

Nuptial Relations through the Filter of Barbaric Laws

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Abstract

Aim of the study is to analyse the importance of marriage in the Germanic world, generally speaking, and in the Germanic barbarian states, exceptionally speaking. In order to highlight the features of the institution of marriage, I have used the texts of the barbaric laws of the Burgundians, Franks, Longobards and Visigoths as my primary source. Apart from archaeological discoveries, these legislative codes are the most important historical source for the period between the collapse of the Western Roman Empire and the formation of the Germanic kingdoms, and represent a historical legacy of the Old Germanic world. In this paper we aim to point out the relationships between social/marital actors, legal guardian, husband, wife, regulated by the Germanic legislative codes, instruments of the central power. At the same time, we will touch on issues such as betrothal, bride price, marriage, forbidden marriages, divorce, repudiation, remarriage, adultery, etc., and the legal framework that sets and imposes certain limits. At the same time, we will try to outline, by analysing the laws, the ideal marriage, but also the potential loopholes or situations that deviate from legal and moral norms.

Keywords: *Lex Salicae, Lex Gombetta, Edictum Rothari, Forum Judicum, barbarian kingdoms*

Throughout the Middle Ages, the institution of marriage was very important, forming the basis of the family. For an individual it was of major importance, directly proportional to the need for family solidarity. One's honour was the honour of the whole family, and any personal feud became a family one. Thus, at every important moment in life, the family was at the side of the individual, whether facing the justice, in times of war, or in times of happiness. Through marriage and procreation, the family remained tied to the same property, generation after generation. Starting a new family did not mean a new home or moving away from parents. Often, for economic, pragmatic reasons, young people remained together with their parents, usually the boy's, forming over time 'family communities' of siblings and cousins, which would be the basic unit of barbarian society, rather than the simple family.¹

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¹ Genevieve D'Haucourt, *Viața în Evul Mediu* (București: Corint, 2000), 105-106.

The barbarian states formed on the skeleton of the Western Roman Empire were ruled by kings, who were originally just tribal leaders and were only formally accepted by the Roman population. Frankish, Burgundian, Gothic or Longobard kings had limited power, both over their countrymen and over the local populations. The laws drafted in the 5th and 7th centuries by these kings were of a markedly barbaric nature, based on the monetary or material compensation imposed for various offences, which varied according to ethnicity and social class.² At the same time, barbarian legislation aimed to regulate the relationship between the state and its subjects, but also to create an economic and social framework controllable by the central power.

The Roman legislative codes promulgated by the barbarians (*Alaric's Breviary* of 506 for the Visigoth state; *Lex Romana Burgundionum* of the early 6th century in the Burgundy; *Edictum Theodorici* for the Ostrogoths; *Lex Romana Curiensium* of the 7th century in Raetia) were based on vulgar Roman law, which also permeated the legislation of the Germanic peoples. As far as Germanic law is concerned, the most archaic aspects can be identified with the Franks (*Salic Law*, 507-511) and the Longobards (*Edict of Rothari*, 643). Massive influences of Roman law can be found in the first Visigothic law (*Euric's Code*, 470-480) and Burgundian law (*Gombette Law*, 501-515). Analysing these legislations, we can identify the common features of barbaric law: oral and formalistic procedure, the personality of laws, the role of the counters and ordained judges, the *wergeld*, family solidarity, etc. Many of these features can also be found in Scandinavian law, which was only drafted in the 13th century, without any Roman influence. However, Roman ideas and influences can be found in many of the laws drafted in the barbarian kingdoms.³

Therefore, the king, who represents the central power, tries through various channels, in this case by issuing firm, written legislation, to regulate various sectors of the state, ranging from the public (*terra salica* at the Franks, for example) to the private: property, family, marriage, etc. We will see below that various aspects of the private life of social or rather nuptial actors, in the case of this study, are well defined by state intervention.

The family is integrated into a larger lineage, which includes all related persons (*sippe*), the father having the right of protection over the children and wife (*mund*, in Latin *mundium*) and absolute power within the family. Girls until marriage and boys until they come of age, when they become warriors, live within the family. When the daughter marries, the *mundium* is passed on to the husband in exchange for a gift, *morgengabe* at the Longobards, *morgengab* at the Salian Franks, the marriage ceremony symbolising the solidity of the family institution.⁴ Unlike other Germanic laws, the Burgundian law does not strictly refer to *morgengabe*, the

² Jacques Le Goff, *Evul Mediu și nașterea Europei* (Iași: Polirom, 2005), 40-41.

³ Lucien Musset, *Invaziile. Valurile germanice* (București: Corint, 2002), 276-277.

⁴ Patrick J. Geary, *Mitul națiunilor: originile medievale ale Europei* (Târgoviște: Cetatea de Scaun, 2007), 110; Pierre Riché, *Europa barbară din 476 până în 774* (București: Corint, 2003), 34-35.

morning gift, which attests to the purity of the betrothed's blood, but also to the husband's gratitude for having received a virgin. *Vittum* (*wittimon*⁵) was the sum paid by a Burgundian man in exchange for his betrothed, it was fixed by the king and differed according to the social class to which the girl belonged. For a girl from a higher social class the amount was 50 or 65 *solidi*, and for a lowly girl only 15 *solidi*. The ceremony of the payment of the *vittum* involved the groom pouring the sum into the hands of the girl's parents, who were to receive the dowry, *in ornamentis*. In fact, this sum could be considered as a possible compensation for the parents in case the girl was repudiated or widowed.

Indeed, women had less freedom in Germanic society than men, and the penalties for adultery were harsher, but women were no less important in the family. The special attention paid to a woman's purity was a sign of the importance of lineage, and a husband's adultery was not considered a threat to the family line, whereas a woman could become pregnant by another man, in which case the resulting children could not be part of the family. The importance of a woman's purity is emphasised by the *morgengab*, in effect the price of the virginity of the girl to be married.⁶

Marriage payments were doubly important, the man received a wife from her parents, and later, in the event of the husband's death, the woman was assured of her livelihood. Tacitus explained these customs: "The wife does not bring a dowry to her husband; on the contrary, he offers one to her. This part of the affair is arranged by her parents and kinsmen, and they pass judgment on the wedding gifts, which are no toys collected to suit feminine frivolities or adorn a bride; instead of that, they consist of oxen, and a bridled horse, and a shield and spear and sword. These are the presents that await her as a wife, and her own wedding present to her husband in return is a gift of arms. This is the strongest bond of union; this the mystery of marriage; these are their gods of wedded life."⁷

Marriage was the second big event for teenagers, girls or boys. Girls were often engaged and married by the age of 14, with the father having the power of decision in this matter. Parents aimed to get their boys married as soon as possible, as adolescence was seen as a dangerous age, and to 'curb the lust of adolescence by the marital remedy'. Marriage of sons was also intended to keep landed property in the family.⁸

⁵ This term seems to be used with several meanings, sometimes that of marriage price or dowry, and sometimes with the meaning of punishment for one who has taken a girl in marriage without her father's consent. See Katherine Fischer Drew, *The Burgundian Code* (Philadelphia: University of Pennsylvania Press, 1993), 79.

⁶ ***, *The Cambridge Ancient History: Late Antiquity Empire and Successors. A.D. 425-600. vol. XIV* (Cambridge: Cambridge University Press), 426-427.

⁷ Tacitus, *The Agricola and Germania* (London: Methuen & CO, 1894), 70.

⁸ Pierre Riché, *Educație și cultură în Occidentul barbar. Secolele VI-VIII* (București: Meridiane, 2001), 146.

Family and inter-family relationships were important to the act of marriage. A legal marriage could be made between a free adult man and a free adult woman with the consent of the families of the two and without them being related. The age of majority, *aetas perfecta* or *legitima*, differed from one Germanic lineage to another: 12 years among the Salian Franks, 14 among the Cologne Franks and Visigoths, 15 among the Anglo-Saxons, Burgundians and Riparians. Roughly speaking, the barbarians, for whom the figure seven was generally an important one, kept the traditional divisions: childhood to age 7 and adolescence to age 14. From the Salic Law we learn that when a boy turned 12 years old, his hair was cut off, which corresponds to the Roman *capillatura* ceremony. Among the Ostrogoths, Lombards and Franks, only before the Carolingian period, there was a second coming of age, marked by the handing over of arms, as in early Germanic society. Some historians have considered that ritual arming was replaced in the Merovingian Franks by *barbatura*, the cutting off of the first beard, a ceremony taken over from the Romans.⁹

Typical of the Germanic peoples, the Visigoths also made the father, the head of the family, responsible for arranging a marriage for his daughters, and if he was no longer alive, this role was taken over by the mother, elder brother or uncle, in order. On the other hand, the eldest son was free to choose his own wife without the consent of his relatives (Book III, Title I, 8). Visigothic legislation regulated the amount of the dowry that the groom had to offer the bride, i.e. 10% of the value of her own fortune or of what she was to inherit (Book III, Title I, 6). The mother had the right to represent the family in matters of marriage if the father died. However, if the mother remarried or died, the brothers obtained this right (Book III, Title I, 8), without being allowed to abuse their right. Thus, the brothers could not delay the sister's marriage in order to benefit from her share of the father's estate. On the other hand, the daughter was not to marry a man from a lower social class, risking losing her share of the inheritance (Book III, Title I, 9). If a girl, already betrothed with her father's consent, gave up and became betrothed to another man, all her property reverted to her first betrothed (Book III, Title I, 3).¹⁰ When a man married a girl and obtained her guardian's consent only after their union, he was obliged to pay the legal price for his bride, and if he failed to do so, the wife reverted to her family (Book III, Title II, 8).¹¹

For the Longobards, marriage was an important institution, whereby the girl passed from the protection (*mundium*) of her father to that of her husband, as did her property. Two ceremonies took place to formalise the relationship: first the betrothal, which consisted of an agreement by which the groom, whether or not supported by his relatives, undertook to pay a certain amount (*meta*) to the bride's

⁹ Riché, *Educație și cultură în Occidentul barbar*, 145-146.

¹⁰ S.P. Scott, *The Visigothic Code (Forum Judicum)* (Boston: The Boston Book Company, 1910), 90-92.

¹¹ Scott, *The Visigothic Code*, 87.

family, followed by the main ceremony in which the payment was made and formally the bride's father or brother gave her to the groom (*traditio*), making the transfer of the *mundium* official, and the girl's father offered the couple a gift, *faderfio*. In turn, after the wedding night, the groom would offer a gift to the bride, *morgengabe* or *morgincap*. These gifts were generally very substantial and considered the woman's property, and in the event of her death they went to her heirs, not to her husband. If the *meta* was not paid, the bride remained under the legal protection of her family, as did any children.¹²

The same principle was applied in Visigothic law. In order for a marriage to be valid, a dowry (wedding gift) had to be given to the bride by the groom (Book III, Title I, 1). Part of any personal property, whether received from the king or otherwise acquired, could be offered as a dowry, and a written document to this effect could not be contested (Book III, Title I, 10). If the marriage covenant had been made and the dowry provisions had been observed, the marriage contract could not be broken by either party and there was no legal basis for breaking the bond (Book III, Title I, 4).¹³

The Lombards considered that a minor could not marry an adult woman, as he was not strong enough to have intimate relations with her. However, in order to achieve such an union, an agreement between the boy's guardian and the woman's relatives was necessary. On the other hand, marriage between a woman and an orphaned minor under the age of 13 was not valid (Liuprand 129). If a minor wished to become engaged until the age of majority, he had to secure the dowry, *morgengabe*, and was subsequently entitled to assume responsibilities and sign contracts (Liuprand 117).¹⁴

According to Longobard law, girls could marry from the age of 12, only then being considered mature enough (Liuprand 112)¹⁵. If the age was not respected, the girl returned to her parents' home and the man was obliged by law to pay 900 *solidi*, half to the girl's guardian and half to the tax authorities. If the *mundwald* approved the marriage of a girl under 12 years of age, he was obliged to pay a fine of 300 *solidi*, and the girl's *mundium* went to the king (Liuprand 12)¹⁶. If, within two years of the betrothal and the agreement between relatives, the husband postponed the marriage, the girl's guardian could demand full payment of the dowry from the groom, and the girl could be offered in marriage to any other free man (Rothari 178)¹⁷. A comparison of Titles 12 and 112, issued by the Longobard King Liuprand, helps us understand that the legislator originally suggested that it would

¹² Katherine Fischer Drew, *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1996), 31-33.

¹³ Scott, *The Visigothic Code*, 75-82.

¹⁴ Fischer Drew, *The Lombard Laws*, 195.

¹⁵ Fischer Drew, *The Lombard Laws*, 192.

¹⁶ Fischer Drew, *The Lombard Laws*, 148-149.

¹⁷ Fischer Drew, *The Lombard Laws*, 84.

be appropriate for a girl not to marry before the age of 12. Subsequently, the provision was reversed and the minimum legal age for girls to marry was set at 12, to avoid any controversy or abuse.

At the Franks, marriage was also preceded by an engagement ceremony in which the future husband paid a price for his future wife and her father offered her a gift. In fact, the bride-to-be would receive from her fiancé and father some valuable property or goods, which would remain her property after her husband's death. These assets, which constituted the bride's dowry, could not be alienated by her husband and were inherited by her children. Title LXVa¹⁸ mentions the compensation to be paid by a man who withdraws from a betrothal: 62.5 *solidi*, without specifying any penalty in the event of the woman's withdrawal from the future marriage. If, after the death of her husband, the woman wished to remarry, she was obliged by law to pay the deceased husband's relatives 10% of the value of the wedding gift for the transfer of the *mundium* to the new husband. After the woman's death, what remained of the dowry went to the children of the first marriage (Capitulum III, Title C, 1-2)¹⁹. On the other hand, in the Longobards' case, if a girl fell ill with leprosy after the betrothal, the man could choose not to marry her and keep his property without being accused of negligence, the girl's illness being considered a natural consequence of her sins (Rothari 180)²⁰.

Most likely, the main role of the gift the woman received at her wedding was to give her some independence from her husband by having her own wealth and some income from it. In the case of the Visigoths, a woman's personal fortune, the wedding gift, went to her children when she died. Minor children, together with their property, remained under the control of the father in the event of the mother's death. The father benefited from the fruits of the children's property, but could not destroy or alienate them in any way. Legislation advised widowed fathers not to remarry, and if they did they were not allowed to leave their children from the previous marriage. When the children reached the age of 20, they received half of the deceased mother's estate, the other half being for the benefit of the father for the rest of his life, ultimately to be shared by the children (Book IV, Title II, 13). On the other hand, a widowed mother inherited an equal share of her husband's estate with their children, which was to be divided to the children upon her death (Book IV, Title II, 14).²¹

The Burgundian legal code includes many articles regulating the right of inheritance or succession. In the absence of sons, daughters inherited their fathers. If a Burgundian died without sons or daughters, the sisters or next of kin would inherit. If a married woman died, the widowed husband could not claim back from

¹⁸ Katherine Fischer Drew, *The Laws of the Salian Franks* (Philadelphia: University of Pennsylvania Press, 1993), 126.

¹⁹ Fischer Drew, *The Laws of the Salian Franks*, 42.

²⁰ Fischer Drew, *The Lombard Laws*, 84-85.

²¹ Scott, *The Visigothic Code*, 123-125.

the deceased's family the price paid for the marriage settlement. When the husband died, the wife could not claim payment of the expenses she had incurred during the marriage. If a married but childless Burgundian died and his wife did not remarry, she received one third of the deceased's estate for the rest of her life, and his heirs received the entire estate upon her death (Title XLII). If the widow remarried within a year, she received nothing of her former husband's estate. If she contracted another marriage after 1-2 years, her husband's entire estate reverted to his heirs, even the price paid for his bride by the second husband.²²

We note that the woman is supported by Frankish law to have some independence (property), but at the same time we find no reference to the possibility of inheriting her own husband. She kept her wedding gifts (received from her husband and father) and the possibility of being heir to relatives in her own clan, but there was also the risk of contributing to the payment of compensation for her own relatives (Title LVIII, 3). It is clear that the position of women was an important one in Frankish society, even stronger than that of the Visigoths, Burgundians or Longobards.²³

Divorces were generally not encouraged in the Germanic world, as evidenced by the small number of articles in the barbarian laws on the subject, but some situations are presented which allow the husband and wife to separate or the husband to repudiate his wife. At the same time, a number of situations are covered with regard to a possible second or even third marriage.

The *Lex Gombetta* contains clear provisions on divorce or repudiation (Title XXXIV). If a woman abandoned her husband, she could be punished by drowning in a bog, a method applied by the old Germans to cowards or those unable to fulfil their obligations to the king. If a man left his wife without legal grounds, he was obliged to pay compensation equal to the bride price plus a fine of 12 *solidi*. The wife could only be legally repudiated if she was guilty of adultery, witchcraft or grave desecration and only after the charges had been proven, and the judge decided the punishment. If the accusations could not be proven, the woman could not be repudiated, but the husband could leave his wife and home, while giving up his entire estate to his wife and children.²⁴ If a Burgundian committed adultery with his wife's relative or sister, he was obliged to pay the woman's guardian her *wergeld* and a fine of 12 *solidi*, and the woman in question became the king's slave (Title XXXVI).²⁵

In the Visigothic kingdom, divorces were allowed only in the case of adultery or if both spouses consented to such an act, a rule that also applied to betrothals (Book III, Title VI, 2). A free man could marry a woman who had been repudiated by her husband, rightly or wrongly, only if he received written proof or the testimony of

²² Fischer Drew, *The Burgundian Code*, 50-51.

²³ Fischer Drew, *The Laws of the Salian Franks*, 43.

²⁴ Fischer Drew, *The Burgundian Code*, 45-46.

²⁵ Fischer Drew, *The Burgundian Code*, 46.

several witnesses (Book III, Title VI, 1).²⁶ In the case of adultery, a husband or fiancé could kill his adulterous wife and her partner without being charged with murder (Book III, Title IV, 4). At the same time, if a father killed his daughter who was guilty of adultery in his own home, he could not be charged with murder, but was free to spare her life (Book III, Title IV, 5).²⁷ If a betrothed girl was guilty of adultery, she became the slave of her betrothed, together with the man with whom she had sinned, and their property went into the possession of the man who was cheated (Book III, Title IV, 2). However, when the woman was not caught committing adultery, the husband could accuse her before the judge, presenting evidence, and if it proved true, the woman and the man with whom she had committed adultery remained at the husband's disposal (Book III, Title IV, 3). Visigothic law also provided for the situation in which a free unmarried woman committed adultery with a free unmarried man, and then the latter had the right and even the obligation to take her as his wife, otherwise he was guilty of knowingly breaking the law (Book III, Title IV, 8).²⁸

In Grimoald's legislation we can identify references to child abandonment, women going to a married man or adulterous wives. A particular case mentioned here is that of the husband who illegally left his wife to marry another. He was obliged to pay compensation of 500 *solidi*, which was divided equally between the family of the deserted woman and the royal treasury. The former wife's *mundium* also went to her family, and the woman could return to her parents' home, keeping her entire personal fortune (Grimoald 6).²⁹ When a woman made an attempt on her husband's life, either personally or in collusion with others, she could deny the accusations and her family could protect her by oath or judicial duel. If the woman's guilt was proven, her husband became the master of her and her property (Rothari 202). The woman was sentenced to death if she killed her husband, and the property went to the victim's heirs (Rothari 203). If the husband caught his wife preying on a free man or slave, he could kill them both (Rothari 212), although the free man could prove his innocence by oath or duel (Rothari 213).³⁰

It seems that adultery was rare among the Germans, but Tacitus tells us how it was punished in his time: "Amongst all this immense population adultery is extremely rare: its penalty is instant, and is left to the husband; he cuts off the hair of the unfaithful wife, strips her, turns her out of his house in the presence of the kinsmen, and scourges her through the whole village. For there is no pardon for the fallen woman; not by her beauty, not by her youth, not by her wealth, will she

²⁶ Scott, *The Visigothic Code*, 113-114.

²⁷ Scott, *The Visigothic Code*, 96.

²⁸ Scott, *The Visigothic Code*, 95-97.

²⁹ Fischer Drew, *The Lombard Laws*, 134.

³⁰ Fischer Drew, *The Lombard Laws*, 91-93.

succeed in finding a husband. For no one there makes a jest of vice, or says that seducing and being seduced is the style of the period."³¹

In addition to traditional marriage, the Franks also practised a type of marriage that excluded any transfer of authority or dowry, called *Friedelehe*, an act that resisted the authority of the heads of families and the Church, increasingly involved and interested in the legitimacy of children and marriages. This marriage began with the abduction of the woman by the man, but with her consent and acquiescence, and once this had been consummated, the girl's family could choose between revenge, compensation for the girl's forced abduction, or acceptance of the abductor as a husband. Even with the disapproval of many, these marital ties often ended up being publicly acknowledged. On the other hand, many Franks used to have concubines, either between marriages or even during marriage. This practice seems to have ended in the 8th century, being a custom condemned by the Church. However, even men involved in such relationships could see the children of such unions as a potential threat to the inheritance of legitimate children, and there was a danger of the family fortune being broken up.³²

Free Lombards could have other official relationships besides marriage, and the resulting children were called natural children, not illegitimate, and were counted as heirs. Daughters could be heirs in the absence of sons, but women had no legal powers, and their estates were administered by the legal guardian (*mundwald*), but instead were protected by law. Free women could not marry slaves, unlike free men, who could marry slaves after they were formally freed and the resulting children were free and legal heirs. The children of a free man and a slave, unmarried, were slaves of the mother's master, but could be bought and freed by the father and became natural sons with the right of inheritance. A free woman could marry an *aldius*, her mundium remaining with her family, and the resulting children were free and under the protection of her family. If the half-free man or his employer paid for his wife's *mundium*, the resulting children became *aldii*. A free man could marry an *aldia*, but if she was not formally freed, their children were *aldii*.³³

We note that men had certain marital freedoms, but the barbarian laws were not as permissive for women. If the daughter of a free Burgundian had an affair with a man, whether barbarian or Roman, in secret, the man was obliged to pay 15 *solidi*, with no further punishment. In return, the girl was considered infamous by losing her chastity (Title XLIV). When the woman in question was widowed, she lost her right to another marriage, and was even forbidden to marry the man with whom she had committed the crime. If a Burgundian woman married a man deliberately and secretly, he was obliged to pay the girl's family the price of the betrothal and could

³¹ Tacitus, *The Agricola and Germania*, 71.

³² Patrick J. Geary, *Merovingienii. Europa înainte de Carol cel Mare* (Târgoviște: Cetatea de Scaun, 2009), 115-116.

³³ Fischer Drew, *The Lombard Laws*, 33-34.

then marry another woman.³⁴ On the other hand, under Title C, issued later, a woman could marry without her parents' consent, but from then on the husband had absolute rights over her and her property. On the other hand, a man who took a girl from a noble or middle-class family into marriage without her father's consent had to pay her three times the price of the marriage, i.e. 450 *solidi*, and a fine of 36 *solidi* (Title CI, 1). And those of the lower stratum paid a triple *wittimon*, but in total only 45 *solidi*, and a fine of 12 *solidi* (Title CI, 2).³⁵

Under Visigothic law, marriage or incestuous relations with any female relative of the father, mother, grandfather or grandmother, with the brother's fiancée or with the widow of any relative were forbidden (Book III, Title V, 1), all marriages with relatives up to the sixth degree being considered incestuous, except those marriages permitted by the king. Violation of this law resulted in the perpetrators being removed by a judge and imprisoned in a monastery for life. Punished priests, deacons, monks or widows were not allowed to marry and were punished by confiscation of all property.³⁶ Also included in the category of forbidden marriages were those between a free man or woman and slaves, and in the case of deviation from the law, the perpetrators were separated, punished by whipping and the children resulting from such a union automatically became slaves. A woman who committed the same offence repeatedly risked becoming a slave. (Book III, Title II, 2-3).³⁷ Visigothic law forbade relations between a man and any woman related to his father or brother, as well as between a man and his son's concubine. At the same time, there was also a penalty for those who did not respect this law: they lost their property to their legal heirs, after which they were forced to do penance and exiled (Book III, Title V, 7).³⁸

Salic law forbade marriage between an uncle and his niece, implicitly between aunt and nephew, or with the ex-wife of the maternal brother or uncle, implicitly with the ex-husband of the maternal sister or aunt (Title XIII, 11). We note here that maternal uncles and aunts were considered closer relatives, and marriage to the former partners of paternal uncles and aunts was not prohibited by law. A later law, issued by King Childebert in 594, punished a man who married his father's wife with death, one of the few cases where Frankish law imposed capital punishment. As with other Germanic peoples, the children of an illegal marriage were considered illegitimate and could not be heirs (Title XIII, 11).³⁹

The Longobard king Aistulf refers in an article to incest and forbidden marriages as an act "against God and against his own soul" (Aistulf 8)⁴⁰, and decides to stop

³⁴ Fischer Drew, *The Burgundian Code*, 51-52.

³⁵ Fischer Drew, *The Burgundian Code*, 85-86.

³⁶ Scott, *The Visigothic Code*, 106-111.

³⁷ Scott, *The Visigothic Code*, 84-85.

³⁸ Scott, *The Visigothic Code*, 86.

³⁹ Fischer Drew, *The Laws of the Salian Franks*, 41-42.

⁴⁰ Fischer Drew, *The Lombard Laws*, 229.

them immediately. Marriages between a man and his cousin's widow, stepmother, half-sister or sister-in-law were considered illegal. If children were born out of these relationships, they were considered illegitimate and could not inherit their parents' property.

As a special case, Burgundian law offered guardianship over a minor child to the mother, underlining the importance of women in Burgundian society. However, if a widowed mother chose to remarry, she lost guardianship of her children to the children's grandfather (Title LIX). If a woman married a second time, the parents of the first husband received the marriage payment. When a woman had a third marriage, she personally received *wittimon* (Title LXIX). A woman married more than once, with children from each marriage, benefits throughout her life from the nuptial gifts she received, without the possibility of alienating them, and upon her death her property is left to her children. When a woman died childless, the marriage property was divided equally between her parents and the parents of her deceased husband. The woman was free to dispose of the property she received as a gift during her lifetime or by will from her husband.⁴¹

In the Visigothic kingdom, if a woman remarried less than a year after the death of her first husband, or if she committed adultery, half of her estate was confiscated and given to her children. If she had no children, then the estate went to the deceased husband's heirs, his relatives (Book III, Title II, 1). This period of one year, during which the woman was forbidden to have another relationship, was intended to prevent a woman pregnant with her deceased husband from killing her unborn child so that she could remarry as soon as possible. The only way for a widow to marry early was a royal order. To avoid unpleasant situations, women who thought their husband was dead in another country were forbidden to remarry. If, however, they did, and the first husband returned, he became master of the woman and her new husband, who became slaves (Book III, Title II, 6).⁴²

In the Frankish kingdom, when a woman married, her *mundium* was transferred from her family to her husband. On his death, it seems that the wife's *mundium* remained with the deceased man's relatives, without much legal control. If a woman married a second time, neither her family nor that of her deceased husband could object, provided the legal formalities were fulfilled. On the other hand, as a widow, she could receive payment to allow her daughter-in-law a second marriage, proving that a woman could own her son's wife's *mundium* after his death (Capitulum III, Title C)⁴³. In many cases the woman in Frankish society was legally independent. She could own property which she could administer herself, but she could also be held liable before the law and charged compensation (Title LV, 4).⁴⁴

⁴¹ Fischer Drew, *The Burgundian Code*, 40-41.

⁴² Scott, *The Visigothic Code*, 83-86.

⁴³ Fischer Drew, *The Laws of the Salian Franks*, 145.

⁴⁴ Fischer Drew, *The Laws of the Salian Franks*, 42-43, 118.

Generally, in the Germanic world, the family consisted of husband, wife, minor sons, unmarried daughters, and other dependents: slaves and dependent half-free people. Unlike other Germanic peoples (Burgundians, Visigoths, Longobards), the Franks relied much more on the idea of the extended family or clan. The subject of marriage, which is the basis of the family, is touched on in numerous laws and the conditions under which a marriage can be legal or illegal are specified.

As for marriage, a unitary element in barbarian kingdoms was the payment of a bride price by the groom and his family. The bride personally received a wedding gift, *morgengabe*, which remained in her possession for the rest of her life. The only barbaric legal code that does not mention a *morgengabe* gift is the Burgundian one. This legislation, one of the earliest written Germanic codes, perhaps even the first, is heavily Romanised, allowing intermarriage from the outset. The same would happen in the Visigothic and Longobard kingdoms, but in the 7th and 8th centuries respectively. Interfamilial relations were very important for a marriage union, and the agreement of the heads of the family was necessary. There was also the possibility of marriage without family consent, but the new family lost the right of inheritance. In the case of Longobards, they could also have other formal relationships, which could result in natural sons. The legal age for marriage is generally specified, although it differs from one law to another, and failure to do so has repercussions for the guardians of those involved.

Adultery and incest were severely punished throughout the Germanic world, sometimes resulting in capital punishment. Divorce was allowed only in certain circumstances, primarily when a woman's adultery was proven. Among the Burgundians, divorce was also allowed in cases of witchcraft or grave desecration. In Visigothic law, which was heavily Romanised and perhaps most influenced by the Western Church, abortion was forbidden and there were severe penalties for deviating from this law.

Thus, the legal relationship between husband and wife is described at length, a marriage is not valid without a dowry provided by the man, and a widow's property is protected by law, not being allowed to be disposed of without the consent of a council of relatives. An analysis of barbarian legislations shows that women did not have equal rights with men or even a well-defined legal status, but their property and position in society were protected by law. Thus, she enjoyed her own wealth throughout her life, and her husband had no right to alienate it. When the woman died, her property went to her children. On the other hand, she had no right to inherit her husband.

Analysing the barbarian legislations, we see that the king, by means of the law, has power over the family, but at the same time gives a position of power to the father or the husband. Thus, the monarch watches over the nuptial actors, regulating the transfer of power (*mundium*) from father to husband. At the same time, the Germanic legal codes allow us to intuit the ideal marriage: husband and wife of the same social class and preferably of the same ethnicity, who fully respect the law, but at the same time identify potential breaches and regulate them: divorce,

repudiation, adultery, non-payment of the bride price, etc. We can conclude that the institution of marriage was an important one for the Germanic world; it was the basis of barbarian society, ensuring the vertical transfer of power.