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XXVIII.2 That the laws of the barbarians were all personal

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

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XXVIII.2 That the laws of the barbarians were all personal

It is a distinguishing character of these laws of the barbarians that they were not attached to a certain territory : the Frank was judged by the law of the Franks, the Germans by the law of the Germans, the Burgundian by the law of the Burgundians, the Roman by Roman law ; and far from attempting in those times to make the laws of the conquering peoples uniform, they did not even think of making themselves the legislators of the conquered people.

I find the origin of this in the ways of the Germanic peoples. These nations were divided by marshes, lakes, and forests ; we even see in Cæsar that they liked to separate. [1] Their fear of the Romans brought them together again ; each man in these mixed nations was to be judged by the practices and customs of his own nation. All of these peoples taken separately were free and independent, and when they were intermixed, the independence still remained : the homeland was common, and the republic separate ; the territory was the same and the nations diverse. The spirit of personal laws was therefore among these peoples before they left home, and they took it with them in their conquests.

We find this practice established in the formulas of Marculfus, [2] in the codes of barbarian laws, especially in law of the Ripuairians, in the decrees of the kings of the first dynasty, [3] whence derive the capitularies made on that subject in the second. [4] Children followed the law of their father, wives [5] that of their husband, widows [6] returned to their own law, freed men [7] had that of their patron. Furthermore, each could take the law he wished ; the constitution of Lotharius I required that this choice be made public. [8]

[1] *De bello gallico*, book VI.

[2] Book 1, formulary 8.

[3] Clotaire's of the year 560 in edition of the capitularies of Baluze, vol. I, art. 4, *ibid.* in fine.

[4] Capitulary appended to *Leges Langobardorum*, book I, tit. 25, ch. lxxi ; book II, tit. 41, ch. vii, and tit. 56, chap. i-ii.

[5] *Ibid.*, book II, tit. 7, ch. i.

[6] *Ibid.*, ch. ii.

[7] *Ibid.*, book II, tit. 35, ch. ii.

[8] In *Leges Langobardorum*, book II, tit. 57.