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XXVIII.1 On the different character of the laws of the Germanic peoples

- The Spirit of Law - Book XXVIII. On the origin and transformations of the civil laws among the French -

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The Franks, after leaving their country, had the Salic laws drawn up by the wise men of their nation. [1] The tribe of Ripuarian Franks, when joining the tribe of Salian Franks under Clovis, preserved its own customs, [2] and Theodoric, king of Austrasia, had them set down in writing. [3] He likewise collected the customs of the Bavarians and the Germans who were dependencies of his kingdom. [4] For Germania being weakened by the exit of so many peoples, the Franks, after conquering before them, had taken a step backward and extended their domination into the forests of their fathers. It would appear that the code of the Thuringians [5] was issued by the same Theodoric, since the Thuringians too were his subjects. The Frisians having been subdued by Charles Martel and Pépin, their law does not antedate these princes. [6] Charlemagne, who was the first to defeat the Saxons, gave them the law that we have ; it suffices to read these last two codes to see that they come from the hands of the conquerors. The Visigoths, the Burgundians, and the Lombards, having founded kingdoms, had their laws written down, not to make conquered peoples follow their customs, but so that they themselves would follow them.

There is an admirable simplicity in the Salic and Ripuarian laws, in the laws of the Germans, the Bavarians, the Thuringians, and the Frisians : we find in them an original crudeness, and a spirit that had not been diluted by any other spirit. They changed little, because these peoples, if we except the Franks, remained in Germania. Even the Franks founded a large part of their empire there ; thus all their laws were Germanic. This was not the case with the laws of the Visigoths, the Lombards, and the Burgundians : they lost much of their character because these peoples, who settled into their new dwellings, lost much of theirs.

The Burgundian kingdom did not last long enough for the laws of the conquering people to be greatly modified. Gundebald and Sigismond, who collected their customs, were almost the last of their kings. The laws of the Lombards received more additions than changes. Those of the Rotharis were followed by those of Grimoaldus, Luitprandus, Rachis, and Astulphus, but they did not take on a new form. Such was not the case with the laws of the Visigoths [7] : their kings rewrote them and had them rewritten by the clergy.

The kings of the first dynasty of course removed [8] from the Salic and Ripuarian laws what was not perfectly consistent with Christianity, but they left the substance in place. That cannot be said of the laws of the Visigoths.

The laws of the Burgundians, and especially those of the Visigoths, permitted corporal punishments. The Salic and Ripuarian laws did not accept them, [9] and better preserved their character.

The Burgundians and the Visigoths, whose provinces were very exposed, sought agreements with the former inhabitants, and sought to give them the most impartial civil laws [10] ; but the Frankish kings, sure of their might, did not show such deference. [11]

The Saxons who lived under the dominion of the Franks were of indomitable temper, and persisted in revolting. We find in their laws [12] severities of the conqueror which we do not see in the other codes of barbarian laws.

We see there the spirit of the laws of the Germans in the pecuniary penalties, and that of the conqueror in the afflictive punishments.

The crimes they commit in their country are punished corporally, and the spirit of the Germanic laws is followed only in the punishment of those they commit outside their territory.

They declare there that for their crimes they will never have peace, and every asylum is refused them, even churches.

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Bishops had tremendous authority at the court of the Visigoth kings ; the most important matters were decided in councils. We owe to the code of the Visigoths all the maxims, all the principles, and all the views of today's Inquisition ; and the monks had only to copy against the Jews the laws formerly made by the bishops.

Moreover, the laws of Gundebals for the Burgundians seem rather judicious ; those of Rotharis and the other Lombard princes are even more so. But the laws of the Visigoths, those of Recessunthus, Chindasuinthus, and Egigas, are puerile, awkward, and foolish ; they do not achieve their purpose, full of rhetoric and void of meaning ; at bottom frivolous, and gigantic in style.

[1] See the prologue of the Salic law. Mr. Leibniz says in his *Treatis on the Origin of the Franks* that this law was made before the reign of Clovis, but it could not have been made before the Franks had left Germania : at that time they did not understand the Latin tongue.

[2] See Gregory of Tours.

[3] See the prologues of the *Lex Baiuvariorum* and of the *Lex Salica*.

[4] *Ibid.*

[5] *Lex Angliorum werinorum, hoc est Thuringorum.*

[6] They did not know how to write.

[7] Euric issued them ; Leuvigildus amended them. See *Chronicles of Isidorus*. Chindasuinth and Recessuinth reformed them. Egigas had the code we have written up, and gave that commission to the bishops ; they however preserved the laws of Chindasuinth and of Recessuinth, as it appears in the sixth Council of Toledo.

[8] See the prologue of the *Lex Baiuvariorum*.

[9] We find only some of them in Childebert's decree.

[10] See the prologue of the code of the Burgundians and the code itself, especially tit. 12, §5, and tit. 38. See also Gregory of Tours, [book II, ch. xxxiii](#), and the code of the Visigoths.

[11] See below, ch. iii.

[12] See ch. ii, §8-9, and ch. iv, §2 and 7.