AN EXAMINATION OF

TEUTONIC LAW being

a thesis written for
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Chapter I.

The Corpus Juris Germanicorum.

Of the multitude of the Teutonic tribes enumerated by Tacitus in the Germania, comparatively few survived that immense period of warfare between Roman and Teuton, and between Teuton and Teuton, which began with the invasion into the Empire of the Cimbri and Teutones a century before Christ, and which did not finally determine the fate of Europe until the beginning of the ninth century. When Charlemagne succeeded to the name and inheritance of the last Emperor of the West his rule extended over all the Teutonic races then occupying what had been Roman territory, with the exception of the Visigoths in Spain and the Anglo-Saxons in England. The Salic and Ripuarian Franks were settled in the kingdoms of Neustria Francia and Austrasia, and had driven the Visigoths from Aquitaine, Vasconia, Navarre, and the ancient Provincia on the Mediterranean shore to the other side of the Ebro. The Burgundians they had con-
quered but not expelled. Where Switzerland now is were the Alamanni, and east of them the Bajuvarii; and north of these were the tribes who cost Charlemagne so many tedious campaigns, the Angli, Werini, Frisiones, and Saxons. In Italy, the Ostrogothic kingdom, destroyed by Narses, had been followed by the Lombard monarchy, the principal strength of which was in the province named after them, the southern half of the peninsula being divided between the nominally subordinate duchies, of which the more important were Spoletum and Beneventum.

The written laws of these races form the Corpus Juris Germanici. Originally preserved in the memories of the leaders of the tribe, whose business it was to guide the opinions of the judicial and legislative assemblies, the laws of these nations were committed to writing at various times after the settlement in Roman territory, when contact with written law had shown its advantages. As written, these compendia of barbarian law display very different characteristics. In each some particular branch of law is emphasised and laid down at length which in another is only mentioned, and from a third, perhaps, omitted altogether. It is necessary therefore in order
order to discover the fundamental principles of Teutonic Law to take all the codes in a mass, treating each as a chapter in the Corpus Juris, and supplementing one with another. Nothing more need be said in favour of this method than that it is used by Tacitus himself, who deals with the numerous German tribes of his day as having a common stock of laws and institutions. And it may be said here that one result of a careful study of these codes, written four centuries after the "Germania", is a firm belief in the almost unerring accuracy of Tacitus. "He is sometimes obscure, sometimes incomplete, but it is hardly possible to find a sentence of his upon Teutonic institutions which cannot be supported by evidence taken from the laws of the subjects of Charlemagne."

To say that the Teutonic laws exist in the form of codes is only allowable if the word code is used to conveniently denote a written collection of laws, compiled at one time or in such a manner as to constitute a continuous series, as opposed to the vague mass of unwritten customary law and usage. Of scientific arrangement and definition there is nothing in these codes. Early law grew just as our own Common Law has grown by accumulation of precedents into principles, by the actual everyday work of the court of
ger to attain all the fundamental properties of the law to take all the cases in a mass, first
saying that in the Grotius' style, any
merely one with another. Nothing more need be said!
In order to learn all the method from then that it to reach y'r and
the principle, who agree with the humorous German phrase
of the gash as playing a common stock if Iowa and that
sufficient. And if may be said here that one reason of
a careful study of these cases: written to your center.
there after the "American" to a trim better in the
short writing soon resulting. There is sometimes
opaque, sometimes incompletest, part it at least by some-
ple to find a sentence of the now Tynon's particular
from which more complex be supported by adjective taken
from the Iowa of the unknown or Charleston.
To say that the Tynon's Iowa extract in the form
of course as man's humble and man's college to Iowa,
comparing at one time or in much a manner as to come.
(a) to. 10. 221 s. De Doleq.
attune a constitute rests, as opposed to the several
means of repetition constitute Iowa and usage. Of course,
cite statements and get toll there to working in
these cases. May I eel them that as our own common
less per exam py recommendation of preceding into print
appendix, in the expert attachment work of the court of
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justice, which takes cases as they come, and is as little concerned with the orderly arrangement of the rules which it brings into existence as with the laying down of rules for future conduct. Hence the most rudimentary of the codes deal almost exclusively with the punishment of wrongs; and the wrongs which they are called to redress are those of violence, chiefly against the person and to some extent against property - murder and wounding, theft and burning, injuries to and by cattle and slaves, the carrying off of women and the usurpation of inheritances. In the Lex Angliorum, of seventeen titles nine deal with murder or violence to the person, three relate to trial by battle, theft and arson respectively, two are concerned with inheritance, two with trespass to and by cattle, and one with offences committed by slaves. In the Lex Frisiorum there are enumerated no less than eighty-nine varieties of wounds each with its particular fine (a). These laws, with the Saxon, were probably reduced to writing by order of Charlemagne about 804 A.D.; and in spite of their late date should be less affected by external influences than any other, as until then the Frisians Angli Werini and Saxons were pagans, and lived in the same way, in all probability, as in the days of Tacitus.
The Lex Salica is perhaps the most remarkable of the barbarian laws. In the prologue it is said that the famous race of the Franks, brave in war, constant in peace, deep in counsel, noble fair and handsome in body, bold, swift, and hardy, while they were yet pagans elected four chiefs, Wisegast, Salogast, Bodogast and Windogast, who met at three mals to discuss all causes of action and agreed upon the Pactus Legis Salicae.

At what time this occurred cannot even be conjectured. Afterwards Chlodoveus, first king of the Franks, having been baptised into the Christian faith amended the pact to bring it into conformity with the new belief. This is the Lex Salica as we know it, which may be ascribed to about 500 A.D. Subsequently Childebert and Lothar added to it and towards the end of the eighth century Charlemagne amended and consolidated it as the Lex Salica Reformta.

The chief excellence of the Lex Salica is in the light which it throws upon the pantomimic or symbolic forms of archaic conveyance. The Salic Warp corresponds with singular exactness to the Latin mancipation in respect of both Conveyance and Will, and suggests an explanation of the practical working of the will inter vivos which throws much light on the mancipatory will.
In the Salic Law we find a formula for the voluntary renunciation of the family tie and a pantomimic form of archaic insolvency. It is to the Salic Law that we are indebted for the forms of early judicial procedure. The Lex Salica is admirably supplemented by the Formulae of the monk Marculphus, who issued them during the reign of Clovis, son of Dagobert, about the middle of the seventh century. They are a series of forms of public and private conveyances and charters which with the chronicle of Gregory of Tours brilliantly illustrate the practical effect of the Lex Salica upon the political and domestic life of the time.

The laws of the Ripuarian Franks, with those of the Bajuvarii and Alamanni forming a group akin to the Lex Salica, were transcribed by Thierry, king of Austrasia towards the end of the sixth century and were afterwards amended by Dagobert. The authorship of the Burgundian code is attributed to the jurisconsult Papian, whose Responses are supposed to have been issued by order of Gundobald or Sigismund for the use of provincials in the Burgundian kingdom, while the Lex Burgundionum was compiled for their conquerors. The date of the code would therefore be about 500 A.D. In 534 the Burgundian monarchy was destroyed by the
In the Select Law we find a formula for the voluntary
remuneration of the family or the resulting form
of another transaction. It is the Select Law that we
are interested in for the form of such a transaction.

(b) Form. Veron. Tradition. Venditum

Here the lex salica is summarily exemplified by the
form of the work Moneta praeda, which is found among
the cases of Clorus, son of Desiderius, about the middle
of the seventh century. They are set down in the form of
a simple and private company or a company with
the characteristics of the company of persons of the
same and domestic life at the time.

The laws of the Panzian Franks with those of
the Salian and Asamian form the second stage of the
lex Salica, were transferred in the tenth century and
were

(c) Cod. Theod. Lib. Vii. X. 5.

Preliminary to the Punic laws and, at least to
the success of the Punic laws, whose reforms and suppression
have been found by order of Gannard and Siggum,
for the use of probation in the Punic laws, which
the lex Punicorum was compiled for their conductors
in 54 B.C.

In 54 B.C. the Punicum was geographically on the
side of the coin money therefore the state of 500 A.D.

Franks, but the code is found in existence in Italy, in company with the Salic Ripuarian Ostrogothic Alamannic and Lombard laws, until the eleventh century (b) and it was probably in force in France until that time. The intermixture of Roman Law in this code is very plain, (c) but it contains valuable information with reference to the apportionment of the property of the provincials among their conquerors. The barbarian took two thirds of the land and one third of the cattle and slaves of his Roman hospes (d). The barbarian portions were called sortes and were no doubt settled by lot. This system seems to have been borrowed from the mode of quartering Roman soldiers adopted in the later Empire (e). The same method of apportioning Roman lands was in force among the Visigoths (f). These laws of settlement formed the evidence upon which the compte de Boulainvilliers, the abbe Dubos, and Montesquieu based their respective theories of the character of the Teutonic occupation. The first attempted to rest the powers exercised by the noblesse in the first half of the eighteenth century upon the Frankish conquest of Gaul in the fifth century. The nobles were the descendants of the conquerors and the
France, put the case to lay in evidence at the law.

In company with the Belloy Propositions Cottodilico. Also

memorize and Homer's Laws, with the seventeenth century's (d) and its was properly in force in France until that

time. The interference of Roman Law in this case is

very partial (e) and it consists of bare information

with reference to the support of the property and

the plot of the Province's some the companions. The plot

in the next two centuries of the land and one third of the

sellier and alises of the Roman power (g). (g) portions were called Barons and were no longer left

from the law of descent, the Roman soles being thought in the

intermediate (e). (f) the same method of support of

Roman laws it was to be some more the Victorians. The

laws of settlement formed the evidence about

which the complete of the Constitutional, the scope, upper,

Monte Carlo's bear their representative features of the

character of the Termino occupation. The literal

style of the law's occupation by the hope in

the literal part of the eighteenth century upon the

Pomeranian command of (g) in the fifteenth century. The

hopes were the genealogists of the companions and the
and the rest of the French nation descendants of the provincials, who, according to his view, had been reduced to a condition of absolute servitude. The abbe Dubos went to the other extreme, and to support the claims of the Third Estate maintained that there had been no Teutonic invasion and no conquest, but that the Franks were invited to enter Gaul, and in return for their submission to Roman law and religion received portions of the provincial lands. Montesquieu had no political theory to support and demonstrated that there was a very real invasion but that the conquerors had left to the conquered their libertés and a portion of their property (g).

The Ostrogoths under Theodoric settled in Northern Italy in 493 A.D. Their code consists of the Edict of Theodoric and is valueless for the purpose of throwing any light on barbarian law, as it is saturated with Roman Law and contains no genuine Teutonic element. This is due to the long stay of the Ostrogoths within the boundaries of the Eastern Empire, and to the Roman education of Theodoric. The Formulae of his minister Cassiodorus with their flowery platitudes and their list of Roman titles - consul, praetor, quaesitor, count of the Sacred Largesse, count of the Provinces, Spectabilis, and Clarissimus - suggest the
Byzantine court rather than that of a barbarian monarch. There was probably a considerable trace of true Teutonic institutions in the unwritten customs of the Ostrogoths but there is none in their code.

Teja, the last Ostrogothic king was defeated by Narses at Nuceria in 552. Sixteen years later Alboin founded the Lombard or Winil monarchy in Italy, and in 643 Rotharis the seventeenth king of the Lombard race consolidated, amended and put into writing the Lex Langobardorum. The laws of Rotharis were added to by his successors Grimwald Liutprand Rachis and Aistulph; and after the Franks conquered Italy Charlemagne and his descendants Pippin, King of Italy, and the Emperors Ludovicus Pius, Lothar, and Ludovicus II promulgated laws for Italy which are included in the Lombard code but are practically not distinguishable from the Capitularies issued for the Frankish kingdom.

The liberality and judicious wisdom of the Lombard laws has been approved by Kingsley (h) and Montesquieu, who says, "Les lois de Gondebaud pour les Bourguignons paraissent assez judicieuses; celles de Rotharis et des autres princes lombards de sont encore plus" (j). 'The Laws of Rotharis and Liutprand
show some trace of arrangement and are superior to the laws of any other nation in completeness. It is clear from them alone that the reputation of wisdom in affairs which attached to the Lombards as long as they continued a race was deserved from the time of their settlement. The _Lex Langobardorum_ is illustrated with a great number of formulae of pleading which, when they occur in the Carlovingian laws, are applicable also to the Salic Law. But the most valuable portion of the code is that which deals with the law of the family; concerning which no other code is so explicit.

The Visigoths were first of Teutonic races to promulgate laws which are territorial and not personal. Alaric, son of Euric, set an example to the Burgundian authors of the _Responsa Papiani_ by publishing for the use of his Roman subjects a digest of Roman Law known as the Breviary of Anianus; but this was about the beginning of the sixth century superseded by the _Lex Visigothorum_ in which Roman and barbarian law were fused into a law for both Roman and Goth throughout the kingdom. Like the Ostrogothic, therefore, this code may be omitted from consideration; but the manner in which the Visigothic laws were enacted is of some importance as showing the place allowed to the Church in the Teutonic kingdoms. In the Legislative
Councils of Toledo it was the office of the king and bishops to frame the laws, which were subsequently accepted or rejected by the nobles. So in the eleventh century the bishop, abbot or abbess is assigned to the second clypeus or feudal rank, below the Rex Romanorum and above the lay nobility. The position of the clergy in the Visigothic kingdom, although higher than it was in the other barbarian states at that time, was yet no more than a natural development of the position which was almost thrust upon the bishops of Western Europe. The bishops were elected by the people and upon the failure of the Roman machinery of provincial and municipal administration became the rulers and representatives of the cities. But this position would hardly have been left to them by the barbarians, if they had not regarded the Christian priest as performing the same office in the state as did his pagan predecessor. The simplicity with which the Teutonic races adopted Christianity — witness the wholesale conversion of Clovis and the Franks, and that of the Saxons after their subjugation by Charlemagne — shows that the change of faith must have been more nominal than real. As Spencer says, "How great may be the seeming change adventitiously produced in a people's religion, the anthropomorphic tendency prevents it from being other than a superfi-
Committee of Review if we the office of the king and
pharoah to frame the laws which were suspended by
of the Stanford Papers, No. 1, X
Committee of the pharaoh's support or appearance as being to
the second dynasty of the Persian Ranks below the Rex Ro-
memorium and trace the ly monument
flow of the water in the Valley of the Kings, splendidly
phys enabled the use of the other persistence; in the
time, was yet to more than a severity development
of the password which we should know, what the
pharaohs were seeking for
the people (I) and know the latency of the Roman
acquaintance of pontifical and impartial sacrifice to
become the author and teachers of the office
(n) Germania, Cap VII
and the password is not properly have been told to them
by the persistence, if they had not regarding the office
thus placed as performing the same office in the same
as this the beggar, beggar's
with which the Tenth Doctor粗糙
(c) L.Sac. Capitulatio de Partibus Saxonial. Cap XXXIV
seen the interchange as conversation of others and the
may show that the change of last part have
Charlemagne. 
show that the change of last part have
An especial case: "how
been more momentous from rest. Great may do the seeming change substitution to
move to a people's restoration the supputation of
commitment prevented if from falling after from a republic
cial change - insures such modifications of the new religion as to give it all the potency of the old one" (m) Although so little tied to their religion, the Teutons were strongly tenacious of their political institutions and the duty of the priest was of considerable weight. He was the Ew-wast or guardian of the law; at the meetings of the mal he controlled the assembly and kept order, a business of great importance in so democratic a constitution, where the chief of the tribe stood in the meeting on a level with any other freeman. The duty of reproving and punishing the condemned, the performance of which by any other person would probably have led to endless feuds, was prudently entrusted to the priest who acted as the minister of an impartial deity (n) It was natural that the Christian bishop should have been considered the legitimate successor of the priest of Woden or Hertha. That the Christian priest did fulfill the duty of regulating public meetings there is evidence in a Capitulary of Charlemagne directed to the Saxons (o). He forbids them to convene meetings except by his order and adds, "et hoc a sacerdotibus consideretur". The custom of trial by oath must have rendered the presence of the priest indispensable in judicial business, and in the ritual of trial by purgation he has the sole
Torture was astronomically important to their politics.

Intelligence and the duty of the British government were central to the German intelligence service.

The duty of the British government was to develop an intelligence system.

The duty of the British government was to develop an intelligence system.
conduct of the matter. The churchman was the lawyer of his day and habitually the adviser and minister of his king. It was no doubt on the initiative of the priest and for his assistance in administering them, that the more or less rude Teutonic codes were written. But at the same time it is not probable that they could have come into existence if the office of the king had not greatly changed after the permanent settlement of the tribe.

The essentially democratic character of the original Teutonic constitution was itself unfavourable to any arrangement or consolidation of law, which is difficult with even a modern assembly unless it submits to be absolutely guided by the opinions of experts.

The formation of the Pactus Legis Salicae (the only codification not accomplished by a king) seems to have been rather in the nature of an agreement between four allied tribes as to the laws which should be given them when united. Before the administrative needs of a permanent state had strengthened and extended to power of the Teutonic king he had little personal authority. He was elected by the tribe from the body of nobles or from the members of a single noble family (p) such as the Merovings among Franks,
The Conference was held in London, England, during the fall of 1945. The main purpose of the Conference was to discuss and negotiate the terms of the post-war peace treaty, including questions of territorial borders, reparations, and war crimes.

The Conference consisted of delegates from the Allied nations, including representatives from the United States, the Soviet Union, and the United Kingdom. The Conference was held in the Palais des Nations in Geneva, Switzerland, and was attended by over 1,000 delegates from 51 countries.

The main issues discussed at the Conference included the division of Germany into four occupation zones, the creation of the United Nations, and the establishment of a new system of international law to prevent future wars.

The Conference resulted in the signing of the Potsdam Declaration, which called for the establishment of a democratic government in Germany and the division of the country into four occupation zones. The Conference also paved the way for the creation of the United Nations, which was established at the San Francisco Conference in 1945.
the Amals of the Ostrogoths, the Visigothic Balths, the Vandal Asdings and the Agilolfings of the Bajuvarii (q). Of the seventeen kings of the Lombards enumerated by Rotharis eight were not related to their predecessors, and Rotharis himself counts no royal ancestor in eleven generations (r). In the deed by which Charlemagne divided his empire between his sons he provided that if any one of them died his brother should recognise as his heir that one of his sons whom his people should elect as their king (s).

In peace the king had a strictly limited authority. He was advised by a council of elders with whom he debated matters before submitting them for approval to the greater council, the mal. To this came the free-men armed twice a year (t) showing their independence by not attending until the first or second day after that appointed for the meeting. The priests opened the mal, and enforced the rule which forbade the prosecution of the blood feud against a man while he was present, or in his coming or going. The assembly was addressed by the king and the chiefs of the tribe, who rather persuaded the crowd by their influence and the respect given to them than by any power to command. The meeting approved the sense of the speaker with the clash of arms, or expressed dissent by hooting.
In the assembly of the Orthodox, the Vatopedian Rites
the Senate and the Senate did not receive the letter sent by
receipt of the seventeen kings of the Komastas—as
understand by Rostov,发展格局 was not received to their
predecessors, and a resolution of the Donation on which
in the year and in eleven years past gave the example between the two men of
where they first of the one of them that the broken
recognizing as the part that one of the same whom the
people among elected as their king.
In because the king has a strict family
He was striving to cause of a city to be joined to whom who came
apart to the west of my with the east of

(u) Capit. vii cap cxxxiii. AD 769
the Western consistory, the west
new stairs twice a year a feast approaching their independence
by not attending with the feast or second day after
their support for the meeting. The principle depended
the west and enquired the rule which to place the
prosecution of the floor being sustained a man with the
the occasion was in the coming of the guest. The assembly
was present to in the coming to the king, and the office of the crime
who restated because of the crown's power influence and
the respect given to them from their own power to command.
The meeting supported the same of the measure
with the class of slaves or express sense, agreed by power.
the
But when the Teutonic nations became fixed in their possessions, the increase of population and the greater expanse of country over which the people were spread, consequent upon their dispersion over the provincial lands, made direct personal intercourse between the king and his subjects more and more difficult. The power of the king and his council increased, that of the body of freemen diminished. The national meeting survived the time of Charlemagne as the Maienfeld or annual meeting of the army before the summer campaign, at which the king held a council of Bishops, Abbots and Counts. At this time also was probably held one of the two mals which every freeman was bound to attend yearly, one in summer and one in autumn. To these meetings the Capitularies issued by the king and council were sent for approval, as appears by a capitulary of 803: "Let the question be put to the people concerning the Capitularies which are to be newly added to the law, and after all shall have assented to them they shall subscribe their names to them". It seems that these new edicts emanating from the king were not at first considered as on an equal footing with the ancient laws of the race, since Charlemagne expressly provides that his capitularies, made "cum omnium consensu" are to be called
Part of the Teutonic Institute became the property of the people

The greatest expense of county carriages which the people were spared, especially on state and public occasions. The Protestant clergy were required to prepare sermons for the people between the king and the county intercessory. The power of the king and the county intercessory that the meeting of the body of the Teutonic Administration.

This was the time of Chasemans as the material, or summer meeting of the state before the summer case. At this time also was properly held one of the two ways by which every Teuteman was bound to attend as many as in summer and one in autumn. In these meetings the circumstances thrown by the king and county were sent for approval, as by the discretion of the people surrounding the circumstances which had to be newly thrown to the law, and those still available have seemed to throw their special advantage their names to the Teut. It seems that these were then, in fact.

From the king were not at first considered as an essential footing with the special laws of the race, since Chasemans especially provided that the captain of the sea, along with the communes, be to be called...
leges and to be regarded as part of the Lex Salica (w).

The principal question which is suggested by the existence of the Teutonic body of law is this—what is its value to the science of comparative Law? Without investigating the actual worth of Teutonic Law as a system and looking at it a priori only, there appears good ground for the expectation that it would afford valuable matter of comparison with Roman Law. Philology has taught us that of the three branches of the Aryan stem the Roman and Teutonic are more closely connected than Roman and Indian because the Roman and Teutonic separated after their common parent had parted from the Indian offshoot. In all history there is no spectacle more vast than that of these two races, separated for innumerable ages, yet moving to the same end, meeting at last to fight for five centuries for the possession of Europe and then joining to bring about the greatest recorded degree of civilisation. It would be strange if the Roman and the Teutonic, related in blood and in language, did not exhibit some correspondence in legal ideas, or some common institutions.

But when it sought to discover the elementary ideas of Teutonic jurisprudence an objection is taken which if rightly taken would be conclusive against the
value of the barbarian codes. These races, it is said, were so long in contact with Roman civilisation that their original customs and laws must have been entirely corrupted by Roman Law before any record of them was made. Maine lays so much stress on this argument that he considers that it frees him entirely from the necessity of inquiring into the matter of fact, whether the Teutonic codes are actually worthless. He conceives that the Roman Law of the Western Empire "clothed with flesh and muscle the scanty skeleton of barbarous usage. The change must be supposed to have taken place before the Germanic tribes had distinctly appropriated, as conquerors, any portion of the Roman dominions and therefore long before Germanic monarchs had ordered breviarii of Roman law to be drawn up for the use of their Roman subjects. The necessity for some such hypothesis will be felt by everybody who can appreciate the difference between archaic and developed law. Rude as are the Leges Barbarorum which stand which remain to us, they are not rude enough to satisfy the theory of their purely barbarous origin; nor have we any reason for believing that we have received, in written records, more than a fraction of the fixed rules which were practised among them—
The nature of the perpetually common. These losses, if at
least were so long in contrast with Roman civilization
that their original customs and laws must have been
entirely corrupted by Roman law before any contact or
leaves were made. Middle laws are so much effects on this-
remain that the same customs that have been entirely
from the necessity of impounding into the matter of.
their, whether the Teutonic code are strictly Morris.
He considered that the Roman law of the Western Empire
"alleged with fear and miracle the society rejection of
persons' masses. The change must be approached to have
taken place before the Germanic tribes had originated.
In appropriate as conduits of my portion of the
Roman countries and therefore loose peoples Germanic
monuments had acquired previous of Roman law to be
grown up for the ease of their Roman uprisings. The
necessary for some such hypotheses will be left by
everybody who can appreciate the difference between,
such and savage law. Rude as the laws here-
persons which remain with remnants to us then she not large on
every, to establish the theory of their minority conquests
ought, you have we my reason for preferring first we
have received, in written records, more than a description
of the larger losses which were practical more them.
selves by the members of the conquering tribes. If we can once persuade ourselves that a considerable element of debased Roman Law already exists in the barbarian systems we shall have done something to remove a grave difficulty. The German Law of the conquerors and the Roman law of their subjects, would not have combined if they had not possessed more affinity for each other than refined jurisprudence usually has for the customs of savages. It is extremely likely that the codes of the barbarians, archaic as they seem, are only a compound of the primitive usage with half understood Roman rules, and that it was the foreign ingredient which enabled them to coalesce with a Roman jurisprudence that had already receded somewhat from the comparative finish which it had acquired under the Western Emperors" (x).

This passage contains the propositions that Teutonic and Roman law combined — that they could not have combined unless they had possessed an affinity to each other — and that this affinity can only be explained by the hypothesis that Teutonic law had previously become mixed with a large element of Roman.

The most obvious objection to this argument is that it goes in a very palpable circle. There must have been an affinity between the two laws to enable them to combine, and there must have been combination to produce this affinity, which is supposed to have existed
first? But that there was an original likeness in some essential points between Roman and Teutonic law there can be no doubt. It may be supposed that it would be almost impossible for English and Turkish law to fuse, and that is the code of Manu or Hindoo customary Law, admirable as they are, would not be apt to mix with Justinian's Digest; yet where Roman and Teutonic law were voluntarily combined, as they were in the Visigothic code, they coalesced without difficulty, and we see how wasily and naturally a not inconsiderable portion of Roman doctrine has been grafted on to our own law. There was an affinity, but it was the affinity of race.

But the main question is - did the Roman and Teutonic law coalesce? Maine says that they did, and that the Roman law "clothed with flesh and muscle the scanty skeleton of barbarous usage". No doubt codes like those of the Frisians or Anglii are very meagre, so meagre that it is as impossible that they could be the complete laws of a community as that the Twelve Tables could have been. The tribe could not have existed without rules or customs regulating marriage, the family, and conveyance of property, and providing some kind of judicial procedure. It is absolutely absurd to maintain that the Anglii, for instance, who were heathens up till this time of Charle-
magne, had borrowed laws from Rome on these important matters; but it is natural to believe that the compiler of the Lex Angliorum, either from ignorance or because he considered that laws were only concerned with crimes, only committed to writing a part of the law, leaving behind it a large and vigorous body of customary law (y). That has disappeared, but it is surely allowable to assume that it agreed in the main with the customary law of other tribes which has been preserved. It is quite certain that whatever Roman law has been intruded into the Teutonic codes is all contained in them and not in customary law which lies behind them, but where these intrusions have taken place there is as a rule some special reason. I have already mentioned the Visigothic code. The Burgundian contains several titles bodily transferred from the Responsa Papiani, and these are clearly distinguishable. In the new circumstances the barbarians found themselves after the invasion they very naturally turned to the Roman Law with regard to matters as to which their own was silent. In their original home it was the habit of the Germans, as Tacitus tells us, to live apart, each man distant from his neighbour; but under the new conditions entailed by the occupation of a settled country they were compelled to take into
consideration the reciprocal rights and duties of proprietors of adjoining lands and cultivators of enclosed fields. Their own law said nothing on this head and Roman Law was adopted to supply the deficiency. So the system of the fiscus is taken over bodily from the Empire. The mere fact that the barbarians settled in countries furnished with apparatus of a more advanced stage of material civilization, the benefits of which they adopted, is sufficient to account for the presence in their codes of a considerable amount of Roman Law. Again, the codes were no doubt compiled by churchmen trained in Roman Law, whose prepossession in favour of that law cannot but have had some influence on their labours. The translation of Teutonic words by Roman technical terms must have tended to modify the original idea by assimilating it to the corresponding principle in the Roman Law.

It may be laid down as a general rule that where a clear and definite principle exists originally in Teutonic Law it will not be found to have been obscured or destroyed by Roman Law. To say that the barbarian laws coalesced with Roman Law so as to lose their character is to assert what was certainly not believed by those who lived under these laws. The civilians who raged against the Lombard laws as being "leges asininae, leges porcorum, irrationabiles, fac-
comparatively the least costly rights and duties of pro-

(2) Cencius I p. xv

Reference to statute forms and connotations of appro-

ably. Therefore I was left wondering on this point and

Roman Law was adopted to supply the deficiency to the

system of the Empire in order to keep order properly from the

point of view that the preparatory setting to

(5) Civ. p. Lib. VI cap. XXXVII

comprise under an aspect of transitory use of

(a) Roth, cap XIV Pippin cap. XLVI. Cf. Form. Marc. Lib. I. viii.

This refers to a comparison of the Roman Law

with respect to the transitory use of

(b) Roth, cap XIV Pippin cap. XLVI. Cf. Form. Marc. Lib. I. viii.

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Teutonic Law it will not be found to have been ap-

(c) Roth XXXC

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precedent of the Roman Law is observed with the same certainty not

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"legal science, legal doctrine, intellectualities, etc."
tae a bestialibus, faeces et non leges" (z) certainly supported Maine's views of the worthlessness of barbarian law, but at the same time made it plain that they did not consider that the Lombard code was mainly Roman. On the other hand Liutprand punishes notaries who confound the two laws (a) and Pippin regulates the kinds of actions between the barbarian and Roman in which Lombard or Roman law is to be used (b). Such a coalescence, indeed, would have been opposed by one of the strongest characteristics of barbarian law, its exclusiveness and persistency.

The Roman law was originally personal, but had become practically territorial by the legislation of Caracalla which gave the civitas to all free inhabitants of the Empire. The barbarian invasion restored the personal application of laws. The Teuton regarded his tribal law as the only law possible for him. It attached to him by birth and was handed down to his descendants as a right. The permission to an alien barbarian to live by his law was considered an act of grace among the Lombards; (c) and although it was no doubt in the power of a conqueror to impose his own law upon the conquered the disinclination to do so must have been very strong, since the Saxons after their thirty years of stubborn resistance to Charlemagne were
The Roman Law was originally Parliamentary, but has become practically senatorial by the legislation of Caesar, who composed the classes to all the importance of the empire. The Roman Law is a secondary formation to the Persian, the Persian formation to the Semitic. The Persian was the only law possible for Persia, and was imposed upon the Persian as a light. The Parthian is an attempt to free the Persian from the Semitic yoke, to give to the power of a commander an imposing and commanding form. I say, since the Parthian formed the American Constitution to do so.

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still allowed to live by Saxon law. William the Con-queror, it is said (d) summoned certain of the English, noble, wise and learned in their law, to inform him of the laws of Edward the Confessor; and afterwards confirmed them as a law for the Saxons. The theory of Montesquieu (e) that a man might at will drop his own law and adopt another is based on a single law of Lo-thar (f) which offers to the people of Rome as a body the choice between their own law or Lombard law, and can hardly be maintained in face of the fact that the wergeld of the barbarian was everywhere higher than that of the Roman and generally higher than that of an alien barbarian (g). This amount of difference in the protection to life would have been amply sufficient to have obliterated the Roman law unless there had been some barrier which prevented the passage from one to another. A Lombard law (h) indeed speaks of persons' who wish to depart from their own law, but this seems — the words are somewhat obscure — to refer to pacts made between Lombard and Roman in which one of the parties temporarily and for the purpose of the agreement subjected himself to the law of the other.

From the moment therefore that the barbarians settled in a Roman province, their law and the law of the Roman came face to face on the same footing of personal attachment, but divided by the very clear and dis
tinct line of racial difference. The barbarian might borrow from the Roman some rules relating to real property, or might adopt a provision of Roman administration, but he probably would have considered it unnatural that in matters which concerned him individually and in his relations with his family he should abandon the time honoured customs of his forefathers and be governed by the rules derived from an alien and a conquered race. He had no scientific enthusiasm for Roman Law, which had long ceased to be the free expression of the development of a national character and had become an element thrust from without into the lives of men who had no hand in the shaping of it. The Teutonic law "apertissima et pene omnibus nota" (j) ruder in form than the Roman but of more vigorous substance was the fruit of a healthy national growth. The one had already passed a stunted maturity; the other was and is still growing.

If the Teutonic law had been diluted and characterless compound which Maine supposes it to have been at the time of the invasion, there is no doubt that coalescence with Roman law which he assumes to have taken place must have meant the absolute extinction of the barbarian element. In the contest for the possession of Western Europe the Roman law had the advantage of position. It still had the prestige which still clung