"Barbarian" Legislation.

by

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Legislation:
A Thesis upon Hellenistic and Roman Influence in Modern Legislation.

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I.

Since the Barbarous Codes of Law were produced neither by the Barbarians alone nor by the Romans alone, but by the fusion of the two which resulted from the Barbarian Conquest, it will first be necessary to consider the part each contributed to that fusion, and also the influence of each in the subsequent Legislation of the new Civilization then introduced.

It is a well known fact that for centuries before the final overthrow by the Barbarians of the Roman State, it had been growing weaker and more corrupted. Kings were grown cruel and absolute, by inordinate ambition; and the people were corrupted and dissatisfied by endless red tape, by luxury, debauchery, slavery, and insolvency. The grand system of government, the
laws and institutions yet remained; but neither kings nor people were able to wield these cumbersome and inquisitive instruments of their great predecessors. Rome fell by her own hand, rather than by that of the Barbarian. As a general statement, the Barbarian merely glided into the Roman state as molten metal into the mold, and from this new combination were forged the institutions of this new civilization. The influences which the Roman civilization exerted in this formation, or, rather, re-formation, were many and potent. The awe and majesty of the old Roman Empire in the eyes of the Barbarians gave to this new state its formal dignity and power. Christianity, also, with its institutions, impressed the Barbarian as something higher, nobler and more elevating than his own crude Northern religion, and in accepting it, it became in his eyes hands the
humanizing factor in his future legislation.

Besides the institutions of government, the Barbarians found, also, an elaborate and well-developed system of law, which was applicable to most varied and numberless questions of human life and intercourse. There were three improvements which the Romans introduced into formal jurisprudence, and which the Barbarians, in their rude way, afterwards imitated in the formation of their codes. 1st.-For a multitude of heterogeneous sources of law, the sole authority of certain definite volumes was substituted. 2nd.-They gathered together and grouped under appropriate titles the various enactments promulgated at different times on any given legal topic. 3rd.-They arranged these titles or groups in a regular though unscientific order. The different Barbarian tribes cast their unwritten usages and customs into these
Roman forms; and thus were formed the "codes" so-
known of Barbarian law. These manners and customs
must, then, be first considered.

The most reliable sources of our knowledge of
the ancient Germanic or Teutonic tribes are Tacitus and Caesar. From these we find that the Ger-
manic were a pure and unmixed race, never inter-
marrying with other nations; and hence they built up
a race distinct in character, with all the concen-
trated heritages from their ancestors of virtue and
simplicity. The land being ill-suited to agricul-
tural or mining pursuits, war became their pastime
and their business; and in times of peace their bold
and energetic natures found delight in the dangers and
excitement of the chase.

But though they were thus wild and savage
as warriors, as men they were not entirely devoid of
all refinement and virtue. Woman was held in
the greatest esteem and veneration, and the laws of
hospitality and social entertainment were most lib-
eral. Justice was administered quickly and impar-
tially, and freedom and equality prevailed.
The Barbarian principles which were most
influential in the new civilization were four. 1st.-The
principle of representative government, as shown in
the great national council of the freemen, the basis of
the constitution of all the Germanic tribes, and from
whom all power and every legislative enactment
proceeded. All freemen had an equal voice in this
Council, and decided by their votes all questions
of war, of government, of public policy and of justice.
In matters of small importance the chiefs alone de-
cided; but in questions of great public importance
the chiefs first thoroughly discussed the business among
themselves, and then presented it to the council, which again discussed and decided it.

This is one of the most, if not the most, important of the Germanic institutions, for it contains the germ from which were developed many of the most cherished bulwarks of our modern civilization. This council among the Saxons is called by the English the exemplar or prototype of their House of Lords, an institution which now, however, seems of doubtful importance in the English government. The principle is exhibited in a higher and true sense in our Congress.

And—The principle of royalty in a new form, the king must be both of divine origin, and also elected by the people. Pausitius says that in electing kings they had regard to birth, but in electing chiefs to lead in war, valor. The Northern mythology left
this tendency in the Germanic tribes, to associate their kings by lineal descent with their deities. This principle has cropped out notably several times in the history of modern Europe, when it was more fruitful of rebellions and revolutions, being carried into far-fetched and exceptional prerogatives of the Crown.

3rd. - The sentiment of devotion or loyalty to a chieflain, constituting what is known as military patronage. Tacitus says, the chiefs were elected with regard to valor, and that they fought for victory, while their companions fought for their chief. The king was the real head of the tribe or nation, only in times of peace; in war other chiefs were elected for their superior bravery and valor to lead them to victory or death; because for the people to return from the death of this chief, or for the chief to return after the defeat of his companions, was disgrace and death.
Implicit obedience on the part of his companions in arms, and the greatest virtue and bravery in battle in both, was required and scrupulously observed. Upon this principle, but altered by the changed conditions in domestic life and manners noticed further on, was founded the system of Feudalism.

II th. — A strong feeling of personal independence and equality. This as a common characteristic of all the Germanic tribes, and one which has been of great and salutary influence in all subsequent history. Every man was considered the equal in all respects of every other man; not even chiefs were allowed exclusive privileges; privileges were almost entirely unknown; rights alone existed, and were maintained not by any public power kept by the individual himself. The story of Clovis is well-known, and often cited. It was this feeling which led the Barbarians
to discriminate in many of their laws between the
Romans and themselves; they could not hold equal
with themselves a people whom they had conquered;
and, though they were avowed by the Romans institu-
tions, yet they looked with scorn and contempt on
their system of political slavery. From this arose, also,
the system of personal legislation, or according to race,
as distinguished from territorial legislation, or that
according to country or territory.

In personal legislation each member of
the community was tried and judged not by a cer-
tain common law of the territory in which he dwelt,
but by the law of his tribe, by his natural or birth
law. He was not even allowed to choose the law
by which he should be governed, but must take per-
force the law of his birth. To the Romans, even, was
this conceded; and to this fact savagery attributes
the cause of the perpetuity of the Roman law, for this licence gave full scope to the natural or inherent forces of the Roman law to work out in their own natural way its progressive and already well-developed system.

But this system of personal legislation is a transitory and insufficient one, and it was impossible for the state to exist in security and prosperity. The reason for it is evident, and does not need to be elaborated. The proper territorial law soon afterwards sprang up, and the true occasions of its introduction may be traced, first, to the total subversion of the law relations of preceding times, and, secondly, to the disappearance of the old German and national law-characteristics. New generations and nations arising discontinued the inefficient personal laws, and feudalism changed the nation from a mass of free com-
munities into a body of military vassals and serving dependents. The Visigothic nation in Spain was almost the only Barbarous nation that adopted and maintained this system of territorial legislation; in all the others personal legislation prevailed until broken up by feudalism and later forces.

Another prevailing custom of all the Germanic tribes was the composition, or fine paid by an offender to the injured person or to his family. All crimes and offenses—murders, thefts, personal injuries, etc.—were punished by this means. At war, however, a secondary step. The right recognized under this, as well as under all the Barbarous laws, is the right of each man to do justice to himself, to revenge himself by force. War between offended and offender. Composition attempts to substitute for this war a legal system; it obliges
The offended was to renounce the employment of force; it is the first step of criminal legislation out of the system of personal vengeance. At first, the offended had the choice of personal vengeance or composition; and judicial combats were authorized as a compromise between the right of personal vengeance and the right of public order. From this latter institution arose the similar institutions and customs of feudalsims and chivalry. Probably until the 8th Century, however, composition was obligatory, and refusal was a violence not a right. Real liberty was prevalent, and each man was at his own peril; composition, then, attempted to regulate chaos and maintain social order.

To overcome this personal warfare and confusion, two remedies were used; - the inequality between men was declared, - rich and poor,
noble and obscure, patrons and clients, masters and slaves; and public power also was developed; a collective force arose, which, in the name and interest of society, proclaimed and executed laws. Thus originated aristocracy and government. Compunction was a mere step out of the state of warfare and the barbarous struggle of forces; its incoherence is evident, and it has not much moral worth.

Besides this compunction, or money paid by the offender to the offended or to his family, he paid also a pecuniary, or fine, to the community, for the offence against the public order. Government arose, and began to assert its rights and the rights of society, and they began to be recognized. It is but another step in the gradual development, unfolding, of civilization, of social and political governmental institutions.
Such were some of the more important of the early customs and institutions of the Goths, and, when they came into contact with the Roman Empire and its institutions and influences, three effects followed having a bearing upon domestic life and manners, and hence, indirectly, upon their subsequent legislation. 1st. - The intermixture that occurred between the new invading races and the original population, which had for long periods of time filled the provinces. The Romans, although more refined and civilized in intellect and taste, were depraved in morals, having a blunted or vitiated conscience, seeking after physical pleasures and enjoyments without regard to means by which secured. A disregard of right, of female virtue, and exercise of refined cruelty often marked their conduct. These could not but exercise a corrupting
influence upon the more virtuous Barbarians.

2nd. - The conversion of these races to the Christian religion. Although peculiar individual idiosyncrasies still remained in full force, the influence of religion was restraining and salutary to the rough, harsh, warlike Barbarians. They recognized its truth and attempted to follow its teachings. Its effect, then, as has already been paid, was to act as a humanizing factor or force in their legislation.

3rd. - The change in occupation that occurred on the settlement of the Roman provinces. The Germans were previously characterized as a fierce, warlike race, delighting in war and the chase, and leaving all agricultural labors to the women, children and the aged. Now, however, on the settlement of the Roman provinces, the men revived and stimulated agricultural pursuits, and the women assumed control of
the domestic affairs and education of children, the economy of the fireside, and the relations of home and mother and wife. These changes in industrial habits and pursuits led to changes in manners and customs, forms of intercourse and modes of life.
II.

In considering the codes of the Barbarian laws, only a few—the Gothic, the Frank and the Burgundian—will be taken up; for, to attempt to consider all the laws of the numerous Germanic tribes, would result in an extensive, heterogeneous mass, perplexing and uninteresting in the extreme. We have seen that all the Germanic tribes were characterized by certain ideas and institutions, which were held in common, and exhibited, in greater or less degree and intensity in each; so, also, did all become imbued with the same spirit of codification, and cast these universally prevailing characteristics, with of course, the individual peculiarities of each, into the one common form—the Roman. This, then, greatly lessens the work of exposition and explanation of the Barbaric Codes; it reduces the labor to the consid—
eration only of the prevailing common characteristics; and that can be done by a few prominent and notable exemplars easier and more intelligibly than by an extensive and attempted complete exposition of the whole.

The Astrogothic code is, comparatively, of slight importance, but should receive some notice, as it contains principles which may serve as introductory to the more important Visigothic and other codes. Though promulgated by a Barbarian king, Theodoce, it can hardly be called a "Barbarian" code, for it is a code of Roman law, presumably, though so changed in its sources, and so rude and imperfect in the changes that the Roman law is scarcely distinguishable and only a Barbaric rubbish of Latin phrases is left—a most confused and unsatisfactory collection. Theodoce attempted a revision and condensation of the
voluminous mass of the Roman jurisprudence; and, in modelling the sources into an entirely new system, in which the old jurists are no longer the authorities, but the author of this "Edict" alone, he so changed them that only a confused, unintelligible mass remains. It was written in the Latin language, by Roman and not Barbarian authors, and was intended as a law for Roman subjects only; hence it can have but little importance in a consideration of Barbarian laws.

By far the most important of all the Codes is the Visigothic, for in this is manifested a culture and refinement unknown to the other Codes. There are two different Codes - the Roman, the "Breviariunm" of Alaric, and the Spanish, the "Porum Judicium" which is generally known as the "Visigothic Code".

After the Visigoths had settled in Gaul, Euric
had the Gothic custom written in his Gothic subjects; and in 306 Alaric, who had come with a large following and settled in Gaul and Spain, issued a written code, the "Breviarium," for his Roman subjects only, however, his Gothic subjects still retaining their own ancient unwritten Germanic customs and usages, or the written code of Euric, which was a mere written transcript of those customs and usages.

This Roman collection is more properly called "Lex Romana," instead of "Breviarium," which was unknown before the 16th Century. The code itself was in force only until 650, when it was formally abolished, and the whole nation united under one law, that of the "Forum Judicium." This "Lex Romana" was an abridgment and collection of the Roman laws, composed of 16 Books of the Theodosian Code; Books of the Civil Law of the Emperors Theodosius,
Valentinian, Marcial, Majorian and Severus; the "Institutes" of the jurisconsult Gaius; 5 Books entitled "Rerum Sententiarum" of the jurisconsult Paul; 13 Titles of the Gregorian Code; 2 Titles of the Hermogenian; and a passage from the work of Papinian entitled "Liber Responsorum."

The edition of this collection is divided into two essential parts — 1st, a text, or abstract, of the sources of the law, and 2nd, an interpretation. The "Institutes" of Gaius is the only work in which the text and interpretation are fused in one. The ancient laws appear in all its purity in the text; but in the interpretation, being digested by civil or ecclesiastical jurisconsults, all the changes caused by the fall of the Empire are taken cognizance of, and it is impregnated and tinted throughout by the Roman society, institutions, and legislation.
This heterogeneous collection lasted only until 650. About that time the Visigoths were driven out of Gaul by the Franks into the Spanish peninsula, where they formed a new government under a new Constitution. Henceforth, as we have seen, the Barbarous and the Roman law were distinct—each nation retaining its own; from now on, however, the two were fused into one;—the Roman was abolished, and the system of real laws, or those according to territory, was substituted. From this time until 700 was developed and completed the "Roma juris cum," which "occupies a great place in the general history of barbarous laws and figures as a very remarkable phenomenon." It deserves, then, close and careful inspection, for it reveals the whole social and political order of the Visigothic state.

The law is composed of a prefatory title and 12 Books, divided into 34 Titles, and 593 Articles, or...
distinct laws of various origin and date. All the laws from Euric are included, and it presents a complete system of government. "All legislative matters are there met with; it is not a collection of ancient customs, nor a first attempt at civil reform; it is a universal code, a code of political, civil and criminal law; a code systematically digested, with the view of providing for all the requisites of society. It is not only a code, a totality of legislative provisions, but it is also a system of philosophy, a doctrine. It is preceded by and here and there mixed with dissertations upon the origin of society, the nature of power, civil organization, and the composition and publication of laws; and not only is it a system, but also a collection of moral exhortations, menaces and advice. The "Forum judicum," in a word, bears at once a legislative,
philosophical and religious character, it partakes of the several properties of a law, a science and a sermon."

The cause of this great diversity and diffuseness is to be found in the character of the composition of the national councils, which issued the "Forum Judicum." These great councils were held at Toledo, and from the first the ecclesiastical was the dominant party, though the nobility was also associated with it. The Spanish monarchy was the mere instrument of the Church, so potent was Christianity at that time in all affairs, legislative, judicial and executive. The bishops forming this council were the most learned and influential in the nation, and they, therefore, were the authors of the nation's laws, as well as the controlling power in all public affairs. The proof of this is found from
the Code itself; it exhibits in its laws the vices and merits of the ecclesiastics; it is more rational, just, mild and exact, and more elevated in its aims than any other of the Barbarous legislations.

But, although it possesses this general spirit of culture and refinement, it is deficient as an instrument of government in that it leaves society devoid of guaranties—It abandons it on one side to the clergy, on the other to royalty. The Frank, Bar-
on, Lombard and Burgundian laws respect the guaran-
ties arising from ancient manners, of individual in-
dependence, the participation more or less regular and extensive of freemen in the affairs of the nation, and in the conduct of the acts of civil life. "In the "Forum Judicium" almost all these traces of the pruni-
tive German society have disappeared; a vast admin-
istration, semi-ecclesiastical and semi-imperial, extends
over society." This was the triumph of Rome and the Roman element, the final absorption of the Barbarian characteristics into the Roman principles of legislation. There were two causes which produced this — the power of the Roman civil legislation, strong and closely-knit, and the natural ascendency of civilization over barbarism.

There are two texts of this code, the "Leyes Visigothorum", which was intended mainly for Visigoths who had fled to France, where they lived under the personal-law system, and hence had no need of Gothic government, but retained still their Gothic laws. And, secondly, there was the text of the "Liber Iure Comiti"," a Spanish translation made for the government of the Spanish monarchy. The Spanish language exhibits another victory of the Roman element, the absorption and loss of the Barbaric language in the Latin.
The Visigothic law is clothed throughout in Roman phraseology, and was written from the Codes of Justinian and Theodosius. But, as Rome was pre-eminent only, or mainly, in civil law, so was the Visigothic civil law almost wholly Roman; the criminal law, however, remained true to its Pictorian origin, and their traditionally Germanic law also existed in full force, unobstructed by king or council. The old Germanic custom of electing kings from a royal line, and generals by reason of valor, existed among the Visigoths alone of all these Barbarian monarchies until the time of Alfonso. Elective chieftainship was unknown in feudal Europe, and was retained, only here in Spain.

Some obscurity exists as to the administration of criminal justice; but in civil causes the course was analogous to the Roman proceedings.
Torture was used always with slaves, sometimes with freemen; and, after the recovery of Spain, the ordeal was in frequent use. The common Germanic custom of confusions was discontinued in the "Puro Juzgo," the oath of the Defendant alone dismissing the Plaintiff out of court in a civil suit, when insufficient evidence was produced to convict, or subjecting the accuser to the severe punishment with which the law visited a calumnious charge. Ordeal was afterwards discontinued by legislation, but continued, however, in practice.

The most important Codes of law are those of the Salian and the Ripuarian Franks. The Salic law is of doubtful origin, from the fact that there are two slightly conflicting texts, one in German, or mixed German-Latin, the other in pure Latin.
In all there are 18 manuscripts, 15 of which are pure Latin, and 3 with Germanic words. 14 of the pure Latin were found in France, the other in Germany, but the whole fifteen have a close resemblance, while the three German texts vary much. Hence, it is now generally accepted that the Latin text is the purer and more ancient.

The Salic law was written for the first time probably upon the left bank of the Rhine in Belgium, a country which for a long time was occupied by the Salian Franks, whom, especially, this law governed, and from whom it received its name. The law does not appear to extend farther back than the 7th century, and is written only in the Latin language, as is true of all the Barbarian laws—the Ripuarian, Bavarian, Allemanian, Burgundian, etc. The Salic law as written
is the result of a long line of traditions transmitted as customs and usages from generation to generation, and modified, extended, explained, reduced into law at various times from the early epochs to the end of the 8th Century. It is not, properly, a code or a law; nor was it compiled and published by a legal official authority of a king, or an assembly of the people, or great men; but was a mere enumeration of customs and judicial decisions, a collection by some learned man, perhaps by some Barbarian priest. It differs then greatly from the Visigothic Code, which was sanctioned and promulgated by the national Council, and which is a complete compendium of laws and government.

The Germanic text contains 80 titles, and 420 articles; the Latin has but 70 titles (or 71 or 72, according to different manuscripts), and 406, 407 or 408 Arti-
The first characteristic of the law is its utter chaos; it treats of political law, civil law, criminal law, civil procedure, criminal procedure, and rural jurisdiction—all mixed without classification or order. It is essentially a penal regulation; criminal law is its distinguishing feature, and the others are incidental only, being recognized as established institutions. As to Criminal procedure, the law considers every point as established and understood, supplying only a few obvious deficiencies. It is in fact a penal code, containing 345 penal articles, and but 65 on other subjects.

First, it enumerates and defines crimes. They are of two kinds, 1st. Robbery, concerning which there are 130 articles, and of these 74 relate to stealing animals. In punishing crimes discriminations were made as to the sex and age of the offender.
2nd. were violations against the person, consisting of
113 articles, 24 of which related to violence against
women, etc. This penal code is characterized as be-
longing to a society in a very low and inartificial
state, because of the sameness and simplicity of the
laws. It is further, a very coarse and brutal society
in which personal independence is the controlling force,
with no public power to prevent excesses. There is
an absence of all generalization, of all attempt
to give simple and common character to crimes; it
shows a want of intellectual development, and pre-
cipitation of the legislator, for a new law must be added
for every new crime committed.

The utter chaos of the law is, then, its
first characteristic; a second, is the mildness of the
punishments. So cruelty was indulged in, but a
singular respect for the person and liberty of men,
of slavery only, however, for slaves were treated with extreme severity. Death punishments were rare, and corporal punishments or imprisonments were never resorted to. Even in death penalties, the person might redeem himself. The only punishment in writing in the Salic law is the composition or wergeld common to all the Germanic tribes. This the guilty person paid to the offended one or to his family; and sometimes the freed also, was paid to the king or magistrate in reparation of the violation to public peace.

With regard to criminal procedure, the Salic law is imperfect and almost silent. Judicial institutions are taken as a fact. Two important points of information were the distinctions between fact and law, and the compurgators or conjurators. The question to be decided by the judges was, what
the law commanded; as to the reality of the fact or trials
or compurgators' testimony were used. The compurgators
merely testified or took oath that they believed the
accused guilty or innocent. This, as regards the disco-
cvery of facts, was the great means and general
system of the Barbarous laws; the compurgators are
mentioned less frequently in the Salian than in the
other Barbarous laws, yet they were everywhere the
foundation of criminal procedure. The Salic law is
a complex, uncertain, transitory legislation, con-
stantly changing. Its existence was precarious and
brief; in the 10th Century it was replaced by local
customs resulting mainly from it, but also greatly
from the Roman law, canon law and necessities of
circumstances; and by the 14th Century it was barely
remembered.

The Salian and Ripuarian Franks were united
under Clovis; but his son, Theodoric, became afterwards
king of the Ripuarian only and to him is generally
attributed the compilation of the Ripuarian laws;
which, therefore, would be placed between 511 and
534, though it was not digested as now found until
628–638.

It contains 89 or 91 Titles, and 234 or 227
Articles, 16 of which are penal, 113 political or
civil, and civil or criminal procedure. Of the penal,
94 are for violence against the person, 16 for theft,
and 64 for various crimes. Hence, it, in so much,
resembles the Salić law, is a penal law, and indi-
cates nearly the same state of manners. A notable
difference, however, is in the greater importance of
the Conjuratones, which are mentioned in not less
than 58 Articles, and whose number, forms of
appearance, duties, etc., are minutely described and
regulated. The Salic law did not mention them so often because they were so common and well-understood that more mention was thought unnecessary. Another difference between these two laws is in the mention of the judicial combat. Many traces of it are found in the Salic law, but in the Ripuarian it is formally instituted in six articles. Compromise and judicial combat were closely connected, and were developed simultaneously in place of a legal system. The character of the Ripuarian law, however, is more advanced than that of the Salic. While the Salic is a purely penal code, the other is a civil as well as penal, full in procedure and status of persons and property. Royalty also was held in more esteem; the king was regarded as the proprietor of a vast dominion, and a patron with serfs under him. The Church, too, was more
intimately associated with royalty, even sharing its privileges, which the Salic Code did not allow. Roman law had more influence in the Ripuarian legislation, as the proximity of their territories permitted easy intercourse. The tone of their law is the imperial—"We establish; we order." As a whole, the Ripuarian is less barbarous than the Salic law; its provisions are more precise and extensive; there is more purpose, and it is now matured and political, and inspired by universal views.

The Burgundian laws are important as being entirely different in character from those of the other barbarous nations, and as evidencing a more developed and better regulated society. The kingdom was established amid Roman influences, and hence in the Burgundian legislation and government the Roman element prevailed more and more over the
Barbarian. The kingdom did not last long, being overthrown by the Franks in 534; but the Burgundian laws existed much later, and traces are found even in Charlemagne's laws.

The Code, which may be divided in three parts, was compiled between 467 and 534, the date of the Frank conquest. The first part comprehends the first 47 Titles, and is due evidently to King Gondebald, who published it before 501. From the 48th Title the character of the legislation changes; the new laws are only modifications of the old ones, explaining, reforming, completing and announcing them definitely. It is due probably to Sigismund, and was published by him about 517. The third part consists of two supplements, called "Additamenta," compiled also by Sigismund, who died in 523. The Preface, of which there are two, one by Gondebald, the other by
Digimond, are most remarkable productions, and indicate high and advanced ideas of government and the social relations. From them we see that the Burgundian law was not a mere collection of customs, we know not by whom digested, nor at what epoch, nor with what view; it is a work of legislation emanating from a regular power, with a view to public order, which offers some truly political characteristics, and gives evidences of a government, or, at least, the design of a government.

It contains 110 Titles, and 357 Articles, of which 142 are on civil law, and 182 on penal law, with 30 on civil or criminal procedure. Of the 182 penal regulations, 72 are for crimes against persons, 62 for crimes against property, and 48 for various offences. From an examination of this, we find, first, that the condition of the Burgundian and the Roman was the
same, all legal difference having vanished; in civil or
criminal matters, either as offender or offended, they
are placed upon a footing of equality. A medieval
historian says, that King Gondebald instituted "the
most mild laws, in order that the Romans might not
be oppressed."

He said, also, that the penal law of the
Burgundians was the same as that of the Franks. Com-
position had always existed in it, but it was not the
sole penalty—there were corporal and moral penalties
also; the legislators attempted to make use of shame.
Strange and fantastical punishments, entirely foreign and
unknown to the Germanic customs, were often used.

Crimes were much more various, and were fewer against
persons; some, also, bespeak more regular and com-
plicated social relations.

A third characteristic is, that civil right
and procedure also occupy a much greater place in these laws than in the Salic or Ripuarian. Nearly one-half the Articles consider this subject, while in the Salic only one-sixth, and in the Ripuarian but two-fifths. A multitude of provisions are made in regard to successions, testaments, bequests, marriages, contracts, etc.

In the fourth place, the Burgundian contains some positive marks of Roman law. In the Ripuarian hardly any can be seen, though the Roman influence is there plainly discernible; here, however, the marks are plain and distinct, particularly in the civil law; because in Barbarous times civil law was rare and weak; but when civil relations arose and became numerous and complicated Roman legislation was adopted to furnish forms.

The law shows also that royalty had made
great progress among these people. The Burgundian
is the least political of all the Barbarian laws, con-
firming itself most exclusively to civil and penal law,
and seldom alluding to general government. But
throughout it shows that the king was no longer merely
a warrior chief or great proprietor; and royalty
had left its barbarous condition to become a pub-
lie power.

All shows a more developed and better regu-
lated society, — Roman rather than Barbarian. The
Burgundian borrowed from the Roman law, independent-
ly of traits of civil law, the idea of public order,
of government. The ancient German assemblies are
hardly distinguishable; the clergy does not appear
dominant in its influence; royalty alone prevailed,
striving to reproduce imperial power.

These different laws illustrate the most
prominent and important phases of the character of the Barbarian legislation, semi-Roman and semi-Germanic; and in this intricate and confused mass may be found many of the germs from which have developed the institutions of our modern nineteenth century civilization.