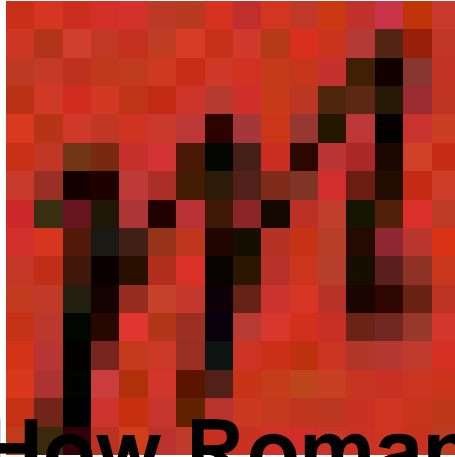


<http://montesquieu.ens-lyon.fr/spip.php?article3072>



XXVIII.7 How Roman law was lost in Spain

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

Date de mise en ligne : vendredi 7 septembre 2018

Copyright © Montesquieu - Tous droits réservés

Things went differently in Spain. The law of the Visigoths won out, and Roman law lost out. Chindsuinthus [1] and Recessuinthus [2] banned Roman laws, and did not even permit them to be cited in the tribunals. Recessuinthus was also the author of the law [3] that suppressed the prohibition of marriages between Goths and Romans. It is clear that these two laws had the same spirit : this king wanted to do away with the principal causes of separation between the Goths and the Romans. Now it was thought that nothing separated them more than the prohibition against contracting marriages between them and the permission to live under different laws.

But though the kings of the Visigoths had banned Roman law, it still subsisted in the domains they possessed in southern Gaul. These lands, distant from the center of the monarchy, lived in considerable independence. We see from the history of Vamba, who ascended the throne in 672, that the natives of the country had assumed the upper hand [4] : thus Roman law had more authority there, and Gothic law less. Spanish laws were suited neither to their manners nor to their current situation ; perhaps the people even clung to Roman law because they attached to it the idea of their liberty. Moreover, the laws of Chindasuinthus and Recessuinthus contained horrendous provisions against the Jews ; but those Jews were powerful in southern Gaul. The author of the history of king Vamba calls these provinces the Jewish brothel. When the Saracens came into these provinces, they had been called : now who could have called them but the Jews or the Romans ? The Goths were the first oppressed because they were the dominant nation. We see in Procopius that during their calamities they withdrew from Narbonne Gaul into Spain. [5] In this particular misfortune, they doubtless took refuge in the areas of Spain that still could be defended ; and the number of those who, in southern Gaul, lived under the law of the Visigoths was much diminished as a result.

[1] His reign began in 642.

[2] We do not wish to be tormented by foreign nor by Roman laws : *Law of the Visigoths*, book II, tit. 1, §9-10.

[3] *Ut tam Gotho Romanam quam Romano-Gotham, matrimonio liceat sociari* (*Lex Visigothorum*, book III, tit. 1, ch. i).

[4] The revolt of these provinces was a general defection, as seen in the judgment which follows the history. Paulus and his adherents were Romans, they were even favored by the bishops. Vamba dared not put to death the seditious people he had defeated. The author of the history calls Narbonne Gaul the nurse of perfidy.

[5] *Gothi qui cladi superfueraut, ex Gallia cum uxoribus liberisque egressi, in Hispaniam ad Teudim jam palam tyrannum se receperunt* (*The Gothic Wars*, book 1, ch. xiii).