

OUTLINE — SEMINAR SESSION 2

The ‘Barbarian Invasions’

The Germanic Peoples and Their Codes

Germanic Language Groups:

<i>West</i>	<i>North</i>	<i>East</i>
OHG	ONorse	Gothic
OSax		
ONeth		
OFris		
OEng		

Germanic Kingdoms in 486:

<i>West</i>	<i>Center</i>	<i>East</i>
Anglo-Saxon	Saxons	Saxons
Franks	Franks	Thuringians
Visigoths	Alemanni	? ? ?
	Burgundians	Ostrogoths
	Odoacer	

Germanic Kingdoms in 600:

<i>West</i>	Anglo-Saxon	Saxons	Saxons
Franks	Franks	Thuringians	
Visigoths	Lombards	Bavarians	

Position of the ‘Germanic Tribes’ c. 200 A.D.

<i>North Sea</i>	<i>Rhine-Weser</i>	<i>Elbe</i>	<i>Oder-Vistula</i>	<i>Scand.</i>
Angles	Franks	Alemanni	Goths	Norse
Saxons		Bavarians	Burgundians	
‘Jutes’		Lombards	Vandals	
Frisians				

The Chief Monuments of Roman Law in the Period of the ‘Germanic Kingdoms’:

a. The *lex romana visigothorum (breviarium Alarici)* (Alaric II, 506)

Bibliog: *Lex romana visigothorum*, G. Haenel ed. (1845); *Breviarium Alarici*, M. Conrat (Cohn) ed. & trans. (1890)

b. The *lex romana burgundionum* (Gundobad 506)

Bibliog: *Leges Burgundionum*, ed. F. Bluhme (MGH Leges 3, 1863, repr. 1925); *Leges Burgundionum*, ed.

L.R. von Salis (MGH Legum sec. 1, Leges nationum Germanicarum 2.1, 1892); *Gesetze der Burgunden*, F. Beyerle ed. (Germanenrechte Texte und Übersetzungen 10, 1936)

c. The so-called *edictum Theodorici* (?Theodoric the Ostrogoth, 493–507)

Bibliog: *Edictum Theodorici regis*, F. Bluhme ed. (MGH Leges 5, 1875)

Germanic Codifications in Areas of Strong Roman-Law influence:

a. The Visigoths (*lex Visigotorum, liber judiciorum, fuero juzgo* (first rec. Euric (466 X 484), others: Leowigild (568 X 586), Rekeswind (653 X 672), Erwig (680 X 687).

Bibliog: *Formulae Visigothicae*, in *Formulae Merovingici et Karolini aevi*, K. Zeumer ed. (MGH Legum sec. 5, 1886); *Gesetze der Westgothen*, E. Wohlhaupter ed. & trans. (Germanenrechte, Texte u. Übersetzungen 11, 1936); *Leges Visigothorum antiquiores*, K. Zeumer ed. (MGH Fontes juris Germanici antiqui, 1894); *Leges Visigothorum*, K. Zeumer ed. (MGH Legum sec. 1, Leges nationum Germanicarum 1, 1902); *El Codigo de Eurico*, ed. A. d'Ors (Estudios Visigoticos 2, 1960)

b. The Burgundians (*lex Burgundionum* (1st rec. [first recension] before 516))

Bibliog: As above for the *lex romana Burgundionum* plus *The Burgundian Code*, K. Drew trans. (1949) (*lex Burgundionum* only)

c. The Lombards (Rothair (643), Liutprand (713 X 735), with various additions)

Bibliog: *Leges Langobardorum*, F. Bluhme, A. Boretius edd. (MGH Leges 4, 1868, repr. 1925); *Edictus ceteraque Langobardorum Leges cum constitutionibus et pactis principum Beneventorum*, F. Bluhme ed. (MGH Fontes iuris Germanici antiqui, 1869); *Die Gesetze der Langobarden*, F. Beyerle ed. & trans. (1947); *The Lombard Laws*, K. Drew trans. (1973)

Germanic Codifications in Areas of Weak Roman-Law Influence:

a. The Salic Law (*pactus legis salicae* (1st rec. c. 500)

Pactus legis Salicae I., K. Eckhardt ed., 2 vols. (1=Einführung u. 80 Titel-Text; 2=Systematischer Text) (Germanenrechte n.f., Westgermanisches Recht 1.1, 1.2, 1954–1957); *Pactus legis Salicae II.*, K. Eckhardt ed., 2 vols. (1=65 Titel-Text; 2=Kapitularien u. 70 Titel-Text) (*id.* 2.1, 2.2, 1955–1956); *Lex Salica 100 Titel-Text*, K. Eckhardt ed. (*id.* 3, 1953); *Gesetze des Merowingerreiches 481–714*, K. Eckhardt ed. & trans., vol. 1 (=Pactus legis Salicae, recensiones Merovingicae) (Germanenrechte Texte u. Übersetzungen, 2d ed. 1955); *Gesetze des Karolingerreiches 714–911*, *id.* (*id.* 2d ed. 1953); *Laws of the Salian and Ripuarian Franks* T.J. Rivers trans. (AMS studies in the Middle Ages 8, 1986)

b. The Anglo-Saxon Laws (Aethelberht (c. 600), Hlothere & Eadric (c. 680), Wihtred (c. 695), Ine (688 X 694), Alfred (c. 900), etc.)

Bibliog: *Die Gesetze der Angelsachsen*, F. Liebermann ed., 3 vols. (1903–1916); *The Laws of the Earliest English Kings*, F. Attenborough ed. & trans. (1922); *The Laws of the Kings of England from Edmund to Henry I*, A. Robertson ed. & trans. (1925); *Gesetze der Angelsachsen 601–925*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 13, 1958); *Leges Anglo-Saxonum 601–925*, K. Eckhardt ed. (Germanenrechte n.f. Westgermanischesrecht 4, 1958)

c. The Alamani Law (*Pactus* (7th c.); Leges (712 X 725)

Bibliog: *Leges Alamannorum*, K. Eckhardt ed., 2 vols. (1=Einführung u. Recensio Chlothariana (Pactus); 2=Recensio Chlothariana) (Germanenrechte n.f. Westgermanisches Recht 5–6, 1958–1962); *Gesetze der Merowingerreiches 481–714*, K. Eckhardt ed. & trans., vol. 2 (=Pactus legis Alamannorum: Recensio Chlothariana) (Germanenrechte Texte u. Übersetzungen, 2d ed. 1957); *Gesetze des Karolingerreiches 714–911, id.*, vol. 3 (=Recht der Alemannen) (*id.* 2d ed. 1953)

d. The Bavarian Law (first recension [1st rec.] ? 743 X 744)

Bibliog: *Lex Baiuvariorum*, J. Merkel ed. (MGH Leges 3, 1863); *Lex Baiuvariorum*, E. Frhr. von Schwind (MGH Leges nationum Germanicarum 5.2, 1926); *Recht der Bayern*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.4, 1934)

Carolingian Codifications:

a. The Ripuarian Law (1st rec. 9th c., contents date back to 7th)

Bibliog: *Lex Ribuaria*, F. Beyerle, R. Buchner edd. (MGH Leges nationum Germanicarum 3.2, 1954); *Lex Ribuaria*, K. Eckhardt ed. (Germanenrechte n.f., Westgermanisches Recht 7–8, 1959–1966); *Recht der Ribuarischen Franken*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.2, 1934); *Laws of the Salian and Ripuarian Franks* T.J. Rivers trans. (AMS studies in the Middle Ages 8, 1986)

b. The Chamavian Franks (early 9th c.)

Bibliog: *Lex Francorum Chamavorum*, R. Sohm ed. (MGH Leges 5, 1875–1889); *Lex Ribuaria et lex Francorum Chamavorum*, R. Sohm ed. (MGH Fontes juris Germanici antiqui [6], 1883); *Das Recht der chamavischen Franken*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.7, 1934)

c. The Frisian Law (rec. prob. early 9th c. of very diverse material, some obviously pagan)

Bibliog: *Lex Frisonum*, K. Frhr. von Richthofen ed. (MGH Leges 3, 1863); *Recht der Friesen*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.8, 1934)

d. The Saxon Law (1st rec. early 9th c.)

Bibliog: *Leges Saxonum*, K. Frhr. von Richthofen, K. F. von Richthofen edd. (MGH Leges 5, 1875–1889); *Leges Saxonum u. Lex Thuringorum*, Cl. Frhr. von Schwerin ed. (MGH Fontes iuris Germanici antiqui [4], 1918); *Recht der Sachsen*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.5, 1934)

e. The Thuringian Law (1st rec. early 9th c.)

Bibliog: *Lex Thuringorum*, K. F. von Richthofen ed. (MGH Leges 5, 1875–1889); *Leges Saxonum u. Lex Thuringorum*, Cl. Frhr. von Schwerin ed. (MGH Fontes iuris Germanici antiqui [4], 1918); *Recht der Thuringer*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.6, 1934)

ÆTHELBERHT'S "CODE" ON WOMEN

31. Gif friman wið fries mannes wif geligeþ, his wergilde abicge, 7 oðer wif his agenum scætte begete 7 ðæm oðrum æt þam gebrenge.

[Oliver] 31. If a freeman lies with a free man's wife, let him buy [him/her] off [with] his/her wergild and obtain another wife [for the husband] [with] his own money and bring her to the other man at home.

[Attenborough] 31. If [one] freeman lies with the wife of [another] freeman, he shall pay [the husband] his [or her] wergeld, and procure a second wife with his own money, and bring her to the other man's home.

The translations indicate the problem with the language.

72. **Gif** friwif locbore leswæs hwæt gedep, XXX [þritig] sciH gebete.

[Oliver] 72. If a free woman in charge of the locks does anything seriously dishonest, let her pay 30 shillings.

[Atnb.] 73. If a freeborn woman, with long hair, misconducts herself, she shall pay 30 shillings as compensation.

Virtually every word in this provision is problematic; let's look at them.

73. **Mægþbot** sy swa friges mannes.

[Oliver] 73. Compensation for [injury to/offense against] a maiden shall be as for a free man.

[Attenborough] 74. Compensation [for injury] paid to an unmarried woman shall be on the same scale as that paid to a freeman.

[Hence, the *wergeld* of the daughter of a *ceorl* would be 100s.]

74. **Mund** þare betstan widuwan eorlcundre, L scillinga gebete.

74.1. **Ðare** oþre, XX scH.

74.2. **Ðare** þridan, XII scH.

74.3. **Þare** feorðan, VI scH.

[Oliver] 74. [For violation of] protection of the foremost widow of noble rank, let him pay 50 shillings.

74.1. [For a widow] of the second [rank], 20 shillings.

74.2. [For a widow] of the third [rank], 12 shillings.

74.3. [For a widow] of the fourth [rank], 6 shillings.

[Attnb] 75. The compensation to be paid for violation of the *mund* of a widow of the best class, [that is, of a widow] of the nobility, shall be 50 shillings.

§ 1. For violation of the *mund* of a widow of the second class, 20 shillings; of the third class, 12 shillings; of the fourth class, 6 shillings.

75. **Gif** man widuwan unagne genimeþ, II gelde seo mund sy.

[Oliver] 75. If a person takes a widow who does not belong to him, the [payment for violation of] protection shall be 2[-fold] as compensation.

[Attnb.] 76. If a man takes a widow who does not [of right] belong to him, double the value of the *mund* shall be paid.

76. **Gif** man¹ mægþ gebigeð² ceapi, geceapod sy³ gif hit unfacne is. [77]

76.1. **Gif** hit þonne facne is, eſ[t]⁴ þær æt ham gebrenge, 7 him man his scæt agefe. [77.1]

76.2. **Gif** hio cwic bearn gebyreþ, healfne scæt age gif ceorl ær swylteþ. /3v/ [78]

76.3. **Gif** mid bearnum bugan wille, healfne scæt age. [79]

76.4. Gif ceorl agan wile, swa an bearn. [80]

76.5. Gif hio bearn ne gebyreþ, fæderingmagas fioh agan 7 morgengyfe. [81]

[Oliver]76. If a person buys a maiden with a [bride-]price, let the bargain be [valid], if there is no deception.

76.1 If there is deception, afterwards let him bring [her to her] home, and let him be given his money.

76.2 If she bears a living child, let her obtain half the goods [belonging to the household] if the husband dies first.

76.3 If she should wish to dwell with the children, let her obtain half the goods [of the household].¹

76.4 If she should wish to take a man [i.e., another husband], provision as for one child [i.e., the inheritance is split equally between the mother and each of the children].

76.5 If she does not bear a child, her paternal kin should obtain [her] property and the morning-gift.²

[Attnb] 77. If a man buys a maiden, the bargain shall stand, if there is no dishonesty.

§ 1. If however there is dishonesty, she shall be taken back to her home, and the money shall be returned to him.

78. If she bears a living child, she shall have half the goods left by her husband, if he dies first.

79. If she wishes to depart with her children, she shall have half the goods.

80. If the husband wishes to keep [the children], she shall have a share of the goods equal to a child's.

81. If she does not bear a child, [her] father's relatives shall have her goods, and the "morning gift."

77. Gif man mægþman nede genimeþ, ðam agende L scillinga, 7 eft æt þam agende sinne willan ætgebicge.

77.1. Gif hio oþrum mæn in sceat bewyddod sy, XX scillinga gebete.

77.2. Gif gængang geweorðeþ, XXXV scið, 7 cyninge XV scillingas.

[Oliver]77. If a person takes a maiden by force: to the owner [of her protection] 50 shillings, and afterwards let him buy from the owner his consent [to marry her].

[Oliver] 77.1. If she should be betrothed to another man by goods [i.e., the bride-price has been paid], let him pay 20 shillings [to that man as well].

77.2. If return [of the stolen maiden] occurs, 35 shillings and 15 shillings to the king.

[Attnb] 82. If a man forcibly carries off a maiden, [he shall pay] 50 shillings to her owner, and afterwards buy from the owner his consent.

83. If she is betrothed, at a price, to another man, 20 shillings shall be paid as compensation.

84. If she is brought back, 35 shillings shall be paid, and 15 shillings to the king."

THE BURGUNDIAN "CODE" ON WOMEN

XII. De raptibus puellarum.

[1.] Si quis puellam rapuerit, pretium, quod pro puella daturus erat, in novigildo cogatur exsolvere, et

multae nomine solidos XII.

[2.] Si vero puella, quae rapta est, incorrupta redierit ad parentes, sexies puellae pretium raptor exsolvat, multae autem nomine solidos XII.

[3.] Quod si raptor solutionem suprascriptam unde solverit non habuerit, puellae parentibus adsignetur, ut faciendi de eo quod ipsi maluerint habeant potestatem.

[4.] Si vero puella sua sponte expetierit virum et ad domum illius venerit, et ille se cum illa miscuerit, nuptiale pretium in triplum solvat; si autem incorrupta redierit ad domum suam, remota omni calumnia revertatur.

[5.] Romana vero puella, si sine parentum suorum voluntate aut conscientia se Burgundionis coniugio sociaverit, nihil se de parentum facultate noverit habituram.

L.B. “12.1. If anyone shall steal a girl, let him be compelled to pay the price set for such a girl ninefold, and let him pay a fine to the amount of twelve solidi.

12.2. If a girl who has been seized returns uncorrupted to her parents, let the abductor compound six times the wergeld of the girl (the text does not say *wergeld*; it says *pretium*); moreover, let the fine be set at twelve solidi.

Here we have a translation problem. [would this be on a 150, 200, 300 scale?]

12.3. But if the abductor does not have the means to make the above-mentioned payment, let him be given over to the parents of the girl that they may have the power of doing to him whatever they choose.

12.4. If, indeed, the girl seeks the man of her own will and comes to his house, and he has intercourse with her, let him pay her marriage price (*pretium nuptiale*) threefold; if moreover, she returns uncorrupted to her home, let her return with all blame removed from him.

12.5. If indeed a Roman girl, without the consent or knowledge of her parents, unites in marriage with a Burgundian, let her know that she will have none of the property of her parents.”

XLII. De hereditatibus eorum, qui sine filiis moriuntur.

[1.] Licet de hereditatibus eorum, qui sine filiis moriuntur, quamplura prioribus legibus iusserimus, tamen nunc impensius universa tractantes iustum esse prospeximus, ut aliqua ex his, quae ante praecepta fuerint, corrigantur. Idcirco praesenti constitutione decernimus: ut, si mulier, defuncto sine filiis coniuge suo, ad secunda vota non ierit, tertiam totius substantiae mariti usque ad diem mortis suae secunda possideat; sic tamen, ut post transitum eius ad legitimos mariti heredes omnia revertantur.

[2.] De morginegiva, vero, quod priori lege statutum est, permanebit. Nam si a tempore obitus prioris mariti intra annum nubere voluerit, habeat liberam potestatem et tertiam substantiae partem, quam permissa fuerat possidere, dimittat. Ceterum si emenso anno vel biennio maritum accipere voluerit, omnia sicut dictum est, quae de priore marito habuit, derelinquat et pretium, quod de nuptiis eius inferendum est, accipiat cuius partibus defuncti parentis debetur hereditas.

Data Ambariaco in concilio sub die III. Non. Septembris Abieno V.C. cons. [AD 501]

XLII OF THE INHERITANCE OF THOSE WHO DIE WITHOUT CHILDREN.

1. Although we have ordered many things in former laws¹ concerning the inheritance of those who die without children, nevertheless after considering the matter thoroughly, we perceive it to be just that some of those things which were ordered before should be corrected. Therefore we decree in the present constitution that if a woman whose husband has died without children has not taken her vows a second time, let her possess securely a third of all the property of her husband to the day of her death; with the

¹ Cf. XIV, 2: [

further provision that after her death, all will revert to the legitimate heirs of her husband.

2. Let that remain in effect which has been stated previously concerning the morning gift (*morgengaba, morginegiva*).² For if she wishes to marry within a year from the time of the death of her first husband, let her have full right to do so, but let her give up that third part of the property which she had been permitted to possess. However, if she wishes to take a husband after a year or two have passed, let her give up all as has been stated above which she received from her first husband, and let the heirs in whose portion the inheritance of her former husband belongs receive the price which must be paid for her (second) marriage.

Given in council at Ambérieux, September 3rd (501), Abienus *vir clarissimus* being consul.

LII. De mulieribus desponsatis, quae ad aliorum consortium adulterio instigante transierint.

[1.] Quotiens huiusmodi causae consurgunt, de quibus nihil praecedentium legum statuta iusserunt, ita ambiguitatem rei oportet absolvi, ut emissum iudicium perpetuae legis robur accipiat, et apicalis causa generalem teneat aequitatem.

[2.] Auditis igitur atque perpenesis criminalis negotii meritis, quod inter Fredegisclum spatarium nostrum et Baltamodum nec non et Aunegildem veriebatur, sententiam diximus, quae recens facinus resecaret et futuris temporibus modum districtionia imponeret.

[3.] Et quoniam Aunegilde post mariti prioris obitum in sua potestate consistens se antedicto Fredegisclum non solum ex parentum consensu, verum etiam proprio arbitrio et voluntate donaverat, et maiorem nuptialis pretii partem sponso adnumerante perciperat, fidemque placiti libidinis ardore succensa disrumpens ad Baltamodi non tam vota cucurrit, quam ad consuetum flagitium remeavit, atque ob hoc non aliter tantum crimen tantumque dedecus libertatis quam sanguinis sui effusione debuerit expiari, tamen districtioni publicae dierum reverentiam praeposcentes iubemus, ut Aunegilde divino humanoque dehonesta iudicio pretium, hoc est CCC solidos, Fredegisclum coacta dissolvat.

[4.] Nec Baltamodum quidem ab ipsius damnationis merito segregamus, qui mulierem alterius coniugio debitam praesumpsit accipere, cuiusque mortem causa poscebat; sed sententiam nostram ab interitu eius sub hac conditione sanctorum dierum consideratio revocavit, ut, nisi cum aliis undecim evidentiis praebuerit sacramenta, quibus adfirmet: se eo tempore, quo ipsi saepius dicta Aunegilde quasi uxoris iure coniuncta est, ignorasse, quod Fredegisclum iam fuerit obligata, pretium suum, hoc est CL solidos, Fredegisclum non moretur exsolvere. Quod si iuraverit, neque damnum neque periculum patietur.

[5.] Iudicium vero in hac causa prolatum ad vicem mansurae in aevum legis percipimus custodiri. Et ne quemquam deinceps ad exercendum tanti facinoris ausum permissae nunc compositionis temperamenta sollicitent, iubemus, ut quoscumque similis facti reatus aequaverit, non tam dispendia sustineant facultatum quam capitis amissione plectantur. Rectius est enim, ut paucorum condemnatione multitudo corrigatur, quam sub specie incongruae civilitatis intromittatur occasio, quae licentiam tribuat delinquendi.

Data sub die IIII. kalendas Aprilis Lugduno, Agapito consule.

² The word *pretium* is used to express the idea of a price or wergeld of the woman, but it also refers to the present made at the time of the marriage. Title XLII, 2, apparently defines the *morgengaba* as *pretium quod de nuptiis inferendum est*. This definition of *pretium* in the law seems to indicate that *pretium uxoris*, *pretium de nuptiis*, *morgengaba*, and *donatio nuptialis* designate the same general idea. However there are concrete distinctions: the *morgengaba* designates the present made the day after the wedding night; *pretium uxoris* is probably the price or wergeld of the woman, the *donatio nuptialis* is a present which is made at the occasion of the wedding by the parents of the husband to the woman, and by her parents to the husband; the *pretium de nuptiis* seems to be a general expression which includes the *wittimon*, *donatio*, and *morgengaba*. The *wittimon* is a payment made by the husband to the father of the bride and may correspond to the *pretium uxoris* or *nuptiale pretium*. For *pretium nuptiale*, see XII, 4; LII, 3, LXI; for *donatio nuptialis*, see XXIV, 1, 2; for *morgengaba*, see XLII, 2, for *wittimon*, see LXIX; LXXXVI, 2; and CI. Cf. Davoud-Oghlou, *op. cit.*, I, 430, n. 2.

LII

OF BETROTHED WOMEN WHO, INCITED BY DESIRE, GO TO CONSORT WITH OTHERS.

1. Howsoever often such cases arise concerning which none of the preceding laws have established provisions, it is fitting that the ambiguity of the matter be removed so that the judgment set forth shall receive the strength of perpetual law, and the special case shall have general application.
 2. Since the deserts of a criminal case which is pending between Fredegisil, our sword-bearer on the one side, and Balthamodus together with Aunegild on the other, have been heard and considered, we give an opinion which punishes this recent crime and imposes a method of restraint for the future.
 3. And since Aunegild, after the death of her first husband, retaining her own legal competence, promised herself, not only with the consent of her parents, but also with her own desire and will, to the above-mentioned Fredegisil, and since she had received the greater part of the wedding price which her betrothed had paid, she broke her pledged faith, having been aroused by the ardor of her desire for Balthamodus. Furthermore, she not only violated her vows, but repeated her customary shameful union, and on account of this, she ought to atone for such a crime and such a violation of her free status not otherwise than with the pouring forth of her own blood. Nevertheless we command, placing reverence for these holy days before public punishment, that Aunegild, deprived of honor by human and divine judgment, should pay her wergeld, that is three hundred solidi, to Fredegisil under compulsion.
 4. Nor do we remove merited condemnation from Balthamodus who presumed to receive a woman due in marriage to another man, for his case deserves death. But in consideration of the holy days, we recall our sentence for his execution, under the condition that he should be compelled to pay his wergeld of one hundred fifty solidi to that Fredegisil unless he offers evident (public) oaths with eleven others in which he affirms that at that time in which he was united with the above-mentioned Aunegild as if by the right of marriage, he was unaware that she was pledged to Fredegisil. But if he shall have so sworn, let him suffer neither loss nor punishment.
 5. In truth we command that the judgment set forth in this case be established to remain the law forever, and lest the moderation of the composition now permitted encourage anyone hereafter to commit a deed of such great crime, we command that whosoever incurs the guilt of such a deed not only may sustain the loss of his property, but also may be punished by the loss of his life. For it is preferable that the multitude be corrected by the condemnation of a few rather than that the appearance of unsuitable moderation introduce a pretext which may contribute to the license of delinquency.
- Given on the 29th of March (517) at Lyons, Agapitus being consul.