

Western Medieval Law

Presented at Pennsic XL by Dani of the Seven Wells¹

Between the fifth and tenth centuries, most of the major tribes of Western Europe produced written legal codes. These codes were generally presented as codifications of tribal custom, but they were actually necessary because tribal custom no longer sufficed. The laws had to allow for Germans living alongside Romans and alongside members of other tribes. They had to allow for the expanded power and importance of kings. They had to be modified to be acceptable to the church. Each tribe had unique laws and institutions, but there were also broad commonalities, and those are the focus of this class.

Flosi asked if this were the law, but Eyjolf replied that he did not know for certain and said that the Law-Speaker would have to settle the point... “There are more great lawyers alive today than I thought,” replied Skapti. “...I had thought that I was the only person who knew this specialty of the law now that Njal is dead.” (Njal’s Saga, Ch.142)

Mord named witnesses – “to testify that I give notice of an action against Flosi Thordarson for unlawful assault, inasmuch as he assaulted Helgi Njalsson at the place where he assaulted Helgi and inflicted on him an internal wound, brain wound, or marrow wound, which did cause Helgi’s death. I demand that Flosi be sentenced to full outlawry on this charge, not to be fed nor forwarded nor helped nor harboured. I claim that all his possessions he forfeit, half to me and half to those men in the Quarter who have a lawful right to receive his confiscated goods. I refer this manslaughter action to the proper Quarter Court. I give lawful notice of it, in public, at the Law Rock. I give notice of an action, to be heard at this session, for full outlawry against Flosi Thordarson, as assigned to me by Thorgeir Thorisson.” (Njal’s Saga, Ch.141)

1. He who kills a free Frank or other barbarian who lives by Salic law, and it is proven against him, shall be liable to pay eight thousand denarii² (i.e., two hundred solidi).

5. He who kills a man who is in the king’s trust or a free woman and it is proved against him shall be liable to pay twenty-four thousand denarii (i.e., six hundred solidi).

9. If a Roman landholder who is not a table companion of the king is killed, he who is proved to have killed him shall be liable to pay four thousand denarii (i.e., one hundred solidi).

- Laws of the Salian Franks 41 (On the killing of Freemen)

2. And if the man summoned comes to the place, then he who called him to court, if the case is such a minor one that the composition involved is less than thirty-five solidi, should offer oath with six oathhelpers. And afterwards he who had been summoned, if he believes it proper for him to do so in such a case, shall absolve himself with the oaths of twelve oathhelpers. (Laws of the Salian Franks, Title 73)

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² A penny, as in lsd, but at this time a fortieth of a solidus, rather than a twelfth.

1. If a man has been summoned to court in accordance with the king's laws and does not come, and if a lawful excuse has not detained him, he shall be liable to pay six hundred denarii...

3. He who summons another man should go with witnesses to that man's house...

- Laws of the Salian Franks, Title I.

It was commanded at the time the order was issued whereby our people should receive one-third of the slaves, and two-thirds of the land, that whoever had received land together with slaves either by the gift of our predecessors or of ourselves, should not require a third of the slaves nor two parts of the land from that place in which hospitality had been assigned to him... (The Burgundian Code, 54)

He who cuts off the fourth finger shall pay two solidi as composition. (Lombard Laws, 92)

8. ...We command that Romans be judged by the Roman laws, just as has been established by our predecessors; let them know that they must follow the form and statement of the written law when they render decisions so that no one may be excused on grounds of ignorance.

13. Let no Roman or Burgundian count, in the absence of the other judge, presume to decide any case however often they may desire it, so that consulting frequently they may not be in doubt concerning the provisions of the laws. (The Burgundian Code, First Constitution)

If in the presence of the king one man accuses another of an offense which would involve the loss of his life then the accused may offer satisfactory oath and clear himself. If in such a case the man is present together with him who accused him of the offense, then the accused may refute the charge, if he can, by means of the *camfio*, that is, by judicial duel. If the accusation is proved against him, he shall lose his life or pay such compensation as pleases the king. If the charge is not proved against him, and it is recognized that he has been accused wrongfully, then he who accused him and was not able to prove it shall pay the amount of his wergeld as composition, half to the king and half to him charged with the offense. (The Lombard Laws, Title 9)

... They shall appoint men, each two, to observe the oath taking. If these men disagree, some holding the oath to have been properly sworn and others, improperly, those who are willing to swear to their opinion shall be upheld in it. If both sides offer to swear, those who wish to support [the defense] have the best right to the oath; if any one raises a doubt, the defendant shall have his witnesses heard at the next thing. But if the oath fails him, his case shall have a hearing within the first twelvemonth like any other action. (Gulathing Law, 136)

And concerning the ordeal we enjoin by command of God, and of the archbishop, and of all the bishops: that no man come within the church after the fire is borne in with which the ordeal shall be heated, except the mass-priest, and him who shall go thereto: and let there be measured nine feet from the stake to the mark, by the man's feet who goes thereto. But if it be water, let it be heated till it low to boiling. And be the kettle of iron or of brass, of lead or of clay. And if it be a single accusation, let the hand dive after the stone up to the wrist, and if it be threefold, up to the elbow. And when the ordeal is ready, then let two men go in of either side; and be they agreed that it is so hot as we before have said. And let go an equal number of men of either side, and stand on both sides of the ordeal, along the church; and let these all be fasting, and abstinent from their wives on that night; and let the mass-priest sprinkle holy water over them all, and let each of them taste of the holy water, and give them all the book and the image of Christ's rood to kiss: and let no man mend the fire any longer when the hallowing is begun; but let the iron lie upon the hot embers till the last collect: after that let it be laid upon the stapela; and let there be no other speaking within, except that they earnestly pray to Almighty God that he make manifest what is truest. And let him go thereto; and let his hand be enveloped, and be it postponed till after the third day, whether it be foul or clean within the envelope. And he who shall break this law, be the ordeal with respect to him void, and let him pay to the king 120 shillings as wite. Walreaf is the nothing's deed: if any one desire to deny it, let him do so with eight and forty full-born thanes. (The Laws of King Athelstan, 28)

C.4. Our most pious lord king has decreed, with the assent of the holy synod, that no man, clerk or lay, may sell his corn more dearly, in time of abundance or scarcity of the harvest, than the public muid³ brings according to recent decree. For a muid of oats one denarius, for a muid of barley two denarii, for a muid of rye three denarii, for a muid of wheat four denarii. But if he wishes to sell it as bread, he ought to give twelve wheaten loaves, each weighing two pounds, for one denarius; fifteen of rye of equal weight for one denarius; twenty barley loaves of the same weight, or twenty-five oat cakes of the same weight, for one denarius. As for the public grain of the lord king, if it be sold, two muids of oats shall be sold for a denarius, one of barley for a denarius, one of rye for two denarii, one of wheat for three denarii. And let him who holds a benefice from us see to it that, when he has given what is due to God, no serf belonging to that benefice die of hunger, and what is left after the necessities of the serfs have been attended to shall be sold according to the rates mentioned above. (Capitulary of Frankfort: The Price of Staples⁴, 794)

Secret murder is known by its being committed among neighbours, and by the body being concealed; or by its being committed in a mountain or wild place, without the body being concealed; and the person who has committed it does not tell it until it has been fastened upon him according to the law of eyewitness, or proof, or evidence; or, he may acknowledge before swearing. And though he may put the body into a trench, or into water, if it was not for the purpose of concealing it (the body) he did so, he is liable to the 'eric'-fine for the killing only....

³ Muid = modius. A peck, or a quarter of a bushel. Historically a third of an amphora.

⁴ <http://www.fordham.edu/Halsall/source/794capit-frankfort.asp>

If it was the same person that committed the killing and concealed the body, a fine of seven 'cumhals' and full honor-price is imposed upon him for the concealing; and a fine of seven 'cumhals' and full honor-price is imposed upon him for the killing; which is twice seven 'cumhals' and double honor-price upon a native freeman for secret murder. (Book of Aicill, C.898)

The chief of kindred 189 cows

The uchelwyr 126 cows

Man with a family without office 84 cows

The innate boneddig 63 cows

The alltud of the brenhin 63 cows

The alltud of the uchelwyr 31-1/2 cows

The bondman (caeth) of this island, one pound of silver (4 cows)

The bondman from beyond the sea 1-1/2 pound (6 cows) (Venedotian Code)

Whoever shall kill a cat that guards a house or a barn of the King or shall take it stealthily; it is to be held with its head to the ground and its tail up, the ground being swept and then clean wheat is to be poured about it until the tip of its tail be hidden: and that is its worth. Another cat is four legal pence in value. (Gwentian Code)

“The galanas of a man with a family is four score and four kine augmented: his saraad is four kine, and four score of silver, augmented.”

“The saraad of the king’s daughter is half the saarad of her brother until she shall marry; after her marriage her saraad is a third of her husband’s saraad: and in like manner every female’s.”

“In three ways saraad occurs to every person in the world: by striking; assaulting; and taking by violence from him: and if it be a man, if his wife be violated, it is saraad to him: if it be a woman, if she find another woman with her husband, it is saraad to her: and so nobody escapes without being subject to saraad.

- Venedotian Code, from Ancient Laws and Institutes of Wales

2. He who claims someone else is covered in dung shall be liable to pay 120 denarii.

4. He who calls someone else a fox shall be liable to pay 120 denarii.

5. He who calls someone else a rabbit shall be liable to pay 120 denarii.

7. He who calls someone else an informer or liar and cannot prove it shall be liable to pay six hundred denarii.

- Laws of the Salian Franks, Title 30

If anyone shall have died without children, if father and mother survive they shall succeed to the hereditas. If there are not father and mother, brother and sister shall succeed. But if he has not these either, then the sister of the mother and the sister of the father shall succeed. And further, up to the fifth knee, whoever is nearest shall succeed to the

inheritance. But as long as the male sex survive, a woman shall not succeed to the hereditas aviatica. (Lex Ripuariorum, Title 56)

.... Indeed concerning Salic land, no portion or inheritance is for a woman the male sex acquires it, that is, the sons succeed to the inheritance. When the allodial property comes to grandchildren after a long time, let them divide it not by branch of family but by individual person ["Non per stripem sed per capita"]. (Laws of the Salian Franks, Title 59)

The various kinds of land that are to be regarded as odal land shall now be enumerated. The first is land that has been passed from man to man for [five] successive generations... (Gualthing Law, 270)

What relates to the general benefit of the public must not be neglected in our decrees, nor shall the facility for committing crime be such, that any person may think that he is exempt from the operation of the law. Since, therefore, when an affray takes place among freemen whereby death results, and no freeman is present who can give evidence of the crime, slaves may testify; so that it may be ascertained from their evidence how the homicide was committed. But for the reason that, under other circumstances, the course of justice would be obstructed as, for instance, when the accused freeman shall be some distance away, or, if at hand, should not be recognized, therefore slaves shall be permitted to testify when no freemen were present, or those who were there are implicated in the affair in question. But slaves shall not be allowed to give testimony in other cases, nor in matters of great importance, but only in such as are comparatively insignificant, as those involving the title to lands, vineyards, or buildings, which are of lesser moment, and concerning which disputes often arise between heirs or neighbors. A slave shall also be believed in matters in which he is personally interested; as, for instance, if he should be seized by others, or be illegally detained by them, and also where another slave has escaped; on his statement, when true, the former may be returned to his master, and by reliable information imparted by a slave, any dispute which has arisen on account of the ownership of another, may be ended. Nevertheless, slaves shall be considered unworthy of credit, unless they are known to be innocent of all crime, and are not grievously oppressed by poverty; and their testimony can, under no circumstances, be received to contradict that of freemen, unless, as has been hereinbefore stated, it should happen that a homicide has been committed. (Visigothic Code, Book II, Title IV, IX)

1. In the case where a slave is accused of theft, if a freeman would pay six hundred denarii in composition, the slave stretched out on a rack shall receive one hundred twenty blows of the lash.

2. If he confesses before torture and it is agreeable to the slave's lord, he may pay one hundred twenty denarii for his back, and the slave's lord shall return the value of the property stolen to its owner.

4. If he does not confess under torture, then he who tortured him, if he still wishes to torture him even though his lord objects, ought to give a pledge to the lord of the slave. Afterwards the slave may be subjected to further torture, and if he confesses nothing is to be believed from him concerning his lord. Indeed, he who tortured the slave shall keep him in his power. The slave's lord, who had already received a pledge, should accept that price for his slave.

If they come to extreme want, they are *grafgangsmenn*. A grave shall be dug in the churchyard, and they shall be put into it and left to die there. The master shall take out the one who lives the longest, and feed that one thereafter. (Gulathing Law, 63)

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* Available through Google Books.

⁵ Pron. Shanahus.