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XXXI.8 How allods were changed into fiefs

- 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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XXXI.8 How allods were changed into fiefs

The manner of changing an allod into a fief is found in a formula of Marculfus [1] One gave his land to the king ; he gave back it as usufruct or benefice to the donor, and the donor named his heirs to the king.

To discover the reasons they had for thus denaturing one's allod, I have to search as if in the deep the ancient prerogatives of that nobility which is covered in eleven centuries of dust, blood, and sweat.

Those who held fiefs had some very great advantages. Composition for the injuries done to them was greater than that of free men. It appears in the formulas of Marculfus that it was a privilege of the king's vassal that anyone who killed him would pay six hundred sous in composition. This privilege was established by the Salic law [2] and by the Ripuarian law ; and while these two laws were directing six hundred sous for the death of the king's vassal, they were awarding [3] only two hundred for the death of a freeborn, Frank, barbarian, or man living under the Salic law, and only one hundred for a Roman.

That was not the only privilege of the king's vassals. We have to realize that when [4] a man was summoned to trial and did not show up or obey the judges' ordinances, he was challenged before the king ; and if he persisted in his contumacy he was excluded from the king's protection, [5] and no one could take him in, nor even give him bread ; now if he was of ordinary station, his property was confiscated [6] ; but if he was a vassal of the king, it was not. [7] The first, by his contumacy, was assumed to be convicted of the crime, and not the latter ; the former in the slightest crimes was subjected to the ordeal of boiling water, [8] to which the latter was condemned only in the case of murder [9] ; finally, a vassal of the king could not be forced to swear in court against another vassal. [10] These privileges always increased ; and the capitulary of Carloman does this honor to vassals of the king, that they cannot themselves be obliged to swear, but only through the mouth of their own vassals. [11] Moreover, when a man who had the honors had failed to join the army, his punishment was to abstain from flesh and wine for as long as he had been absent from the service ; but the free man [12] who had failed to follow the count paid a composition of sixty sous, [13] and was placed in servitude until he had paid it.

It is thus easy to think that the Franks, and even more the Romans, tried to become vassals of the king if they were not ; and in order not to be deprived of their domains, they thought up the practice of giving their allod to the king, receiving it from him as a fief, and naming their heirs to him. This practice continued on, and was especially pertinent in the disorders of the second dynasty, where everyone needed a protector, and wanted to ally with other lords, [14] and enter, so to speak, into the feudal monarchy, because they no longer had a political monarchy.

This continued into the third dynasty, as we see from several charter, [15] either by donating one's allod, and taking it back in the same act, or by declaring it an allod, and having it recognized as a fief. Such fiefs were called *fiefs of resumption*.

That does not signify that those who held fiefs governed them as good patresfamilias ; and while free men eagerly sought to have fiefs, they treated this sort of asset as usufructs are administered today. That is what led Charlemagne, the most vigilant and attentive prince we have had, to make many statutes to prevent fiefs from being degraded in favor of one's properties. [16] That proves only that in his time most of the benefices were still for life, and that consequently men took better care of their allods than of their benefices ; but that does not mean they did not prefer even more being a vassal of the king than a free man. One could have reasons for disposing of a certain particular portion of a fief, but no one wanted to lose his very dignity.

I also quite realize that Charlemagne complains in one capitulary that in some places there were men who donated their fiefs as property, and then bought them back as property. [17] But I am not saying that they did not prefer a property to an usufruct ; I am saying only that when one could make an allod into a fief that would pass on to one's

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heirs, which is the case of the formula of which I have spoken, there were great advantages in doing so.

[1] Book I, formula 13.

[2] Tit. 44. See also titles 66, §3-4 and title 74.

[3] See *Lex Ribuarica*, tit. 7, and *Lex Salica*, tit. 44, art. 1 and 4.

[4] Salic law, tit. 59 and 76.

[5] *Extra sermonem Regis* (*Lex Salica*, tit. 59 and 76).

[6] *Ibid.*, tit. 59, §1.

[7] *Ibid.*, tit. 76, §1.

[8] *Ibid.*, tit. 56 and 59.

[9] *Ibid.*, tit. 76, §1.

[10] *Ibid.*, tit. 76, §2.

[11] *Apud Vernis Palatium*, year 883, art. 4 and 11.

[12] *Capitulary of Charlemagne*, year 812, art. 1 and 3.

[13] Heribannum.

[14] *Non infirmis reliquit hæredibus*, says Lambert d'Ardres in Du Cange, at the word *Alodis*.

[15] See those that Du Cange cites at the word *Alodis* and those related by Galland, *Traité du franc alleu*, p. 14 ss.

[16] Capitulaire ii of the year 802, art. 10, and capitul. vii of the year 803, art. 3, and capitulary i, *incerti anni*, art. 49, capitulary v of the year 806, art. 7, capitul. of the year 779, art. 29, and capitulary of Louis the Debonaire, year 829, art. 1.

[17] The fifth of the year 806, art. 8.