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XXX.20 On what has since been called the justice of lords

- 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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Besides the composition that had to be paid to the family for murders, harm or injuries, there was also a certain duty to pay which the barbarian law codes call *fredum*. [1] We have no term to express it in our modern languages ; nevertheless I shall speak at length about it ; and to communicate the idea, I shall say it is a recompense for the protection granted against the right of vengeance.

Among these violent nations, dispensing justice was nothing more than granting someone who had committed an offense one's protection against the vengeance of the person who was its victim, and obliging the latter to accept the satisfaction which was owed him ; so among the Germans, unlike all other peoples, justice was dispensed to protect the criminal against the man he had offended.

The barbarian codes of law offer us cases where these *freda* had to be demanded. In those where the family could not take any vengeance, they give no *fredum* ; indeed, where there was no vengeance there could be no duty for protection against vengeance. Thus, in the law of the Lombards, if someone chanced to kill a free man, he paid the value of the dead man without the *fredum*, because, having killed him involuntarily, it was not the case where the family had a right to vengeance. [2] Thus in the law of the Ripuarians, when a man was killed by a piece of wood or a man-made artifact, the artifact or the wood were held guilty, and the family took them for their use, without being able to require any *fredum*. [3]

Likewise, when an animal had killed a man, the same law established a composition without the *fredum*, because the dead man's family were not offended. [4]

Finally, by the Salic law, a child who had committed some fault before the age of twelve paid the composition without the *fredum* [5] : as he could not yet bear arms, he was not in the case where the injured party or his family could require vengeance.

It was the guilty party who paid the *fredum*, for the peace and security which he had lost through the excesses he had committed, and which he could recover through protection ; but a child did not lose that security ; he was not a man, and could not be excluded from the society of men.

This *fredum* was a local duty for the man who was judge in the territory. [6] The law of the Ripuarians, however, forbade him to require it himself ; it called for the party which had won its case to receive it and take it to the treasury, so that peace, says the law, might be eternal among Ripuarians. [7]

The amount of the *fredum* was proportionate to the amount of protection [8] : thus the *fredum* for the king's protection was higher than that granted for the protection of the count and the other judges.

I can already see the beginning of the justice of lords. The fiefs took in large territories, as can be seen in numberless documents. I have already proven that the kings levied nothing on the lands which had been ceded to the Franks ; even less could they reserve to themselves duties on the fiefs ; those who obtained them had in this regard the most extensive enjoyment : they got all the fruits and all the emoluments from them ; and as one of the most considerable [9] was the judicial profits (*freda*) that one received through the practices of the Franks, it followed that whoever had the fief also had the justice that was exercised only by compositions to the families and profits to the lord ; it was nothing other than assuring that the compositions of the law were paid, and demanding the fines of the law.

We see from the formulas that contain the confirmation or transmission in perpetuity of a fief in favor of a leude or fidèle, [10] or of the privileges of fiefs in favor of churches, [11] that the fiefs had this right. That appears again in an

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infinite number of charters [12] which include a prohibition to judges or officers of the king to enter the territory to exercise any act of justice whatsoever, and there demand any emolument of justice whatsoever. Once the royal judges could no longer require anything in a district, they no longer entered that district ; and those to whom this district remained exercised the functions which the former had exercised.

Royal judges are forbidden to oblige the parties to give bail for appearing before them : it was thus up to the person who received the territory to require it. It is stated that the king's envoys could no longer ask for lodging ; indeed they no longer had any function there.

Justice was therefore, in the ancient fiefs and in the new fiefs, a right inherent in the fief itself, a lucrative right which was part of it. That is why in all times it has been so regarded, whence arose the principle that justice in France is patrimonial.

Some have believed that the origin of these jurisdictions lay in the freeing of their serfs by the kings and lords. But the Germanic nations and those which have descended from them are not the only ones which had emancipated slaves, and they are the only ones which established patrimonial courts. Moreover, the formulæ of Marculfus show us free men dependent on these courts in the early time [13] ; the serfs were then subject to them, because they found themselves in the territory ; and they were not at the origin of fiefs just because they were absorbed into the fief.

Others have taken a shorter path : the lords have usurped the jurisdictions, they said, and that is all there is to say. But are the peoples descended from Germania the only ones on earth who have usurped the rights of princes ? History teaches us sufficiently that other peoples have made enterprises against their sovereigns ; but we do not see arising from them what have been called the courts of lords. It was therefore in the stock of practices and customs of the Germans that their origin was to be sought.

I beg the reader to look at the manner in which Loyseau supposes the lords to have proceeded to form and usurp their various courts. [14] They would have to have been the most refined men on earth, and to have stolen, not as warriors pillage, but as village judges and prosecutors rob each other. We would have to say that these warriors, in all the separate provinces of the realm, and in so many realms, had made a general political system. Loyseau makes them reason the way he himself reasoned in his study.

I shall repeat : if justice was not a dependency of the fief, why do we see everywhere that the service of the fief was to serve the king or the lord, both in their courts and in their wars ? [15]

[1] When the law did not set it, it was ordinarily the third of what was given for composition, as appears in the law of the Ripuarians, ch. lxxxix, which is explained by capitulary III of the year 813, Baluze ed., vol. I, p. 512.

[2] Book I, tit. 9, §17, Lindembrock ed.

[3] Tit. 70.

[4] Tit. 46. See also *Leges Langobardorum*, book I, ch. xxi, §3, Lindembrock ed. : *si caballus cum pede*, etc.

[5] Tit. 28, §6.

[6] As appears from the decree of Clotaire II in the year 595. *Fredus tamen Judici in cujus Pago est, reservetur.*

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[7] Tit. 89.

[8] *Capitulare incerti anni*, ch. lvii, in Baluze, vol. I, p. 515. And we must note that what is called *fredum* or *faidi* in documents of the first dynasty is called *bannum* in the second, as appears in the capitulary *De partibus Saxoniae* of the year 789.

[9] See Capitulary of Charlemagne, *De villis*, where he lists these *freda* among the grand revenues of what he calls *villæ* or *domaines du roi*.

[10] See formulæ 3, 4, and 17, book I of Marculfus.

[11] *Ibid.*, formulæ 2, 3, and 4.

[12] See collections of these charters, especially the one which is at the end of the fifth volume of *Historiens de France of the Benedictine Fathers*.

[13] See 3rd, 4th, and 14th of book I and the charter of Charlemagne, in the year 771, in Martenne, vol. I, Anecdote Collect., 11. *Præcipientes jubemus ut ullus Judex publicus homines ipsius ecclesie and monasterii ipsius morbacensis tam ingenuos quam and servos, and qui super eorum terras manere*, etc.

[14] *Traité des Justices de Village*.

[15] See Mr. du Cange, at the word *Hominium*.