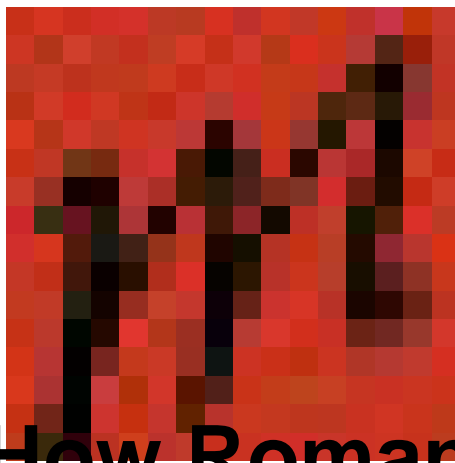


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**XXVIII.4 How Roman law was
lost in the country of the
Frankish domain, and
preserved in the country in the
domain of the Goths and
Burgundians**

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

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The things I have said will shed some light on other things which until now have been full of obscurities.

The country we today call France was governed during the first dynasty by Roman law or the Theodosian code, and by the various laws of the barbarians who lived there. [1]

In the country of Frankish domain, the Salic law was established for the Franks, and the Theodosian code for the Romans. [2] In the country of Visigoth domain, a compilation of the Theodosian code, made by order of Alaric, [3] settled the disputes of the Romans ; the customs of the nation which Euric [4] had set down in writing decided those of the Visigoths. But why did the Salic laws acquire an almost overall authority in the land of the Franks ? And why was Roman law slowly lost, while in the Visigoth domain Roman law was extended, and had overall authority ?

I say that Roman law lost its usage among the Franks because of the great advantages that attached to being a Frank, a barbarian, or a man living under the Salic law [5] ; everyone was eager to abandon Roman law to live under the Salic law. It was kept only by the ecclesiastics, [6] because they had no interest in changing. The differences of conditions and ranks consisted only in the amount of the compensations, as I shall show elsewhere. Now separate laws gave them compensations as favorable as those the Franks had, [7] so they kept Roman law. They suffered no prejudice by it ; and they preferred it, besides, because it was the Christian emperors who had fashioned it.

On the other hand, in the patrimony of the Visigoths, the Visigoth law [8] offering no civil advantage to the Visigoths over the Romans, the Romans had no reason to cease living under their law to live under another, so they kept their laws and did not adopt those of the Visigoths.

This becomes more certain as we proceed. The law of Gundebald was very impartial, and was not more favorable to the Burgundians than to the Romans. It seems from the prologue of that law that it was made for the Burgundians, and was also made to settle matters that could arise between Romans and Burgundians ; and in this latter case the tribunal was evenly divided. That was necessary for particular reasons related to the political arrangement of those times. [9] Roman law subsisted in Burgundy to settle disputes that Romans might have among themselves. These had no reason to abandon their law, as they did in the land of the Franks, all the more so that the Salic law was not established in Burgundy, as can be seen in the famous letter which Agobard wrote to Louis the Debonaire.

Agobard was asking this prince to establish Salic law in Burgundy [10] : therefore it was not established there. Thus Roman law subsisted and still subsists in many provinces that used to dependencies of that kingdom.

Roman law and Gothic law were similarly maintained in the land of Gothic establishment ; there the Salic law was never received. When Pépin and Charles Martel drove out the Saracens, the cities and provinces that submitted to those princes asked to preserve their laws, and this was granted [11] : which, despite the custom of those times when all laws were personal, soon caused Roman law to be regarded as a real and territorial law in those lands.

This is proven by the edict of Charles the Bald issued in Pistres in the year 864, which distinguishes between the lands where they judged by Roman law and those where they did not. [12]

The Edict of Pistres proves two things : first, that there were areas which judged according to Roman law, and that there were others which did not judge according to that law ; the other, that those areas which judged by Roman law were precisely those where it is still followed today, as appears from this same edict [13] ; thus the distinction between of regions of France under custom and those governed by written law were already established in the time of the Edict of Pistres.

I have said that in the beginnings of the monarchy all laws were personal ; thus when the Edict of Pistres distinguishes lands of Roman law from those that were not, that means that in lands that were not of Roman law so many people had chosen to live under one or another of the laws of the barbarian peoples that there was hardly anyone remaining in those regions who chose to live under Roman law, and that in lands of Roman law there were few persons who had chosen to live under the laws of barbarian peoples.

I realize that I am saying new things here ; but if they are true, they are very old. What difference does it make, after all, whether it is me, the Valois, or the Bignons, who said them ?

[1] The Francs, the Visigoths, and the Burgundians.

[2] It was finished in 438 AD.

[3] The twentieth year of the reign of this prince, and published two years later by Anian, as is stated in the preface of that code.

[4] Year 504 of the era of Spain : chronicle of Isidorus of Seville.

[5] *Francum aut barbarum, aut hominem qui Salica lege vivit (Lex Salica, tit. 445, §1).*

[6] According to the Roman law under which the Church lives, as stated in the law of the Ripuarians, tit. 58, §1. See also the authorities without number on this recorded by Mr. du Cange under the word *Lex romana*.

[7] See the capitularies appended to the Salic law in Lindenbrog, at the end of that law, and the various barbarian law codes on the privileges of ecclesiastics in this respect. See also the letter from Charlemagne to his son Pépin, king of Italy, in the year 807, in the Baluze edition, vol. I, p. 462, where it is said that an ecclesiastic must receive triple compensation ; and the compendium of capitularies, book V, art. 302, vol. I, Baluze edition.

[8] See this law.

[9] I shall speak of this elsewhere (book XXX, ch. vi, vii, viii and ix).

[10] Agobard, *Opera*.

[11] [Guillaume] Catel, *Histoire du Languedoc*, reports on this a chronicle of the year 759 : *Franci Narbonam obsident ; datoque sacramento Gothis, ut civitatem traderent partibus Pipini, permetterent eos legem suam habere : quo facto, Gothi Saracenos occiderunt, and civitatem partibus Pipini reddiderunt.*

[12] *In illa terra in qua judicia secundum legem Romanam terminantur, secundum ipsam legem judicetur ; and in illa terra in qua, etc.*, art. 16 ; see also art. 20.

[13] See art. 12 and 16 in Edict of Pistres, in Cavilono, in Narbona, etc.