All Men Were Not Created Equal:

The Status of Romans in the Sixth-Century Law Code of the Salian Franks

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Unequal treatment of people under the law did not begin with the Salian Franks of sixth-century Gaul—it existed even in the earliest known law codes. The Babylonian Code of Hammurabi, dated c. 1754 BC, lays down dramatically different punishments for landowners, free men, and slaves, as well as for men versus women.[i] Roman law varied depending on whether you were a Roman citizen (*status civitates*) or a foreigner, a free man (*status libertatis*) or a slave, and whether you held special status such as a senator or the head of a family (*pater familias*). Barbarian contemporaries of the Franks such as the Burgundians and Visigoths wrote separate law codes for their German and Roman subjects following a concept known as "personality of law" where each person comes under the law of his ancestors. This meant that different laws applied to different people living in the same area depending on their perceived nationality. Agobard, the bishop of Lyons, reported that "it frequently happened that of five persons who were together each was governed by a different law."[ii] This personality of law particularly distinguished barbarians from Romans, and being Roman in Merovingian Gaul could have important legal consequences.

The late fifth century was a time of transition in western Europe. The control of the Roman Empire had crumbled in the European region of Gaul. Large numbers of Franks immigrated from across the Rhine and settled among the Gallo-Romans. Cultures clashed as arriving Germanic tribes merged with the Roman residents. Rival Germanic chieftains vied for power, and gradually a united Frankish kingdom emerged in northern Gaul with the rise of the Merovingian leaders Childeric and his son Clovis. Although the barbarians triumphed politically, Roman culture prevailed in many ways, and Clovis navigated a delicate merger of barbarian and Gallo-Roman cultures.

> By A.D. 500, the Western Roman Empire had given way to a number of Germanic kingdoms, but just how 'Germanic' these kingdoms were has always been a matter of dispute. Certainly the Germans constituted a minority of the population so that the new kings found themselves ruling essentially in two guises: as kings to their own German people and as magistrates toward their Roman population, with the functions of the second role being more firmly established than those of the first.[iii]

Rather than removing and replacing the established infrastructure, the Frankish kings adapted it to their own use. "[T]hroughout the sixth century and most of the seventh the administration remained almost entirely in Roman hands—and those functionaries were not clerics. This is a fact of great importance, because it shows the continuity between the high Roman administration and the courts of the Frankish kings."[iv] The Frankish kings maintained some aspects of Roman rule while rejecting others. The limited available evidence fails to provide a clear picture of this process of cultural assimilation.

> Although the grave goods from Childeric's tomb indicate that Childeric had assumed the trappings of a member of the Roman court and thereby considered himself to be ruling as a Roman, the literary and legal evidence suggests that Clovis inherited from his father a kingship that was essentially Germanic.[v]

That legal evidence comes from the first written Frankish law code, the *Pactus legis Salicae* or Salian law, believed to have been recorded between 507 and the end of Clovis' reign in 511. The Salian law was intended primarily to govern the Franks under Clovis' rule, while the Gallo-Romans in that territory continued to follow Roman law as contained in the *Codex Theodosianus* and the *Breviarum*, a Visigothic summary of the Theodosian Code. Many of the Salic laws reflect this fact by referring specifically to Franks in the wording of the statutes. A few of the laws, however, pertain directly to Romans, and it is clear from these laws that although the Franks emulated the Romans in many ways, Romans were second-class citizens in Frankish territory.

Nowhere is this more obvious than in the statutes that assign a monetary value, or *wergeld*, to each person. The basic fine for killing "a free Frank or other barbarian who lives by Salic law" is 8,000 denarii.[vi] This amount increases to 24,000 denarii for "a man who is in the king's trust (*in truste dominica*)."[vii] This fine increases to 72,000 denarii when a band of men attacks and kills "one of the king's sworn antrustions" within his own house.[viii] The penalty for killing a Roman of corresponding status is half that amount: 12,000 denarii for killing "a Roman who is a table companion of the king" and 4,000 denarii for "a Roman landholder who is not a table companion of the king."[ix] The fine is even lower, only 2,500 denarii, for killing a Roman who is not a landholder.[x]

The Salian law code demonstrates the legal inferiority of Romans in other ways as well. One law, for instance, groups Romans with servants and half-free men, clearly illustrating their lower status. "Concerning Romans or half-free men (*letis*) or servants (*pueri*) who have been killed [by a band of men], half the amount involved in the rule above [for killing a freeman] shall be paid."[xi] Other laws establish at least twice the penalty if a Roman commits a crime against a Frank than if the roles are reversed. "If a Roman ties up a Frank without cause, he shall be liable to pay twelve hundred denarii…If a Frank ties up a Roman without cause, he shall be liable to pay six hundred denarii."[xii] In a similar example, if a Roman robs a Salic barbarian, he must pay a fine of sixty-two and one-half solidi, whereas if a Frank robs a Roman he need only pay thirty solidi.[xiii]

One of the more inexplicable discrepancies calls for more than quadruple the fine for instigating the flight of a Roman slave, suggesting that while Romans were treated as second-class citizens, they were considered particularly valuable slaves. "If a man entices away the bondsman of another man…he shall be liable to pay six hundred denarii…If a man entices away a Roman, he shall be liable to pay twenty-five hundred denarii."[xiv] This fine is similar to the twenty-eight hundred denarii penalty for stealing slaves who were considered to have the most valuable skills—swineherds, vine dressers, metalworkers, millers, carpenters, grooms, other craftsmen, and certain females.[xv]

Many of the laws specifically regarding Romans address acceptable methods of proof. These laws focus on the use of oathhelpers and the ordeal of boiling water to establish the truth of a claim. Salian law requires both Franks and Romans to provide oathhelpers to support their testimony. Romans, however, are required to provide more oathhelpers than Franks in similar cases. "If a Roman robs a Salic barbarian (*barbarum Salicum*) and it is not certainly proved against him, he can clear himself with twenty-five oathhelpers, half of whom he has chosen…If a Frank robs a Roman and it is not certainly proved, he shall clear himself with twenty oathhelpers, half of whom he has chosen."[xvi]

This difference seems modest compared to the inequalities laid out in the *wergeld* statues, but there are other important legal distinctions. If a Roman cannot clear himself with oathhelpers, he can resort to the ordeal of boiling water.[xvii] In some cases, the accused Roman can choose between using the ordeal to attempt to prove his innocence and simply paying the fine. In the

statute on arson, however, the use of this ordeal is mandatory for a Roman who cannot clear himself with oathhelpers. "If he cannot find the oathhelpers, then he must go to the ordeal of boiling water."[xviii]

Although slaves could be beaten to force a testimony, neither the ordeal of boiling water nor any other form of torture was prescribed for Frankish free men. This distinction may have had less to do with relative social status than cultural tradition and religious beliefs—the personality of law in action. There was a tradition in Roman law of using corporal torture as part of judicial interrogation. The Theodosian Code specifically refers to "punishment inflicted by cords and other instruments of torture" and "beatings with leaden scourges" in this context.[xix]

There is no reference in the Theodosian Code, however, to the ordeal of boiling water. Rather than being employed as a form or torture designed to force confession, this ordeal was intended to reveal truth through divine intervention—*iudicium Dei*, the justice of God. An innocent man would endure the boiling water with a "clean" wound, thus proving his righteousness. As an instrument thus designed to reveal the will of God, it is consistent with the non-Christian nature of the Salian law code that this ordeal would not have been applied to Franks, who would not convert to Christianity for several more years.

One complicating factor was that it was not always clear who were Romans and who were barbarians. The Roman empire had encompassed many nations, and as a result people of various ethnic origins were considered to be Roman. Nor were the barbarian immigrants a homogenous group. "We conventionally lump the invaders together as 'Germans', although not all of them were by any means 'Germanic' in language, dress, customs, habits, or appearance."[xx] As the Germans settled among the Gallo-Romans, some of them received Roman educations and adopted Roman lifestyles. "Common usage…describes them as 'barbarians', despite the fact that not a few of them knew Latin and were by Roman standards tolerably 'civilized'."[xxi] Many had also served in the Roman army. As the Germans and Gallio-Romans intermarried the difference between Roman and barbarian became increasingly difficult to determine. Certain segments of the population, however, remained determined to maintain the distinction. "Both incomers and indigenous Romans were conscious of their differences. The aristocratic Romans, administrators, landowners and bishops, who dominate the written record, had more to say about it, and the

terms in which they conducted the debate were profoundly influenced by their own definitions of what it meant to be Roman."[xxii]

According to at least one modern scholar, being Roman in the sixth century was a matter of choice rather than a matter of birth.[xxiii] Loyalty to the emperor was the sole determinant of Roman versus barbarian status. "[T]he notion of Roman identity—being Roman—was therefore extremely elastic in the sixth century, incorporating (primarily in the army) a large range of *ethne*, some of which might at any given point decide they preferred another identity.[xxiv]

Whatever criteria they used to determine who was and was not Roman, it's clear from the statutes of the Salian law code that I've illustrated here that being Roman had a dramatic effect on one's legal status in Merovingian Gaul. For centuries, the Romans had enjoyed the privileges of citizenship in the ruling empire. In sixth-century Gaul, the tables had turned.

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Endnotes

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ii Alan Watson, <u>Roman Law & Comparative Law</u> (Athens, GA: The University of Georgia Press, 1991), 88.

iii Katherine Fischer Drew, "The Barbarian Kings as Lawgivers and Judges," in <u>Life and Thought in the Early Middle Ages</u>, ed. R. S. Hoyt (Minneapolis: University of Minneapolis Press, 1967), 21. Reprinted in Katherine Fischer Drew, <u>Law and Society in Early Medieval Europe: Studies in Legal History</u> (London: Variorum Reprints, 1988), II:7.

iv Maurizio Lupoi, <u>The Origins of the European Legal Order</u>, trans. Adrian Belton (Cambridge University Press, 2000), 94.

v Katherine Fischer Drew, <u>The Laws of the Salian Franks</u> (Philadelphia: University of Pennsylvania Press, 1991), 7.

vi Drew, trans., <u>The Laws of the Salian Franks</u>, XLI:1, 104.

vii Ibid., XLI:5, 104.

viii Ibid., XXXVIII:2-4, 99.

ix Ibid., XLI:8-9, 105.

x Ibid., XLI:10, 105.

xi Ibid., XLII:4, 107.

xii Ibid., XXXII:3-4, 95.

xiii Ibid., XIV:2-3, 79.

xiv Ibid., XXXIX:1 & 5, 101-102.

xv Ibid., X:6-7, 75-76.

xvi Ibid., XIV:2-3, 79.

xvii Ibid.

xviii Ibid., XVI:5, 81-82.

xix Clyde Pharr, et. Al., <u>The Theodosian code and novels, and the Sirmondian constitutions: a translation with commentary, glossary and bibliography</u> (Princeton: Princeton University Press, 1952), Book IX, Title 35:2.

xx James A. Brundage, <u>Medieval Canon Law</u>. (London: Longman Group Limited, 1995), 19.

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xxii Jill Harries, "Legal culture and identity in the fifth-century west," in <u>Ethnicity and Culture in Late Antiquity</u>, ed., Stephen Mitchell and Geoffrey Greatrex (London: Gerald Duckworth & Co., Ltd., 2000), 45.

xxiii Geoffrey Greatrex, "Roman identity in the sixth century," in <u>Ethnicity and Culture in Late Antiquity</u>, ed., Stephen Mitchell and Geoffrey Greatrex (London: Gerald Duckworth & Co., Ltd., 2000), 268.

xxiv Ibid, 278.