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## ***IUSTITIA AND CORRUPTIO IN LIBER CONSTITUTIONUM SIVE LEX GUNDOBADA***

**Abstract.** After 476, Flavius Gundobadus, King of the Burgundians (473–516), sought ways and means to consolidate and strengthen his power, including through legal regulation of the relations between the Burgundians themselves, on the one hand, and between the Burgundians and the Gallo-Romans, on the other. Thus, *Liber Constitutionum sive Lex Gundobada* was issued, the main purpose of which is the legal regulation of the complex relations in the kingdom, through a codification of the preserved customary law – an embodiment of tribal traditions, practices, and customs, with reasonable use of Roman legal ideas, notions, and norms.

The translation and analysis of selected provisions from *Lex Gundobada* in this paper show the extent to which the Burgundians perceived, received, adopted, and adapted some of the most valuable Roman legal and moral rules and principles, especially the Roman concepts of *iustitia* and *corruptio*, and how the rights of both the Burgundians and the Romans were regulated and protected through them.

*Lex Burgundionum* is part of a series of legal Barbarian codes, compiled, adapted, published, and applied in the Barbarian *regna* between the 5<sup>th</sup> and 9<sup>th</sup> centuries. These codes are one of the significant and true sources for the historical reconstruction of the socio-political, socio-cultural, and legal-administrative transition from the late Roman Empire to the German kingdoms and early medieval Europe. They manifest how historically the arena of clashes, confrontations, and wars between *Romanitas* and *Barbaritas* gradually became a contact zone of legal reception, of cultural, legal, and socio-political influences, from which a new world will be born, a successor to the old ones, and a new legal system – the Romano-Germanic one.

**Keywords:** Burgundians, *Lex Gundobada*, *ius Romanum*, *iustitia*, *corruptio*, legal reception, *Romanitas*, *Barbaritas*, *leges Barbarorum*

The transition from the late Roman Empire to the Germanic kingdoms and early medieval states<sup>1</sup> is a significant period of transformation for *Romanitas*<sup>2</sup>

<sup>1</sup> H. WOLFRAM, *Das Römerreich und seine Germanen*, Wien–Köln–Weimar 2018; M. MEIER, *Geschichte der Völkerwanderung. Europa, Asien und Afrika vom 3. bis zum 8. Jahrhundert n. Chr.*, München 2019.

<sup>2</sup> *Romanitas* – the Roman identity, encompassing the Roman value system of virtues, legal and moral principles, traditions, norms (*mores*), and memory (collective and individual) of *mos maiorum*.

and *Barbaritas* in terms of its sociopolitical, legal, and historical consequences. In aiming to understand and reconstruct this in-between liminal world of change, continuity and new historical horizons, we must undoubtedly explore and interpret the nature, purposes and essence of *Leges Romanae Barbarorum*<sup>3</sup> and *Leges Barbarorum*<sup>4</sup>.

More or less influenced by *ius Romanum*, the compilers produced texts, preserving and reflecting the unwritten customary law of their ancestors, part of their collective memory (similar to the Roman *mos maiorum*<sup>5</sup>). Through this codification and unique reception<sup>6</sup> they also adapted their socio-legal philosophy to the changed socio-political context during the settlement in the former Roman territories.

The disintegration of the once great empire<sup>7</sup>, *imperium sine fine*<sup>8</sup>, was a slow process, with early harbingers. It accelerated especially in the period 376–476. In these years, the imperial power failed to organize the administrative, political and social

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It lies at the basis of the Roman state, philosophy, and law. It draws its sources from a shared memory of the Roman ancestors, of *maiores*, the worthy and brave, who laid the foundation of *Civitas Aeterna* through their individual and collective *virtus*. For *Romanitas* cf.: *Transformations of Romanness. Early Medieval Regions and Identities*, ed. W. POHL, C. GANTNER, C. GRIFONI, M. POLLHEIMER-MOHAUPT, Berlin 2018; P.J. HOLLIDAY, *The Rhetoric of “Romanitas”: The “Tomb of the Statili” Frescoes Reconsidered*, *MAAR* 50, 2005, p. 89; E.S. GRUEN, *Culture and National Identity in Republican Rome*, Ithaca 1992, p. 71, 141; C.N. COCHRANE, *Christianity and Classical Culture. A Study of Thought and Action From Augustus to Augustine*, Oxford 1980, p. 62, 292; *The Portable Greek Historians. The Essence of Herodotus, Thucydides, Xenophon, Polybius*, ed. M.I. FINLEY, New York 1959, Bk VI, sec 56, p. 499; E. HAMILTON, *The Roman Way*, Avon 1932, p. 64, 158; P. SARRIS, *Empires of Faith. The Fall of Rome to the Rise of Islam, 500–700*, Oxford 2011, p. 68–72.

<sup>3</sup> Particularly valuable are *Lex Romana Visigothorum* or *Breviarium Alarici(anum)* of 506, and *Lex Romana Ostrogothorum* (*Edictum Theodorici Regis* – 500).

<sup>4</sup> Among the most significant are *Codex Euricianus* (5<sup>th</sup> century, c. 480), *Lex Burgundionum* (*Lex Gundobada*, 6<sup>th</sup> century, c. 500), *Lex Salica* (6<sup>th</sup> century, c. 500), *Lex Ripuaria* (7<sup>th</sup> century), *Pactus Alamannorum* / *Lex Alamannorum* (7<sup>th</sup>–8<sup>th</sup> centuries, c. 620, 730), *Leges Langobardorum* (7<sup>th</sup>–11<sup>th</sup> centuries), *Lex Baiuvariorum* (8<sup>th</sup> century, c. 745), *Lex Frisionum* (8<sup>th</sup> century, c. 785), *Lex Saxonum* (8<sup>th</sup>–9<sup>th</sup> centuries, 803), *Lex Thuringorum* (9<sup>th</sup> century).

<sup>5</sup> *Mos maiorum* (pl. *mores maiorum*) – the morals, the custom(s) of the ancestors: a key concept of Roman traditionalism. The unwritten code from which the Romans derived their legal and moral norms, owes its binding force to *auctoritas maiorum* (“the authority/influence of the forefathers”). A key element of their collective identity. M. TULIUS CICERO, *Philippicae*, 10.20: *Omnes nationes servitutem ferre possunt: nostra civitas non potest, nec ullam aliam ob causam nisi quod illae laborem doloremque fugiunt, quibus ut careant omnia perpeti possunt, nos ita a maioribus instituti atque imbuti sumus ut omnia consilia atque facta ad dignitatem et ad virtutem referremus. ita praeclara est recuperatio ut ne mors quidem sit in repetenda libertate fugienda*. CICERO, *Orations Philippics* 7–14, ed. D. BAILEY, Cambridge Mass. 2009 [= LCL, 507], p. 120.

<sup>6</sup> St. JURASINSKI, *Ancient Privileges. Beowulf, Law and the Making of Germanic Antiquity*, Morgantown 2006, p. 93.

<sup>7</sup> M. KULIKOWSKI, *Imperial Tragedy. From Constantine’s Empire to the Destruction of Roman Italy*, London 2021, p. 260–276.

<sup>8</sup> *Vergil’s Aeneid*, 1.279, *Books I–VI*, ed. C. PHARR, Boston–New York 1998, p. 42.

management over the vast territories. Internal strife and infighting, corruption, religious politics with the imposition of a single monotheistic religion protected by law, the persecution, disenfranchisement and slaughter of heathens and heretics<sup>9</sup>, the use of religion as an instrument of power control over the masses, the army, hardly infiltrated by Barbarians are factors that facilitate these processes. In Northern Gaul<sup>10</sup> Barbarian chieftains engage in battles for supremacy, while local Roman nobles reap the benefits of chaos and change.

In these period Roman history was dominated by this struggle, which lasted years – from the beginning of the civil war, in which Orestes, Odoacer, Nepos and Gundobad competed for supremacy<sup>11</sup>. Concentration and consolidation of power as a sole ruler was a main purpose of one of them, nephew<sup>12</sup> of Ricimer<sup>13</sup> – Flavius Gundobadus<sup>14</sup> (d. 516) – patricius<sup>15</sup>, a notable vigorous and merciless<sup>16</sup> leader in the early post-Roman world<sup>17</sup>, greatest of all Burgundian kings, progressive as legislator, with a different mindset<sup>18</sup>. After 476<sup>19</sup> when

<sup>9</sup> D. VALENTINOVA, *Theodosian Code: Fides Catholica Adversus Paganos et Haereticos*, BS 50, 2015, p. 45–70.

<sup>10</sup> *The Oxford Handbook of the Archaeology of Roman Germany*, ed. S. JAMES, S. KRZNICEK, Oxford 2020, p. 494.

<sup>11</sup> P. MACGEORGE, *Late Roman Warlords*, Oxford 2002, p. 269, 283.

<sup>12</sup> M.R. SALZMAN, *The Falls of Rome. Crises, Resilience, and Resurgence in Late Antiquity*, Cambridge 2021, p. 211; G. MAIER, *Amtsträger und Herrscher in der Romania Gothica. Vergleichende Untersuchungen zu den Institutionen der ostgermanischen Völkerwanderungsreiche*, Stuttgart 2005, p. 96.

<sup>13</sup> According to John Malalas (374–375) Ricimer called Gundobad to Italy from Gaul where he was *magister militum*. P. MACGEORGE, *Late Roman...*, p. 242; D. HENNING, *Periclitans res publica. Kaisertum und Eliten in der Krise des Weströmischen Reiches 454/5 – 493 n. Chr.*, Stuttgart 1999, p. 93.

<sup>14</sup> M. GIDEON, *Amtsträger und Herrscher...*, p. 96–98.

<sup>15</sup> P.S. BARNWELL, *Emperor, Prefects & Kings. The Roman West, 395–565*, London 1992, p. 82–83.

<sup>16</sup> According to GREGORIUS TURONENSIS, *Decem Libri Historiarum (Historia Francorum)*, II, 28: *Gundobadus Chilpericum fratrem suum interfecit gladio uxoremque eius [...]*, *Gregorii Turonensis episcopi opera omnia necnon Fredegarii Scholastici epitome et chronicum cum suis continuatoribus et aliis antiquis monumentis*, [in:] PL, vol. LXXI, ed. J.-P. MIGNÉ, Paris 1858, p. 223.

<sup>17</sup> M. FRASSETTO, *The Early Medieval World. From the Fall of Rome to the Time of Charlemagne*, vol. I, A–M, Santa Barbara 2013, p. 296.

<sup>18</sup> P. MACGEORGE, *Late Roman...*, p. 275; D. FRYE, *Gundobad, the Leges Burgundionum, and the Struggle for Sovereignty in Burgundy*, CM 41, 1990, p. 205.

<sup>19</sup> The significance of the event circa the year 476 and as a whole, this transitional period for Roman history can hardly be summed up in a single article, much less in a footnote. The studies are numerous, from Gibbon's "fall of Rome" (E. GIBBON, *The History of the Decline and Fall of The Roman Empire*, vol. I–VI, Westminster Md 2010; IDEM, *The Christians and the Fall of Rome*, New York 2005); Watts' "decline and fall of Rome", which "offers eerie parallels" to the present" (*The Eternal Decline and Fall of Rome. The History of a Dangerous Idea*, ed. J. WATTS, Oxford 2021, p. 237); Sarris' "fall of Rome" (P. SARRIS, *Empires of Faith...*); Ward-Perkins' "fall of Rome and the end of civilization" (B. WARD-PERKINS, *The Fall of Rome and the End of Civilization*, Oxford 2005, p. 39); Heather with *The fall of Rome [...] constitutes one of the formative revolutions of European history [...] it changed the world for ever* (P. HEATHER, *The Fall of the Roman Empire. A New History of Rome and the Barbarians*, Oxford 2005, p. XI–XII); Halshall who defines the assassination of Julius Nepos (480) as the final

Odoacer<sup>20</sup> seized power in Rome, Gundobad, King of the Burgundians<sup>21</sup>, sought ways and means to expand his kingdom and consolidate and strengthen his power, including through legal regulation of the relations between the Burgundians themselves, on the one hand, and between the Burgundians and the Gallo-Romans, on the other. His legislative decisions were highly Romanized, and it could be seen clearly in both legal co-existing<sup>22</sup> codes, issued by his order: the Burgundian *Lex Burgundionum* (or *Liber Constitutionum sive Lex Gundobada*) and the Roman-Burgundian *Lex Romana Burgundionum*.

*Lex Romana Burgundionum* borrows legal decisions from *ius Romanum*<sup>23</sup>, though mainly in its vulgar form<sup>24</sup> with infusion of Germanic notions and ideas, and is directly applicable to the Gallo-Romans, the Roman population under Burgundian rule. On the other hand, the “pure” Burgundian legal code *Lex Burgundionum* (*Lex Gundobada*) was also strongly influenced by the Roman law<sup>25</sup>.

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end of the Western Roman empire (G. HALSALL, *Barbarian Migrations and the Roman West, 376–568*, Cambridge 2007 [= CMT], p. 282); Salzman who analyzes “the falls of Rome”, five political and military crises *critical for understanding the fall of Rome* (p. 1), noting that the *idea about the dating of the fall of Rome was created by sixth-century eastern writers* (p. 197), also p. 13–18, 35, 98, 111, 129, 135 (M.R. SALZMAN, *The Falls of Rome...*); to Mommsen’s “Odoacer and Theoderic” – *German kings, who ruled as commissaries of the emperors* (Th. MOMMSEN, *Ostgotische Studien*, Berlin 1910, p. 362sq), et al.

<sup>20</sup> More about his relationship with the Roman elite and this transitional period: D. HENNING, *Periclitans res publica...*, p. 178–187.

<sup>21</sup> More about Second Burgundian Kingdom: K. ESCHER, *Les Burgondes I<sup>er</sup>–VI<sup>er</sup> siècle apr. J.–C.*, Paris 2006, p. 61–262; J. FAVROD, *Histoire politique du royaume burgonde*, Lausanne 1997; J. FAVROD, *Les Burgondes. Un royaume oublié au coeur de l’Europe*, Lousanne 2011; K. REINHOLD, *Die Burgunder*, Stuttgart 2004. The Burgundian kingdom is a good historical example how a king (Gundobad) and a bishop (Avitus) work together to create a new social, legal and religious world, driven not only by conquest and strategies for consolidation of power, but even more by policies for unification. Both Gundobad and Avitus accelerated the Gallo-Burgundian fusion. It was facilitated partially by the fact that Burgundians perceived themselves as descendants of the 5<sup>th</sup> century Romanized military nobility. R. MATHISEN, *Roman Aristocrats in Barbarian Gaul. Strategies for Survival in an Age of Transition*, Austin 2011, p. 6; H. ROSENBERG, *Bishop Avitus of Vienne and the Burgundian Kingdom, A.D. 494–518*, Qu 3, Article 2, 1982, p. 9; U. HEIL, *Avitus von Vienne und die homöische Kirche der Burgunder*, Berlin–Boston 2011.

<sup>22</sup> B. WAUTERS, M. BENITO, *The History of Law in Europe. An Introduction*, Cheltenham 2017, p. 37.

<sup>23</sup> Reception from *Codex Gregorianus*, *Codex Hermogenianus*, *Codex Theodosianus*, post-Theodosian Novels, *Gai Institutiones*, *Pauli Sententiae*. *Lex Romana Burgundionum* is consisted of 47 titles. *Lex Romana sive forma et expositio legum Romanorum*, ed. L. DE SALIS, [in:] *Leges nationum Germanicarum*, vol. II.1, *Leges Burgundionum*, Hannoverae 1892 [= MGH.LL, Sectio I, 2.1], p. 123–124.

<sup>24</sup> E. LEVY, *West Roman Vulgar Law. The Law of Property*, Philadelphia 1951 [= MAPS, 29], p. 15. A. KREMER, V. SCHWAB, *Law and Language in the Leges Barbarorum: A Database Project on the Vernacular Vocabulary in Medieval Manuscripts*, [in:] *Law and Language in the Middle Ages*, ed. M.W. MCHAFFIE, J. BENHAM, H. VOGT, Leiden 2018 [= MLP, 25], p. 235–261.

<sup>25</sup> The first direct and more comprehensive contact of the Burgundians with the Roman law most probably was during the early 5<sup>th</sup> c., when Honorius granted land to them and they founded a federate kingdom. *The Burgundian Code. Book of Constitutions or Law of Gundobad. Additional Enactments*, trans. K. DREW, Philadelphia 2010, p. 8.

The main purpose of *Liber Constitutionum sive Lex Gundobada* was legal regulation of the complex relations in the kingdom, through a codification of the preserved customary law – an embodiment of tribal traditions, practices and customs, with reasonable and historically inevitable use of Roman legal ideas, notions and norms. As with other Barbarian codes, excluding the Ostrogoths<sup>26</sup>, the principle of the personality of law, characteristic of the post-Roman period, has been adopted.

The parts of the code are compiled chronologically – except for the first title, which had undergone multiple revisions, titles 2–41 were drawn up circa 483–501; titles 42–88 – in the period 501–527; titles 89–105 and *Constitutiones Extravagantes* (Additional Enactments) – not clear whether in the years of Godomar rule (524–532) or after his death when the Franks annexed Burgundian lands<sup>27</sup>.

*Lex Burgundionum* reflects an early mixing of Germanic tribal culture with Roman law in a unique way. The practical aim was to create conditions for peaceful coexistence between different ethnic groups, allies, or enemies in the recent past, by enforcing two co-existing legal codes in a dualistic legal system. This normative act is perhaps one of the most significant in terms of influence and legal consequences Barbarian codes, as it survived, it remained in force among the Burgundians and was applied long, even after the Frankish invasion, until the 9<sup>th</sup> century<sup>28</sup>. In it, we rediscover already known Roman moral concepts, principles, and norms protecting justice (*iustitia*), equality (*aequitas*)<sup>29</sup> and virtue (*virtus*)<sup>30</sup> against corruption (*corruptio*)<sup>31</sup> with its moral, ethical and administrative dimensions.

If we turn back to Rome, Roman *corruptio* flourished in two main forms: electoral corruption (*ambitus*)<sup>32</sup> – obtaining positions by illegal means, electoral

<sup>26</sup> The Ostrogoths did not recognize the principle of the personality of the law, unlike the other Barbarian kingdoms. *We did not allow that Goths and Romans live under two different laws [...] when we join them in the same affection* – wrote in 510 Theodoric The Great to the Goth Count Sunhivad. G. BARETIERI, *The Cimbrians and their “Law”: A Possibility of Langobard Laws Continuum*, [in:] *Struggles for Recognition. Cultural Pluralism and Rights of Minorities*, ed. O. FUENTE, M. FALCÃO, J.D. OLIVA MARTÍNEZ, Madrid 2021, p. 116.

<sup>27</sup> *The Burgundian Code. Book of...*, p. 7.

<sup>28</sup> *Ibidem*, p. 24.

<sup>29</sup> *Aequitas*, atis, f – justice, sense of justice, equality, M. VOYNOV, A. MILEV, *Latin-Bulgarian Dictionary*, Sofia 1990, p. 31.

<sup>30</sup> *Virtus*, utis, f – 1. courage, bravery; 2. heroism; 3. virtue, valor, *ibidem*, p. 774.

<sup>31</sup> *Corruptio*, onis, f – decay, falsehood, degradation, lying, bribery, corruption; from *corrumpo*, -rupi, ruptus, 3 – destroy, ruin, spoil, seduce, forge, distort, corrupt, bribe, *ibidem*, p. 160.

<sup>32</sup> *Ambitus*, us, m – 1. a) going around, circling; b) detour; c) circle, girth. 2. obtaining office illegally, through bribes. 3. smearing, demagoguery. 4. ambition, *ibidem*, p. 44. The Latin noun *ambitus* literally means going around, unlawfully obtaining office by bribery, anointing, demagoguery. The verb *ambio* and the noun *ambitio* express as well, the pursuit of positions and political fame by roundabout ways, VARRO, *On the Latin Language*, 5, 22, vol. I, *Books V–VII*, London–Cambridge Mass. 1938 [= LCL, 333], p. 20. The crime *ambitus*, sanctioned by a whole series of anti-corruption laws in Rome, implied two punishable acts – *ambitus* and *largitiones*. *Largitiones* were offered in two

fraud, bribery of voters; and official corruption in its two most widespread manifestations: *furtum pecuniae publicae* – misappropriation of public property (*pecunia publica*) or theft from the treasury; waste of state property by officials or violation of the requirements for management of public property; and *crimen repetundarum* – demanding and receiving a bribe or extortion by officials – provincial governors, judges and other magistrates.

*Iustitia*<sup>33</sup>, the supreme guiding, legal and administrative principle of justice, is in the foundations of the Roman anticorruption legislation, moral and legal antithesis of *corruptio*, and we rediscover it in *Lex Burgundionum*.

### Liber Constitutionum sive Lex Gundobada<sup>34</sup>

The most famous man Gundobad, king of the Burgundians. As we have reflected deeply on the ordinances of our ancestors and ourselves on the peace (*quies*) and benefit (*utilitas*) of our people, we have considered what is most appropriate for integrity (*honestas*), discipline (*disciplina*), reason (*ratio*), and justice (*iustitia*) in the light of all individual cases and legal titles. We discussed all of these things in the presence of our best men (*optimates*) and began to write down not only our opinions but theirs, designed to stay in the law forever. In the name of love for justice (*amore iustitiae*), through which God is at peace.

1. In the name of God, in the second year of our Lord's reign, the most glorious King Gundobad, a book of constitutions for the preservation of laws, past and present, and those to be preserved in the future, was passed on the fourth day before the Calendas of April (March 29) in Lyon<sup>35</sup>.

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forms. From the point of view of *optimates*, the most dangerous, *the most supreme and massive form of corruption through bribery, is legislation promising prosperity for the people*, A. LINTOTT, *Electoral Bribery in the Roman Republic*, JRS 80, 1990, p. 14. The second, widely used by *optimates* and *populares* alike, are private *largitiones*, given out generously by candidates in the hope of giving them a successful final outcome. D. VALENTINOVA, *The Roman Face of Electoral Corruption or "Nihil novi sub sole"*, SCS 2, 2013, p. 41–68. *Largitio*, onis f – 1. a) generous giving, generosity. b) bribe, *largitionis suspicio*. 2. giving, gifting, handing out, M. VOYNOV, A. MILEV, *Latin-Bulgarian...*, p. 376. *Ambio*, 4 – 1. go round, surround. 2. struggle to win on my side; aspire to ~ *populum, magistratum, ibidem*, p. 44. *Ambitio*, onis, f – 1. seeking, seeking from the people (place, office, etc.). 2. search for the disposition of the people; flattery, demagoguery. 3. bias. 4. ambition, thirst, *ibidem*.

<sup>33</sup> *Iustitia*, ae, f – justice, *ibidem*, p. 368.

<sup>34</sup> *Leges Burgundionum, Liber Constitutionum sive Lex Gundobada*, ed. L.R. DE SALIS, Hanover 1892 [= MGH.LL, 2.1], p. 29–116. All translations from Latin in the paper are made by the author, D. Valentinova.

<sup>35</sup> *Vir gloriosissimus Gundobadus rex Burgundionum. Cum de parentum nostrisque constitutionibus pro quiete et utilitate populi nostri inpensus cogitemus, quid potissimum de singulis causis et titulis honestati, disciplinae, rationi et iustitiae conveniret, et coram positus obtimatibus nostris universa pensavimus, et tam nostram quam eorum sententiam mansuris in evum legibus sumpsimus statuta perscribi. Amore iustitiae, per quam Deus placatur. Vir gloriosissimus Gundobadus rex Burgundionum. (1) In Dei nomine anno secundo regni domni nostri gloriosissimi Gundobadi regis liber consttutionum de praeteritis et praesentibus atque in perpetuum conservandis legibus editus sub die IIII. kalendas Aprilis Lugduno. L.R. DE SALIS (ed.), *Leges...*, p. 29–30.*



The key words and notions in the introduction here are “ancestral ordinances” (an allusion to the Roman *mores maiorum*), “peace and benefit of our people” (recalls the Roman *bonum commune communitatis, utilitas populi Romani*), “integrity” (*honestas* and *virtus* also used by Roman lawmakers), “reason and justice” (*ratio* and *iustitia* in *ius Romanum*), moreover all of which applicable to each individual case and following the reason and the principle behind the law (*ratio legis*).

Roman *iustitia* is a multifaceted concept in Roman self-consciousness, in the Roman value system, in the Roman pantheon (*dea Iustitia*), in *ius Romanum*, which the Barbarians recognized by historical necessity, associated with their notions of justice, and valued with dignity as soon as they adopted and adapted cardinal concepts and principles of Roman law. We could delve into the deeper layers of this concept trying to suppose what the Burgundians felt and perceived, historically and socially experiencing first the confrontation and then the mutual penetration and influence between *Romanitas*<sup>36</sup> and *Barbaritas*<sup>37</sup>.

Roman *iustitia* is the power and the will which distributes, renders, gives back to everyone what is due to them, *suum cuique distribuit*<sup>38</sup>. *Iustitia* is the universal ultimate retribution *suo cuique tribuendo*<sup>39</sup>. *Iustitia* is the honor and duty to judge truly, *verum iudicare*<sup>40</sup>. *Iustitia* is the eternal and unchanging will to attribute, to assign to everyone his own right, *constans et perpetua voluntas ius suum cuique tribuendi*<sup>41</sup>. *Iustitia* is the ultimate supreme duty “to live honestly, to hurt no one, to give everyone his due”, *honeste vivere, alterum non laedere, suum cuique tribuere*<sup>42</sup>. *Iustitia* is the knowledge of the divine, eternal and human things, the knowledge

<sup>36</sup> *Romanitas* as a quintessence of the Roman value system of virtues, moral principles, traditions, norms and memory of the history and customs of the ancestors (*mos/mores maiorum*), which underlies the Roman state, philosophy and law. For *Romanitas* see in particular: E.S. GRUEN, *Culture and National...*, p. 71, 141.

<sup>37</sup> *Barbaritas* as a quintessence of the value system of the German peoples, of their socio-cultural, customary, spiritual, historical perceptions, traditions and norms.

<sup>38</sup> *Nam iustitia, quae suum cuique distribuit, quid pertinet ad deos?*, “And the justice that distributes to every one what is due to them, how does it relate to the gods?”, CICERO, *De Natura Deorum*, III, 38, The Latin Library, <https://thelatinlibrary.com/cicero/nd3.shtml#38> [9 V 2022].

<sup>39</sup> “Justice in retribution to each his own”. CICERO, *De Finibus Bonorum et Malorum*, V, 67, The Latin Library, <https://thelatinlibrary.com/cicero/fin5.shtml#67> [9 V 2022].

<sup>40</sup> Cf. *Edictum Theoderici regis*, ed. F. BLUHME, Hanover 1875–1889 [= *MGH.LL (Leges in Folio)*, 5], p. 145–179, 149, 152: 7. *Iudex ut discussis allegationibus vel documentis utriusque partis, verum iudicet. Iudex discussis utriusque partis suggestionibus atque documentis id solum iudicare debet, quod iuri et legibus viderit convenire.*

<sup>41</sup> *Imperatoris Iustiniani opera*, Dig. 1.1.10pr. Ulpianus 1 reg. *Iustitia est constans et perpetua voluntas ius suum cuique tribuendi*, “Justice is the eternal and unchanging will to attribute to every one his own right”. The Latin Library, <https://thelatinlibrary.com/justinian/digest1.shtml> [9 V 2022].

<sup>42</sup> *Imperatoris Iustiniani opera*. Dig. 1.1.10.1. Ulpianus 1 reg. *Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere*, “The precepts of the of law are these: to live honestly, to hurt no one, to give every one his due”. The Latin Library, <https://thelatinlibrary.com/justinian/digest1.shtml> [9 V 2022].

of the just and the unjust, *divinarum atque humanarum rerum notitia, iusti atque iniusti scientia*<sup>43</sup>. *Iustitia* is the ultimate source of the law (*ius*), “the art of the good and the just”, *ars boni et aequi*<sup>44</sup>. *Iustitia* is the only virtue queen of all others, *una virtus omnium est domina et regina virtutum*<sup>45</sup>. *Iustitia* together with labor is the ultimate condition for the state to grow and prosper, *labore atque iustitia res publica crevit*<sup>46</sup>.

In *Lex Burgundionum* we find Roman *iustitia* in general and specific provisions prescribing certain impeccable and honest conduct of officials or sanctions for acts committed against the general prohibition, plainly postulated by Paulus – *contra iustitiam iudicasse*<sup>47</sup>. The same fundamental principle of legitimizing the law and administration of justice through their connections with the highest moral and ethical concepts and categories, especially with *iustitia* and *aequitas*, is recognizable not only in *Lex Gundobada*, but in other Barbarian codes as well<sup>48</sup>.

Like in Roman law, justice (*iustitia*) is protected by special provisions sanctioning official corruption, including judicial corruption. Integrity and justice are supreme moral values in *Lex Burgundionum*, for which protection the Burgundians have chosen the force of legal norms. The principle of reciprocal justice in the spirit of *ius Romanum* (“to give back to every one what is due to them”, *suum cuique tribuere*)<sup>49</sup> is expressed in the duty of the judge to decide fairly, *verum iudicare*, according to the objective truth. A similar requirement for the judge to decide and

<sup>43</sup> *Imperatoris Iustiniani opera*. Dig. 1.1.10.2. Ulpianus 1 reg. *Iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia*, “The wisdom of the law is the knowledge of the divine and human things, the knowledge of the just and the unjust”. The Latin Library, <https://thelatinlibrary.com/justinian/digest1.shtml> [9 V 2022].

<sup>44</sup> *Imperatoris Iustiniani opera*. Dig. 1.1.1pr. Ulpianus 1 inst. *Iuri operam daturum prius nosse oportet, unde nomen iuris descendat. est autem a iustitia appellatum: nam, ut eleganter Celsus definit, ius est ars boni et aequi*, “Before practicing law, one must know where the word *ius* comes from. *Ius* comes from *iustitia*: because, as Celsus exquisitely defines: “Law is the art of the good and the just””. The Latin Library, <https://thelatinlibrary.com/justinian/digest1.shtml> [9 V 2022].

<sup>45</sup> CICERO, *De officiis*, III, 28: *Iustitia enim una virtus omnium est domina et regina virtutum*, “Because justice is the only virtue that is the mistress and queen of all others”. The Latin Library, <https://thelatinlibrary.com/cicero/off3.shtml#28> [9 V 2022].

<sup>46</sup> SALLUSTIUS, *Bellum Catilinae*, 10. [...] *when the state, thanks to labor and justice, grew [...]*. The Latin Library, <https://thelatinlibrary.com/sall.1.html#10> [9 V 2022].

<sup>47</sup> Cf. *Pauli sententiarum*, Liber V, Titulus XXX, Ad Legem Iuliam repetundarum, [in:] *Lex Romana Visigothorum. Ad LXXVI librorum manu scriptorum fidem recognovit, septem eius antiquis epitomis, quae praeter duas adhuc ineditae sunt, titulorum explanatione auxit, annotatione, appendicibus, prolegomenis* G. HAENEL, Lipsiae 1848, p. 438, 440.

<sup>48</sup> E.g. 15. *Volumus, ut sicut nos omnibus legem observamus ita et omnes nobis legem conservare faciant, et plenam iustitiam in eorum ministeriis, quicquid ad nos pertinet, facere studeant: Capitularia regum Francorum*, 102, ed. A. BORETIUS, Hannoverae 1881 [= MGH.LL, Sectio II, 1]. *Pippini Capitulare Italicum*, Legum Sectio II, Tomus I, Hannoverae 1881, p. 210.

<sup>49</sup> *Imperatoris Iustiniani opera*. Dig. 1.1.10pr. Ulpianus 1 reg. The Latin Library, <https://thelatinlibrary.com/justinian/digest1.shtml> [9 V 2022].



rule truthfully, again under the influence of *ius Romanum*, we find in the provisions of *Edictum Theodorici regis (Lex Romana Ostrogothorum)*<sup>50</sup>. Ex lege both Barbarian codes obliged the judge to take all measures to ensure the disclosure of the truth, under the law, guided always by *amor iustitiae* and acting against *corruptio*:

2. In the name of love of justice, through which God is appeased and power over earthly possessions is acquired, after we first had the advice of our *comites*<sup>51</sup> and nobles (*proceres*), we endeavored to enact these laws so that honesty and fairness in what will be judged (*integritas et aequitas iudicandi*) to prevent all rewards and acts of corruption<sup>52</sup>.

It is no coincidence the repetition of “all” (*omnes*) – the giving and the receiving of *all* rewards must be prevented and prohibited, rewards, which are in fact disguised bribes. *All* rulers and judges, that is, all those employed and charged with the executive and the judiciary power, to be guided solely by the law in the spirit of the principle of the rule of law and justice, and by integrity as the supreme virtue:

3. Accordingly *all* rulers (*administrantes*) and judges (*iudices*) are obliged to judge between the Burgundians and the Romans following our laws, which were drafted and amended by a common treatment so that no one hopes or assumes that he will receive something like a reward or repayment on behalf of any of the parties as a result of the acts or decisions; but let that party that merits, to achieve justice (*iustitia*) and let the integrity of the judge alone be sufficient<sup>53</sup>.

Under the influence of the Roman *iustitia* and *aequitas* the imperative rule *verum iudicare* is normatively bound by the general prohibition *contra iustitiam iudicasse*<sup>54</sup>. Similar norms (in the light of *Pauli sententiarum*) are found

<sup>50</sup> 7. *Iudex ut discussis allegationibus vel documentis utriusque partis, verum iudicet. Iudex discussis utriusque partis suggestionibus atque documentis id solum iudicare debet, quod iuri et legibus viderit convenire.* “7. The judge to decide correctly on the discussed allegations and documents of both parties. The judge, after discussing the allegations and documents of both parties, should judge only what appears to be under the law and the normative acts”. *Edictum Theoderici regis...*, p. 149, 152.

<sup>51</sup> Roman, and later Byzantine, civil or military official. J.B. BURY, *A History of the Later Roman Empire. From Arcadius to Irene (395 A.D. to 800 A.D.)*, Norderstedt 1889, n. 6, 41.

<sup>52</sup> 2. *Amore iustitiae, per quam Deus placatur et potestas terrenae dominationis acquiritur, ea primum habito consilio comitum et procerum nostrorum studuimus ordinare, ut integritas et aequitas iudicandi a se omnia praemia vel corruptiones excludat.* L.R. DE SALIS (ed.), *Leges...*, p. 30–31.

<sup>53</sup> 3. *Omnes itaque administrantes ac iudices secundum leges nostras, quae communi tractatu compositae et emendatae sunt, inter Burgundionem et Romanum praesenti tempore iudicare debebunt, ita ut nullus aliquid de causis et iudiciis praemii aut commodi nomine a qualibet parte speret aut praesumat accipere, sed iustitiam, cuius pars meretur, obteneat et sola sufficiat integritas iudicantis.* L.R. DE SALIS (ed.), *Leges...*, p. 31.

<sup>54</sup> Cf. *Pauli sententiarum*, Liber V, Titulus XXX, Ad Legem Iuliam repetundarum, [in:] *Lex Romana Visigothorum...*, p. 440.

in *Lex Romana Visigothorum (Breviarium Alaricianum)*, which defines judicial corruption as a crime against justice and punishes *corrupti iudices* with removal from the curia by the provincial governor, exile or demotion for a specified period. The judges should have been convicted of being guided by a “corruption motive” (*causae corrupti*) and “against justice” (*contra iustitiam*) in passing their acts<sup>55</sup>.

*Iustitia* together with *integritas* and *aequitas*, socially fundamental, ethical and moral concepts, are inevitably connected with the rule of law principle, elements of which we could trace in *Lex Gundobada*:

4. We believe that the provisions of this law must also apply to us, so that no one may dare to test our integrity (*integritas*) in any case by votes<sup>56</sup> or remuneration; first of all, by repelling from us, through our pursuit of equality (*aequitas*), what we forbid to all judges under our administration, let our treasury accept nothing more than what is established in the laws on the payment of fines<sup>57</sup>.

*Lex Gundobada* affirms equality before the law for both Burgundians and Romans and obliges them to respect the rules of public law and especially anti-corruption prohibitions. The principle of legality is an essential key element of the rule of law, which requires unexceptionable fairness in the application of the law and equality before the law, and must be observed by all officials empowered to take administrative or judicial decisions.

Anti-corruption provisions are essential and we could feel in them the spirit of the anti-corruption Roman laws<sup>58</sup>, and *Codex Theodosianus*. The punishment under the Barbarian law for official corruption committed by a judge, that is, by an official who must supervise the observance of the law and administer justice according to it, is death in case of deliberate, intentional violation of the law with corruption motive, and financial sanctions in any other minor cases of judicial corrupt behavior:

<sup>55</sup> *Pauli sententiarum*, Liber V, Titulus XXX, Ad Legem Iuliam repetundarum, [in:] *Lex Romana Visigothorum...*, p. 438, 440.

<sup>56</sup> Suffragium, ii, n – vote in Roman Assembly; right to vote; opinion, evaluation, approval, consent. M. VOYNOV, A. MILEV, *Latin-Bulgarian...*, p. 685.

<sup>57</sup> 4. *Cuius legis conditionem nobis quoque credidimus inponendam, nec ullus in quolibet causarum genere integritatem nostram suffragiis aut praemio adtemptare praesumat, a nobis primum aequitatis studio repellentes, quod a cunctis sub regno nostro iudicantibus fieri prohibemus, ne fiscus noster aliquid amplius praesumat, quam de solutione multae legibus legitur constitutum.* L.R. DE SALIS (ed.), *Leges...*, p. 31.

<sup>58</sup> Cf. Paulus on several Roman laws that incriminated and persecuted ambitus, peculatus, crimen repetundarum and vi publica et privata in Rome: *Lex Iulia de ambitus*, *Lex Iulia peculatus*, *Lex Iulia de vi publica et privata*, *Lex Iulia de repetundis – Pauli sententiarum*, Liber V, Titulus XXXII, Ad Legem Iuliam ambitus, [in:] *Lex Romana Visigothorum...*, p. 440; *Pauli sententiarum*, Liber V, Titulus XXIX, Ad Legem Iuliam peculatus, [in:] *ibidem*, p. 438; *Pauli sententiarum*, Liber V, Titulus XXVIII, Ad Legem Iuliam de vi publica et privata, [in:] *ibidem*, p. 438; *Pauli sententiarum*, Liber V, Titulus XXX, Ad Legem Iuliam repetundarum, [in:] *ibidem*, p. 438, 440.

5. Therefore let all the optimates (*optimates*), counselors (*consilarii*), domestics (*domestici*)<sup>59</sup>, governors of the palaces (*maiores domus nostrae*), also secretaries (*cancellarii*), comites (*comites*) of towns or villages, Burgundians, as well as Romans, and all judges, appointed and military (*iudices militantes*), know that nothing can be taken in connection with those cases which are pending or decided, and that nothing should be sought in the name of promises or award from the disputing parties; or that the parties to the case must not be compelled by the judge to reach agreements to obtain something in this way<sup>60</sup>.

*Lex Gundobada* determines the most severe punishment for a superior corrupt official empowered with administrative and judicial authority – the death penalty. But the principle of justice requires the responsibility to be personal and the heirs not to be affected by the sentence. The circle of criminally responsible persons is precisely determined, referring to *all the optimates (optimates), counselors (consilarii), domestics (domestici), governors of the palaces (maiores domus nostrae), also secretaries (cancellarii), comites (comites) of towns or villages, Burgundians, as well as Romans, and all judges, appointed and military (iudices militantes)*:

6. And if any of the above, bribed against our laws, or even pronouncing decision justly, is convicted of accepting remuneration for a case and a court decision, after his crime is proven, let him be sentenced to death for the example of all: but in such a way that his sons or legal heirs are not to blame regarding this property for which bribery has been proven, for which he was punished<sup>61</sup>.

The principle of *iustitia* and *aequitas* could be tracked in the very co-existence of a unique dualistic Roman-Barbarian legal system, in which Romans preserved some legal autonomy, having the right to keep their *ius Romanum* in litigations between them, including when the crime is *corruptio*:

8. However, we order the Romans to be judged according to the Roman law, since the crime of bribery (*venalitas*)<sup>62</sup> was forbidden under a similar condition to that established by our

<sup>59</sup> Domesticus – civil, ecclesiastical and military service in the late Roman Empire and Byzantium. From domesticus, i, m – domestic, family (friend); paternal, local. M. VOYNOV, A. MILEV, *Latin-Bulgarian...*, p. 208. The term can be traced back to the 3<sup>rd</sup> century in the late Roman army. *Protectores domestici* were guards serving the Roman emperor. I. SYVÄNNE, *Military History of Late Rome 361–395*, vol. II, Havertown 2014, p. 4, 79, 110.

<sup>60</sup> 5. *Sciant itaque optimates, consilarii, domestici et maiores domus nostrae, cancellarii etiam Burgundiones quoque et Romani civitatum aut pagorum comites vel iudices deputati, omnes etiam et militantes: nihil se de causis his, quae actae aut iudicatae fuerint, accepturos aut a litigantibus promissionis vel praemii nomine quaesituros; nec partes ad compositiones, ut aliquid vel sic accipiant, a iudice compellantur.* L.R. DE SALIS (ed.), *Leges...*, p. 31–32.

<sup>61</sup> 6. *Quod si quis memoratorum corruptus contra leges nostras, aut etiam iuste iudicans, de causa vel iudicium praemium convictus fuerit accepisse, ad exemplum omnium probato crimine capite puniatur: ita ut facultatem eius, in quo venalitas vindicatur, a filiis aut legitimis heredibus suis, quae in ipso punita est, culpa non auferat.* L.R. DE SALIS (ed.), *Leges...*, p. 32.

<sup>62</sup> Venalitas, atis, f – from venalis, e – for sale, exposed for sale, venal, corrupt. M. VOYNOV, A. MILEV, *Latin-Bulgarian...*, p. 759.

procreators: let them know that they must follow the form and wording of the written law as they judge a case so that no one is excused for ignorance<sup>63</sup>.

*Lex Gundobada*, just like *Edictum Theodorici Regis*, also establishes safeguards against offenses in the field of the criminal law, adopted in the process of legal reception from *Codex Theodosianus*. One of them is the normative rule from Liber IX.1.19pr. that every criminal charge must be proved, and every unproven criminal defamation must be punished: *the person who questions another's good name, property, position, and life must know that the corresponding punishment threatens him if he does not prove what he has accused him of*<sup>64</sup>.

The principle of reciprocal justice requires fair administration of *iustitia*, sanctions for unfounded and unproven allegations of *corruptio*, especially when the accused is an unjustifiably slandered judge:

9. And for the criminal act committed before that time, to preserve the form of the previous law regarding judgments; but we also insert that if a judge is accidentally accused of corruption (*in corruptione accusatus*) and could be convicted without any reason, let the accuser be subjected to a punishment similar to the one we ordered to be imposed to the corrupt judge (*iudicem corruptum*)<sup>65</sup>.

The principle of justice also states that everything new that is added and not regulated in the written law has not received official legitimacy and must be referred to the authority:

10. However, if something inserted is not contained in our laws, we order those who judge to refer it to us<sup>66</sup>.

<sup>63</sup> 8. *Inter Romanos vero, interdicto simili conditione venalitatis crimine, sicut a parentibus nostris statutum est, Romanis legibus praecipimus iudicari: qui formam et expositionem legum conscriptam, qualiter iudicent, se noverint accepturos, ut per ignorantiam se nullus excuset.* L.R. DE SALIS (ed.), *Leges...*, p. 32.

<sup>64</sup> *Codex Theodosianus*, ed. Th. MOMMSEN, Berlin 1905: CTh.9.1.19pr. [=brev.9.1.11pr.] *Imp. Honorius et Theodosius aa. consulibus, praetoribus, tribunis plebis, senatui suo salutem dicunt. Accusationis ordinem iam dudum legibus institutum servari iubemus, ut, quicumque\* in discrimen capitis accessitur, non statim reus, qui accusari potuit, aestimetur, ne subiectam innocentiam faciamus. Sed quisquis ille est, qui crimen intendit, in iudicium veniat, nomen rei indicet et vinculum inscriptionis arripiat, custodiae similitudinem, habita tamen dignitatis aestimatione, patiat, nec impunitam fore noverit licentiam mentiendi, quum calumniantes ad vindictam poscat similitudo supplicii*, [https://droitromain.univ-grenoble-alpes.fr/Constitutions/CTh09\\_mommсен.htm](https://droitromain.univ-grenoble-alpes.fr/Constitutions/CTh09_mommсен.htm) [31 V 2022].

<sup>65</sup> 9. *De male vero ante acto tempore iudicatis prioris legis forma servabitur; hoc etiam inserentes, ut, si forte iudex in corruptione accusatus convinci nulla ratione potuerit, accusator simili poenae subiaceat, quam iudicem corruptum praecipimus sustinere.* L.R. DE SALIS (ed.), *Leges...*, p. 32–33.

<sup>66</sup> 10. *Si quid vero legibus nostris non tenetur insertum, hoc tantum ad nos referre praecipimus iudicantes.* L.R. DE SALIS (ed.), *Leges...*, p. 33.

The principle of justice and the rule of law require that if the official in charge of judicial functions has not ruled and judged in accordance with the written law, and his act was not committed maliciously, with the expectation of a desired benefit and a corruption motive, but accidentally and due to *simplicitas*<sup>67</sup> or *neglegentia*<sup>68</sup>, then his punishment should be limited to financial sanction. *Iustitia* is also visible in the extrapolation of this normative rule to all – both Burgundians and Romans:

11. If, certainly, someone, Barbarian, or Roman, hindered out of simplicity or negligence, accidentally judges not according to these things contained in the laws, and is alien to corruption, let him know that he will have to pay thirty solidi, and that the case must be heard again in the interests of the injured parties<sup>69</sup>.

The protection of justice has also been carried out through principles and rules governing judges, holding them accountable for their behavior, and sanctioning them in cases of misconduct, when they fail to fulfill their duties. The same financial sanction, fine, is provided for the appellant if he skips the court up to three times and takes his case directly to the authority:

12. Applying this rule that if the judges to whom the matter was referred for the third time do not pass judgment, and if the appellant believes that the appeal should be addressed to us and proves that his judges have been present three times and have not heard the case, let the judge be punished with compensation of 12 solidi. As well as if someone acting too hastily comes to us for a case of any kind, after he missed the judges, that is, after he did not appeal the case for the third time, as we ordered above, let him pay a fine to appoint a different judge so as not to delay cases due to the absence of appointed judges<sup>70</sup>.

*Lex Gundobada*, similar to *Edictum Theodorici Regis*<sup>71</sup>, affirms equality before the law for Romans and Burgundians with judicial powers, and obliges them to

<sup>67</sup> *Simplicitas*, atis, f – simplicity, frankness, sincerity, naivety. M. VOYNOV, A. MILEV, *Latin-Bulgarian...*, p. 652.

<sup>68</sup> *Neglegentia*, ae, f – negligence, carelessness, neglect, disrespect, indifference, *ibidem*, p. 440.

<sup>69</sup> 11. *Si quis sane iudicum, tam barbarus quam Romanus, per simplicitatem aut neglegentiam praeventus, forsitan non ea quae leges continent iudicabit et a corruptione alienus est, XXX solidos se noverit solviturum, causa denuo discussis partibus iudicanda.* L.R. DE SALIS (ed.), *Leges...*, p. 33.

<sup>70</sup> 12. *Illud adicientes, ut si iudices simul tertio interpellati non iudicaverint, et causam habens interpellationem nostram crediderit expetendam, et iudices suos ter se adisse et non auditum probaverit, XII solidorum iudex inlacione multetur; ac si quisque de quolibet causae genere omissis iudicibus hoc est, tertio ut supra iussimus non interpellatis – ad nos venire praesumpserit, ea qua iudicem differentem statuimus multa constringat, ne forte per absentiam deputatorum iudicum negotia differantur.* L.R. DE SALIS (ed.), *Leges...*, p. 33.

<sup>71</sup> We could open *Edictum Theodorici Regis* and read a similar rule, which, however, has a wider general application to all Romans and Barbarians, not only those charged with judicial functions:



know and follow the law at the same time, while forbidding them to rule in the absence of the other judge to guarantee a fair process. Thus again it reaffirmed the principle of legality in the name of justice:

13. Let a Roman *comes* or a Burgundian does not dare to adjudicate on any case in the absence of the other judge, let them try as hard as they can so that they cannot be uncertain about the rule of law, no matter how often they may want to<sup>72</sup>.

The translated and commented provisions, although far from exhaustive, illustrate the phenomenal process of preserving, receiving, editing, and adapting the best Roman legal principles and norms, bound by universal moral and ethical categories. We see a mixture of Roman<sup>73</sup> and Barbarian<sup>74</sup> moral and ethical

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*Et quamvis nullum iniuste factum possit sub legum auctoritate defendere: nos tamen cogitantes generalitatis quietem et ante oculos habentes illa, quae possunt saepe contingere, pro huiusmodi casibus terminandis praesentia iussimus edicta pendere: ut salva iuris publici reverentia et legibus omnibus cunctorum devotione servandis, quae barbari Romanique sequi debeant super expressis articulis, edictis praesentibus evidenter cognoscant.* The key phrase here is: [...] *to discuss this edict in order to preserve respect for the public law and to observe with due devotion all the laws which both Barbarians and Romans must observe in accordance with the provisions set forth [...], Edictum Theoderici regis...*, p. 152; *Corpus Iuris Germanici antiqui*, vol. I, ed. F. WALTER, Berlin 1824, p. 396.

<sup>72</sup> 13. *Nullam causam absente altero iudice vel Romanus comes vel Burgundio iudicare praesumat, quatenus studeant, ut saepius expetentes se de legum ordine incerti esse non possint.* L.R. DE SALIS (ed.), *Leges...*, p. 33.

<sup>73</sup> The Roman value system, its transformations and deviations, could be reconstructed using Roman sources, interpreting historical events and historical choices, that shaped the Roman world and history. We could explore: SALLUSTIUS, *Bellum Catilinae*, 9: 9 (1) *Thus, both in times of peace and in times of war, good manners (boni mores) were respected, concord (concordia) was greatest, avarice (avaritia) least. Nature was the original source of right and good among them, to the same extent as were laws. (2) Disputes, dissensions, dislikes were left to the enemies, and the citizens competed with each other in virtue (virtus). Their prayer rites were magnificent, they were modest at home, and faithful to their friends. (3) Governing the state, they were guided by two qualities – bravery in war and justice (iustitia) after conclusion of peace,* SALLUST, *The War with Catiline*, trans. J. CAREW ROLFE, ed. J.T. RAMSEY, Cambridge Mass. 1931 [= LCL, 116], p. 17, see also p. 16–23. We could read and reread Cicero, e.g. M. TULLI CICERONIS *Tusculanarum Disputationum Liber Tertius*, VII, 14–18: M. TULLIUS CICERO, *Tusculanae Disputationes (Latin)*, ed. M. POHLENZ, Leipzig 1918, p. 324; M. CICERO, *De officiis*, 2.21–75, especially 2.73.1 and 2.75: The Latin Library, <https://www.thelatinlibrary.com/cicero/off2.shtml> [30 X 2022]. We could refer to TACITUS, *Annalium*, I, 2: P. *Cornelii Taciti Annalium ab excessu divi Augusti*, vol. I, *Libri I–VI*, ed. H. FURNEAUX, Oxford 1884, p. 157. We could refer to TITUS LIVIUS, *Ab urbe condita*, XXXIV, 4: *An Anthology of Latin Prose*, ed. D. RUSSELL, Oxford 1990, p. 101–103, et al.

<sup>74</sup> Barbarian moral notions and value system could also be reconstructed on the basis of written sources, historical, legal et al. Salvian's view of Romans and Barbarians is particularly interesting: *Now almost all the Barbarians, at least those who belong to one tribe and live under the rule of one king, love one another, while almost all the Romans are at odds with one another. What citizen does not hate his fellow citizens? Who shows mercy to his neighbors? Who provides fraternal help for his next of kin? Who pays to family love the debt he knows he owes, because of the name he bears? Who is as bound by love and affection as by his blood? Who is not inflamed with the dark passion of ill-will? [...] Hence*

conceptions of justice and truth, a quintessence of the strongest human virtues, guarded and protected by the law. Historically necessary and inevitable in the Barbarian *regna* on the former imperial territory, or deliberately sought after by the Barbarian rulers who perceived themselves as the Roman empire's heirs, the reception of *ius Romanum* testifies to a long process of sociocultural and legal-administrative influence and overflow of ideas, practices, and norms between *Romanitas* and *Barbaritas*<sup>75</sup>, from which a new world is born, neither Roman nor Barbarian. Its appearance is difficult, writes Salvian in *De Gubernatione Dei*<sup>76</sup>, and especially painful for the Romans, who realized the sunset of their virtues and glory.

The translation and analysis of selected provisions from *Lex Gundobada* outline the influence *ius Romanum* had upon the Burgundian legislator, the extent to which the most valuable Roman legal decisions against *corruptio* and principles protecting *iustitia* were accepted, interpreted, adapted, and adopted, especially in the field of administration of justice, and how the rights of both the Burgundians and the Romans were regulated and protected through them.

*Lex Gundobada*, as well the other Barbarian codes, reveal both the aspiration to the secular power of the new rulers, and the will to build an acknowledged political entity<sup>77</sup>, a stable world for *Barbaritas* by preserving the peace (*Pax Romana*) among the successors of the Roman Christian empire. Quite naturally, the influence of Roman law, Latin language and *fides Catholica*, is strongest among Barbarian *gentes* that settled on the territory of the empire as federates, especially the Goths and the Burgundians. We should mention with special emphasis *Lex Romana Visigothorum* or *Breviarium Alarici(anum)*<sup>78</sup> of 506, of the Visigothic King Alaric II, and *Lex Romana Ostrogothorum* (*Edictum Theodorici Regis* – 500).

*Leges Barbarorum* and *Leges Romanae Barbarorum* define the coexistence of *Romani et Barbari*<sup>79</sup> in a new born reality. They reflect the formation of certain

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*the name of a Roman citizen, once not only highly prized, but dearly bought, is now deliberately denied and avoided, and is not only of little value, but almost hated. What could be a greater proof of Roman injustice than that many worthy nobles, to whom their Roman affiliation should have been the greatest source of glory and honor, were driven so far by the cruelty of Roman injustice that they did not want to be Romans anymore?*, SALVIANI PRESBYTERI, V, 4–5: *Salviani presbyteri Massiliensis libri qui supersunt*, ed. K. HALM, Berolini 1877 [= MGH.SS, 1], p. 58–63.

<sup>75</sup> P. PÉRIN, M. KAZANSKI, *Identity and Ethnicity during the Era of Migrations and Barbarian Kingdoms in the Light of Archaeology in Gaul*, [in:] *Romans, Barbarians, and the Transformation of the Roman World*, ed. R. MATHISEN, D. SHANZER, London 2011, p. 299–330.

<sup>76</sup> *Salviani presbyteri Massiliensis libri qui supersunt...*, IV, 3, 38; V, 7, p. 38, 60–61.

<sup>77</sup> P. WORMALD, *The Leges Barbarorum: Law and Ethnicity in the Post-Roman West*, [in:] *Regna and Gentes. The Relationship between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World*, ed. H.-W. GOETZ, J. JARNUT, W. POHL, Leiden–Boston 2003 [= TRW], p. 21.

<sup>78</sup> D. VALENTINOVA, “*Qualis debeat fieri lex?*”: *Rhetoric and Ethics in Leges Visigothorum*, BMD 6, 2015, p. 27–41.

<sup>79</sup> EADEM, *Leges Barbarorum: Between Rome and the Barbarians*, VIII 3–4, 2012, p. 3–26.

legal notions and perceptions in the Early Middle Ages, and the unique processes of acculturation and integration<sup>80</sup>. The difficulties in their interpretation and analysis are related to the long-lasting processes of reception, compilation, adaptation, revision of Roman legal terms and norms, and their logical “barbarization”. Particularly challenging are the Burgundian, Alamannic, and Lombard laws, in which we have yet to clarify German concepts and the purity of the Roman legal terms used, some of which probably mask purely German legal notions.

Surely *Lex Burgundionum* is a significant part of this series of legal codes, compiled, adapted, published, and applied in the Barbarian *regna* between the 5<sup>th</sup> and 9<sup>th</sup> centuries. Undoubtedly these codes are one of the important and true sources for the historical reconstruction of the socio-political, socio-cultural, and legal-administrative transition from the late Roman Empire to the German kingdoms and early medieval Europe. They manifest how historically the arena of clashes, confrontations, and wars between *Romanitas* and *Barbaritas* gradually became a contact zone of legal reception, of cultural, legal, and socio-political influences, from which a new world will be born, a successor to the old ones, and a new legal system – the Romano-Germanic one.

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<sup>80</sup> More about *Leges Barbarorum* and *ius Romanum*, and the processes of acculturation and integration: M. FRASSETTO, *Encyclopedia of Barbarian Europe. Society in Transformation*, Santa Barbara 2003, p. 231–234; G. HALSALL, *Barbarian Migrations...*, p. 464–466; H. SIVAN, *The Appropriation of Roman Law in Barbarian Hands: “Roman-Barbarian” Marriage in Visigothic Gaul and Spain*, [in:] *Strategies of Distinction. The Construction of the Ethnic Communities, 300–800*, ed. W. POHL, H. REIMITZ, Leiden 1998 [= TRW, 2], p. 189–124; *Transformations of Romanness...*; R. MATHISEN, D. SHANZER, *Society and Culture in Late Antique Gaul. Revisiting the Sources*, Aldershot 2017.

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