himself, though Ritson, as I rements of these ancient lays, quoted by member, calls him, in his
own polite style, "a M. Sismondi and M. Ginguen6, seem to blockhead," it will always be
useful to the inquirer into the manners and opinions of the middle ages, possess a sort of charm
that has evapo- from the numerous illustrations it contains of two rated in translation. Upon this
harmony, general facts; the extreme dissoluteness of morals and upon the facility with which
mankind among the higher ranks, and the prevailing aniare apt to be deluded into an admiration
msity of all classes against the clergy. * Hist. litt. de la France, t. vii., p. 58. Le of exaggerated
sentiment in poetry, they Bmanf, according to these Benedictins, has subdeped for their
influence. And, how- lished some poetical fragments of the tenth centuever vapid tCl songs of
Provence may ry; and they quote part of a charter as old as 940 seemm to our apprehensions,
they were in romance, p. 59. But that antiquary, in a meundoibtedly the source from which
poe- moir printed in the seventeenth volume of the Academy of Inscriptions, which throws
more light try for many centuries derived a great on the infancy of the French language than
any portion of its habitual language.* thing within my knowledge, says only that the earliest
specimens of verse in the royal library are * Two very modern French writers, M. Gin-
of the eleventh century au plus tard, p. 717. M guene (Histoire Litteraire d'Italie, Paris, 1811) and de
la Rue is said to have found some poems of the M. Sismondi (Litt6rature du Midi de l'Europe,
eleventh century in the British Museum.-Roque Paris, 1813) have revived the poetical history
of the fort, Etat do la Poesie Franqoise, p. 206. Le troubadours. To them, still more than to
Millot Bceuf's fragment may be found in this work, p. 379 and Tiraboschi, I would acknowledge my obliga- it seems nearer to the Provenqal than the French tions for the little I have learned in respect of dialect. this forgotten school of poetry. Notwithstanding, t Gale, xv. Script., t. i., p. 88. bewever, the heaviness of Millot's work, a fault t Ritson's Dissertation on Romance, p. 66

Page 532 ~32 EUROPE DURING rIHE MIDDLE AGES. [CHAr. IX The use of a popular language be- cribed to Wace, who was at least a procame more common after the year 1100. lific versifier, and, if he seem to deserve Translations of some books of Scripture no higher title at present, has a c:lain to and acts of saints were made about that indulgence, and even to esteem, as havtime, or even earlier, and there are ing far excelled his contemporaries, %with. French sermons of St. Bernard, from out any superior advantages of knowi. which extracts have been published, in edge In emulation, however, of hii the royal library at Paris.* In 1126, a fame, several Norman writers addicted charter was granted by Louis VI. to the themselves to composing chronicles, ar city of Beauvais in French.t Metrical devotional treatisesin metre. The court compositions are in general the first of our Norman kings was to the early literature of a nation, and even if no dis- poets in the Langue d'Oil, what those of tinct proof could be adduced, we might Arles and Toulouse were to the trouba assume their existence before the twelfth dours. Henry I. was fond enough of century. There is, however, evidence, literature to obtain the surname of Beau. -iot to mention the fragments printed by cleric; Henry II. was more indisputably Le Bceuf, of certain lives of saints trans- an encourager of poetry; and Richard I. ated into French verse by Thibault de has left compositions of his own in one Vernon, a canlon of Rouen, before the or other (for the point is doubtful) of the middle of the preceding age. - And we two dialects spoken in France.* are told that Taillefer, a Norman min- If the poets of Normandy had nevei strel, recited a song or romance on the gone beyond historical and reli- Norman rodeeds of Roland, before the army of his gious subjects, they would prob- mancesand countrymen, at the battle of Hastings in ably have had less claim to our tales. 1066. Philip de Than, a Norman subject attention than their brethren of Provence. of Henry I., seems to be the earliest poet But a different and far more interesting whose works as well as name have reach- species of composition began to be cultied us, unless we admit a French transla- vated in the latter part of the twelfth tion of the work of one Marbode upon century. Without entering upon the precious stones to be more ancient.t controverted question as to the origin of This de Than wrote a set of rules for romantic fictions, referred by one party computation of time, and an account of to the Scandinavians, by a second to the different calendars. A happy theme for Arabs, by others to the natives of Britinspiration, without doubt! Another per- any, it is manifest that the actual stories formance of the same author is a trea- upon which one early and numerous tise on birds and beasts, dedicated to Ad- class of romances was founded are relaelaide, queen of Henry I.~ But a more ted to the traditions of the last people. famous votary of the muses was Wace, These are such as turn upon the fable of a native of Jersey, who, about the begin- Arthur; for though we are not entitled ning of Henry II.'s reign, turned Geof- to deny the existence of such a personfry of Monmouth's history into French age, his story seems chiefly the creation metre. Besides this poem, called Le of Celtic vanity. Traditions current in Brut d'Angleterre, he composed a series Britany, though probably derived from of metrical histories, containing the tran- this island, became the basis of Geoffrey sactions of the dukes of Normandy, from of Monmouth's Latin prose, which, as Rollo, their great progenitor, who gave has been seen, was transfused into French names to the Roman de Rou, down to metre by WVace.t The vicinity of Norhis own age. Other productions are as- mandy enabled its poets to enrich their narratives with other Armorican fictions, * Hist. Litt., t. ix., p. 149. Fabliaux par
Barba- all relating to the heroes who had sursan, vol. i., p. 9, edit. 1808. M6m. de l'Academie rounded the table of the son of Uther. An des Inscr., t. xv. and xvii., p. 714, &c. f Mabillon speaks of this as the oldest French e Millot says that Richard's sir-enestes (satirical instrument he had seen. But the Benedictins songs) have appeared in French, as well as Pro quote some of the eleventh century.-Hist. Litt., t. venqal, but that the former is probably a translation. vii., p. 59. This charter is supposed by the au--Hist. des Troubadours, vol. i., p. 54. YetI have thors of Nouveau Traité de Diplomatique to be met with no writer who quotes them in the latter translated from the Latin, t. iv., p. 519. French language, and M. Ginguén6, as well as Le Grand charters, they say, are not common before the age d'Aussy, consider Richard as a trouveur. of Louis IX.; and this is confirmed by those pub- t This derivation of the romantic stories of Ar. fished in Martenne's Thesaurus Anecdotorum, thur, which Le Grand d'Aussy ridicously attribwhich are very commonly in French from his utes to the jealousy entertained by the EnJglish ox reign, but hardly ever before. the renown of Charlemagne, is stated in a very. Ravaliere Rdvol. de la Langue Françoise, p. perspicuous and satisfactory manner by Mr. Ellit t16, doubts the age of this translation. in his Specimens of Farly English Mt irical Ro / Archaeologia, vols xii. and xiii mancas

Page 533 PART II. STATE ou bOCiET _ A33 equallyimagilyl history ofCharlemagne metrical narratives could excite. This gave rise to a A:d s--w family of romances. poem was highly popular in the middle The authors (ij these fictions were call- ages, and became the source of those ed Trouveur;, a name obviously identical numerous allegories which had not ceaswith t'lat of Troubadours. But, except ed in the seventeenth century. in name, thc-e was no resemblance be- The French language was employed in tween the minstrels of the northern and prose as well as in metre. In- Works io. southern dialects. The invention of one deed, it seems to have had almost French class was turned to description, that of an exclusive privilege in this re- prose. the other to sentiment; the first were spect. The language of Oil, says Dante, epic in their form and style, the latter in his treatise on vulgar speech, prefers almost always lyric We cannot per- its claim to be ranked above those of Oc haps give a better notion of their dissim- and Si (Provencal and Italian), on the ilitude, than by saying that one school ground that all translations or composi produced Chaucer, and the other Pe- tions in prose have been written therein, trarch. Besides these romances of chiv- from its greater facility and grace: such alry, the trouviers displayed their pow- as the books compiled from the Trojan ers of lively narration in comic tales or and Roman stories, the delightful fables fabliaux (a name sometimes extended to about Arthur, and many other works of the higher romance), which have aided history and science.* I have mentioned the imagination of Boccace and La Fon- already the sermons of St. Bernard, and taine. These compositions are certainly translations from Scripture. The laws more entertaining than those of the trou- of the kingdom of Jerusalem purport to badours; but, contrary to what I have have been drawn up immediately after said of the latter, they often gain by ap- the first crusade; and though their lan peering in a modern dress. Their guage has been materially altered, there versification, which doubtless had its seems no doubt that they were originalcharm, when listened to around the ly compiled in French.t Besides some hearth of an ancient castle, is very lan- charters, there are said to have been guid and prosaic, and suitable enough to prose romances before the year 1200.t the tedious prolixity into which the nar- Early in the next age, Ville Hordouin, rative is apt to fall; and though we find seneschal of Champagne, recorded the many sallies of that arch and sprightly capture of Constantinople in the fourth simplicity which characterizes the old crusade, an expedition, the glory and relanguage of France as well as England, ward of which he had personally shared, it requires, upon the whole, a factitious and, as every original work of prior date taste to relish
these Norman tales, con- has either perished, or is of small im-. sidered as poetry in the higher sense of portance, may be deemed the father of the word, distinguished from metrical fic-

French prose. The establishments of tion. St. Louis, and the law treatise of BeauA manner very different from that of Roman de the fabliaux was adopted in the * Prose e Rime di Dante, Venez, 1758, t. iv., p. la Rose. Roman de la Rose, begun by 261.' Dante's words, biblia cum Trojanorum RP William de Lorisabu, an com manorumque gestibus compilata, seem to bear no William de Loris about 1250, and com- other meaning than what I have given. But there pleted by John de Meun half a century may be a doubt whether biblia is ever used except later. This poem, which contains about for the Scriptures; and the Italian translator ten 16,000 lines in the, usual octo-syllable ders it, ciob la bibbia, i fatti de i Troiani, e de i Rofrom which the early French mani. In this case something is wrongin the oriverse, from which the early French wri-
ginal Latin, and Dante will have alluded to tho ters seldom deviated, is an allegorical translations of parts of Scripture ma(le,l'to French, vision, wherein love, and the other pas- as mentioned in the text. sions or qualities connected with it, pass t The Assises de Jerusalem have undergone two over the stage, without the intervention, revisions; one in 1250, by order of John d'lbelin, Ibelieve, oaylsatacount of Jaffa, and a second in 1369, by sixteen I believe, of any less abstract personages. commissioners chosen by the states of the kingdom Though similar allegories were not un- of Cyprus. Their language seems to be such as known to the ancients, and, which is more might be expected fiom the time of the former re to the purpose, may be found in other i ion. " Sevt eral prose romances were written or trans. productions of the thirteenth century, Soteral pro se remained 1r70iand afterwardn lated Prom th( Latin about 1170, and afterward. none had been constructed so elaborate- Mr. Ellis seems lcillned to dispute their antiquity. ly as that of the Roman de la Rose. Cold But, besides the authorme-es of La Ravalilre and and tedious as we now consider this spe- Tressan, the latter ol wncln is not worth much, a lat-e.;er extensively itorreed writer seems tW cies of poetry, it originated in the crea- lhave euSrths mattel'niv o eubt. —Roquefort Flav the power of imagination, and c--ppealed hace n of this matter, ou o euht.-Roquefort Fla toe power of imagination, and f_&ppealel mericourt, Etar de'a Po6dse FranPaise daj:s les to more refinndd feeling than tie eommo, I'm e,'~me siC! Paris...::: p. 147

Page 534 53'4 EUROPE DURING THE M.DDLE AGES. [CV.P. IX inanoir, fill up the interval of the thir- pronounced the poem of the Cid to be teenth century, and before its conclusion "deically and beyond comparison the we must suppose the excellent memoirs finest in the Spanish language." It is at of Joinville to have been composed, least superior to any that was written in since they are dedicated to Louis X., in Europe before the appearance of Dante," 1315, when the author could hardly be A strange obscurity envelops the inless than ninety years of age. Without fancy of the Italian language. Early wri prosecuting any farther the history of Though it is certain that gram- ters in the French literature, I will only mention the matical Latin had ceased to be Italian. translations of Livy and Sallust, made in employed in ordinary discourse, at least the reign and by the order of John, with from the time of Charlemagne, we have those of Cesar, Suetonius, Ovid, and parts not a single passage of undisputed auof Cicero, which are due to his successor thenticity, in the current idiom, for near Charles V.* ly four centuries afterward. Though Itall confess myself wholly uninformed as ian phrases are mixed up in the barbaSpanish to the original formation of the rous jargon of some charters, not an inlanguage. Spanish language, and as to the strument is extant in that language beepoch of its separation into the two prin- fore the year 1200; unless we may reckciple dialects of Castile and Portugal or on one in the Sardinian dialect (which, I Gallicia;t nor should I perhaps have al- believe, was rather Provencal than Italluded to the literature of that
peninsula, ian), noticed by Muratori. Nor is there were it not for a remarkable poem which a vestige of Italian poetry older than a shines out among the minor lights of few fragments of Ciullo d'Alcamo, a S., those times. This is a metrical life of cilian, who must have written before the Cid Ruy Diaz, written in a barba-1193, since he mentions Saladin as then rous style and with the rudest inequality living. This may strike us as the more of measure, but with a truly Homeric remarkable, when we consider the olitwarmth and vivacity of delineation. It ical circumstances of Italy in the elevius nuch to be regretted that the author's enth and twelfth centuries. From the name has perished, but its date seems to struggles of her spirited republics against be not later than the middle of the twelfth the emperors, and their internal factions, century, while the hero's actions were we might, upon all general reasoning, aun yet recent, and before the taste of Spain ticipate the early use and vigorous cultihad been corrupted by the Provencal vation of their native language. Even if troubadours, whose extremely different it were not yet ripe for historians and manner would, if it did not pervert the philosophers, it is strange that no poet poet's genius, at least have impeded his should have been inspired with songs of popularity. A very competent judge has triumph or invasive by the various fortunes of his country. But, on the con* Villaret, Hist. de France, t. xi., p. 121. De trary, the poets of Lombardy became Sade, Vie de P'trarque, t. iii., p. 548. Charles V. troubadours, and wasted their genius in had more learning than most princes of his time. Provenqal love-strains at the courts of Christine de Pisan, a lady who has written me-princes. The ila moirs, or rather a eulogy of him, says that his father le fist introdire en lettres moult suffissamment, bard dialects were indeed exceedingly et tant que competentment entendoit son Latin, et rude, but this rudeness separated them souffissamment seavoit les regles de grammaire; la more decidedly from Latin; nor is it pos quelle chose pleust a dieu qu' ainsi fust accoutu- sible that the Lombards could have em103 ntre le princes-Coct de m, t. 190, &c. ployed that language intelligibly for any t The earliest Spanish that I remember to have public or domestic purpose. And indeed, seen is an instrument in Martenne, Thesaurus in the earliest Italian compositions that Anecdotorum, t. i., p. 263 the date of which is 1095. Persons more conversant with the antiqui- * An extract from this poem was published in ties of that country may possibly go farther back. 1808, by Mr. Southey, at the end of his " Chroni Another of I 101 is published in Marina's Teoria de cle of the Cid," the materials of which it partly las Cortes, t. iii., p. 1. It is in a Vidimus by Peter supplied, accompanied by an excellent version be the Cruel, and cannot, I presume, have been a a gentleman, who is distinguished, among many translation from the Latin. Yet the editors of other talents, for an unrivalled felicity in expresNouveau Tr. de Diplom. mention a charter of sing the peculiar manner of authors whom he 1243 as the earliest they are acquainted with in translates or imitates. M. Sismondi has given the Spanish language, t. iv., p. 525. other passages, in the third volume of his essay on Charters in the German language, according to Southern Literature. This popular and elegant the same work, first appear in the time of the Em- work contains some interesting and not very coin peror Rodolph. after 1272 and became usual in the mon information as to the early Spanish poets in next century, p. 523. But Struvis mentions an the Provencal dialect, as well as those who wrote instrument of 1235 as the earliest in Garman.- in Castilian. Colp. Hist. Germ., p 4,57 - Dissert. 32. t Tiraboschi, t. IP., p. 340

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Alighieri, born in 1265, of a re. Frederick II I. both encouraged their art spectacular family at Florence. Attached and cultivated it; among the very first to the Guelf party, which had then obessays of Italian verse we find his pro- tained a final ascendency over its rival, ductions and those of his chancellor, he might justly promise himself the nat. Piero delle Vigne. Thus Italy des- ural reward of talents under a free govtined to owe the beginnings of her na- erment, public trust, and the esteem of tional literature to a foreigner and an his compatriots. But the Guelfs unhapenemy. These poems are very short and pily were split into two factions, the Bivory few; those ascribed to St. Francis anchi and the Neri, with the former of about the same time are hardly distin- whom, and, as it proved, the unsuccessguishable from prose; but after the mid- ful side, Dante was connected. In 1300 the of the thirteenth century, the Tuscan he filled the office of one of the Priori, or poets awoke to a sense of the beauties chief magistrates at Florence; and havywhich their native language, refined from ing manifested in this, as was alleged, he impurities of vulgar speech,* could some partiality towards the Bianchi, a display; and the genius of Italian litera- sentence of proscription passed against ture was rocked upon the restless waves him about two years afterward, when it of the Florentine democracy. Ricordano became the turn of the opposite faction Malespini, the first historian, and nearly to triumph. Banished from his country, the first prose writer in Italian, left me- and baffled in several efforts of his morials of the republic down to the year friends to restore their fortunes, he had 1281, which was that of his death, and it no resource but at the courts of the Scawas continued by Giacchetto Malespini las at Verona, and other Italian princes, to 1286. These are little inferior in pu- attaching himself in adversity to the Im. rity of style to the best Tuscan authors; perial interests, and tasting in his own for it is the singular fate of that language language the bitterness of another's to have spared itself all intermediate bread.* In this state of exile he finishstages of refinement, and starting the last ed, if he did not commence, his great in the race, to have arrived almost in- poem, the Divine Comedy; a representastantaneously at the goal. There is an tion of the three kingdoms of futurity, interval of not much more than half a Hell, Purgatory, and Paradise, divided century between the short fragment of into one hundred cantos, and containing Ciullo d'Alcamo, mentioned above, and about 14,000 lines. He died at Ravenna the poems of Guido Guinizzelli, Guitone in 1321. d'Arezzo, and Guido Cavalcante; which, Dante is among the very few who in their diction and turn of thought, are have created the national poetry of their sometimes not unworthy of Petrarch.t country. For notwithstanding the po!* Dante, in his treatise De vulgari Eloquentia, ished elegance of. some earlier Italian reckons fourteen or fifteen dialects, spoken in dif- verse, it had been confined to amorous ferent parts of Italy, all of which were debased by sentiments; and it was yet to be seen impure modesofexpression. But the "noble,prin- that the language could sustain for a cipal, and courtly Italian idiom," was that which belonged to every city, and seemed to belong to as a reason for it, that it was a more agreeable and none, and which, if Italy had a court, would be the usual language than his own. Et se aucuns delanguage of that court, p. 274, 277. mandoit pourquoi chis livre est ecris en romans, Allowing for the metaphysical obscurity in selon la raison de France. pour chose que nous which Dante chooses to envelop the subject, this sommes ytalien, je dirio que ch'est pour chose might perhaps be said at present. The Florentine que nous sommes en FranLe: l'autre pour chose dialect has its peculiarities, which distinguish it que la parleure en est plus delitable et plus commune a from the general Italian language, though these are toutes gens. There is said to be a manuscript his. seldom discerned by foreigners, nor always by na- tory of Venice dcwn to 12T5, in the Florentine li tives, with whom Tuscan is the proper denomina- brary, written in:'rench by Martin de Canale, who tion of their national tongue. says that he has chosen that language, parceque t Tiraboschi, t. iv., p. 309- 377. Ginguen6, vol. la langue fransaise cort parmi le monde, et est Ja t., c. 6. The style of the Vita Nuova of Dante, plus delitable a lire et a oir que nulle autre.-Gmn written soon after the death
of his Beatrice, which guen6, vol. i., p. 384. happened in 1290, is hardly distinguishable by a *
Tu proverai ci (says Cacciaguida to a foreigner from that of Machiavel or Castiglione. come
sA di sale Yet so recent was the adoption of this language, 11 pane altrui, e come B duro calle
that the celebrated master of Dante, Brunetto La- 11 scendere e 1 salir per altrui scale. tini, had
written his Tesoro in French; and gives Paradis.. (ant. 16,

Page 536 536 EUROPE DURING THE MIDDLE AGES. [UCHAS. IX greater length than
any existing poem a word which he finds convenient for hlt Xexcept the Iliad, the varied style
of nar- measure or his rhyme. It seems indeed ration, reasoning, and ornament. Of all as if he
never altered a line on account writers he is the most unquestionably of the necessity of rhyme,
but forced anoriginal. Virgil was indeed his inspiring other or perhaps a third into company
genius, as he declares himself, and as with it. For many of his faults no suffimay sometimes be
perceived in his dic- cient excuse can be made. But it is can tion; but his tone is so peculiar and char-
did to remember, that Dante, writing al acteristic, that few readers would be wil- most in
the infancy of a language which ling at first to acknowledge any resem- he contributed to
create, was not to anblamiie. He possessed, in an extraordi- ticipate that words, which he
borrowed nary degree, a command of language, the from the Latin and from the provincial
abuse of which led to his obscurity and dialects, would by accident, or through licentious
innovations. No poet ever ex- the timidity of later writers. lose their celled him in conciseness,
in the rare place in the classical idiom of Italy. If talent of finishing his pictures by a few
Petrarch, Bembo, and a few more, had bold touches; the merit of Pindar in his not aimed rather
at purity than copiousbetter hours. How prolix would the sto-
ness, the phrases which now
appear bar.ries of Francesca or of Ugolino have be- barous, and are at least obsolete, might
come in the hands of Ariosto, or of Tas- have been fixed by use in poetical lan so, or of Ovid,
or of Spenser! This ex-
guage. cellence indeed is most striking in the The great characteristic
excellence of first part of his poem. Having formed Dante is elevation of sentiment, to which
his plan so as to give an equal length tp his compressed diction and the emphatic the three
regions of his spiritual world, cadences of his measure admirably corhe found himself unable
not to vary the ima- respond. We read him, not as an amuses of hope or beatitude, and the Para-
sing poet, but as a master of moral wisdise is a continual accumulation of de-
dom, with reverence and awe. Fresh scriptions, separately beautiful, but uni-
from the deep and serious,
though some. form and tedious. Though images deri-
what barren studies of philosophy, and
ved from light and music are the most schooled in the severer discipline of ex pleasing, and can
be borne longer in poe-
rence, he has made of his poem a mir. try than any others, their
sweetness palls ror of his mind and life, the register of upon the sense by frequent repetition,
his solicitudes and sorrows, and of the and we require the intermixture of sharp-
caples in which he sought to eser flavours. Yet there are detached pas-
their recollection. The
banished sages of great excellence in this third magistrate of Florence, the disciple of part of
Dante's poem; and even in the Brunetto Latini, *the statesman accus long theological
discussions which occu-
ted to trace the varying fluctuations py the greater proportion of its
thirty- of Italian faction, is for ever before our three cantos, it is impossible not to ad-
eyes. For this reason, even the prodimire the enunciation of abstract positions gal display of erudition,
which in an epic with remarkable energy, conciseness, and poem would be entirely misplaced,
insometimes perspicuity. The twelve first creases the respect we feel for the poet cantos of the
Purgatory are an almost though it does not tend to the reader's continual flow of soft and
brilliant poe- gratification. Except Milton, he is much try. The seven last are also very splen-
the most learned of all the great poets, did, but there is some heaviness in the and, relatively to
his age, far more learnintermediate parts.' Fame has justly ed than Milton. In one so highly
engiven the preference to the Inferno, dowed by nature, and so consummate by w-ich displays throughout a more vigor- instruction, we may well sympathize ous and masterly conception; but the with a resentment which exile and povmind of Dante cannot be thoroughly ap- erty rendered perpetually fresh. The preciated without a perusal of his entire heart of Dante was naturally sensible, and poem. even tender; his poetry is full of simple The most forced and unnatural turns, comparisons from rural life; and the sinthe most barbarous licenses of idiom, are cerity of his early passion for Beatrice found in this poet, whose power of ex- pierces through the vale of allegory pression is, at other times, so peculiarly which surrounds her. But the memory happy. His style is indeed generally of his injuries pursues him into the im, free from those conceits of thought mensity ofeternal light;* and, in the corn which discredited the other Foets of his _ country; but no sense is' toc remote for * Paradiso. cant. 16.

*Page 537* PARY if. STATh. OF SOCIETY. 33 pany of saints and angels, his unforgiving In the same year that Dantet was ec spirit darkens at the name of Florence. pelled from Florence, a notary, This great poem was received in Italy by name Petracco, was involved Petrarcb with that enthusiastic admiration which in a similar banishment. Retired to attaches itself to works of genius onlyin Arezzo, he there became the father of ages too rude to listen to the envy of Francis Petrarch. This great man shared. competitors or the fastidiousness of crit- of course, during his early years, in the cs. Almost every library in that coun- adverse fortune of his family, which he thy contains manuscript copies of the Di- was invincibly reluctant to restore, acvne Comedy, and an account of those cording to his father's wish, by the pro. who have abridged or commented upon fession of jurisprudence. The strong it would swell to a volume. It was thrice bias of nature determined him to polite printed in the year 1472, and at least nine letters and poetry. These are seldom times within the fifteenth century. The the fountains of wealth; yet they would city of Florence, in 1373, with a magna- perhaps have been such to Petrarch, if nimity which allnost redeems her origi- his temper could have borne the sacrifice nal injustice, appointed a public professor of liberty for any worldly acquisitions to read lectures upon Dante; and it was At the city of Avignon, where his parents hardly less honourable to the poet's mem- had latterly resided, his graceful appear.. ory, that the first person selected for this ance and the reputation of his talents at. office was Boccaccio. The universities tracted one of the Colonna family, then of Pisa and Piacenzaimitated this exam- bishop of Lombes in Gascony. In him, ple; but it is probable that Dante's ab- and in other members of that great struse philosophy was often more re- house, never so illustrious as in the four garded in their chairs than his higher ex- teenth century, he experienced the union cellences.* Italy indeed, and all Europe, of patronage and friendship. This, how. had reason to be proud of such a master. ever, was not confined to the Colonnas. Since Claudian, there had been seen for Unlike Dante, no poet was ever so libermine hundred years no considerable body ally and sincerely encouraged by the of poetry, except the Spanish poem of great; nor did any, perhaps, ever carry the Cid, of which no one had heard be- to that perilous intercourse a spirit more yond the peninsula, that could be said to irritably independent, or more free from pass mediocrity; and we must go much interested adulation. He praised his farther back than Claudian to find any friends lavishly, because he loved them one capable of being compared with ardently; but his temper was easily sus. Dante. His appearance made an epoch ceptible of offence, and there must have in the intellectual history of modern iesa- been much to tolerate in that restlessness tions, and banished the discouraging sus- and jealousy of reputation, which is perpcion which long ages of lethargy tend- haps the inevitable failing of a poet.* ed to excite, that nature had exhausted hex fertility in the great poets of Greece ions of the 12th and 13th centuries, it seems prob. anid Rome. It was as if, at some of the able that he derived hints from
the Tesoretto of his ancient games, a stranger hadi appeared master in philosophical studies, Brunetto Latini, upon the plain, and thrown his quoit * There is an unpleasing proof of this quality in among the marks of former casts, which a letter to Boccaccio on Dante, whose merit he tradition had ascribed to the demigods. rather disingenuously extenuates; and whose popBut the admiration of IDante, though it ularity evidently stung him to the quick.-De Sade, gave a general impulse t to the hum t. iii., p. 512. Yet we judge so ill of ourselves, that Petrarch chose envy as the vice from which of all mind, did not produce imitators. I am others he was most free. In his dialogue with St. unaware at least of any writer, in what- Augustin, he says; Quicquid libuerit, dicit. Amodo ever language, who can be said to have me non accuses invidia. AuG. Utinam non tibi followed the steps of Dante; I mean not magis superbia quam invidia.ouisset: nam hoc much in his subject as in the crime, me judice, liber es.-De Contemptu Munso much in his subject as in the charac- di, edit. 1551, p. 342. ter of his genius and style. His orbit is I have read in some modern book, but know t.c, still all his own, and the track of his where to seek the passage, that Pet:arch did aot doit aot doted with ise not confounded with intend to ailude to Dante in the letter to Boccatcia Lhat of a rival.t mentioned above, but rather to Zanobi Strata, a contemporary Florentine poet, whom, however for gotten at present, the bad taste of a party in criti * Velli, Vita di Dante. Tiraboschi. cism preferred to himself.-Matteo Villani men t The source from which Dante derived the tiou.s them together as the two great ornaments of scheme and general idea of his poem has been a his age. This conjecture seems probable, for some subject of inquiry in Italy. To his mind expressions are not in the least applicable to Dante one might har e thought the sixth..Eneid would But, whichever was intsnndel, the letter eqvall) have suffi.c.' But besides several legendary vis- shows the irritab. e humour of Petrarch.

Page 538 538 EUROPE DURING THE MIDDLE AGES. LtIAF I But wors thing was forgiven to a man ry, of patriotism, of religion, he gave the cywo was the acknowledged boast of his rein to all their impulses; and there is age and country. Clement VI. conferred not perhaps a page in his Italian writing one or two sinecure benefices upon Pe- which does not bear the trace of one or trach, and would probably have raised other of these affections. By far the him to a bishopric, if he had chosen to most predominant, and that which has adopt the ecclesiastical profession. But given the greatest celebrity to his name'ie new er took orders, the clerical ture is his passion for Laura. Twenty years leing a sufficient qualification for holding of unrequited and almost unaspiring love canonries. The same pope even afforded were lightened by song; and the attachhim the post of apostolical secretary, and ment, which, having long survived the this was repeated by Innocent VI. I beauty of its object,* seems to have at know not whether we should ascribe to one time nearly passed from the heart to magnanimity, or to a politic motive, the the fancy, was changed to an intenser behaviour of Clement VI. towards Pe- feeling, and to a sort of celestial adora trach, who had pursued a course as vex- tion, by her death. Laura, before the atious as possible to the Holy See. For time of Petrarch's first accidental meetnot only he made the residence of the ing with her, was united in marriage with su'preme pontiffs at Avignon, and the another; a fact which, besides some vices of their court, the topic of invec- more particular evidence, appears to me tives, too well founded to be despired, deducible from the whole tenour of his but he had ostentatiously put himself for- poetry.t Such a passion is undoubtedly ward as the supporter of Nicola di Rien- not capable of a moral defence; nor zi in a project which could evidently have no other aim than to wrest the city of * See the beautiful sonnet, Erano i capei d' oro Rome from the temporal sovereignty of all' aura sparsi. In a famous passage of his Conits bishop. Nor was the friendship and fesslons, he says; Corpus illud egregium morbis et crebris partubus exhaustum,
multurn pristini vigo society of Petrarch less courted by the ris amisit. Those who maintain the virginity of most respectable Italian princes; by Rob- Laura are forced to read perturbationibus instead of ert, kin0 of Naples, by the Visconti, the partubus. Two manuscripts in the royal library at Corregai of Parina, the famous doge of Paris have the contraction ptbus, which leaves the ~~~~Correggi of Pama, he matter open to controversy. De Sade contend Venice, Andrew Dandolo, and the Carrara that " crebris" is less applicable to "perturbationi family of Padua, under whose protection bus" than to "partubus." I do not know that he spent the latter years of his life. Sto- there is much in this; but I am clear that corpus ries are related of the respect shown to exhaustum partubus is much the more elegant him by men in humbler stations which Latin expression of the two. t The Abbé de Sade, in those copious memoirs are perhaps still more satisfactory.* But of the life of Petrarch, which illustrate in an agree the most conspicuous testimony of pub- able though rather prolix manner the civil and lite lie esteem was bestowed by the city of rary history of Provence and Italy in the fourteenth Rome, in his solemn coronation as lau- century, endeavoured to establish his own descent from Laura, as the wife of Hugues de Sade, and reate poet, in the capitol. This ceremony born in the family de Noves. This hypothesis has took place in 1341; and it is remarkable since been received with general acquiescence by that Petrarch had at that time composed literary men; and Tiraboschi in particular, whose no works which could, in our estimation, talent lay in these petty biographical researches, give hi~m~ pretensions to so singular an and who had a prejudice against every thing that singular an came from France, seems to consider it as decihonour. sively proved. But it has been called in question The moral character of Petrarch was in a modern publication by the late Lord Woodformed of dispositions peculiarly calcu- houselee.- (Essay on the Life and Character of ted for a poet. An enthusiast in the Petrarch, 1810.) I shall not offer any opinion as to the identity of Petrarch's mistress with Laura emotisrs of love and friendship, of glo- de Sade; but the main position of Lord W.'s essay, that Laura was an unmarried woman, and the ob* A goldsmith of Bergamo, by name Henry Ca- ject of an honourable attachment in her lover, pra, smitten with an enthusiastic love of letters seems irreconcilable with the evidence that nio And of Petrarch, earnestly requested the honour of writings supply. 1. There is no passage in Pe d visit from the poet. The house of this good trach, whether of poetry or prose, that alludes to tradesman was full of represantations of his person, the virgin character of Laura, or gives her the usuand of inscriptions with his name and arms. No al appellations of unmarried women, puella in expense had been spared in copying all his works Latin, or donzella in Italian; even in the Trionfo as they appeared. Hewas received byCapra with della Castita, where so obvious an opportunity oc. a princely magnificence, lodged in a chamber curred. Yet this was naturally to be expected hung with purple, and a splendid bed on which no from so ethereal an imagination as that of Petrarch, one before or after him was permitted to sleep. always inclined to invest her with the halo of ce.-.;oldsmiths, as we may judge by this instance, lestial purity. We know [how Milton took hold ere opulent persons; yet the friends of Petrarch of the mystical notions If virginity; notions tsuaded him from this visit, as derogatory to his more congenial to the religion of Petrarchl than hi, a P.levated station — De Sade, t. iii., p. 496. own:

Page  539 RT It j STATE 01 SOCIETY - dS would I sick its palliation so much in the ried genius than Petrarch, are contami orlevant manners of his age, by which, nated, above all the rest, with the mlos. however, the conduct of even good men degrading grossness. Of this there is is generally not a little influenced, as in not a single instance in the poet of Vau. the infirmity of Petrarch's character, cluse; and his strains, diffused and ad. which induced him both to obey and to mired as they have been, may have con justify the emotions of his heart. The ferred a
benefit that criticism cannot es lady too, whose virtue and prudence we timate, in giving elevation and refinement are not to question, seems to have tem- to the imaginations of youth. The great pered the light and shadow of her coun- defect of Petrarch was his want of strong tenure so as to preserve her admirer original conception, which prevented hini from despair, and consequently to pro- from throwing off the affected and overclock his sufferings and servitude. strained manner of the Provenqal troubaThe general excellences of Petrarch dours, and of the earlier Italian poets, are his command over the music of his Among his poems, the Triumphs are pernative language, his correctness of style, haps superior to the Odes, as the latter scarcely two or three words that he has are to the Sonnets; and of the latter, used having been rejected by later wri- those written subsequently to the death ters, his exquisite elegance of diction, of Laura are in general the best. But improved by the perpetual study of Vir- that constrained and laborious measure gil; but, far above all, that tone of pure cannot equal the graceful flow of the canand melancholy sentiment, which has zone, or the vigorous compression of the something in it unearthly, and forms a terza rima. The Triumphs have also a strong contrast to the amatory poems of claim to superiority, as the only poetical antiquity. Most of these are either li- composition of Petrarch that extends to centious or uninteresting; and those of any considerable length. They are in Catullus, a man endowed by nature with some degree, perhaps, an imitation of the deep and serious sensibility, and a poet, dramatic Mysteries, and form at least the in my opinion, of greater and more va- earliest specimens of a kind of poetry not uncommon in later times, wherein Quod tibi perpetuus pudor, et sine labe juventas known, where he most unbosoms himself, will Pura fuit, quod nulla tori libata voluptas, leave no doubt, I think, that his passion could not En etiam tibi virginei servantur honores. have been gratified consistently with honolr. At Epitaphium Damonis. mulier ista celebris, quam tibi certissimam ducem’2. The coldness of Laura towards so passionate fings, ad superos cur non hasitantem trepidumque and deserving a lover, if no insurmountable obsta- direxerit, et quod caecis fieri solet, manu apprehencle intervened during his twenty years of devotion, sum non tenuit, qu6 et gradiendum foret admonu would be at least a mark that his attachment was it’?-PETR. Fecit hoc illa quantum potuit. Quid misplaced, and show him in rather a ridiculous enim aliud egit, cum nullis mota precibus, nullis ight. It is not surprising, that persons believing victa blanditiis, muliebrern tenuit decorem, et ad Laura to be unmarried, as seems to have been the versus suam semel et meam aetatem, adversus case with the Italian commentators, should have multa et varia, quae flectere adamantium spiritum thought his passion affected and little more than debuissent, inexpugnabilis et firma permansit? poetical. But, upon the contrary supposition, a Profectd animus iste femineus quid virum decuit thread runs through the whole of his poetry, and admonebat, prestabatque ne in sectando pudicitiam gives it consistency A love on the one side, in- studio, ut vertis utar Senecae, aut exemplum aut convitium deesset; postrem5 cum lorifragum’ ac ceptibility of a tender heart and ardent fancy; praecipitem videret, deserere maluit potius quhm nourished by slight encouragement, and seldom sequi.-AUvGUST. Turpe igitur aliquid quid interdum presuming to hope for more;'amixture of prudence voluisti, quod supra negaveras. At iste vulgatus and coquetry on the other, kept within bounds ei- amantium, vel, ut dicam verius, aut nolit, ignotum flattery more refined than had ever before been the story gerunt; nunc quid velim et cupiam scio, firmavque aliter forte voluissem, ametium furor ther by virtue or by the want of mutual attachment, est, ut omnibus merit5 dici possit: volo nolo, nolo yet not dissatisfied with fame more brilliant and volo. Vobis ipsis quid velitis, aut nolitis, ignorant more refined than had ever before been the est.-PET. Invitusinlaqueum offendi. Si quid talot of woman-these are surely pretty natural cir- men olim aliter forte voluissem, amor mtasque concumstanceo, and such as do not render the story gerunt; nunc quid velim et cupiam scio, firmavque lessintelligible. IJnquestionably, such a passionis jam tandem animum labentem; contra autem illa not innocent. But Lord Woodhouselee, who is so propositi tenet semper una permansit, quare much scandalized at
it, knew little, one would constantly femineam quo magis intelligo, magis think, of the fourteenth century. His standard is admiror: idque sibi consilium fuisse, si unquam taken not from Avignon, but from Edinburgh, a debut, gaudeo nunc et gratias ago.-AUG. Semel much better place, no doubt, ai,d where the moral fallenti, non facile rursus fides habenda est: tu barometer stands at a very different altitude. In prius mores atque habitum, vitamque mutavisti, ne passage, p. 188, he carries his strictness to an quam animum mutAsse persuadeas; mitigatur forte excess of prudery. From all we know of the age si tuus leniturque ignis, extinctus non est. Tu of Petrarch, the only matter of astonishment is the vero qui tantum dilectione tribuis, non animadvertis, persevering virtue of Laura. The troubadours illam absolvendo, quantum te ipsse condemnas much better boast with Provençal ladies. illam fateri libet fuisse sanctissimam, dum.e insa. 3. But the following passage from Petrarch's dia- geometrum with St. Augustin, the work, as is well Dialog. X, p. 367, edit. 1581.

Page 540 ACEROPE DURING THE MIDDLE AGES. [CHAI'. ix real and allegorical personages are in- The first English writer who can be read termingled in a masque or scenic repre- with approbation is William Langland, sentation. the author of Piers Plowman's Vision, a None of the principal modern lan- severe satire upon the clergy. Though English guages was so late in its forma- his me'asure is more uncouth than that language. tion, or in its application to the of his predecessors, there is real energy purposes of literature, as the English. in his conceptions which he caught not This arose, as is well known, out of the from the chimeras of knight-errantry, Saxon branch of the great Teutonic but the actual manners nd opinions of stock, spoken in England till after the his time. conquest. From this mother dialect, our The very slow progress of the Eng English differs less in respect of etymolo- lish language, as an instrument Cause of gy, than of syntax, idiom, and flexion. of literature, is chiefly to be its slow In so gradual a transition as probably ascribed to the effects of the progress. took place, and one so sparingly marked Norman conquest, in degrading the nal byany existing evidence, we cannot well live inhabitants, and transferring all assign a definite origin to our present power and riches to foreigners. The. language. The question of identity is barons, without perhaps one exception, almost as perplexing in languages as in and a large proportion of the gentry, individuals. But, in the reign of Henry were of French descent, and preserved II., aversion of Wace's poem of Brut, by among themselves the speech of their one Layamon, a priest of Emly upon fathers. This continued much longer Severn, exhibits, as it were, the chrysalis than we should naturally have expected; of the English language, in which he even after the loss of Normandy had can as little be said to have written, as snapped the thread of French connexEarly in Anglo-Saxon.* Very soon af- ions, and they began to pride themselves writers. terward, the new formation was in the name of Englishmen, and in the better developed; and some metrical inheritance of traditionary English privpieces. referred by critics to the earlier illeges. Robert of Glocester has a repart of the thirteenth century, differ but markable passage, which proves that, in little from our legitimate grammar.t his time, somewhere about 1270, the suAbout the beginning of Edward I.'s perior ranks continued to use the French reign, Robert, a monk of Glocester, com- language.* Ralph Higden, about the posed a metrical chronicle from the his- early part of Edward III.'s reign, though tory of Geoffrey of Monmouth, which he his expressions do not go the same continued to his own time. This work, length, asserts, that "gentlemen's chilw with a similar chronicle of Robert Man- dren are taught to speak French from' ning, a monk of Brunne (Bourne) in Lin- the time they are rocked in their cradle; col-shire, nearly thirty years later, stand and uplandish (country) or inferior men at the head of our English poetry. The will likenthemselves to gentlemen, and romance of Sir Tristrem, ascribed
to learn with great business for to speak Thomas of Erceldoune, surnamed the French, for to be the more told of." Rhymer, a Scottish minstrel, has recent- Notwithstanding, however, this predomly laid claim to somewhat higher antiqui- inance of French among.the higher ty. In the fourteenth century, a great class, I do not think that some modern number of metrical romances were trans- critics are warranted in concluding that lated from the French. It requires no they were in general ignorant of the small portion of indulgence to speak fa- English tongue.'Menliving upon their vourably of any of these early English estates among their tenantry, whom they productions: A poetical line may no welcomed in their halls, and whose asdoubt occasionally be found; but in gen- sistance they were perpetually needing eral the narration is as heavy and pro- in war'and civil frays, would hardly have lix as the versification is unmusical.T permitted such a barrier to'obstruct their intercourse. For we cannot, at * A sufficient extract from this work of Layamon has been published by Mr. Ellls, in his specimens gling short passages, where the original is rather of early English poetry, vol. i., p. 61. It contains, above its usual mediocrity, with his own lively he observes, no word which we are under the ne- analysis. cessity of ascribing to a French origin. * The evidences of this general employment f Warton's Hist. of English Poetry. Ellis's and gradual disuse of French in conversation and Specimens. writing are collected by Tyrwhitt, in a dissertation X Warton printed, copious extracts from some of on the ancient English language, prefixed to the these. Ritson gave several of them entire to the fourth volume of his edition of Chaucer's Canter pressed. And Mr. Ellis has adopted the only plan bury Tales; and by Ritson, in the preface to his which could render them palatable, by intermin- Metrical Romances, vol. i., p. 70.

Page 541, RT 11. STATI OF SOCIETY. 541 the utmost, pre,;unme that French was so trach; but he enjoyed the favour of Ed well known to the English commonalty ward III., and, still more consDicamente ill the thirteenth century, as English is of John, duke of Lancaster; his fortunei at present to the same class in Wales were far more prosperous than have and the Scottish Highlands. It may be usually been the lot of poets; and a rep. remarked, also, that the institution of utation was established beyond competi trial by jury must have rendered a tion in his lifetime, from which no suc. knowledge of English almost indispen- ceeding generation has withheld its sancsable to those who administered justice. tion. I cannot, in my own taste, go There is a proclamation of Edward I. completely along with the eulogies that in Ryiner, where he endeavours to ex- some have bestowed upon Chaucer, who cite his subjects against the King of seems to me to have wanted grandeur, France by imputing to him the intention where he is original, both in conception of conquering the country, and abolish- and in language. But in vivacity of iming the English language (linguam de- agination and ease of expression, he is lere anglicanam), and this is frequently above all poets of the middle time, and repeated in the proclamations of Edward comparable perhaps to the greatest of ILI.* In his time, or perhaps a little be- those who have followed. He invented, fore, the native language had become or rather introduced from France, and more familiar than French in common employed with facility the regular iambic use, even with the court and nobility. couplet; and though it was not to be exHence the numerous translations of met- pected that he should perceive the capa rical romances, which are chiefly refer- cities latent in that measure, his versifired to his reign. An important change cation, to which he accommodated a very was effected in 1362, by a statute, which licentious and arbitrary pronunciation, is enacts that all pleas in courts of justice uniform and harmonious.* It is chiefly, shall be pleaded, debated, and judged in indeed, as a comic poet, and a minute English. But Latin was, by this act, to observer of manners aid circumstances, be employed in drawing the record; for that Chaucer excels. In serious and there seems to have still continued a moral poetry he is frequently languid and sort of prejudice
against the use of Eng-diffuse; but he springs like Antaus fromlish as a written language. The earliest the earth, when his subject changes to English instrument known to exist is coarse satire ormerrynarrative. Among said to bear the date of 1343. And his more elevated compositions, the there are not more than three or four Knight's Tale is abundantly sufficient to entries in our own tongue upon the rolls immortalize Chaucer, since it would be of parliament before the reign of Henry difficult to find anywhere a story better VI., after whose accession its use be-conducted, or told with more animation comes very common. Sir John Mande- and strength of fancy. The second place vile, about 1350, may pass for the father may be given to his Troilus and Cresof English prose, no original work being eide, a beautiful and interesting poem so ancient as his travels. But the trans-though enfeebled by expansion. But lation of the Bible and other writings by perhaps the most eminent, or at any rate Wicliffe nearly thirty years afterward, the most characteristic, testimony to his taught us the copiousness and energy of genius will be found in the prologue t which our native dialect was capable; his Canterbury Tales; a work entirely and it was employed in the fifteenth cen- and exclusively his own, which can sel tury by two writers of distinguished dom be said of his poetry, and the vivid merit, Bishop Peacock and Sir John delineations of which perhaps very few Fortescue. writers but Shakspere could have equalBut the principal ornament of our Eng-led. As the first original English poet, Chaucer. lishliterature was Geoffrey Chau-if we except Langland, as the inventor cer, who, with Dante and Pe-of our most approved measure, as an imrarch, fills lip the triumvirate of great prover, though with too much innovation, poets in the middle ages. Chaucer was of our language, and as a faithful witness born in 1328, and his life extended to the to the manners of his age, Chaucei would last year of the fourteenth century. That deserve our reverence, if he had not also rude and ignorant generation was not rude and ignorant generation was * See Tyrwhitt s essay on the language and yet likely to feel the admiration of native ge-sification of Chaucer, in the fourth volume of his nius as warmly as the compatriots of Pe-edition of the Car terby Tales. The opinion of this eminent critic has lately been controverted by + T. v., p. 490; t. vi., p. 642, et alibi. Dr. Nott, who maintains the versification of Chau. t Ritson, p 80 There is one in Rymer of the I cer to have been wholly founded on accentual amxd ve3r 1385. not syllabic regularl y.
The the sixth to the eleventh century, it is copying of books, for some ages slowly unusual to meet with quotations, except and sparingly performed in monasteries, from the Vulgate or from theological had already become a branch of trade; writers. The study of Rome's greatest and their price was consequently Invention authors, especially her poets, was almost reduced. Tiraboschi denies that of linen forbidden. But a change took place in the invention of making paper paper. The course of the twelfth cen- tury. The polite literature, as well as the polite literature, as Warton's Hist. of English Poetry, vol. i., Dis tory, well as the abstruser science of sertation II. Roquefort, Etat de la Poésie Frhnantiquity, became the subject of cultura- tions du douzidme dle, p. 18. The following tion. Several writers of that age, in dif- lines from the beginning of the eighth book of the different parts of Europe, are distinguished Philippi seem a fair, or rather a favourable speci. moe or less for elegance, though not ab- en of these epics. But I am very superficially more or less for elegance, though not accustomed with any of them. solute purity, of Latin style; and for acquaintance with any of them their acquaintance with th Solverat interea zephyris melioribus annum their acquaintance with those ancients Frigore depulso veris tepor, et renovari who are its principal models. Such Cceperat et viridi gremio juvenescere tellus; were John of Salisbury, the acute and Cun Rea l Jovis rideret ad oscula mater learned author of the Polericatus, Will- Cum jam post tergum Phryxi vectore relictio iam of Malmsbury, Giraldus Cambrensis, Solis Agenorei preremerota terga juvenci. Roger Hoveden, in England; and in for- The tragedy of Eccerinus (Eccelin da Romano), by Albertinus Mussatus, a Paduan, and author of eign countries, Otho of Frisingen, Saxo a respectable history, deserves some attention, as Grammaticus, and the best perhaps of all the first attempt to revive the regular tragedy. If I have named as to style, Falcandus, the was written soon after 1300. The language by no historian of Sicily. In these we meet means wants animation, notwithstanding an unskilful conduct of the fable. The Eccerinus is with frequent quotations from ivy, printed in the tenth volume of Muratori's collection. cero, Pliny, and other considerable wri- t Booksellers appear in the latter part of the thirteenth century. Peter of Blois mentions a lawadmired, and even imitated. All metri- book which he had procured a quodam publico C3al Latin bIefore the latter part of the mangoone librorum. Hist. Litteraire de la France, telft century, so far as I have seen, is t. ix., p. 84. In the thirteenth century there were twelfth century, so far as I have seen, is many copyists by occupation in the Italian univer extremely bad; but at this time, and ear- sities. —Tiraboschi, t. iv., p. 72. The number of ly in the succeeding age, there appeared these at Milan before the end of that age is said to several versifiers, who aspired to the re- have been fifty, ibid. But a very unsual proportion Rnown of following the steps of Virgil and of their labour could have been devoted to purpo. Status tn epte* poetry.* ses merely literary. By a variety of ordinances, Status in epic -poetry. Joseph Iscanus, the first of which bears date in 1275, the booksel. an Englishman, seems to have been the lers of Paris were subjected to the control of the earliest of these; his poem on the Tro- university.-Crevier, t. ii., p. 67, 286. The pretext.an war, containing an addres to JHenry of this was, lest erroneous copies should obtain cirr.al wror, eonta g ntled AntiocHu culation. And this appears to have been the origi, tl. He wrote another, entitled Antioc Hu, nal of those restraints upon the freedom of publi. an the third crusade, most of which has cation, which, since the invention of printing, have perished. The wars of Frederick Barba- so much retarded the diffusion of truth by means rossa twere celebrated by Gunther in his of that great instrument.
Sallust, Lucan, Virgil, of this position, yet the confidence with Claudian, and other ancient writers.*' which so eminent a scholar advances it. But no other, probably, of that age was is at least a proof that paper manuscripts so numerous or so valuable. Richard of of an earlier date are very rare.* Prin- Bury, the chancellor of England. and Ed. f es became far more attentive to litera- ward III., spared no expense in collect ture when it was no longer confined to ing a library, the first perhaps that any metaphysical theology and canon law. private mall had formed. But the scar[ have already mentioned the translations city of valuable books was still so great, from classical authors, made by command that he gave the abbot of St. Alban's fifty of John and Charles V. of France. These pounds weight of silver for between French translations diffused some ac- thirty and forty volumes.t Charles V quaintance with ancient history and learn- increased the royal library at Paris to ing among our own countrymen.t The nine hundred volumes, which the Duke Libraries. public libraries assured a more of Bedford purchased and transported to respectable appearance. Louis London.t His brother Humphrey, duke [X. had formed one at Paris, in which it of Glocester, presented the university of de3s not appear that any work of elegant Oxford with six hundred books, which literature was found.; At the beginning seem to have been of extraordinary value, of the fourteenth century, only four clas- one hundred and twenty of them having sical manuscripts existed in this collec- been estimated at one thousand pounds. tion; of Cicero, Ovid, Lucan, and Boe- This indeed was in 1440, at which time thius.– The academical library of Ox- such a library would not have been ford, in 1300, consisted of a few tracts thought remarkably numerous beyond kept in chests under St. Mary's church. the Alps,~ but England had made com That of Glastonbury Abbey, in 1240, con- paratively little progress in learning. Germany, however, was probably still

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* See reference for page 85. On the contrary side less advanced. Louis, Elector Palatine, are Montfaucon, Mabillon, and Muratori; the lat- bequeathed in 1421 his library to the uniter of whom carries up the invention of our ordi- versity of Heidelber consistig of one nary paper to the year 1000. But Tiraboschi con-delberg, consstg of one tends that the paper used in manuscripts of so hundred and fifty-two volumes. Eightyearly an age was made from cotton rags, and, ap- nine of these related to theology, twelve parently, from the inferior durability of that material, not frequently employed. The editors of Nou- * Warton, vol. i., Dissert. lveau Trait6 de Diplornatique are of the same opin- t Ibid. Fifty-eight books were transcribed In ion, and doubt the use of linen paper before the this abbey under one abbot, about the year 1300 year 1300, t. i., p. 517, 521. Meerman, well known Every considerable monastery had a room, called as a writer upon the antiquities of printing, offered Scriptorium, where this work was performed. a reward for the earliest manuscript upon linen More than eighty were transcribed at St. Albans paper, and, in a treatise upon the subject, fixed under Whethamstede, in the time of Henry VI., the date of its invention between 1270 and 1300. ibid. See also Du Cange, v. Scriptores. Never But M. Schwandner, of Vienna, is said to have thesless we must remember, first, that the fax found in the imperial library a small charter bear- greater part of these books were mere monastic ing the date of 1243 on such paper.-Macpherson's trash, or at least useless in our modern apprehenAnnals of Commerce, vol. i., p. 391. Tiraboschi, sion; secondly, that it depended upon the characterif he had known this, would probably have main- ter of the abbot whether the scriptorium should be tained the paper to be made of cotton, which he occupied or not. Every head of a monastery was says it is difficult to distinguish. He assigns the not a Whethamstede. Ignorance and jollity, such invention of linen paper to Pace da Fabiano of as we find in Bolton Abbey, were their more usoa. Treviso. But more than one, Arabian writer as-characteristics. By the account-books of this serts the manufacture of linen paper to have been rich monastery, about the beginning of the four carried on at Samarcand early in the eighth cen- teenth century, three books only appear to have tury., having been brought thither from China. been purchased in forty years. One of those was And, what is more conclusive, Casiri
positively de-

the Liber Sententiarum of Peter Lombard, which dares many manuscripts in the

Escurial of the cost thirty shillings, equivalent to near forty eleventh and twelfth centuries to be

written on pounds at present.-Whitaker's Hist. of Cravel, that substance.-Bibliotheca Arabico-


117. the opinion of Tiraboschi in favour of Pace da Fa-

Niccolo Niccoli, a private scholar, who con biano, who must perhaps take his place at the ta-

tributed essentially to the restoration of

ancient ble of fabulous heroes with Bartholomew Schwartz learning, bequeathed a library of

eight hundred voland Flavio Gioja. But the material point, that umes to the republic of

Florence. This Niccoli paper was very little known in Europe till the tat-

hardly published any

thing of his own; but earned ter part of the fourteenth century, remains as be-

a well-merited

reputation by copying and correcting fore.

manuscripts.-Tiraboschi, t. vi., p. 114. Sr ep t


C(lluccio Salutat:) had proculed as many as sigh 4 Velly, t. v, p. 202. Crevier, t. ii., p. 36.

and suppose these books to have been univertheir contemporary labourers in this sally unknown before; Quintilian, at vineyard for a hundred years before the least, is quoted by English writers much invention of printing. However little intercourse preWhat Petrarch began in the fourteenth vailed among different countries, and the industry of century was carried on by a monks had so little acquaintance with the fifteenth new generation with unabating the riches of their conventual libraries, century. industry. The whole lives of that an author might pass for lost in Italy, Italian scholars in the fifteenth century who was familiar to a few learned men were devoted to the recovery of manu- in other parts of Europe. To the name scripts and the revival of philology. For of Poggio we may add a number of others they sacrificed their native language, ers, distinguished in this memorable reswhich had made such surprising shoots urrection of ancient literature, and united, in the preceding age, and were content not always indeed by friendship, for their to trace, in humble reverence, the foot- bitter animosities disgrace their professteps of antiquity. For this too they sion, but by a sort of common sympathy lost the hope of permanent glory, which in the cause of learning; Filefio, Lauren., can never remain with imitators, or such tius Valla, Niccolo Niccoli, Ambrogio as trim the lamp of ancient sepulchres. Traversari, more commonly called It Camaldolense, and Leonardo Aretino. + Schmidt, Hist. des Allemands, t. v., p. 520. From the subversion of the Western t He had lent it to a needy man of letters, who pawned the book, which was never recovered. —De * Tiraboschi, p. 101. Sade, t. i., p. 57. t Idem, t. vi., p. 104; and Shepherd's Life of $ Tiraboschi, p. 89. Poggio, p. 106, 110. Roscoe's ILorenzo de' Med Id:m;n, t. -., p 83. De Sade, t. i.: p. 88. ici, p. 38.

Page 545 BrRT I.] STA_IE'uF SOCIETY. 545 Greek lan- Empire, or at least from the intimacy with it to write animadversions language un- time when Rome ceased to pay upon Suidas. Since Greek was spoken,own in obedience to the exarchs of Ra- with considerable purity by the noble the west. venna, the Greek language and and well educated natives of Constanti literature had been almost entirely for- nople, we may wonder that, even as a gotten within the pale of the Latin church. living language, it was not better known A very few exceptions might be found, by the western nations, and especially in especially in the earlier period of the so neighbouring a nation as Italy. Yet niddle ages, while the Eastern emperors here the ignorance was perhaps even retained their dominion over part of more complete than in France or Hlng Italy * Thus Charlemagne is said to land. In some parts indeed of Calabria, iave established a school for Greek at which had been subject to the eastern Osnaburg.t John Scotus seems to have empire till near the year 1100, iet liturgy been well acquainted with the language. was still performed in Greek; and a conAnd Greek characters may occasionally, siderable acquaintance with the language though very seldom, be found in the wri- was of course preserved. But for the trsgs of learned men; such as Lanfranc scholars of Italy, Boccaccio positively or William of Malmsbury.1 It. is said asserts, that no one understood so much that Roger Bacon understood Greek; and as the Greek characters.* Nor is there hli eminent contemporary, Robert Gros- probably a single line quoted from any tete, bishop of Lincoln, had a sufficient poet in that language from the sixth to the fourteenth century. * Schmidt, Hist. des Allemands, t. ii., p. 374. The first to lead the way in restoring Tiraboschi, t. iii., p. 124, et alibi. Bede extols Grecian learning in Europe Its study reTheodoire primate of Canterbury, and Tobias, bish- were the same men who had vives in the op of Rochester, for their knowledge of Greek.- revived the kindred muses of f.urteenth Hist. Eccles., c. 9 and 24. But the former of these century. prelates, if not the other, was a native of Greece. Latium, Petrarca and Boccact Hist. Littorinaire de la France, t. iv., p. 12. cio. Barlaam, a Calabrian by birth, during t Greek characters are found in a charter of 943, an embassy from the court of
Constantinopublished in Martenne, Thesaurus Anecdot., t. i.1 ple in 1335, was persuaded to become the p. 74. The title of a treatise, 7rcVL O\avGV eptil., PI ptof the former, with whom he and the word &soroso;, occur in William of Malms-preceptor bury, and one ortwo others inLanfranc's Constitu- read the works of Plato.t Leontius Pitions. It is said that a Greek psalter was written latus, a native of Thessalonica, was enin an abbey at Tournay about 1105.- Hist. Litt. de couraged some years afterward by Bocla France, t. ix., p. 102. This was, Ishould think, a very rare instance of a Greek manuscript, sacred cacco to glve public lectures upon or profane, copied in the western parts of Europe Homer at Florence. Whatever light before the fifteenth century. But a Greek psalter, be the share of general attention that he written in Latin characters at Milan in the ninth excited, he had the honour of instructing century, was sold some years ago in London. John both these great Italians in his native of Salisbury is said by Crevier to have known a little Greek, and he several times uses technical language. Neither of them perhaps words in that language. Yet he could not have reached an advanced degree of profibeen much more learned than his neighbours; ciency; but they bathed their lips in the since having found the word seta in St. Ambrose, he fountain, and enjoyed the pride of being was forced to ask the meaning of one John Sara- the first w sin, an Englishman, because, says he, none of our t ho paid the homage of a new masters here (at Paris) understand Greek. Paris, posterity to the father of poetry. For indeed, Crevier thinks, could not furnish any Greek some time little fruit apparently resulted scholar in that age except Abelard and Heloise, from their example; but Italy had: imand probably neither of them knew much.-Hist. bibe the desire of acquisitions ir a de l'Univers. de Paris, t. i., p. 259. The ecclesiastical language, it maybe observed, was full of Greek words Latinized. But this pro- some interval, she was abundantly en cess had taken place before the fifth century; and abled to realize. A few years before most of them will be found in the Latin dictiona- the termination of the fourteenth century, ries. A Greek word was now and then borrowed, as more imposing than the correspondent Latin. Thus the English and other kings sometimes called * Nemo est qui Gr~ecas literas narit; at ego in themselves Basileus instead of Rex hoc Latinitiati companion, qua sic omnino Grwca ab. It will not be supposed tnat I have professed to jecit studia, ut etiam non noscamus characteres enumerate all the persons of whose acquaintance literaruim.-Genealogiae Deorum, apud 1lodium die with the Greek tongue some evidence may be Graecis Illustribus, p. 3. found; nor have I ever directed my attention to the t M6m. de Petrarque, t. i., p. 407. subject with that view. Doubtless the list might: Idem, t. i., p. 447; t. iii., p. 634. Hody, de be more than doubled. But, iftimes the num- Graecis Illust., p. 2. Boccace speaks modestly oer could be found, we should still be entitled to say of his own attainments in Greek; etsi non satis that the language was almost unknown, and that plene perceperim, percepenti tamen quantum potnli.,t could have had no influence'n the condition of nec dubium, si permansisset homo ille vagus O'u literature. tius pe.aes nos, quin plenius Der.'eissem, id., v 4 M m

Page 546 546 EUROPE DURING THE MIDDLE AGES. ICJIAF. fl. Emanuel Chrysoloras, whom the Empe- their country's destruction. The counci ror John Paluaologus had previously sent of Florence brought many of them into Italy, and even as far as England, Italian connexions, and held out at least upon one of those unavailing embassies a temporary accommodation of their conby which the Byzantine court strove to flicting opinions. Though the Roman obtain sympathy and succour from Eu- pontiffs did nothing, and probably could rope, returned to Florence as a public have done nothing effectual, for the em. teacher of Grecianliterature.* His school pire of Constantinople, they were very was afterward removed successively to ready to protect and reward the learning Pavia, Venice, and Rome; and during of individuals. To Eugenius IX., to nearly twenty years that he taught in Nicolas V., to Pius II.,
and some other Italy, most of those eminent scholars popes of this age, the Greek exiles were whom I have already named, and who indebted for a patronage which they redistinguished the first half of that century, paid by splendid services in the restoraderived from his instruction their knowl- tion of their native literature throughout edge of the Greek tongue. Some, not Italy. Bessarion, a disputant on the content with being the disciples of Chry- Greek side in the council of Florence, soloras, betook themselves to the source was well content to renounce the docof that literature at Constantinople; and trine of single procession for a cardinal's returned to Italy not only with a more hat; a dignity which he deserved for his accurate insight into the Greek idiom learning, if not for his p4iancy. Theothan they could have attained at home, dore Gaza, George of Trebizond, and Ge- with copious treasures of manuscripts, mistus Pletho, might equal Bessarion in few, if any, of which probably existed merit, though not in honours. They all, previously in Italy, where none had abil- however, experienced the patronage of ity to read or value them; so that the those admirable protectors of letters, Nicprincipal authors of Grecian antiquity olas V., Cosmo de' Medici, or Alfonso may be considered as brought to light by king of Naples. These men emigrated these inquiries, the most celebrated of before the final destruction of the Greek whom are Guarino of Verona, Aurispa, empire; Lascaris and Musuris, whose and Filelfo. The second of these brought arrival in Italy was posterior to that, home to Venice in 1423 not less than two event, may be deemed perhaps still more hundred and thirty-eight volumes.t conspicuous; but as the study of the The fall of that eastern empire, which Greek language was already restored, it State of had so long outlived all other is unnecessary to pursue the subject any learning in pretensions to respect that it farther. Greece. scarcely retained that founded The Greeks had preserved, through upon its antiquity, seems to have been the course of the middle ages, their share providentially delayed till Italy was ripe of ancient learning with more fidelity to nourish the scattered seeds of litera- and attention than was shown in the ture that would have perished a few ages west of Europe. Genius indeed, or any earlier in the common catastrophe. From original excellence, could not well exist the commencement of the fifteenth cen- along with their cowardly despotism and tury, even the national pride of Greece their contemptible theology, more could not blind her to the signs of ap- rupted by frivolous subtleties than that proaching ruin. It was no longer possi- of the Latin church. The spirit of perbble to inspire the European republic, dis- section, naturally allied to despotism tracted by wars and restrained by calcu- and bigotry, had nearly, during one period, lating policy, with the generous fanati- extinguished the lamp, or at least reduced cism of the crusades; and at the council the Greeks to a level with the most ignoof Florence, in 1439, the court and church rant nations of the west. In the age of of Constantinople had the mortification Justinian, who expelled the last Platonic of sacrificing their long-cherished faith, philosophers, learning began rapidly to without experiencing any sensible return decline; in that of Heraclius, it had of protection or security. The learned reached a much lower point of degradaGreeks were perhaps the first to antici- and for two centuries, especially pate, and certainly not the last to avoid, while the worshippers of images were persecuted with unrelenting intolerance, * Hody places the commencement of Chrysolo- there is almost a blank in the annals of ras's teaching as early as 1391, p. 3. But Tirabos- Grecian literature.* But about the midchi, whose research was more precise, fixes it at the end of 1396 or beginning of 1397, t. viii., p. 126. * The authors most conversant with Byzantine t Tiraboschi, t. vi., p. 102. Roscot's Lorenzo learning agree in this. Nevertheless, there is one ie' Medici. vol i., D. 43 manifest difference between the Greek writers.
cheerless intervals of imme- Though, as I have observed, we find in ate terror, there was no

ger longer any en very few instances any original talent, couragement to preserve the monuments
yet it was hardly less important to have of an expiring language, and of a name had compilers
of such erudition as Pho- that was to lose its place among nations.* tius, Suidas, Eustathius,
and Tzetzes. That ardour for the restoration of clasWith these certainly the Latins of the sical
literature which animated Italy in middle ages could not place any names in comparison. They
possessed, to an cius, a Platonic philosopher, mentions the old lan extent which we cannot
precisely appre- guage as distinct from that which was vernacular, ciate, many of those poets,
historians, 7IV apXata tva yXwrrav trep 7nY IdlOw7rv (LS)XSOVaL.-Du Cange, ibid., p. 11. It
is well known that the popand orators of ancient Greece, whose ular, or political verses of
Tzetzes, a writer of the loss we have long regretted, and must twelfth century, are accentual;
that is, are to be continue to deem irretreivable. Great read, as the modern Greeks do, by


treating every havoc, however, was made in the libraries acute or circumflex syllable as long,
without the capture by the gard to its original quantity. This innovation,
which must have produced still greater confusion Latins; an epoch from which a rapid de- of
metrical rules than it did in Latin, is much older dine is to be traced in the literature of than the
age of Tzetzes; if, at least, the editor of he eastern empire. Solecisms and bar- some notes
subjoined to Meursius's edition of the:arious terms, which sometimes occur in Themata of
Constantine Porphyrogenitus (Lug-he old Byzantine writers, are said to de- duni, 1617) i right
in aemeror, who describing certain 959 These form the style of the fourteenth and fif- verses are
regular accentual trochaics. But I beteenth centuries.t The Turkish ravages lieve they have
since been given to Constantine Manasses, a writer of the eleventh century. the worst period,
such as the eighth century, and According to the opinion of a modern traveller those who
 correspond to them in the west. Syn. (Hobhouse's Travels in Albania, letter 33), the cellus, for
example, is of great use in chronology, chief corruptions which'distinguish the Romainc because
he was acquainted with many ancient his- from its parent stock, especially the auxiliary verbs,
tories now no more. But Bede possessed nothing are not older than the capture of
Constantinople by which we have lost; and his compilations are con- Mahomet II. But it seems
difficult to obtain any sequently altogether unprofitable. The eighth cen- satisfactory proof of
this; and the auxiliary verb is tury, the saeculum iconoclasticum of Cave, low as so natural and
convenient, that the ancient Greeks it was in all polite literature, produced one man, may
probably, in some of their local idioms, have St. John Damascentus, who has been deemed the
fallen into the use of it; as Mr. H. admits they did founder of scholastic theology, and who at
least set with respect to the future auxiliary 9eXw. See the example of that style of reasoning in
the East. some instances of this in Lesbonax reps axaloarov, This person, and Michael Psellus,
a philosopher ad finem Ammonii, cur& Valckenanr. of the eleventh century, are the only
considerable * Photius (I write on the authority of M. Heeren) men as original writers in the
annals of Byzantine quotes Theopompus, Arrian's history of Alexan. literature. der's
Successors, and of Parthia, Ctesias, Agathar* The honour of restoring ancient or heathen lit-
cides, the whole of Diordorus Siculus, Polybius, erature is due to the Cesar Bardas, uncle and
min- and Dionysius of Halicarnassus, twenty lost ora. ister of Michael II. Cedrenus speaks of it
in the tions of Demosthenes, almost two hundred of Lysfollowing terms: e7rcEIXEIn3q 6 Kat
riS EFco aolas (ov ias, sixty-four of Iseus, about fifty of Hyperides. yap EK VOXOU Xpo9vv
7rapaPPEtaa, Ka, erpO5 rT ul'ev Heeren ascribes the loss of these works estogether IXit
Xwoprlaaaa 7Tp Tryv KpaTroV'rTv apepyq caL aeaOsa), to the Latin capture of
Constantinople, no writer 3tarpt6a; eKaTar rov E7Slrtar7lSv aboptatS, ov pv ieXXwaw
subsequent to that time having quoted them., — Inrp rep ervXE, rne 6' et raaawv rT Croxov
0XoooQitaS Kar' Essai sur les Croisades, p. 413. It is difficult, howavra Ta aariXea a ev a'p
Mayvavp.-' Kar obrwo E6 EEVOv ever, not to suppose. that some part of the destruc.
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548 EUROPE DURING THE MIDDLE AGES CHAP. 1X Literature the first part of the fifteenth tions that have so eminently cor tributed improved century, was by no means cornm- to the literary reputation of this country, beyond mon to the rest of Europe. Nei- and that still continue to exercise so con. Itlay. ther England, nor France, nor spicuous an influence over her taste and Germany seemed aware of the approach- knowledge, as the two great schools of ing change. We are told that learn- grammatical learning, Winchester and ing, by which I believe is only meant Eton; the one founded by William of the scholastic ontology, had begun to Wykeham, bishop of Winchester, in 1373, decline at Oxford from the time of the other, in 1432, by King Henry the Edward III.* And the fifteenth centu- Sixth.* ry, front whatever cause, is particularly But while the learned of Italy were ea barren of writers in the Latin language. gerly exploring their recent ac- InventionThe study of Greek was only introduced quisitions of manuscripts, deci- of printing by Grocyn and Linacer under Henry VII., phered with difficulty, and slowly circulaand met with violent opposition in the ted from handto hand, a few obscure Geruniversity of Oxford, where the unlearned mans had gradually perfected the most imparity styled themselves Trojans, as a portant discovery recorded in the annals pretext for abusing and insulting the of mankind. The invention of printing, so scholars.t N~ or did any classical work far from being the result of philosophical proceed from the respectable press of sagacity, does not appear to have been Caxton. France, at the beginning of the suggested by any regard to the higher fifteenth age, had several eminent theo- branches of literature, or to bear anylogians; but the reigns of Charles VII. other relation than that of coincidence to and Louis XI. contributed far more to their revival in Italy. The question, why her political than her literary renown. it was struck out at that particular time, A Greek professor was first appointed at must be referred to that disposition of Paris in 1458, before which time the lan- unknown causes which we call accident. gulage had not been publicly
taught, and Two or three centuries earlier, we cannot was little understood. Much less had but acknowledge the discovery would Germany thrown off her ancient rude- have been almost equally acceptable.

_Enes Sylvius indeed, a delibera-th But the invention of paper seems to have ate flatterer, extols every circumstance naturally preceded those of engraving in the social state of that country; but and printing. It is generally agreed Campano, the papal legate at Ratisbon in that playing cards, which have been 1471, exclaims against the barbarism of traced far back in the fourteenth century a nation where very few possessed any gave the first notion of taking off impres earning, none any elegance._ Yet the sions from engraved figures upon wood progress of intellectual cultivation, at The second stage, or rather second appii least in the two former countries, was cation of this art, was the representation, uniform, though silent; libraries became of saints and other religious devices, sev more numerous, and books, after the eral instances of which are still extant. happy invention of paper, though still Some of these are accompanied with an very scarce, might be copied at less ex- entire page of illustrative text, cut into pense. Many colleges were founded in the same wooden block. This process the English as well as foreign universi- is indeed far removed from the invention ties during the fourteenth and fifteenth that has given immortality to the names r:enturies. Nor can I pass over institu- of Fust, Scheeffer, and Guttenburg, yet it --- --- Wood's sof., vol.i 537. probably led to the consideration of Wood's Antiquities of Oxford, vol. i., p. 537.means whreby it might be redered less Roper's Vita Mort, ed. Hearne, p. 75. Roper's Vita Mori, ed. Hearne, p. 75. means whereby it might be rendered less t Crevier, t. iv., p. 243; see too p. 46. operose and inconvenient. Whether _Incredilibisingeniorum barbaries est; rarissimi moveable wooden characters were ever literas n6runt, nulli elegantiam._-Papiensis Epis- employed in any entire work is very questolae, p. 377. Campano's notion of elegance was tionable; the opinion that refrred their ridiculous enough. Nobody ever carried farther the pedantic affectation of avoiding modern terms use to Laurence Coster of Haarlem not in his latinity. Thus, in the life of Braccio da Montone, he renders his meaning almost unintelligible * A letter from Master William Paston at Eton by excess of classical purity. Braccio boasts se (Paston Letters, vol. i., p. 299) proves that Latin nunquam deorum immortalium templa violasse. versification was taught there as early as the be Troops committing outrages in a city are accused ginning of Edward IV.’s reign. It is true treat the virgines vestales incestssee. In the terms of specimen he rather proudly exhibits does not muck treaties, he employs the old Roman forms; exerci- differ from what we denominate nonsense verses tum trajicito-oppida pontificis sunto, &c. And But a more material observation is, that the sons with a most absurd pedantry, the ecclesiastical of country gentlemen living at a considerable die state is called Romanum imperium._Campani tance were already sent to public schools for gram Vita Braceii, in Muratori, Script. Rer. Ital., t. xix. matical education.
manuscripts, they commonly called the Mazarine Bible, a were like a new mechanical power in copy having been discovered in the library machinery, and gave a wonderfully acclivity to the intellectual cultMazarin at Paris. This is supposed to tivation of mankind. From the era of have been printed between the years these first editions proceeding from the 1450 and 1455.* In 1457 an edition of Spiras, Zarot, Janson, or Sweynheim, the Psalter appeared, and in this the in- and Pannartz, literature must be deemed vention was announced to the world in a to have altogether revived in Italy. The boasting colophon, though certainly not sun was now fully above the horizon, unreasonably bold.t Another edition of though countries less fortunately circumthe Psalter, one of an ecclesiastical book, stanced did not immediately catch his Durand's account of liturgical offices, one beams; and the restoration of ancient of the Constitutions of Pope Clement V., learning in France and England cannot and one of a popular treatise on general be considered as by any means effectual science, called the Catholicon, fill up the even at the expiration of the fifteenth interval till 1462, when the second Mentz century. At this point, however, I close Bible proceeded from the same printers.1 the present chapter. The last twenty This, in the opinion of some, is the ear- years of the middle ages, according to liest book in which cast types were em- the date which I have fixed for their terployed; those of the Mazarine Bible hav- mination in treating of political history. ing been cut with the hand. But this is might well invite me by their brilliancy a controverted point. In 1465, Fust and to dwell upon that golden morning of Schceffer published an edition of Cicero's Italian literature. But, in the history of Offices, the first tribute of the new art to letters, they rather appertain to the modpolite literature. Two pupils of their ern than the middle period; nor would it school, Sweynheim and Pannartz, mi-become me to trespass upon the exgrated the same year into Italy, and hausted patience of my readers by reprint Donatus's grammar, and the works peating what has been so often and so reo of Lactantius, at the monastery of Subi- cently told, the story of art and learning ac in the neighbourhood of Rome.- that has employed the comprehensive research of a Tiraboschi, a Ginguene, and * De Bure, t. i., p. 30. Several copies of this a Roscoe. book have come to light since its discovery. t Idem, t. i., p. 71. * Sanuto mentions an order of the ser ate It: Mem. de l'Acad. des Inscriptions, t. xiv., p. 1469, that John of Spira shoAuld print the epistles 265. Another edition of the Bible is supposed to of Tully and Pliny for five years, and that no one nave been printed by Pfister at Bamberg in 1459. else should do so.-Script. Rerum Italic., t. xxLi. o Tiraboschi, t. vi., p. 140. p. 1189.
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