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O'NEAL, CAPRI MONTGOMERY

MARRIAGE AND THE STATUS OF WOMEN AS VIEWED THROUGH EARLY MEDIEVAL  
LAW CODES

RICE UNIVERSITY

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RICE UNIVERSITY

MARRIAGE AND THE STATUS OF WOMEN  
AS VIEWED THROUGH EARLY MEDIEVAL LAW CODES

by

CAPRI MONTGOMERY O'NEAL

A THESIS SUBMITTED  
IN PARTIAL FULFILLMENT OF THE  
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DEGREE

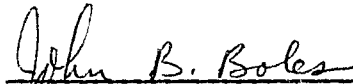
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AS VIEWED THROUGH EARLY MEDIEVAL LAW CODES

by

Capri Montgomery O'Neal

ABSTRACT

The Visigoths, the Salian and the Ripuarian Franks, the Burgundians and the Lombards each compiled their own law codes upon settling into the old Roman Empire. Sources for this time period may be few, but these law codes contain a wealth of information on early medieval society.

Each of these law codes is different. They are all variations based on the amount of influence exerted by three key influences of this time: the germanic, the Church and the Roman. Yet all of these law codes stress the great importance of the family in their society.

Family and marriage is rightly detailed in the laws and adds considerable insight into the status of women in early medieval society. These law codes touch on such aspects of marriage and family as betrothal, dowry, invalid and valid marriages, children, adultery, divorce, inheritance and remarriage. These laws are an important source for early medieval society.

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## INTRODUCTION

The early Middle Ages began with much movement and change. It saw the "fall" of the Roman Empire and the "rise" of new germanic kingdoms. It was a period of transition. The Roman Empire, by the fifth century, had exhausted itself from over-taxation, a lack of manpower and boundaries too far flung for their diminished army adequately to protect. The Romans, therefore, invited in germanic tribes from the frontiers to serve as soldiers. The wealth, agriculture and climate of the Empire were alluring to the germans. The Romans, in an attempt to keep germanic settlement peaceful, often set up the germans as foederati of the Empire. This arrangement required the Romans in the areas in question to share their land with the germans. The germans became overlords taking on government functions of administration and protection. Although still within the Empire, they ruled the lands on their own and defended the boundaries of the Empire against others.<sup>1</sup> In 476 AD, when the leadership in the Western Empire faltered, the germanic kingdoms were in a position to take over in their own right. The Visigoths were in southwest Gaul and Spain. The Franks ruled northern Gaul and the Burgundians ruled southeast Gaul.<sup>2</sup> The Lombards entered Italy in 568 and settled in the aftermath of the attempt, by the Eastern Roman Emperor Justinian, to reconquer Italy from the Ostrogoths.<sup>3</sup> These, therefore, were the



major germanic tribes that comprised early medieval society on the Continent.

Many powerful women are known from this age. One such is Brunhild, a Visigothic princess who married a Frankish king and literally ruled and had her way in portions of Gaul for fifty years. Clotild was a Burgundian princess who married Clovis, an earlier Frankish king. It was at least partially through her influence that the Franks were converted to Christianity. Radegund was a Thuringian who, too, became a Frankish queen. She left her powerful husband to found a monastery and became famous for her saintly ways. Strong queens, however, cannot be taken as representative of society as a whole. Their situations were unique to their positions. What, therefore, could the position of the everyday woman be at this time?

Early medieval society was in a state of flux. The decay of Roman civilization and the primitive backgrounds of the germanic kingdoms make this time period difficult for historians. Sources are few as literacy was minimal. Many scholars have used various methods for discovering more about this time period, yet the study of women at this time has been almost neglected. One cannot get an adequate picture of a society unless they understand all of its aspects. Women are a component of society, therefore a study of their status should shed light on society as a whole.

Due to the meagre sources for this period, the status of women is hard to determine. Most of the primary sources were written by men. They were most often Christian chroniclers who usually had motives for writing other than accurately portraying their society. Many women,

too, as well as men, had little chance for literacy so there are few accounts of their own experiences. Women did not play a major role in what early medieval society deemed the most important spheres of life. Therefore, again, less was written about women. One example was the military. Women were not associated with the military or with weapons. These were an important and essential part of the man's world. The Church was another area in which women did not have a major role. While the Church taught equality for all before God, the hierarchy of the Church's offices was strictly for men. Because women did not play an essential role in these areas which early medieval society viewed as worthy of writing on, the material written about women is extremely scarce.

The secondary sources on early medieval women are, in some instances, just as scarce. Women's history is a difficult subject to research. There are no major, reputable works on which a foundation can be set and new studies can build. Women's history has not yet made a place for itself in distinguished circles either. One reason for this is that women's history has become "fashionable." This has enticed many to write women's history who are not actually qualified to write on the subject. Much work in women's history, therefore, is neither thorough nor accurate.

Early medieval women's history is often given a small chapter as background to women's history in the High Middle Ages. This does not allow for much detail on early medieval women nor on society in general. Some examples of this are Eileen Powers' Medieval Women<sup>5</sup> and Women in the Middle Ages<sup>6</sup> by Frances and Joseph Gies. Vern L.

Bullough's The Subordinate Sex<sup>7</sup> is also very general. Another argument with Bullough is his approach to women's history. The Subordinate Sex does not deal with the actual status of women at any time period but rather with the history of the attitudes that men had about women. Bullough defends this approach by suggesting that this method is essentially the only way to write women's history, "since both the actions which went into the making of history and the records kept by a society have in general been determined from a male point of view."<sup>8</sup> This approach, however, tells us nothing about the actual situation of women. Literary sources, which Bullough leans on heavily, cannot be accepted as reliable indicators of society either. Much that was written had some sort of bias or another and should not be taken at face value.

Another problem with works on women's history is that they usually try to cover too much material and end up not saying much of any substance. Bernard I. Murstein's Love, Sex and Marriage Through the Ages<sup>9</sup> is one of these, although there is an interesting chapter on early Christian views of marriage and women. Another is Not in God's Image by Julia O'Faolain and Lauro Martines.<sup>10</sup> Elise Bouldings' The Underside of History<sup>11</sup> is guilty of this also. The Underside of History also tends to make blanket statements and conclusions without proof or explanation. This is due to the author's attempt to encompass too much material without adequate scholarly discipline.

Two other books deal specifically with medieval women and are collections of various articles. Medieval Women<sup>12</sup> has two articles

that pertain to the early Middle Ages;<sup>13</sup> however both deal with literary sources and talk exclusively of queens. This approach is not really adequate, as queens were most often exceptions to the rule and not a very good indicator of society as a whole.

Susan Stuard Mosher, editor of Women in Medieval Society,<sup>14</sup> suggests another approach to women's history: Women in Medieval Society". . . deals with the position of women, the roles assumed by women, and their importance within the social context, which often meant their importance within the family."<sup>15</sup> This framework leads to some very revealing research,<sup>16</sup> and the articles use their sources judiciously in order to substantiate their findings.

There are, too, some works done on individual germanic kingdoms. Katherine Fischer Drew has authored much of this.<sup>17</sup> Dr. Drew uses the law codes of these societies as her source material and comes up with a rich amount of data. Her studies emphasize family law, not specifically women, but her findings shed much light on women at this time also.

Suzanne Fonay Wemple's Women in Frankish Society<sup>18</sup> is another excellent work. Ms. Wemple makes very good use of a variety of sources in order to come up with an indepth look at women in Frankish society, not just in marriage but also in the Church.

P.D. King's Law and Society in the Visigothic Kingdom<sup>19</sup> has one complete chapter on the family. The problem with this source is that Mr. King tends to be extremely wordy while actually stating little of much value.

These then are the major and most current works on women in early medieval society. Many emphasize the importance of the family in society and women's role in that family, yet most overlook one major source for the period. This source is the law codes of the Germanic kingdoms. Each of the Germanic tribes wrote down their laws (which had previously been customary and unwritten) upon settling into the Roman Empire. The law codes of the Visigoths, Salian and Riparian Franks, the Burgundians and the Lombards still remain. K.F. Drew argues in "Legal Materials as a Source for Early Medieval Society,"<sup>20</sup> and has shown in her other works, that these law codes have been long overlooked as a good source for early medieval society. Family law, especially, should be a good source for information on women. Susan Stuard Mosher suggests that "...the events which punctuate a life, birth, infancy, possible education, very likely betrothal and marriage or entry into a religious order, begetting children, divorce, widowhood, last testaments and death, reveal much about social priorities."<sup>21</sup> These are the very issues that the laws talk of and dictate.

Women's sphere of influence in the early Middle Ages was domestic. This was due mainly to the importance of militaristic influences in society. Rudolph Huebner explains this:

. . . Germanic women were generally regarded as incapable of bearing arms...and since the community was constituted by the totality of arm-bearing persons, they could not be independent members of the community; they were incapable of serving in the army, and therefore also in the courts - for he who would participate in the popular court must be able to bear arms, since the procedural contest might at any moment be transformed into a warlike combat. Consequently, women were but members of a household community that was represented in external relations by its head.<sup>22</sup>

Women were revered as mothers and wives--this was their role in society. The price paid for killing a woman was the highest during her childbearing years.<sup>23</sup> Tacitus, in his Germania, stated that german men "whenever they are not fighting, they pass much of their time in the chase, and still more in idleness, giving themselves up to sleep and feasting. . .and surrendering the management of the household, of the home, and of the land to the women, the old men, and all the weakest members of the family."<sup>24</sup> Women were married early and most often kept in the married state for most of their lives. Therefore, looking to family and marriage laws in each of the germanic kingdoms should give a clearer picture of the status of women in the early Middle Ages and a better understanding of medieval society as a whole.

One must be cautious, however, when using laws as a source. The writing down of laws for the germanic kingdoms was a new concept derived from Roman influence and the necessity to create new laws for new surroundings and circumstances. Those who wrote the laws often took for granted that most people knew the basic fundamentals of the law. There are, therefore, few explanations of some of the provisions of the laws. Also, one must be cautious as law remained customary in many aspects. Much was not written down. One must keep in mind that laws could be either practical guides for society or an ideal goal. Dr. Drew has found that the "general organization found in barbarian codes issued for those within the territory of the old Roman Empire is in general agreement with that found in much later codes issued for

people who remained outside the Empire."<sup>25</sup> Therefore, Dr. Drew feels that these law codes present a fairly adequate picture of society. The legal aspects of family law dealt with by the laws and that will be discussed are betrothal arrangements, illegal marriages, legal marriages, children, divorce and adultery, inheritance and property, and remarriage.

Determining the status of women through family law may be facilitated by keeping in mind certain criteria or questions with which to evaluate the laws. For instance, one such indicator should be the conditions of marriage. Did women have the right to choose their partners or even consent to their marriages? Did women remain under their father's power even after marriage? Was the woman, in the eyes of the law, more of a child than a wife to her husband? Property rights must also be considered. Could women own property? Could they inherit equally with their brothers? And finally, the issue of legal rights must also be considered. Could women plead their own cases in court? Could women be guardians of their children and others or did they have to have guardians themselves? These questions must be kept in mind when one evaluates the laws.

FOOTNOTES

1. Katherine Fisher Drew, "Introduction," The Burgundian Code (Philadelphia: University of Pennsylvania Press, 1972), p. 11.
2. Colin McEvedy, The Penguin Atlas of Medieval History. (Harmondsworth, Middlesex: Penguin Books Ltd., 1961), p. 23.
3. Ibid, p. 33.
4. For more information on these and other women see Gregory of Tours' History of the Franks.
5. Eileen Powers, Medieval Women, M. M. Postan, ed., (Cambridge: Cambridge University Press, 1975).
6. Frances Gies and Joseph Gies, Women in the Middle Ages (New York: Thomas Y. Crowell Co., 1978).
7. Vern L. Bullough, The Subordinate Sex (Urbana, Illinois: University of Illinois Press, 1973).
8. Ibid, p. vii.
9. Bernard I. Murstein, Love, Sex and Marriage Through the Ages (New York: Springer Publishing Co., 1974).
10. Julia O'Faolain and Lauro Martines, ed., Not in God's Image: A History of Women in Europe from the Greeks to the Nineteenth Century (New York: Harper & Row, 1973).
11. Elise Boulding, The Underside of History: A View of Women Through Time (Boulder, Colorado: Westview Press, 1976).
12. Derek Baker, ed., Medieval Women (Oxford: Basil Blackwell, 1978).
13. Janet L. Nelson, "Queens as Jezebels: The Careers of Brunhild and Balthild in Merovingian History," Ibid, pp. 31-77.
14. Susan Mosther Stuard, ed., Women in Medieval Society (Philadelphia: University of Pennsylvania Press, 1976).
15. Ibid, p. 1
16. David Herlihy, "Land, Family, and Women in Continental Europe, 701-1200," Ibid, pp. 13-45; Emily Coleman, "Infanticide in the Early Middle Ages," Ibid, pp. 47-70; Jo-Ann McNamara and Susan F. Wemple, "Marriage and Divorce in the Frankish Kingdom," Ibid, pp. 95-124.



17. Katherine Fischer Drew, "The Germanic Family of the Leges Burgundionum, Medievalia et Humanistica, 1963, pp. 5-14; "The Laws of the Family in the Germanic Barbarian Kingdoms: A Synthesis," Studies in Medieval Culture, vol. XI, pp. 17-26 and "Notes on Lombard Institutions," The Rice Institute Pamphlet, vol. XLIII, no. 2, pp.3-100.
18. Suzanne Fonay Wemple, Women in Frankish Society: Marriage and the Cloister, 500 to 900 (Philadelphia: University of Pennsylvania Press, 1981).
19. P. D. King, Law and Society in the Visigothic Kingdom Cambridge: At the University Press, 1972).
20. Katherine Fischer Drew, "Legal Materials as a Source for Early Medieval Social History," Rice University Studies, vol. 60, No. 4, pp. 33-43.
21. Stuard, Women in Medieval Society, p. 4.
22. Rudolf Huebner, A History of Germanic Private Law, Frances S. Philbrick, trans. (South Hackensack, NJ: Rothman Reprints, Inc., 1968), p. 64.
23. The Salian Frankish law code was one example of this. It states that: "He who strikes a pregnant free woman, and it is proved against him shall be liable to pay six hundred solidi." (Title 24, No. 5).
24. Tacitus, Germania, H. Mattingly, trans. (West Drayton: Penguin Books, 1948), p. 113.
25. Drew, "Germanic Family of the Leges Burgundionum," p. 5.

THREE TRADITIONS THAT INFLUENCED EARLY  
MEDIEVAL LEGISLATION ON MARRIAGE AND WOMEN

This time period was one of the coming together of three separate influences: Germanic, Christian, and Roman. Each will have its own effect on family law. Therefore, a look to each of these influences is necessary first before analyzing the law codes themselves.

Early germanic law was customary meaning that it was not written down but depended on custom and tradition. Tacitus, who in AD 100 wrote a treatise on the Germans, stated that they used ancient songs to remember and record their history.<sup>1</sup>

The Germans were not organized into national units but rather in small bands. The chief was a war lord or military leader. This was the source of his power. This chief did not, however, have the power to enforce the laws. This power resided in the family. The family had long been the most important agency for the protection of lives and obtaining vengeance for wrongs. The families were the policing force in society, chiefly due to the threat of a bloodfeud for a wrong done. If a person was wronged by another then his family avenged the wrong through violence to the other family. This family would most likely avenge being avenged. Tacitus wrote that "it is a

duty among them to adopt the feuds as well as friendships of a father or a kinsman."<sup>2</sup> Bloodfeuds could get very involved. Therefore, it was actually the threat of a bloodfeud that kept order. Obviously, too, it was best to belong to a strong family that could afford good protection.

As these early germanic societies began settling into the old Roman Empire, the chief gradually came to have more power. The groups became more consolidated. The germans were actually fewer in numbers than the Romans and needed a more organized form of keeping order and protecting individuals' rights. The bloodfeud would cause chaos if allowed to continue unchecked. Chiefs or kings began to have their customary laws written down. To compensate a wronged party and to stop a bloodfeud from evolving, a money payment was set up. The payment was made to the injured family. The amount of money varied with the severity of the offense. This money sum was called a composition.<sup>3</sup> Every person had a price or wergeld that depended upon his status and birth. This wergeld was paid to the family of the person who was killed. After the payment of the composition or wergeld then the threat of a bloodfeud as retribution was avoided. This idea of money payments for crimes is very characteristic of the early germanic law codes. There are not many physical punishments. This system of fines for offenses, however, lessened some of the power of the family.

Yet, as the state grew in importance the family became important for other reasons. Laws defining family were very detailed. Kinship groups encompassed persons related to the seventh degree.<sup>4</sup>

The barbarians represented generations by the limbs of the upper part of the body, rather like children who count on their fingers. The head represents the spouses; the elbow, the children, the shoulders, the grandchildren; the neck, the great-grandchildren; the wrists and the joints of the fingers, subsequent degrees; the nearest after these are on the nail. From the seventh degree, going back to the common ancestor and redescending to the seventh degree, one gets a total of fourteen degrees. Relationship stops at this point...<sup>5</sup>

Kinship relations could therefore, connect a great many people.

Family remained important in helping individuals pay the heavy fines of composition and wergeld. In this way the individual could avoid debt slavery. The family could also help in getting cases to court.<sup>6</sup> The most prevalent form of proof of guilt or innocence in court was the use of oathhelpers swearing to one's good character. The oathhelpers would swear on a sacred object to the good character of the accused. It was thought that if one or more oathhelpers stumbled in the oath, it was divine intervention and meant guilt. The laws determined the number of oathhelpers required and these oathhelpers were usually members of one's family.<sup>7</sup>

Property was held in family trust. Family property was not owned but rather held from generation to generation; therefore family property could not be alienated. Members of the family inherited it.<sup>8</sup> Tacitus wrote that ". . . every man's own children are his heirs and successors, and there are no wills."<sup>9</sup> Wills and testaments could be used, however, for acquisitions through gift or purchase,<sup>10</sup> but not for family property. This was changed under Church influence so that one could leave their property to the Church.

Family was also important for the protection of minors and women, and in the arranging of marriages. Marriage was especially important for the family to dictate because family property could possibly be inherited. Women and minors had guardians or mundwalds. Minor sons, upon majority, became legally competent; but not so with women. A husband bought his wife's mundium or right of protection from her mundwald. Mundium meant control of a woman's property and the right to the guardianship and mundium of any children born to the woman. If a husband did not have the mundium of his wife, their children would legally belong to her mundwald.<sup>11</sup> The transference of a woman's mundium from her father or guardian to her husband was one of the major agreements settled upon during betrothal negotiations. Marriage almost always began with a betrothal. A betrothal was a contract whereby a woman's mundwald agreed to marry her to a suitor. A dowry was determined at this time and agreed upon. This dowry was to be paid by the husband to his wife for her maintenance. It was her property which meant that although it was administered by her husband, he could not alienate it nor could his heirs inherit it. It was inherited by her heirs.

The marriage itself was the formal handing over of the bride to her husband. The consent of a woman's family to her marriage was absolutely essential and was the only requirement to a marriage.<sup>12</sup> The husband usually gave the bride's father a symbolic sum in exchange, presumably, for her mundium.<sup>13</sup> The dowry was given at this time also. One final wedding gift was given to the bride by her husband. This was the morgengabe or morning gift given the morning

after the wedding night. This too became a part of the woman's property.

This then was the old germanic framework upon which Christian and Roman influences will merge, in varying degrees, to create the unique law codes of the early Middle Ages.

Church influences may be difficult to determine. All of the germanic kingdoms, except the Franks, were first converted from paganism to Arian Christianity. Arians believed that as Jesus was the son of God, he could not be as equally divine as God.<sup>14</sup> Arian Christianity was viewed as heresy by the Orthodox or Roman Church, so there was very little exchange of views between the two at this time.

By the end of this period each of the germanic kingdoms had embraced orthodoxy. Yet Church influences on marriage legislation are still difficult to ascertain. This was an illiterate society. Religion was superstitious rather than intellectual.<sup>15</sup> The Church was not yet a consolidated power to be dealt with carefully. The transition from pagan to Christian had been a recent development. Marriage was not yet a religious concern. The power of the family over this function was still very strong. Marriage would not officially fall under the jurisdiction of the Church until the twelfth century.

Yet the Church had some interesting opinions on marriage and women. St. Paul had a lot to write on the subject in the New Testament, as did the Latin Fathers, St. Jerome and St. Augustine, in the fifth century. The writings of these three men had enormous influence on Church doctrine. Therefore, their views on women and marriage should be dealt with.

St. Jerome viewed the "ideal" woman as a "woman not given to too much wine, one who, as the apostle says, is not idle nor a tattler, but sober, grave, skilled in spinning, saying only such words as will train a girl's mind in virtue."<sup>16</sup> His woman of "bad" character "desires the things of this world, she loves riches, she ignores all fasts, she rubs her eyes with antimony, she likes to go out in fine clothes."<sup>17</sup> These views of women are fairly typical for the time. Yet the Church also upheld a unique idea about women, too. This was the belief that a woman's soul could be equal to a man's in the eyes of God. This idea was carried over into writings on marriage, even St. Paul believing that husbands and wives were equal in marriage:

The husband should give to his wife her conjugal rights, and likewise the wife to her husband. For the wife does not rule over her body, but the husband does: likewise the husband does not rule over his own body, but the wife does. (1 Corinthians, 7)

Nevertheless, in the Lord woman is not independent of man nor man of woman for as woman was made from man, so man is now born of woman. (1 Corinthians, 10)

Even so husbands should love their wives as their own bodies. He who loves his wife loves himself. For no man ever hates his own flesh, but nourishes and cherishes it . . . . . (Ephesians, 5)

This idea of equality in marriage also influenced Christian ideas on divorce. The Church believed in monogamy. St. Paul allowed divorce only if the spouse was an unbeliever.<sup>18</sup> St. Augustine, too, believed in the equality of marriage and especially equal fidelity.<sup>19</sup>

This union divine Scripture so commands that it is not permitted a woman who has been dismissed by her husband to marry again, as long as her husband lives nor is it permitted a man who has been dismissed by his wife to marry again, unless she who left has died.<sup>20</sup>

This was true even for adulterers: St. Augustine wrote "I do not see how a man can have freedom to marry another if he leaves an adulteress, since a woman does not have freedom to marry another if she leaves an adulterer."<sup>21</sup>

Divorce was not possible. A marriage ended upon the death of a spouse, in the eyes of the Church. Marriage, however, was not yet a sacrament and the rites were not performed by a priest at this time.

For all of these writings on the equality of women before God and in marriage, these men wrote just as much, if not more, against too much equality for women in the Church and against marriage itself. Church offices were closed to women. St. Paul's writings are well-known for their misogynistic attitudes:

For a man ought not to cover his head, since he is the image and glory of God; but woman is the glory of man. (For man was not made from woman, but woman from man.)  
(1 Corinthians, 10)

Let a woman learn in silence with all submissiveness. I permit no woman to teach or to have authority over men; She is to keep silent. For Adam was formed first, then Eve; and Adam was not deceived, but the woman was deceived and became a transgressor. Yet woman will be saved through bearing children, if she continues in faith and love and holiness, with modesty. . . (1 Timothy, 2)

. . . women should keep silence in the churches. For they are not permitted to speak but should be subordinate. . . .  
(1 Corinthians, 14)

Wives, be subject to your husbands, as is fitting in the Lord. (Colossians, 3)

Some writers have suggested that St. Paul wrote these verses to fit particular problems in his day and that they were not meant to be taken as absolutes.<sup>22</sup> Yet they were soon included in the Bible as divinely inspired and became absolutes to many who set the doctrines for the Church.



Marriage rather than virginity was viewed as a poor substitute available for those who were weak. St. Jerome believed that "marriage is a raft for the shipwrecked, a remedy that may at last cure a bad beginning."<sup>23</sup> Those Christians who had the strength to be pure remained virgins. Those who were weak were encouraged to marry rather than commit a mortal sin through adultery or fornication. St. Augustine wrote a treatise on "The Good of Marriage" and believed that "marriage and continence are two goods, the second of which is better."<sup>24</sup> He believed that marriage was for the procreation of children, for the companionship of the couple, and for the morality of a weak soul. The problem with marriage for St. Augustine was expressed in his statement that "He who is unmarried thinks about the things of the Lord, how he may please the Lord. Whereas he who is married thinks about the things of the world, how he may please his wife, and he is divided."<sup>25</sup>

These opinions on marriage and women had more influence on medieval society once the Church consolidated its power, later in the Middle Ages, than in the early medieval period. Yet some influences can be seen even in the earlier time. Restrictions in the laws of divorce arose under Church pressure, and there was an increase in the number of people who chose not to marry but rather to remain religiously chaste. The Church, however, had more influence on Roman legislation. It is through Roman influence that the Church affected early medieval legislation on marriage.

Roman influence on the Germanic law codes was inevitable as the laws were written down in Latin by Roman scribes. The very idea of

writing laws down was Roman. The new kingdoms had previously relied on customary law, law that was the heritage of the people and could not be legislated.

Yet new surroundings and circumstances called for new laws to guide them. The Germans believed that law was personal. The law that one was born with was the law that governed him for life, no matter where he lived. This meant, for example, that Burgundians living under the Franks were ruled by Burgundian law and Romans still lived under Roman law. Obviously, this could get confusing. The necessity to write down laws became apparent. Alaric, King of the Visigoths, in 506, compiled a law code for the Romans based on the Roman Theodosian Code. Breviarium Alaricianum, as this new law code was called, became the major source of law for the Roman population in the early Middle Ages. The Theodosian Code is important, not only in that it served as the model for the Breviarium Alaricianum, but also because it was the model from which the Germanic kingdoms developed their own law codes. Therefore, it is necessary to understand late Roman marriage laws in order to understand better the marriage laws of the Germanic kingdoms.

The Theodosian Code, issued on February 15, AD 438, was a compilation of the edicts of Roman Emperors up to that time. It was compiled so that judges would know the law of the Imperial courts. It remained the law for the Western Empire until the Empire's inevitable fragmentation.

The Theodosian Code has much to say on the status of women. Those women with a base or low status included slave women, daughters of slave women, freedwomen, daughters of freedwomen, actresses,

daughters of actresses, mistresses of taverns, daughters of tavern keepers, daughters of procurers or of gladiators and women who sold wares in public.<sup>26</sup> These women were not allowed to have relations with upperclass men, such as senators.<sup>27</sup>

Both men and women came of legal age at eighteen.<sup>28</sup> This meant they had the right to make contracts, although they remained under the guidance of their families unless they were emancipated. Both men and women could be emancipated from their families. If this were the case then they became legally independent,<sup>29</sup> yet the family still remained important. Kinsmen continued to bear responsibility for the women of the family.<sup>30</sup>

Women could own their own property.<sup>31</sup> They were deemed legally competent and could conduct their own cases in court, yet they were not allowed to conduct the cases of others.<sup>32</sup> A husband could only handle a case for his wife with her written approval.<sup>33</sup>

Women had rights to inheritances.<sup>34</sup> Freeborn women who had borne three children, and freedwomen who had borne four, received jus liberorum or "the rights that accrue to parents on account of children."<sup>35</sup> This meant they were able to accept an unlimited amount of gifts, inheritances and legacies. Those without these rights could only accept a small amount.<sup>36</sup>

A woman was deemed competent enough to become her child's guardian upon her husband's death.<sup>37</sup> She supervised the child's property and business transactions. Women also had the power to make wills and testaments.

Women, therefore, were recognized as legal entities in the Theodosian Code. They could become independent from their families,

they could administer their own property, and they could supervise that of their children.

Roman marriage arrangements usually began with a betrothal. This was often a contract between fathers for their children. The consent of parents was necessary. The man who raped a woman after failing to receive her parents' consent to marry received capital punishment.<sup>38</sup> A widow under the age of twenty-five, even though emancipated, had to have the consent of her father before remarrying.<sup>39</sup> The consent of the parties being betrothed was necessary also, but women were often too young to protest (they could be betrothed before the age of ten)<sup>40</sup> and men were usually dependent financially upon their fathers.

The betrothal was solemnized and a kiss exchanged as pledge. The betrothed couple then gave gifts to each other.<sup>41</sup> These gifts became valid with a formal registration in the public records.<sup>42</sup>

The couple were to be married within two years of the betrothal agreement. If this was not done it was deemed the fault of the man and he was not allowed to demand back his betrothal gifts. The woman was freed from the betrothal and allowed to marry another. If the woman married another before the two years were up, however, the person who had approved of the marriage was exiled to an island.<sup>43</sup>

No reason was allowed as valid for revoking a betrothal. It was felt that any reason, such as low birth or morals, should have been discovered prior to the betrothal. Only a change in intent could be cited.<sup>44</sup> If a woman's family changed its mind they had to pay back the betrothal gifts fourfold.<sup>45</sup>

A dowry was probably negotiated at the time of the betrothal. The dowry was given by the bride's family for the bride's upkeep during her marriage. It was the bride's property upon divorce, should she be the innocent party. The amount of the dowry was to be not less than the amount received as a betrothal gift.<sup>46</sup> The dowry was essential to a marriage, for a marriage without dowry made the couple infamous. This meant that their marriage was not recognized and their children were not legitimate.<sup>47</sup>

Several types of unions were deemed invalid and often entailed serious punishments. Capital punishment, which could mean exile, loss of citizenship, or death was given for Jews marrying Christians<sup>48</sup> and Romans marrying barbarians of any nation.<sup>49</sup> A man could not marry a virgin or widow consecrated to God; capital punishment was again prescribed, and anyone could accuse someone else of this.<sup>50</sup>

Legal marriage could not result from a union of slave and free. If a free man married a slave, the slave was sent to the mines and the free man was exiled to an island and all of his property was confiscated. Any children born of the union became slaves.<sup>51</sup> A free woman who lived with a slave was given three formal warnings to leave the slave. If she did not, she lost her freedom and her children became slaves also.<sup>52</sup> The slave involved was convicted of adultery and burned. Other slaves were rewarded for making accusations of this crime: they received their freedom.<sup>53</sup>

Several types of unions were not recognized and children of such unions were illegitimate in the eyes of the state. Illegitimacy meant that children were not under the power of their fathers and they could

not inherit from their family as heirs.<sup>54</sup> If a man married a woman without her family's permission, he lost all of his property, was exiled and the marriage was not valid; furthermore the children were illegitimate.<sup>55</sup> Those who married without the performance of a marriage ceremony could not have legitimate children either.<sup>56</sup> A man of rank could not legitimize the children of a union with a slave woman or any other woman of base or low status.<sup>57</sup> Those men of rank were, however, allowed to marry any woman of honorable parents regardless of whether she was rich or not.<sup>58</sup>

A judge or administrator could not use his power or rank to force a woman to marry him against her will. Her family could take their case to any court outside of his sphere of influence. If he was found guilty he was to pay her parents ten pounds of gold, he was stripped of his rank, and he was exiled from his province for two years.<sup>59</sup>

A man who married a woman related to him within the third degree suffered infamy as did the woman whom he married. Infamy meant that a person could possess his own property but could not enter into contracts or receive gifts or testaments. Children from such unions were illegitimate.<sup>60</sup> A marriage between persons related in the fourth degree was also deemed infamous, but they were allowed to receive pardons from this by the emperor.<sup>61</sup>

A valid marriage, therefore, was one where both parties could legally marry each other. The marriage contract began with a betrothal and the exchange of gifts. The couple and their parents had to consent to the union and a dowry was given. The marriage was solemnized with some sort of vows.<sup>62</sup> At this point the couple

were married. They were not allowed to give each other any more gifts, as gifts were forbidden between husbands and wives.<sup>63</sup>

Marriage between slaves was not officially legal, yet a union between slaves was recognized. The couple could not be separated nor their children sold.<sup>64</sup>

Once a couple was married it was their duty to the Roman Empire to have children. Manpower was short. The Roman Empire needed more people who would pay taxes and work, so pressure was put on couples to have children. Freeborn people who had not borne at least three children and freed people who had not borne at least four were allowed to receive only a small number of gifts, legacies and inheritances.<sup>65</sup> The sole exception to this was for religious celibates who were not married.<sup>66</sup> A man who had five children, and one was a son of legal age, could place this son in his own compulsory position to take over his duties.<sup>67</sup> A man with thirteen children was no longer obligated to do his compulsory duties.<sup>68</sup>

Children came under the control of their fathers and were the heirs to their fathers and mothers. If a child had no father, he was punished by his kinsmen. Only for serious crimes did a judge have grounds to punish minors.<sup>69</sup> Illegitimate children of an illegal marriage could not inherit from their parents nor were they under their fathers' control.<sup>70</sup>

Legitimate children did not have to be recognized by their fathers--they could be exposed instead. A person who took an exposed child for his own had to get a signed statement from the Bishop as a

witness, but after that, no one could reclaim the child.<sup>71</sup> A person taking up an exposed child had the right to make the child free or slave.<sup>72</sup> If a father wanted his child back, then double the price of a comparable slave and expenses had to be paid.<sup>73</sup>

Poverty and starvation were common among the lower classes. If a person could not support his child, he could get relief from the imperial fisc.<sup>74</sup> Selling children was common. The buyer, however, was not allowed to transfer the child to another nation.<sup>75</sup> This was to insure that the child could always be bought back. A freeborn child could not remain in slavery forever. Once he had worked off the amount of his sale price and expenses, he was free.<sup>76</sup>

Children, therefore, were an important and integral part of Roman marriage. The state needed manpower and used the institution of marriage to aid the economy of the Empire. The state encouraged couples to have children. To keep up the functions and the taxes of the state jobs, were made hereditary. In spite of the state paternalism, however, poverty was so great that many people had no choice except to expose or sell their children.

The Theodosian Code details three types of justification for divorce: for a crime, for bad character and for no reason. A notice of divorce had to be sent.<sup>77</sup> A wife could divorce her husband if he were convicted of having committed homicide, sorcery, or violation of tombs. In these cases, the wife received back her dowry and betrothal gifts and she was able to remarry after five years. If the wife could not prove her charges, she forfeited her dowry and gifts,



and she was exiled and not able to remarry.<sup>78</sup>

The legislation stating what a man could divorce his wife for was a little different. A husband could divorce his wife if she was convicted of adultery, sorcery, or procuring. In these cases, the wife lost her dowry and betrothal gifts, and the husband was able to remarry at once. If the husband could not prove his charges, he had to restore his wife's dowry and could not remarry. If he did remarry, his first wife received his house, property, and even the second wife's dowry.<sup>79</sup>

A man or woman could divorce on grounds of the bad character of his or her spouse. The party desiring the divorce forfeited the dowry and the betrothal gifts, in this case, but could remarry after two years.<sup>80</sup>

A couple could divorce by mutual consent until 452. A law issued at this time prohibited the dissolution of a marriage solely by the wishes of the parties.<sup>81</sup> This idea of the indissolubility of marriage was new; it had most likely come about due to the influence of Christianity.

The adultery of women was a serious crime in the Theodosian Code. It was related to such crimes as homicide and high treason, and capital punishment was the sentence for homicide, magic, or adultery.<sup>82</sup> A person convicted of homicide, magic, adultery or rape and proved guilty, was not allowed to appeal his case.<sup>83</sup>

Husbands were allowed to accuse their wives of adultery on the grounds of suspicion alone and near kinsmen could accuse a woman of adultery also, but no one else could.<sup>84</sup> A husband was allowed to

torture household slaves in order to investigate the suspected adultery of his wife.<sup>85</sup> The husband, however, could not recover his wife's dowry and betrothal gifts until she had been proven guilty of adultery.<sup>86</sup>

While divorces were still legal and relatively easy to obtain in the Theodosian Code, Christian morality was beginning to gain influence. Divorce by mutual consent had long been practiced by the Romans. A stop was put to this, most likely by Christian intervention. Yet one still had other means for obtaining a divorce.

Adultery on the part of a wife had always been dealt with severely and the new Christian ideas did not change this. Adultery was thought to warrant serious punishment as it could cause uncertainty of parentage.

Roman men and women could legally make wills and testaments. Wills had to be written, not oral, and there had to be seven witnesses to the will. Such wills were kept in the offices of the tax assessor; a will was not valid if it had been written more than ten years previously.<sup>87</sup>

Husbands and wives held separate property and they did not succeed to each other intestate unless there were no children or near kinsmen.<sup>88</sup> Husbands and wives, however, were allowed to leave each other as much as they pleased in their wills.<sup>89</sup>

A mother who died intestate was succeeded by her children.<sup>90</sup> Her inheritance included the dowry and betrothal gifts. The father was able to use the usufruct of this property, but he was not able to alienate it.<sup>91</sup> When a child turned twenty years of age, the

father was to relinquish one half of this property to the child.<sup>92</sup>

A father received one-third of his child's property, however, should he emancipate that child.<sup>93</sup>

When a father died intestate, it was the mother who enjoyed the usufruct of her children's inheritance so long as they were minors.<sup>94</sup> If the mother remarried, she turned her dead husband's property over to their children. This property also became officially theirs upon their mother's death.<sup>95</sup> If a married daughter wished to inherit from her father, she first had to give back her dowry before getting an equal share of the inheritance.<sup>96</sup> This law suggests that the dowry was actually the daughter's compensation for not inheriting from her father. Natural children were allowed to receive only one-twelfth of the inheritance and could do so only if the father so designated in his will.<sup>97</sup>

When a child died intestate, the father and mother inherited.<sup>98</sup> If the mother had the rights of three children, she received two thirds of this property. If she did not, she received one third.<sup>99</sup> Mothers could not be unjustly disinherited by their children. They were believed to need consolation for the loss of their children.<sup>100</sup>

Those who received an inheritance had to take over the duties and obligations of that property.<sup>101</sup> This did not mean just paying taxes. Several jobs, such as baker, were passed on hereditarily through the inheritance of property.<sup>102</sup>

Inheritance laws take up a great deal of space in the Theodosian Code. The Romans were very concerned with where property went by

inheritance. They were also concerned with the transfer of the duties involved with such property.

Roman women were encouraged to keep in the married state for most of their lives. A childless widow under forty years of age was to remarry within five years of her husband's death. She was still in her childbearing years and the Roman Empire needed women to bear children as long as they could. If a widow did not remarry within the prescribed time, she was to divide her property amongst her heirs,<sup>103</sup> however, widows with children did not have to remarry.<sup>104</sup> Widows with children could be their children's guardians, so long as they swore in public and for the record that they would not remarry.<sup>105</sup>

A divorced woman could not remarry if she had not proven her grounds for divorce against her husband; nor could she remarry for divorce on trivial grounds. If a woman proved her husband guilty of her charges for divorce, she could remarry after five years.<sup>106</sup>

A husband, with a wife proven guilty of justifiable reasons for divorce, could remarry immediately. If he divorced his wife on trivial grounds, a husband could remarry after two years. A man who divorced his wife for no reason, could not remarry; but his former wife could after one year.<sup>107</sup>

Divorce and remarriage clearly reveal a double standard for men and women in the Theodosian Code. Yet, with the exception of serious crimes, women, after the divorce or death of a husband, were encouraged to remarry. Since the purpose of marriage was to have children, financial sanctions were placed on those women who were not

married or who did not have children.

These then were the major influences on the development of marriage law in the germanic kingdoms during the early Middle Ages, the germanic, the Christian and the Roman. Each of these influences had a decided effect on this time. The germanic background laid a unique framework upon which the other built. The Church, as yet, did not play a major role, but its influence permeated late Roman society. It is through the germanic imitation of Roman ways that both Christian and Roman traditions were preserved. The idea of written law was one of the major Roman influences; the Theodosian Code was the vehicle for this. The Theodosian Code's provisions not only were the basis for Roman law in the early Middle Ages, but they also served as the model for the newly written germanic law codes.

The synthesis of these three influences created a new society. The early Middle Ages served as the "melting pot." Things were molded and remolded. Out of this would emerge that period uniquely known as the Middle Ages.

A look now to the major germanic kingdoms and their law codes, each one unique to itself, will develop this thesis. A look at family law in these societies will allow a better picture of the status of women at the time and a clearer understanding of this complex and changing society as a whole.

FOOTNOTES

1. Tacitus, Germania, H. Mattingly, transl. (West Drayton: Penguin Books, 1948), p. 102.
2. Ibid, p. 118.
3. Notes taken from lecture given by K. F. Drew on September 30, 1981 in Medieval Law class.
4. Rudolf Huebner, A History of Germanic Private Law, Frances S. Philbrick, transl. (South Hackensack, New Jersey: Rothman Reprints, Inc., 1968), p. 122.
5. Ibid, pp. 123-124.
6. K. F. Drew, "Legal Materials as a Source for Early Medieval Social History," Rice University Studies, Vol. 60, No. 4, (fall, 1974), p. 35.
7. Drew, Lecture Notes.
8. K. F. Drew, "The Law of the Family in the Germanic Barbarian Kingdoms: A Synthesis," Studies in Medieval Culture, Vol. XI, (1972), p. 25.
9. Tacitus, Germania, p. 118.
10. Drew, "Law of Family in Germanic Kingdoms," p. 25.
11. Huebner, History Germanic Private Law, p. 178.
12. Ibid, p. 112.
13. Ibid, p. 94.
14. Crane Brinton, John B. Christopher, and Robert Lee Wolff, Civilization in the West, Part 1, (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1973), p. 119.
15. For instances of this one need only read Gregory of Tours' History of the Franks. Many natural phenomena are explained through divine intervention. Saints' miracles also abound throughout Gregory of Tours' books.
16. St. Jerome, "Letter CXXVIII. To Pacatula, written 413 AD," Select Letters of St. Jerome, F. A. Wright, transl., (Cambridge, Massachusetts: Harvard University Press, 1954), pp. 467-481.

17. St. Jerome, "Letter CXVII. To a Mother and Daughter Living in Gaul, written AD 405," Select Letters of St. Jerome, F. A. Wright, transl., (Cambridge, Massachussets: Harvard University Press, 1954), pp. 371-395.
18. 1 Corinthians, 7.
19. St. Augustine, "The good of Marriage," Treatises on Marriage and Other Subjects, Roy DeFerrari, ed., (The Fathers of The Church Series [Washington, 1955]), p. 13.
20. Ibid, p. 12.
21. Ibid, p. 18.
22. George H. Tavard Woman in Christian Tradition, (Notre Dame, Indiana: University of Notre Dame Press, 1973). Constance F. Parvey, "The Theology and Leadership of Women in the New Testament," Religion and Sexism: Images of Woman in the Jewish and Christian Traditions, Rosemary Radford Ruether, ed., (New York: Simon and Schuster, 1974), pp. 117-149.
23. St. Jerome. "Letter CXVII." pp. 371-395.
24. St. Augustine. "Good of Marriage," p. 20.
25. Ibid, p. 23.
26. The Theodosian Code and Novels and the Sirmondian Constitutions, Clyde Pharr, transl. (Princeton, 1952), Title 4-6-3. (Referred to hereafter as T.C.)
27. T.C., Title 4-6-3-1.
28. T.C., Title 2-17-1.
29. T.C., Title 5-1-3.
30. One instance is T.C., Title 16-2-20, where kinsmen suspicious of a cleric's visits to widows or wards could have the cleric banished.
31. T.C., Title 9-42-1.
32. T.C., Title 2-12-5.
33. T.C., Title 2-12-4.
34. T.C., Title 6-4-17.
35. T.C., Title 5-1-1.

36. T.C., Title 18-6-1.
37. T.C., Title 3-5-11.
38. T.C., Title 9-24-1.
39. T.C., Title 3-7-1.
40. T.C., Title 3-5-11.
41. T.C., Title 3-5-6-1.
42. T.C., Title 3-5-1.
43. T.C., Title 3-5-5.
44. T.C., Title 3-5-2-2.
45. T.C., Title 3-5-11.
46. T.C., N. Maj. Title 6-9.
47. T.C., N. Maj. Title 6-9.
48. T.C., Title 9-7-5.
49. T.C., Title 3-14-1.
50. T.C., Titles 9-25-1; 9-25-2; 9-25-3.
51. T.C., Title 12-1-6.
52. T.C., Titles 4-12-6; 4-12-7. Another law (T.C., Title 9-9-1)  
States that a woman united to a slave should receive capital  
punishment.
53. T.C., Title 9-9-1.
54. T.C., Title 3-12-4.
55. T.C., Title 3-10-1.
56. T.C., Title 4-6-7.
57. T.C., Title 4-6-3.
58. T.C., N. Marc. Title 4-1.
59. T.C., Title 3-11-1.



60. T.C., Titles 3-12-2; 3-12-3; 3-12-4. The Romans reckoned degrees on kinship differently from the Germans. For the Romans, those persons within the forbidden degrees included: sister's or brother's daughter, a cousin to the third degree, a brother's wife, a wife's sister, or a husband of a sister.
61. T.C., Title 3-10-1.
62. T.C., N. Maj. Title 6-10.
63. Clyde Pharr, T.C., note 9, p. 76.
64. T.C., Title 2-25-1.
65. T.C., Titles 5-1-1; 18-6-1.
66. T.C., Title 18-6-1.
67. T.C., Title 12-17-1.
68. T.C., Title 12-1-55.
69. T.C., Title 9-13-1.
70. T.C., Title 3-12-4.
71. T.C., Title 5-9-2.
72. T.C., Title 5-9-1.
73. T.C., Sirm. Title 5.
74. T.C., Title 11-27-1.
75. T.C., N. Val. Title 33.
76. T.C., Title 3-3-1.
77. T.C., N. Th. Title 12-1.
78. T.C., Title 3-16-1.
79. T.C., Title 3-16-1.
80. T.C., Title 3-16-1.
81. T.C., N. Val. Title 35-8.
82. T.C., Title 9-40-1; N. Maj. Title 9-1.

83. T.C. Title 11-36-7.
84. T.C., Title 9-7-2.
85. T.C., Title 9-7-4.
86. T.C., Title 9-7-7.
87. T.C., N. Th. Title 16-2.
88. T.C., Titles 5-1-9; 4-21-1.
89. T.C., Title 8-17-2.
90. T.C., Title 5-1-3.
91. T.C., N. Th. Title 14-1.
92. T.C., N. Val. Title 35-8.
93. T.C., Title 8-18-9.
94. T.C., N. Th. Title 14-1.
95. T.C., Title 3-9-1.
96. T.C., Title 4-2-1.
97. T.C., Title 4-64.
98. T.C., Title 4-7-1.
99. T.C., Title 5-1-1.
100. T.C., Title 2-19-2.
101. T.C., Title 11-1-17.
102. If a person received the property of a baker, then he became a baker also. If a senator died after being named praetor and he only had daughters to succeed him, the daughters had to take on his praetorian duties. (T.C., Title 6-4-17) (this was a law although technically a woman could not become praetor). A decurion's (a member of the municipal council and also a hereditary position) daughter had to marry another decurion within three years of her father's death. If she did not, she had to forfeit one fourth of her property to the municipal council. (T.C., Title N. Th. Title 22-2-8).

103. T.C., N. Maj. Title 6-1-6.
104. T.C., Title 6-1-7.
105. T.C., Title 3-17-4.
106. T.C., Title 3-16-2.
107. T.C., Title 3-16-2.

### MARRIAGE LAW IN THE VISIGOTHIC CODE

The Visigoths entered the Western Roman Empire in 376, when they requested asylum from the Huns. In 377 the Visigoths revolted due to unrest and thievery on both sides. This led to the Battle of Adrianople in 378, where the Emperor Valens was killed. In 401, the Visigoths entered Italy with Alaric as their king. It was at this time or a little earlier that the Visigoths were converted to the Arian form of Christianity. Rome was sacked by Alaric and the Visigoths in 410, but they stayed only three days in Rome. In 416 the Visigoths were established in Aquitaine as federate allies of Rome. This meant that the Visigoths were to provide military service to the Romans in return for land. Each nationality lived by its own laws and remained separate from the other. King Euric (466-84) wrote the first well-authenticated compilation of Visigothic customs into a code in 475. As the Visigoths were not yet Catholic at this time, there was probably little Roman influence on this early version of the laws. Alaric II (484-507) ruled over the largest political unit in Western Europe. In 506 he compiled the Breviarum Alaricianum (the Breviary) which was a codification of Roman law for the Roman population of the Visigothic Kingdom. In 507, Alaric II was defeated by Clovis, King of the Franks, and the Visigoths were forced to move further south into Spain, where they stayed until they were conquered by the Muslims in

711. Leovigild (568-86) revised Euric's law code. This code has not survived, but 324 of its laws were included in Reccesuinth's later compilation in 654. Leovigild lifted the ban on marriage between Romans and Visigoths in his edition of the laws; before this such intermarriage was prohibited, although we know of such cross marriages from an earlier time. The removal of a legal barrier to intermarriage started a fusion between Roman and Visigothic influences. Reccared succeeded to the throne in 586 and became a baptised Catholic. The fusion of those things Roman and Visigothic now began in earnest. Reccared further stopped the ban on Church Councils. These Church Councils now became associated with the issuance of secular law, especially after the Edict of Confirmation of the Council in which penalties were laid down for those who disobeyed enactments of the council. In 654 there was also another compilation of the law under Reccesuinth. He did away with a separate Roman law; hereafter everyone in the Visigothic Kingdom was ruled by Visigothic law. The Visigoths fell to the Muslims in 711.<sup>1</sup>

The status of women among the Visigoths was distinct and unique from that of the other germanic peoples. Visigothic women were considered legally competent. They could represent themselves in court, although women could not represent anyone else.<sup>2</sup> A husband needed his wife's written permission before he could represent her property in court, and she had the power to rescind that consent once given.<sup>3</sup> Women could make wills and dispose of their property as they chose;<sup>4</sup> they could also inherit equally with their brothers.<sup>5</sup> When a woman's husband died, she became the guardian of all her minor

children.<sup>6</sup> A woman could, therefore, act for herself in the legal spheres of Visigothic society. She did not need to be under the constant supervision of a male protector.

Marriage, for the Visigoths, was first contracted with a betrothal. This was literally a binding contract whereby the two parties (or the bride's father and the bridegroom) agreed to marry within a stipulated time, but within not more than two years.<sup>7</sup> The betrothal contract was witnessed and a ring given as pledge.<sup>8</sup> The betrothal could not now be broken except by mutual consent or should one of the parties wish to join a religious order because of illness.<sup>9</sup> If a woman married someone other than the betrothed, she and her husband were turned over to the betrothed along with all their property.<sup>10</sup> If her parents had consented to her being carried off by someone other than the betrothed, they were to pay the betrothed four times the amount of the dowry. The man who had carried off the woman became the slave of the betrothed.<sup>11</sup> Penalties were stiff, therefore, among the Visigoths for violation of the betrothal contract.

Betrothal was accompanied by a dowry settlement. Marriage could be entered into without a dowry, but the dowry gave dignity to the relationship.<sup>12</sup> The dowry was given by the man's side to the woman and it could not exceed one tenth of his property.<sup>13</sup> Nobles, however, were allowed to give ten boys, ten girls, and twenty horses extra, if they so desired.<sup>14</sup> The dowry was either actually given at the time of the betrothal or was promised in writing.<sup>15</sup> The woman had absolute power over this property and upon her death she

could will one-fourth of it to whomever she pleased, with the rest going to her children. If she had no children, she was allowed complete liberty in its disposal.<sup>16</sup> Receipt of the dowry enabled Visigothic women to have the potential for economic power in their own right, and freed them from economic dependence on their husbands.

Consent of the parents was often essential prior to a marriage. This was most important for the male because if his father were living he would have no property of his own to give as dowry.<sup>17</sup> A woman could marry without her parents' consent, but if she did this she lost her right to inherit from her parents.<sup>18</sup> When a father died, the right to consent was given to the mother. If both parents were dead, consent was given to brothers or paternal uncles although a family council had to approve of their choice and consent to the marriage also.<sup>19</sup> The law provided against the abuse of consent by anyone other than the parents. If brothers (or other relatives) consented to the abduction of their sister, in order to keep her inheritance, they lost half of their property to her and received 50 lashes.<sup>20</sup> If they allowed her to marry beneath her station or refused to marry her at all, she received their inheritance.<sup>21</sup> Consent, therefore, was an important ingredient for the betrothal arrangement. The consent of the parties being married was not as important and therefore children could legally be married against their will. Persons married without parental consent were disinherited from their parents.

Visigothic women were protected by the law from being abducted, since an abductor would be punished by losing all of his property, receiving 200 lashes in public, and becoming a slave to the injured

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party. In this way, the abductor (now a slave) and the woman could not marry since the marriage of slaves and freeborn people was forbidden. His property was given to her family. The punishment for this crime was also meted out by her family.<sup>22</sup> If a slave abducted a woman he was given 100 to 300 lashes and was scalped. If the slave had forced intercourse with a freeborn woman he was burned.<sup>23</sup> One who killed a ravisher in revenge for an abduction was innocent as this was believed to be justifiable homicide.<sup>24</sup> The seriousness of the crime of abduction of women is apparent everywhere in the Visigothic laws.

Certain types of marriages were forbidden. The law defined what constituted illegal marriage and the punishment such marriages entailed. Prior to 654, Visigoths could not marry Romans (this was repealed under Leovigild).<sup>25</sup> A Visigoth could not marry another person if he was already betrothed to another. Restrictions were also placed on incestuous relations. Incest was broadly defined to include relatives to the sixth degree. The prohibition extended to families related by marriage also. Relations with a father's concubine were also defined as incestuous and marriage forbidden. The punishment for such illegal marriage was the loss of property and each party was placed in a monastery for life in order to do perpetual penance.<sup>26</sup> The same punishment was extended to those in religious orders who married.<sup>27</sup> A free person could not legally remarry unless it were certain that he had acquired a legal divorce from a previous marriage. If not, then both parties to the new marriage were to be given to the wronged spouse for punishment.<sup>28</sup> A woman could not remarry for



one year after the death of her husband--if she did, her children received half of her property.<sup>29</sup> An interesting restriction in the laws was one that provided that women should not marry men younger than themselves since the Visigoths felt this would encourage vice in women and the children of such a union might be born deformed.<sup>30</sup> A freeborn woman was strictly prohibited from marrying or having relations with a slave--the punishment was loss of property and public scourging, then both were burned. Any children borne of this union were illegitimate and could not inherit from their parents or their families.<sup>31</sup> There was not, however, a strict punishment for men who had relations with slaves and they could freely do this. Women clearly had more restrictions placed on them for marriage. Women could only marry within their rank. All relations with inferiors were strictly forbidden.

The crime of adultery was precisely detailed in the laws. For the Visigoths, if a man forced a married woman into intercourse, he was given to her husband as a slave. If the adulterer had no children, his property reverted to the husband also (otherwise his children received it). If the wife had consented, she too was given as a slave to her husband.<sup>32</sup> If the wronged party was the betrothed, he got the pair.<sup>33</sup> This also went for a freeborn woman who was unmarried--her father was allowed to punish the couple as he saw fit.<sup>34</sup> Curiously enough, if a woman committed adultery with a married man, she was delivered to the wife for punishment.<sup>35</sup> In the usual case, the guilty pair had to be convicted before their punishment could be enacted; however, if they were caught in the act,

they could be killed without criminal prosecution.<sup>36</sup> If a husband refused to prosecute the crime of adultery, then anyone could eventually do it.<sup>37</sup> The Visigoths wanted to be sure that the crime of adultery would not go unpunished. Even slaves could be tortured for use as evidence--the only other crimes where this was legal was in the case of treason or homicide.<sup>38</sup> This illustrates the seriousness, in the minds of the Visigoths, of adultery. The convicted couple lost all of their property to their heirs (or to the wronged party if they had no heirs) before being placed at the mercy of the wronged party. Above all else, women could not have relations outside their rank, for this was punishable by death.

The adultery of a wife was not the only grounds for divorce for men in Visigothic society. A couple could also divorce by mutual consent, so long as the consent was not forced. In these two instances alone could a husband remarry. A man could repudiate his wife, but in this case she received all of his property and he was forbidden to remarry. If he did remarry, he was given 200 lashes and then was either exiled or enslaved. A man could not join a monastery in order to get a divorce, for his wife's consent was necessary for his entry into a religious order. A woman could divorce on grounds of her husband's homosexuality or if her husband forced her to have intercourse with another against her will. She was also given a divorce if her husband married a second time. Only in these instances, or if she had mutually consented to a divorce, was a woman allowed to remarry.<sup>39</sup> A widow could also remarry, but she had to wait one year or forfeit half of her property to her children.<sup>40</sup>

This waiting period most likely was instituted so that there would be no questions of parentage over issue of the widow. A Visigothic woman clearly had her rights protected in divorce and she could not be cast aside unjustly. This unique idea of divorce among the Visigoths was probably determined by the unique status of Visigothic women and by the influence of Rome.

Property rights and inheritance also illustrate the strong status of women in Visigothic society. Women inherited equally with their brothers in the property of their parents.<sup>41</sup> A husband and wife held separate property. The dowry was exclusively the wife's.<sup>42</sup> The only benefit that the husband got from his wife's property was the produce from her slaves--he did not have to reimburse her for this.<sup>43</sup> Gifts between husband and wife were allowed after one year of marriage. A written deed had to be drawn up, however, in which the gift was described and two or three witnesses acknowledged it.<sup>44</sup> A woman had the right to dispose of one-fourth of her property as she saw fit in a will, with the remaining portion going to her children.<sup>45</sup> Only for sexual misconduct did the husband retain this property without his wife's consent.<sup>46</sup> A widow handled the property of her dead husband for their children for the rest of her life or until she remarried, then it went to the children.<sup>47</sup> Visigothic women were obviously given the independence necessary to continue on after the death of their husbands or after divorce.

The status of women in the Visigothic law code was unique to the Visigoths. Women were legally competent. Guardians were not mandatory for women and women could even be guardians for their

children. Visigothic women could contract their own marriages and, although the consent of her parents was important for inheritance, it was not necessary for marriage. This was not the case for Visigothic men, as they needed parental consent in order to receive property to give as dowry.

A dowry was given to the woman and it could be of a substantial amount. It was solely the property of the woman and, as she was legally competent, she could administer it as she saw fit. This dowry could not be sold, as it was to be inherited by her children, but the woman could will one-fourth to whomever she pleased. If she had no children, she could dispose of all of it as she wished in a will.

The crime of abducting a woman was severely punished. Women had their persons protected. This clearly gave women more independence in their movements and more say in their marriages due to the fact that abduction was not just another form of marriage. It was forbidden and punished.

There were few restrictions on illegal marriages solely for women. One such restriction was that a woman could not remarry for a year after the death of her husband. This was most likely in order to prevent questions of paternity. Another restriction was that a woman could not marry a man younger than herself. Finally, women could not marry or have relations with slaves. All other legislation against certain types of marriages applied to both sexes. The Visigoths thus did not practice many double standards when it came to women, at least not in the laws. Those double standards that did exist in the laws were most likely thought necessary in order to keep base elements out

of the free classes. Marriage was for the purpose of having children, children were necessary for the preservation of the free Visigothic society, and so strict punishment was enacted for free female relations with a slave.

Adultery, too, was treated fairly equally. This went so far that if a wife were the injured party, she received the adulteress to punish as she saw fit. Adultery was a serious offense and the Visigoths believed that it was necessary to punish this crime in both sexes.

The Visigoths could divorce by mutual consent. Women were protected from having their consent forced or having their husbands leave them without just cause. Men were bound to their wives just as much as women to their husbands. Men could not divorce on whim. Women, in fact, had more legal reasons to divorce their spouses than did men.

The Visigoths, clearly, were susceptible to new ideas. Their laws do not employ monetary fines as punishment, as was the germanic custom. Instead, physical punishments were often used. They also became more isolated than the other germanic kingdoms due to their location. These considerations probably helped lead to the development of the unique institution of Visigothic marriage and the surprisingly equal status that women had in the laws.

FOOTNOTES

1. For more detailed information on the history of the Visigoths, see E.A. Thompson's The Goths in Spain (Oxford: At the Clarendon Press, 1969)
2. The Visigothic Code, S.P. Scott, transl. (Boston: The Boston Book Co, 1910), Book II, Title III. VI. (hereafter the Visigothic Code Shall be referred to as V.C.).
3. V.C., Book II, Title III. VI.
4. V.C., Book IV, Title V. II. All property except marriage gifts could be bequeathed. A woman could only bequeath one fourth of her dowry if she had children. She could, however, bequeath all of it if she had no children.
5. V.C., Book IV, Title II. I.
6. V.C., Book IV, Title II. XIV.
7. V.C., Book III, Title I. V.
8. V.C., Book III, Title I. IV.
9. V.C., Book III, Title IV. III.
10. V.C., Book III, Title I. III.
11. V.C., Book III, Title III. III.
12. V.C., Book III, Title I. I.
13. V.C., Book III, Title I. VI.
14. P.D. King, Law and Society in the Visigothic Kingdom, (Cambridge: At the University Press, 1972), p. 226.
15. V.C., Book III, Title I. VII, and V.C., Book III, Title I. X.
16. V.C., Book III, Title I. VI, and King, Law and Society, p. 237.
17. King, Law and Society, p. 230.
18. V.C., Book III, Title II. VIII.
19. V.C., Book III, Title I. VIII.
20. V.C., Book III, Title III. IV.

21. V.C., Book III, Title I. IX.
22. V.C., Book III, Title III. I.
23. V.C., Book III, Title III. VIII - X.
24. V.C., Book III, Title III. VI.
25. V.C., Book III, Title I. II.
26. V.C., Book III, Title V. I - II.
27. V.C., Book III, Title IV. XVIII.
28. V.C., Book III, Title II. V - VI.
29. V.C., Book III, Title II. I.
30. V.C., Book III, Title I. VI.
31. V.C., Book III, Title II. II.
32. V.C., Book III, Title IV. I.
33. V.C., Book III, Title IV. II.
34. V.C., Book III, Title IV. V.
35. V.C., Book III, Title IV. IX.
36. V.C., Book III, Title IV. IV.
37. V.C., Book III, Title IV. XIII.
38. V.C., Book III, Title IV. X.
39. V.C., Book III, Title VI. I - II.
40. V.C., Book III, Title II. I.
41. V.C., Book III, Title VI. IX.
42. V.C., Book III, Title I. - II.
43. V.C., Book III, Title VI. I. - II.
44. V.C., Book III, Title VI. IX.
45. V.C., Book IV, Title V. I.
46. V.C., Book III, Title V. III., and V.C. Book III, Title VI. I.
47. V.C., Book IV, Title II. XIV.

### MARRIAGE LAW IN THE SALIAN AND RIPUARIAN CODES

The Salians and Ripuarians were two divisions of the germanic federation of the Franks. They were separated by the two different areas which they inhabited. The Salian Franks entered the Roman Empire in 358 AD, but they were defeated in their attempt to penetrate deep into Gaul by the future Emperor Julian.<sup>1</sup> At this time they were, however, established in a small area of Northeast Gaul as foederati of the Empire.<sup>2</sup> The Ripuarian Franks were also defeated by Julian in 360 AD,<sup>3</sup> but they did not become foederati. It was not until the aftermath of the Huns' invasion in 451 that the Ripuarians were able to make some headway into devastated Gaul<sup>4</sup> near the middle bank of the Rhine.<sup>5</sup>

The Salian Franks really enter history with the reign of Clovis (481-511). Clovis continually pushed the Franks into new territory through conquest, first defeating the Alamanni in 496.<sup>6</sup> In 503,<sup>7</sup> Clovis became a Catholic Christian.<sup>8</sup> This conversion, according to O. M. Dalton in his Introduction to Gregory of Tours' History of the Franks, gave Clovis a "battle-cry" for attacking the Arian Visigoths in 507.<sup>9</sup> The Ripuarian King, Sigibert the Lamé, also fought in this campaign,<sup>10</sup> in which the Franks pushed the Visigoths out of most of Gaul.

Clovis' conversion brought him the support of the Roman population,<sup>11</sup> and most importantly, the support of the bishops of the



Church.<sup>12</sup> The bishops were valuable allies, as they often came from the most distinguished and powerful Roman families.<sup>13</sup> Clovis even received the consulship from Emperor Anastasius<sup>14</sup> in 508.<sup>15</sup>

In an attempt to consolidate his power, Clovis turned the Ripuarian King Sigibert's son against his father, and the son killed Sigibert.<sup>16</sup> Clovis then had the son killed in order to avenge Sigibert's death. It was in this way that Clovis also became ruler of the Ripuarians.<sup>17</sup>

Clovis died in 511<sup>18</sup> and his kingdom was divided in inheritance among his four sons.<sup>19</sup> There was much grappling for power and by 558,<sup>20</sup> the youngest son, Chlotar, held possession of all the land.<sup>21</sup> Clovis' sons managed, however, to conquer most of what was left of Gaul<sup>22</sup> taking Burgundy in 534.<sup>23</sup>

Chlotar died in 561 leaving his kingdom in turn to his four sons.<sup>24</sup> Two of these sons, Sigibert and Chilperic, had wives who bitterly hated each other. This was the cause of much of the intrigue spoken of by the chronicler of this time, Gregory of Tours. The feuding of these two left much of the kingdom in chaos, allowing the nobility to increase its strength.

At the end of the civil war a son of Chilperic's, Chlotar, survived due mainly to the nobility's support.<sup>25</sup> In return, Chlotar had to make many concessions to the nobility, of which the Church was essentially a part. He lowered taxes and extended ecclesiastical jurisdiction.<sup>26</sup>

Chlotar's son, Dagobert, who began his reign in 629, increased once more the power of the king.<sup>27</sup> But Dagobert proved to be the

last strong king of the Merovingian Franks. Thereafter power fell gradually into the hands of the officials known as Mayors of the Palace. They eventually took over the throne and established the Carolingian dynasty.<sup>28</sup>

The Salian laws were probably first compiled and written down under Clovis<sup>29</sup> in 65 Titles.<sup>30</sup> This was a time when the Franks were expanding their territory and the kings were consolidating their power. A written law code would be an asset to both of these processes. Some time later in the fifth century more laws were added to the Salian Code by Clovis' successors.<sup>31</sup> The Ripuarian law code is later, probably from the seventh century, although no known manuscript exists that is dated earlier than the eighth century.<sup>32</sup>

Many aspects of the two law codes are the same, such as there being the same monetary amount for compensations, wergelds and fines.<sup>33</sup> The Ripuarian law code, however, includes the number of oathhelpers needed, should that option be desired, for proving innocence. Marjolijn Ave' Lallemand, in her PhD Dissertation Early Frankish Society as Reflected in Contemporary Sources, Sixth and Seventh Centuries, suggests that the Salians did not include this option for oathhelpers because it was either a "self evident procedure" or the system had not been organized until the writing of the Ripuarian law code.<sup>34</sup>

Fines were often very heavy. A solidus was equal in value to a horned cow with good vision and health. A horned ox with good vision and health was valued two solidi, and a healthy stallion with good

vision and health was valued at three solidi.<sup>35</sup> Therefore, most people were not able to pay such heavy fines as, for example, 200 solidi. These steep fines were meant to safeguard and protect the Franks--the individual was given a high value.<sup>36</sup>

The Ripuarian Franks have very little on marriage or women in their law code. What has been compiled here is from the Salian law unless specifically stated to be Ripuarian. In any event, the Ripuarians may have used the Salian code along with their own. The Salians, too, however, have little in their law code on marriage and women. The laws are still very germanic and have not yet absorbed much of the Roman influence. Family concerns may not have been within the jurisdiction of the laws, but rather within the the jurisdiction of the family.

Frankish society, it would appear from the laws, was a very violent society. Numerous laws deal with compensations for injury done to a woman. The calling of names was taken very seriously. If one called a free woman a prostitute and was unable to prove it, he was fined 45 solidi.<sup>37</sup> For calling a woman a witch and not proving it, one had to pay 187 1/2 solidi.<sup>38</sup> Touching a woman was also a serious offense. If a man touched a free woman's hand, arm or finger, he was fined 15 solidi.<sup>39</sup> This was also true for the Ripuarians.<sup>40</sup> The fine went up depending upon where the man touched the woman. If he touched her arm it was 30 solidi.<sup>41</sup> For touching above the elbow, the fine went up to 35 solidi (this was only a 30 solidi fine for the Ripuarians).<sup>42</sup> There are no laws pertaining specifically to touching a man, but perhaps this was because a man could defend himself against this affront, while a woman

was deemed needy of protection. Violent actions against free women, it would seem, were taken seriously by the Franks.

There were different categories of women and their wergelds reflected these. A woman under the protection of the king had a wergeld of 1200 solidi.<sup>43</sup> The Ripuarian law states that this wergeld was 300 solidi; or one could prove themselves innocent of the crime with the help of 36 oathelpers.<sup>44</sup> There were four wergelds for free Frankish women depending upon their age. A young girl had a wergeld of 200 solidi.<sup>45</sup> The Ripuarians had the same wergeld for young girls or they had the option of swearing with twelve for this.<sup>46</sup> When a girl reached childbearing years, her wergeld tripled to 600 solidi.<sup>47</sup> A Ripuarian woman's wergeld was also 600 solidi or one could swear with 72.<sup>48</sup> This amount for a wergeld illustrates how important a woman's childbearing function was to the Franks. Only counts, military followers of the king and priests had as high a wergeld.<sup>49</sup> The wergeld of a pregnant woman was the highest, 900 solidi.<sup>50</sup> For the Ripuarians, the wergeld of a pregnant woman probably stayed at 600 solidi, because the killing of a fetus was 100 solidi, but if the mother was killed also, it was 700 solidi. A woman past childbearing years was valued with a 200 solidi wergeld (which was the same wergeld as that of a man of the same rank).<sup>51</sup> This was true in the Ripuarian law code also, but one could always swear with 12.<sup>52</sup> These wergelds clearly illustrate the importance of women for childbearing in Frankish society.

These wergelds applied only to free Frankish women. Freedwomen or Roman women had a wergeld value of half that of free Frankish

women.<sup>53</sup> Slave women were most likely valued for their training and function. A slave fetus, however, was valued at 62 1/2 solidi and one denarius.<sup>54</sup>

Wergelds and compositions were paid to the injured party by the offender, although in the case of heavy fines the offender's family was expected to help with these large payments. The maternal side of the family, along with the mother, was expected to pay equally with the paternal family.<sup>55</sup> This suggests that the maternal family maintained connections with the woman and her children. The woman's family protected her and were her heirs, should she have no children.

Marriage was the expected condition for most Frankish women. The marriage process began with the betrothal. The betrothal was usually arranged between the girl's father or kin group and the would-be husband or his family. There was no specific minimum age at which one could be betrothed, yet young boys were not responsible for their acts up to and including their twelfth year.<sup>56</sup> Young girls were considered children up to the end of their twelfth year also.<sup>57</sup> For the Ripuarians, children could not answer in court until they were 15.<sup>58</sup> This, however, was just the legal age of majority. It does not suggest that children were not betrothed before this age because their consent was not necessary for the agreement.

The consent of the parents was necessary. A Council in 511 at Orleans declared that a couple who took refuge in a church to escape the wrath of an unconsenting parent were to be separated and the woman was to be returned to her father.<sup>59</sup> Later, the Church decided to excommunicate a man who married a woman without her parents'

consent.<sup>60</sup> Secular legislation stated that a widow's parents' consent was necessary before she could remarry<sup>61</sup>--one may therefore infer that this was also true for the first marriage. The betrothal agreement was entered into in the presence of both sets of relatives.<sup>62</sup> The dowry was probably negotiated at this time. A dowry was given by the future husband to his wife.<sup>63</sup> It remained in her possession, after the marriage, until her death.<sup>64</sup> The husband would also give a morning gift to his wife on the morning after the wedding. This too became her property until death.<sup>65</sup> At the time of the wedding, a dowry fine was paid by the future husband to the relatives of the woman.<sup>66</sup> This was probably a small sum which had more symbolic value than anything. This possibly could have been in exchange for the mundium of the woman, yet there is no mention of a woman needing a mundwald in the Frankish laws. At the time of the wedding, the woman's family gave the couple personal and household gifts.<sup>67</sup>

The Ripuarians had a law which guaranteed a dowry to a wife. Whatever was given to her was to be hers permanently,<sup>68</sup> but if nothing was given as dowry then upon the death of the husband the woman received 50 solidi, her morning gift, and one-third of all that the couple had worked for together.<sup>69</sup>

The betrothal, once official, was a binding agreement. The man who married another man's betrothed was to pay 62 1/2 solidi as a fine and 15 solidi to the betrothed.<sup>70</sup> If the man broke the betrothal, he was to pay 62 1/2 solidi as a fine.

Certain unions were illegal in the law codes. Most of this legislation dealt with unions with slaves. A free man or woman who married another man's slave became a slave also.<sup>71</sup> This was true, too, for the Ripuarians but a free Ripuarian man or woman who married a church slave escaped servitude for themselves. Their offspring, however, became slaves.<sup>72</sup> Later Salian legislation detailed further the punishment for marrying a slave. All of the free person's property was turned over to the royal fisc, they were not allowed to inherit, their relatives were allowed to kill them without penalty, and they were not to be allowed food or shelter; the slave was tortured.<sup>73</sup> A slave who married another man's slave without her master's permission was either lashed or had to pay 3 solidi to her master.<sup>74</sup>

There were also regulations against incest. A Ripuarian who committed incest was exiled and all of his possessions were given to the treasury.<sup>75</sup> A Salian man could not marry his niece, cousin, sister-in-law, aunt or other consanguineous relative. If he did, the couple were separated and marked by "disgrace."<sup>76</sup> It is not defined in the laws either what was meant by consanguineous or disgrace. Consanguineous, however, must have been relationships within a certain degree although the exact degree is not stated. It may have been a matter of common knowledge and so it was not necessary to legislate on it.

The Church, too, had some legislation on incest. A canon issued by the Church in 557 stated that a union with the widow of a brother, the sister of a wife, a step-mother, the widow of an uncle, a

daughter-in-law, or a stepdaughter was to be dissolved. If this was not done then the parties were excommunicated.<sup>77</sup>

The children of such an illegal union were illegitimate. If one married his stepmother his punishment was death.<sup>78</sup> An incestuous couple who had already married could get their situation corrected by the bishop.<sup>79</sup> This most likely included some form of dispensation. If the couple refused this they lost all of their property to their heirs.<sup>80</sup> Consanguineous relationships were not a subject of extensive legislation. This could be either because it was a responsibility of the family or of the Church to guard against such unions.

The Church did regulate the punishment for the union of a Christian and a Jew: the Christian was excommunicated.<sup>81</sup>

There was one other type of union that resulted in a form of punishment--this was for the abduction of a boy or girl in order to marry them without their parents' consent. This was considered robbery and entailed a monetary fine the size of which depended upon where the person was abducted from.<sup>82</sup>

Some of the laws concerning certain types of invalid marriages do not state that the resulting marriage was illegal or void. The same was true for laws on abduction. Did the man have to return an abducted woman? Were the couple considered married? If the man paid his fine, was he allowed to keep his abducted woman? It is hard to say what the status of an abducted woman was, as the laws do not state one way or the other. However, compositions were often steep enough to cause a problem paying the fine, and the family would most likely



prosecute, for an abduction meant the loss of a dowry fine to them.

There is much legislation on the abduction of women, so it may have been a common occurrence. The fine for seizing a free woman from her house<sup>83</sup> or having forced intercourse with her was 62 1/2 solidi.<sup>84</sup> The Ripuarian law stated that this composition was 200 solidi.<sup>85</sup> If the abductor was a slave or a freedman, he lost his life.<sup>86</sup> A Ripuarian slave also lost his life,<sup>87</sup> but a Ripuarian freedman's fine was 100 solidi for abducting a woman.<sup>88</sup> A woman who consented to her abduction lost her freedom.<sup>89</sup> If a woman consented to intercourse, she was fined 45 solidi.<sup>90</sup> The Ripuarian fine for this was 50 solidi.<sup>91</sup> A Ripuarian man who caught another man violating his wife or daughter was allowed, according to Ripuarian law, to kill him without punishment.<sup>92</sup> A freedman who abducted a freedwoman was fined 20 solidi--10 solidi of this went to the local count. This is the only law that states what happened to the woman in the case of abduction. A freedwoman who was abducted was returned to her lord.<sup>93</sup> Free women were probably, however, returned to their families with the fine going to the family also.

Later legislation created a stricter punishment for rape and abduction; the abductor lost his life and not even a noble was allowed to entreat on his behalf to the court. If the abductor took refuge in a church, he was removed and sent into exile. He was saved from death by seeking refuge in the Church, but he did not go unpunished. A woman who consented to being abducted received the same punishment. The condemned couple's property was given to their legitimate heirs, or to the fisc.<sup>94</sup>

A Frankish marriage, therefore, began with a betrothal which was a binding agreement to marry in the future. This betrothal was arranged, most likely, by the two families, with the dowry negotiated at that time. The dowry was paid by the husband to his wife. He also paid a dowry fine to her parents. The consent of the woman's family was necessary before the marriage ceremony took place. There must have been some form of marriage ceremony, but marriage was still a secular occasion. The laws only mention the woman being led by a bridal party to her husband.<sup>95</sup> At that point her family gave her some household and personal gifts. This often consisted of articles similar to a trousseau. These included beds, linens, benches, dresses and jewelry.<sup>96</sup> Suzanne Fonay Wemple, in Women in Frankish Society, believes that marriage was mostly beneficial for Frankish women.<sup>97</sup> Women could get out from under parental control. They could also raise their social status through marriage.

The major function of marriage was to have children. The importance of having children is illustrated by the higher wergeld for women in their childbearing years.

The Frankish laws give the impression that there was no such thing as divorce in Frankish society. This is difficult fully to accept. Most societies have some laws for divorce. The Frankish laws state that a man who took another man's wife while the husband was still living had to pay 200 solidi.<sup>98</sup> The same was true for the Ripuarians.<sup>99</sup> But it must be remembered that these laws were not enforced unless the injured party brought suit. Therefore, a type of divorce by mutual consent may have existed. Also separations

without remarriage must have existed. Gregory of Tours cites examples of women who left their husbands to join with other men and of women who joined religious orders in order to escape unpleasant unions. Gregory of Tours also cites numerous instances of marriage and remarriage. It seems therefore that some form of divorce was accepted and used.

The Salian and Ripuarian Franks had a unique form of inheritance. The laws were the same for both codes. At the death of an intestate parent, the children inherited.<sup>100</sup> If there were no children, then the parents of the deceased inherited.<sup>101</sup> After that, the sisters and brothers of the deceased inherited.<sup>102</sup> If there were none of these, then the sisters of the mother or father inherited.<sup>103</sup> After that, the closest kin of the father inherited.<sup>104</sup> For the Ripuarians, this was counted to the fifth degree.<sup>105</sup> Curiously, Salic land, could not be inherited by women.<sup>106</sup> This law became famous as the basis for the Salic Law of the Hundred Years War. The Ripuarians had a similar law. It stated that ancestral land could not be inherited by women.<sup>107</sup> It is unclear what was meant by Salic or ancestral lands, as in both codes allodial land could be inherited by women.

The wergeld of a deceased person was paid in increments of one half to the children, one fourth to the wife and one fourth to the relatives of the deceased on both sides.<sup>108</sup> Children also received the dowry of their mother upon her death. It is important to note the importance of the mother's family for her and her children, even after marriage. They remained an outside force to guard her

interests and she also meant property to them on her death or her children's deaths.

The Ripuarians had some legislation on adoption. If a person had no children, he could adopt someone as heir. This was allowed to be either a husband or wife of the deceased.<sup>109</sup> A husband or wife did not inherit from each other intestate, however, in either law code.

Suzanne Wemple alleges that a widow took over all of her husband's former functions.<sup>110</sup> This included controlling both the property and the children. These rights were relinquished once a widow remarried. The laws, however, do not support these statements one way or the other.

A woman was allowed to remarry after the death of her husband, when a few regulations had been followed. Her relatives had to consent to her remarriage,<sup>111</sup> then a curious ritual had to be followed. The future husband had to go to court with a shield, 3 solidi and 1 denarius. Once these had been inspected, the couple were betrothed.<sup>112</sup> This was, of course, provided the dowry fine was paid to the nearest relative of the woman.<sup>113</sup> The dowry fine had to be paid before remarrying.<sup>114</sup> If one did not follow this ritual, and married anyway, the fine was 62 1/2 solidi which went to the person who was owed the dowry fine.<sup>115</sup>

A woman had also to consult her first husband's relatives before remarrying. She had to pay a fee, called a achasius, to her husband's closest relatives in exchange for her mundium.<sup>116</sup> For every 10 solidi given as dowry, the woman had to give one solidus to receive

back this mundium.<sup>117</sup> There was also a ceremony or ritual for receiving her mundium in order to remarry. The woman prepared a bench and a bed with coverlets. She then summoned nine witnesses and her dead husband's relatives. She was to recite:

You are my witnesses that I have given the achasius in order to have peace with his relatives, and I leave here the covered bed and the worthy bedspread, the prepared bench and an arm chair that I brought with me from my father's house.<sup>118</sup>

Then the woman was allowed to remarry. If a woman wanted to remarry but did not follow this ritual, she lost half of her dowry and had to pay 62 1/2 solidi to the fisc.<sup>119</sup> This law was the same for freedwomen, yet the sums were half that for a free woman.<sup>120</sup>

A man who desired to remarry after the death of his wife was not to give his second wife his first wife's dowry. This went to the children of the first wife.<sup>121</sup> But if there were no children by the first marriage, the closest relatives of the dead woman received half of the dowry, provided that two beds, two covered benches and two arm chairs were left.<sup>122</sup> These household items had been brought by the wife to her marriage. If her relatives neglected to leave the specified items, then they only received one third of the dowry.<sup>123</sup> It is not stated, but most likely the husband received back the rest of the dowry.

The Church had some legislation on remarriage also. Members of the clergy or monastic orders were not allowed to marry. Yet if they had been married before they took their orders, this union was not dissolved.<sup>124</sup> They were not allowed to have relations, however, and their wives were not allowed to remarry. If she remarried and refused to dissolve the union, she was sent to a nunnery.

The Frankish law codes are very weak on marriage legislation. Much remains unspoken in the laws. The law codes are very germanic in their form, especially with their use of wergelds, compositions, and oathhelpers. The family, therefore, must have been very important for the regulation of these matters. Most probably the laws on marriage and the family were within the sphere of the family and were not written up in the law codes. Still, what was written gives some insight into the makeup of marriage and the family in the Salian and Ripuarian societies.

The Franks lived in a violent society, and offenses against women received much attention. Women were thought of as in need of protection. It is not mentioned in the laws whether Frankish women could administer their own property or needed a mundwald to do this, although Frankish women clearly could own property. Women were expected to be oathhelpers and help pay wergelds and fines for those in their families. This suggests that women may have been legally competent in Frankish society.

The varying amounts of wergelds for women illustrate their status and their relative importance. A free woman's wergeld depended upon her age. When she was of childbearing age her wergeld was higher. Her wergeld was the highest when she was pregnant. This illustrates the importance of women in Frankish society. They were important for having children and were most valued for doing this.

Women were expected to marry and stay married or remarry for most of their lives. Their consent to their marriage was not necessary,

but their parents' consent was essential. The woman received the dowry and the morning gift. These were to remain in her possession for life (although she may not have administered them). It was not mandatory for a man to give a dowry to his wife when marrying, but the Ripuarians had a law which guaranteed a woman without a dowry some of her husband's property when he died.

According to the laws, the death of a spouse was the only means of escaping a bad marriage. But divorce by mutual consent must have existed. Women also must have been able to leave their husbands by entering a religious order or by marrying men in stronger positions.

Although women could not inherit "Salic" lands, they could, if they had no brothers, inherit everything else from their parents. It is unclear, however, whether a widow took control of her husband's property and became guardian of her children or not.

Marriage did not break the tie a Frankish woman had with her family. This is everywhere apparent in the Frankish laws. A woman did not become a part of her husband's family. She was expected to be an oathhelper or help pay compositions for those in her family. Her property was inherited by her family, if she had no children, and likewise she inherited from her family. A Frankish woman who remarried could not do so without the consent of her family. A surprisingly strong status for Frankish women appears to be hinted at in the Frankish law codes.

FOOTNOTES

1. James Pierce Barefield, "Introduction," The Ripuarian Code A Translation With Introduction. (unpublished MA Thesis Rice University, Houston, Texas, 1958), p. 1.
2. O.M. Dalton "Introduction," The History of the Franks by Gregory of Tours. (Oxford: Clarendon Press, 1927), p. 9. and W. Marjolijn J. De Boer Ave' Lallemand, Early Frankish Society as Reflected in Contemporary Sources, Sixth and Seventh Centuries. (unpublished PhD Dissertation, Rice University, Houston, Texas, 1982), p. 1.
3. Barefield, "Introduction," Ripuarian Code, p. 2.
4. Ibid, p. 2.
5. Ave' Lallemand, Early Frankish Society, p. 15.
6. Peter Lasko, The Kingdom of the Franks: North-West Europe Before Charlemagne (New York: McGraw-Hill, 1971) p. 33.
7. Ibid, p. 33.
8. Barefield, "Introduction," Ripuarian Code, p. 3.
9. Dalton, "Introduction," Gregory of Tours, pp. 92-93.
10. Barefield, "Introduction," Ripuarian Code, p.
11. Lasko, Kingdom of Franks, pp. 33-34.
12. Ave' Lallemand, Early Frankish Society, p. 4.
13. Dalton, "Introduction," Gregory of Tours, p. 92.
14. Barefield, "Introduction," Ripuarian Code, p. 4.
15. Lasko, Kingdom of Franks, p. 34.
16. Barefield, "Introduction," Ripuarian Code, p. 4.
17. Ibid, p. 5.
18. Ibid. p. 5. and Lasko, Kingdom of Franks, p. 33.
19. Dalton, "Introduction," Gregory of Tours, p. 136.
20. Barefield, "Introduction," Ripuarian Code, p. 5.
21. Lasko, Kingdom of Franks, p. 44.



21. Lasko, Kingdom of Franks, p. 44.
22. Ave' Lallemant, Early Frankish Society, p. 2.
23. Lasko, Kingdom of Franks, p. 44.
24. Barefield, "Introduction," Ripuarian Code. p. 5.
25. Ibid, p. 6.
26. Ibid, p. 6.
27. Ibid, p. 7.
28. Ibid, p. 7.
29. Ave' Lallemant, Early Frankish Society, p. 2.
30. Pactus Legis Salicae, Katherine Fischer Drew, transl., Title A2.  
(Referred to hereafter as S.C.)
31. S.C., Title A2.
32. Ave' Lallemant, Early Frankish Society, pp. 15-16. Barefield,  
"Introduction," Ripuarian Code, p. 11.
33. Ave' Lallemant, Early Frankish Society, pp. 88-122.
34. Ibid, p. 77.
35. The Ripuarian Code, James Pierce Barefield, transl., Title XLII.  
(Referred to hereafter as R.C.)
36. Ave' Lallemant, Early Frankish Society, pp. 114-115.
37. S.C., Title XXX.3.
38. S.C., Title LXIV.2.
39. S.C., Title XX.1.
40. R.C., Title XLIII.
41. S.C., Title XX.2.
42. R.C., Title XLIII.
43. S.C., Cap. III. Title CIV.7.
44. R.C., Title XIV.
45. S.C., Title XLI.15., also S.C. Title LXVe.2. and S.C. Cap. V.  
Title VI.4.

46. R.C., Title XIII.
47. S.C., Title XLI.16.; also S.C. Title LXVe.3. and S.C. Cap. V. Title VII.2-3.
48. R.C., Title XII.1-2.
49. Suzanne Fonay Wemple, Women in Frankish Society: Marriage and the Cloister 500 to 900 (Philadelphia: University of Pennsylvania Press, 1981), p. 29.
50. S.C., Cap III. Title CIV.6. Earlier laws, Title XLI.19 and Title LXVe.1., state only 600 solidi as the composition for killing a pregnant woman. A later law, Cap. VIII. Title VIII.3., states this wergeld was 1800 solidi. If the fetus were killed also, a composition of 600 solidi was to be paid for it. (Title LXVe.1. and Cap. III. Title CIV.1). Yet Title XXIV.6. states that an infant killed in the womb or within 9 days of birth and before a naming ceremony had a wergeld of only 100 solidi. This wergeld was also true for the Ripuarians. (R.C., Title XL.10).
51. S.C., Title XXIV.9.
52. R.C., Title XII.a.
53. S.C., Cap. III. Title CIV.9.
54. S.C., Cap. III. Title CIV.10.
55. S.C., Title LVIII.3.
56. S.C., Cap. VII. Title V.
57. S.C., Title LXVe.2.
58. R.C., Title LXXIV.
59. Wemple, Women in Frankish Society, p. 35.
60. Ibid, p. 35.
61. S.C., Cap. VII. Title VIII.
62. S.C., Title LXVa.
63. S.C., Cap. III. Title C.1.
64. Wemple, Women in Frankish Society, p. 45.
65. Ibid, p. 45.
66. S.C., Title XLIV.3.

67. Wemple, Women In Frankish Society, p. 44.
68. R.C., Title XLI.1.
69. R.C., Title XLI.2.
70. S.C., Title XIII.12-14.
71. S.C., Title XIII.9., also Title XXV.3. and Title XX.4.
72. R.C., Title LXI.14 & 16.
73. S.C., Cap. III Title XLVIII.1-2 and Cap. VII, Title II.
74. S.C., Title XXV.6.
75. S.C., Title LXXIII.
76. S.C., Title XIII.9. and Cap. VI. Title I.2.
77. Ave' Lallemant, Early Frankish Society, pp. 62-63.
78. S.C., Cap. VI. Title I.2.
79. S.C., Cap. VI. Title I.2.
80. S.C., Cap. VI. Title I.2.
81. Ave' Lallemant, Early Frankish Society, pp. 62-63.
82. S.C., Cap. III. Title XLIX.1.
83. S.C., Title XII.4.
84. S.C., Title XV.2.
85. R.C., Title XXXVIII.1.
86. S.C., Title XII.7. and Title CXXX.3.
87. R.C., Title XXXVIII.3.
88. R.C., Title XXXVIII.3.
89. S.C., Title XII.8.
90. S.C., Title V.3.
91. R.C., Title XXXIX.2.
92. R.C., Title LXXX.
93. S.C., Title CXXX.1-2.

94. S.C., Cap. VI. Title II.2.
95. S.C., Title XIII.14.
96. Wemple, Women in Frankish Society, p. 47.
97. Ibid, p. 50.
98. S.C., Title XV.1 and Cap. V Title CXXXIII.
99. R.C., Title XXXIX.1.
100. R.C., Title LI.
101. R.C., Title LVII.1.
102. R.C., Title LVII.1.
103. R.C., Title LVII.3.
104. S.C., Title LIX.1-5.
105. R.C., Title LVII.3.
106. S.C., Title LVII.4.
107. R.C., Title LVII.4.
108. S.C., Title LXVIII. and LXII.1.
109. R.C., Title L.1.
110. Wemple, Women in Frankish Society, pp. 31, 32 & 61.
111. S.C., Cap. VII. Title VIII.
112. S.C., Title XLIV.1.
113. S.C., Title XLIV.4-12.
114. S.C., Cap. III. Title CI.1.
115. S.C., Title XLIV.4-12.
116. S.C., Cap. III. Title C.1.
117. S.C., Cap. III. Title C.2.
118. S.C., Cap. III. Title C.2.
119. S.C., Cap. III. Title C.3.
120. S.C., Cap. III. Title C.4.

121. S.C., Cap. V. Title CI.1.
122. S.C., Cap. V. Title CI.2.
123. S.C., Cap. V. Title CI.2.
124. Ave' Lallemant, Early Frankish Society, p. 63.
125. Ibid, pp. 62-63.

### MARRIAGE LAW IN THE BURGUNDIAN CODE

The Burgundians first entered the Roman Empire in the fifth century, and were established as federate allies by the Emperor Honorius shortly after 410.<sup>1</sup> This first kingdom was overthrown by the Huns in 435-36.<sup>2</sup> A second Burgundian kingdom, set up again as foederati of the Empire, emerged in 443.<sup>3</sup> King Gundioc (437-74) was the ruler of this second kingdom.<sup>4</sup> Gundioc had four sons. Gregory of Tours, in his History of the Franks, states that the eldest son, Gundobad, had his brother Chilperic and Chilperic's wife killed and then exiled their daughters. One of these daughters was Clothild, who later married Clovis, King of the Franks.<sup>5</sup>

Gundobad succeeded to the throne of Burgundy in 474.<sup>6</sup> He joined Clovis, in 506, in war against the Visigoths in Aquitaine.<sup>7</sup> It was under Gundobad that one law code for the Burgundian population and another for the Roman population were developed.<sup>8</sup> Gundobad died in 517 and was succeeded by his two sons, Sigismund and Godomar.<sup>9</sup>

In 523, Clothild, the widow of Clovis, called her three sons, the kings of the Franks, to avenge the murders of her father and mother by Gundobad.<sup>10</sup> The law of the bloodfeud was still accepted at this time, although Gundobad was dead. The sons of Clothild, therefore, set out to attack Sigismund, the son of Gundobad. Sigismund was defeated, but his brother, Godomar, made peace.<sup>11</sup>

In 532, the Franks again attacked Burgundy.<sup>12</sup> Godomar was killed in 534,<sup>13</sup> and Burgundy was divided amongst the three Frankish kings, Childebert, Lothar, and Theudebert.<sup>14</sup> The Burgundians were compelled to pay tribute and offer military service to the Franks, yet the Franks did not confiscate any property and the Burgundians maintained their own laws.<sup>15</sup>

Under Gundobad (474-516)<sup>16</sup> the Burgundians had reached the height of their power and this was when the law codes were developed. The Visigothic law code probably served as a model for both compilations. The earliest known manuscript of the Burgundian Code dates from the ninth century, although the code itself dates from the late fifth century.<sup>17</sup> There were 88 original titles, with titles 88-105 coming later, probably with Godomar (524-32).<sup>18</sup> The Romans had their own set of laws developed by the Burgundians. These were also compiled by Gundobad, under the example of Alaric's Breviary for Romans in the Visigothic kingdom. When the Franks took over Burgundy, the Breviary was substituted for this Burgundian compilation of Roman law.

The Burgundian law code does not list the wergelds for various classes of people. One law states a woman's wergeld as 300 solidi and a man's as 150 solidi but this does not take into account status or age.<sup>19</sup> The law involved applied to a particular situation and not to men and women in general. Wergelds are mentioned as being paid in the law code but no monetary amount is mentioned. Katherine Fischer Drew states, in "The Germanic Family of the Leges Burgundionum," that wergelds were decided by class. The highest class had a wergeld of

300 solidi. The middle class had a wergeld of 200 solidi, with a 150 solidi wergeld for a lower class person.<sup>20</sup> The laws, however, do not mention what persons comprised each class. A few of the laws do, however, suggest a little about the status of Burgundian women. Women could own property.<sup>21</sup> They were allowed to control this property and own it separate from their husbands.<sup>22</sup> Women could also accuse in court and bring complaints.<sup>23</sup> Women, too, were oathhelpers, for Title VIII of the Burgundian code states that one swore with his wife and sons. If there were neither, then one's mother and father could swear to his good character. Women also had to pay fines for any wrongs done<sup>24</sup> or could receive fines for wrongs done to them.<sup>25</sup> Burgundian women, therefore, were recognized as competent before the law.

There was only one law that dealt with a physical affront to a woman. This lack of legislation possibly suggests that women were not deemed to be defenseless.<sup>26</sup> The only affront to women listed in the laws was for cutting the hair of a free woman. The fine was 12 solidi paid to the woman and 12 solidi paid to the fisc.<sup>27</sup> For this done to a freedwoman, the fine was 6 solidi; and for a slave it was 3 solidi. It is important to note that the fine was paid to the woman, not the holder of mundium over her. The punishment for a slave cutting the hair of a free woman was 200 lashes. For this done to a freedwoman, the fine was 100 lashes and for a slave, 75 lashes.<sup>28</sup> The law peculiarly states that these fines were to be exacted only if the woman was innocent.<sup>29</sup> Title XXXIII.5 explains what she was to be innocent of - this was voluntary sexual intercourse, for in the



case of voluntary intercourse the woman could not seek redress for her injuries. This law possibly suggests that the disgrace a woman received for intercourse outside of marriage was to have her hair cut off. This was a mark of humility.<sup>30</sup>

Marriage seems to have been the lot for most women. Title XIV, 1-6 suggests that a woman either married and received her inheritance through her marriage portion, or she entered a convent and inherited along with her brothers. Marriage or the cloister seem to have been the only two choices that a Burgundian woman had. She would not receive any property from her parents if she chose another way of life. It is safe to assume, therefore, that most women either married or took the veil.

A marriage process started with a betrothal. A couple needed the consent of their parents to be betrothed and to marry.<sup>31</sup> The future husband paid the wedding price or dowry at this time to the woman.<sup>32</sup> This was to be her property for life.<sup>33</sup> But, the woman was not allowed to give, sell or transfer this property,<sup>34</sup> it was to be reserved for her children, upon her death. A betrothal was a binding agreement to marry. This was true in as much as if a betrothed person married another, he or she was prosecuted for adultery.<sup>35</sup> There is an actual case in the law where a man married another's betrothed. The man's punishment was the loss of his property and possibly his life. He was to pay the woman's wergeld of 300 solidi to the betrothed along with his own wergeld of 150 solidi. The paying of the woman's wergeld suggests that she was either placed in servitude or was killed. The man could, however, proclaim his

innocence of knowledge that she had been previously betrothed by swearing with eleven.<sup>36</sup>

Other payments were made during the marriage process. The donatio nuptialis was presented by the parents of the husband to the woman and by the parents of the wife to the man.<sup>37</sup> The wittimon was the payment made by the husband to the wife's father most likely in exchange for mundium over the woman.<sup>38</sup> The woman technically became a part of her husband's family upon marriage and this wittimon was paid to compensate her family on their loss of her.<sup>39</sup> The laws stipulated how this money was to be divided. When there was no father or brother, the mother received one-third, with the sisters receiving another third. If there were no sisters, then the nearest relatives received one-third.<sup>40</sup> The final one-third was reserved, however, for the bride.<sup>41</sup> When a woman remarried, the wittimon paid by the second husband went to the first husband's relatives.<sup>42</sup> For a third marriage, the woman received the entire wittimon.<sup>43</sup>

Marriage ornaments or malahereda were given to the bride by her family,<sup>44</sup>--possibly these included dresses, jewelry and other matronly wear.<sup>45</sup> One final payment or present was the morning gift or morgengaba.<sup>46</sup>

Some unusual marriages were regulated by the Burgundian law code. A Roman woman who married a Burgundian without the consent of her parents was disinherited by her parents<sup>47</sup>--this suggests, however, that Romans could marry Burgundians. The consent was the factor being regulated here. Incest with a relative (it is not stated which

relatives this meant, besides a wife's sister) was punished by placing the woman in servitude to the king. The man paid her wergeld to her nearest relatives<sup>48</sup>--this was to compensate her parents for her being placed in servitude.<sup>49</sup> A man who married a Burgundian woman secretly and without her parents consent had to pay the woman's wedding price to her parents. He was free, however, to remarry another person if he so desired.<sup>50</sup> It is interesting to note that physical punishment, such as servitude, was meted out for women. The punishment for men (excluding slaves) usually was monetary. Of course, heavy fines could mean servitude for the man also. Curiously enough there are no laws against a free person's marrying a slave. There must have been some regulation against this. Most likely this union was not considered marriage and was dealt with under the name of abduction.

The Burgundians did have legislation on the abduction of women. For abducting a girl the fine was to be nine times her wergeld paid to her family, and 12 solidi were to paid to the fisc.<sup>51</sup> If the girl was not corrupted (i.e., the man had not had intercourse with her) and was returned, the man had only to pay six times her wergeld and the fine was turned over to the girl's parents to do with as they willed<sup>53</sup>--this usually meant that he became their slave. But if the girl willingly had intercourse with the man, the fine was three times the marriage portion<sup>54</sup>--this perhaps suggests that the couple were then married. Title LXI states that a man who married a woman without her parents' consent had to pay her marriage price. He was then free to marry another if he so chose. Possibly this was also

true for a woman who consented to her abductor.

A freeman who did violence to a female slave, most likely only if the slave belonged to another, had to pay 12 solidi to her master.<sup>55</sup> If a slave did this, then he received 150 lashes.<sup>56</sup> A slave who did violence to a free woman was killed;<sup>57</sup> however, if she voluntarily consented, then both were killed.<sup>58</sup> A woman could not escape her punishment, even if her relatives refused to kill her, for she was then turned over to the king as a slave.<sup>59</sup> Possibly this law could be the law against marriages with slaves. A free woman's union with a slave was not looked upon as marriage but as abduction. The penalty, either way, was very stiff. The Burgundians did not recognize any other sexual union outside of marriage; concubinage is not mentioned. Katherine Fischer Drew suggests that the Burgundians either "never practiced it or had abandoned it long before."<sup>60</sup>

A Burgundian marriage, therefore, began with a betrothal. This betrothal was a binding agreement to marry in the future. No time limit for going through with the ceremony is stated in the laws. There must have been some form of marriage vows that constituted the marriage ceremony, since Title XLII.1 states that there were marriage vows; however, the form of these vows is not given. A dowry was paid by the future husband to his future bride and he gave a wittimon to her father in exchange for the woman's mundium (right of legal protection). Gifts were given by the families to the couple and the woman's family gave her some personal gifts also - possibly these were to be her portion of the inheritance of her parents.<sup>61</sup> The couple

were then considered married, although the husband would give one final gift to his wife--this was the morgengaba given to her the morning after the wedding night.

Children were the wanted by-product of marriage. One was considered a child until his fifteenth birthday.<sup>62</sup> This meant that a child was not responsible before the courts,<sup>63</sup> nor could he make sales transactions or bequests.<sup>64</sup> A father was the usual guardian of his children, but if the father was dead, the mother could be her children's guardian provided that she did not remarry.<sup>65</sup> This was possibly because it was thought that the mother would then have a conflict of interest with her children.

According to the Burgundian law code, women were not allowed to divorce their husbands: a woman who left her husband was "smothered in mire."<sup>66</sup> This was regardless of how corrupt the husband was or what crimes he had committed. On the other hand a husband could divorce his wife if she were found guilty of adultery, witchcraft or the violation of graves.<sup>67</sup> A man who left his wife without cause had to pay an amount equal to her marriage portion and a 12 solidi fine<sup>68</sup> (probably he then had to return to his wife).<sup>69</sup> A man could, however, divorce his wife without cause, but he then lost all of his property and his home. These went to his wife and children.<sup>70</sup> It is not mentioned whether he could remarry or not, although he probably could not.

The punishment for adultery was not regulated by the courts, punishment was meted out by the injured party. The adulterous couple could be killed by the injured husband without punishment<sup>71</sup>--if

he killed only one of the two, however, he had to pay the wergeld for that one.<sup>72</sup>

When a man died intestate, his sons inherited.<sup>73</sup> Only if there were no sons could a daughter inherit.<sup>74</sup> It was thought that the husband would support his wife. The daughter/wife became a part of the husband's family--her own family's inheritance would stay in that family. Therefore, sons would stand to inherit first.<sup>75</sup> Women, however, could inherit equally with their brothers, if they had taken the veil.<sup>76</sup> They were still part of their family and had the right to inherit with that family. They also had not received a marriage portion. Possibly married daughters received their inheritance through presents made by their parents to them on their wedding day. When there were no children, sisters or near relatives of the deceased inherited.<sup>77</sup>

A widow became the guardian of her children and received the usufruct of their inherited property.<sup>78</sup> A woman who did not remarry also received the use of one-third of the husband's property, the rest went to his heirs.<sup>79</sup> If a son died after his father, his mother received the usufruct of his property until her death, then this property went to the son's heirs.<sup>80</sup> This was later changed so that the son's heirs and his mother received equal halves of the son's property.<sup>81</sup> A widow who had no children received one-third of her husband's property provided that she had not received any property from her parents or husband that could support her.<sup>82</sup> A woman who had one son received one-third of her husband's property. If she had more than one son, she received one-fourth. Upon her death, this property went to her children.

A woman received the usufruct of her dowry for life. She was not allowed to sell this property nor give it away nor bequeath it. It was inherited intact by her children.<sup>84</sup> If there were no children, this dowry was divided. Half went to the woman's relatives and half went to the dead husband's relatives<sup>85</sup> The woman's personal possessions were inherited by her daughters.<sup>86</sup> This was the only inheritance specifically outlined for daughters, unless of course they had no brothers or had taken the veil. These laws on how a woman's property was disposed of when she died do not mean, however, that a woman could not make a will or testament. Most likely properties, other than those mentioned (such as property received by purchase or gift) could be willed.

Women must have married young and remarried often, after the death of their husbands. This can be assumed by the more indepth laws on the inheritance of widows. More women must have survived their husbands than husbands survived their wives. The inheritances of widows, often many times over, must have created some wealthy women, too, as they kept their marriage gifts.

There are also laws that outline how a woman could remarry. These instances in the laws about remarriage may suggest that women were scarce in the population and therefore kept in the married state most of their lives. They could, however, accumulate wealth through remarriage by their acceptance of marriage gifts.

A Burgundian widow was the guardian of her children and all of their property provided that she did not remarry.<sup>87</sup> When a widow remarried, her wittimon went to her first husband's nearest

relative.<sup>88</sup> This person, most likely, became the children's guardian also. For a third marriage, the widow herself retained the wittimon given by her third husband. Possibly this could have been a reward for a woman who attempted to remain married throughout her life. A woman could remarry within a year after the death of her first husband. She was required, however, to give up her entire one-third of her first husband's property that she had inherited.<sup>89</sup> This was true regardless of when a widow remarried. The first husband's property went to his heirs.<sup>90</sup> This did not, however, include her marriage gifts.

The Burgundian law code treated women as a legal entity. Women could own property and control it in their own right. They could make wills and testaments. They could bring cases to court. Women were expected to be oathhelpers. Women paid fines and received those fines due to them. There were few laws against violence to a woman which may have been because women were thought of as competent in the laws and so not as weak and defenseless.

Marriage was most likely the state that most women remained in for most of their lives. Their only other option, in order to inherit from their parents, was to enter a religious order. Parental consent was necessary to marry. The consent of the woman herself was not important. The woman received a dowry from her husband which remained her property for life. Burgundian women, upon marriage, became a part of their husbands' families. The wittimon was paid more to compensate her family for their loss of her and her issue than to pay for her mundium.



Illegal marriages were legislated against. Women usually received a physical punishment, such as servitude, whereas men received a monetary fine. This fine, however, was often so large that servitude may have been the case for men also. Fines for abducting a woman were also heavy.

The Burgundians had a double standard when it came to divorce. Women could not divorce under any circumstances; a man could divorce his wife for adultery, witchcraft, or violation of graves. An adulterous husband was not punished. A man could divorce his wife without cause, but the woman had some protection against this since the husband then lost his property and his home.

Daughters could inherit from their parents provided there were no sons. This was due to the idea that a woman became part of her husband's family and it was his duty to support her. Possibly, moreover, a woman's inheritance portion was given to her through marriage gifts since an unmarried daughter in a convent inherited equally with her brothers.

Widows received the usufruct of their husband's property until their death or remarriage. They could be the guardians of their children and administer their children's inheritance unless they remarried. Women, therefore, were not left unsupported upon their husband's death.

Remarriage must have been common in Burgundian society. This allowed women possibly to accumulate wealth through the receiving of multiple dowries. Women, upon a third marriage, also received their

wittimon. This seems to be the reward given to women who had tried to remain married their entire lives.

Although women, in the Burgundian law code, had few options outside of marriage and children or entering a convent, they could acquire wealth and status in their own right and they had these rights protected in law.

FOOTNOTES

1. Katherine Fischer Drew, "Introduction," The Burgundian Code (Philadelphia: University of Pennsylvania Press, 1972.), p.11
2. O.M. Dalton, "Introduction," The History of the Franks by Gregory of Tours. (Oxford: At the Clarendon Press, 1927), p. 169. Katherine Fischer Drew, "The Germanic Family of the Leges Burgundionum," Medievalia et Humanistica, 1963, p. 6.
3. Drew, Burgundian Code, p. 11.
4. Drew, "Germanic Family," p. 6.
5. Gregory of Tours, The History of the Franks, O.M. Dalton, transl. (Oxford: At the Clarendon Press, 1927), pp. 66-67.
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12. Ibid, p. 104.
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17. Ibid, p. 4.
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19. Drew, The Burgundian Code, Title LII. (hereafter The Burgundian Code shall be referred to as B.C.).
20. Drew, "Germanic Family," p. 13.
21. B.C., Title XIV, 5-7.

22. Drew, "Germanic Family," p. 10.
23. B.C., Title XLIV, 1-2.
24. B.C., Title LXXVI.
25. B.C., Title XXXIII, 1.
26. Suzanne Fonay Wemple, Women in Frankish Society: Marriage and the Cloister 500 to 900 (Philadelphia: University of Pennsylvania Press, 1981), p. 29.
27. B.C., Title XXXIII, 1.
28. B.C., Title XXXIII, 2-4.
29. B.C., Title XXXIII, 1.
30. Drew, "Germanic Family," p. 13.
31. B.C., Title LII.
32. B.C., Title LII.
33. B.C., Title LXII, 2.
34. B.C., Title XXIV, 1.
35. Drew, "Germanic Family," p. 8.
36. B.C., Title LII.
37. Drew, B.C., p. 50, n.2.
38. Ibid, p. 50, n.2.
39. Drew, "Germanic Family," p. 8.
40. B.C., Title LXVI, 1-3.
41. B.C., Title LXXXVI, 2.
42. B.C., Title LXIX, 1.
43. B.C., Title LXIX, 1.
44. B.C., Title LXXXVII.
45. Wemple, Women in Frankish Society, p. 47.
46. Drew, B.C., p. 50, n. 2.

47. B.C., Title XII, 5.
48. B.C., Title XXXVI.
49. Drew, "Germanic Family," p. 10.
50. B.C., Title LXI.
51. B.C., Title XII, 1.
52. B.C., Title XII, 2.
53. B.C., Title XII, 3.
54. B.C., Title XII, 1.
55. B.C., Title XXX.
56. B.C., Title XXX.
57. B.C., Title XXXV, 1.
58. B.C., Title XXXV, 2.
59. B.C., Title XXXV, 3.
60. Drew, "Germanic Family," p. 9.
61. B.C., Title XIV, 5-6.
62. B.C., Title LXVII, 3.
63. B.C., Title LXVII, 2-3.
64. B.C., Titles LXXXVII.
65. B.C., Title LXXV & LIX.
66. B.C., Title XXIV, 1.
67. B.C., Title XXXIV, 3.
68. B.C., Title XXXIV, 2.
69. Drew, "Germanic Family," p. 9.
70. B.C., Title XXXIV, 4.
71. B.C., Title LXVIII, 1.
72. B.C., Title LXVIII, 2.
73. B.C., Titles LI, 1 & XIV, 1.

74. B.C., Title XIV, 1.
75. Drew, "Germanic Family," p. 10.
76. B.C., Title XIV, 5.
77. B.C., Title XIV, 2.
78. B.C., Title XXIV, 3.
79. B.C., Title XLII, 1.
80. B.C., Title LIII, 1.
81. B.C., Title LIII, 2.
82. B.C., Title LXXIV, 1.
83. B.C., Title LXXIV, 2.
84. B.C., Title XXIV, 1.
85. B.C., Title XXIV, 2.
86. B.C., Title LI, 2.
87. B.C., Title LIX.
88. B.C., Title LXIX, 1.
89. B.C., Title XLII, 2 & XLII, 1.
90. B.C., Title XLII, 2.

## MARRIAGE LAW IN THE LOMBARD CODE

The Lombards were the last of the Germaic tribes to enter the Western Roman Empire. Justinian's attempt to reconquer the old Roman Empire had resulted in devastating Italy. The Lombards entered Italy at this point, in 568, with Alboin as their king. They established a kingdom, with Pavia as its capital, in northern Italy and in Spoleto and Benevento to the east and south of Rome. The Lombards were reluctant to find a successor to Alboin and there ensued ten years of government by local dukes (the interregnum). This would create the precedent of local interest over central authority. This would prove to be fatal to the Lombards for they were less inclined to rally around a central ruler. In 584, however, they recognized the need for a central ruler and elected Authari, who had married a Bavarian princess, Theodolinda. She was Catholic and this started the way for the Lombards to convert from Arianism. When Authari died, Theodolinda was asked to pick the next king for the Lombards and marry him. Theodolinda's daughter also married a king of the Lombards and she too was asked to marry the next king. This was Rothair. He was an Arian but he was to be the last Arian Lombard king. Rothair compiled the first edict of the Lombards in 643. Roman influence is not very apparent since he was not a Catholic king. The Lombards did not convert to Catholic Christianity for over one hundred years after they settled into Italy. They did not easily assimilate with the culture

and customs of Rome. Luitprand (712-44) was the most powerful of the Lombard kings. He was Catholic and favored Roman influences. In 751, the Lombards finally took Ravenna (after having been repelled many times) and were threatening Rome. Rome had always been caught between the Lombards and the Eastern Imperial Army. Rome, therefore, called on the Franks for assistance this time. Charlemagne took up the cause and the Lombards fell to the Franks in 774.<sup>1</sup>

Women were not legally competent under the Lombards--they had to be always under the guardianship of a man.<sup>2</sup> This guardianship gave the holder of a woman's mundium the right to represent her in court, administer her property and negotiate her marriage.<sup>3</sup> Compositions and wergelds were paid by the guardian but he also received any composition or wergeld due the woman. Mundium was in the power of the father until the woman married. At this time the mundium was transferred to her husband, but only if he had paid the marriage portion or meta for it. Mundium could also be passed to a brother or other guardian in accordance with inheritance laws, or, if there were no relatives, the king took over the mundium of a woman.<sup>4</sup> Mundium was a profitable and coveted inheritance right. Guardians other than the father or brother were called mundwalds. The law stipulated certain offenses of the mundwald that were cause for him to lose the mundium of a woman. These included if he tried to have her killed, or hand her over to a husband without her consent, or voluntarily consent to someone causing her violence.<sup>5</sup> Later, more offenses were included: if he let her go hungry, did not clothe her properly, gave her to an aldius or slave as wife, hit her, forced her to do indecent



work or had intercourse with her.<sup>6</sup> The status of women, in the eyes of the law, was of a very restricted nature. Women virtually held the status of children all of their lives.

Marriage, for the Lombards, began with a betrothal. Betrothal was a serious undertaking; it was a contract, the terms of which were negotiated by the guardians of the two parties involved. After a betrothal was official, the wedding could not be delayed more than two years without just cause. If the husband-to-be delayed longer than two years, he was obligated to pay the stipulated marriage portion and the woman was released from marrying him.<sup>7</sup> Just cause for the man's breaking a betrothal were the woman's becoming a leper, going blind, or dying. If any of these events occurred, the betrothed was given back his marriage portion.<sup>8</sup> If a betrothed woman married someone else, composition was paid by her husband and the betrothed received back double his marriage portion. The man who married the woman was only then able to purchase his wife's mundium.<sup>9</sup> Penalties for breaking a betrothal were not as strict among the Lombards as some of the other law codes indicated.

The marriage portion or meta was also negotiated at the time of the betrothal and the man gave it at this time to the woman's family. At the time of the wedding, the father gave this meta to his daughter, along with a gift. This became her property to be administered by her husband as her mundwald.<sup>10</sup> The husband then gave his wife, on the morning after the wedding, a morning gift or morgin cap which also became her property. The morning gift was to be announced publicly and could not be more than one-fourth of the husband's property. It

could be less, however, that was up to the husband.<sup>11</sup> The husband was not to give any other property besides these amounts to his wife during their marriage.<sup>12</sup> The only way that a woman could control who got her property upon her death was by giving one-third of it to the Church for the saving of her soul. She could also bring one-third of her property with her if she entered a convent.<sup>13</sup> It would seem that although the meta was technically the woman's it was really the payment for the acquisition of a Lombard woman's mundium. Marriage did not free the Lombard woman nor did it give her many economic advantages of her own.

Consent of parents for marriage was not essential to the Lombards. If a woman married without her parent's consent, her husband had to pay 20 solidi as composition for illegal intercourse, and another 20 solidi to avert a feud. If the husband was a free person, he was then able to acquire the mundium of the wife from her parents.<sup>14</sup>

Punishment for abducting a free woman was a monetary fine of 900 solidi. One who seized a woman and violently took her to wife had to pay the composition, but the marriage was not void and the husband was even able to acquire his wife's mundium.<sup>15</sup> The fine, however, was heavy enough to make this form of marriage highly unlikely. Lombard laws on abduction were clearly influenced by germanic custom. Women had protection against the unwilling abduction of their persons, as a 900 solidi fine meant almost certain slavery.

Illegal marriage for the Lombards was strictly defined. If a man married another man's wife, they were both to be killed.<sup>16</sup>

This was the strongest penalty imposed for an illegal marriage. A woman who married a man who already had a wife lost all of her property and the man was returned to his first wife. There were incest stipulations that counted to the seventh degree<sup>17</sup> and also included step-mothers, step-daughters, sisters-in-law,<sup>18</sup> widows of cousins,<sup>19</sup> god-mothers or god-daughters.<sup>20</sup> The incestuous couple were to be separated immediately. A composition of 100 solidi was paid and the woman lost half her property to the king.<sup>21</sup> A woman who entered a religious order was not allowed to return to secular life. If she married, there was a 600 solidi fine and she lost all her property.<sup>22</sup> Marriage between social ranks was possible. Both a free man and an aldius (a semi-free male) could marry a free woman, and aldia (a semi-free female) or a slave.<sup>23</sup> An aldia, however, who married a slave lost her freedom and became a slave.<sup>24</sup> If a free woman married a slave, the slave was killed, and the woman's family had the right to kill her or send her out of the country. If her relatives neglected to do this, the woman became one of the king's palace slaves.<sup>25</sup> The woman's relatives were given one year in which to punish her before she became such a palace slave.<sup>26</sup> Free women, therefore, were allowed relations with at least one group of social inferiors: the semi-free aldius. An aldia or a female slave could possibly improve her station by marrying a man who was a social superior. If a Roman married a Lombard woman, the marriage was legal but the woman became a Roman in the eyes of the law.<sup>27</sup> A woman was not allowed to marry until she turned thirteen. If she were married before this time, the man had to pay

900 solidi composition and the woman was returned home. A father or brother, however, could marry her off at any age because it was supposed that they would have no malicious intent.<sup>28</sup> The legality of a marriage, therefore, was important to the Lombards. Children of an illegal marriage were not legitimate and could not inherit in any way from their parents.<sup>29</sup> Under Catholic influence, the Lombard laws later stated that any marriage not permitted by canon law or secular law was void. This was seen as marriage against God.<sup>30</sup>

Illegal intercourse between a free woman and a free man was punishable by a monetary fine of 100 solidi, or if they agreed to marry, only a 20 solidi fine. If relatives neglected to punish this, the case could be presented to the king, but this was not mandatory.<sup>31</sup> If a man dishonorably touched another man's wife, he was to defend himself by oath or duel, and if found guilty had to pay his wergeld to the husband.<sup>32</sup> Compositions were paid to the husband regardless of whether he held his wife's mundium or not--such acts were seen as offenses against the husband.<sup>33</sup> The wife who had consented to being touched by another was to be dealt with by her husband as he wanted. The law stipulated, however, that he could neither mutilate nor kill her.<sup>34</sup> There is nothing said of the punishment of women found guilty of adultery; this punishment was probably left up to her family. If a man caught his wife in the act of adultery, however, he had the right to kill the couple without any blame befalling him.<sup>35</sup> Later, in 733, it was legislated that a woman found guilty of adultery was to be killed.<sup>36</sup> It was also considered adultery when a woman was betrothed or had taken the veil

and had relations with another man.<sup>37</sup> If a betrothed charged his wife-to-be with adultery, her relatives could take oaths to prove her innocence. If she were cleared, the betrothal contract was not broken but rather if the betrothed still refused to marry her, he was required to pay double the marriage portion. But if she were not cleared of the charges, the betrothed received back his property and she was punished by her relatives.<sup>38</sup> Adultery committed by a woman who had taken religious vows was punished by a double composition of 200 solidi. Later, most likely from Catholic influence, punishments for adultery by men were established. If a man committed adultery with a married slave or aldia, then both she and her husband were automatically manumitted.<sup>39</sup> A man charged with adultery with a free woman was able to clear himself by oath or duel, but if he were found guilty he was punished by death.<sup>40</sup>

For the Lombards, there were no grounds for divorce for women nor was their divorce by mutual consent. Divorce was not directly dealt with in the laws. A man who abandoned his wife without legal cause had to pay 500 solidi and he lost her mundium. She was then able to return to her relatives with her property.<sup>41</sup> It is not stated whether the husband could remarry at that point or not. Just cause for divorcing a wife included adultery and conspiring to kill her husband. The woman was, however, allowed to be cleared by oath or duel.<sup>42</sup> For conspiring to kill her husband, the woman lost her property and her husband could do with her as he wished.<sup>43</sup> For killing her husband, a woman was killed.<sup>44</sup> A woman could remarry after her husband died (provided she had not killed him); her mundium

was to be purchased from the heirs of the first husband. The price was to be half the marriage portion that was paid at the time of the first wedding.<sup>45</sup> Lombard women, therefore, could not be cast aside unjustly. However, it was only a monetary fine, although a heavy one, to do so.

Lombard women possessed their marriage portion and morning gifts, but the administration of this property was handled by their mundwalds. No other gifts besides these could be given to the wife by the husband.<sup>46</sup> A woman could lose her property only by being guilty of one of the following: an incestuous relationship,<sup>47</sup> conspiring to kill her husband,<sup>48</sup> marrying a man who already had a wife,<sup>49</sup> or marrying after having entered a religious order.<sup>50</sup> The injured person usually received half of the property, with the king receiving the other half. A woman was only able to sell her property with the consent of her husband and with two or three relatives as witnesses to the charter. A sale was invalid without this. A woman's property was inherited by her children, but she had the right to give one-third of her property to the Church on behalf of her soul. If she had no children she was able to leave one-half of her property to the Church.<sup>51</sup> Inheritance of relatives was determined up to the seventh degree of relationship.<sup>52</sup> If a man had no legitimate sons, then daughters and sisters were allowed to inherit up to half of the property, with the rest going to relatives.<sup>53</sup> A father with only daughters could will up to half, but no more, of his property to the Church--the rest went to the daughters.<sup>54</sup> A woman's mundium was inheritable. It went to the

woman's near relatives or to the king.<sup>55</sup> Widows were provided for, too, in the Lombard laws. A widow was able to use up to half of her husband's property until she remarried or died; the property then reverted to her first husband's heirs.<sup>56</sup> A widow, however, kept her marriage portion and morning gifts. She was allowed to return to her relatives provided that they bought back her mundium from her husband's heirs at half the price of the original marriage portion. She would then inherit from her family provided that first her sisters received an amount equal to her marriage portion. The rest of their parents' property was then to be divided amongst them.<sup>57</sup> Lombard women could also remarry. Her mundium was to be bought from her first husband's heirs. They could not refuse their consent to this marriage. The woman was then allowed to remarry.<sup>58</sup>

The Lombards were less susceptible to change than many of the other Germans and therefore, they maintained more of the old customs in their marriage laws. This is illustrated by the great use of monetary fines for punishments and the use of oaths and duels for proving guilt or innocence. The laws on marriage are not very detailed. This may be because this was an area under the family's sphere of influence or so well known in custom that writing down seemed unnecessary.

The Lombards maintained the Germanic custom of perpetual guardianship for women. Lombard women were not legally competent, but they were protected from many abuses that may have been contracted by their mundwalds. Lombard women were also protected from being abducted, but only by a monetary fine. Monetary fines were the most prevalent form of punishment in the Lombard law code. The punishment

for abducting a Lombard woman could be reduced, however, by the abductor marrying his victim. Abduction, therefore, could be used as a form of marriage. Marriage to the abducted was in fact encouraged by the reduced fine for it. A woman could either have no say in this form of marriage, or she could encourage an abduction so as to marry whom she desired.

Marriage was the station that most Lombard women remained in for most of their lives. The consent of parents was not absolutely essential to a marriage; therefore, a woman perhaps had more say in whom she married than among the other Germans. Lombard women had a few restrictions on whom they could not marry--these restrictions included a relative related to the seventh degree, a man who was already married, and a slave. A Lombard woman could, however, marry a Roman, but she lost her status as a Lombard. Lombard women could also marry one class of social inferior--the semi-free aldius.

Marriage for the Lombards began with a betrothal. The meta was negotiated in return for handing over the woman's mundium. The right to the woman's mundium must have been a profitable one since there is much legislation on the subject. Lombard women could own property and her marriage portion was hers for life, but she could not administer it nor did she have much say over its inheritance.



FOOTNOTES

1. For a more detailed history of the Lombards see Paul the Deacon's History of the Lombards, William Dudley Foulke, transl. (Philadelphia: University of Pennsylvania Press, 1974).
2. The Lombard Laws, Katherine Fischer Drew, transl. (Philadelphia: University of Pennsylvania Press, 1973) Rothair, 204. (hereafter cited as L.C.).
3. L.C., Rothair, 204.
4. L.C., Rothair, 161.
5. L.C., Rothair, 195.
6. L.C., Luitprand, 120, III.
7. L.C., Rothair, 178.
8. L.C., Rothair, 180.
9. L.C., Rothair, 190.
10. L.C., Rothair, 181.
11. L.C., Luitprand, 7, I.
12. L.C., Luitprand, 103, VIII.
13. L.C., Luitprand, 101, V.
14. L.C., Rothair, 188.
15. L.C., Rothair, 186.
16. L.C., Rothair, 211.
17. L.C., Rothair, 153.
18. L.C., Rothair, 185.
19. L.C., Luitprand, 33, IV.
20. L.C., Luitprand, 34, V.
21. L.C., Rothair, 185.
22. L.C., Luitprand, 30, I.

24. L.C., Rothair, 217.
25. L.C., Rothair, 221.
26. L.C., Luitprand, 24, VI.
27. L.C., Luitprand, 127, XI.
28. L.C., Luitprand, 12, VI.
29. L.C., Luitprand, 32, III; also L.C., Luitprand, 105, II.
30. L.C., Aistulf, 8.
31. L.C., Rothair, 189.
32. L.C., Luitprand, 121, V.
33. L.C., Luitprand, 139, I.
34. L.C., Luitprand, 121, V.
35. L.C., Rothair, 212.
36. L.C., Luitprand, 130, I.
37. L.C., Luitprand, 76, VIII.
38. L.C., Rothair, 179.
39. L.C., Luitprand, 140, II.
40. L.C., Rothair, 213.
41. L.C., Grimwald, 6.
42. L.C., Grimwald, 7.
43. L.C., Rothair, 202.
44. L.C., Rothair, 203.
45. L.C., Rothair, 183.
46. L.C., Rothair, 12.
47. L.C., Rothair, 185.
48. L.C., Rothair, 202.
49. L.C., Grimwald, 8.

50. L.C., Luitprand, 30, 1.
51. L.C., Luitprand, 101, VI.
52. L.C., Rothair, 153.
53. L.C., Rothair, 159; also L.C., Luitprand 1, 1.; 2, 11.; and 3,  
III.
54. L.C., Luitprand, 65, 1.
55. L.C., Rothair, 161.
56. L.C., Luitprand, 14, V.
57. L.C., Rothair, 199.
58. L.C., Rothair, 182.

### CONCLUDING REMARKS

The Visigoths, the Salian and the Ripuarian Franks, the Burgundians and the Lombards each compiled their own law codes upon settling into the old Western Roman Empire. Sources for this time period may be few, but these law codes contain a wealth of information on early medieval society. Although the law codes often do not explain their conditions or leave certain issues out entirely, those areas that are covered, especially family and marriage law, add considerable insight into the status of women in this society. These findings on women should add one more piece to the puzzle that is early medieval society.

Each of these germanic law codes is different. They are all variations based on the amount of influence exerted by three key influences of this time: the germanic, the Church and the Roman. A woman's sphere of influence clearly was domestic. She was revered as a wife and a mother. In political terms, women were "second-class" citizens in each society, to be sure, yet they had a variety of rights and privileges that contributed to their unique status.

Women in medieval society, on the whole, had little to say on who was chosen for them to marry -- the consent of their parents was more important. A person married for economic reasons, more likely, than for love. Women were usually under the protection of a mundwald in

Lombard society, although this was not true for the Visigoths and the Burgundians, and may not have been true for the Franks.

Burgundian and Lombard women became a part of their husband's family upon marriage, but their natural family kept an active interest in her welfare. Visigothic and Frankish women remained a part of their own families. For the Visigoths and Burgundians, women were legally competent. This meant that women did not need guardians and could usually become the guardians of their children when their husbands died. Frankish women may have had such rights but Lombard women did not have is the freedom. Women in medieval society could own property, but Lombard, and perhaps Frankish women, had to have their property administered by others. Visigothic and Burgundian women, on the other hand, could plead their own cases in court, and could administer their own property. All early medieval women could inherit property. The degree to which, however, depended upon one's family and one's nationality. Clearly, then, the status of women in early medieval society varied with each of the germanic kingdoms.

All of the law codes agree on one point, however. This is the great importance of the family in their society. This is one of the reasons why family law shall remain an important source of information for early medieval society. Much, too, of what the family regulates has to do with marriage and women. Therefore, an analysis of family law and marriage, as it pertains to the status of women, has shed more light on this society as a whole.

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