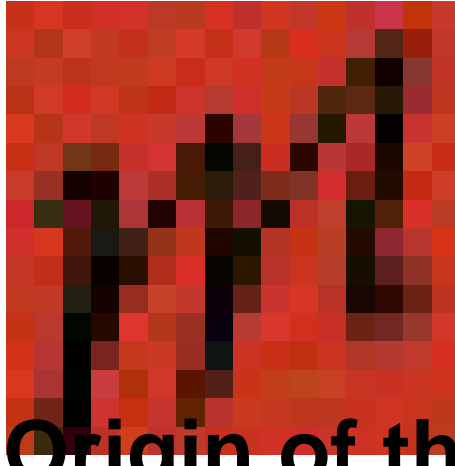


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XXVIII.20 Origin of the point of honor

- The Spirit of Law - Book XXVIII. On the origin and transformations of the civil laws among the French -

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We find enigmas in the barbarians' codes of laws. The law of the Frisians [1] grants only one-half sou of compensation to a man who has been beaten with a staff, and there is no wound so small that it does not award more. By the Salic law, if a freeborn man laid three blows on another freeborn, he paid three sous ; if he drew blood, he was punished as if he had wounded him with a sword, and he paid fifteen sous : the penalty was proportionate to the size of the wounds. The law of the Lombards establishes different compensations for one blow, or two, three, or four. [2] Today one blow is as good as a hundred thousand.

The constitution of Charlemagne inserted into the law of the Lombards would have those it allows to duel fight with staffs. [3] That might have been in deference to the clergy ; perhaps, since they were extending the practice of combats, they wanted to make them less sanguinary. The capitulary of Louis the Debonaire [4] allows the choice of fighting with a staff or with weapons. [5] Subsequently, serfs alone fought with staffs.

I can already see the particular articles of our point of honor arising and taking shape. The accuser would first declare before the judge that some person had committed such-and-such an act, and the latter would reply that he was a liar, [6] at which point the judge ordered a duel. The maxim became established that when anyone had been called a liar, a fight was mandatory.

When a man had declared that he would fight, he could no longer get out of it, and if he did, he was sentenced to a penalty. [7] Whence followed this rule : that when a man had given his word, honor no longer allowed him to retract it.

Gentlemen fought among themselves on horseback and with their weapons, and commoners fought on foot with a staff. [8] From this it followed that the staff was the instrument of insults, [9] because a man who had been beaten with one had been treated like a commoner.

Only commoners fought with their faces uncovered [10] ; thus they were the only ones who could receive blows to the face. A slap became an insult that had to be purged with blood, because a man who had received it had been treated like a commoner.

The German peoples were not less sensitive than us to the point of honor ; they were even more so. Thus the most distant relatives took an acute interest in insults, and all their codes are based on that. The law of the Lombards would have him who, accompanied by his servants, goes to beat a man who is unexpectant in order to mock and humiliate him, [11] pay half the compensation he would have owed if he had killed him, and if, for the same reason, he binds him, he pays three-quarters of the same compensation. [12]

Let us say, then, that our fathers were extremely sensitive to affronts, but that affronts of a particular sort - receiving blows from a certain instrument on a certain part of the body, and given in a certain manner - were not yet known to them. All of that was included in the affront of being beaten ; and in that case, the magnitude of the excesses constituted the magnitude of the outrage.

[1] *Additio Sapientium wilemari*, tit. 5.

[2] Book II, tit. 5, §23.

[3] Book II, tit. 5, §23.

[4] Appended to the Salic law on the year 819.

[5] See Beaumanoir, ch. lxiv, p. 323.

[6] *Ibid.* p. 329.

[7] See Beaumanoir, ch. iii, p. 25 and 329.

[8] See on the combattants' weapons Beaumanoir, ch. lxi, p. 308, and chap. lxiv, p. 328.

[9] Among the Romans, cudgel blows were not degrading : *Lege ictus fustium de iis qui notantur infamia.*

[10] They had only the shield and the cudgel. Beaumanoir, ch. lxiv, pag. 328.

[11] Book 1, tit. 6, §1.

[12] *Ibid.*, §2.