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Another Look at the Origins of the Middle Ages: A Reassessment of the Role of the Germanic Kingdoms

By Katherine Fischer Drew

Megahistory has not had much appeal to medieval historians, especially in recent years. Most of us are rather tightly bound to a limited body of source material, and we have been able to concentrate on topics of limited scope, expecting to become familiar with all the literature on this subject and to produce an answer to our questions or an interpretation of our problems that takes into account all the relevant evidence. In the process I think that many of us have lost sight of the larger world or even just the world of the Western Roman Empire.

The purpose of this paper is to take another look at that period of transition between the Roman Empire and the Middle Ages and to reemphasize the importance of the role played by the Germanic kingdoms — I refer specifically to the period from about A.D. 500 to 800. In a sense, this is to raise once again the old Romanist-Germanist controversy, a controversy that has tended in recent years to be resolved largely in favor of the influence exerted by Rome. To a certain extent this has resulted from a backlash against the extreme position claimed by the Germanists of the nineteenth century, who saw the origin of all free and democratic institutions as coming out of the forests of Germany. But without looking at the early Germans through such rose-colored glasses, I think a good case can be made for reemphasizing how much early-medieval society owed to the Germans. My method of approaching this problem is to look at the Germanic kingdoms collectively, to point out practices and institutions similar in all of them that became a fundamental part of early-medieval civilization. And none of you will be surprised when I state that most of my evidence will be drawn from the Germanic law codes.

There has been a certain amount of resistance to the use of the Germanic codes as evidence for anything more extensive than the Germanic people themselves, since the Germanic immigrants into the western empire constituted such a small proportion of the population of the kingdoms they eventually established. But I have worked with these materials for many years and have become convinced that the Germanic codes can, if used with care, serve as a source for the social history of the early Middle Ages. I have been

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pleased to note the recent appearance of publications by a number of English and American scholars utilizing material from these codes in conjunction with other evidence when studying special problems, works such as Patrick Wormald's "*Lex Scripta and Verbum Regis: Legislation and Germanic Kingship, from Euric to Cnut*,"¹ Suzanne F. Wemple's *Women in Frankish Society: Marriage and the Cloister, 500 to 900*,² Alexander C. Murray's *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Early Middle Ages*,³ David Herlihy's *Medieval Households*,⁴ and Charles M. Radding's *A World Made by Men: Cognition and Society, 400–1200*.⁵

What I offer here is nothing so tightly argued as any of these works. It is rather a summary of impressions that have grown out of my work with a number of the Germanic law codes — the Burgundian, Lombard, Visigothic, Frankish, and Anglo-Saxon. Although these codes vary greatly — from those reflecting strong Roman influence (the Burgundian, Lombard, and Visigothic) to those reflecting little if any Roman influence (the Frankish and Anglo-Saxon) — all have certain features in common, and I would like to point out and emphasize one of them here.

This common feature is the development of a concept of collective security. This was closely related to two Germanic institutions: the family and kin group on the one hand and personal lordship on the other. Both of these institutions were not unknown in the Roman world, but they were not very important as long as the political and administrative machinery of the empire remained effective. By the sixth century, however, the security that had been provided by the organization of the Roman bureaucratic administration and by the defensive presence of the Roman armies had been largely eroded. Although the barbarian kings might retain an organization inherited from the Roman Empire, the real vitality of this organization was rapidly fading. And with the collapse of the Roman armies, defense rested with the barbarian king and an army composed largely of Germans, whether professionals or not.⁶ Though most of the Germanic kings made an effort to reassure the Roman provincials that things would go on as before and that in legal matters they would enjoy the protection of Roman law, inevitably change did occur.

¹ In P. H. Sawyer and I. N. Wood, eds., *Early Medieval Kingship* (Leeds, 1977).

² Philadelphia, 1981.

³ Toronto, 1983.

⁴ Cambridge, Mass., 1985.

⁵ Chapel Hill, 1985.

⁶ Bernard S. Bachrach, *Merovingian Military Organization, 481–751* (Minneapolis, 1972), and others believe that the Merovingian army, as well as the other Germanic armies, was made up entirely of professionals — either the king's retinue, the retinues of the other magnates of the kingdom, or the remnants of Roman imperial troops or colonial *laeti*. References in the Frankish and Lombard laws, however, make it clear that the ordinary free man was involved in military service. See *Lex Salica* 63.1; and Rothair 6–7, Ratchis 4, and Aistulf 2–3. The laws here and elsewhere from *Lex Salica* are translated from Karl August Eckhardt, *Pactus Legis Salicae*, MGH LL 5/1, and the Lombard laws here and elsewhere are quoted from K. F. Drew, *The Lombard Laws* (Philadelphia, 1973).

One of the changes was the substitution of collective security for the security formerly offered by the strong police power of the Roman state. In the period of the Germanic kingdoms this collective security was provided for the most part by the family and kin group, but this familial security existed alongside and was eventually replaced — at least in some parts of western Europe — by the lord-man relationship based on a frank recognition of the fact that some men are strong and some men are weak.

Let us consider first the security offered by the family and kin group. I have little doubt that if we were able to penetrate back to the beginnings of Roman society, we would find that the Romans knew and practiced the blood feud, the memory of which may even lie behind one of the provisions of the Laws of the Twelve Tables:

If anyone has broken another's limb there shall be retaliation in kind unless he compounds for compensation with him.⁷

Retaliation here certainly implies self-help on the part of the injured individual if not by his larger kin. But even if remnants of the feud survived in early republican times, certainly by the time of the classical Roman law we find no references to the blood feud nor is there other judicial evidence of an active kin group. Peace and security had become the responsibility of the state. For the bulk of the population criminal actions were brought by the state, offenders were tried in police courts, and punishment, frequently summary, was imposed by public authority. (For the more honorable members of society, it is true, trial was in one of the regular courts and the defendant enjoyed considerable latitude in defending himself.)

What has happened here is that Roman law had separated into what we might call civil and criminal law. This split occurred during the republican period, before the day of the great juriconsults. The Roman jurists were not interested in criminal law; rather the great contributions of the Roman legal writers was in the field of private law. The courts in the Roman provinces invaded by the Germans were primarily concerned with the application of private law, and it was these courts that provided the model for the Germanic court.

But the Germans made no distinction between civil and criminal causes. Private law was important for them, but equally as important, if not more so, were offenses involving violence. One need only recall that characteristic feature of all the Germanic law codes — long lists of physical injuries ranging from cutting off the little toe, to cutting off the foot, to cutting off the leg; from cutting off the little finger, to the hand, to the arm; for knocking out a tooth to cutting off an ear or gouging out an eye, each with its corresponding payment or composition — to be reminded of this fact.

So in the judicial procedure followed in the Germanic courts no distinction

⁷ Allan Chester Johnson, et al., *Ancient Roman Statutes* (Austin, 1961), p. 11 (table 8, law 2).

was made between criminal and civil actions. Offenses involving physical injury, or perhaps even personal slander, were handled as if they were civil suits for damages. And I think that this was true for the former Roman population as well as for the Germanic, since there was no effective police force or police courts to handle criminal matters.

The attitude toward criminal offenses had become a personal one. If an individual had suffered injury, whether intentional or unintentional, the purpose of Germanic litigation was to bring the offender to court and, if the offender was found guilty by whatever method of proof was used, to assess the damages he should pay to the injured party. Even among the Visigoths, where the organization of the court system more nearly resembled the Roman than did that of any other of the Germanic kingdoms, the role of the family and the kin group remained essential in the operation of this system. Therefore I think that we must conclude that it was the threat of the blood feud — even though unexpressed — that was the motivating factor in getting defendants before the courts. The police power of none of the Germanic states was strong enough to do this. If you or your family had suffered an injury, it was up to you, supported by your kin, to summon the offender to court. The man without family or kin was in a very precarious position in early-medieval society. Only a strong family, backed up by an easily identifiable kin group, offered effective protection. So although the practice of the blood feud was undoubtedly an unsettling matter for the peace of the community, I think that we may take the barbarian kings at their word when they express the hope that the feud will be averted by the payment of composition (compensation). The Lombard King Rothair stated this in one of the laws of his edict:

In the case of all wounds and injuries . . . we have set a higher composition than did our predecessors in order that the faida, that is the blood feud, may be averted after receipt of . . . composition, and in order that more shall not be demanded and a grudge shall not be held. So let the case be concluded and friendship remain between the parties.⁸

And Ine of Wessex acknowledged the role of self-help in the administration of justice when he stated:

If anyone wreaks vengeance [on his enemy] before demanding justice [in court], he shall give back anything he has seized together with as much again [to the injured party], and shall pay 30s compensation [to the king]. . . .⁹

And even as late as Edmund, the law provides:

I. If henceforth anyone slay a man, he is himself to bear the feud, unless he can with the aid of his friends within twelve months pay compensation at the full wergild, whatever class he [the man slain] may belong to.

⁸ Rothair 74.

⁹ Quoted from Carl Stephenson and Frederick George Marcham, *Sources of English Constitutional History* (New York, 1937), p. 7.

I.1. If, however, the kindred abandons him, and is not willing to pay compensation for him, it is then my will that all that kindred is to be exempt from the feud, except the actual slayer, if they give him neither food nor protection afterwards.

I.2. If, however, any one of his kinsmen harbours him afterwards, he is to be liable to forfeit all that he owns to the king, and to bear the feud as regards the kindred [of the man slain], because they previously abandoned him.

I.3. If, however, anyone of the other kindred takes vengeance on any man other than the actual slayer, he is to incur the hostility of the king and all his friends, and to forfeit all that he owns.¹⁰

With the possible exception of southwestern Gaul, where little Germanic legal influence was left behind by the Visigoths after their defeat and expulsion from Aquitaine by the Franks and where Roman law in the form of Alaric's *Breviary* remained the basis of the judicial system, I think that the Germanic concept of the role of the family and kin group came to dominate in all parts of the early-medieval population, whether descended from Roman or German. The structure of the Germanic family itself was little different from that of the Roman — it consisted of father, mother, minor sons, unmarried daughters, and various legal dependents. The relationships among the members of this family had changed (especially with respect to the Roman father's *potestas* and the legal status of the wife), but the composition of the family itself had not. The importance of a larger kin group, however, was more distinctively Germanic. It is hard for us to imagine that the blood feud could effectively be waged by any but a fixed group of relatives who felt some strong tie of blood. However, the Germanic kin group was not a fixed group of relatives but a carefully defined set of persons whose relationship was traced from each individual. And since kin groups were based on the bilateral kindred, not just the maternal or paternal, the composition of the kin group would be the same only for individuals having the same father and mother, in other words, the full-blooded brothers and sisters. We do not know precisely how degrees of relationship were determined by the various Germanic peoples, but a person's kin group included all his direct ascendants and descendants as well as collaterals extending to second or third cousins. Therefore we should not think of the medieval blood feud as pitting large groups of hostile kindred against one another.¹¹ Undoubtedly feuding did break out, but that was not the underlying concept. The underlying concept was the reassurance that each individual knew at all times whom he could call upon to support him in getting offenders against his peace into the courts or in providing proof or in supporting his oath in the courts, and in some cases (certainly among the

¹⁰ Quoted from Dorothy Whitelock, ed., *English Historical Documents c. 500–1042* (London, 1955), pp. 389–90.

¹¹ K. F. Drew, "The Law of the Family in the Germanic Barbarian Kingdoms: A Synthesis," *Studies in Medieval Culture*, ed. John R. Sommerfeldt and Thomas H. Seiler (Kalamazoo, 1977), p. 25. Also cf. Alexander C. Murray, *Germanic Kinship Structure*, pp. 135–62; I do not agree with all of the details of the kinship structure worked out by Murray, but on the necessity of counting the kin from each individual I do.

Franks and Anglo-Saxons)¹² helping him to pay compositions assessed against him. In return for this real or merely moral support, the kin group had an established place in the inheritance patterns of all the Germanic kingdoms.

The Germanic inheritance laws provide some of our best evidence for the importance of the kin group. The inheritance rights of the kin were exercised in connection with one of the two kinds of free tenure found in the codes.¹³ This form of tenure owed its origin to a family's settlement upon the land (perhaps at the time of original distribution) whereby that land became family land. I do not mean that the family owned the land in common but rather that the land could not be alienated. Although the various Germanic law codes provided that an individual could exercise some discretion in the manner in which this land was divided among his heirs, basically family land passed according to rules of inheritance which recognized in turn the claims of the various ranks of the kin group should closer heirs be lacking. Even among the Visigoths, whose laws specifically covered Romans as well as Visigoths and where the influence of Roman law was greater than among the other Germanic peoples, the Visigothic holder of family land could not alienate all of that land if he or she had direct descendants — it must pass to the heirs.¹⁴

So membership in a family and kin group was one means of guaranteeing peace and security to the individual during the period when the state was weak. The other means was for a man to be under the legal protection of someone stronger than he who was not a member of his family or kin group.

The importance of the lord-man relationship throughout the entire medieval period (especially in its lord-peasant and lord-vassal aspects) has tended to obscure the nature of this institution during the period of the Germanic kingdoms. To say that the relationship went back to the *comitatus* of Tacitus, where powerful military leaders attracted able young followers to their retinues, and to say that these military leaders with their retinues participated in the successful invasion of the Roman Empire and shared in the distribution of land or booty is to recognize only a part of the institution. The *comitatus* was an institution of the military "elite" — but the lord-man relationship existed throughout almost all levels of society. If instead of an honorable military relationship (implied by the older Germanic *comitatus* and the later

¹² *Lex Salica* 44.11–12; Edmund Prologue 2, 1–1.3 (Whitelock, pp. 389–90).

¹³ The other kind of free land tenure in the Germanic codes is that founded on grant or gift, which was not subject to the inheritance laws. This form is well defined in the Visigothic Code, 5.2.2: "Donations conferred by royalty upon any person whomsoever, shall belong absolutely to him to whom they are given; so that he who is thus honored by the royal munificence shall have the power to dispose of any property derived from such a source in any way that he chooses. If he who received such gifts should die intestate, the donations aforesaid shall belong to the legal heirs in regular succession, according to law, and the royal favor can in no way be infringed upon; because it is not fitting that the will of the prince should be interfered with, where the recipient of royal bounty has not been guilty of crime." Quoted from S. P. Scott, *The Visigothic Code* (Boston, 1910), p. 152.

¹⁴ 4.2 (Scott, pp. 121–30).

lord-vassal feudal relationship) we think of it as being essentially a relationship between the strong and the weak, we may get nearer its significance. Undoubtedly powerful lords did have "men" who were bound by oaths of loyalty (their *fideles*, *gasindii*, antrustions, or gesiths) and who rendered military service to them. In the barbarian codes it is primarily the Germanic king who appears in this guise, although there are sufficient references to the followers of other men to make it clear that other powerful men had their own followings, some of which were strong enough to make exercise of the royal power very difficult.¹⁵ But for judicial purposes the lord-man relationship appeared at other levels of society and offered the security of the strong for the weak.

At the lowest level of society the slave was the "man" of his lord — the lord represented him in court and paid the compositions assessed against him for offenses for which he was convicted. Of course, since the slave was the property of his lord, injuries to him were regarded as injuries to his lord, and so the lord collected any compensation adjudged. Still the legal relationship did not differ greatly from that of the lord-man relationship of higher ranks of society. The half-free man (the *colonus*, *aldius*, or *lidus*) was also the "man" of his lord and was protected by him and represented by him in court in much the same way as was the slave. And at the level of the common freeman, the relationship also existed, not always for honorable purposes. The Frankish, Lombard, and Anglo-Saxon laws all make it clear that bands of men under leaders were a threat to the peace of the countryside.¹⁶

The reference above to the masters and slaves as an example of the lord-man relationship brings me to the last point I would like to make. It is about slavery, an institution common to all the Germanic kingdoms.

The study of slavery has come in for a lot of attention lately, but for the most part historians of this institution confine their attention to ancient Greek and Roman slavery and to the modern slavery that developed from the late fifteenth century. Historians of slavery do not know what to make of medieval slavery and so for the most part they tend to ignore it.¹⁷ A study of slavery as it appears in the Germanic codes is not going to solve the question of medieval slavery, but it should help to understand the important changes that devel-

¹⁵ On the king's following, see from the Lombard laws Liutprand, prologues to years 721, 724, 726–29, and 735; on the followings of other men Rothair 167 and 225; Liutprand 44; and Ratchis 10–11 and 14. From the Frankish laws, see *Lex Salica* 14.6–8; 42; and 43.

¹⁶ In addition to the Frankish and Lombard examples cited above, see the following from the Anglo-Saxon laws: Ethelbert 17; Ine 13.1, 14, 15, and 39 (Whitelock, pp. 358, 366, and 368).

¹⁷ I am not here referring to such medieval specialists as Charles Verlinden (*L'esclavage dans l'Europe médiévale*, 2 vols. [Ghent, 1955–77]) or those whose work is surveyed by Pierre Bonnassie, "Survie et extinction du régime esclavagiste dans l'Occident du haut moyen âge (IVe–XIe s.)," *Cahiers de civilisation médiévale* 112 (1985), but to the recent group of scholars, mostly American, who have tried to work out the roots of American slavery. One of these writers, however, has tried to cover the medieval period: W. D. Phillips, Jr., *Slavery from Roman Times to the Early Transatlantic Trade* (Minneapolis, 1985).

oped in this institution, and these may explain why slavery tended to disappear in the later Middle Ages.

Perhaps part of the reason that modern historians of slavery do not like to look at medieval slavery is because they find it hard to imagine medieval society as a slave society. And yet the careful provision for slaves in the Germanic codes indicates that slaves played a very important role in the economies of the Germanic states. If we look only at the economic activities engaged in by the barbarian slaves, we might not think that much change had occurred in slavery since Roman times, for we find agrarian slaves, household slaves, and skilled slaves (carpenters, goldsmiths, etc.). And if we look at the origin of the barbarian slaves, at first glance there might also seem little change. Slaves were purchased (from war captives or those captured abroad by slave traders — there are many laws in the codes aimed at stopping the sale of freemen abroad), slaves were born into captivity, and individuals could voluntarily place themselves in slavery if they could not support themselves in any other way. If these were the only sources of slavery in the Germanic kingdoms, probably little change would have taken place in the institution. But there was another source of slaves that was little known if known at all in the Roman world, at least by the time of the empire. This source of slaves fits well into regarding the slave-master relationship as essentially the same as the lord-man relationship — and this I think had a profound effect on the institution of slavery itself.

To understand this last source of slavery in the Germanic kingdoms, we need to note again the Germanic attitude toward injuries, whether intentional or not. The party who sustained an injury, or his family or kin group if the injury sustained was death, was entitled to damages in order to avert retaliation. The convicted offender was not punished (unless the offense was extremely serious and committed in defiance of honorable standards of behavior) — instead he was assessed compensation to be paid to the injured party. The amount of composition or compensation varied with the seriousness of the injury — and in the event of an injury so serious as homicide, the amounts were very high, even if the homicide was unintentional. If a man could not pay the assessed composition and if his family or kin group could not help him or refused to help him and if he could not obtain help from some other protector (that is, his lord), his own person was held liable for the amount — he was handed over to the injured party, and since the labor of a slave would go further toward payment of the damages than killing the offender, slavery was the result. If the amount involved was relatively small, the guilty man might be able to work out the amount of the compensation; thus his slavery was temporary. Frequently, however, the sum was so large that permanent slavery was the result.¹⁸ So a man might find himself with a former neighbor

¹⁸ Alfred 30; Ine 48, 54.2 (from the version by F. L. Attenborough, ed. and trans., *The Laws of the Earliest English Kings* [Cambridge, Eng., 1922]); Liutprand 152; Aistulf 22; *Lex Salica* 58 and 85.

among his slaves, or a common man might find himself with one of the more substantial members of the community among his.

The Visigothic laws make provisions that involve an even stranger relationship between lord and slave. Unlike the other Germanic codes, the Visigothic laws provide for physical punishments for violent offenders as well as monetary payments. Slavery is also provided as a punishment — not just the result of what was in effect debt servitude. In the case of certain sexual offenses the offender was handed over as a slave to the man or woman most injured by the offense — and in certain instances this might mean that a girl might have one or more of her brothers among her slaves, or sons might even have their mother.¹⁹

While noting the unusual relationship that might exist between a lord (or mistress) and the slave in Visigothic Spain, one further peculiarity of the Visigothic system might be noted. Normally the slave could not appear in court as a principal party, but Visigothic law provided that if a slave's lord was more than fifty miles away, his slave could appear in court to bring charges against someone else or to handle litigation concerning his lord's property.²⁰

So the slave in the Germanic kingdoms had come to be just another of a man's numerous legal dependents — dependents that included his wife, his minor sons, and his unmarried daughters, as well as his *coloni* and slaves. If we can accept the evidence of the laws, there was a good deal of coming and going from one status to another. The woman was transferred from her father's legal control of that of her husband at the time of marriage; a father could purchase and emancipate with full legal rights the children born to him by another man's slave woman; lords of slaves and half-free entered into contracts regarding the marriages of their dependents in order to assure no dispute over whom the children belonged to; lords emancipated slaves completely or to the status of the half-free (and thus retained legal protection over them).

So it seems quite possible to me that the chattel status of slavery was undermined by this close legal tie between the slave and his lord and by the familiarity of the people who held the status of slave — slaves were a part of a man's legal family.

It is thus seen that a major change in the relationship of individuals to one another had taken place during the period of the Germanic kingdoms. The Germanic states had brought family groups under sufficient control to offer courts before which individuals and families might bring their disputes, but this control did not extend to the persons of offenders themselves. Violent crime was an offense against an individual, not against society, and the role of the state in offering a court before which offenders could be brought was for the purpose of maintaining peace in the community — not for punishing

¹⁹ The Visigothic Code 2.3.1.

²⁰ The Visigothic Code 2.2.10.

offenders. So the punishment aspect of early-medieval crime was largely lacking. Revenge had been replaced by compensation. Even when the compensation was so much that it could not be paid and thus established a debt that could not be paid, the debt servitude that followed was not for punishment, but the labor of the slave was a substitute for the compensation that had been lost.

This was a very different world from that of the Roman Empire, and this collective approach to the problem of security depending partly on the family and kin group and partly on a reciprocal relation between lord and man would not fade until the modern state system began to emerge in the later Middle Ages with the revival of Roman law and the growth of strong monarchies.