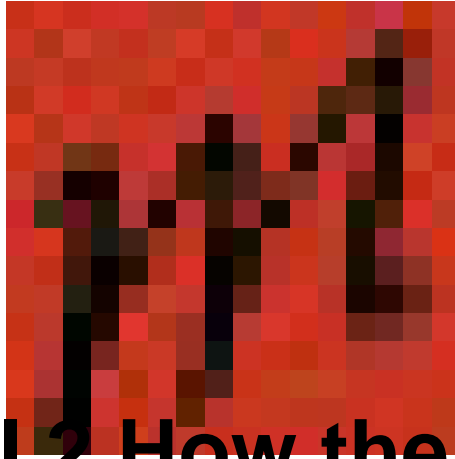


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# XXXI.2 How the civil government was reformed

- The Spirit of Law - Book XXXI. Theory of feudal laws among the Franks, in their relation to the transformations in their monarchy -

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We had seen so far the nation showing signs of impatience and flightiness about the choice or the conduct of its masters ; we had seen it settle the disputes of its masters amongst themselves, and impose on them the necessity of peace. But what we had not yet seen, the nation now did : it cast its eyes on its present situation, examined its laws dispassionately, addressed their insufficiency, halted the violence, and regulated power.

The firm, bold, and insolent regencies of Fredegund and Brunehilde had not so much surprised this nation as alerted it. Fredegund had defended her cruelties with her cruelties themselves : she had justified poison and assassinations with poison and assassinations ; she had so conducted herself that her attacks were even more private than public. Fredegund did more evil, Brunehilde caused more to be feared. In this crisis, the nation was not content to impose order on the feudal government ; it also wished to assure its civil government, for it was even more corrupt than the other ; and that corruption was all the more dangerous that it was older, and had more to do, in a way, with abuse of morals than with abuse of laws.

The history of Gregory of Tours and other documents show us, on the one hand, a fierce and barbarous nation, and on the other kings who were not less so. Those princes were murderous, unjust, and cruel, because that is what the whole nation was. If Christianity seemed sometimes to moderate them, it was only through the terrors that Christianity gives to the guilty : the churches defended themselves against them thanks to the miracles and wonders of their saints. The kings were not sacrilegious, because they dreaded punishments for sacrilege ; but aside from that, they committed, whether out of anger or in cold blood, all sorts of crimes and injustices, because those crimes and injustices did not show them the hand of the deity so present. The Franks, as I have said, put up with murderous kings because they were murderers themselves ; they were not shocked by the injustices and pillages of their kings, because they were pillagers and unjust like them. There were many laws instituted, but the kings would nullify them with certain letters called *precepts* that overturned those very laws [1] ; they were more or less like the rescripts of the Roman emperors, whether because the kings had taken this practice from them, or because they had found it in their own basic nature. We see in Gregory of Tours that they committed murders in cold blood, and had the accused put to death without even being heard ; they issued precepts for making illicit marriages, and others for transferring successions [2] ; they issued them to suppress the right of relatives ; they issued them for marrying nuns. They did not in truth make laws entirely on their own, but they suspended the practice of those already made.

The constitution of Clotaire redressed all the grievances ; no one could any longer be condemned without being heard [3] ; relatives were always to inherit according to the order established by the law [4] ; all precepts for marrying girls, widows, or nuns were voided, and those who obtained and made use of them were severely punished. [5] We might know more exactly what he ordered about these precepts if article 13 of this decree and the two following ones had not perished over time ; we have only the first words of that article 13, which command that precepts be observed, which cannot be understood for those he had just abolished by the same law. We have another constitution of the same prince which relates to his decree and likewise corrects point by point all the abuses of the precepts. [6]

It is true that Mr. Baluze, finding this constitution undated and missing the name of the place where it was issued, has attributed it to Clotaire I. It is by Clotaire II. I shall give three reasons. 1st. It is said therein that the king will maintain the immunities granted to the churches by his father and grandfather. [7] What immunities could Childeric, grandfather of Clotaire I, have granted to the churches, he who was not a Christian, and who lived before the monarchy had been founded ? But if we attribute this decree to Clotaire II, we will find his grandfather was Clotaire I himself, who made huge donations to the churches to expiate the death of his son Cramne, whom he had ordered burned with his wife and children.

2nd. The abuses which this constitution corrects subsisted after the death of Clotaire I, and were even taken to their peak during the weakness of Gotram's reign, the cruelty of Chilperic's, and the odious regencies of Fredegund and

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Bruneilde. Now how could the nation have allowed such solemnly proscribed grievances without ever having protested at the constant return of those grievances ? How would it not have done then what it did when, Childeric II [8] having resumed the earlier forms of violence, it pressed him to order that, in judgments, the law and customs should be followed, as they once had been ? [9]

Finally, this constitution made to redress the grievances cannot concern Clotaire I, because under his reign there were no complaints in the realm in this regard, and his authority was well affirmed, especially at the time where we place this constitution, whereas it conforms very well to the events that took place under the reign of Clotaire II, which caused a revolution in the political state of the realm. History must be illuminated by the laws, and the laws by history.

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[1] They were orders which the king sent to judges, to do or allow certain things that were against the law.

[2] See Gregory of Tours, book IV, [p. 227](#) [*i.e.*, book V]. History and the charters are full of this ; and the extent of these abuses appears especially in the constitution of Clotaire, inserted in the Baluze edition of the capitularies, p. 7, given in order to reform them.

[3] Art. 22.

[4] *Ibid.*, art. 6.

[5] *Ibid.*, art. 18.

[6] In the Baluze edition of the capitularies, vol. I, p. 7.

[7] I have spoken in the preceding book of these immunities, which were concessions of rights of justice, and contained an order to royal judges not to exercise any function in the territory, and were equivalent to the elevation or concession of a fief.

[8] He began to reign about 670.

[9] See *Life of Saint Leger*.