

THE FRANKPLEDGE SYSTEM

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649588008

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Cover @ 2017

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WILLIAM ALFRED MORRIS

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LONGMANS, GREEN, AND CO.

FOURTH AVENUE & 30TH STREET, NEW YORK
LONDON, BOMBAY, AND CALCUTTA

1910

JUL 16
1917

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PREFACE

No writer has hitherto made a study of frankpledge except in a very few of its aspects. From 1832, the date of Palgrave's *Rise and Progress of the English Commonwealth*, down to the publication of Maitland's *Select Pleas in Manorial and other Seignorial Courts* in 1889, interest was almost exclusively centred in questions relating to the time and place of the origin of the system and to its supposed importance in the communal organization of Saxon England. Maitland's investigation as to its place in the toun and leet system, published in the above-named volume, opened up a new field by emphasizing the real constitutional significance of the institution; and in the last twenty years there has been published and made easily accessible much material illustrating the procedure of the various medieval English courts that had to do with frankpledge, and thus affording a view of the system in operation. Only one person, however, has attempted to make such a study of the workings of the system as its importance demands, and even his investigation is limited in range to a local field, the city of Norwich; but the excellence and interest of this work (Hudson's *Leet Jurisdiction in Norwich*, published some seventeen years ago) encourage the undertaking of a similar study of the institution wherever found in England. One might well wish that Liebermann, the latest and most accurate scholar to write upon frankpledge, had been able to turn his great learning in

this direction; but he has, like earlier writers, concerned himself chiefly with questions touching the beginnings, rather than the workings, of the system. It has been the aim of the present writer, without neglecting the information already so well brought out concerning both the origin of frankpledge and its constitutional importance as part of the local government system, to make a study of its maintenance, functions, and decline, and also to discover just how far it is possible at this time to tell where it existed in England and where it did not exist.

Although a list of books used in preparing the following chapters will be found on a later page, something may be said here as to the importance of some of the more prominent ones, and as to the writer's indebtedness to them. The sources for the origin of frankpledge are the Anglo-Saxon laws, and the Anglo-Norman compilations known as the *Leges Henrici Primi*,¹ the *Leges Edwardi Confessoris*, and the various versions of the so-called laws of William the Conqueror. The splendidly edited *Gesetze*, issued by Liebermann within the past twelve years, contains laws not before published, and clearly supersedes the earlier work of Thorpe and Schmid in this field. Of the older works on frankpledge Palgrave's is the best. His conclusions, although sometimes conjectural, have remained to the present time the basis of information in regard to the distribution of the system; and in some ways they almost anticipate Liebermann's investigations. Kemble, who wrote his *Saxons in England* (1849) under the spell of the mark theory, uncritically assumed the existence of frankpledge in Saxon England, and attempted to make the frankpledge tithing a unit of local organization. A little later, William Maurer, in his *Inquiry into Anglo-Saxon Mark Courts*, made further arguments along

¹ Throughout the present work the abbreviated title *Leges Henrici* is used for *Leges Henrici Primi*.

the same line, although Marquardsen had in 1852 shown in a convincing manner that frankpledge could not have existed beside the *borh* system found in the Anglo-Saxon laws. Marquardsen's work is still the most detailed study of the Anglo-Saxon surety system in print; but Waitz reaches very much the same conclusions in summarizing the literature on the subject in his *Deutsche Verfassungsgeschichte*. It was in the latter work that the similarity between frankpledge and English institutions known to have been introduced by the Norman kings was first clearly set forth. Another distinct contribution of Waitz lay in proving that frankpledge was not a primitive Germanic institution. Waitz is, however, too much inclined to hold that the frankpledge tithing was a creation of William the Conqueror rather than a development of Saxon usage. Schmid, in editing *Die Gesetze der Angelsachsen*, first adduced the argument for a Saxon origin of frankpledge from the ignorance of writers of the twelfth century; and Liebermann has more recently sought to strengthen the same line of thought. The contribution of Stubbs to the literature of frankpledge lay in pointing out that, although the similarity of the obligation of the tithing to that of the hundred in cases of murder points very clearly to William the Conqueror as the organizer of the system, frankpledge is nevertheless to be regarded as a development of Anglo-Saxon suretyship. Maitland, who believed that the origin of the institution is in large measure yet to be explained, never undertook to grapple with the problem, but merely dropped here and there in his writings hints that seemed of value to him. He adopted the theory of a Saxon origin. Liebermann, in attempting to show in his *Ueber die Leges Edwardi Confessoris* that frankpledge came into existence at some time between 1030 and 1066, depends much upon the ideas of persons who wrote after 1115; but his scholarly conclusions as to conditions between 1030 and