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XXX.19 On compositions among barbarian peoples

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

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As it is impossible to go very far into our political law without perfect knowledge of the laws and practices of the Germanic peoples, I shall pause a moment to inquire into those practices and those laws.

It appears from Tacitus that the Germans recognized only two capital crimes : they hanged traitors, and drowned cowards ; these were the only crimes that were public. When a man had done another man some harm, the family of the offended or injured person entered into the quarrel, and the wrath was appeased by a satisfaction. [1] This satisfaction was for the offended party, if he could accept it, and the family, if the offense or injury was common to them, or if by the death of the person offended or injured the satisfaction devolved to them.

The way Tacitus talks about them, these satisfactions came about by mutual agreement between the parties ; in the codes of the barbarian peoples, these satisfactions are called compositions.

I find only the law of the Frisians that has left the people in this situation where each enemy family was, so to speak, in the state of nature, and where, without being restrained by any political or civil law, it could at its whim exercise its vengeance until it had been satisfied. [2] This law was itself tempered : they made it so that the person whose life was being demanded should have peace in his house, peace going to and coming from church and from the place where court was held. [3]

The compilers of the Salic laws cite an ancient practice of the Franks [4] by which someone who had exhumed a corpse in order to strip it was banished from the society of men until the family consented to let him return ; and since until that time everyone, even his wife, was prohibited from giving him bread or taking him into their house : such a man was with respect to the others, and the others with respect to him, in the state of nature, until that state had ceased through composition.

With that exception, we see that it occurred to the wise men of the various barbarian nations to do by themselves what it was too long and dangerous to await from the mutual convention of the parties. They took care to set a just price on the composition that should be received by the victim of some harm or injury. All these barbarian laws show on this subject an admirable precision : they shrewdly distinguish [5] the cases, they weigh the circumstances ; the law puts itself in the place of the person offended, and demands for him the satisfaction which in a moment of calm he would himself have demanded.

It was by the establishment of these laws that the German peoples emerged from that state of nature where it seems they still were in the time of Tacitus.

Rotharis declared in the law of the Lombards [6] that he had increased the compositions of the ancient custom for wounds, so that, the wounded man being satisfied, the enmities could cease ; indeed the Lombards, a poor people, having enriched themselves by the conquest of Italy, the ancient compositions were becoming worthless, and reconciliations were no longer made. I do not doubt that this consideration obliged the other chiefs of conquering nations to make the various codes of laws we have today.

The principal composition was that which the murderer was to pay to the dead person's family. A difference in stations called for a difference in the compositions [7] : thus, in the law of the Angles, the composition came to six hundred sous for the death of an atheling, [8] two hundred for that of a free man, and thirty for a serf. The amount of the composition fixed on the head of a man thus constituted one of his great prerogatives ; for in addition to the distinction it lent to his person, it established, among violent nations, a greater security for him.

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The law of the Bavarians [9] makes us see this clearly : it gives the names of the Bavarian families who received twice the composition because they were the first ones after the Agilolfingi. [10] The Agilolfingi were of the ducal lineage, and the duke was chosen from among them ; they had four times the composition. The composition for the duke surpassed by a third the one fixed for the Agilolfingi : "because he is a duke," says the law, "we give him a greater honor than to his family."

All these compositions had a set price in silver. But as these peoples, especially for as long as they remained in Germania, virtually had none, they could pay in livestock, grain, furnishings, weapons, dogs, hunting birds, lands, etc. [11] Often the law even set the value of these things [12] : which explains how, with so little silver, there were so many pecuniary penalties among them.

These laws thus strove to define with precision the difference of wrongs, injuries, and crimes, so every man could know exactly to what point he was harmed or offended, so he could know exactly the reparation he should receive, and especially that he was not to receive more.

From this point of view, we can understand that the man who took vengeance after receiving satisfaction was committing a grave crime. That crime entailed no less a public offense than a private offense : it was disdain for the law itself. This is the crime which the legislators did not fail to punish. [13]

There was another crime which was regarded as especially dangerous when these peoples lost in civil government something of their spirit of independence, and the kings strove to bring better political order to the state : that crime was being unwilling to make, or unwilling to accept, satisfaction. [14] We see in various barbarian codes of laws that the legislators made it mandatory. [15] In effect, the man who refused to receive satisfaction meant to preserve his right to vengeance ; he who refused to make it was leaving his right of vengeance to the man offended : and that is what the wise men had reformed in the institutions of the Germans, which encouraged composition but did not impose it.

I have just mentioned a text in the Salic law where the legislator left it to the freedom of the offended party to accept the satisfaction or not ; this is the law that denied human intercourse to the man who had stripped a corpse until such time as the family, by accepting the satisfaction, had asked that he be allowed to live among men. [16] Out of respect for things sacred, those who drew up the Salic laws did not touch the ancient practice.

It would have been unjust to grant a composition to the family of a robber killed in the act of stealing, or to the family of a wife who had been sent away after a separation for the crime of adultery. The law of the Bavarians granted no composition in such cases, and punished families that pursued vengeance for them. [17]

It is not rare to find in the Bavarian law codes compositions for involuntary acts. The law of the Lombards is almost always reasonable ; it would in this case have him compose according to his generosity, and the family no longer be able to pursue vengeance.

Clotaire II made a very wise decree : he forbade the man who had been robbed from receiving his composition secretly and without the judge's order. [18] We shall presently see the reason for this law.

[1] *Suscipere tam inimicitias, seu patris seu propinqui, quam amicitias necesse est : nec implacabiles durant ; luitur enim etiam homicidium certo armentorum ac pecorum numero, recipitque satisfactionem universa domus.* Tacitus, *De moribus Germanorum* [ch. xxi].

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[2] See this law, tit. 2, on murders, and the addition of Wulemar on thefts.

[3] *Additio sapientum*, tit. 1, §1.

[4] *Lex Salica*, tit. 58, §1 ; tit. 17, §3.

[5] The Salic laws are admirable in this respect. See especially titles 2, 3, 4, 5, 6, and 7, which regard thefts of animals.

[6] Book I, tit. 7, §15.

[7] See *Lex Angliorum*, tit. 1, §1, 2, 4 ; *Ibid.*, tit. 5, §6 ; *Lex Baiuvariorum*, tit. 1, ch. viii–ix, and *Lex Frisionum*, tit. 15.

[8] [A prince or lord in old England.]

[9] Tit. 2, ch. xx.

[10] Hozidra, Ozza, Sagana, Habilingua, Anniena, *ibid.*

[11] Thus the law of Ina valued life at a certain sum of money or a certain portion of land. *Leges Inæ Regis, titulo de Villico Regio, de priscis Anglorum Legibus*, Cambridge, 1644.

[12] See law of the Saxons, which sets this sum even for several peoples, ch. xviii. See also law of the Ripuarians, tit. 36, §11, law of the Bavarians, tit. 1, §10–11. *Si aurum non habet, donet alium pecuniam, mancipia, terram*, etc.

[13] See *Leges Langobardorum*, book I, tit. 25, §21 ; *ibid.*, book I, tit. 9, §8, and 34 ; *ibid.*, §38, and capitulary of Charlemagne, year 802, ch. xxxii, containing an instruction given to those whom he sent into the provinces.

[14] See in Gregory of Tours, [book VII, ch. xlvii](#), the detail of a trial where one party loses half the composition he had been awarded for having taken his own justice, instead of accepting the satisfaction, whatever excess it had since suffered.

[15] See law of the Saxons, ch. iii ; §4, *Leges Langobardorum*, book I, tit. 37, §1–2 ; and law of the Germans, tit. 45, §1–2. This last law allowed taking one's own justice at once and in the first impulse. See also the capitularies of Charlemagne, year 779, ch. xxii, year 802, ch. xxxii, and the same, year 805, ch. v.

[16] The compilers of the laws of the Ripuarians seem to have modified this : see tit. 85 of those laws.

[17] See decree of Tassillon, *De popularibus legibus*, art. 3, 4, 10, 16, 19, law of the Angles, tit. 7, §4.

[18] *Pactus pro tenore pacis inter Childebertum and Clotarium, anno 593* and *Decretio Clotarii II. Regis circa annum 595*, ch. xi.