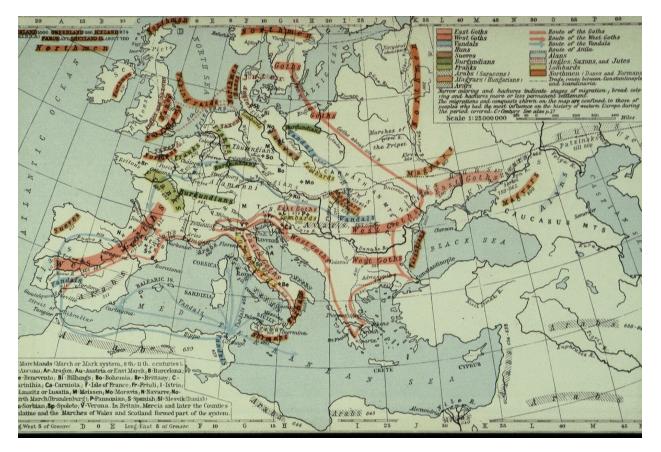# The Germanic Peoples and Their 'Codes'

The Germanic Invasions

The map might be entitled all-hell-breaks-loose, and there are even more inelegant ways to describe it. As we will see, the map probably exaggerates the amount of disruption, but it does show that between the years 150 and 1000, a great many tribes, mostly but not exclusively Germanic, made their way into what was or had formerly been the Roman empire in the West, and this development had far-reaching consequences for Western European history and particularly for its law.

http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/Slides/01_Shep045_11_01_24.jpg

Germanic Language Groups:

West	North	East
OHG	ONorse	Gothic
OSax		
ONeth		
OFris		
OEng		

Germanic Kingdoms in 486:

http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/Slides/03_Shep050_11_01_24(486).jpg

West	Center	East
Anglo-Saxon	Saxons	Saxons
Franks	Franks	Thuringians
Visigoths	Alemanni	? ? ?
	Burgundians	Ostrogoths
	Odoacer	

Germanic Kingdoms in 600:

http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/Slides/02_Shep052b_11_01_24_ERomanEmp_600.jpg

West	Center	East
Anglo-Saxon	Saxons	Saxons
Franks	Franks	Thuringians
Visigoths	Lombards	Bavarians

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

a. The *lex romana visigothorum* (*breviarium Alarici*) (Alaric II, 506)
Bibliog: *Lex romana visigothorum*, G. Haenel ed. (1845); *Breviarium Alarici*, M. Conrat (Cohn) ed. & trans. (1890)

b. The *lex romana burgundionum* (Gundobad 506)
Bibliog: *Leges Burgundionum*, ed. F. Bluhme (MGH Leges 3, 1863, repr. 1925); *Leges Burgundionum*, ed. L.R. von Salis (MGH Legum sec. 1, Leges nationum Germanicarum 2.1, 1892); *Gesetze der Burgunden*, F. Beyerle ed. (Germanenrechte Texte und Übersetzungen 10, 1936)

c. The so-called *edictum Theodorici* (?Theodoric the Ostrogoth, 493–507)
Bibliog: *Edictum Theodorici regis*, F. Bluhme ed. (MGH Leges 5, 1875)

Germanic Codifications in Areas of Strong Roman-Law influence:

a. The Visigoths (*lex Visigotorum*, *liber judiciorum*, *fuero juzgo* (first rec. Euric (466 X 484), others: Leowigild (568 X 586), Rekeswind (653 X 672), Erwig (680 X 687).
Bibliog: *Formulae Visigothicae*, in *Formulae Merowingici et Karolini aevi*, K. Zeumer ed. (MGH Legum sec. 5, 1886); *Gesetze der Westgothen*, E. Wohlhaupter ed. & trans. (Germanenrechte, Texte u. Übersetzungen 11, 1936); *Leges Visigothorum antiquiores*, K. Zeumer ed. (MGH Fontes juris Germanici antiqui, 1894); *Leges Visigothorum*, K. Zeumer ed. (MGH Legum sec. 1, Leges nationum Germanicarum 1, 1902); *El Codigo de Eurico*, ed. A. d'Ors (Estudios Visigoticos 2, 1960)

b. The Burgundians (*lex Burgundionum* (1st rec. [first recension] before 516))
Bibliog: As above for the *lex romana Burgundionum* plus *The Burgundian Code*, K. Drew trans. (1949) (*lex Burgundionum* only)

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

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

Germanic Codifications in Areas of Weak Roman-Law Influence:

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

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

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

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

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

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

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

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

Carolingian Codifications:

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

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

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

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

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

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

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

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

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

Bibliog: *Lex Thuringorum*, K. F. von Richthofen ed. (MGH Leges 5, 1875–1889); *Leges Saxonum u. Lex Thuringorum*, Cl. Frhr. von Schwerin ed. (MGH Fontes iuris Germanici antiqui [4], 1918); *Recht der Thuringer*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.6, 1934)
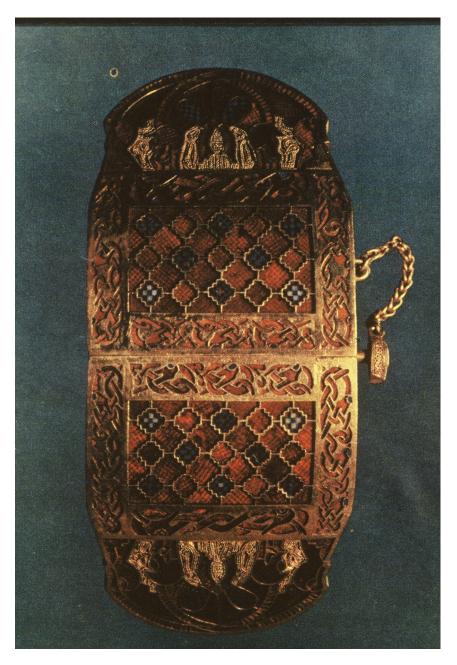
The Carolingian capitularies are a different type of legal source from this perio.

What Were These People Like?

    Designed to inspire awe, this bronze helmet unearthed at Viksoe in Denmark boasts curved horns and two staring

eyes [the Vikings of history did not wear horned helmets]. The four-inch-high kneeling figure in Danish costume (right) wears a similar helmet, suggesting that such a headpiece was an important adjunct to the allure of a Bronze age warrior. [Neither has been dated precisely, but both come from the period before our era and may be as early as 500 BC.] [National Museum, Copenhagen]. Thomas Froncek, *The Northmen*, The Emergence of Man (New York: Time-Life Books, 1974) 111 (Brookline Library 930 F92n). This is clearly from the time before the Germanic peoples had any contact with the Romans.
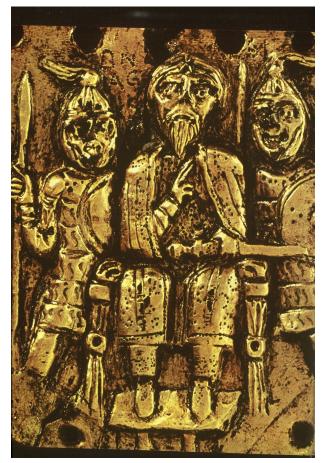

Belt buckle from a ship burial at Sutton Hoo, Suffolk. Seventh century. British Museum, London. Magnus Backes & Regine Dölling, *Art of the Dark Ages*, Francisca Garvie trans. (New York: Harry N. Abrams, 1969c) 45 (Brookline Library 709.4 B12a). The artwork here is Germanic, but we can't be sure that there is not some Roman influence. Even if the Germanic peoples came into an area which the Romans had left, there was plenty of stuff around that showed what they had done.

[Armed and mounted horseman; note the serpent decoration at the bottom.] Funerary stele of horseman. Seventh century. Sandstone, height 30 3/4". From Hornhausen (west of Magdeburg, probably Saxon at this time or Thuringian). Landesmuseum für Vorgeschichte. Halle. Backes, p. 34 (suggests Roman influence). There seems to be considerable disagreement about date and function. It is now being argued that it comes from a church screen. *Origins of Medieval Architecture 600-900*. What is clear is that comes from an area that the Romans never reached.
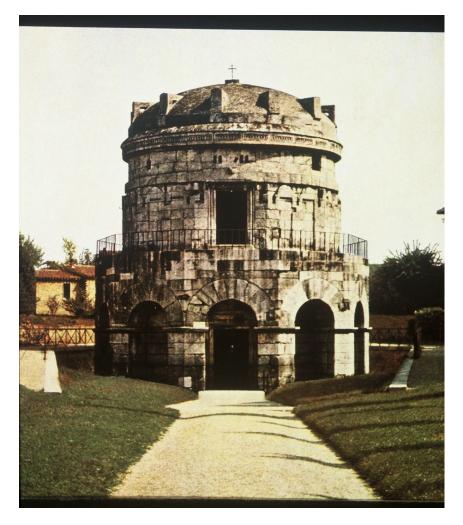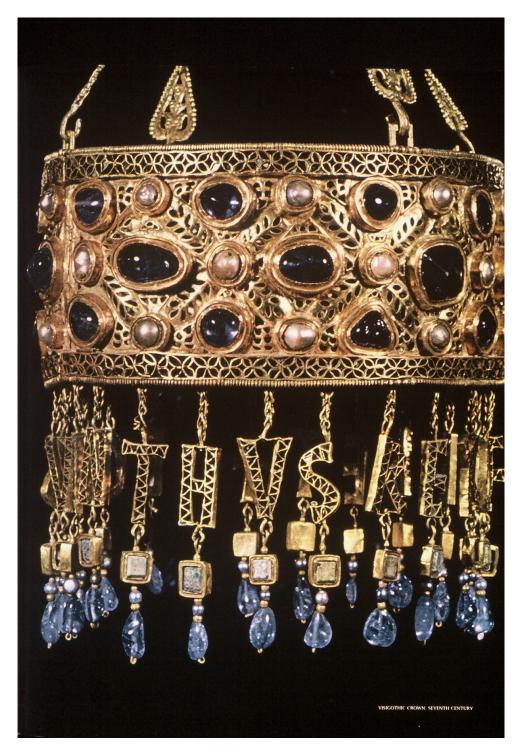
Detail of Helmut Plaque of Agilulf, King of the Lombards [first real king, unites the dukes in opposition to the Franks, 591-616], gilt copper, late 6th c. Museo Nazionale del Bargello, Florence. [A king guarded by warriors, Agilulf, ruler of the Lombards, is shown holding court in this hammered relief of gilded copper.] Gerald Simons, *Barbarian Europe*, Great Ages of Man: A history of the world's cultures (New York: Time-Life Books, 1968) 10 (Brookline Library 940.1 S58b). (Also in H&C p. 77, with winged victories on the sides and cities bringing tribute.)

Cesena Bird Brooch, Ostrogothic, gold and precious stones, cloisonné technique with almandines, early 6th c., Germanishes National Museum, Nuremberg, Germany. [The pin combines the stylized bird motif popular among Germanic peoples with a Christian cross; the filigreed metal work, set with garnets, was undoubtedly borrowed from Byzantine art work.] Simons, p. 54.

Tomb of Theodoric the Great. Before 526. Ravenna. Backes, p. 13. Roman elements put together to make something that is not Roman. (Inside much more Roman)

Votive crown of King Recceswinth [653 X 672], Visigothic, gold filigree with pearls and sapphires, 7th c., National Archaelogical Musuem, Madrid. [The opulent Visigothic crown reveals a barbarian admiration of massive precious stones as well as some refinements of Eastern design; the gold filigree, encrusted with sapphires and pears, and the dangling pendants of rock crystal are of Byzantine origin. The hanging letters spell the name of King Recceswinth, a ruler in Spain during the Seventh Century. He is believed to have given the crown to the Church that converted him.] Simons, p. 55.

What Can We Get Out of the 'Codes'?

Using Language and Internal Comparisons

72. **G**if friwif locbore leswæs hwæt gedeþ, XXX [þritig] sciłł gebete.

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

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

If friwif locbore does some leswæs, let her pay in compensation with 30 shillings.

friwif

locbore

leswæs

8. **G**if cyning his leode to him gehateþ 7 heom mon þær yfel gedo, II bóte, 7 cyninge L scillinga.

[Oliver] If the king summons his people to him and a person does any harm to them there, 2[-fold] restitution and 50 shillings to the king.

[Attenborough] If the king calls his lieges to him, and anyone molests them there, he shall pay double compensation, and 50 shillings to the king.

9. **G**if cyning æt mannes ham drincæþ 7 ðær man lyswæs hwæt gedo, twibote gebete.

[Oliver] If the king drinks at a person's home, and a person should do anything seriously dishonest there, let him pay two[-fold] restitution.

[Attenborough] If the king is feasting at anyone's house, and any sort of offence is committed there, twofold compensation shall be paid.

Comparing Across Codes

Aethelberht

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

> 77.1. **G**if hio oþrum mæn in sceat bewyddod sy, XX scillinga gebete.

> 77.2. **G**if gængang geweorðeþ, XXXV scill, 7 cyninge XV scillingas.

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

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

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

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

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

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

Mægþman, or the more comon *mægþ*, is a young woman or a girl. The word does not have the emphasis on virginity that we tend to associate with the somewhat old-fashioned word 'maiden'.

Nede is our word 'need', but in Old English it means'force'.

Agende is a property word. We can take it as meaning 'owner' so long as we remember that property concepts differ in different societies.

Sceat in 77.1 Oliver translates as 'goods' and Attenborough as 'price'. In fact, it means both.

The word *bewyddod*, which both Oliver and Attenborough translate as 'betrothed' is derived from the Old English word, *wed*, which means 'pledge'. It is found in our word 'wedding'.

What *gængang* means is problematic, but both translators make the same guess, that it means 'return' or 'brought back', and that is probably right.

Lex Burgundionum (i.e., Gundobad)

L.B. 12.1. If anyone shall steal (*rapuerit*) a girl (*puellam*), let him be compelled to pay the price (*pretium*) set for such a girl ninefold (*in novigildo*), and let him pay a fine to the amount of twelve solidi.

12.2. If a girl who has been seized returns uncorrupted to her parents (*parentes*), let the abductor compound six times the wergeld (*pretium*) of the girl; moreover, let the fine be set at twelve solidi.

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

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

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

Puella (*puellam* in the accusative) in Latin is a 'girl'. The implied age-range may not go quite so high as the Old English *mægþ*, but there is no common Latin word that corresponds to our 'young woman' or our gender-neutral 'teenager' (nor is there such a word in Old English).

Pretium in Latin means 'price'. The Latin in 12.2 uses the same word, *pretium*, as does 12.1. The text does not say *wergeld* as the translation does. Elsewhere the code seems to give us wergelds for free people: 150 for the lowest class, 200 for the middle class, and 300 for the highest class. The *pretium* of 12.1 and 12.2 is almost certainly the same thing as the marriage price (*pretium nuptiale*) of 12.4. Whether the *pretium nuptiale* was equal to the woman's wergeld seems unlikely.

In novigildo is not Classical Latin, but it almost certainly means 'ninefold' as in the translation. 'Six times' and 'threefold' in the later provisions use Classical Latin expressions, though not the same ones.

Parentes in Latin is wider than our 'parents'. 'Close kin' probably translates it better.

Solidus (plural *solidi*) is the Latin word for shilling. That does not mean that the shilling was worth the same in Kent around the year 600 as it was in Burgundy in 500, but that the values were thought of in the same terms may be suggested by the fact that wergeld for the highest class people is the same in both codes, 300.

Remota omni calumnia revertatur in 12.4 might be better translated "let her return with no charges being brought." That is to say, the law does not deal with this situation.

With all due caution, what can we get out of the comparison of the two provisions? (There's more about abduction in the Burgundian code in later provisions. It's a great paper topic.)

With all due caution, is there are anything in the comparison that might be used to begin to make generalizations about what is typically 'Germanic'?