THE CHARACTER OF VESTIGOTHIC LEGISLATION

by

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THE CHARACTER OF

VISIGOTHIC LEGISLATION

VOLUME I

TEXT
Interest in the Visigoths has never been a characteristic of British historiography, and my own concern with them has come about only in a circuitous fashion. The original subject of my research was episcopalism and, more generally, episcopal activity among the Frankish hierarchy of the early ninth century. But the preoccupation of the councils of this period with marriage and related matters led me eventually to turn to an examination of the secular sources on these same subjects. Among these sources the *Volksrechte*, and in particular the law codes produced in the Visigothic kingdom, were prominent, and it was only after a lengthy period spent in an attempt to master the complexities of that most exasperating and intractable of problems, Germanic marriage, that I came, by a devious course, to awareness of the controversy which existed among Spanish and German scholars over the question of the nature of the Visigothic codes. Deeper investigation convinced me that the traditional view that different codes were promulgated for the separate use of the two national groups in Visigothic Gaul and Spain was correct, despite modern attempts to prove the territorial character of these codes. But no positive case had ever been made out for this traditional interpretation, and critics of the exponents of territoriality had, in general, been content to argue briefly, and
negatively, against particular aspects of the revisionist theories. I considered that it would be valuable to produce a dissertation which should both marshal the evidence in favour of the traditional, but never defended, assumption and make clear the reasons for the necessary rejection of the more modern territorialist theses. What follows is an attempt at this.

My debt to others is very large, and will be apparent from the notes. But it is claimed that, unless otherwise specified, all portions of this dissertation are original and in no case the result of work done in collaboration. My main sources have been the Visigothic law codes themselves, along with other legal and literary monuments of the fifth, sixth and seventh centuries; these are cited, together with all other sources and secondary authorities which have been used, in the notes and in the bibliography.

The lay-out of the dissertation requires some explanation. The duties of schoolmastering are such that the time during which I have been able to work on the thesis has been restricted to holidays and occasional evenings, and I found myself unable to present the bulk of the manuscript to be typed before the end of August of this year. The notes are lengthy, and it was impossible to find anyone capable, in the short time available, of so organising the whole that text and relevant notes might appear on the same page.
Reference to the notes would be easier, if these were bound in a separate volume rather than placed \textit{en bloc} at the end of the text. I must ask the indulgence of the Examiners for this unusual, but I hope not too inconvenient, mode of presentation.

I should like, in conclusion, to record my gratitude for the unfailing helpfulness shown me by the authorities and staff of the University Library, Cambridge, the Reading Room of the British Museum, the Joint Library of the Hellenic and Roman Societies and the Institute of Advanced Legal Studies. Among my friends and colleagues I should like to thank in particular Mr. M.R. Haywood, Mr. G.A. Tomlinson and Mr. E.N. Williams of Dulwich College, and Mr. M.J. Scott-Taggart of the University of York, for the stimulation and assistance which they have given me. The enthusiasm and learning of Professor Ullmann have been an inspiration to me since I was an undergraduate: I thank him now in addition for his good counsel and long patience. To my mother and to my wife to-be, finally, is due a debt of deep gratitude for their confidence, encouragement and understanding. \textit{Dux femina facti}.

Dulwich College,

September, 1967.

P.D. King.
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<tr>
<td>Anuario</td>
<td>Anuario de historia del derecho español.</td>
</tr>
<tr>
<td>CE</td>
<td>Codex Euricianus (cf. Bibliography, under Legum Codicis Euriciani fragmenta and Fragmenta Parisina).</td>
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<tr>
<td>CE (rest.)</td>
<td>Codicia Euricianis leges ex Legae Baiuvariorum restitutaes.</td>
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<tr>
<td>CT</td>
<td>Codex Theodosianus (cf. Bibliography, under Theodosiani libri XVI).</td>
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<td>D'Ors</td>
<td>A. d'Ors, &quot;La territorialidad del derecho de los visigodos&quot; in Estudios visigóticos, i (Rome/Madrid, 1956), pp. 91-124.</td>
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<td>D'Ors, Cod.</td>
<td>A. d'Ors, El código de Eurico. Edición, palin genesia, índices (Estudios visigóticos, ii (Rome/Madrid, 1960)).</td>
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<tr>
<td>ET</td>
<td>Edictum Theodoricci.</td>
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<tr>
<td>FG</td>
<td>Fragmenta Gaudenziana.</td>
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<td>G.G.</td>
<td></td>
</tr>
<tr>
<td>Isidore, Hist. Goth.</td>
<td>Isidore, Historia Gothorum.</td>
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<tr>
<td>LB</td>
<td>Lex Burgundionum.</td>
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Lex Romana Visigothorum.

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Levy, GS
LRB
LRV
LRV.CT
LRV.GI
LRV.NMai
LRV.NMart.
LRV.NS
LRV.NT
LRV.NV
LRV.PS
LV
LV ... (Chind.)
LV ... (Recc.)
Merea
Merëa
MGH
MGH, Auct. Ant.
Schmidt

E. Levy, Gesammelte Schriften, i (Cologne, 1963).
Lex Romana Burgundionum.
Lex Romana Visigothorum.
" " , Codex Theodosianus.
" " , Gaii Institutiones.
" " , Novellae Maioriani.
" " , Novellae Martiani.
" " , Novellae Severi.
" " , Novellae Theodosii.
" " , Novellae Valentiniani.
" " , Pauli Sententiae.
Lex Visigothorum Reccesvindiana.
Chindasvindian law of the LV.
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Introduction.

It is a truism that the central historical phenomenon of the five centuries which separate Constantine from Charlemagne is the decline, collapse and eventual disappearance of Roman Imperial authority in Western Europe. The sheer magnitude of the process of decline and the infinite ramification of its consequences are such that virtually all studies in the period in some way or other depend upon it as their ultimate point of reference. But it has been even more patently the immediate focal point of two intimately related and vastly important historical enquiries. The one looks forward to the decline from the history of the later Roman Empire and asks how and why it happened: the other looks back to the fall from the history of early medieval Europe and asks how far it can be said to have happened at all.

From Petrarch and Machiavelli, through Voltaire and Gibbon, to the great historians of modern times, a prodigious variety of interpretations and explanations has been advanced in answer to these two questions. But common to them all has been some degree of emphasis on the role of the barbarian invaders. For whatever view is taken of the ultimate causes of the fall of the Western Empire, it cannot be denied that the barbarians were the catalytic agent in the complex compound of circumstances in the fifth century:
nor can it be denied, however much Roman civilisation might be considered to have lived on into early medieval Europe, that the political authority of the Empire in the West did collapse and was replaced by that of those same barbarians. We may not agree with Piganiol that the Empire was murdered, but we have at least to admit that the barbarians administered the coup de grâce: we may agree with Firenne on the perpetuation of the essential features of Roman culture, but we have at least to admit that Germanic barbarians were henceforth responsible for the political development of Western Europe.

Among these barbarians the Visigoths played a prominent part. Even the briefest account of their political history makes this apparent. Already in the third century they were in violent contact with the Romans in the Danube provinces: ravaging the countryside and plundering the towns of Moesia, they had killed one Emperor in battle before they met crushing defeat at the hands of another. Relatively quiet for a century, they were again at war with Rome in the 360's. In 376, fleeing from the onslaught of the Huns, they were received within the frontiers of the Empire as federates: only two years later, as rebels, they defeated and killed the Emperor Valens at Adrianople. Moving westwards, they overran Greece and Italy, sacked Rome in 410, and arrived in southern Gaul during the reign of Athaulf (410-415). It was there, in Aquitaine, that they
later established their first permanent settlement in the Western Empire, sometimes at war with the Romans, sometimes at peace, and it was from that base that they expanded, under Euric (466-484), to create a huge and independent kingdom in southern Gaul and Spain. With the exception of Septimania, the lands in Gaul were lost in 507, after defeat by Clovis and his Franks at Vouglé, but the Visigothic power persisted in Spain: from the beginning of the sixth century to the beginning of the eighth, the rule of the Visigoths extended over most of the Iberian peninsula and came to an end only with the Moorish conquest of 711.

From the point of view of an enquirer into the circumstances in which the Western Empire fell, the significance of the Visigoths is obvious and immense. They were the first barbarian people to be received en masse into the Empire, the first to penetrate Italy and strike at the very heart of the Roman world, the first to create an independent barbarian state on once-Roman soil. In the hundred years between 376 and 476 they constituted the most formidable of the various alien elements in the body politic, a force to be fought, to be placated, to be courted or to be used - but always a force to be reckoned with: if it was the Visigoths who plundered the eternal city which had remained inviolate for eight hundred years, it was also the Visigoths who checked in battle the terrible Attila against whom others had been helpless.
There is justice in the view that the 370's mark the beginning of the end for Rome, for the Visigothic influx and victory of that decade precipitated that process of political disintegration which reached its consummation in the replacement of Roman by barbarian dominion in the West. But the 470's mark, in a sense, the end itself, not because Odovacer in Ravenna assumed a shadowy and imperially-dependent authority over Italy, but because Euric in Toulouse wrested formal recognition from a helpless Emperor of his real and independent power over southern Gaul and Spain.

In large part, the history of the political decline of the Western Empire can be written in terms of the political progress of the Visigothic people from the panic-stricken suppliance of 376 to the confident autonomy of a century later.

Due attention has always been focussed on the cardinal part played by the Visigoths in the drama of the fifth century. But the two hundred and fifty years of Visigothic history which followed have not been regarded with the same interest and close study. Historical attention has tended, generally speaking, to concentrate on the Franks in this period, to the comparative neglect of their southern neighbours: the name of Dagobert would be known by many, that of Chindasvind by few. Such an emphasis is natural enough, for it was the Franks to whom the future belonged and whose civilisation constituted, despite change and development, the prime
political connecting link between the fifth century and the Middle Ages proper. There was no future for the Visigoths, only sudden extinction of their power in 711. But the fact is that while the average student of early medieval history would know, and be expected to know, a great deal about Merovingian society in all its varied aspects - economic, financial, administrative, military and so on - he would know, and, indeed, be able easily to find out, very little about the corresponding features of Visigothic Spain.

Although knowledge of later Visigothic history is not part of general historical equipment, it deserves to be. For evaluation of the civilisation which emerged in the South is every bit as pertinent, from the point of view of determining the extent to which the Roman world lived on in the West after its political death, as is assessment of that which grew up under the long-haired kings of Gaul. Spain was a highly Romanised area, and the Visigoths themselves had been, of all the barbarian peoples, in longest and closest contact with Roman civilisation. They were, on the other hand, fiercely Arian, powerfully conscious of their separate national identity, and numerically far inferior to the subject Roman population. What were the bases of the civilisation which developed from the commixture of Roman sophistication and Germanic immaturity and which lasted for so long? The independent Visigothic
kingdom was, after all, no ephemeral creation, but a state which maintained itself, despite external threats and internal turbulence, for close on two and a half centuries. What were the characteristics of this state? To what were its strength and long life attributable? In what ways did it perpetuate the essential features of Roman civilisation? In what ways those of the barbarian conquerors? To give detailed answers to such questions as these is to give some answer to the fundamental question: how far is it correct to speak at all of the fall of Rome in the West?

A close study of Visigothic society in all its aspects is the obviously necessary preliminary to any attempt to give such answers. Sources for such a study are not lacking. Of least importance here are the historians and chroniclers. The political history of the kingdom is sufficiently, though by no means amply, covered by writers like Gregory of Tours, John of Biclaresnis and St. Isidore, but political history is not of the essence of the matter. Far more important is the evidence which the decrees of the great ecclesiastical councils of seventh-century Spain offer in witness of the development and strength of the Church. These records tell us a great deal about the zeal and dynamic activity with which the Church operated, and about the spiritual ethos of Visigothic society - at least at a high level, for the succession of councils may very well point to a constant need to emphasise
Christian, and Catholic, practice and belief in the face of indifference or even open hostility at a lower level: the Visigoths themselves, it should be remembered, clung to their traditional Arianism right up to the end of the sixth century. But conciliar sources do not tell us very much about the more material facets of Visigothic society, about the economy, finance, administration and so on: nor do they tell us of the predominant features of the everyday life enjoyed or endured by the inhabitants of Visigothic Spain.

To determine what we might term the social history of the Visigothic kingdom, its history wie es eigentlichen gewesen, recourse must be had to a third group of written records. The Visigothic kings were great legislators: from the time of Theodoric I, in the early fifth century, to that of Wittiza, in the early eighth, a succession of decrees and whole codes of laws was promulgated on royal authority. Not all of these are extant, but sufficient remain for there to be a wealth of material available for study. The subject matter of these numerous laws is so diverse that practically no aspect of Visigothic society is left untouched. The laws throw light on the financial and administrative systems, on the execution of justice, on the military organisation, on the economy: they deal with institutions as varied as slavery and guardianship, the colonate and marriage: they regulate the rela-
tionship of king and people, of Romans and Visigoths, of lords and retainers: they establish the law of property and succession, of testaments and sales. Subjects range from treason to the violation of tombs, from murder to the castration of animals, from rape to prostitution. In short, these laws reflect in the most comprehensive fashion the social conditions and internal organisation of the Visigothic kingdom: they constitute a vast storehouse of information which it is impossible to overrate in importance.

In the legal sources of the period, then, lies an obvious and invaluable means of close enquiry into the state of society existing in southern Gaul after the replacement of Roman by barbarian rule, into the modus vivendi forced upon conquerors and conquered alike, and into the characteristic ethos of the civilisation which emerged in Spain under the later Visigothic kings. But an essential preliminary to the correct employment of these texts is the resolution of one fundamental question: how far do they reflect a law common to all the inhabitants of the Visigothic kingdom? We know that in the Burgundian, Ostrogothic and Frankish states there reigned the principle of the personality of law: barbarians and Romans were ruled by different legal regimes, by what may be termed national codes of law. If this was also the case in the Visigothic kingdom, the value of the legal sources
would not be any the less, but our whole approach to them would be vitally modified by the knowledge that any one particular provision could not be regarded as evidence of a general state of affairs. The problem can be most simply expressed thus: were the laws - more specifically, the law codes - of the Visigothic kingdom territorial in character, or were they personal? On the solution of this crucial question depends in considerable part our view of the character of Visigothic civilisation itself.

It is the purpose of this dissertation to examine the evidence which bears upon the problem of the nature of the Visigothic law codes: it is its contention that that evidence offers support only for the view that a personal law system pertained until halfway through the seventh century, when a territorial regime was introduced for the first time. This is, in essence, the view almost universally held - but never, extraordinarily enough, justified by explicit argument - up until the last war, since when it has come under comprehensive attack. But before we turn to outline the state of past and present historical opinion, it will be as well to describe briefly the subject matter of the enquiry - the legal sources of the Visigothic kingdom.

* * * * *
The earliest laws which we possess are those which once formed part of a lengthy law code, the Codex Euricianus (CE), published by the great Visigothic king Euric (466-484) about the year 476. In its original form the code probably consisted of some 350 clauses, organised under different chapter headings and dealing with a variety of matters of both public and private law. Unfortunately the CE no longer exists in full. Its sole remains are clauses 276 to 336 of the original, little more than a sixth, therefore, and many of these clauses are in fact now almost totally illegible or so fragmentary as to be unintelligible, such is the deplorable state of preservation of the palimpsest which contains them. Others are lacking altogether. Zeumer succeeded in reconstituting some missing clauses by using the closely allied laws of the Lex Baiuvariorum, and Professor d'Ors has recently attempted to supply others from a study of the obviously early texts incorporated in the later Visigothic codes. But the sad fact persists that the contents of the CE as it originally existed must, for the most part, remain a mystery to us.

Far more is known about the second law code which must be dealt with, the Lex Romana Visigothorum (LRV), or Breviary, for numerous manuscripts have survived. The code was promulgated by Alaric II (464-507) at Toulouse in 506, the year before Vouglé.
It is wholly Roman in content, consisting of a series of excerpts from the Codex Theodosianus (CT),\(^{(1)}\) from Novellae of Theodosius II and later Emperors, and from certain juristic texts, particularly those of Paulus and Gaius.\(^{(2)}\) Most of the texts of the LRV are accompanied by an Interpretatio, almost certainly not the work of Alaric's advisers, but that of an earlier age.\(^{(3)}\) There are no problems of content here, then. But the one copy of the LRV which emanates from Spain\(^{(4)}\) has a significant addition to the body of the Roman text. This consists in a single law promulgated by king Theudis (531-548) in 546 and concerning judicial costs.\(^{(5)}\) The king provides in the law that it shall be introduced into the body of what he terms the Corpus Theodosianum;\(^{(6)}\) in the palimpsest in question, it in fact appears precisely in the appointed place.\(^{(7)}\)

A third code represents the last of the principal extant legal sources. This code, called here the Lex Visigothorum (LV),\(^{(8)}\) again exists in several manuscripts\(^{(9)}\) and dates from the reign of king Reccesvind (649-672), probably from about the year 654.\(^{(10)}\) The code is divided into twelve books which are subdivided into chapters, each containing a certain number of clauses. The contents are extensive, covering all aspects of public and private law. But the texts themselves fall into groups other than those dictated by their subject matter.\(^{(11)}\) Some are distinguished by the written authority of the king who originally promulgated them; of the
total of 526 clauses, 193 are thus accounted for, the vast majority of these being the work of Chindasvind, Reccesvind's predecessor, and of Reccesvind himself.\(^{(1)}\) Of the remaining 333, 315 have the heading *Antiqua* or *Antiqua emendata*: the other 18 have no heading at all. These last two groups in fact consist of laws originally contained in a code promulgated by king Leovigild (568-586) and generally known as the *Codex Revisus* (CR).\(^{(2)}\) We thus have in the *Antiquae* and unheaded chapters of the LV first-rate material for knowledge of the legal situation which had existed some three-quarters of a century earlier, even though the CR is not extant as a whole.

About the territorial character of the LV, as of later Visigothic legislation, there can be no dispute.\(^{(3)}\) The difficulty lies in establishing the nature of the legal regime existing before the promulgation of Reccesvind's code, in discovering, in other words, the scope and relationship of the three earlier codes, the CE, the LRV and the CR. Were these codes national in character, intended for the use of only one section of the mixed population, or were they territorial? If they were national, which of them ruled the Visigoths, which the Romans? And was it only with the publication of the LV or perhaps before that the national law system came to an end? If they were territorial, did they rule as successive codes, each of them abrogating its immediate predecessor? Or
did they perhaps govern in combination, so that the territorial law was contained in co-existing and complementary codes? Is it even perhaps the case that there are both national and territorial codes among them? These are the questions to which answers must be found if we are to be able to use the material of the Visigothic law codes correctly. A brief survey of the various views which have been expressed on these matters in the past will be a helpful preliminary to the attempt made here to answer them.

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The starting-point of any modern study of the legal history of the Visigothic kingdom must be seen in an article written by the Spanish scholar A. García Gallo, which appeared in 1941 (1) and which was rightly deemed by author and critic alike as revolutionary in its view of the character and evolution of Visigothic legislation. (2) In radical opposition to the then prevailing consensus of historical opinion, García Gallo advanced the thesis that from the earliest days the Visigothic kingdom enjoyed a unitary legal regime, and that each code of law of which we have knowledge was of full territorial validity. Basing his arguments on a wide-ranging examination of evidence from a variety of sources, he contended that the CE was in sole territorial force until replaced by Alaric's LRV, that this in turn held sway until the promulgation by Leovigild of the CR, and that this was then abrogated, some three-quarters
of a century later, by Reccesvind's LV.

It is difficult to overestimate the revolutionary nature of this territorialist interpretation - which will be designated here as the 'abrogation' argument. For in advancing the thesis of territoriality, García Gallo denied what had been for many years a basic article of faith among scholars - the notion that the legal regime of the Visigothic kingdom was characterised, until some time in the seventh century, by the principle of the personality of law. (1) The particular form in which this general notion was expressed had become established, since the end of the nineteenth century, as the following. The barbarian Goths (2) had no written code until the time of Euric: the code which they then received was replaced by another, promulgated by Leovigild, a century later. The Romans were unaffected by these two codes, except when individual laws regulated particular features of Roman/Gothic relations (3) or when Romans and Goths came into litigious contact. (4) They remained ruled, in the early years, by a variety of legal and juristic sources, of which the Theodosian Code was the most important, but after 506 were governed by the LRV, issued by Alaric. Not until the reign of Reccesvind did this national, or personal, system of law disappear: the first territorial law code was the LV of 654(?), even though a tendency towards territorial legislation was discernible from the time of Theudis onwards.
This view, which may be called the traditional thesis, was that which appeared in the writing of Zeumer, Brunner, Schmidt, Torres, Wohlhaupter, Prieto Bances and others. Variations did appear, but none of them attributed a territorial character, as did García Gallo, to the early codes, the CE and the LRV.

Before Zeumer's first edition of the LV and his definitive identification of the fragments discovered by the Maurists as laws of the Eurician code mentioned by Isidore, varying views had been proposed of the evolution of Visigothic legislation. But common to the great majority of writers who had concerned themselves with the subject was the same notion that Goths and Romans had been ruled by separate bodies of law. García Gallo's belief that his revisionist view was in fact a reversion to an opinion generally held before the nineteenth century was not justified; his interpretation was even more revolutionary than he himself realised.

The early editors of the Visigothic laws offer little support for either the traditional or the territorialist theory. But already in 1665 Gothofredus, in his edition of the Codex Theodosianus, referred in explicit terms to the duality of law in the barbarian kingdoms. Where Roman cities and provinces came under the
control of the barbarians, he said, "duplici iure regebantur: nam Romani ... Romano porro iure seu Theodosianis legibus utebantur ... ipsi vero qui exterse gentis erant ... suo proprioque iure regebantur." (1) The LRV was a collection of laws "quibus Romani inter se disceptarent" (2) and the rule of this code came to an end among the Romans of the Visigothic kingdom only under Chindasvind (642-653): "Romani hoc iure regebantur, centum quinquaginta post annis, usque quo Chindus Windus legis Romanae usum interdixit, suumque Codicem omnibus subditis suis proposuit." (3)

Even more explicit was Montesquieu, in the eighteenth century. To him, it was "un caractère particulier de ces lois des barbares, qu'elles ne furent point attachées à un certain territoire" (4) ... Dans (le pays) du domaine des Wisigoths, une compilation du code Théodosien, faite par l'ordre d'Alaric, régla les différents des Romains; les coutumes de la nation, qu'Euric fit rédiger par écrit, décidèrent ceux des Wisigoths." (5) It was the joint work of Chindasvind and Reccesvind, according to Montesquieu, to abolish the Roman laws. (6) These two kings were similarly coupled by Bouquet, who described them as aiming at a "jurisprudence uniforme" and thus making every effort to abolish the Roman laws. (7) To Hein-eccius (8) and Masdeu y Montero (9) it was Chindasvind who brought to an end the use of the LRV by the Romans of the kingdom: to Franck von Frankenau (10) and Fernandez Prieto y Sotelo (11) it was
Reccesvind who accomplished this. All these authors clearly thought in terms of separate legal regimes: so too did Edward Gibbon.\(^{(1)}\)

The same view of a duality of laws in the Visigothic kingdom was maintained throughout the nineteenth century. It appears, for example, in Asso and Manuel,\(^{(2)}\) Lardizábal y Uribe,\(^{(3)}\) Savigny,\(^{(4)}\) Eichhorn,\(^{(5)}\) Sempere y Guarinos,\(^{(6)}\) Zopf,\(^{(7)}\) Pidal,\(^{(8)}\) Gaupp\(^{(9)}\) and Davoud-Oghlou.\(^{(10)}\) The occasional opposition which existed to this idea ceased entirely from the middle of the century, and despite a number of differences of particular interpretation, historians were unanimous in their conviction that separate law codes ruled Goths and Romans until some time in the seventh century. It was in this sense that all the great students of Visigothic history and law, Cardenas,\(^{(11)}\) Perignon,\(^{(12)}\) Helfferich,\(^{(13)}\) Stobbe,\(^{(14)}\) Bethmann-Hollweg,\(^{(15)}\) Dahn,\(^{(16)}\) Hinojosa,\(^{(17)}\) Tardif\(^{(18)}\) and others,\(^{(19)}\) expressed themselves. But one quite extraordinary feature of these historians, as of those before and after, was that they subscribed to the idea that the principle of the personality of law ruled in the Visigothic kingdom without ever justifying this by explicit argument.\(^{(20)}\) It was the great merit of García Gallo to draw attention to this, and, by asserting his opposed territorialist theory of developments, to force scholars into examination of what he considered to be nothing but a cherished prejudice.
First reaction to García Gallo's article was mixed. P. Merêa concluded a cautiously judicious review\(^1\) by accepting the likelihood of the basic territorial character of the codes, though not the abrogation of the CE by the LRV. He tentatively suggested as an alternative the idea that the CE and the LRV might have been in some way complementary one to the other. In Germany, E. Heymann abruptly rejected the new thesis in a short review article,\(^2\) and A. Schultze, in a more extensive contribution,\(^3\) added his considerable authority in support of the traditional view. A further article, in reply to Merêa's, was published by García Gallo in 1943,\(^4\) and early support for him was expressed by two other scholars, A. d'Ors\(^5\) and A. López Amo.\(^6\) A little later, in 1945, W. Reinhart suggested that demographic evidence bore out García Gallo's conclusions.\(^7\)

Sympathetic but not convinced remained Merêa, who in 1946 and 1947 produced three most important articles\(^8\) devoted to the examination and rejection of particular arguments advanced by García Gallo. In Italy, P.S. Leicht was prepared to accept the territoriality of the CE, but not that of the LRV.\(^9\) In general, scholars remained sceptical: the new thesis was alluded to, and rejected, though without argumentation, by E. Wohlhaupter,\(^10\) H. Mitteis,\(^11\) L.G. de Valdeavellano,\(^12\) H. Conrad\(^13\) and L. Wenger\(^14\) in the late '40's and early '50's.\(^15\) It was the
work of the Spanish Romanist, Alvaro d'Ors, to take the next major step in the controversy. In a paper delivered at Spoleto in 1955\(^{(1)}\) he put forward a hypothesis which though asserting, like García Gallo's, the territorial character of Visigothic legislation, nevertheless radically reshaped the original interpretation.

In d'Ors's opinion, the Visigoths adopted Roman law when they first entered the Empire in 376. The territorial CE was a "monument of Roman vulgar law" which stood in complement to the variety of Roman legal and juristic sources which ruled at the end of the fifth century. The LRV was essentially a didascalic compilation, which co-existed with the CE, and later, after the replacement of this in the reign of Leovigild, with the CR. The LV of Reccesvind replaced the conjoint rule of the CR and LRV in 654(?), although the Breviary even then retained some validity as an academic authority in the law schools. The same view of the CE as territorial in character appeared similarly in the introduction to d'Ors's edition of the CE in 1960.\(^{(2)}\)

Despite the eminence of its advocate, the new theory met with a largely unfavourable reception. It was well received by Merèa, in a short review article,\(^{(3)}\) and was subscribed to by G. Martínez in 1961.\(^{(4)}\) A. Guarino has described it as "probably"
correct. But García Gallo, maintaining his original view, was critical already at Spoleto\(^1\) and Valdeavellano\(^2\) and M. Kaser\(^4\), R. d'Abadal y de Vinyals\(^5\) and W. Kunkel\(^6\) all came forward in favour of the traditional thesis. A review of d'Ors's edition and reconstruction of the Eurician laws by E. Levy showed him too to be critical. Aspects of both territorialist theories came under attack also in a paper delivered at Spoleto in 1961 by C. Sánchez-Albornoz\(^7\).

It is certainly the case that neither of the new interpretations has succeeded in becoming part of general scholarly opinion. It is the traditional theory which, since the war, has continued to dominate in text-books, general works and specialist studies alike. The view of the LRA as a code of law which ruled only the Romans of the Visigothic kingdom appears, for example, in the Romanists E. Seidl\(^8\), F. Schwind\(^9\), H. Kreller\(^10\), H.J. Wolff\(^11\), H.F. Jolowicz\(^12\), G. Scherillo and A. dell'Oro\(^13\), R.W. Lee\(^14\), J. Iglesias\(^15\), G. Grosso\(^16\), A.M. Pritchard\(^17\), J.K.B.M. Nicholas\(^18\) and P. Stein\(^19\). Features of the traditional theory are referred to in other authors of the most varied interests and approach: R. Grosse\(^20\), A. Mousset\(^21\), H. Planitz\(^22\), F.S. Lear\(^23\), F. Calasso\(^24\), E.A. Thompson\(^25\), J.M. Wallace-Hadrill\(^26\), A.H.M. Jones\(^27\), P. Courcelle\(^28\) and H. Livermore\(^29\) may be cited as examples. In none of these authors is there even a
reference to the territorialist theme.

The comprehensive character of the territorialist theses, the conviction with which they were asserted and the authority of those who advanced them are such, nevertheless, that in fact the onus now lies upon those who uphold the older view to defend it against its assailants. The object of this dissertation is the examination in detail of the evidence which can be adduced in favour of both the traditional and the territorialist theories: the conclusion is that the traditional thesis is, in essence, correct. Critics of García Gallo and d'Ors have tended, on the whole, rather to attack particular features of the modern reinterpreations than directly to defend the validity of the older view. An attempt is made here to propose positive arguments in favour of this latter, but discussion and rejection of the points made by García Gallo and d'Ors inevitably play a large part in the matter. Criticism of the territorialist theses is by no means wholly negative, however. If it can be shown not only that particular arguments produced in support of both the 'abrogation' and the 'compatibility' versions of the basic territorialist theme are invalid, but that these theories are on any showing inadmissible, then the most powerful of arguments for the traditional thesis emerges. For if the principle of territorial law is to be rejected, what alternative is there but to accept the principle of national,
personal law as that which ruled in the Visigothic kingdom?(1)

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The scheme of what follows is largely chronological. The first chapter deals with the law of the Visigoths before Euric, while the CE itself is the subject of chapters two and three, which outline, respectively, the circumstantial and literary, and the textual, evidence in favour of the different views. Chapter four is concerned with the LRV, chapter five with the CR of Leovigild and chapter six with the reasons why Chindasvind, rather than Reccesvind, should be considered author of the first territorial code. A final lengthy chapter examines some of those contrasts in the law of the different codes which, above all, render unacceptable the territorialist theses.
The Legal situation before Euric.

The following pages will make abundantly clear the very considerable dependence on informed conjecture and arguments ex hypothesi to which the historian is forced at virtually all stages of a study of the character and evolution of Visigothic legislation. But of no period is this more true than of the hundred years which elapsed between the entry of the Visigoths into the Roman Empire in 376 and the promulgation of the first law code which we know to have ruled them, the CE, about 476. After this latter date the historian has at least some firm material basis for his essays in interpretation in the form of the various law codes themselves or fragments of these: no such secure starting-point exists for the pre-Eurician period, where his attempt at reconstruction of the legal situation has to be based on meagre fragments of information contained in only four sources. Given this paucity of evidence, conjecture necessarily plays the predominant role, and it is idle to pretend that many judgments can be made without fear of contradiction, or that any comprehensive knowledge of developments can be attained at all.

Nevertheless, some investigation of the legal regime which pertained among the Goths during these hundred years has to be attempted, for conclusions concerning this, albeit tentative, are not without bearing on the problems which exist for the later
period. If it were to emerge as most probable that the Visigoths and the Romans among whom they lived were subject to the rule of the same law before Euric, then it would certainly follow as extremely unlikely that this legal unity would have been broken by the introduction under that king of a national law code, valid for the Goths alone. It is difficult to imagine, that is to say, that once a territorial law system had come to exist, the Visigothic king would have chosen deliberately to revert to a system which involved the difficulties and disadvantages inherent in a regime based on the principle of the personality of law.\(^{(1)}\)

The most explicit of the relevant references in the sources in fact excludes the possibility of the existence of a territorial law system before Euric: according to the brief account of Isidore, the Goths were not even subject to written law until the reign of that king. Another source, however, would seem on the face of things to indicate an early acceptance by the Goths of Roman law, while there is clear evidence that already before Euric the Goths were ruled by some written laws promulgated by that king's predecessors. It is the purpose of this preliminary chapter to examine the value and compatibility of these different pieces of evidence, and to attempt to establish the probable - if that is in itself not too strong a word - course of legal development.
When the Visigoths crossed the Danube into the Roman Empire in 376, it was as the result of an agreement with the Emperor Valens by which they had promised, in Jordanes's words, ut ... eius (scil. Valentis) se legibus eiusque vivere imperiis subderentur. (1) Now, it is possible that this means little else but that the Goths agreed to accept the authority of the Emperors. (2) But a more precise juridical significance is probably involved, for clearly some agreement must have come about on the question of law. What would seem a priori unlikely is that by this promise was indicated an intention on the part of the Goths to give up their own customary law (3) and regulate their dealings in the future by the tenets of Roman law. (4) The strength of traditional usage would at this stage have been too great for us to consider this at all likely: the law subsisted, among Germanic peoples, in the consciousness of the tribe, in what was sanctified by popular custom: it was not something which could be regarded as at the mercy of expediency, to be altered overnight as the result of a political bargain. The Goths must already have been well aware of many Roman law institutions and ideas - had, indeed, in all probability, already adopted a number of these in the course of their century-long contact with Roman civilisation in the Danube lands. The influence of Roman merchants - for the Goths appear to have been dependent on trade with the Empire to a
surprisingly large degree (1) - would have been especially felt in the sphere of private law. (2) But in those matters which affected everyone at some or other time of his life and which were thus firmly entrenched in popular usage - one thinks, for an obvious example, of marriage - there must surely often have been a profound divergence between Gothic custom and Roman practice, and it attributes to the Goths far too clear-sighted an appreciation of the superior merits of the sophisticated Roman system, and to long-established custom far too insignificant a strength, if we assume at this early stage the acquiescence of the Goths in a complete reception of Roman law.

It is true that the Goths also promised, on their entrance, to accept the Christian faith. (3) But this cannot be taken as evidence of their equal willingness to accept the Roman law. (4) Other Germanic peoples, like the Burgundians, quickly became Christian but maintained their own systems of law, distinct from the Roman, albeit strongly Romanised. (5) The primitive idea that the protective activity of a god was directly and solely exercised on behalf of his devotees (6) must soon have brought the Goths to a realisation of the expediency of a transferal of allegiance to the powerful Christian God, whom they would have deemed responsible for the exalted position of the Roman Empire itself: that conception of an interventionist god which had
persuaded and satisfied Constantine\(^1\) no doubt persuaded and satisfied them also. Proof of the inadequacy of their own gods had been clearly enough displayed in the fact of recent defeat at the hands of Valens.\(^2\) With the Huns threatening, a more powerful protector was obviously called for.\(^3\)

Law was a different matter. A change of religious faith - and in any case we should be careful not to attribute too great a suddenness to the conversion: doubtless many Goths continued as practising heathens\(^4\) and others regarded the Christian god merely as a rather superior addition to the already existing hierarchy\(^5\) - this did not demand the radical re-ordering of their lives which agreement in toto to the Roman laws would have entailed. Can we imagine, for example, that the Goths, at this stage of their development, would have considered giving up their right to self-help, particularly in the form of blood-feud,\(^6\) in favour of a system which insisted upon sole legal redress in the courts? Could they have decided to allow their disputes to be judged by Roman magistrates - for who else? - according to the dictates of a law with which many of them must still have been almost totally unfamiliar? The social implications of such a step would have been staggering in their extent and intensity. Comparatively, a change of heavenly allegiance was a slight matter.
If it is unlikely that the Goths would have given up their customary law, it is equally unlikely that the Romans would have insisted upon the Goths' acceptance of Roman law. The barbarians were probably not settled on the *hospitalitas* system, but given the whole of certain parts of Thrace for their settlement. There was no reason why the Romans should have been over-concerned with the internal legal regime of the barbarians settled there, or, indeed, have interfered with this in any way, as long as the federate military functions of the Goths were maintained, and as long as Roman provincials retained the full protection of their own law.

This last matter would have been important, however, and it would seem most reasonable to see in the promise of the Gothic legates that their people would live according to the laws of the Emperor, a promise to respect Roman law in their dealings with native Romans and to regard it as the superior law, to be followed in those cases where Goths and Romans came into legal conflict. How the Goths lived amongst themselves would have been of little interest to the Romans: how legal relationships between the two peoples should be regulated would have been, on the other hand, a matter of great moment, and a matter which naturally enough, given that the Romans had the whip-hand in 376, would have been settled in favour of the Roman provincials. It would seem most likely, then, that the undertaking of 376 obliged the Goths to live
according to Roman law *vis-à-vis* the Romans - and, of course, to obey the specific commands of the Emperor - but otherwise left their customary law system undisturbed.\(^{(1)}\)

What makes one think above all that this interpretation of Jordanes's words is the correct one, is that Isidore himself refers to the original entry of the Goths into the Empire in very similar terms to Jordanes, despite his later reference to the persistence of customary law up to the time of Euric.\(^{(2)}\)

Writing with reference to the period immediately after the death of Theodosius I in 395, he reports that the Goths constituted Alaric their king *indignum iudicantes Romanae esse subditos* *potestati eosque sequi, quorum iam pridem leges imperiumque respuerant et de quorum se societate proelio triumphantes averterant*.\(^{(3)}\)

The *iam pridem* refers here, clearly enough, to the period of the uprising which followed the settlement of 376: the *proelium* is that of Adrianople in 378. The obvious implication of the passage is that the Goths had once again been subjected to Roman laws by the agreement which ended their rebellion in 382 and that this legal subjection loomed large in what they considered the general "unworthiness" of their position.

Two points are worth noting here. Firstly, it seems very unlikely that the Goths, who probably obtained a very favourable
peace from Theodosius in 382,\(^1\) would have been prepared, at that time, to submit themselves to government by Roman law in their own dealings one with another, though Theodosius would naturally have insisted upon the application of Roman law in mixed cases. The situation after 382 would resemble in short - if this view is correct - that which has been posited above with reference to the earlier period. But Isidore's implication is that the legal position of the Goths after 382 is the same as that which pertained after 376, so that some measure of confirmation appears for the view which has been expressed here of the original agreement.

The second point is more important. Isidore was not such an incompetent historian as to contradict himself, especially within the limits of such a short history as his: to him, there could have been no incompatibility between this passage and that referring to the rule of customary law before Euric.\(^2\) If we accept this, reconciliation of the two reports can be sought in one of two fashions. Either, on the one hand, this passage of Isidore - and, it is reasonable therefore to conclude, the report of Jordanes - is to be interpreted, as it has been here, in terms of the Goths' subjection to Roman law in mixed cases alone - perfectly consistent with an internal customary law regime - or, on the other, we must accept that Isidore considered that the Goths reverted
from an early acceptance of Roman law to a customary law regime.

It is just possible that the panic caused by the onslaught of the Huns brought the Goths to the extremity of agreeing to accept the rule of Roman law in all their dealings: if this were so, it is not difficult to understand that once their immediate fears were over, and the full implications of the change were felt, they might soon have relapsed into their old ways. Such an interpretation would have the advantage of making even easier to explain the extreme influence which the Roman law played in the later Visigothic codes, for it would involve the proposition that the Goths underwent total subjection to the Roman laws in 376. Nevertheless, the interpretation suggested above would seem preferable, for it alone takes proper account of the strong hold which custom and tradition must be considered to have exerted on the still primitive Goths of the later fourth century, and of the indifference with which the Romans must have viewed the internal legal dealings of a barbarian people, albeit settled en masse within the frontiers of the Empire.

The conjectural nature of all this must be freely admitted. But it is in any case exceptionally difficult to believe that once the Goths began their trek across southern Europe there was any question of the rule of Roman law among them, or, for that matter, of the application of Roman law in the settlement of their differences with the Roman provincials. The almost constant conditions
of rebellion and warfare under which the Goths migrated to southern Gaul were admirably suited to the maintenance in vigour — or to the resurrection, if we care to believe that Roman law had ever ruled the Goths — of those principles of self-help and popular decision which characterised all barbarian societies, and we should believe it to have been the sword rather than the law which served to resolve disputes which arose with the native inhabitants of the lands through which they passed. (1) It is to the behaviour of the Goths during this brief Wanderzeit that Athaulf was no doubt referring when he spoke of their "ferocious barbarity" and inability to obey the laws: Multa experientiae probavisset neque Gothosullo modo parere legibus posse propter effrenatam barbariem. (2) This is not to say that the Goths recognised no law: rather we should imagine them to have been lawless in the sense that they were too fierce, too barbarous, not to take the law into their own hands. It is of feud — which certainly did not disappear even in the later Visigothic period (3) — that we might imagine Athaulf to have been thinking here in particular.

We have to turn now to discuss the value of Isidore's evidence that the Goths were ruled by customary law until the time of Euric. A tantalisingly laconic reference in the Historia Gothorum informs us that sub hoc rege Gothi legum instituta scriptis habere coeperunt. Nam antea tantum moribus et consuetudine tenebantur. (4) There can be
no doubt of the accuracy of the bishop's report with simple regard
to the promulgation of a code of law by Euric. The near-certainty
is that his source for this information was the CR, which was on
any view in force in his lifetime, and which probably referred,
in its promulgation edict, to the earlier code of Euric on which
Isidore reports it to have been based. (1) But in any case frag-
ments of the CE are extant. The question is whether the other
information in the report is equally reliable.

It can be said straightaway that in the uncompromising terms
in which it stands the second half of the report is inaccurate.
The Goths were ruled before Euric, says Isidore, by customs and
usage "alone" - tantum - yet we have undeniable evidence that they
were in fact subject at this time to at least some written laws.
But we should not for that reason reject out of hand the whole of
the report, for the first half is quite compatible with the admitted
existence of isolated written laws.

When Isidore says that the Goths first had (habere coeperunt)
the "institutes of the laws" in written form under Euric, he
reports, in effect, the production of the first corpus of written
law. The term legum instituta would seem to leave little doubt
about this, for it is clearly of general scope: Isidore refers
here to the body of the laws, to the generality of the laws. We
know in fact from the surviving fragments of the CE how comprehensive in coverage was the original code. It should be noted that the existence at an earlier date of particular laws governing the Goths in specific matters would in no way preclude acceptance of the bishop's evidence that the laws in general did not take on written form until the time of Euric.

There would seem no good reason to doubt the veracity of this part of Isidore's account. It is quite possible that he drew his information direct from the CR, which perhaps referred to the CE quite specifically as the first written code of the Goths; it is even possible that Isidore had access to a copy of the CE itself, and found the information there. In any case, there must have been many, among the high court dignitaries in whose circles Isidore moved, who had seen the CE, for this code had been used by Leovigild's jurists in the compilation of the CR; perhaps Isidore's information came from such men, who had themselves culled it direct from the CE. Certainly if a code existed prior to Euric's, it must be considered a strong probability that the CE would have referred to it, and if such reference had been made, Isidore would almost certainly have known of it, either from personal acquaintance with the CE or from those of his informed associates who had had such acquaintance: clearly he had no such information, for it is unreasonable to believe that
he would have deliberately attributed to Euric the credit for an innovation which he knew rightfully belonged to one of that king's predecessors. (1)

It could of course be that the part of Isidore's report in question is not based on any source, but that as the CE was simply the first law code to rule the Goths of which Isidore had knowledge, he assumed - perhaps inaccurately (2) that it was the first in absolute terms. It could also be that he relied on a mistaken oral tradition, that he wrote in good faith, but was misinformed. But there is nothing which persuades us rather to consider one or other of these suggestions as likely to represent the truth of the matter than to accept this part of Isidore's report as it stands. We cannot insist on the historical accuracy of Isidore's witness, that is to say, but we have on the other hand no intrinsic reason to doubt it.

The second part of the report, however, is quite definitely inaccurate. What would seem very likely is that it represents a spontaneous Isidorian addition to the information of his source, (3) though based upon this latter. To Isidore, consuetudo and mores were what ruled when written law - lex - was lacking: Consuetudo autem est ius quoddam moribus institutum, quod pro lege suscipitur cum deficit lex. (4) It is not difficult to see how Isidore, with
this view of the character of customary law and its relationship with written law, could have been led, from his knowledge - or perhaps even simple notion - that Euric produced the first body of written law, to attribute to the pre-Eurician period the sole rule of mores and consuetudo. We know that such an attribution is, in the terms in which he states it, wrong: the Goths certainly were not ruled "only" by customary law. It was not justifiable to conclude from the fact that the legum institute were first put in written form under Euric that there were no written laws before that time. But we can understand that the assumption, though careless, would have been an easy one to make, and the likelihood that it is this which is responsible for the second half of the report seems very strong. (1)

We should probably accept the truth of Isidore's report, then, that the body of the laws was first written down under Euric, and this leads to the conclusion that customary law was in general force until that time. Both the circumstances of the Goths, however, and direct evidence indicate that alongside this there existed a certain number of written provisions. Given the new situation in which the Goths found themselves after 418, we should indeed expect that there occurred considerable legal activity. For in that year the Goths were settled in southern Gaul (2) - primarily in the province of Aquitania Secunda - and settled not in communal

(1)

(2)
villages, as they probably had been in Thrace\textsuperscript{(1)}, but on the hospitalitas system, whereby the larger estates of the Roman landowners were divided in such a way that the Gothic hospes took two-thirds, leaving the remaining third to his Roman consors.\textsuperscript{(2)} The division, and the many problems which emerged from it, could only have been dealt with by laws, laws which applied to both Goths and Romans. One such law of Theodoric I (418-451) - Euric's father - is in fact referred to in the CE itself where a text decreed that the old divisions between the Gothic sortes and the Roman tertiae are to be maintained \textit{sicut et bonae memoriae pater noster in alia legre praecepit}.\textsuperscript{(3)} It is a virtual certainty that other references in the CE and in the later LV to matters connected with the land division are also modelled on earlier Theodorician laws.\textsuperscript{(4)} We have no direct evidence of further legislative activity on the part of Theodoric I, but it is difficult not to assume such activity, at least in the field of religion. Unless we are to suppose that the demand for Arian churches was met by a simple building programme, we have to assume that it was supplied at the expense of the already existing places of Catholic worship, some of which must have been taken over by the Arians.\textsuperscript{(5)} The guarantee of the resulting situation would have been provided, we should imagine, by legislation\textsuperscript{(6)} - just as the land settlement was guaranteed in this fashion.
In certain matters, then, Theodoric I, as a de facto independent ruler, can be shown to have issued written laws binding upon his Goths. The problems which a new situation had created could not be ignored; legislation was necessary in response to a novel state of affairs of the highest social and economic importance. The resulting laws had essentially the particular character of législation de circonstance, and as such they do not in the slightest part militate against the continued general adherence of the Goths to unwritten law.

But the internal Gothic regime itself could only have undergone considerable modification during the half-century between the settlement in Aquitaine and the accession of Euric. By 418 knowledge of the Roman law in general use - of the vulgar law, that is - must have been fairly widespread among the Goths, after some forty years within the confines of the Empire: after that date its influence could only have increased quite immeasurably. Goths and Romans were now living in close and settled proximity: opportunity and cause for the former to see and employ the immense advantages of the Roman legal system were now constant. We should probably be right in supposing a continual, piecemeal reception of features of the Roman law for the purpose of the Goths' own dealings one with another. The highly Romanised nature of the CE, by which the Goths were on any showing ruled, makes
such a process a necessary assumption, unless we are to believe in a sudden and violent metamorphosis of the legal regime to which the Goths were subject at the time of that code's promulgation.

If a powerful influence of Roman vulgar legal practice and principles on the customary law of the Goths cannot be doubted, in those fields not dealt with by the customary law it could only have been unchallenged. The Goths were now settled proprietors, enjoying what was to them the essentially new institution of private landed property. (1) Precisely because this institution was virtually unknown to the customary law, the problems which it presented would equally have been totally insoluble by the processes of that law. To provide for the protection of the newly gained estates, (2) for their sale or donation, for their disposal after death - in all these matters, and a variety of others, the Goths would naturally have had recourse to the Roman law which they found around them. (3)

Prima facie, then, we should expect to find the influence of the sophisticated Roman legal system operating both in cases where the customary law provided no answer at all, and in a general fashion on the body of customary law itself. And it is not unreasonable to suppose that problems were on occasions settled by
written judgments - generalisations, perhaps, of decisions in particular disputes. Confirmation that such laws were promulgated is to be found in the reference of CE 327 to a prior lex which concerned a problem of intestate succession - a matter which would have received considerable attention, given the importance of land.

But it must be repeated that the existence of such laws as this prior lex and others is quite compatible with a general Gothic reliance on unwritten, customary law. This law would, if the reasoning above is correct, have altered radically from the old Germanic law to which the Goths must still in overwhelming measure have been subject in 376. But there is no reason to doubt the conclusion, drawn from the evidence of Isidore, that the Goths lived in the main by custom and usage, even though we should not believe these to have been by Euric's time any longer essentially Germanic in character.

One final reference in the sources to the period before the promulgation of the CE has now to be discussed. In a letter written about 470 - that is to say, during the reign of Euric - Sidonius Apollinaris recounts the misdeeds of a certain Seronatus, a high-ranking Roman official in Auvergne, of extreme Gothophil sentiment: this Catilina saeculi nostri is described in the most unflattering
terms: Implet cotidie silvas fugientibus villas hospitibus, (1) altaria reis carceres clericis; exultans Gothis insultansque Romanis, inludens praefectis conludensque numerariis, leges Theodosianas calcans Theodoricianasque proponens.

The idea of former commentators that leges Theodoricianas is a mis-reference to the code of Euric is not acceptable. (2) Neither can the phrase signify a general 'authority of Theodoric', (3) for to write in this sense in the reign of Euric would be absurd. There can be no doubt that leges Theodoricianas means precisely what it says, and little doubt that the Theodoric in question is the second of that name, (4) who ruled from 453 to 466. A look at the circumstances which prevailed in Gaul at the time when Sidonius wrote is helpful to the attempt which must be made to discover the probable character of these laws.

The generally pro-Roman Theodoric II was succeeded by his brother - and murderer - in 466. Euric's policy was one of open aggression against the Empire, (5) and in 469 the first attack on Roman Gaul took place. (6) Following the advice of another treasonable Roman official, Arvandus, (7) Euric first attacked the Bretons, allies of Rome in the north of Aquitania Hima, and by defeating them took over control of that considerable area: Roman resistance under Paulus, however, prevented further northern expansion in the region of Orleans. In the south, the
Goths apparently reached the mouth of the Rhone sometime in 470: defeating Roman forces sent from Italy, they struck northwards up the Rhone valley as far as Valence, and eastwards as far as Riez, before they were pushed back by the Burgundians. The result of these campaigns was that the district of Auvergne became a solitary Roman outpost, surrounded on three sides by territories occupied by the Goths.

It was against this background of Gothic aggression and Roman defeat that Sidonius wrote his letter. Confusion reigned, we may believe: much would have depended on the character of the Roman authorities in the territory under attack. Now, Seronatus, the subject of Sidonius's letter, held high office, probably as Vicar of the Seven Provinces, yet was clearly a collaborator with the enemy. Reference is made in Sidonius's letters to Seronatus's visits to Euric's court, and he is even accused of handing over Roman provinces to the barbarians: the lack of Roman resistance in Narbonensis Prima and Aquitania Prima was perhaps due to him. That he eventually met a just fate in Rome could have been of little consolation to those who suffered from his treasonable activities.

The letter under consideration is specific in its accusation that Seronatus is an adherent of the Goths - *exultans Gothis*
insultansque Romanis - and that he applies the laws of the Gothic Theodoric, rather than those of the Theodosian Code - leges Theodosianas calcans Theodoricianasque proponens. But given the circumstances, it would seem very likely that the other references to Seronatus's behaviour are not so much meant as general comments but rather allude, like these two, to his Gothophil activities. Implet cotidie silvas fugientibus villas hospitibus: Seronatus establishes the Goths as hospites on the Roman estates, while the true owners flee to the forests.\(^{(1)}\)

Implet ... altaria reis carceres clericis: he thrusts the Catholic clergy into prison, while the Arian clergy (rei)\(^{(2)}\) of the Goths take over the churches. In ludens praefectis conludensque numerariis: he jeers at the (Roman?) magistrates and acts in secret understanding with the (Gothic?) tax-collectors.\(^{(3)}\) The rhetorical, paronomastic style obscures Sidonius's meaning, but does not hide it. The Roman Vicar is described here as in specific fields the active supporter of the Visigoths in their attempt to take over power in Auvergne.

Now, we have already had occasion to note that Theodoric I issued laws regulating the division of lands. The strong possibility of laws in favour of the Arian Church has also been mentioned. Given the de facto independence of the Visigothic kings, the probability that they had taxed their Roman subjects must also
be strong (1) and it would seem intrinsically not unlikely that this too had been the subject of legislation. It is precisely to Seronatus's pro-Gothic activities in these three important fields that Sidonius would appear to draw attention. What more likely than that the leges Theodoriciana\ae were a compilation of the laws which had been issued by the Visigothic kings in regulation of such matters, and perhaps other problems of Roman/Gothic relations, (2) and that Sidonius's final accusation that Seronatus applied the laws of Theodoric thus really included within its bounds the earlier specific charges which had been laid?

It is possible that apart from laws governing such cases as these the leges Theodoriciana\ae also contained laws which affected the internal legal regime of the Romans. Such royal legislative activity is not in itself impossible, though it would seem unlikely, if it existed, to have been on a very large scale. It is very doubtful whether the Visigothic kings would have concerned themselves with modification of the law in force among the Romans themselves. There would have been little point in so meddling, and always the danger of alienating the Roman population. The fact that the later LRV includes Imperial laws dating up to 463 (3) suggests, too, a presumption in support of the idea that the normal Roman law applied at least up to that time - only three years before the death of Theodoric. Of course, some new situation
might have arisen which demanded settlement, or the need for amendment of particular laws might have been felt. But if these changes were radical, it is impossible to believe that Seronatus, in still - Roman Auvergne, would have chosen to employ them in his court, for no advantage for the Goths, but only increased ill-feeling, could have resulted: (1) while if they were amendments in only minor matters they would not be sufficient, one imagines, to explain the wrath of Sidonius. In other words, we cannot infer from Sidonius that laws amending the internal Roman regime were included in the *leges Theodoricianae*, but the possibility of their inclusion remains. (2)

It is similarly possible, and *prima facie* more likely, that the Theodorician laws contained certain provisions which affected the internal legal regime of the Goths. Reference has been made already to the probable promulgation of written laws for the use of the Goths: the publication of such laws in a collection, along with others concerning the relations of Goths and Romans, and perhaps the Romans alone, would have been a matter of administrative convenience. But again this cannot be inferred from Sidonius's account, for he is clearly indignant about laws which were applied to the Roman population of Auvergne.

In point of fact, we possess a collection of laws which precisely corresponds in character to the form of the *leges*
Theodoricianae suggested here as possible. The so-called Edictum Theodorici (ET)\(^1\) has some laws which apply only to the barbarians, some which concern only the Romans, and others which are territorial in that they apply to Romans and barbarians alike.\(^2\) The suggested identification of the Edictum with the leges Theodoricianae\(^3\) does not seem viable, for reasons which will not be discussed here.\(^4\) But whatever the place of origin of the Edictum, it is clearly the work of a legislator who had to deal with a situation where Romans and barbarians were living in close contact. And the fact that this legislator found it desirable to issue an ad hoc legal collection of this varied character serves to emphasise that there is nothing inherently improbable about postulating a broadly similar form for the leges Theodoricianae.

The highly conjectural nature of all this will have been sadly apparent. Clearly the possibility that the leges Theodoricianae constituted a territorial code of law, not only governing those matters in which Goths and Romans came into contact, and perhaps also some other isolated legal matters of common interest, or of interest to one or other of the two peoples, but also laying down common laws which both peoples were to follow in their internal dealings one with another, cannot be denied.\(^5\) But it can be said that this is not an interpretation to which Sidonius's report seems to lend support, and that otherwise there is not a
jot of evidence in its favour. On the contrary, the report of Isidore that only under Euric did the Goths become ruled by a body of written law stands in direct opposition to it. In fact, we have found nothing that should incline us to cast any doubt on the first part of Isidore's account, and in the absence of contradictory evidence in other sources it would not seem justifiable to decry the conclusion which has been drawn above from that account, but which was over-stated by Isidore himself - namely, that the Goths lived in accordance with a body of unwritten law until the time of Euric. This is in perfect compatibility both with the existence of particular royal legislation dealing with problems created by the Gothic settlement and with the existence of certain laws promulgated to regulate the Goths' own affairs when the customary law was unsatisfactory or deficient.

But even if Isidore were proved wrong, even if a code of written law governing the Goths were shown indubitably to have existed in the period before Euric, his witness would still have enormous value for us. For whatever the truth of his statement, it is clear that he himself must have believed it to be correct, that he must have believed the Goths to have been ruled by their own customary law before Euric. And this becomes of great importance when we turn to the discussion of the Codex Euricianus itself.
The difficulties involved in study of the legal circumstances of the pre-Eurician period have already been made clear. The historian finds himself on slightly firmer ground when he turns to enquire into the character of the law code issued by the great Visigothic king Euric about the year 476. For here he has some, though sadly few, fragments of the actual code to aid his investigation. Great reliance has been placed on the evidence of these Eurician texts by territorialist writers, who have adduced both the generally Romanised nature of the law which they contain and the particular wording and content of individual laws in support of their revisionary positions. Apart from the CE itself, only one source is of direct bearing on the problem of the character borne by the code; but in addition to this the general historical background against which the CE was promulgated is of great importance and value for the enquiry. Discussion of the arguments which emerge directly from particular texts of the CE will therefore be deferred to a later chapter, and what follows here will be devoted solely to an examination of the arguments which can be produced on the basis of the literary and circumstantial evidence and the general character of the law of the CE. This evidence would seem to be most reasonably interpreted as witnessing the existence of a national law system in the time of Euric, with the CE playing the part of a national law code for the Goths.
The starting-point of discussion must be the two passages of Isidore's *Historia Gothorum* which refer to the CE. The first of these we have already met, but it will be convenient to repeat it here along with the second reference:

35: **Sub hoc rege** (scil. Eurico) *Gothi legum instituta scriptis habere coeperunt*. Nam *antea tantum moribus et consuetudine tenebantur.*

51: **In legibus quoque ea quae ab Eurico incondite constituta videbantur correxit** (scil. Leovigildus), *plurimas leges praeterrissas adiciens, plerasque superfluaeus auferens.*

According to Isidore, then, the Goths were ruled first by unwritten, customary law, then by the written laws of Euric, and finally by the revised laws of Leovigild. Before we turn to the interpretation of Isidore's words, it will be as well to establish his trustworthiness as a source. (1)

Isidore's remarks on the promulgation of a code by Leovigild and on the character of this as a revision of an earlier Eurician code are reliable beyond any doubt. We can reject immediately the possibility of simple fabrication: not only is there no detectable reason why Isidore, writing some forty years after
the death of Leovigild,\(^1\) should take such action, but it is impossible to believe that the bishop who so gloried in the conversion of Reccared to orthodox Catholicism\(^2\) would have been at pains falsely to praise the memory of the last great Arian king.\(^3\) The fabrication would, too, have been immediately exposed in the court and ecclesiastical circles in which Isidore moved. Moreover, the precision of the report of the changes made by Leovigild in the code of Euric militates against any view that it was simply thought up by Isidore for reasons unknown.

Misunderstanding or misreporting of the truth is also so unlikely that it can be ruled out. Isidore was born in the 550's,\(^4\) and was thus already of adult years when Leovigild died in 586: he might well therefore have had personal memories of the promulgation of a code. But in any case he must have encountered many among the high court dignitaries and bishops with whom he associated, who could and would have given him precise information. It is not feasible to imagine that Isidore could have been misinformed about events which took place at most only some thirty years before he became bishop of Seville,\(^5\) given both his own early memories of Leovigild's reign, and the eminence of those who surrounded him.

There is no reason, then, to doubt Isidore's report of Leovigild's legislative activity, and the accuracy of that report with regard to the changes made by Leovigild in the earlier code
of Euric is in fact confirmed by a comparison of the surviving Eurician texts with the corresponding Antiquae of the LV. These Antiquae, which must be considered Leovigildian, show Leovigild's amendment of particular older texts, and addition to those texts. (1) Isidore's report of the omission of Eurician laws in the CR cannot of course be confirmed, for although some provisions of the CE have no corresponding laws among the Antiquae of the LV, it is possible to ascribe their eradication to a later legislator.

In point of fact, the likelihood must be that Isidore's information came from Leovigild's code itself. (2) It is inconceivable that Isidore would have failed to refer to a later code, if such had been issued: the lack of any such allusion indicates therefore that the CR was still in force when Isidore wrote the Historia Gothorum. (3) Nothing is more likely than that Leovigild's code referred to its Eurician basis, (4) and that Isidore was able to specify the character of the Leovigildian revision - addition, omission and particular amendment - precisely because he found this alluded to in the promulgation decree or some other law of the CR which he had before him. (5)

In short, no reasonable doubt can be maintained that Isidore is not totally trustworthy in his report of Leovigild's promulgation of a code, (6) of the Eurician basis of this, and, therefore,
of the issue of an earlier code by Euric. Reference has been made above, however, to the possibility that his characterisation of the CE as the first written code of the Goths is not well-founded, even though there is no positive reason why his accuracy in this respect should be questioned.

What Isidore gives us in the Historia Gothorum is a sketch of the evolution of legal forms among the Goths. That he means by Gothi the Visigoths alone is beyond doubt: it is in this sense that the word is used throughout the Historia, and in any case Isidore knew better than most of the great bulk of written law which had ruled the Romans during the period before Euric, when he describes the Gothi as ruled by customary, unwritten law. But the fact that he speaks explicitly only of Goths might be thought not to rule out the possibility that the written codes of Euric and Leovigild also governed the Romans, and that there is therefore nothing incompatible between the territorialist positions and the evidence of Isidore. It would seem necessary to reject this idea.

Isidore's reference to the rule of customary law before Euric leads to the necessary conclusion that he believed a personal law system to have existed in the Visigothic territories at that time. In Isidore's own time, we are asked to believe by territorialist writers, a territorial system was in force, with either the CR,
exclusively, or the CR and the LRV, conjointly, ruling all the inhabitants of the Visigothic kingdom, and this territorial system dating back at least to the time of Euric. If Isidore was well-informed about the pre-Eurician period and about the character of the CE as the first written code for the Goths, it is very difficult to believe that his source - possibly the CE itself - would not have referred to the introduction of the principle of territoriality, and if it had Isidore would surely have mentioned it. How could he have failed to remark upon an innovation of such vast legal importance? One is tempted to think that even if his source had not mentioned it, he would have felt inclined, faced with a mysterious disparity between the legal situation as he described it for the pre-Eurician period and that which - allegedly - pertained in his own day, to explain in some or other way - presumably by attribution to Euric - the distinction. But there is not the slightest hint in his account of the occurrence of any such transcendental change as the abandonment of a national in favour of a territorial law system involves.

Far from giving any indication that such a change took place, the terminology he employs rather implies the perpetuation of the national law system which he ascribes to the period before Euric. The change which occurred in Euric's reign was, Isidore reports, a change from unwritten to written law, from the rule of *mores*
and consuetudo to that of written leges. The report of the introduction of written leges carries with it no connotations of legal revolution, such as is involved in the idea of transition from a national to a territorial system. To Isidore, more et consuetudo represented the conjunction of norms of behaviour existing in the minds of a particular people: consuetudo was the common practice which followed upon the more. Leges were simply written formulations of the norms of behaviour, the expression in scriptis of the more.(1) Nothing more is implicit in the reported change from more to leges, then, than a simple evolutionary legal development, a change in the outward form in which the - constant - law is clothed.(2) It is clear from Isidore's account that the rule of more et consuetudo applied only to the Goths: what more natural than to understand that the law expressed only in conscience and custom before Euric, but in written form after him, continued to rule only the Goths?(3)

But it has been said above that Isidore may have had no very precise knowledge of the pre-Eurician situation, and that it may have been his own assumption that the CE was the first code to rule the Goths.(4) If this is the case, Isidore's report is even harder to explain from the territorialist viewpoint. If Isidore himself lived under the rule of territorial laws contained in the LRV and the CR in conjunction - the view which has been
designated here as the 'compatibility' thesis - it is hardly likely that he would have made the assumption in the *Historia Gothorum* that the Goths were ruled by customary law before Euric. The circumstances pertaining in his own day would surely have led him rather to assume their rule at that time by those Roman sources, particularly the CT, on which the LRV was based. Certainly he could, with reason, have ascribed a customary law regime to the time before the Goths' entry into the Empire, but if he had no information on the period immediately preceding the reign of Euric, he would surely have imagined the Goths to have been subject to those Roman laws which - allegedly - ruled them in his own day.

If, on the other hand, the CR alone is held to have ruled territorially when Isidore wrote, the *ex silentio* argument used above carries even greater weight. It would be reasonable enough for Isidore to have supposed, in the absence of secure knowledge, that the Goths were ruled, before the promulgation of the first law code to which he knew them to have been subject, by customary - that is to say, personal - law. But is it not reasonable to suppose that he would have indicated the amendment of the situation he had assumed, that he would have commented, that is to say, on the introduction of a territorial law system by Euric?

All this is very involved, and admittedly very conjectural.
It is open to objection also on the grounds that it depends essentially on the argument *ex silentio*, which is notoriously dangerous. Nevertheless, there are occasions when the argument *ex silentio* is as valid as any other, and this would seem to be one of them. It is really extraordinarily difficult to believe that if Isidore lived under a territorial law system he would not have commented on the change-over to that system from the national regime which he reports for the pre-Eurician period: especially is this so if he had no certain knowledge of this early period, but simply assumed the rule of personal law at that time. The reported change from *mores* and *consuetudo* to written *leges* implies nothing more than a change in the form in which the same law was expressed, and as the *mores et consuetudo* ruled the Goths alone, the conclusion that the written *leges* did so also would seem not unreasonable. It may be added finally that Isidore writes elsewhere of the rule of different laws over different peoples (*gentes*); and to him the Visigoths were a *gens*, quite distinct from the Romans. All this would seem to be best interpreted as adding up to at least a strong presumption in favour of the idea that the written codes of Euric and Leovigild contained the national law which ruled the Goths alone, as their customary law had previously done. Certainly we should not rely too heavily on the argument from Isidore's silence here, but it does serve, in con-
junction with other arguments, to build up a considerable positive case in favour of the traditional view of the CE as a national code of law for the Goths.

Two other arguments, both circumstantial, help to support this conclusion. Firstly, there is an argument based upon the law systems known to have been in force in other barbarian kingdoms; secondly, there is an argument based upon the general national attitude and particular political position of the Visigoths themselves.

There is no evidence that any one of the barbarian peoples who established themselves on Roman soil adopted a territorial law system. What evidence we have, in fact, indicates precisely the reverse - that they maintained for themselves legal regimes quite distinct from those of the Romans amongst whom they lived. Of the Sueves and the Vandals we know nothing in this respect: Vandal law certainly showed Roman influence, but this is not relevant to the question of whether the Vandals did or did not live under a territorial law system. The other three neighbours of the Visigoths, however - the Franks, the Burgundians and the Ostrogoths - all allowed the Roman provincials to remain under the rule of their own Roman laws, whilst subjecting themselves to a
separate series of legal norms.

The later Frankish kingdom is indeed notorious for its personal law system (1) - a system which meant, as Agobard protested in the ninth century, that five men gathered together could each be subject to a different law. (2) Evidence for the early period is totally lacking, but there can be no doubt, given the essentially Germanic character of the Lex Salica, (3) that the conquering Franks retained their own customary law, and equally no doubt, given the impossibility and undesirability of imposing this primitive system on the Romans, that these latter continued to enjoy the rule of Roman law, (4) though confirmation of this appears first only in the reign of Lothar II: Inter Romanus negotia causarum romanis legebus praecepemus terminari. (5) The 'personality' principle which applied in the Frankish kingdom is well illustrated in the words of the Aquitanian capitulary of Pippin the Short: Ut omnes homines eorum legis habeant, tam Romani quam et Salici, et si de alia provincia advenerit, secundum legem ipsius patriae vivat. (6)

The same distinction of legal regime for barbarians and Romans existed also in the Ostrogothic and Burgundian kingdoms. In Italy, Theodoric the Great maintained his promise to preserve the Roman laws, (7) while the comes Gothorum applied to the Ostrogoths their own national law, almost certainly in written form. (8)
A sort of ius aequum ruled in mixed cases. (1) The Prima Constitutio of the Lex Burgundionum (LB) shows a similar situation in the Burgundian kingdom, (2) where a later codification of Roman law, the Lex Romana Burgundionum (LRB), was issued in fulfillment of the need for a Roman code. (3) If the circumstances of these other barbarian kingdoms are anything to go by, then, we should expect the situation in the Visigothic territories to have been characterised by the same legal segregation of conquerors and conquered.

Were the circumstances of Euric's kingdom so radically different from those existing elsewhere that we have sound reason to doubt the application of this rule among the Visigoths? Were the contacts between Goths and Romans so close, their relations so friendly, their sense of national 'separateness' so diluted, that the evidence points to their fusion and thus to the probability of territorial law? (4) Some examination of Euric's reign is necessary in order to establish that the political situation was in fact such that it is almost impossible to believe that its concomitant was not the perpetuation of a personal law system.

Throughout the early Visigothic period there is apparent a basic divergence of policy towards the Empire within the ranks of the Goths. (5) Already such a conflict of opinion is clear in 382,
when, we are told, (1) two Gothic chieftains drew their swords after an argument at the dinner table of Theodosius: the one desired nothing but the extinction of the Empire, the other friendship and alliance between Goth and Roman. The dichotomy was maintained during the following years. (2) Athaulf began by holding to the first of these views, but was later won over to the latter: (3) it was because of this pro-Roman policy that he was murdered in 415. (4) His successor, Sigeric, was also a man of peace: it was for this reason that he too was disposed of after a short reign. (4a) In his place the Goths chose Wallia as their king, with the deliberate intention of breaking the peace: only force of circumstance compelled him to maintain it. (5) At Wallia's death an unsuccessful attempt was made to install Beremud as king: probably we should regard him as the candidate of the pro-Roman party. (6) In the event, Theodoric I came to the throne and pursued throughout his lengthy reign a policy which cannot be detailed here, but which was characterised by constant hostility and open aggression towards the Empire (7) to which in theory the Goths were bound as federates. (8) A similar policy was followed by his eldest son and successor, Thorismund, (9) and was responsible for his death at the hands of his brothers, Theodoric and Frederic. (10)

The pro-Roman feeling which we should be inclined to attribute to Theodoric on the basis of his part in Thorismund's
murder is amply confirmed by the political history of his reign.
The thirteen years from 453 to 466 represent the period when the
influence of the 'peace' party among the Goths was at its zenith.
Hidatius's designation of Theodoric in 456 as *fidus Romano...imperio* (1)
might be applied to him at almost any time of his reign. Only
during the brief episode of the *coniuratio Marcelliana* (2) and the
subsequent war against Majorian does the Gothic-Imperial alliance
appear to have been broken - and even this does not indicate
Theodoric's hostility to the Empire as such. (3) He is fighting
against the Bacaudae in Spain in 454 *ex auctoritate Romana*, (4)
and against the Sueves in 457 *sub specie Romanae ordinationis*. (5)
He is responsible for the elevation of Avitus to the Imperial
throne in 456, and for his support thereafter. (6) Again in 462
he wages war, in defence of the Empire, against the rebel Aegidius. (7)
No doubt Theodoric, despite his friendship towards Rome, thought
also in terms of gaining territorial advantages for his own people:
it would be natural that he should have done so, (8) and in any
case we may imagine that he was compelled so to think by the 'war'
party among the Goths. (9) But everything that we know about
Theodoric indicates his general adherence to a policy of friend-
ship and alliance with Rome, and his satisfaction with a state of
continued political dependence on the Empire. (10)

Theodoric met his death in 466 at the hands of his brother
Euric. The character of the new king was very different from that of his amiable predecessor. Ambition, bellicosity, courage—these are the qualities for which he was famed, and to which the events of his reign bear abundant witness. It is clear that from the beginning Euric identified himself with those Goths who favoured war against the Empire and who looked forward to a time when the independence of the Gothic kingdom should be placed beyond any doubt. The murder of Theodoric in 466 should probably be regarded, then, as inspired not just by Euric's personal ambition, but also by political dissatisfaction.

Euric's aim, according to Jordanes, was nothing less than the subjection of the whole of Gaul to his rule: Euricus ergo, Vesegotharum rex, srebram mutationem Romanorum principum cernens Gallias suo iure nisus est occupare. After two years spent in negotiations, probably aimed both at building up an alliance system with the Vandals and the Sueves, and at wrestling concessions from Leo, Euric opened his offensive in Spain in 468 and in Gaul in 469. His breach of treaty was attended by outstanding success. By his death in the 480's he was in control of vast areas of southern Gaul and Spain, his independence was recognised by the Eastern Emperor, and he himself had become the mightiest king of the West, to whose court at Toulouse came ambassadors and suppliants from many peoples.
and the terror of whose name was renowned and feared. (1) Well
might Gregory of Tours write that when he died *fuit etiam et
tunc terrae motus magnus!* (2)

A Visigothic kingdom had now been created which enjoyed
complete political independence. The inspiration for the policy
which had led to such a result must be seen in the national
self-awareness of the Goths, in their consciousness of themselves
as a people separate and quite distinct from the Romans among whom
they lived. The Goths, it is clear, were not willing to allow
themselves to become absorbed into the Roman population: they
insisted on creating for themselves their own Gothic state - the
*patria Gothorum* of later times. (3) The features which defined
the Goth as distinct from the Roman, and which served as a constant
reminder to him of his 'separateness', were many and varied: in
culture and tradition, in habits and institutions, in simple
dress (4) and language, (5) he knew himself as different from the
surrounding Romans. But a more profound distinction appeared
in another field - that of religion.

When the Goths entered the Empire in 376 they were, in
general, still heathen, despite Christian missionary activity: (6)
a hundred years later there can be no doubt of the strength of
their adherence to heretical Arianism. Characteristic, in fact,
of the first part of Euric's reign is his championship of Arianism and oppression of Catholicism.\(^ {1} \) Early evidence of this exists in the letter of Sidonius Apollinaris, which has already been referred to, where the bishop complains of the activity of the Gothophil Seronatus: he is accused, among other things, of introducing Arian clergy into the Catholic churches, and of imprisoning the orthodox clergy.\(^ {2} \) In another letter, Sidonius describes Euric's own extremist Arianism: he hates the very sound of Catholic, and appears more the leader of his sect than of his people. The churches are abandoned, the bishoprics vacant; the task now that territories have been lost to Rome politically is to keep them bound to Rome in faith.\(^ {3} \) The evidence leaves little doubt of Euric's extremism.\(^ {4} \) It may well be that his oppression was largely political in motive - that he took action against the Catholic clergy primarily because they were the leaders of opposition to Gothic occupation.\(^ {5} \) But if this is so it only serves to confirm the national character of the confessional distinction.\(^ {6} \) It was precisely because the Goths were Arian that the Roman resistance movement took the form it did and was led by the clergy.\(^ {7} \) Equally, it was precisely among these clergy that the Catholic Franks found support in their later invasion.\(^ {8} \) Religious and political hostility between Goth and Roman were inextricably bound up with each other, and, as the Catholic reaction to the invasion of 507 shows, remained so.\(^ {9} \)
It is difficult to avoid the conclusion that the Goths developed their Arianism in almost conscious contrast to the Catholic Romans. It is unlikely, anyway, that they adopted and maintained Arianism after due reflection on the relationship of the first and second persons of the Trinity: there were some Visigothic scholars at Toulouse capable of discussing the theological niceties of their faith, but it is not reasonable to attribute to the Goths as a whole the sophistication of thought which characterised these few. Certainly there were Arians among the Goths before the entry of 376 but the influence of those few who had been converted before the settlement of 382 must have been far outweighed by the effect of living in a predominantly orthodox world. Significant perhaps is the fact that the pro-Roman Theodoric II is reported not to have been a convinced Arian, and that there is some slight indication that Frederic, his brother - equally pro-Roman - was perhaps actually a Catholic. We would probably be right in imagining that the vast majority of Goths held fast to Arianism as an expression of their national identity - just as other peoples embraced other heresies as a sign of their distinction from the orthodox Romans - and were increasingly confirmed in their Arianism by the detestation of it displayed by the Catholic Romans. Arianism belonged to Gothia, Catholicism to Romania.

If this was so, the Goths' adoption of the Christian religion
of the Empire in its variant Arian form can perhaps be compared with their reception of Roman law in the variant form which it takes in the CE. In both cases, the Goths' desire to take from Romanitas what it had to offer was tempered by their desire to maintain their own distinctiveness as Goths.

There can in any case be no doubt that by the time of Euric Arianism was one of the distinguishing national characteristics of the Goths: it was the fides Gothica. And given this religious gulf between Goth and Roman, given the mass of other characteristics - of dress, language, culture and so on - which distinguished one from the other, given, moreover, the success of the Goths' attempt to forge for themselves an independent national kingdom - an attempt which had been motivated by the Goths' sense of national particularism - how unlikely it is that the Goths would then have wished to sweep away the other great barrier which marked them off from their Roman neighbours - the barrier of law! Especially, it should be noted, as the situation which resulted from the conquests of Euric could only have served to heighten their national self-consciousness.

For Euric had really over-extended himself. The kingdom which he had created was the result of Gothic pride and national sentiment, but, paradoxically, its very establishment threatened the continued coherence of the Goths as a people. They were
scattered now over a much greater area than before,\(^1\) settled among a subject and potentially hostile Roman population, and outnumbered by some fifty to one.\(^2\) Under these conditions the threat of submersion in the great mass of the native population became more acute than it had ever been during the days of the settlement in Aquitania Secunda. And it is natural to assume that in these circumstances the Goths would have reacted by clinging ever more fast - more deliberately, even - to the idea of themselves as a people, distinct from the Romans about them. Because their cohesion as a people was threatened, they would have asserted the reality of that cohesion. To have asserted it by the promulgation of a national law code would have been a natural step.\(^3\)

We must bear another factor in mind here. Without doubt there were many among the Romans, especially among the lower classes, who willingly accepted Gothic rule.\(^4\) But there must also have been many who felt, like Sidonius,\(^5\) contempt and hatred for the invaders, and who would have been prepared, given the opportunity or sufficient motive, even to rise against them.\(^6\) The violent, though sporadic, anti-German feeling of earlier days\(^7\) could hardly have decreased by the time of Euric, and we would probably be justified in assuming an increase in its intensity as a result of the conquest. Fanned by the religious hostility of Roman for Goth, this antipathy, if not universal, must at
least have been widespread, and must again have been a factor serving to close the Goths in upon themselves, to reinforce their keen sense of nationhood.

The Goths' refusal to allow themselves to become fused with the Roman population is directly witnessed in two ways. Firstly, they maintained their Arianism with a tenacious fervour which was in great part responsible for their defeat in 507 at the hands of the Catholic Franks - helped by an active fifth column among the Romans of the Visigothic kingdom - and which was still in powerful evidence a hundred years after Euric, under Leovigild. Secondly, they refused to allow intermarriage between the Romans and themselves; not till a hundred years later was the prohibition rescinded. Can it reasonably be considered that the Goths, so determined to maintain their national faith and racial purity, were yet prepared to share with the Romans a common law? To take the step which Ostrogoths and Burgundians both declined to take? Surely this idea cannot be entertained!

One further point must be briefly made before we move on. Everything in the political situation of the Goths after the completion of Euric's campaigns suggests that they would have refrained from unduly irritating the Romans by any action which would have radically altered the way of life of these latter. Such action would have been politically pointless and potentially disastrous, given both a measure of Roman hostility to the
invaders and the dispersion and numerical insignificance of the Goths. There exists no evidence of upheaval in the letters of Sidonius: Roman life and the Roman administrative system appear to have continued largely unchanged, and even the Church seems not to have suffered in the later part of the reign. Is it likely that Euric, when conservatism was necessarily the order of the day, would have imposed upon the Romans a system of law which differed in certain vital respects from that by which they were accustomed to be governed? There were bound to be new laws which affected the Romans; in the usual traditional view, in fact, the CE as a whole did this, in that it provided the law to be applied in mixed cases. But to have altered the internal legal regime of the Romans would have been to take an unnecessary step, a step which could only have redounded to the disadvantage of the Goths. To seek a possible reason for such an action is to seek in vain.

Against the arguments which have been outlined here for the national character of the CE, there stands now to be discussed one important argument for its territoriality. This consists in the nature of the law which the CE contains. The basis of this - there is no doubt - is essentially Roman. The fact that the CE shows such a very strong Roman law influence, and often indeed draws directly upon Roman texts, would perhaps seem
to indicate the territoriality of the code. For why should a
national code, issued solely for the regulation of the Goths,
reflect Roman, rather than Gothic, legal practice? (1)

The argument seems plausible enough. But in fact we know
that it is not valid to argue from the existence of a strong
Roman law influence in a code which ruled barbarians to the
fact of the territoriality of that code. The law of the
Burgundians was permeated with Roman law ideas, especially in
the sphere of private law, (2) and was yet without doubt national
in character. (3) If the *Fragmenta Gaudenziana* (FG), which are of
Ostrogothic provenance, (4) should be viewed, as seems possible,
in connection with a lost edict governing the Ostrogoths themselves, (5)
such a Roman law influence is witnessed also in the law of another
barbarian people. And it is by no means wholly absent from the
law of the Franks. (6) It is not, in short, acceptable to argue
from the predominantly Roman legal character of a law code to the
conclusion that it therefore ruled the Romans: a code containing
Roman law cannot be considered as ipso facto applicable to the
Roman population. (7)

Equally, there is nothing incongruous in the idea of a
highly Romanised code like the CE ruling the Goths alone. (8) Of
all the barbarian peoples, the Goths had been longest in close
contact with Roman civilisation, and therefore with the influence
of Roman law. The superiority of that law, especially in matters of private law, was self-evident, and it was natural that once knowledge of the Roman regime had become widespread, as it must particularly have done after the settlement in Aquitania Secunda, the Goths should have been prepared to make increasing use of many of the devices and rules of that regime. (1) The adoption of Roman law - and in any case we should imagine no sudden metamorphosis, but rather a gradual infiltration and acceptance of Roman elements - was by no means incompatible with Gothic national pride, for the Goths' consciousness of themselves as Goths, separate and distinct from the Romans, involved no necessary consequent hostility towards the features of Roman civilisation. (2) The Goths wanted to remain Goths, but this did not mean that they wanted to remain primitive; as they adopted Roman religion, so too they adopted Roman law. (3)

If the CE contained nothing but the Roman law of the time, on the other hand, it would certainly be reasonable to assume its application to the Romans. But the fact is that the law of the CE - and of the CR after it - in places differs enormously from the current law of the late Empire, as it is shown particularly in the Theodosian Code. (4) It is right to deny the preponderantly Germanic character which has been attributed to the law of the CE (5) but only broadly accurate to designate the code as a
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"monument of Roman vulgar law", as has a recent authority.\(^1\) In two ways the CE presents itself as a code of law which is essentially *sui generis*. On the one hand, there are in the code undeniable traces of Germanic legal practice: on the other, there are provisions which, although not specifically Germanic, nevertheless deviate sharply from the provisions in actual contemporary use among the Romans. The law of the CE is Romanised, in other words, but it is not Roman law.\(^2\)

The differences of regime between the CE and the CR on the one hand, and the CT and the LRV on the other, are of such consequence for the solution of the question of the national or territorial character of the Visigothic codes that they must be dealt with in some detail at a later stage.\(^3\) What will then be made clear, it is hoped, is the impossibility of subscription to either the 'abrogation' or the 'compatibility' versions of the general territorial thesis. But first it is necessary to look at other arguments which are of direct significance for the problem of the character of the CE.
III

The Codex Euríkianus (ii).

We have to turn now to the examination of those individual texts of the CE which have been, or can be, alleged to have immediate bearing on the problem of the national or territorial character of the code. Two laws in particular played an especially important part in the argumentation of the first proponent of the territorialist thesis, and it is on these that very careful attention will have to be focussed. The meticulous examination of particular texts does not make for very compelling reading, but it is in this case a quite essential part of the task of attempting to establish the character of the CE. In point of fact, it will appear that neither these two laws, nor others, provide any sort of justification for the territorialist view of the CE, and that some internal textual evidence, though slight, militates rather in favour of the traditional view of the code.

We may straightaway dispose of one quite unconvincing territorialist argument. The existence of certain laws in the CE which refer specifically to Goths and Romans has been regarded as in some way evidence of the general territorial character of the code. (1) There is no justification for such a view. The exponents of the traditional thesis have usually considered, in
fact, that all the laws of the CE affected the Romans, inasmuch as they were applied in mixed cases. But the question is: did the laws of the CE control the relations of the Romans one with another? And this question cannot be answered by reference to laws of the CE which, quite precisely, did not do this!

Another argument need also not detain us long, for it has just as little substance. It has been asserted that in CE 310 and CE 311 the same institution - that of the private soldiery - is dealt with in two quite distinct forms. While CE 310 treats of the Roman bucellarius, providing, inter alia, that he have the right to keep possession of half the goods he might acquire while sub patrono, CE 311 deals with the Gothic saio, allowing him no such right of retention, but requiring him to surrender to his patron all he might acquire. This double regulation of a common institution has been held to furnish evidence of the territorial character of the CE, for why, it has been asked, should a code intended solely for the Goths concern itself with the Roman bucellarius?

The argument lacks all force, for although the bucellarius and the saio share a common character as private soldiers, there exists nevertheless a significant distinction of condition between them. The bucellarius holds lands, while the saio does
not. (1) It is with two different types of private soldier, therefore, that the two texts deal, and the varying treatment which they receive is explicable rather in terms of their distinct status than in terms of their Roman or Gothic character. (2) It would certainly be totally absurd to assume that because the word *buccellarius* was of Roman provenance, the institution it described was not used by the Goths. (3) In a national Gothic code there would be just as much need to regulate the particular type of private soldier known as the *buccellarius* as there would be to regulate the other type known as the *saio*.

We must turn now to the discussion of a much more important argument for the territoriality of the CE. This runs as follows. (4) Two Eurician texts refer to, and expressly abrogate, earlier laws which are to be identified with laws of the Theodosian Code. Reference in the CE to the abrogation of Roman laws makes sense only if the CE ruled the Romans. (5) *Ergo* - since we know the CE ruled the Goths - the CE is to be considered territorial. (6) The logic of this argument seems irresistible, (7) but the premises are false. For the fact is that one of the Eurician texts adduced is not Eurician at all, but Leovigildian, and that neither of the earlier laws referred to can be shown to be a law of the Theodosian Code.
We will deal first with the Antiqua LV III.1.1. The terms of this law are straightforward: an earlier law forbidding mixed Roman/Gothic marriages is repealed and the legal capacity to contract such marriages is expressly allowed, given the fulfillment of certain conditions. (1) Here is the text in full:

LV III.1.1 (Antiqua).

Ut tam Goto Romana, quam Romano Gotam matrimonio liceat sociari.

Sollicita cura in principem esse dinoscitur, cum pro futuris utilitatis beneficia populo providentur; nec parum exultare debet libertas ingenita, cum fractas vires habuerit priscus legis abolita sententia, que incongrue dividere maluit personas in coniuges, quas dignitas comparis exequabit in genere. Ob hoc meliori proposito salubriter censentes, priscus legis remota sententia, hac in perpetuum valitura lege sanccimus: ut tam Gotus Romanam, quam etiam Gotam Romanus si coniugem habere voluerit, premisa petitione dignissimam, facultas eis nubendi subiaceat, liberumque sit libero liberam, quam voluerit, honesta coniunctione, consultum perquirendo, prosapie sollemniter consensu comite, percipere coniugem.
The view that this is an Eurician text, and that the *prisca lex* which it abrogates is an Imperial constitution which had forbidden marriages between Romans and barbarians and which had been included in the Theodosian Code, is not acceptable. The sole positive argument for the attribution of the Antiqua LV III.1.1 to Euric rests upon a false interpretation of one of the texts of the LRV, promulgated some thirty years after the CE, in 506. This text - the Interpretatio, in fact, to that very same Imperial constitution which has just been mentioned - has been alleged to have contained a prohibition of marriage only between Romans and foreigners, within whose ranks the Goths could obviously not, in 506, be numbered. By its deviation from the original constitution, which had contained a general prohibition of marriage between Romans and barbarians, the Interpretatio has been held to bear witness to the legality of marriages between Romans and Goths in 506. It would certainly be reasonable, on the basis of this, to deny the usual attribution of the Antiqua to Leovigild, some seventy years after this date, and hold that it was rather the work of Euric, repealing the original Theodosian law.

The crux of the argument is the meaning of the word *barbari* in the Interpretatio to the original Imperial constitution: it
has been argued that the word means "foreigners" and does not therefore include the Goths within its scope. The two texts concerned read as follows:

LRV.CT III.14.1 (=CT III.14.1).

De Nuptiis Gentilium.

Nulli provincialium, cuiuscunque ordinis aut loci fuerit, cum barbara sit uxor coniugium, nec uli gentilium provincialis femina copuletur. Quod si quae inter provinciales atque gentiles affinitates ex huiusmodi nuptiis exstiterint, quod in iis suspectum vel noxium detegitur, capitaliter expiatur.

Interpretatio.

Nullus Romanorum barbaram cuiuslibet gentis uxorem habere praesumat, neque barbarorum coniugiis mulieres Romanae in matrimonio coniungantur. Quod si fecerint, noverint se capitali sententiae subiacere.

Now, in all other cases where Imperial laws containing the word barbari passed into the Breviary, their Interpretationes substituted for barbari the word hostes or adversarii, or in one
case the phrase *extraneae gentes*. But to conclude from this that *barbari* was synonymous with these other expressions, and was used to mean, like them, "foreigners", is really not justified. *Barbari* does not occur in this sense in the Burgundian law code, where it is used to signify Burgundians as opposed to Romans. Nor does it mean "foreigners" in the *Edictum Theodorici*, where it is employed in antithesis to *Romani*: indeed, it is the function of the *barbari* of the *Edictum* to defend the state! To the jurists who produced these works, *barbari* was certainly not synonymous with *hostes*, and there exists no reason to assume that the jurists of the Visigothic kingdom operated with a radically different concept of the sense of the word.

The fact that on every occasion but one the *barbari* of the original Imperial constitutions disappears in their *Interpretationes*, to be replaced by some term signifying "foreigners", far from being considered proof that *barbari* meant "foreigners", should lead us rather to ask just why amendment did take place in these laws, but not in the *Interpretatio* to LRV.CT III.14.1. The reason becomes apparent when we look at the subject matter of the original Roman laws. Two of them concern situations where the barbarians take Romans captive, two others the case of Romans joining the barbarians for the purpose of plunder or pillage, and
the fifth the sale or conveyance of free-born Roman children to the barbarians or across the sea. (1) They all deal, that is to say, with the rights and obligations of Romans vis-à-vis barbarian peoples who are hostile or potentially hostile.

Now, the use of *barbari* in these laws is perfectly natural, given the constant threat which the barbarian peoples represented to Rome throughout the period when these constitutions were promulgated. But in 506 the situation was vastly changed. Now, there was a barbarian kingdom established on once-Roman soil, and a barbarian king was issuing laws for the regulation of his Roman subjects and for the definition of their position towards external peoples and enemies. (2) The substitution of *hostes* and other terms for *barbari* was surely made precisely because *barbari*, as a general ethnic-cultural term, included Goths within its meaning, (3) and to have maintained it would have been to make nonsense of the laws which contained it. It was not the Goths whose hostile activity was envisaged in these laws of the Breviary, or to whom the legislator was anxious to prevent the sale of conveyance of free-born children, but peoples outside the boundaries of the Visigothic kingdom: for this reason *barbari*, the comprehensive term, had to give way to the more particular *hostes* and other terms. (4)
But in the Interpretatio to LRV.CT III.14.1 the barbari of the original remains. Now, this law, as it stands in the Breviary, is the only one which need not concern external enemies and peoples, the only law which could reasonably be held to apply to Roman/Goth relations. Are we to believe that it is mere coincidence that in this one case the barbari remains, while in all the others mentioned above, it is changed - and changed, apparently, at the whim of the interpreter? Is it not rather the case that barbari is preserved because there is no reason to change it, because it expresses perfectly the intention of the legislator - to prohibit all marriages of Romans with barbarians, including Goths? The strengthening of barbari by cuiuslibet gentis is perhaps, in fact, made in order to remove any doubt that the provision does not apply also to other barbarian peoples (hostes and extraneae gentes!), for the Goths themselves would have been to the Romans par excellence the barbari.

The traditional view of the Interpretatio to LRV.CT III.14.1 as maintaining the prohibition of mixed Roman/Goth marriages is, then, correct, and with the establishment of this fact there disappears all positive reason for the attribution of the Antiqua LV III.1.1 to Euric. But it has been alternatively conjectured that even accepting the usual view of the Breviary text, the Antiqua might still be Eurician. For it could be the case that the prohibition of the LRV was never applied, that it was a
'dead' law, of a purely academic nature. Again, there is no reason why Alaric should not have reversed the policy of his father, and reintroduced the prohibition which Euric had annulled. (1) LV III.1.1 might, therefore, be Eurician: in the former case, indeed, it would most likely be so, for there would be little justification for attributing to Leovigild the abrogation of a law which was without application.

Now, there would seem little doubt that the prohibition of the Breviary was intended to be applied. (2) It is quite true that several of the laws of the LRV could never have been of practical application: Pretorian Prefects, senators, consuls - these had no meaning within the sixth-century Visigothic kingdom. (3) But LRV.CT III.14.1 (with Interpretatio) does not fall into this category of laws. It contains a specific regulation of enormous importance, a regulation which affected the everyday life of all Alaric's subjects, Goth and Roman, in the most significant fashion. It did not refer to out-of-date institutions, or to situations which had long since disappeared. It is impossible to suppose that such a law slipped into the Breviary by accident - especially if one alleges that it expressly contradicted another law issued only some thirty years earlier. To deprive it of meaning by saying its application was not envisaged is to reduce the whole code to a mere collection of legal regulations of a purely
academic nature - and therefore to say that the **Commonitorium** of Alaric enjoining the use of the code in the courts was hypo-
critical nonsense.\(^1\) If Reccesvind, one hundred and fifty years
after the publication of the Breviary, still found the matter
of marriage relations between Goths and Romans important enough
to include LV III.1.1 in his law code,\(^2\) it is surely unreason-
able to see in the prohibition of the LRV a law which had no
significance. If any law of the Breviary had meaning, it was
this one.

Intent to apply the law argues its application, if only for
a limited period. And there is no evidence that it was not applied.
To speak of "varios matrimonios de godos con romanas" in the
period before Leovigild\(^3\) is inaccurate: these cases boil down,
in point of fact, to two, one of which is doubtful. The marriage
of king Theudis with a rich Roman woman\(^4\) is clearly a very
special case: the participation of the king himself makes it
impossible to use it as evidence of a general state of affairs.
The only other example which can be cited is the marriage of the
parents of a certain Sinticius, who died a sexagenarian in 632
and whose epitaph describes him as **paterno traens linea Getarum.**\(^5\)
The assumption that his mother was Roman is possible, but not
of course, necessary;\(^6\) for she may well have been of some other
race: there are instances of mixed Frankish/Gothic marriages from
this period, for example. (1) But in any case the marriage may have taken place after a Leovigildian repeal of the prohibition. (2) We can hardly assume on this slender basis that the prohibition of the Breviary was ignored. (3)

So much for the non-application argument. The alternative suggestion, that Alaric reintroduced a prohibition previously repealed by his father, is total conjecture, with not a solitary scrap of evidence in its support. Certainly there is no argument for it from LV III.1.1. This Antiqua must have stood in the CR. The reference in it to priscia lex could only have been understood, if Alaric's prohibition was in force, as a reference to that prohibition, (4) and this is equally the only sense in which we are justified in taking it. If Euric revoked the Theodosian prohibition, in other words, we cannot know of this from the evidence we have.

Given that the prohibition of the Breviary was a meaningful one, the conclusion that the Antiqua LV III.1.1 is to be attributed to Leovigild is in fact an obvious one. (5) One other factor, the style of the Antiqua, may be mentioned as confirmative. The baroque verbosity and pompous piety of its language are far removed from the simple, direct prose which characterises those Eurician texts which have survived. Indeed, if it were not
certain that the law was an Antiqua, one would feel inclined, on stylistic grounds, to attribute it to Chindasvind or Recoesvind, who so delight in complexity of phrase. But as an Antiqua, its style is so totally dissimilar from that of the CE that one can only believe it to have originated in the chancery of the later legislator, Leovigild.

What seems very likely indeed is that the CE, far from containing a repeal of the original Theodosian prohibition, rather reinforced that prohibition with a parallel provision of its own. Prima facie, we might imagine it to have been the case that Euric would have wished to include such an important feature of the public law of his kingdom in a national Gothic code, and the affirmation of the Imperial prohibition by means of an Eurician law would certainly fit in well with the view of the circumstances of the Goths after Euric's conquests which has been expressed above. The repeal of the prohibition, on the other hand, would equally well correspond with the more settled and friendly relations of Romans and Goths which must have come to exist after a hundred years of constant co-existence.

A small but significant point lifts this suggestion some way out of the realm of simple conjecture. The Antiqua talks of the priscse legis remota sententia and goes on to declare
that in future tam Gotus Romanam, quam etiam Gotam Romanus si coniugem habere voluerit ... facultas eis nubendi subiaceat.

Now, the Interpretatio to LRV.CT III.14.1 spoke in general terms of Romani and barbarae cuiuslibet gentis: the original constitution had been equally general, contrasting provinciales and barbari. Strictly speaking, therefore, the Antiqua, talking only of Gothi and Romani, repeals neither the Theodosian prohibition nor that of the Interpretatio, for it leaves unmentioned the question of marriage between Romans and barbarians of other races. The most reasonable explanation of this would be that the prisca lex to which the Antiqua refers spoke in similar terms of Gothi and Romani. (1) An Eurician prohibition would have done just that. (2)

Two conclusions emerge from this discussion. Firstly, the Antiqua LV III.1.1 is not the work of Euric but of Leovigild, and it cannot therefore be used as evidence for the abrogation in the CE of a Theodosian law. This particular argument for the territoriality of the CE is not admissible. Secondly, a prohibition of marriage between Goths and Romans was, so far as we know, in general force up until the time of Leovigild. The fact of such a prohibition by no means has as its necessary concomitant the fact of separate law regimes: segregation in marriage does not involve the necessity of segregation in law. (3) But it does indicate separatist attitudes in the Visigothic kingdom, which
we would perhaps rather expect to find accompanied by a national law system, as was the rule elsewhere, than by a single territorial regime.

The second text with which we have to deal is CE 327. The problems presented by this text are of a different order from those of LV III.1.1 (Antiqua) In both cases, there is reference to an earlier law which requires identification: in both cases, too, the identification is, for our present purpose, the crucial feature in interpretation. But whereas we have for LV III.1.1 a complete and fully reliable text on which to base our examination, but a text which involves discussion as to its author, in CE 327 there is no problem of attribution, but very considerable doubt as to the correct form of the text. The first nine lines are preserved in such deplorable fashion as to be almost illegible, and it is in precisely this part of the text that the prior lex is dealt with.

The most recent edition of the CE gives the following reading for CE 327: (1)

CE 327

In priori lege fuerat constitutum ut si patruus
aut patrui filii cum matre ... vindicarentur.
2. Nos modo meliori ordinatione censuimus ut patre defuncto, si filius decesserit, omnem facultatem eius sibi mater dibeat vindicare, quae tamen sit post obitum vidua. 3. Si vero qui in vitam filios, nepotes et pronepotes relinquuerit, ipsi omnes habeant facultates, ea condicione servata ut nepotes ex eo filio qui patre superstite mortuus fuerit integrum de avi bonis quam fuerat pater eorum, si vixisset, habiturus percipient

4. nam nepotes ex ea filia quae ante patre (m) mortua est de ea portione quam mater fuerat habitura tertia(m) ((portionem perdant)).

Desunt 6 versus./ In primis 10 versibus singulae tantum litterae legi possunt.

This reading completely destroys the argument which played such an important part in the reasoning of the first exponent of the territorialist theme, and according to which the prior lex was identifiable with the Imperial constitution CT V.1.4(1)

This Theodosian text, which deals primarily with the succession rights of grandchildren ex filia, (2) is undoubtedly the model for the later part of the Eurician law, which deals with these rights in the same fashion as the Roman law. (3) But even before
the new reading of CE 327 appeared, it was not justifiable to accept the Theodosian law as the prior lex.\(^{(1)}\) The melior ordinatio which Euric introduces is contained in section 2 of CE 327, and it has always been accepted, with virtual unanimity, that it treats of the luctuosa hereditas of a mother to her dead child.\(^{(2)}\) This subject is totally outside the purview of CT V.1.4. If the prior lex is CT V.1.4, we have in CE 327 first the résumé of a Roman law concerning the inheritance of grandchildren ex filia, then a melior ordinatio which treats of a matter quite unconnected with that dealt with by the prior lex which is the subject of improvement,\(^{(3)}\) and only then a provision concerning the subject matter of the original prior lex\(^{(4)}\) Logic, common-sense and elementary legal technique alike demand some concordance of subject matter between the prior lex and the melior ordinatio, and this, on the hypothesis that the prior lex is identifiable with CT V.1.4, does not exist.\(^{(5)}\)

The recent reading of patruus aut patrui filii in the first section of CE 327\(^{(6)}\) in fact confirms what, on the grounds explained above, we would in any case have had to assert. Clearly the paternal uncle and his son could have no place in the résumé of a Roman law concerned with grandparents and grandchildren. But a prior lex concerning the succession rights of the patruus would not be open to any of the objections which have been noted as valid against
the proposed identification with CT V.1.4, and the suggestion that the prior lex provided for the participation of the paternal uncle and the mother in the inheritance of a dead child's estate, and that this arrangement was, by the melior ordinatio, revised, so that the whole inheritance passed to the mother, (1) seems in itself very likely. The mother is shown by CE 336 to have totally excluded the paternal uncles. (2)

The inheritance law of the Theodosian Code recognised succession rights to the estate of a dead child as resting jointly in the paternal uncles and the mother when no prior claim, in the persons of direct descendants, brothers and sisters, or the father of the decedent, existed. (3) But the Roman laws distinguished on the one hand between mothers with and without the ius liberorum, and on the other between patruus with and without agnatic claims. A mother with the ius liberorum always inherited two-thirds of her dead child's estate; a mother without it inherited two-thirds when sharing the inheritance with a patruus who had forfeited the rights of agnation, but only one third when the patruus concerned retained those rights. The whole system of the CT, with all its distinctions, was maintained intact in the LRV of 506, thirty years after the publication of the CE, and the relevant Interpretationes in no case let disappear the distinctions which their original constitutions had drawn between the mother with
and without the *ius liberorum* and between the agnatic and simply
cognate *patruus*.

It is the complexity of the Roman system with regard to the
joint succession of *patruus* and *mater* that makes it impossible
to accept any one of the relevant Theodosian laws as the *prior
lex* with which CE 327 is concerned. No summary of any one of
these laws would make sense which did not refer to the distinctions
which it drew between privileged and non-privileged mothers and
between agnate and cognate uncles, and room for the summary of
such complexities is totally lacking in the first few lines of
CE 327.

What is summarised in the Eurician text is clearly a much
simpler affair than any one of the Theodosian laws. (1) Possibly
it is one of Euric's own laws which had appeared in an earlier
redaction of the CE. Possibly again it is one of those *leges
Theodoricianae* to the existence and possible character of which
attention has been drawn above. (2) In either case, certainly, we
may assume the influence of the Roman law. But wherever the
original *prior lex* appeared, it can safely be said that if the
view that it dealt with the succession rights of the mother and
the paternal uncles is correct, the law cannot be identified with
any text of the Theodosian Code. Consequently, no argument for
the territoriality of the CE exists on the basis of the alleged abrogation in CE 327 of a Theodosian law. We may in fact anticipate a little, and say that CE 327 is on the contrary a crucial text in the case for the attribution of a national character to Euric's code. (1)

The texts which have been discussed above cannot be considered, then, as in any way compelling us towards acceptance of the territorial character of the CE. The territorialist case remains, on the basis of the evidence of these texts, at least non-proven. Later arguments will show that both versions of the territorialist thesis must, in fact, be positively rejected, and in these arguments the texts of the CE, in comparison with those of the LRV, will play a leading role. Here, however, we may conclude by referring to two texts which seem to indicate, though in no conclusive fashion, that the view of the CE as a national code of law for the Goths, the view which in the last chapter was supported by reference to the evidence of Isidore and to the general circumstances of the Visigothic kingdom, is correct.

We may note first CE 323, which provides that the wife of a man who succeeds in acquiring booty of some sort (aliquid lucri) whilst on a military expedition shall have no claim on what has been gained. (2) The full terms of the law are unimportant for our purpose. What is significant is this: the law could only have
applied to Goths, for only Goths were at this time liable to military service. (1) Of course, there is no reason why a law regulating Goths alone should not have appeared in a territorial code, but one would perhaps be more inclined to expect a reference to Gothus than to the more general maritus which in fact appears. But admittedly little weight can be put on this.

A stronger argument emerges from the Antiqua LV VII.4.2. The text concerns the duty of the comes civitatis to help the iudex in the event of this latter's inability to arrest a malefactor:

LV VII.4.2 (Antiqua).

Ut comes iudici auxilium prebeat pro comprehendis in crimine accusatis.

Quotiens Gotus seu quilibet in crimine, aut in furtum aut in aliquo scelere, accusatur, ad corripiendum eum iudex insequitur. Quod si forte ipse iudex solus eum comprehendere vel distinctere non potest, a comite civitatis querat auxilium, cum sibi solus sufficere non possit. Ipse tamen comes illi auxilium dare non moretur, ut criminis reus insultare non possit.

The opening phrase of this law immediately strikes the attention. Why does the law use the particular phrase Gotus seu quilibet rather than the more normal, and - in a territorial
code, as the LV undoubtedly was — equivalent in meaning, quis or quicumque? It could be that originally the law applied only to Goths, and that as the code in which it appeared — either Buric's or Leovigild's — was territorial, the word Gothus was deliberately used alone to make clear this restricted application. In this case, a later redactor added the seu quilibet in order to extend the law to cover people of all races. But two objections spring to mind here. Firstly, it is difficult to understand why this particular law of an original territorial code should have been applied only to the Goths and not also to the Romans. Are we to suppose that the legislator was not concerned to bring Romans to justice, and therefore went out of his way to omit them from the purview of the law? It seems most unlikely. And secondly: if the later amender was concerned to extend the scope of the law, why did he not make the simple, and natural, substitution of quis or quicumque for the existing Gothus, rather than introduce the additional phrase seu quilibet?

A far more satisfactory explanation is to accept that the text as we have it — or at least the opening words — is the original text of the CE. But if the CE was a territorial code, how can we explain the phrase Gothus seu quilibet, when the simple, and usual, quis would have served perfectly adequately? If, on
the other hand, the CE was a national code, and the *guis* in it thus always a reference to someone of Gothic nationality, the phrase makes absolute sense. This was a territorial law, and its general application was put beyond any doubt by the specific phrase *Gothus seu quilibet.* *Whereas quilibet* on its own would refer to a Goth, in conjunction with *Gothus* it could only be interpreted in one way. Perhaps the CE contained other such laws of full territorial validity, with similar phrases: if so, we must assume that they were amended by a later legislator, who overlooked this particular *Antiqua.* But the argument does not, of course, depend upon this.

The inclusion of such a territorial law in a national Gothic code is easily explicable, for it was concerned not with the regulation of Roman law cases as such — in which case its application would, according to the view expressed below, have been forbidden after 506 by the *LRV* — but with the judicial machinery which preceded the hearing of such cases. It laid down the course of action which a magistrate should follow in order to bring a wrong-doer to justice, rather than the law which he should apply in the execution of that justice. And as such it in no way affected the internal legal regime of the Roman population.
The main conclusions of the last two chapters may be summarised as follows. Firstly, the evidence of Isidore would seem best interpreted as indicating the national character of the CE as a code of law for the Goths. Secondly, confirmatory evidence of this interpretation appears to exist in the wording of the Antiqua VII.4.2 and possibly also in that of CE 323. Thirdly, the law systems of those other barbarian kingdoms about which we are informed are national: we should naturally expect a similar system in the Visigothic kingdom, in the absence of evidence to the contrary. Fourthly, the attitude and political situation of the Goths leads also to the conclusion that a national law system was most probable. Fifthly, the fact that the CE contains much Roman law cannot be used as a proof of the code's territoriality. And finally, no other territorialist argument so far discussed inclines us to positive rejection of the traditional view of the CE.

These conclusions add up to a considerable positive case in favour of the traditional attribution to the CE of the character of a code of national law for the Goths. But in the next chapter, on the LRV, there will begin to emerge a more general and more powerful argument in support of this thesis. For once we turn to the LRV, we will be able to begin to judge the territorialist theories not just with regard to the particular arguments they
produce in favour of the territorial character of a specific code, but with regard to the explanations they have to offer of the relationship existing between different codes. It is in this wider field that their inviability will, it is hoped, become clear, and that a consequent argument in favour of the traditional opinion - an argument, to coin a phrase, *ex impossibilitate contrarii* - will be shown to appear.
Central to any discussion of the nature of the LRV is the evidence proffered by the text of the Commonitorium, or promulgation decree, of Alaric II. It is necessary, despite the length of the text, to quote this in full:(1)

1. Praescriptio.

In hoc corpore continentur leges sive species iuris de Theodosiano vel de diversis libris electae vel, sicut praeceptum est, explanatae anno XXII regnante domno Alarico rege ordinante viro inlustre Goiarico comite.

2. Commonitorium Alarici regis.

Exemplar auctoritatis.

Commonitorium Timotheo v. Spectabili comiti.

Utilitates populi nostri propitia divinitate tractantes hoc quoque, quod in legibus videbatur iniquum meliore deliberatione corrigimus, ut omnis legum Romanarum et antiqui iuris obscuritas adhibitis sacerdotibus ac nobilibus viris in lucem intellagentiae melioris deducta resplendeat ac nihil habeatur ambiguum, unde se diuturna aut diversa iurgantium inpugnet objectio. Quibus omnibus enucleatis atque in unum librum prudentium electione collectis haec quae excerpta sunt vel clar-
iori interpretatione conposita venerabilium episcoporum vel electorum provincialium nostrorum roboravit adsensus. Et ideo secundum subscriptum librum, qui in thesauris nostris habetur oblatus, librum tibi pro discingendis negotiis nostra iussit clementia destinari, ut iuxta eius seriem universa causarum sopiatur intentio nec alius cuicumque aut de legibus aut de iure liceat in disceptatione proponere nisi quod directi libri et subscripti viri spectabilis Aniani manu, scut iussimus, ordo conplectitur. Providere ergo te convenit, ut in foro tuo nulla alia lex neque iuris formula proferri vel recipi praesumatur. Quod si factum fortasse constiterit, aut ad periculum capitis tui aut ad dispendium tuarum pertinere noveris facultatum. Hanc vero praecptionem directis libris iussimus adhaerere, ut universos ordinationis nostrae et disciplina teneat et poena constringat. Recognovimus. Dat. III. non. Feb. anno XXII. Alarici regis Tolosae.


Anianus vir spectabilis ex praecptione domni nostri gloriosissimi regis Alarici ordinante viro magnifico et inl. Goiarico com. hunc codicem legum iuris secundum authenticum subscriptum vel in thesauris editum subscripsi et edidi sub die III. non. Febr. anno XXII. domno nostro Alarici regis.
Various arguments for the territoriality of the LRV have been proffered on the basis of this text and other evidence, and we may say straightaway that they have considerable immediate appeal. There is no need to specify them individually at this stage, but we may note, for example, that the phraseology of the Commonitorium appears at first sight to indicate the territorial character of the code which it introduces. The phrases: Iuxta eius seriem universa causarum sopiatur intentio, Ut universos ordinationis nostrae et disciplina teneat et poena constringat, Nec aliud cuicumque aut de legibus aut de iure liceat in disceptatione proponere nisi quod directi libri ... ordo conplectitur, Nulla alia lex neque iuris formula proferri vel recipi praesumatur—these would seem to be most naturally interpreted as evidencing the universal — that is to say, territorial — application of the laws which follow.

But closer examination of the Commonitorium shows that although it certainly offers evidence which is susceptible of a territorialist interpretation, the evidence does not necessitate such a conclusion. The features and phrases of the Commonitorium are perfectly compatible with the traditional view of the LRV as a code of national law for the Romans, produced within the framework of an accepted personal law system. No positive argument for the territoriality of the LRV can in fact be drawn from the Commonitorium.
It would be wrong, however, to say that it is a wholly neutral source, of no value for our enquiry. For what does emerge from its study, taken in conjunction with other factors, is not simply that certain territorialist arguments are unconvincing, but that both the territorialist theories which have found expression are as a whole insupportable. It is impossible to accept, that is to say, either that the LRV replaced the CE as an exclusive, territorial code governing all the inhabitants of the Visigothic kingdom, and remaining in force until replaced in turn by the CR, or that the LRV co-existed with the CE, forming with it a territorial corpus, though bearing itself, in large part, the character of a didascalic work. The evidence shows on the one hand that the CE remained in force after the promulgation of the LRV in 506, and on the other that the LRV was intended as a code of real, living law, to be applied in the courts of the kingdom.

This is not of simply negative value. For it is not over-dogmatic to say that rejection of the two territorialist theories necessarily involves acceptance of the traditional view that a national law system pertained in the Visigothic kingdom. What alternative is there that can be proposed? Some evidence in positive favour of the national (Gothic) character of the CE has already been reviewed: equally some evidence exists in positive
favour of the similar character of the CR and of the national (Roman) character of the LRV. This may not be sufficient in itself to allow us to make any confident assertions about the character of Visigothic legislation as a whole. But once the territorialist interpretations have been invalidated, not simply negatively, in that their various arguments have been demonstrated to be inconclusive, but quite positively, in that the positions adopted are shown to be untenable as a whole, then the traditional interpretation, to which this evidence anyway inclines us, is vindicated, for there is no conceivable alternative to it.

We may begin by recalling the circumstances under which the LRV of 506 was promulgated. (1) The Visigothic kingdom of Toulouse was faced in that year with a formidable threat from the north. The expansionist policy of the Catholic Clovis menaced the Visigoths with what was proclaimed by the Franks as a holy war against the Arians. Attempts at negotiations had failed, and Alaric began to prepare for war, even mobilising the Romans, who had hitherto been free from the duty of military service. Gregory of Tours reports much sympathy for the Franks, whose religious propaganda seems to have influenced the Catholic bishops in particular to treasonable activity. In 505 Cesarius, the bishop of Arles, and leader of the Church, was exiled, on the grounds of conspiring to deliver Arles into the hands of the Burgundians, allies of the
Franks: other bishops suffered a similar fate for similar activities. (1)

Yet in September, 506, Cesarius presided at the first-ever assembly of the Catholic Church of the kingdom of Toulouse, the council of Agde, and only seven months previously Alaric had published the compilation of wholly Roman law which we know as the LRV. Given the tension of the time, the friendliness shown by the Catholic hierarchy to the Franks, and the prime need to keep the support of the Roman population, it makes best sense to see both the council of Agde and the LRV as the results of a last-minute attempt by Alaric to show his concern for his Roman subjects and thus win their support in the imminent struggle. (2) This view, which is now generally accepted, (3) is amply confirmed by the obvious speed with which the LRV was produced. (4) The promulgation of the LRV was essentially an emergency measure, of political as well as legal importance.

With this in mind, let us look at the 'abrogation' argument, and see if in fact it does stand up to examination. First, we should note that there is no specific reference in the Commonitorium to the abrogation of the CE. (5) This would under any circumstances seem strange, for the CE had been in force for only some thirty years, and the law which was now allegedly taking its place was
often radically different. One would naturally expect some mention of the code which was being replaced after such a short lease of life and by laws quite distinct from it. But it is even stranger when we remember the particular circumstances of 506. The LRV was promulgated in an attempt to win the support of the Romans against the threatening Franks. It was, essentially, an emergency measure, and a propaganda measure. We could understand that Alaric could have felt compelled by the situation to re-introduce the old Roman law, which, according to the 'abrogation' interpretation, had been out of use since the appearance of the territorial CE. But this clearly implies that the Romans were dissatisfied with the CE, and positively in favour of its repeal - that, in other words, the rule of the CE was a factor in Roman discontent. Can we then imagine that Alaric would have let pass the opportunity to increase the propaganda effect of the LRV by referring directly to the CE and to the injustice of its rule?

We might be prepared to admit that failure to mention the CE, though difficult to explain, does not in itself rule out the possibility that it is nevertheless the CE which the LRV replaces. But the fact is that not only does the Commonitorium not mention the CE, but that it does specify the law which the LRV is now replacing. This is the omnis legum Romanarum et antiqui iuris obscuritas. Now
it is quite clear that the CE can be viewed neither as *leges Romanae* nor as *ius antiquum*: the second is inadmissible for obvious reasons, the first precisely because the CE was in neither the traditional nor the territorialist view a *Roman* code. In fact, if we were to admit, for the sake of argument, that the CE was included within the first of these two categories, we would find ourselves in a quite impossible position, for we would have to explain just how Alaric could talk of the "obscurity" of the CE when this was, as we know from the fragments which remain, not at all obscure.

We have to admit, then, that the *Commontorium* has no reference, either direct or indirect, to the CE and to its abrogation, but that it does, on the other hand, refer to Alaric's object as the clarification of the Roman law and of the old juristic pronouncements.\(^{(1)}\) This *lex* and *ius* had already, according to the 'abrogation' argument, been out of force for some thirty years. But the text of the *Commontorium* makes it abundantly clear that it is not a question of the resurrection and elucidation of defunct law, but of the clarification of law in daily use: *Quod in legibus videbatur iniquum... corrigimus, ut omnis legum Romanarum et antiqui iuris obscuritas... in lucem intelligenteriae melioris deducta resplendeat ac nihil habeatur ambiguous, unde se diuturna aut diversa iurgantium inpugnet obiectio.* It is impossible to see how this part of the text can
be interpreted except as an indication that Roman laws and ius were still, in 506, in use. The CE, that is to say, had not enjoyed undisputed territorial rule since the time of its promulgation.

Unless the CE had been withdrawn at some time before 506, then, we are compelled to conclude that the legal regime of the Visigothic kingdom before Alaric issued the LRV was characterised by the dual rule of the CE and a complex of Roman laws and juristic maxims. (1) It is to these latter that Alaric applied himself in the promulgation of the Breviary: his aim was to replace the existing variety of Roman legal and juristic sources with a single code which should contain the only authorities in future to be accepted. This is the only interpretation to which the text of the Commonitorium lends itself, and it is an interpretation entirely borne out by the contents of the LRV. We find there precisely what we should expect to find: a collection of Imperial laws and juristic dicta. Not only is there no reference to the CE in the Commonitorium, but neither do the laws of the LRV owe any debt to those of the CE. It is as if the CE had never existed.

How can this be explained if the CE were abrogated by the LRV? What, for example, of those laws of the CE which concerned the profoundly relevant issue of the division of lands, and which reappeared in the CR and in the LV itself? How can we explain
the absence of any laws dealing with this question in the LRV, and yet consider this a code at once territorial and exclusive of any other? How explain, too, for example, the absence of laws dealing with the saio and the bucellarius? Are we to believe that the conditions produced by the division of lands, and the relations between private soldiers and their patrons, required no legal regulation between 506 and the date of the publication of the CR, although they did require such regulation both before and after? It is impossible to accept.

Not only are the omissions of the LRV inexplicable if the code is regarded as abrogating the CE, but we have the extreme difficulty of being thereby forced to accept that the Goths put themselves, in 506, under the exclusive rule of a law code which contained nothing but Roman law. (1) Now, it should be said immediately that the adoption of a totally Roman legal code by a barbarian people is not in itself impossible to accept, even though it in fact occurred in no other case that we know of. (2)

The difficulty lies in accepting this of the Goths, who were - on any view - ruled before and after the LRV by codes which were not fully Roman in character. (3) The simple assertion that the law of the CE and the CR differs very considerably from that of the LRV must, for the moment, suffice: proof will come later. (4) Now, the force of the argument from the variations of regime between
the CE/CR and the LRV is perhaps not as strong in opposition to the 'abrogation' thesis as it is to the other territorialist theory, but it is strong nevertheless.

If the LRV was issued in deference to Roman opinion, the law in it can safely be presumed to be the law which the Romans wanted. But as the law of the LRV is quite distinct from that of the CE we have no choice but to accept that the - allegedly - territorial CE was considered unsatisfactory by the overwhelming majority of the population. It would be unreasonable to suppose that Roman dissatisfaction in this matter was of recent appearance in 506, and we would thus have to assume that the CE was promulgated, and remained in force for thirty years, in despite of Roman hostility. It is really extraordinarily difficult to believe that Euric would have imposed upon his Roman subjects a code of law which met with their disapproval: one can see no possible advantage, and, on the contrary, extremely pertinent disadvantages, in the adoption of such a course of action. (1)

But - accepting this for the sake of argument - we have no choice but to consider the deviations of the CE from the law of the LRV as due to the wishes of the Goths. How, then, explain their alleged willingness, not so much simply to accept a radically different regime in 506 - for the imminent menace of the Franks would perhaps be sufficient to explain that, even though one can see no
good reason why the LRV should not have been promulgated simply for the Romans - as to continue living under that regime until the time of Leovigild? And then to revert abruptly to laws based essentially on those of the CE, allegedly out of force for some seventy years? One could accept the exigencies of the situation as the cause of their action in 506; one could not accept them, nor find any other cause, for their remaining content to live under the LRV for so long after 506. It cannot be argued that they simply became accustomed to the regime of the LRV, for then the reversion under Leovigild makes no sense. It may be that some explanation can be found for this strange behaviour on the part of the Goths, but none presents itself.

Even more difficult is it to accept the implications of the 'abrogation' argument for the legal regime governing the Romans. Taking the differences of regime between the CE/CR and the CT/LRV again, for the moment, for granted, we have to imagine that within just about one hundred years the Romans were ruled successively by four different codes of law, the first and third of which were much the same, and wholly Roman in their content, the second and fourth of which were again much the same, but only partly Roman. The property rights of a Roman widow, for example, would have been one thing before about 476, and between 506 and the year of publication of Leovigild's code, another altogether between about 476 and 506, and after the promulgation of the CR! (1) It is extra-
ordinarily difficult to believe that such rapid changes of regime could have taken place at all: but it really defies belief that two of those changes would have been rather reversions to previously abrogated regimes.

The arguments against the theory that the LRV replaced the CE in 506 as the sole territorial legal authority of the Visigothic kingdom are, in short, overwhelming. The language of the Commonitorium, which makes it clear that Roman laws were in force immediately before the promulgation and that it was with these that Alaric was concerned, the corresponding lack of any reference in the Commonitorium to the CE, the totally Roman character of the laws of the LRV, which owe no debt whatsoever to those of the CE, the stark contrasts of regime between the CE and the LRV, the failure of the LRV to deal with highly relevant matters of public law which were dealt with in the CE - each of these separate arguments provides evidence of the weakness of the 'abrogation' theory, while in conjunction they are surely irresistible. When to the points made here are added those of the next chapter, showing that at a later period the simultaneous rule of the CR and the LRV cannot be denied, the case against the 'abrogation' theory as a whole will be complete and, one dares to say, watertight.

Various of the objections which have been raised here against the 'abrogation' thesis are not valid against the alternative terr-
itorialist position, which postulates the conjoint territorial rule of the CE and the LRV. According to this view, the two codes were compatible one with another: the character of the LRV was essentially that of a didascalic code, the laws of which applied only in those cases not foreseen by the CE.\(^1\) Highly original though this theory is, it stands up to examination little better than does that discussed above.

It must again be taken on trust for the moment that there are glaring divergencies between certain of the laws of the CE and the LRV. Given these conflicts of regime, and given too that both the CE and the LRV were codes of positive law, the impossibility of claiming that the CE was directly compatible with the LRV is plain to see. But the 'compatibility' argument in fact rests on the basic assumption that the LRV was not a code of positive law, but a code of an essentially didascalic character.

This characterisation of the LRV seems both arbitrary and unjustified.\(^2\) For the Commonitorium surely leaves no doubt that the LRV was a code of positive law, of law which Alaric intended to be applied in the courts of the land. His purpose in promulgating the code is plainly stated in the opening lines: it is to clarify the obscurities and remove the ambiguities inherent in the existing Roman leges and ius. These legal inadequacies are not at all the subject of mere academic concern: they are the
source of constant practical problems for actual litigants in the courts: Ac nihil habeatur ambiguum, unde se diuturna aut diversa iurgantium impugnet obiectio. The code which Alaric produces to remedy this confusion in the Roman laws is approved by a council of the leading men of the kingdom called at a time of imminent crisis - a fact hardly consistent with a view of the Breviary as an academic authority - and sent to Timotheus so that he might judge all cases according to its provisions: Librum tibi pro discingendis negotiis nostra iussit clementia destinari, ut iuxta eius seriem universa causarum sopiatur intentio. The text is quite explicit here: the code is to be used for the resolution of law cases. Timotheus is to allow no Roman laws or juristic authorities(1) to be put forward in a dispute, except those included in the LRV: Nec aliud cuicumque aut de legibus aut de iure liceat in discpectione proponere nisi quod directi libri ... ordo conplectitur. The discpection is envisaged as a real, rather than an academic, dispute, for it takes place in court: Ut in foro tuo nulla alia lex neque iuris formula proferri vel recipi praesumatur.(2) And, finally, the penalty for disobeying Alaric's instructions is severe - death, or the forfeiture of property: hardly, one might again think, consistent with a view of the LRV as didascalic in character!

The Commonitorium, then, makes it very plain that the law of
the code which follows it is law meant by Alaric to be applied: indeed, it is difficult to imagine that in 506 he would have concerned himself with the publication of a code of academic law, when the Franks were virtually knocking at the gates of the kingdom. But to remove any vestige of doubt that this is the case, a further piece of evidence may be put forward. The only Spanish manuscript of the LRV contains an addition to the body of the text of 506 in the form of a law issued in 546 and ordered by its author, king Theudis, to be included in the LRV at a specified point - precisely the point, in fact, at which it is found. Now, the lex Theudi dealt with a matter of urgent and practical importance: it regulated the whole question of the costs in which a litigant in a court case might be expected to be involved. Essentially, it was a law of positive application. But we find it added - expressly ordered to be added - to a code which is allegedly didascalic in character!

Despite the frequent general designation of the LRV as didascalic, however, the exponent of the 'compatibility' thesis does admit the practical application of the laws of the code in those cases not already dealt with by the CE. The LRV is to be considered, in other words, as only in part didascalic. The extraordinary difficulty in dealing with this view is that its advocate adduces not a single argument in its favour, but contents himself with pure assertion: it appears above all therefore to have the character
of a hypothesis of simple convenience, which is produced as the only way of resolving the problems caused by the need to recognise the inaccuracy of the 'abrogation' argument, the general applicability of the LRV as a code of positive law and the patent incompatibility of the provisions of the CE with those of the LRV, when it is a prior requirement that the solution be reconcilable with a territorialist conception of Visigothic legislation.

In fact, this hypothesis is open to the same objections as have been maintained above against the general characterisation of the LRV as didascalic. For the CE was a comprehensive code of some 350 to 400 chapters, covering a wide range of topics:\(^{(1)}\) if only those cases not dealt with in the CE were regulated by the LRV, the practical validity of this would have been reduced to a minimal level. The character of the code would have remained in essence, if not wholly, that of a didascalic compilation. And it is really impossible to attribute this character to the LRV, given the circumstances of 506, the language of the Commonitorium and the inclusion in the LRV of the later \textit{lex Theudi}.

The vast majority of the laws of the LRV were laws which were capable of application,\(^{(2)}\) and one can see no justification for the claim that not all of these laws were actually intended to be applied. Not only does the Commonitorium say nothing of the alleg-
edly superior authority of the CE, when we might naturally expect it to, but its language would seem to offer decisive opposition to any such theory. (1) One should not think here of the instructions to Timotheus ut ... nulla alia lex neque iuris formula proferri vel recipi prae sumatur, for what was forbidden here was the admission of any other Roman legal or juristic source: the CE was neither lex nor ius, and was not therefore excluded. What would seem to make the claim insupportable is the earlier injunction that all cases be judged according to the provisions of the LRV: Librum tibi pro discingendis negotiis nostra iussit clementia destinari, ut iuxta eius seriem universa causarum sopiatur intentio.

Now, it is possible to interpret this phrase as evidencing the sole and territorial applicability of the LRV: it is equally possible to maintain that it shows the LRV to have been the exclusive code of law for the Romans. Either of these positions is arguable from the language of the text. But what would not seem possible is the reconciliation of the phrase with the hypothesis under consideration. The LRV is to be used in the judgment of all cases, universa causarum ... intentio: one can viably interpret 'all' in fully territorial terms or in national (Roman) terms, but what is surely not permissible is to interpret it as meaning 'some', as meaning 'all except those cases which are already regulated by the CE.' This seems a clinching argument indeed, which not only rules out the conjecture of a partly didascalic LRV, but also militates
directly against any view of the conjoint territorial rule of the CE and the LRV.

The arguments produced above against both the 'abrogation' and the 'compatibility' theses will have demonstrated, it is hoped, the untenability of both these versions of the basic territorialist theme. One piece of further evidence may now be mentioned, which serves to confirm the traditional view that the Goths were not ruled by the LRV. On either territorialist showing, the LRV was in force at least until the promulgation of the CR in the reign of Leovigild (568 - 584): according to the 'abrogation' interpretation it was then abrogated by the CR, while in the 'compatibility' view it remained in force alongside the CR. Under these circumstances it is impossible to believe that Isidore - already a bishop about the end of the century(1) - would not have known - if either territorialist view is correct - that the LRV ruled, or had ruled, the Goths. Yet nowhere does he refer to it. Failure to mention the LRV is difficult indeed to comprehend, if it did indeed regulate the Goths, for Isidore was plainly interested in their legal history, referring to the CE and the CR in two separate passages of the Historia Gothorum - and clearly implying in the second, it may be added, that the CR directly replaced the CE in Leovigild's reign.(2) But the lack of reference to the LRV is perfectly explicable if its character as a
national code of law for the Romans - with whom Isidore was in
the Historia Gothorum self-evidently not concerned - is admitted.\(^1\)

We may turn finally to discuss those arguments for the
territoriality of the LRV which have been produced on the basis
of the Commonitorium and of other evidence. Several of these bear
a superficial appeal, but in no case can it be said that the
evidence offered leads to a necessary territorialist conclusion:
in each case, in fact, the evidence is perfectly compatible with
that traditional view of a personal law system in the Visigothic
kingdom to which, as has been contended above, we are compelled
as a result of the rejection of the two territorialist theories.

The reference in the Commonitorium to utilitates populi
nostri... tractantes has no necessary implications for the terri-
torial thesis.\(^2\) The phrase itself is admittedly territorial
in scope: it would be forced to see in it a specific indication
of Alaric's Roman subjects alone,\(^3\) even though we may believe
the Commonitorium as a whole to have been of relevance only to
them. Just as in the Antiqua LV VII.3.3 populus noster is used
as the equivalent of regnum nostrum,\(^4\) so here Alaric could have
written utilitates regni nostri without any change of meaning.
Populus has also the meaning of "community" - again with regional
connotations - and is frequently used in this sense in later laws.\(^5\)

To translate "people" in the sense of a particular racial, national
unit, the word *gens* would have been used.\(^{(1)}\)

But Alaric's use of the territorial phrase *utilitates populi nostri* is certainly not out of place in a code addressed solely to the Romans. Concern for the state of the kingdom naturally includes concern for the Romans.\(^{(2)}\) There is a statement of general motivation - *utilitates populi nostri... tractantes* - and then a declaration of particular action, taken with regard to the Roman law - *hoc ... corrigimus, ut omnis legum Romanarum et antiqui iuris obscuritas ... in lucem ... deducta resplendeat*. In effect Alaric was saying: 'because I am concerned for the welfare of my kingdom, I am now clearing up the obscurities of the laws by which the Romans are ruled.' The Romans, after all, constituted some 98% of the population: their welfare was manifestly pertinent to a general concern.

The argument that there is no indication of the exclusively Roman nationality of the *episcopi* and *provinciales* who gave their consent to the code and that we have therefore to assume the representation of both races - a feature held to be inexplicable if the LRV were intended for the Romans alone - is equally invalid.\(^{(3)}\) There can be no doubt that *provinciales* and *episcopi* are not words which in themselves have any particular national connotation. *Provinciales* means simply "inhabitants"\(^{(4)}\) while *episcopi* applies as well to Arian (Gothic) as to Catholic (Roman) bishops. But this does not involve the necessary conclusion that Gothic *provinciales* and
episcopi were present at the assembly which gave its consent to the LRV. (1) We cannot regard the words of the Commonitorium in vacuo, but must interpret them against the background of the legal system which pertained. If we accept the traditional thesis and hold that before 506 the Goths had been ruled by the CE, and the Romans by a complex of laws - with the CT as the most significant single corpus - and juristic dicta: if we then take into account Alaric's declared intention to clarify the Roman legal regime by the issue of one definitive law book: under these circumstances, provinciales and episcopi would surely have been naturally understood as references to persons of Roman nationality. Given an existing national law system, that is to say, the reader of the Commonitorium would take it for granted that those concerned with giving their consent to a code of Roman law were of Roman nationality: we should not expect the composer of the Commonitorium to write: Venerabilium episcoporum Romanorum vel electorum provincialium nostrorum Romanorum roboravit adsensus, when he had already written of the intention to elucidate the legum Romanarum et antiqui iuris obscuritas. Certainly, anyway, the assumption that because the bishops and provinciales are not specified as Roman, they are to be considered as in part Gothic, is not logically justifiable. (2) The words actually used are, in short, neutral, and incompatible with neither the traditional nor the revisionist view of the LRV. (3)
This same argument applies also to another point. The Commonitorium tells us that the LRV is to serve ut iuxta eius seriem universa causarum sopiatur intentio, and Alaric orders ut universos ordinationes nostrae et disciplina teneat et poena constingat: Timotheus is to allow no other law or juristic authority in his court but those found in the LRV: Nec aliud cuicumque aut de legibus aut de iure liceat in disceptatione proponere nisi quod directi libri ... ordo complectitur ... nulla alia lex neque iuris formula proferri vel recipi praesumatur - and this on pain of death or forfeiture of property. But again, given an existing national law system, and Alaric's previous reference to his clarification of the Roman law, such references cannot be viewed as having necessary territorial implications.\(^{(1)}\)

It would have been known and accepted, if a national law system were in force, that a code of Roman law would be applied only in Roman cases, and that only Romans would be bound by it - in other words, that universi meant universi Romani. Similarly, the instructions to Timotheus can be thought to hark back to the opening declaration of Alaric's intention to clarify the Roman leges and ius: it is nulla alia lex Romana neque iuris antiqui (=Romani) formula that is meant.\(^{(2)}\) Such instructions would not hinder Timotheus's use of the CE in purely Gothic cases: they would restrict only his freedom of choice among the various sources of Roman law which could - until the promulgation of the LRV - have been used in Roman cases.
The argument that popular consent to legislation was not a feature of late Roman constitutional practice, and that it can be inferred from the fact of popular consent in this case that the Goths were affected by the promulgation is, equally, not convincing. It is true enough that popular consent played no part in late Roman legislative activity. But the fact that it did play a part in 506 does not mean that the Goths were necessarily affected by the LRV, or even that they were present at the council. We can easily explain the gathering of 506 by the influence of Gothic practice: it would have been natural for Alaric to think in terms of gaining the support of his Roman subjects by means of a council of the most important among them, and such an attitude on the part of the king would have been welcome, we may imagine, to the powerful Roman aristocracy who would have been most affected by it. Neither is the claim convincing that Alaric's procurement of popular assent to the LRV is explicable only if the law which had been in force before the LRV was quite distinct from that of the LRV - that is to say, only if the CE had been in force previously. We have already seen that the wording of the Commonitorium excludes this possibility. But in any case the replacement of the complex and confusing variety of Roman legal and juristic authorities with the simplicity of a single code, would have been an action of sufficient importance in itself to warrant gaining the support of those who were affected by such a change.
In any case, the promulgation of the LRV was, as has been said above, essentially an act of propaganda, designed to win the good-will of the Romans, in face of their tendency to support the advancing Franks. What better way for Alaric to show his concern for the Romans and their importance in his eyes, and at the same time to ensure the widest possible diffusion of the news of his reform, than to summon an assembly of the leading Romans of the kingdom, who might declare their approval of his measure? There is no need to attach any particular juridical significance to the fact of popular assent in 506: it is explained perfectly adequately by the exigencies of the political situation. (1)

What, next, of the similarity of wording between the Commonitorium and the later territorial laws of Theudis, Reccesvind and Ervig - a similarity which in itself cannot be denied? (2) This seems of not the slightest significance. All these later laws are explicitly territorial: that of Theudis speaks of provinciales adque universos populos, (3) while both Reccesvind and Ervig address their codes in cunctis personis ac gentibus nostrè amplitudinis. (4) The Commonitorium, on the other hand, offers no such incontrovertible evidence of territoriality, and its phraseology is perfectly explicable within the framework of a national law system. The admitted territoriality of later laws would not seem to be a factor which we should take into account when dealing with the Commonitorium.
It has also been argued that the phrase *ordinante viro inlustre Goiarico comite* in the *Praescriptio* is best interpreted as showing Goiaricus, a Gothic count, to have been president of the commission which produced the LRV.\(^1\) It really cannot be admitted that this view, if correct, has any particular consequences for the solution of the question of the nature of the LRV: the choice of a Gothic minister as president of a commission whose function was the compilation of a code of Roman law in no way implies that the code was therefore territorial in its application.

We could easily put down such an appointment to Alaric's concern to ensure that the commissioners - among whom representatives of the Catholic Church must have been prominent\(^2\) - did not go further than the king desired, did not, for example, maintain the anti-Arian legislation of the Emperors.\(^3\) But in any case the interpretation is by no means secure. The other view may well be correct that Goiaricus was simply the minister responsible for the order to Anianus to send out the *exemplaria* of the code.\(^4\) It is really more to be expected that the composition of a code of wholly Roman law be entrusted to the overall control of a Roman than of a Goth. But the evidence that we have allows no certainty as to the post held by Goiaricus or to the precise functions attached to those posts which can be considered possible, and no conclusions can therefore be drawn which bear on the question of the national or territorial character of the LRV.
Two further arguments, not this time based on the phrases and features of the *Commonitorium*, remain now to be discussed. Firstly, it has been pointed out that we have no citations of the CE in any source for the period after 506.\(^{(1)}\) This is obviously consistent with the abrogation of the CE in 506: what it is not is evidence that the CE was abrogated then. The *ex silentio* argument is highly suspicious when used in this way. It is one thing to say that we can reasonably expect Isidore to have mentioned something if it had existed, and to use the fact that he does not mention it as an argument against its existence: it is quite another to say that we can reasonably expect the CE to have been cited in contemporary sources, and to use the fact that those sources which have survived do not mention it as an argument against its currency. The only reference we do have to the CE is that of Isidore, and that strongly implies the currency of the CE up to the time of the promulgation of the CR.\(^{(2)}\) The *ex silentio* argument is here sadly inadequate.

Secondly, it is pointed out that the *lex Theudi* of 546, of indubitable territorial scope, was ordered by the king to be included in the LRV at a specified point\(^{(3)}\) - precisely where it is found in the Leon manuscript of the LRV - but that there was no corresponding order for the law to be inserted in the CE. Does this not lead us to think that the LRV was, therefore, the only code in territorial force in 546?\(^{(4)}\)
Not at all, for two reasons. Firstly, we cannot know that the lex Theudi was not also introduced into the body of a still valid CE. The only knowledge we have of the lex Theudi and of the instructions to include it in the LRV is from the text of the law as it in fact appears in the LRV. It is quite conceivable that a similar text, but containing instructions that it be included in the CE, would be found in the CE, if we had a full copy of that code.

Secondly, it would have been perfectly reasonable for Theudis to order the law to be inserted in the LRV alone, even if a national law system were in force, with the CE ruling the Goths. There was, after all, almost certainly a unified judicial system in the kingdom: the rectoribus et iudicibus to whom the king addressed his law were thus judges for both Goths and Romans. There would have been no need for the king to order the inclusion of his territorial law in both the national codes, the CE and the LRV, for its inclusion in the LRV alone - the code which, given the numerical preponderance of the Romans would have been more extensively used if a national law system pertained - would have been quite sufficient to ensure that it was brought to the attention of the judges responsible for its execution and preserved in such a way that they had permanent access to it. The territorial application of the law was inherently clear, and would have been in no way prejudiced by the law's inclusion in an otherwise national code.
In other words, naturally we would expect to find the *lex Theudi* in the LRV if this code were in sole and territorial force, but the point remains that the law's position in the LRV does not lead to the necessary conclusion that the LRV *was* in sole and territorial force. The evidence permits of an interpretation fully in accordance with the traditional thesis.\(^{(1)}\)

The positive arguments for the territorial character of the LRV are, then, of nugatory value: the positive objections to both territorialist theses, in their wider application to the question of the relationship of the CE and the LRV, are, on the other hand, irresistible. We have, it must again be stressed, no alternative but to hold to the traditional thesis, to which, in any case, isolated pieces of evidence have pointed and against which no viable arguments have been found. The question of divergencies between the individual laws of the CE and the LRV, which is of obvious importance in the argument against both territorialist theories, will be treated later. First, however, we have to turn to the problem of the character of post-Alarician legislation up to the time of Reccesvind.
Post-Alarician legislation.

The *terminus ad quern* for our discussion of the character and evolution of Visigothic legislation can be established as the year which saw the promulgation of Reccesvind's LV.\(^{(1)}\)

For the territorial nature of that code is beyond dispute. The words of LV II.1.4 (*Recc.*) are unambiguous:

\[
\text{Leges in hoc libro conscriptas ... in cunctis personis ac gentibus nostre amplitudinis imperio subiugatis omni robore valere decernimus hac iugi manus suras observantia consecramus.}
\]

Not only is the territoriality of the code unquestionable: there can also be no doubt that the LV was the *sole* law code in force. Any idea that it might have co-existed with another code in the same way that the CE and the CR are suggested, in the 'compatibility' argument, to have co-existed with the LRV, is ruled out by LV II.1.8 (*Recc.*) and II.1.9 (*Recc.*), which specifically forbid the employment of any law-code other than Reccesvind's, and provide a swingeing penalty in the event of contravention.\(^{(2)}\)

The only later code of the Visigothic kingdom, that issued by Ervig in 681,\(^{(3)}\) is similarly characterised by the dual features of territoriality\(^{(4)}\) and exclusiveness.\(^{(5)}\) On these points historians have been virtually unanimously agreed.\(^{(6)}\)
No such unanimity of opinion has existed concerning the legal situation in the period between 506, the date of the appearance of the LRV, and 654(?). With reference to this period we find maintained that same conflict of views between the 'national' and territorial' schools that we have already encountered when considering the CE and the LRV. The Codex Revisus of Leovigild (568-586) has been generally acknowledged as the principal legislative feature of these 150 years and as such has necessarily lain at the centre of discussion. Traditionally, the CR has been regarded as a simple successor to the CE and as bearing the same national character as that code. The dual regime of the CE and LRV has been held to have given place to the similar rule of the CR and the LRV: two separate national codes were replaced by one territorial code only with the later promulgation of Reccesvind's LV. A tendency towards territoriality, explicit in the various wholly territorial laws issued by kings Theudis, Reccared, Sisebut and Chindasvind, and implicit in the CR itself, has been frequently recognised. But this was only a tendency: with the substitution of the CR for the CE, it has traditionally been thought, the national law system continued in force.

Territorialist writers have similarly maintained, with reference to the CR, the positions which we have already seen
them adopt in discussing the CE and the LRV. In the one view, it has been held that the CR ruled with exclusive and territorial validity, succeeding and abrogating the LRV just as this had, in 506, succeeded and abrogated the CE. No special significance should be attached, in this view, to the code of 654(?), for this appears as simply the fourth of a series of territorial codes, a series which had begun with Euric and was to end with Ervig. In the other, 'compatibility', version of the territorialist theme, the CR is considered to have replaced the CE but to have borne precisely the same relationship to the LRV as Euric's code had done: the CR and the LRV, that is to say, co-existed, forming together a territorial whole. A significant change in the legal system occurred only in 654(?), when the sole rule of the LV replaced this conjoint regime, the CR being abrogated and the LRV reduced to a wholly didascalic role.

Common to all three theses is the view that there existed no distinction of character between the CE and the CR. This was not the view expressed in a fourth theory. According to this, the CE and the LRV ruled as separate national codes until the time of Leovigild, but were then both replaced by the CR, which was thus the first territorial code of the Visigothic kingdom. Reccesvind's LV was, in this view, the territorial successor to the territorial CR.
The truth would seem to lie in none of these views. It is the contention of the following pages that the evidence leads us to adopt the traditional opinion of the CR as a national Gothic law code which replaced the similarly national CE and which existed alongside the national Roman LRV, but to consider not Reccesvind but Chindasvind, his father, as responsible for the abrogation of these two national codes and their replacement by a single territorial code. The traditional view is correct, that is to say, with regard to the character of the CR, incorrect in its attribution of responsibility for the first territorial code to Reccesvind.

The starting-point of discussion must be Isidore's report in the Historia Gothorum of Leovigild's legislative activity. Leovigild, the bishop says:

\[\text{In legibus quoque ea quae ab Eurico incondite constituta videbantur correxit, plurimas leges praetermissas adiciens, plerasque superfluas auferens.} \]

Leovigild, that is clearly to say, used the CE as a basis for his own code, but amended and omitted various of its provisions, and added many new laws of his own. In essence, Leovigild's code, the CR, was a revised edition of Euric's.
We have already established the trustworthiness of Isidore's report, and the near-certainty that it was directly based on first-hand knowledge of the promulgation decree of Leovigild's code.\(^{(1)}\) Its value lies both in what it says - which would seem effectively to scotch the 'abrogation' argument that the LRV ruled exclusively and territorially until replaced by the CR - and in what it does not say - which would seem equally decisively to deny the notion that the national CE and LRV gave way to the territorial CR.

The clear implication of Isidore's report is that the CE was in force until replaced by the CR. The language used - the reference to Leovigild's correction of "those things in the laws which seemed confusedly established by Euric", to his removal of "superfluous" laws, to his addition of laws "overlooked" by Euric - this leads one to think quite naturally in terms of the revision by Leovigild of a code which he found in force and which he considered inadequate for the legal needs of the time. The natural sense of the passage is that Leovigild made his revision because Euric's code was still in force, but marred by confusions, superfluities and omissions. It has been explained above\(^{(2)}\) why the view that the CE had been abrogated in 506 and that the LRV had ruled thereafter with sole territorial force should be emphatically rejected on the grounds of the evidence of the *Commonitorium*, of the differing nature of the laws.
of the CE and the LRV, and of Isidore's total silence with regard to the LRV as a code ruling the Goths. In these words of Isidore's, surely, is to be seen confirmation that the CE remained in force until replaced by Leovigild's CR.

It could of course be argued that though the natural implication of Isidore's report is that Leovigild revised the still valid CE, this is not the necessary implication - that there is nothing in the passage which explicitly forbids our acceptance of the view that it was the LRV which was replaced by the CR, but that this latter was nothing but a revised edition of the earlier and out-of-force CE. It is true that no explicit statement of the currency of the CE in Leovigild's time is made by Isidore. But to believe that it was the LRV which Leovigild replaced by the CR not only involves denying any weight to the arguments expressed in the last chapter against the view that the CE was abrogated by the LRV in 506: it also means acceptance of the surely untenable proposition that Leovigild took as the basis of his new code not the existing law which he found in force, but a compilation that had been legally defunct for something like seventy years! We are asked to believe that in 506 a radical transformation of the legal regime had taken place with the replacement of the Romanised laws of the CE by the wholly Roman and often strikingly opposed laws of the LRV: now we are asked to believe that a lifetime later Leovigild's subjects found themselves obliged to accept an
equally sweeping legal revolution with the replacement of the laws of the LRV by what were - in essence - the laws abrogated by Alaric, the laws of the CE! Suddenly, it would seem, Leovigild took it into his head not to modify, but to sweep away, for example, the inheritance law by which his subjects were accustomed to be ruled, and replace this with the often wholly distinct system that had pertained - but apparently been found unsatisfactory - two generations before! Suddenly, it would seem, the need was felt for laws concerning, for example, the division of lands, laws which we are asked to believe had not been required or applied for seventy years! It is rare to find total revolution in legal development, but to accept that the CE was abrogated by the LRV and that this in turn was abrogated by the CR is to accept the fact of two revolutions - or rather, a revolution and a counter-revolution - within the span of a long lifetime.

We may add a further point. Would the promulgation decree of the CR, which so precisely specified the nature of its dependence on the - allegedly - long defunct code of Euric, not have referred to the LRV which it is supposed to have abrogated? And would not Isidore, who used this promulgation decree, then have made some reference to the LRV as a code governing the Goths - if not here, at least somewhere in the Historia Gothorum? Even if the CR made no mention of the code it was abrogating, Isidore
would certainly have known of the rule of the LRV over the Goths, if this came to an end only with the publication of the CR, for he was possibly already of adult years when Leovigild's code was issued, and would in any case have heard of the different legal regime pertaining before that time from the eminent men with whom, as bishop of Seville, he associated. (1) One would confidently expect a reference somewhere. Yet there is none. (2)

Just as the evidence points overwhelmingly to rejection of the notion that the CE was abrogated in 506, then, so it leaves little room for doubt that it was the CE, and not the LRV, which was abrogated by Leovigild's CR. (3) Further and quite decisive evidence against the 'abrogation' argument will be discussed a little later. What we must now assess is the value of Isidore's evidence with regard to the alternative suggestion that the CE was in force till replaced by the CR, but that the former code was national (Gothic) in character, the latter territorial.

Certainly this view has the merit of taking Isidore's words in the sense in which it is most natural to take them: it accepts that the CE remained in force until abrogated by the CR. But to attribute a national character to the CE but a territorial character to its replacement, the CR, is not justifiable. It is not what Isidore says that makes this unacceptable, but what he does not say.
Isidore's report makes clear the direct link between the CE and the CR, and precisely specifies the nature of the changes made by Leovigild. But it makes no mention of any such transcendental change as would have taken place if the legal system of the country as a whole had altered with the publication of the CR. When we remember that the CR was produced in Isidore's own lifetime, that it was still in force when he wrote the Historia Gothorum, (1) that the promulgation decree, from which he almost certainly drew the details of the changes which he reports Leovigild to have made in Euric's code, would quite certainly have recorded such a revolutionary innovation, if such had taken place, as the introduction of a territorial in place of a national law system, and that in any case, Isidore would assuredly have known of this from those high dignitaries of church and state in whose circles he moved - under these circumstances, the failure of Isidore to make any reference to such a fundamental change in the legal system of the country is the strongest evidence that no such change took place. (2) We cannot reasonably attribute responsibility for the transition from a national to a territorial regime to Leovigild.

It would be as well, however, to look now briefly at the arguments advanced in support of this hypothesis. Four features of the CR (3) are specified as evidencing the territoriality of
that code as against the earlier CE and LRV: the removal of the prohibition on mixed Roman/Gothic marriages, the disappearance of the social superiority formerly enjoyed by the Goth over the Roman, the establishment of a uniform judicial system for both peoples, and the Romanisation of the law of succession.\(^{(1)}\)

None of these features, even if admitted, would seem pertinent to the question of the national or territorial character of the code.

It is true, firstly, that Leovigild removed, in LV III.1.1 the earlier prohibition against marriages between Goths and Romans.\(^{(2)}\) Such a step is witness to the breaking down of the barriers between the two peoples and must have been of the greatest political as well as social importance.\(^{(3)}\) But it cannot conceivably be considered, whatever its extra-legal signification, to have had necessary juridical implications. The freedom of two peoples to marry into each other does not involve the conclusion that therefore they enjoy a common legal regime\(^{(4)}\) any more than does the lack of such freedom involve the converse conclusion that therefore no common legal regime exists. It is not justifiable to use a particular social, as evidence of a general juridical, reform.

The disappearance in the CR of the privileged position allegedly shown in the CE to have been enjoyed by the Goth
vis-à-vis the Roman is also advanced in support of the theory
that while Euric's code was national, Leovigild's was territ-
orial. There is no need for examination of the texts, CE 312
and LV V.4.20 (Antiqua), which are held to bear witness to this
change, though it should be noted that the view that CE 312
evidences Gothic social superiority is highly disputable.(1)
The fact is that even if we admit the social development which
is suggested, we get nowhere: for why should we infer from the
fact of the social equality of Goth and Roman the fact of their
common subjection to a single code of territorial law? The
premise - that the CE shows the Goth to have occupied a privi-
leged position and that the CR shows this superiority to have
disappeared - is suspect, that is to say, but the conclusion -
that the CR was therefore a territorial code - is in any case
invalid.

It is just as inadequate to rely on the alleged establishment
of judicial unity by Leovigild as evidence of his similar estab-
lishment of legal unity.(2) It may be correct to assert that
Goths and Romans became under Leovigild subject to the same judges -
though this is very unlikely(3) but it is not justifiable to
assert that therefore they became subject to the same law. The
fact is that the existence of a single set of judges for Romans
and Goths alike in no way precludes the application by those
judges of different sets of laws in different cases, depending on the nationality of those concerned. (1)

Finally, there is the question of the Romanisation of the law of succession of the CR. A whole chapter, De gradibus, is taken over direct from the Breviary and a significant example of Romanisation is allegedly apparent in the Antiqua LV IV.2.1, which is held to differ from CE 320 in its establishment of the new principle of the equal successor capacity of the two sexes. Again, there is no need to examine these texts in detail. (2) No-one would seriously attempt to deny the enormous debt which the CR, like the CE, owes to Roman legal principles and provisions: to isolate examples of the general pervasion of Roman influence is valuable in itself but nevertheless irrelevant to the question of the national or territorial character of the code. This particular territorialist theme has already been dealt with in its application to the CE, (3) and it suffices here to repeat that the argument that a code must have ruled the Romans simply and precisely because the content of the code is largely Roman is totally unjustified in itself and in any case directly invalidated by the example of the Burgundian law. It may be added finally that however strong the Roman influence on the law of succession of the CR, the contrasts between that law and the law of the LRV remain striking and irreconcilable. (4)
These arguments are so unconvincing, and their original expression was so cursory, that one gains the impression that their exponent put them forward only as a rather desperate attempt to justify by direct evidence a point of view into which he was forced by his maintenance of the traditional opinion as to the national character of the codes of Euric and Alaric, and his simultaneous conviction that the introduction of territoriality could not be ascribed to Reccesvind. For if not to Reccesvind, to whom could the responsibility for the transition to a territorial law regime be attributed but to the only other monarch who is generally accepted to have issued a code between 506 and 654? To Leovigild? The dilemma is a real one, for it has been argued above that the one premise - the national character of the CE and the LRV - is correct, and the second - the impossibility of attributing to Reccesvind the authorship of the first territorial code - will be shown later to be equally justified. But it is not a viable solution to this problem to regard Leovigild's code as effecting the introduction of territoriality. Isidore's witness in this matter is so important that repetition may be forgiven. If, with the CR, there was introduced a new system of law - territorial in place of national - Isidore could not have failed to know of it, both from the informed court circles in which he moved and from the CR itself, which would inevitably have made mention of it. It is surely not possible to believe that if such a revolutionary
innovation had been made Isidore would have been at pains to tell us the precise fashion in which Leovigild re-cast Euric's code - by omission, addition and particular amendment - but would at the same time not have bothered to make reference to Leovigild or to his code as effecting such a fundamental transformation of the legal scene. Isidore's silence is the most telling of arguments against any view that the CE and the CR were essentially different in character, an argument in the face of which it is really not feasible to suggest that the CR was the first territorial code of the Visigothic kingdom.

The arguments which have been put forward against the two territorialist opinions so far discussed can admittedly be objected to on the grounds that they are conjectural, relying on probability or on silence. They would seem, nevertheless, convincing, especially in the face of the lack of effective counter-arguments in favour of the territorialist positions. But fortunately we do not have to rely on Isidore's evidence alone. Common to both the territorialist views which have been mentioned is the assertion that the CR ruled exclusively and territorially from the time of its promulgation until the time of its repeal by the LV of Reccesvind. It will be seen later that the time of repeal of the CR must, in fact, be brought back to the reign of Chindasvind.(1) But this is not presently important: what is significant is that the allegation that the CR ruled alone can be quite decisively
denied on the grounds of direct evidence that the LRV was still in force as a \textit{de iure} code of law well after the time of its alleged abrogation by the CR, and at a time when the CR itself was also still in force.

There are unmistakable references to the LRV in the \textit{Formulae Visigothicae},\(^{(1)}\) but these cannot be used as evidence that the LRV ruled as a \textit{de iure} code at that time, for it could be the case that the texts of the LRV continued to be used in practice, despite the official abrogation of the code.\(^{(2)}\) It is when we turn to the conciliar sources of the post-Leovigildian period that the debility of the thesis that the CR ruled as the sole code of law in the kingdom is quite clearly exposed. The fact is that references to the LRV do occur in the canons of these councils and that they cannot be passed off as reflecting simply the \textit{de facto} rather than the \textit{de iure} rule of the code.

Of the eleven allusions to the LRV which a pre-war investigation found in the decrees of the seventh-century councils,\(^{(3)}\) two leave no room for doubt that the LRV ruled as a current and valid code of law, while two others, though not in themselves decisive, offer strong confirmatory evidence of this. Of these four references, three are to be found in the canons of the second council of Seville, held in 619.\(^{(4)}\)
The first canon of II Seville regulates the question of lands whose possession has been lost to a church during hostilities: the lands are to be returned to the church which originally held them, regardless of the length of time which has elapsed since they were lost. Here is the relevant part of the text:

Sicut enim per legem mundialem his quos barbarica feritas captiva necessitate transvexit, postliminio revertentibus redditur antiqua possessio, non aliter (et) ecclesia receptura parrochiam quam ante retinuit cum rebus suis, sive ab aliis ecclesiis possideantur sive in cui(us)libet possessione transfusa sunt, non erit obicienda praescriptio temporis ubi necessitas interest hostilitatis.

Now, there is nothing at all in the texts of the LV, Antiquae or otherwise, which corresponds with the lex mundialis mentioned here. All law cases are subject to the general limitation period of thirty years established in the Antiqua LV X.2.3: not only is no exception made, but the code passes over in silence the whole question of post-liminiary rights.

The LRV, on the other hand, does deal with this matter, and makes it clear in addition that the right of postliminium
is unaffected by the thirty years limitation period that pertains in other cases. (1) On the grounds of this correspondence of content between the LRV and our canon, we would be wholly justified, in the absence of connection between the canon and the laws of the LV, in identifying the *lex mundialis* with the LRV. This identification would in turn lead to the conclusion that the LRV was in force when the canon was produced. For if the CR was in sole territorial force in 619, it is really inconceivable that a gathering of such an official and important nature as a national council of the highest dignitaries of the Church would have chosen to buttress its canonical decree by reference to a legally defunct law code, the use of which would, we may be sure, have been expressly prohibited in the CR, (2) and would have alluded to this as the "secular law" - the *lex mundialis*. (3)

Any doubt about this identification is ruled out by the striking concordance of language between the two texts of the LRV which are found under the heading *De postliminio* and our canon. LRV.CT V.5.1 reads as follows:

*Sint forte necessitas captivitatis abduxit, sciunt, si non transierunt, sed hostilis irrupt-ionis necessitate transducti sunt, ad proprias terras festinare debere recepturos iure post-liminiis ea, quae in agris vel mancipiis ante*
tenuerunt, sive a fisco nostro possideantur, sive in aliquem principali liberalitate transfusa sunt. Nec timeat quisquam alicuius contradictionis moram, quem hoc solum requirendum sit, utrum aliquis cum barbaris voluntate fuerit an coactus.

and the relevant part of LRV.CT V.5.2 as follows:

Diversarum homines provinciarum ... quos barbarica feritas captiva necessitate transduxerat, invitós nemo retineat, sed ad propria redire cupientibus libera sit facultas ... Reddantur ignitūr sedibus propriis sub moderatione, qua iussimus, quibus iure postliminii etiam veterum responsis incolōmnia cuncta servata sunt.

It is abundantly clear that these two texts were in front of the bishops who drafted the Seville canon. A whole phrase of LRV.CT V.5.2: Quos barbarica feritas captiva necessitate transduxerat appears with the change of only one word in the council text: Quos barbarica feritas captiva necessitate transvexit, and that one amendment corresponds, in fact, with the reading of the only Spanish manuscript of the LRV, which has transvexerat instead of transduxerat. (1) A further close concordance exists between the wording of LRV.CT V.5.1: Sive a fisco nostro
possideantur, sive in aliquem principali liberalitate transfusa sunt and that of the canon: Sive ab aliis ecclesiis possideantur sive in cui(us)libet possessione transfusa sunt. The phrases recepturos ... ea, quae ... ante tuerunt and necessitas captivitatis in this same LRV text appear as receptura parrochiam quam ante retinuit and necessitas ... hostilitatis(1) in the canon. Convincing evidence indeed that the Breviary texts formed the immediate source of the council decree!

It surely cannot be denied, given this intimate terminological correspondence, that the lex mundialis to which the canon refers is to be identified with the law of the Breviary. And this identification, as has been said, leaves no doubt that the LRV was still in force in 619, for that the bishops should have depended so closely upon a defunct and legally out-of-force law code and should have referred to this code as lex mundialis is frankly unthinkable.

Another citation of the lex mundialis in the decrees of this same council of Seville must also be taken as a reference to the LRV. The text of the decree, II Seville, c.3, is as follows:

De desertoribus clericis ut episcopis suis restituantur.

Tertia definitione ad nos oblata precatio est a reverentissimo fratre nostro Cambrane Italicensi episcopo pro quodam clerico Ispassando, qui desserens
ecclesiae suae cultum in qua dicatus ab infantiae
exordiis fuerat ad ecclesiam Cordobensem se contulit;
quem eligimus ut si nihil proponeretur de eo citra
dilationis obiecta proprio reformaretur episcopo.
Scribitur enim in lege mundiali de colonis agrorum,
ut ubi esse quisque iam coepit ibi perduret.
Non aliter et de clericis (qui) in agro ecclesiae
operantur canonum decreto praecipitur nisi ut ibi
permanenat (sic) ubi coeperunt. (1)

Just as the lex mundialis prescribes that a colonus agrorum
must remain on the lands ubi esse ... iam coepit, so must clerics
remain with the church ubi coeperunt. Significant here is the
clear indication that the lex mundialis alluded to is current law:
the use of the present tense - scribitur - leaves little room
for doubt about this.

Now, the institution of the colonate is nowhere mentioned by
name in the LV, and would seem to be referred to in fact by only
one law, of Chindasvind. (2) There is no justification for the view
that various Antiquae deal with the institution. (3) There are
references to individuals holding lands by agreement with others,
and these latter are designated as domini. (4) But the severely
limited freedom which was the prime characteristic of the Roman
colonus\(1\) is not even hinted at in any of these laws, and there is no reason at all to think that those who held lands from others did not remain free in their capacity to leave those lands when they wished - as did certainly the buccellarius.\(2\)

The LRV, on the other hand, refers to the colonus in numerous laws.\(3\) The obligation of the colonus to remain on the lands to which he is ascribed - the same obligation which, with regard to a cleric, is dealt with in our canon - is made clear in several of these.\(4\) The right of the deserted master to reclaim a fugitive colonus is held to lapse after thirty years:\(5\) a limitation period - which we would be correct in thinking to be also thirty years - appears similarly in our canon - 

\[ \text{Si quis colonus originalis vel inquilinus ante hos triginta annos de possessione discessit, neque ad solum genitale silentii continuatione repetitus est, omnis ab ipso, vel a quo forte possidetur, calumnia penitus excludatur; quem annorum numerum futuris quoque temporibus volumus observari. Quod si quis originarius intra hos triginta annos de possessione discessit, sive per fugum lapsus, seu sponte seu sollicitatione transductus, neque de eius conditione dubit-} \]
atur, eum, contradictione summota, loco, cui natus est,
cum origine iubemus sine dilatione restitui.

There is no connection of terminology between the Seville canon and this, or any other of the LRV texts, but this is not surprising, for the reference of the canon is only a passing one. The correspondence of content is, however, clear: to say that the colonus must remain ubi esse ... iam coepit is to state the obvious principle lying behind the words of LRV.CT V.10.1 - that the fugitive colonus must be restored loco, cui natus est. The absence of any texts in the LV bearing on the matter dealt with in the canon, and the existence of several such texts in the LRV, cannot reasonably be taken to mean anything else but that the lex mundialis of the canon is in fact the LRV. Why such an identification requires us to accept that the LRV was still in force in 619 has been explained above, in the discussion of II Seville, c.l: in the case of this reference, the currency of the lex mundialis - the LRV - to which the bishops allude is expressly confirmed by their use of the particular phrase scribitur enim in lege mundiali. (1)

There can be no doubt, then, from the evidence of these two canons of the second council of Seville, that the LRV was still in de iure force in 619. In addition to these two certain ref-
ferences, two other highly probably allusions to the LRV in conciliar sources must be discussed, one contained in the decrees of the same council of Seville and the other in those of the fourth council of Toledo, held in 633.

II Seville, c.8 provides that an actio ingrati should be proceeded with against an ecclesiastical freedman who has acted against his patron, the Church, and that he should thus be compelled to return to his former slavery: the authority of both canon and secular law supports such action:

De superbis ecclesiae libertis ut ad servitium revocentur.
Octava discussio est agitata de quodam Eliseo ex familia Egabrensis ecclesiae, qui ab episcopo suo traditus libertate confestim ad contumaciae morbum transiliit, sicque per superbiam non solum eisdem episcopi veneficis artibus salutem laedere voluit, sed etiam patronam ecclesiam libertatis inmemor damnavit. Adversus quem ingrati actio canonum ac legum auctoritate iuste dirigitur, scilicet ut inmeritae libertatis damno multatus ad servitii nexum quo natus est revocetur. Talium enim status, qui contra episcopum suum vel patronam ecclesiam nitit tur decidi potius quam servare convenit, ut quorum
libertas perniciosa est sit salutifera servitus
et qui superbire noverint adepta libertate praediti
discant obedire subiecti. (1)

Now, it is possible to imagine that when the bishops spoke
of the legum auctoritas they had in mind the CR, for the Antiqua
LV V.7.9 provides that a freedman should suffer a reversion of
status if manumissori eum, qui manumissus est, inuriosum aut
contumeliosum vel accusatorem aut criminatorem esse constiterit. (2)
But it is far more likely that the reference was to the LRV, for
echoes of three texts of that code which deal with the libertus
ingratus appear clearly in the canon. LRV.CT IV.10.1 (with
Interpretatio) provides that the freedman guilty of any offence
against his manumissor shall revert to the status of slavery:

Libertis ingratis in tantum iura adversa sunt,
ut, si quadam iactantia vel contumacia cervices
erexerint aut levis offensae contraxerint culpam,
a patronis rursus sub imperia ditionemque mittantur.

Interpretatio

Quaecunque persona servilis a domino suo
fuerit consecuta libertatem, si postea
superbire coeperit aut patronum, id est
manumissorem suum laeserit, amissa li-
bertate, quam meruit, in servitium revocetur.
while LRV.CT IV.10.2 (with Interpretatio) and LRV.CT IV.19.3 (with Interpretatio) make it clear that a similar fate awaits both the freedman, if he should commit an offence against his patron's heirs, and the freedman's heirs, if they should act against the original manumissor or his heirs:

**LRV.CT IV.10.2**

*Liberti adversus patronos non modo non audiantur, verum etiam eandem, quam patronis ipsis, reverentiam praestent heredibus patronorum, quibus ingrati actio sicut ipsis manumissoribus deferetur, si illi, datae sibi libertatis immemores, nequitiam receperint servilis ingenii. Quod si delatores accusatoresve manumissorum heredumve esse praesumserint, eodem, quo servi, supplicio tenebuntur, luituri poenas ante adhibitae de- lationis exordium etc.*

**Interpretatio**

*Libertos non solum contra patronos, sed et contra patronorum heredes audiendos non esse; ingratos etiam ab heredibus in servitutem revocari: delatores etiam contra patronorum heredes, antequam audiantur, puniendos.*
Libertinae conditionis homines nunquam ad honores vel palatinam adspirare militiam permittimus. Sane hanc distinctionem volumus custodiri, ut ex manumissis nati ad locum usque proximum protectoris (licitum nullatenus) adire mereantur ita, ut patronis patronorumve heredibus reverentiae privilegia conserventur. Nam si militantes etiam docubuntur ingrati, ad servituis nexum procul dubio reducentur. Ipsos vero, qui manumissi sunt, nulla ratione ad ullum, quamvis humilis, militiae locum sinimus admitteri.

**Interpretatio**

Libertos ad nullos honores militiamque adspirare: eorum filios ingenuos usque ad protectoris locum posse conscendere: etiam militantes ingratos in servitutem revocari.

As far as content alone is concerned, either these three texts or the Antiquae already mentioned might have been the secular legal authority to which the canon refers. But a comparison of the language of the LRV texts with that of the canon leaves us in little doubt that the bishops had recourse to the
Breviary in the compilation of their decree. The correspondence of terminology is not as precise as appeared when we compared the first canon of II Seville with LRV. CT V.5.1 and 2: nevertheless it is striking and unmistakable. The clauses of the canon: Sicque per superbiam non solum eiusdem episcopi ... sal-utem laedere voluit, sed etiam patronam ecclesiam libertatis inmemor damnavit and Qui superbire noverint recall the words of LRV.CT IV.10.1 (Interpretatio): Si ... superbire coeperit aut patronum ... laeserit and LRV.CT IV.10.2: Libertatis immemores. The technical phrase ingrati actio, which nowhere occurs in the LV, appears both in the canon and in LRV.CT IV.10.2: one may note too the opening words of LRV.CT IV.10.1: Libertatis ingratis and the use of militantes ... ingrati in LRV.CT IV.10.3 (and Interpretatio). The canon has ut ad servitium revocentur and ut inmeritae libertatis damno multatus ad servitii nexum ... re-vocetur, while the Interpretatio to the first Breviary text uses the words: Amissa libertate, quam meruit, in servitium revocetur, and LRV.CT IV.10.3 the phrase: Ad servitutis nexum ... reducentur: the Interpretationes to both LRV.CT IV.10.2 and 3 have in ser-vitutem revocari. The similarities of language are so close that the use of the Breviary texts in the preparation of the decree would seem almost certain. No such similarities exist between the wording of the Antiquae and that of the canon.
Both in subject matter and in language, then, the eighth canon of Seville reflects the laws of the LRV. The conclusion that the bishops had the LRV in mind when they referred to the *legum auctoritas* is natural. We cannot be certain of this, for it is arguable that they simply used the *language* of the Breviary - even though this code was officially out of force - but were referring to the CR when they called upon the authority of the secular law. But how unlikely this is! If the CR were the only valid law code when they produced their canon, would they not, in their language, have followed the model of the *Antiquae* if they followed any model at all, rather than that of the abrogated Breviary texts? If we possessed this one conciliar text alone, we would be justified in positing the strongest probability that the LRV was still in *de iure* force in 619. Fortunately the two texts discussed earlier make it abundantly clear that this was in fact the case.

The second highly probable reference to the LRV as current law dates from 633. IV Toledo, c.46 deals with the punishment to be meted out to clerics responsible for the violation of tombs, and refers to the secular law's provision of the death penalty for such sacrilege:

*De Clericis sepulcris demolientibus.*

Si quis clericus in demoliendis sepulchris fuerit de-
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De clericis sepulcra demolientibus.

Si quis clericus in demoliendis sepulchris fuerit de-
prehensus, quia facinus hoc pro sacrilegio legibus publicis sanguine vindicatur, oportet canonibus in tali scelere proditum a clericatus ordine submoveri et poenitentiae triennium deputari. (1)

Now, the LV contains an Antiqua dealing specifically with the violation of tombs. But it is difficult indeed to believe that this alone is the "public law" referred to in our canon, for the death penalty is provided in the Antiqua only in the event that the criminal is a slave: a freeman undergoes only a financial penalty and a flogging:

LV XI.2.1 (Antiqua).

De violatoribus sepulcrorum

Si quis sepulcri violator extiterit aut mortuum expoliaverit et ei aut ornamenta vel vestimenta abstulerit, si liber hoc fecerit, libram auri coactus exolvat heredibus et que abstulit reddat. Quod si heredes non fuerint, fisco nostro cogaturn inferre et preterea C flagella suscipiat. Servus vero, si hoc crimen admitterit, CC flagella suscipiat et insuper flammis ardentibus exuratur, redditis nihilominus cunctis, que visus est abstulisse.
The particular restriction of the death penalty to slaves in the *Antiqua* makes it unlikely that it is this CR text to which the general statement of the canon - *quia facinus hoc pro sacri-legio legibus publicis sanguine vindicatur* - refers, as does the omission in the CR text of any reference to the crime as "sacrilege".

The more sweeping provision of the death penalty which we should expect to find in the secular law exists in the LRV. There, a Novel of Valentinian, LRV.NV 1.1, refers to the frequent *sacrilega praesumptio* of the violation of tombs, and declares that it is necessary to renew the severity of the old laws, which punished such a crime by death:

*Diligenter quidem legum veterum conditores prospezerunt miseris et post fata mortalibus, eorum, qui sepulcra violassent, capita persequendo. Sed quoniam noxiae mentes caeco semper in facinus furore rapiuntur, et se ad poenas dudum statutas existimant non teneri, necesse est severitatem novari, quam videmus hactenus impune contentam.*

The law goes on to provide the death penalty for guilty slaves and *coloni*, for their masters, if they are implicated, and for freemen in general: only people of distinction and high rank escape, and they are punished by the loss of half their goods and the sentence of perpetual *infamia*.
Servos colonosque in hoc facinore deprehensos duci protinus ad tormenta conveniet. Si de sua tantum fuerint temeritate confessi, luant commissa sanguine suo: si dominos inter supplicia nullo interrogante nexuerint, pariter puniantur. Ingenui quoque, quos similis praesumtio reos fecerit, si fortasse plebeii et nullarum fuerint facultatum, poenas morte persolvant: splendidiores autem vel dignitatis noti bonorum suorum medietate multatati, perpetua notentur infamia.

The identification of the leges publicae of the Toledo canon with the LRV is by no means certain. But it would seem most likely, given the comparatively limited role which the death penalty plays in the Antiqua LV XI.2.1. (2)

There are other possible allusions to the LRV in the conciliar canons of the first half of the century, but in each case the reference could equally well be to the CR. (3) But one final source needs now to be mentioned, which bears witness to the fact that as late as 638 the LRV was still being quoted as an official authority in legal matters. The bishops at the sixth council of Toledo, in 638, heard a case between two of their number: their decision was not incorporated in the canons of the council, but the text of the proceedings has survived. (4) A deacon
who was implicated in the affair referred to a sententia legum, which he read out before the gathering: Neque contra leges, neque contra bonos mores pacisci possumus.\(^1\) The identification is simple, for the clause is a quite precise reiteration of one of the Sententiae of Paulus which had appeared in the LRV.\(^2\) It is surely not credible that such an august assembly as met at Toledo would have admitted a reference to a legal maxim which had lost all force by prior abrogation. The conclusion that the leges to which allusion was made were those of the LRV is a necessary one, and further proof that the Breviary remained in de iure force long after its alleged replacement by the CR of Leovigild.

The relevance of this information to the question of the evolution of Visigothic legislation is quite crucial. For the fact is that we know that the CR of Leovigild was also in force in the early years of the seventh century. Of this there can be no doubt. Isidore wrote the Historia Gothorum not earlier than 624, and would assuredly have commented upon the promulgation of a new code, if such an event had occurred since the time of Leovigild.\(^3\) It is impossible to believe that he would have included information about the legislative activity of the Arian kings Euric and Leovigild, but would have passed in silence over the similar work of Reccared,\(^4\) whose conversion to Cath-
olicism rated him so highly in Isidore's eyes, or of Sisebut or Svintila, with both of whom the bishop was on the closest personal terms: and one or other of these more important kings would have had of necessity to have been responsible for any new codification. To judge from the LV, their legislative contribution was in fact insignificant.

In the first part of the seventh century, then, two quite distinct law codes, the CR and the LRV, governed the inhabitants of the Visigothic kingdom. Such a state of affairs is in self-evident and irreconcilable contradiction with any theory of the sole territorial rule of Leovigild's code. But though it thus totally destroys the 'abrogation' version of the territorialist theme, it is of course perfectly compatible with the more recent theory that the CR and the LRV enjoyed conjoint rule.

We have already seen that no evidence was proffered in direct favour of this 'compatibility' theory with regard to the CE and LRV: in just the same way, nothing is advanced to support it with regard to the period after the promulgation of the CR. We are faced now, it would seem, as we were before, with simple conjecture, and it is not easy to argue constructively about a hypothesis so totally devoid of any adduced evidential foundation. Nevertheless, the positive objections which have been outlined above remain valid against the theory in its
application to the CR and the LRV: firstly, the laws of the two codes are frequently, and in matters of the highest legal and social importance, so far from being compatible as to be in stark and unequivocal antithesis, and secondly, the wording of the Commonitorium rules out the possibility that such incompatibilities were intended to be resolved in favour of the CR. One further point may be added. On what grounds can be explained the reception in the CR of a whole chapter of the LRV - the chapter De gradibus (1) - if the Breviary ruled territorially as a complement to the CR? Why introduce, without amendment of any sort, a whole section of the LRV into the CR, if the law of the LRV was, and remained, valid law for all the inhabitants of the kingdom? Such a reception makes sense only if we posit either the sole rule of the CR or the independent national rule of the CR alongside the LRV. The reasons why the first alternative must be rejected have already been made clear.

Only one viable explanation offers itself which accounts in coherent and logical fashion for the various pieces of evidence which have been presented above, and particularly for that contemporaneous rule of the CR and the LRV which is witnessed so undeniably for the early seventh century, and that is, that the legal regime of the Visigothic kingdom, after 506 as before, was characterised by the separate rule of Goths and Romans by separate, national codes, the CE and CR for the Goths, and the LRV for the
Romans. Everything militates in favour of such a view, nothing against it. The paucity of direct evidence in support of this traditional theory should not be allowed to blind us to the necessity which nevertheless exists of upholding it. Rejection of the different versions of the basic territorialist theme is necessary on the evidence which we have: it is a positive rejection, of positive value. For it leaves us no choice but to assert the correctness of the 'national' theory: there exists, quite simply, no alternative. And not only is there nothing which tends to invalidate that opinion, but the contemporary testimony of Isidore would seem to be best - though admittedly not necessarily - interpreted as in its support.

We may conclude by referring briefly to four territorialist arguments which have been put forward.\(^1\) Firstly, it is suggested that the absence of any reference to the LRV in the fourteenth canon of III Toledo (589) and in Reccared's law LV XII.2.12, both of them of anti-Semitic character, and both of them reiterations, in essence, of provisions contained in the LRV, argues the prior abrogation of this latter.\(^2\) The altogether convincing reasons why the LRV must be considered as still in force in the first half of the seventh century have already been explained. But in any case there is surely nothing so very strange about a king, newly converted to Catholicism and full of the zeal of the proselyte,\(^3\)
issuing an emphatic restatement of earlier anti-Semitic legis-
lation, which had perhaps fallen into desuetude, as a mark of his
devotion to his new faith? In such a legislative field as this,
it would not seem reasonable to infer from the fact of Reccared's
repetition of the substance of earlier laws that these latter
had therefore been previously abrogated.\(^{(1)}\)

Secondly, it is pointed out that Isidore nowhere refers to
the LRV. But to argue from this that the code was therefore not
in force in his day\(^{(2)}\) is really wholly unjustifiable. If Isidore
had anywhere given a summary of the legal situation pertaining in
Spain, yet had neglected to mention the LRV, the *ex silentio*
argument would obviously be overwhelmingly strong. But nowhere
does he do this. He refers to legal sources twice, once in the
*Etymologiae*, once in the *Historia Gothorum*. On the first of these
occasions he gives a brief summary of some of the legal sources
which had been current among the Romans\(^{(3)}\) he does not allude to
his own day, nor does he write of the development of the Roman
laws after the production of the Theodosian Code.\(^{(4)}\) Of course if
he had been concerned to trace this development he would have had
to mention the LRV, which on any showing had been in force for
the Roman population and at least till the promulgation of the CR,
and which Isidore could simply not have failed to know of.\(^{(5)}\) The
fact that he does not allude to the LRV at all shows that he was
not concerned to trace this development, and there is thus no reason to expect any reference to the legal system pertaining in his day, or to the possible part of the LRV in this.

In the second case he is writing, quite specifically, a history of the Goths: neither here could there be any reason to mention the LRV, if this was, as is maintained here, the national code for the Romans of the kingdom. Far more important is the converse argument: if the LRV was a territorial code, how can we explain Isidore's failure to mention it, alongside the CE and the CR, in the Historia Gothorum? If the LRV was a national code for the Romans, that is, Isidore's silence is natural; if it was territorial, his silence is inexplicable.

The two final arguments are both also ex silentio. The assumption is made that the promulgation edict of the CR would have stated the code to be national in character if it had indeed been intended solely for the Goths. The failure of Isidore and Reccesvind - who are both held to have used the promulgation edict or some closely related law of the CR to make any mention of the CR as national indicates that the promulgation edict contained no such statement. Ergo, the CR was not national but territorial.
The weakness of the reasoning with regard to Isidore is easily apparent. Isidore certainly does not say in so many words that the CR was a national Gothic code. But we should not, of course, expect him to, if a national law system was in force when he wrote. If a national CR ruled the Goths of the kingdom in 624, the inclusion in Isidore's account of the information that the CR was national would have been gratuitous in the extreme. We are hardly justified in using Isidore's failure to refer to what would have been an obvious and accepted fact of legal life as evidence that the fact did not exist! If the CR had been territorial, this fact too would doubtless have been recorded in the promulgation edict of the code: one could equally well argue therefore that Isidore's failure to specify the CR as territorial is evidence that it was national!

In any case, if Isidore does not directly declare the CR to be a national code for the Goths, he would seem to do so indirectly. We must remember his earlier remarks. At first, the Goths had lived by custom and usage - that is to say, under their own national and customary law regime: then they had received written laws from Euric: now it was Leovigild who revised Euric's law-book. The inference that the CE and the CR were, like the early regime of customary law, for Goths alone, would seem a natural one. (1) If we postulate that the CR - and the CE before,
for that matter - was territorial, we have a much greater problem on our hands than that alleged to exist in Isidore's silence over the national character of the CR: we have to explain his failure to remark upon the introduction of a territorial law system, for on any reading Isidore attributes a national law system to the period before Euric.

As it is put, the argument concerning Reccesvind is even weaker. LV II.1.12 (Recc.) is probably based upon either the promulgation edict or some closely related law of the CR: Reccesvind nevertheless makes no reference to the CR or to its national character. But it is obviously fallacious to argue from this silence to the conclusion that Leovigild's promulgation edict could have contained no declaration that the code was valid solely for Goths. LV II.1.12 provides that law cases already settled should not be revived, but that those outstanding should be settled in accordance with the laws of the LV itself. It is difficult to see any reason why the particular Leovigildian text on which Reccesvind based his law should have made any mention of the national character of the code which contained it, or why Reccesvind should have maintained such a reference, if it had existed, in his own territorial law.

If the argument is put in more general terms, however, it
takes on considerable force. If the CR was national in character, and if it was, as the traditional view has it, in force, together with the LRV, until replaced by the LV, would it not be reasonable to expect some reference, in one of the Reccesvindian laws outlining the scope of the code, to the previously existing national system, for the abolition of which Reccesvind himself was responsible? How can we explain the total absence of such reference? The argument - which must be expounded in more detail - would seem impossible to answer from the traditionalist standpoint. We cannot imagine that a change of such transcendental importance as that from a national to a territorial law system could go unremarked in the law code of the legislator responsible for the innovation.

The usual traditional position is untenable in the face of this argument: there is an inner contradiction involved in maintaining the view that a national law system both pertained in the Visigothic kingdom and persisted until the time of Reccesvind. But we should not for this reason assume either of the territorialist views to be correct. Precisely because the evidence points so emphatically against it, the territorialist theme has to be abandoned. The contradiction has to be resolved, in other words, by reassessing the traditional attribution of the introduction of territoriality to Reccesvind. We have to take as our premise the
fact of a national law system, and see if it can be established that this system came to an end before Reccesvind. If this could not be shown, the dilemma would be appalling, for we would be placed in a position where the evidence pulled us irresistibly in two opposing directions. But this is not the case. The next chapter will show that it is to Chindasvind that the responsibility for the metamorphosis to territoriality must be ascribed, and to the second year of his reign - 643/644 - that the change must be dated.
VI

Chindasvind and territoriality.

The insuperable difficulty involved in accepting the traditional view of the LV as the first territorial code of the Visigothic kingdom lies in the absence of any LV text which can reasonably be considered to contain a formal abrogation of the previously existing national system. (1) We do not have to underestimate the strength of the tendency towards territoriality shown in the legislation of kings before Reccesvind (2) to recognise that the actual substitution of a single territorial code for two sets of national laws could only have been a step of quite momentous importance and impact upon contemporaries. The rejection of a legal system which had prevailed, as has been argued here, since the very beginning of the Visigothic settlement, and which had been consecrated in the promulgation of three separate national codes, represented a development of the highest social - and probably political - significance, a far-reaching change in one of the very bases of society. No doubt the change had been long foreseen: but its character and impact must nevertheless have been such that it is only reasonable to imagine it fully introduced only after deep consideration and with an appropriate sense of the solemnity of the occasion.

It is really not feasible, given the radical nature of the
transformation, to accept that the legislator responsible would have introduced this very first territorial code without explicit reference to the national law system which he was abolishing, or, at least, without a formal abrogation of the two codes which his own was replacing. And the fact is that no law of Reccesvind's LV contains such an abrogative formula. One law of the LV has indeed been taken as such.\(^{(1)}\) LV II.1.8 (Recc.) prohibits the employment in the courts of "the laws of other peoples":

LV II.1.8 (Recc.)

De remotis alienarum gentium legibus.

Aliene gentis legibus ad exercitiam hutilitatis inbui et permittimus et optamus; ad negotiorum vero discussionem et resultamus et proibemus. Quamvis enim eloquiiis polleant, tamen difficultatibus herent. Adeo, cum sufficiat ad inst- ittie plenitudinem et prescrutatio rationum et competentium ordo verborum, que codicis huius series agnoscitur continere, nolumus sive Romanis legibus seu alienis institutionibus amodo amplius convexari.

But it is surely impossible to accept this law as a formal abrogation of the national law system.\(^{(2)}\) No legislator could have been content to notify his subjects in this casual way of such a crucial reform of the legal scene. The language simply does not match the importance of the occasion. The sole use of
the LRV in Roman cases had been enjoined on the judges, we should remember, on pain of death or confiscation of property: (1) doubtless there had been provided similarly punitive consequences for those who employed in Gothic cases laws other than those contained in the CR. (2) To imagine that Reccesvind would have replaced these two official codes by his territorial LV without any mention at all of the CR and with only a diffident reference to the LRV — if the phrase Romanis legibus seu alienis institutionibus is taken to refer to that code (3) — as "teeming with difficulties" with which he no longer wished to be "tortured" (convaxari) is surely to imagine the impossible. (4) The transition from a national to a territorial legal regime could not have been effected in such an incidental, en passant fashion. (5)

Even less can the official pronouncement of abrogation be discovered in two other laws which together assert the exclusive and territorial sway of the LV. (6) The one, LV II.1.4 (Recc.), decrees the territorial validity of Reccesvind's code:

LV II.1.4 (Recc.)

De tempore, quo debeant leges emendate valere.
Quoniam novitatem legum vetustas viciorum exigit et innovare leges veternosas peccaminum antiquitas inpetrabit, adeo leges in hoc libro conscriptas ab anno secundo dive memorie domni et genitoris mei Chindasvindi regis in cunctis personis ac
gentibus nostre amplitudinis imperio subiugatis omni robore
valere decernimus hac iugi mansuras observantia consecramus;
ita ut, reiectis illis, quas non equites iudicantis, sed
libitus impresserat potestatis, evacuatisque iudiciis omni-
busque scripturis earum ordinatione confectis, he sole val-
eant leges, quas aut ex antiquitate iuste tenemus, aut idem
genitor noster vel pro equitae iudiciorum vel pro austeri-
tate culparum visus est non inmerito condedisse, prolatis
seu conexis aliis legibus, quas nostri culminis fastigium
iudiciiali presidens trono coram universis Dei sanctis sac-
erdotibus cunctisque officiis palatinis, ducante Deo adque
lavente audientium universali consensu, edidit et formavit
ac sue glorie titulis adnotabit; ita ut tam he, que iam
prolate consistunt, quam ille, quas adhuc exoriri novorum
negotiorum eventus inpulerit, valido hac iustissimo vigore
perfurent et eterne soleditatis iura retentent.

while the other, LV II.1.9 (Recc.), prohibits the use of any other
law-book:

LV II.1.9 (Recc.)

Ne excepto talem librum, qualis hic, qui nuper est editus,
alterum quique presumat habere.
Nullus prorsus ex omnibus regni nostri preter hunc librum,
qui nuper est editus, adque secundum seriem huius amodo
translatum, librum legum pro quocumque negotium iudici offerre pertemtet. Quod si presumserit, XXX libras auri fisco persolvat. Iudex quoque, si vetitum librum sibi postea oblatum disrupere fortasse distulerit, predicte damnationis dispendio subiacebit. (1)

There is no hint in either of these laws that the exclusive territoriality of the LV which they assert is something new, something now established for the very first time in the history of the Visigothic state. Neither of them can reasonably be construed as a legislator's means of bringing formally to an end one centuries-old legal system and replacing it with a new. (2) They defend a particular system: they do not establish that system.

No other law of the LV can conceivably be interpreted as bearing the character of an official abrogation of the traditional legal regime, an abrogation which, as has been said, we cannot but expect to find in the first territorial code. The conclusion is clear: already by 654 (?) a territorial code was in force. To whom, if not to Reccesvind, must the credit for the innovation be given?

To whom, but to Chindasvind? (3) A priori, we would unhesitatingly nominate Chindasvind as the legislator responsible, if we knew only that at some time between the reigns of Leovigild and
Reccesvind a territorial code was introduced. Of the 526 laws of Reccesvind's LV, no less than 99 are attributable to Chinda-
svind: (1) the other kings of this period provide a grand total
of five laws between them. (2) It is inconceivable that a king
who had the breadth of vision and strength of mind to take the
momentous step of establishing a sole territorial law for all
the inhabitants of the realm would not have left his mark in
some positive fashion also in the field of actual law-making.
Solely on the grounds of Chindasvind's extensive contribution
in the form of new laws, many of which have long been recognised
as territorial in scope, (3) and the corresponding lack of such
a contribution by his predecessors, we would be amply justified
in identifying him as the king who should take the place in the
evolution of Visigothic legislative activity traditionally
ascribed to his son. (4)

In point of fact, the terminus post quem for the introduction
of territoriality is not the reign of Leovigild, but much later.
From the evidence of Isidore we know that the CR was still in
force when he wrote the Historia Gothorum, about 624, and from
that of the judgment of the sixth council of Toledo in the dispute
between Martianus and Aventus we know that the LRV still possessed
legal validity in 638. (5) The previous conclusion that it is to
Chindasvind that we must ascribe responsibility for the first
territorial code is now put beyond any doubt, for although two kings, apart from Chindasvind, reigned between 638 and the time of Reccesvind, there is no record that either of them issued laws, and to attribute such an important step as the introduction of a single territorial law to a king whose legislative activity, if it existed at all, did not retain its force for even twenty years, is simply not acceptable. We are left with Chindasvind.

Chindasvind has indeed been generally thought of as linked with the introduction of territoriality. The usual view has been that he was responsible for beginning a collection of laws which was completed and published as a territorial code by his son. The basis for this hypothesis consists in the wording of the Reccesvindian law LV II.1.4:

Adeo leges in hoc libro conscriptas ab anno secundo dive memorie domni et genitoris mei Chindasvindi regis in cunctis personis ac gentibus nostre amplitudinis imperio subiugatis omni robore valere decernimus hac iugi marmras observantia consecramus.

The most favoured interpretation of this passage has been that which understands Reccesvind as saying that the laws in his code have been written down since the second year of his father's reign: the
phrase *ab anno secundo ... Chindsvind regis* is held, that is to say, to qualify *conscriptas*. On the basis of this interpretation, it has been concluded that Chindasvind inaugurated the process which led to the completion and promulgation of a territorial code by Reccesvind.\(1\) This conclusion is not, however, valid, since the interpretation of \textit{LV II.1.4} on which it depends is not acceptable. In reality, \textit{LV II.1.4} confirms what, on general grounds, has been argued above: that a territorial code must already have appeared under Chindasvind.

We may look first at the syntax of the text. If Reccesvind is saying what is generally alleged, he certainly chooses a highly irregular way in which to express himself.\(2\) The adverbial phrase *ab anno secundo ...* should precede, not follow, the adjective which it qualifies: we should expect to find *leges ... ab anno secundo Chindasvindi regis ... conscriptas*. Perhaps too much store should not be set by what may be nothing but faulty grammar in the seventh-century Latin of a barbarian king's jurists, even by what would be such an elementary error as this. But an examination, admittedly cursory, of the texts of the \textit{LV} in fact reveals no other case where such a solecism is perpetrated.\(3\) And the error, if such it is, is even more difficult to explain, given the ambiguity of meaning which it would allow, then – presumably – as well as now, in such an important law as the promulgation edict of a royal code.
Grammatically, the law bears quite a different meaning from that normally ascribed to it. The phrase *ab anno secundo* ... qualifies the verb which follows, *valere decernimus*, and the meaning thus becomes: "We decree that the laws written in this book be valid from the second year of king Chindasvind." (1) Reccesvind is not making a passing reference to the date at which his law-book began to be formed. Rather, if the grammar is to be relied on, he is dealing with a highly pertinent matter of great significance - the establishment of the date from which his laws shall be deemed to apply. It may seem at first sight surprising that Reccesvind should make his law code retrospective. (2) But there is no gainsaying the fact that this is the conclusion we have to come to on an evaluation of the construction of the text as it stands. (3)

But we do not have to rely solely on the syntactical evidence of the law. What would seem decisive confirmation that the interpretation put here upon Reccesvind's words is wholly correct is provided by another factor. We should naturally expect to find in the LV some indication of the date from which the code was to apply. Both the codes which, apart from Reccesvind's, we possess in their entirety carry such information: Alaric uses a dated promulgation decree, separate from the body of the code itself, (4) while Ervig specifies the date in his promulgation decree, the title of which - *De tempore, quo debeant leges emendate valere* -
makes clear its tenor. (1) Such information was of obvious and crucial importance to the judges who had to apply the provisions of the codes, (2) and it is difficult in the extreme to imagine that Reccesvind could have dispensed with it in the LV; especially would this be so if we were to regard the LV as the first territorial code.

When we turn to examine the chapter headings of the LV, we find precisely what we expect. Early in the second book occurs the very same title as presents itself in the code of Ervig: De tempore, quo debeant leges emendate valere. The title is unambiguous: the law concerns the time from which Reccesvind's legal collection is to be valid. And the clinching fact is that the law which appears under this title in the body of the text is none other than LV II.1.4, the wording of which was under discussion above. The interpretation proffered there can now be seen not only to be that which is necessitated by the syntax of the language, but also to be the only interpretation which makes sense in the light of the title which the law carries.

To understand Reccesvind as saying anything other than that his code is to be valid from the second year of Chindasvind's reign is, in short, to attribute to the composers of the law both a total disregard of the elementary rules of syntax and an equally total failure to match the title of the law with its content. It
might be possible to accept the first suggestion: it is surely not possible to accept the second. (1) Common-sense and the analogy of other codes alike demand that Reccesvind should somewhere have included information as to the date from which his code was to apply; the usual interpretation forbids the possibility that such information was included, for there is no text, LV II.1.4 apart, which can conceivably be construed as containing it. Reccesvind would, if this usual view is correct, have been at pains to point out the precise date at which his father began the collection, but would have passed over in silence the infinitely more important question of when the code was to be considered as coming into force, even though the title of the law concerned that very matter! There is really no justification for asserting or accepting this view, which holds together only on the assumption that Reccesvind's jurists perpetrated quite incomprehensible errors, both of commission and of omission, when the evidence in fact leads naturally to the conclusion which has been suggested here.

The reasons why it is necessary to consider Chindasvind rather than Reccesvind as the author of the first territorial code have already been stated: it can be seen that LV II.1.4 offers nothing which might lead us to reverse such a judgment. The law has, however, considerable positive significance, for it allows us to specify the date of this Chindasvindian code. Reccesvind makes his laws valid from the second year of Chindasvind's reign: so much
has emerged from our discussion of the title and wording of LV II.1.4. But the laws are made territorially valid from that date: Leges ... in cunctis personis ac gentibus ... valere dermimus. Now, it is simply not possible, on the basis of this, to believe that the first territorial code produced by Chindasvind came into force after the second year of his reign. Such a theory would mean that Reccesvind, for reasons unknown and unfathomable, decreed the most radical retrospective alterations in the laws which ruled his subjects in the period between 643/644 - the second year of Chindasvind's reign - and the date, whenever it was, at which Chindasvind's code was introduced. (1) The Romans, for example, who would have been ruled during this period by their own laws in the form of the LRV, would now in 654(?) have found themselves retrospectively subject to totally new provisions, often at complete variance with those of the LRV. (2) Accepting that decisions already made in law cases dating from this period would not, in accordance with Reccesvind's law LV II.1.12, be challenged, (3) the legislative chaos which would ensue from the retrospective application of a whole new code of laws is nevertheless quite unimaginable. While such action would involve the most extreme practical disadvantages, it would also be, as far as one can see, wholly purposeless: one cannot even conjecture what might be Reccesvind's motive in making his laws retrospectively valid from an apparently arbitrarily chosen point - the second year of his father's reign. In
short, the possibility that Chindasvind's territorial code was promulgated after 643/644 can, on the evidence of LV II.1.4, be totally discounted. (1)

But LV II.1.4 does more than give us solely a terminus ante quem for the introduction of Chindasvind's code: it allows us to pinpoint the year in which this occurred as 643/644. In point of fact, only one other year, 642/643, is in any case possible, and the difficulty of accepting that a legal compilation of such importance could have been produced and brought into force so soon after Chindasvind's accession is obvious. Again, too, we would be able to find no explanation for Reccesvind's specification of the second year of his father's reign as the year from which his own code should enjoy validity. Why the second year? Why not the first? Or the third?

Reccesvind's action in attributing retroactive force to his code, and in specifying 643/644 as the year from which his code is to apply, must have some rational explanation: it is impossible to believe that he made the code retroactive because the whim so took him, and that he fastened upon 643/644 quite arbitrarily. Only one explanation offers itself. It is that that year had witnessed the introduction of Chindasvind's territorial code, an event of such momentous importance in the history
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of Visigothic legal evolution that Reccesvind, perhaps regarding his own code as essentially a re-edition, with variations, of his father's, chose to invest the LV with precisely the same validity as Chindasvind's code had had.

Such action is understandable, given the enormous importance which must have been attached to such a rare event as the promulgation of any law code, but especially that of the very first territorial code. The impact of this on a society accustomed to a national law system could only have been profound, and the authority of the code promulgated immense. It would be natural to suppose that contemporaries regarded the code as a final, definitive statement of the law, as a legal monument to be respected and revered. When Reccesvind found it necessary to make amendments and additions of sufficient extent and importance to demand a recasting of his father's code, we may believe that he would quite naturally have chosen to lend his LV the greatest possible authority by giving it currency from that very year in which the revolutionary change-over from a national to a territorial system had taken place. In short, it seems most reasonable to believe that Reccesvind made his code retroactive from 643/644 because that year was associated in the minds of contemporaries with the introduction of a new legal regime, with the beginning of a new legal era.

This explanation is admittedly conjectural. But it would
seem the only one which fits the difficult fact that Reccesvind did make his code retroactive. This retroactivity has indeed been denied. "To impart retrospective force to a whole law code for more than a decade," it has been said, \(^{(1)}\) "is a thing of impossibility." But there can be no escape from the wording of the title and text of LV II.1.41 here is a case where a law code was given retroactive validity. The effect of this should not, however, be exaggerated. To speak of imparting retrospective force to a whole code is, in fact, misleading, for if we assume that the Antiquae and the Chindasvindian laws which stand in the LV were already all present in a code of 643/644, \(^{(2)}\) the difficulty of accepting that a "whole code" could be made retrospective is reduced to the much lesser difficulty of accepting that the Reccesvindian provisions, and those alone, were made retroactive. When we recall that only 89 out of the total of 526 laws in the LV are Reccesvindian, that a very large number of these are in any case declaratory or administrative laws - establishing the relationship of individuals to the law, \(^{(3)}\) dealing with the scope of the code, \(^{(4)}\) regulating the jurisdiction of certain judges, \(^{(5)}\) defining the methods of proving the validity of legal documents \(^{(6)}\) and so on - that we have no means of knowing the Chindasvindian equivalents, if any, of those punitive measures dealt with in Reccesvindian laws - and thus of discovering the extent to which Reccesvind's subjects might in fact have been unjustly treated by the retroactivity of the LV - and finally that Reccesvind
expressly forbade the resurrection of law cases already settled\(^{(1)}\) - then we can see that this difficulty is in turn much smaller than it appears. Certainly it would not seem reasonable to allow it any weight against the clear evidence of retroactivity contained in LV II.1.4.\(^{(2)}\)

Other pieces of evidence combine to corroborate the correctness of the view that a code was promulgated in the second year of Chindasvind's reign. Of all the 99 Chindasvindian laws contained in the LV, only one is explicitly dated, and that - LV III.1.5 - to the 12th January, 645.\(^{(3)}\) If Chindasvind's laws were issued at varying times during his reign, either singly or in groups,\(^{(4)}\) some at least would surely have borne their date of promulgation as does this one: we then have the difficult task of explaining why Reccesvind carefully removed such subscriptions in every case but this one. The inference from the existence of a sole dated Chindasvindian law in the LV would seem clear: it is that the remaining Chindasvindian laws were issued and dated en bloc.\(^{(5)}\)

If they were issued en bloc, it is difficult to avoid the conclusion that they were promulgated, together with other, older laws, in the form of an actual code. It is reasonable to suppose that many of Chindasvind's laws, as they stand in the LV, have taken the place of earlier provisions which existed in the CR.\(^{(6)}\)
Now, if the Chindasvindian laws as a whole had been issued while the CR was still in force, there would have been open contradiction between many of the provisions of the code and of the new laws. The official abrogation of those laws of the CR which were superseded by Chinasvind's legislation would have been a necessity. Individual abrogations contained in the Chindasvindian laws concerned are not, however, to be found: nor is it thinkable that there was a general abrogative clause, specifying the particular laws of the CR which were to be considered no longer valid, for the number of such laws would have been large, and the difficulty of identifying them in an age when the fidelity of documents to their exemplar could never be relied on, insuperable. A straight replacement of the CR by the body of the Chindasvindian laws is equally and obviously unacceptable, for the extensive contribution which Antiquae make to the LV shows that far too many matters which the law had recognised and regulated for many years would have been left uncovered: Chindasvind's code would have represented an impossibly retrograde legal enactment. Only one other viable possibility presents itself: that Chindasvind expressly abrogated the CR, and replaced it with a code made up of his own laws together with those of Leovigild and his other predecessors.

Corroborative evidence of the promulgation of an actual code of law by Chindasvind is probably to be seen in the terminology of certain of his laws. References which occur in these to
"other laws" (1) and to "earlier laws" (2) are fairly frequent, but these usages cannot be held to lead even to a presumption that Chindasvind was the author of a code; it would be possible to maintain that the allusions were contained in isolated laws, where Chindasvind found it convenient to refer to laws issued earlier by him or to a body of laws which existed in independence of his own. Equally, of course, the usage is perfectly compatible with the inclusion of these laws within a code, so that the references are to other laws within the same corpus. But in some cases Chindasvindian laws use the words superior and subterius (3) which are of much greater significance, for the employment of these terms presupposes the existence of a positional relationship of the laws concerned within a written series. The terms are meaningless, that is to say, unless they occur in, and refer to, laws which are written down in an established sequence.

One of these laws - LV III.5.1, which concerns incestuous relationships - illustrates very well the points made here. (4) Firstly, the text includes the phrase ante hanc legem, which indicates clearly enough that information as to the date of issue must have been available: yet there is no dated subscription attached to the law. (5) Secondly, the law is a Chindasvindian substitution for an earlier Leovigilian law: (6) yet it carries
no clause abrogative of that earlier law. Thirdly, the law is
referred to by another Chindasvindian provision as a superior lex,(1)
indicating, as has been said, the existence of some sort of
written relationship between them. Finally, and most important,
LV III.5.1 itself refers to a third law in terms which show yet
another positional relationship - subterius correcte legis sent-
entia - and this time not with a Chindasvindian provision, but
with a law issued some fifty years before by Reccared.(2) These
various factors would appear to find really satisfactory explana-
tion only on the postulate that there existed an actual Chindas-
vindian code which included both earlier, and Chindasvind's own,
legislation.

Chindasvind's own laws were issued, then, *en bloc*, and -
with others - in the form of a code. But one, and one only, of
the Chindasvindian laws allows us, from internal evidence, to date
it with absolute precision,(3) and it should come as no surprise to
learn that the year of its promulgation is 643/644 - the very year
to which, on the basis of other evidence, the publication of the
Chindasvindian code has already been ascribed. The text in question
is LV II.1.6, which deals with those who have acted treasonably
towards the Visigothic state from the time of Chintila (636-639)
up to the second year of Chindasvind's reign - *ex tempore reverende
memorie Chintilani principis usque ad annum Deo favente regni*
nostri secundo - or who will so act after this time - vel amodo et ultra. The specification of the year and the further use of "henceforth" - amodo et ultra - leave no doubt that 643/644 was the year in which the law appeared. (1)

All this serves as confirmatory evidence that the second year of Chindasvind's reign witnessed the promulgation of a code of laws. The further argument that this code was territorial in character also finds textual support, for the one Chindasvindian law which is explicitly dated - LV III.1.5 - contains a reference to the "Roman laws" which can be identified with the LRV, (2) and indicates that these had already been abrogated before the law was issued in 645. The text, which deals with the amount to be given in dos, refers to the "Roman laws" in terms which leave little room for doubt: Iuxta quod et legibus Romanis recolimus fuisse decretum. The use of the past tense - fuisse decretum - is highly significant, for the phrase is not one which a legislator could reasonably have used if the Roman laws were still in force. Its use makes very good sense, on the other hand, if the year before had seen the replacement of separate Roman and Gothic national codes by a single territorial code. (3)

The arguments have been involved, but the conclusion would seem to emerge clearly enough: it was the achievement of Chindasvind,
during the second year of his reign, to promulgate the first law code in the history of the Visigothic state to possess exclusive territorial validity over Goths and Romans alike. The promulgation would, as has been argued above, have been accompanied by the formal abrogation of the two national codes in force until that time, the LRV and the CR, as well as by a declaration of the date from which the new code was to have force. The abrogation law is naturally omitted by Reccesvind, who yet reminds his subjects - his Roman subjects, that is - in LV II.1.8 that the employment of his territorial code alone is permitted in the courts; some had perhaps continued to use the Roman laws, by which, Reccesvind almost contemptuously says, he no longer wishes to be troubled. (1) The actual Chindasvindian promulgation decree, on the other hand, probably forms the basis of Reccesvind's own law - that law which has been such a fruitful source of information to us - LV II.1.4.
Contrasts of law in the Visigothic codes.

Among the various arguments which have been put forward in the preceding pages for the attribution of a national law system to the pre-Chindasvindian period, one of the most powerful has been the argument that both the alternative territorialist theories of the evolution of Visigothic legal development are inadmissible. It is time now to look in more detail at the texts of the CE and LRV, for it is in these that the evidence for the inviability of the revisionist interpretations is most clearly to be discovered. The summary account which follows will, it is hoped, show that certain matters are dealt with in the CE in a fashion quite distinct from that in which they are treated in the LRV, so that the possibility of straightforward compatibility between the two codes can be ruled out. These same contrasts of treatment, which are apparent also in a comparison of the law of the CR and the LRV, militate equally strongly, secondly, against the original territorialist theory of successive codes, each abrogative of its predecessor, for it is really not credible that such rapid and violent bouleversements of the legal scene as acceptance of this theory would entail could have taken place. Finally, the deviation of laws of the CE in some places not only from those of the LRV in particular, but from the norms of late
Roman practice in general, makes it in itself difficult to believe that Euric would have wished, or perhaps even have been able, to impose his code upon the Romans of the kingdom.\(^{(1)}\)

It is true that these cases of contrast between the norms of the CE and those of the LNV and of Roman vulgar practice are the exception rather than the rule. In general, it is the influence of Romanitas which predominates in the CE. In external appearance and organisation the code was Roman: "Roman was the language, the conceptual structure, the technique, the composition of certain fact patterns, the organisation of the material, the whole legislative style."\(^{(2)}\) So also in the law it contains, the CE shows the same extreme Roman influence. The preponderant proportion of the laws of the CE are rules which the Goths found in use among the Romans in whose midst they were settled - are norms, in other words, of the vulgar law.\(^{(3)}\) In every legal matter covered by the surviving texts of the code - donations, sales, deposits, debts, loans, succession and so on - the principles and provisions of Roman vulgar law are clearly discernible in the Eurician texts.\(^{(4)}\) The highly Romanised character of the law of the CE has always been recognised\(^{(5)}\) and has become even clearer in recent years when the vulgar law itself has been the subject of increased study.\(^{(6)}\)

It has been said above that the most powerful Roman influence in a code of law does not argue that the code was necessarily intended
to govern Romans — witness the *Lex Burgundionum.* But in fact certain important qualifications have in any case to be made to such a general declaration as that the CE was a "monument of Roman vulgar law." Leaving aside for the moment the most significant of these qualifying factors — direct contrast between Eurician and vulgar law rules — we may discuss briefly three aspects of the CE which must be borne in mind in order to arrive at a correct assessment of the character of the code.

Firstly, we have to remember that there is extant only a small fraction of the original Eurician compilation, and that in the main the laws which have survived concern matters which by their very nature were those in which Roman influence was likely to have played an extremely important role. Of the five chapters which have survived, three are devoted to loans and deposits (*De commendatis vel commodatis*), to sales (*De venditionibus*) and to donations (*De donationibus*). These were precisely those matters of private law which had obvious connection with economic and commercial transactions and with the Roman regime of which the Goths had therefore no doubt had longest acquaintance, through the agency of Roman merchants trading across the Danube already many years before the entry of 376. Once the Goths had become landed proprietors in southern Gaul and Spain, increasingly concerned in their own dealings one with another with the legal
problems involved in the preservation and disposition of their estates and stock, the appeal and influence of the sophisticated and developed Roman system - albeit in its diluted, vulgar form - could only have become overwhelming. If we had no knowledge of the laws of the CE at all, we would surely be justified in conjecturing these three fields of private law to be those in which Roman models were most likely to be accepted in a barbarian compilation. (1)

Another chapter, concerning boundaries (De terminis (2)) is again one where we should expect to, and do, find Roman influence strongly at work. For the Goths were historically a migratory people, unaccustomed to the problems of maintaining inviolate particular and carefully delineated boundaries to individually owned estates. (3) It was natural that here too they should turn to Roman models, and take over for their own use the law which they found in force around them.

But the last extant chapter - De successionibus - of the CE deals with a matter of law with which the customary law must, to an extent, have been competent to deal. And it is precisely here that deviations from Roman principles and practice are to be found. (4) Certainly this is not to say that the Eurician regime governing succession is essentially Germanic in character. Rather it is the case that the CE represents in this respect law sui generis.
law which is a compound of Roman, Germanic, Christian and simply circumstantial elements. (1)

The point that emerges is simply this. It is unwise to base a general assessment of the character of the CE upon the fact that four out of the five extant chapters of the code are composed of very largely Roman material. If we possessed the code in its entirety, we would doubtless find many examples of Germanic influence, particularly in laws concerning those matters which had been basic to Visigothic society since time immemorial and which had always been regulated by customary law, consecrated by age-old usage. (2) One thinks, for instance, of an institution like marriage, firmly rooted in the common experience of the people and therefore far less susceptible to the influence of a distinct Roman regime. (3) No Eurician texts concerning marriage have survived, (4) but if the Antiquae of the LV are anything to go by, the regime of the CE did, in fact, contain far stronger traces of customary Visigothic usage (5) than did — say — the law of donations. (6) As with marriage, so, doubtless, with many other matters. (7) Even within the existing chapter De venditionibus, CE 289 reflects the Germanic Ansfang procedure for the recovery of property of which a man has been involuntarily deprived, rather than a procedure based upon the Roman actio in rem. (8)

Secondly, it does not follow from the existence in the CE
of features which correspond to features of Roman legal practice that the former necessarily, and in every case, had the latter as their direct models.\(^1\) The simplification - quite precisely, vulgarisation - of the elaborate Roman system which occurred in post-classical times meant that the law which the Visigoths found in common use often represented comparatively primitive practices which, at least in some instances, corresponded with their own customs or notions.\(^2\) To find a vulgar law model for a particular feature of the CE does not therefore indicate that it was precisely the vulgar law which acted as the source of the provision; it may well have been Germanic practice itself.\(^3\)

Three examples of this may be briefly cited. It would appear certain, first, that the CE contained, as did the later CR and LV, laws dealing with the institution of the dos ex marito - an institution which broadly corresponded in appearance to that of the late Roman donatio ante nuptias.\(^4\) But we would certainly be wrong in assuming that the Eurician institution existed solely as a result of Roman influence. Characteristic of Germanic marriage was payment by the bridegroom's side to the bride's,\(^5\) and there is no reason to think that the Goths were unique by their departure from this norm. The dos had its origins in Gothic custom, and though it may be the case that the regime governing the donatio ante nuptias affected the Goths' view and treatment
of their *dos*, there is yet no doubt that this would in any case have existed quite independently of the Roman *donatio ante nuptias*.

Some texts of the CE, secondly, refer to the method of establishing innocence by simple oath. This occurs in CE 279: *Sacramentum primitus praebere debet, quod non per suam culpam morte consumtum sit, et nihil cogatur exsolvere*, and also in CE 278, 280, and 284. Now, the oath of innocence was certainly a feature of late Roman judicial procedure, appearing in both the *ET* and *LRS*: no doubt ecclesiastical influence was largely responsible for this. But the fact remains that the *Reinigungseid* was a typically Germanic feature and that there is therefore no reason why the vulgar law origin of the oath as it is found in the CE should be assumed.

These two examples have been of particular institutions: a third example, but this time rather of a general principle, exists in the Eurician law of sales. The basic notion which prevails here is that a sale is a simple exchange between buyer and seller, "a simultaneous act implying both transfer and payment." This was certainly the rule of vulgar law, which had departed from the classical norm whereby a sale was solely a contract to sell. But equally it was, in its simplicity, the rule of Germanic law, a rule common, in fact, to all primitive peoples. The Eurician
structure built upon this fundamental attitude to a sale was Roman in particulars, but the underlying principle was as much Germanic as Roman.

The examples given here of features of the CE which corresponded to Germanic as well as to Roman legal notions are not isolated. And although the inclusion of such features in the CE does not, as does the inclusion of features in explicit contrast with those of the LRV and vulgar law in general, have immediate bearing on the question of whether or not the code was intended for the Romans also, it does on the other hand serve as a warning against overstatement of the case for viewing the CE as a source of Roman law. In itself, there is nothing incongruous in the idea of a code of largely Roman law ruling the Goths alone; even more so is this the case, however, when this Roman law is seen in many instances to coincide, in particular details or in general principles, with Gothic custom.

The third qualifying point which needs to be made is this. Conspicuous by their absence from the CE, as from the later Antiquae, are certain institutions of wide and often basic importance in late Roman law. The omission of such features is difficult, if not impossible, to explain if the CE was a codification of vulgar law, intended for the use of Romans and Goths alike.
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The third qualifying point which needs to be made is this. Conspicuous by their absence from the CE, as from the later Antiquae, are certain institutions of wide and often basic importance in late Roman law. The omission of such features is difficult, if not impossible, to explain if the CE was a codification of vulgar law, intended for the use of Romans and Goths alike.
We shall note briefly some cases of such omission, but it will be as well to begin by referring to one case where the significance which has been attached to the absence of Eurician allusion to Roman institutions is not justified.

The basic Roman social categorisation of humiliores and honestiores,\(^1\) which characterised the ET\(^2\) and LRB\(^3\) just as it did the LRV itself,\(^4\) finds no mention in the surviving fragments of the CE.\(^5\) An attempt to explain this has been made with the argument that the CE was a territorial code, and that the terms were unnecessary since social superiority now belonged formally to the Goths.\(^6\) But this is really absurd: Romans like Leo of Narbonne,\(^7\) Victorius,\(^8\) and, at a later date, Anianus\(^9\) and Timotheus\(^10\) cannot conceivably be considered as humiliores as compared with rude Gothic warriors!\(^11\) The alternative explanation, which has been made, however - that the terms are lacking precisely because the CE was a code intended solely for the use of the Goths, among whom such social distinctions were unknown\(^12\) - is not viable. For what would seem virtually a certainty is that the Goths, too, had social groups corresponding to the humiliores/honestiores of the Romans.\(^13\) An optimate class existed already before the entry of 376;\(^14\) the unsettled century which followed could only have accentuated the decay of the old tribal system and allowed many more to rise or fall in status.\(^15\) Quite certainly
such social distinctions existed a century after Euric, for they are consecrated in numerous Antiquae of the LV. It is difficult to believe that precisely at the time of Euric, though not before or after, they did not similarly exist.

In fact, there is no reason to suppose that if we had a complete copy of the CE we would not find there references to the humiliores and the honestiores just as we do in the LV. The view that the Antiquae which refer to these two categories are - in this respect at least - Leovigildian would seem to rest on nothing more substantial than the assumption, already mentioned, that the Goth was socially superior to the Roman. Not one of them can be shown to be Leovigildian by comparison with texts of the CE, for they none of them correspond to extant Eurician provisions. There is nothing which prevents our acceptance of them as in fact Eurician. And it may be mentioned finally that one of the laws reconstructed from the Lex Baiuvariorum and attributed to Euric does contain the equivalent phrase minores personae.

The absence in the CE of this particular Roman feature is almost certainly, then, only apparent. This is not the case as regards insinuatio, or the public registration of gifts, for neither can any trace of this be found in the later LV. Registration had been specified by Constantine, in a constitution which
passed into the LRV, as one of the three essential requirements for the validity of a donation. (1) Later Imperial laws had emphasised its essential character, (2) and at the same time made specific exemptions from its scope of certain donations. (3) In the ET it was required only in the event of the donation of immovables: (4) so too in the LRB. (4) In Justinian's legislation, insinuatio was necessary for the validity of any gift worth over 500 solidi. (5)

There is a total absence of reference in the CE, or in any text of the LV, to such registration. Now, it is difficult to see that any argument for the national (Gothic) character of the CE could emerge from this fact in itself. We cannot believe that insinuatio was for any reason inherently repugnant to the Goths, so that we might accept the omission of the institution in the CE to have been made necessary by the nature of that code as a compilation of law for the barbarians. (6) The absence of insinuatio could easily be explained simply in terms of the development of the vulgar law. (7) The original constitution of Constantine had clearly expected too much: "to subject every occasional petty gift to public registration was completely impracticable." (8) The Interpretationes to the Sentences of Paulus made no mention of registration at all, (9) and the ET (10) and the LRB (11) alike provided - without reference to registration - that the traditio of movables
sufficed for the validity of their donation. (1) The situation shows, in sum, considerable confusion, and it could be argued that the omission of insinuatio in the CE is a deliberate attempt by the legislator to clarify the position, perhaps in accordance with normal vulgar practice.

Similarly, no conclusion can be drawn from the fact that the scriptura, or written record of the details of a gift, does not appear as a general feature of the Eurician texts. It is mentioned in CE 307, but the provisions of that text, concerned with gifts inter coniuges, cannot be thought to apply to gifts in general. (2) Simple traditio, on the other hand, appears sufficient in CE 308: Res donata, si in praesenti traditur, nullo modo a donatore repetatur, nisi causis certis et probatis. There would seem little doubt, from this, that traditio was the sole requirement for validity, (3) except in the special case of donationes inter coniuges - and, naturally, donationes mortis causa (4).

But the absence of the scriptura from the Eurician regime of donations seems, like that of insinuatio, to have been in accordance with vulgar law developments. (5) Although the scriptura had appeared in the basic Constantinian constitution as essential for the validity of a gift, (6) and although this provision had been repeated in later laws, (7) other sources do not insist upon it. (8) In the Interpretatio to LRV.PS V.12.2 it is mentioned as
of no significance alongside traditio; similarly, in the ET and the LRB traditio suffices for the validity of gifts of movables - even though the first of these sources recommends a written record. There is therefore nothing surprising in the similar reference of the CE only to traditio and the corresponding failure to mention the scriptura as a general feature of donations.

But - to revert to the matter of registration - the omission of insinuatio has to be seen in connection with the failure of the CE to allude to another fundamental feature of late Roman society. For registration took place before the curiales, figures of prime importance in the later Empire and the necessary subject of much legislation. The curiales appear in the LRV, the ET and the LRB, but there is no mention of them in the CE or in the Antiquae of the LV. Recesvind's code in fact contains only a single reference to them, included in a law of Chindasvind - of significance because it shows that there can be no question of the disappearance of the institution as such. The omission of insinuatio from the CE and Antiquae may be in accordance with the developments of the vulgar law, but it is perhaps rather the case that it is a consequence of the absence among the Goths of officials corresponding to the Roman curiales - an absence mirrored in the lack of mention in the CE and Antiquae of these figures.
In any case, it is difficult to see how a code of law intended in part for the Romans of Euric's kingdom could have failed to refer to such a basic late Roman institution as the *curia*.

In two other cases the omission of fundamental features of late Roman society is again striking and difficult indeed to reconcile with a view of the CE as a "monument of vulgar law". The colonate, firstly, was an institution of great importance in the late Empire, and it was natural that it should have been the subject of Imperial legislation, much of which passed into the Breviary. The *colonus* appears similarly in the ET and the LRE, in both of which the distinction between him and the simple *servus* is maintained, and we have already had occasion to notice the reference to the *colonus* which occurs in c. 3 of the second council of Seville in 619.

But not a single Eurician text or *Antiqua* refers to the institution, and in all the laws of the LV there occurs only one possible allusion to it, contained - significantly - in a law of Chindasvind. What explanation can be found for such a noticeable failure to regulate such an important social institution, when this still flourished and if the CE and CR were territorial in character? The omission of reference to the colonate is perfectly explicable, on the other hand, if the CE represented
a code of law for the Goths alone, for although, at the time of the division of lands with the Romans, the barbarians almost certainly took over, with their share of the estates, the coloni who had been working these, it is easy to see that the slender distinction between half-free colonus and unfree servus would not have been one of great significance or appeal to the Goths, accustomed to the simpler social and legal categories of slave, freedman and freeman alone.

From an institution of great social and economic importance, ignored by the CE, we may pass to another feature of equally great importance, but in the field of family and marriage law. A usual, though not necessary, concomitant of Roman marriage was the dos, the subject of numerous Imperial laws. The Roman dos was a parte sponsarum, and intended both as a contribution by the woman's side to the common expenses of the household and as a provision for the woman in the event of her widowhood or unjust divorce. It was this dos ex muliere to which Leo I referred in his celebrated, but later misinterpreted, decision of 458/459, which was regulated by a whole series of laws in the LRV, and which found mention in both the ET and the LRB. There is no reason to think, therefore, that the institution had fallen into desuetude by Euric's time.

Yet the institution, if not the word, is totally lacking
from the CE, and, indeed, from all the Antiquae, which know only of a *dos ex marito*, broadly corresponding with the late Roman institution of the *donatio ante nuptias*. How, again, can this absence be explained, if the CE and CR are considered to have ruled the Romans of the Visigothic kingdom? The omission of the institution makes perfect sense, however, if the CE is considered as a code of national law for the Goths to whom the institution was alien.

Enough will have been said to show two things. Firstly, these omissions of the CE, coupled with the points made earlier, allow us to admit the demomination of the CE as a "monument of Roman vulgar law" only with qualifications so considerable as to render not very valuable the original statement, and as certainly to rule out any attempt to reconstruct the lost laws of the CE on the criterion of their necessary correspondence with the rules of Roman vulgar law. And secondly, these omissions make it extremely difficult to accept the code as intended for the Romans as well as the Goths of Euric's kingdom, though they are precisely what we should expect to find if the CE were issued solely for the regulation of the Goths.

Both these conclusions receive decisive confirmation when we turn to examine the texts of the CE and to compare these with texts concerning similar matters, but contained in the LRV and our other
main sources of contemporary Roman law, the ET and the LRB.
Investigation of the question of straightforward compatibility between the CE and the LRV necessitates, of course, only the examination of the laws of these two codes, but to extend investigation to the texts of the ET and the LRB is valuable, for it serves, at least on some occasions, to exclude the possibility that the law of the LRV was wholly academic law.\(^{(1)}\) What follows is not a detailed examination of all the laws of the CE, but restricts itself to certain of these, where matters of fundamental importance are treated in a fashion quite distinct from that of the LRV and other Roman sources. All the laws dealt with are concerned with property and inheritance rights.\(^{(2)}\) But it must be stressed that no attempt is made here to investigate and establish the law of succession and of matrimonial property in the CE and LRV as such: the concern is not to establish the full particulars of each regime, but simply to point out some of the features in which they diverge from each other. The end, in other words, is not legal, but historical.

A clear contrast between the provisions of the CE/CR, on the one hand, and the LRV, on the other, exists in the matter of donations between husband and wife. Such donations were expressly prohibited in Roman law except in certain specified cases.\(^{(3)}\) The prohibition is implicit in LRV.FS II.24.2, which provides for the
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donation of manumitted slaves: Manumissionis gratia inter virum et uxorem donatio favore libertatis recepta est, vel certe quod nemo ex hac fiat locupletior. Ideoque servum manumittendi causa invicem sibi donare non prohibentur, while the interpreter of that text makes it explicit: In coniugio haec sola donatio haec legem permissitur, ut mancipia sibi invicem, quae manumittant, non quae habeant, donare possint. Possible loopholes in the prohibition were referred to and blocked by LRV.FS II.24.3 and 4, which forbade respectively the use of a third party (per interpositam personam)\(^1\) and the device of a fictitious sale (imaginaria venditio).\(^2\)

So basic was the prohibition that LRV.CT III.13.3 referred to it quite naturally when it provided that the return of the dos ex muliere by a husband to his wife during the marriage should not be a valid act, since such a return was like a donation:\(^3\) in the words of the interpreter: Nam si maritus, dum adviveret, hoc ipsum, quod a muliere in dote perceperat, fortasse refuderit, quia similaritudo donationis est refusio, nulla obtinet firmitatem. None of our sources allows us to think that this rule of Roman law underwent relaxation in the period of the late Empire, or that the prohibition of the Breviary was not meaningful law.\(^4\)

Both the CE and the CR, on the other hand, allow for such donationes inter coniuges, and in fact specify the conditions under which such gifts are required to be made. CE 307\(^5\) provides that
the spouse wishing to make a gift to his or her partner must do this in writing, and with the support of two or three freemen as witnesses, or, if necessity demands, by word of mouth, again with two or three witnesses. The substance of CE 307 is repeated in LV V.2.7 (Antiqua)(1), where the clause providing for verbal donation is, however, omitted. A further Eurician text, CE 319(2), adds that when the donee is the wife, she shall retain the gift, after her husband's death, as long as she remains chaste as a widow, or contracts an honestam coniunctionem. Misbehaviour involves loss of the gift, in favour of the heirs of the dead husband. CE 319 finds its Leovigildian counterpart in LV V.2.5 (Antiqua),(3) where, however, a provision is added to the effect that the children of the marriage shall inherit on their mother's death.

The contrast here between the Eurician/Leovigildian laws and those of the LRV is evident. It has already been shown that the theory that the LRV abrogated the CE and was in turn abrogated by the CR cannot be justifiably maintained: here, surely, is further evidence in opposition to that theory. The inherent unlikelihood of such abrupt reversals of the legal regime is obvious.(4) Similarly, the contrast forbids our acceptance of the 'compatibility' version of the territorialist theme.(5) The prohibition of donations inter coniuges contained in the LRV is clearly quite specifically incompatible with the provision in the CE and the CR of
the very form by which such donations were to be made. Unless, of course, it is alleged that the LRV was to apply only in those cases not dealt with by the Eurician and Leovigildian codes: but this convenient argument has already been stated to be indefensible in face of the wording of the Commonitorium: Iuxta eius seriem universa causarum sopiatur intentio. (1)

It has been argued, however, that the Eurician texts CE 307 and 319 do not refer, as has been usually accepted, (2) to gifts in general inter coniuges, but only to the special case of donations mortis causa: CE 307 provides, in this view, the general form of testamentary donation in Eurician law. (3) If this interpretation were accepted there would be no question of the acute incompatibility between the CE and the Breviary which has been described above, for the latter allowed donations between husband and wife mortis causa. (4) But the support which can be adduced for this view is slight indeed. The word voluntas is often used in the texts in connection with testamentary matters, (5) but there is usually some clear terminological indication of the special employment to which it is being put: (6) there is no reason whatsoever to assume that it is being used here - in the phrase et sic voluntas ipsius habeat firmitatem - in anything other than its general sense of "wish" or "desire". (7) The later phrase of CE 307 - si necessitas est - can readily be understood in connection
with the imminence of death and the need to dispose swiftly of property by oral testament, but equally easily as a more general reference to the exigencies of a particular situation. On the other hand, nowhere in CE 307 or 319 do the more technical phrases testamentum or mortis causa occur. (1)

Directly militating against the view that CE 307 provides for donations mortis causa are two factors. Firstly, it is extraordinarily difficult to understand why a special provision should have been devoted to the procedure which should accompany these donations when they were made between husband and wife. If CE 307 is meant to establish the general form of testamentary donation, why should the law be couched in terms referring to particular individuals? (2) That the law speaks specifically of husband and wife is easily explicable, on the other hand, if Euric was concerned to provide a special regime for gifts between these two, laying stress on the scripture, since simple traditio, which probably otherwise sufficed for the validity of a donation, (3) was not satisfactory in marriage, given the closeness of contact between the persons involved and the fact that property individually owned was inevitably often possessed in common.

Secondly, the evidence of the Leovigildian texts shows clearly that at that stage of development gifts between husband
and wife were freely permitted. LV V.2.4 (Antiqua) is the essential text here. (1) This law provides in detail for the regime governing all property extra dotem transferred by any means from husband to wife and at any time - extra dotem de quibuscumque rebus, quacumque donatione vel promissione conquisitis aut illi debitis, quoquo tempore quodcumque donatum - providing, in a final clause, that a similar regime shall govern gifts made by wife to husband. If there are no children born of the marriage, the wife has full ownership over the property given by her husband, though if she should die intestate, the gift reverts to her husband, if he is still alive, or to his heirs. There is no question here of a donation mortis causa.

The gift can be made at any time - quoquo tempore - and is clearly envisaged as passing into the actual possession of the wife during the marriage, for the possibility of the husband's survival of his wife is dealt with: Quidquid mulier de rebus sibi donatis facere elegerit, liberam habeat potestatem. Ceterum si intestata discesserit, ad maritum eius, si suprestis extiterit, donatio revertatur.

Similarly, LV V.2.5 (Antiqua), (2) dealing with the same subject, though not excluding the dos as does its immediate predecessor, (3) provides that if the wife should die intestate and without children, gifts made by the husband should revert to
him, si suprestis extiterit, or to his heirs. The gift is specified as written: Aut ad heredes mariti, qui donationem conscripsit, eadem donatio pertinebit. Again, the gift has clearly changed hands during the marriage, for the provision that the wife has full control of it if there are no children is followed by the stipulation that if she die intestate without children the gift shall revert to her husband if he is still alive. There is no possibility in either of these texts that the donatio mortis causa is the sole subject of legislation.

It could be argued that this regime was a Leovigildian innovation, of no value as evidence for Euric's day. The problem of compatibility, this time between the CR and the LRV, would still remain, of course. But what makes one think above all that CE 307 was concerned with gifts in general is that its Leovigildian equivalent, LV V.2.7 (Antigua), (1) uses almost precisely the same language - and this at a time when, as we have seen, gifts inter vivos coniuges were without any doubt legally permissible. One would not consider this Antigua as referring solely to gifts mortis causa, if it were read in conjunction with the other texts just discussed: and there would seem no good reason to hold that the language of the similar Eurician law was meant to convey a different impression. (2)

We may note finally, and briefly, that to regard CE 307 as
providing the general form of testamentary donation is in any case to come up against the problem of compatibility. The Eurician law requires the signatures or marks of two or three witnesses, or, *si necessitas est*, the oral witness of the same number, in order that the gift shall have validity. LV V.2.7 (*Antique*) omits the reference to oral witness, but is otherwise the same. The LRV, on the other hand, requires the written or oral testification of five or seven witnesses, \(^1\) as do both the LRB\(^2\) and the ET\(^3\). Again, there would be clear incompatibility between the different codes.

There would seem little doubt, then, that CE 307 and 319, like the Leovigildian texts LV V.2.4,5 and 7, all refer to gifts in general made between husband and wife.\(^4\) The liberality of this regime, which we may reasonably consider to have operated primarily in favour of the wife,\(^5\) is the first instance which we have encountered of what is indeed a general characteristic of Eurician legislation. The married woman and mother of the CE appear as greatly favoured *vis-à-vis* their counterparts of the LRV. They are permitted both the opportunity to build up a larger personal estate, by the reception of gifts or by inheritance, and considerable freedom in the disposal of their property. Various texts to which we may now turn make this abundantly clear, and at the same time point the contrast with the law of the LRV.
Central to those texts of the LV which regulate marriage and the various property matters connected with this is the institution of the dos. (1) This differed from the Roman dos of the LRV inasmuch as it passed to the bride ex marito, (2) not to the bridegroom ex parte sponsarum; (3) it corresponded, therefore, rather to the late Roman institution of the donatio ante nuptias. (4) Unfortunately, no Eurician texts dealing explicitly with the dos have survived, but it is nevertheless possible to reconstruct from other laws some aspects of the regime which governed the rights of the Eurician uxor over her dos and thus to compare these rights with those enjoyed by the uxor of the LRV over the property which she received from her husband as the donatio ante nuptias. A similar comparison can also be made between the Eurician and Leo-vigildian regimes governing other property received by the wife from her husband and the corresponding provisions of the LRV.

These comparisons of the treatment afforded by the different codes to property received ex marito by the wife are highly revealing, for they show totally opposed assumptions to underlie the legislative enactments of the CE/CR and LRV respectively. The latter is concerned, in accordance with the spirit of late Roman Imperial legislation, (5) to stress the prior rights of the children of the marriage in property received from the father by the mother, conceding her only a right of usufruct: the former allow the uxor legal rights which can operate, if she so wishes,
to the total - in the CE - or partial - in the CR - exclusion of the children from succession to property which has devolved upon her ex marito.

The *uxor* of both the CE and the CR had the right of free disposal of her *dos*\(^{(1)}\) at death.\(^{(2)}\) So much emerges clearly from two Chindasvindian laws. The first of these, LV IV.5.1: *De non exheredandis filiis; et quod judicium ferant parentes de facultatibus suis* refers expressly to, and abrogates, an earlier law which had allowed parents or grandparents to confer their property on persons other than their children or grandchildren and which had given women the right to dispose of their *dos* at will: *Ideo, abrogata legis illius sententia, qua pater vel mater aut avus sive avia in extraneam personam facultatem suam conferre, si voluisset, potestatem haberent, vel etiam de dote sua facere mulier quod ele-gisset in arbitrio suo consisteret ...* The law goes on to deal only with the first of these two situations - the disinheritance of children or grandchildren\(^{(3)}\) - but the very next law, LV IV.5.2, deals specifically and solely with the *dos*.\(^{(4)}\) Its title: *De quota parte liceat mulieribus iudicare de dotibus suis* indicates the tenor of what follows. Women have thus far - *dudum* - been allowed to dispose of their *dotes* as they wished, begins the law: *Quia mulieres, quibus dudum concessum fuerat de suis dotibus iudicare quod voluisset ...* but Chindasvind feels obliged to protect the interests
of the children pro quibus creandis fuerat adsumtum conilgiium, and provides that free disposal of the dos be at the woman's command in future only when there are no children or grandchildren of the marriage: if there are such, she is permitted unrestricted control of only one quarter of the whole.

Quite in keeping with this, the woman's unrestricted right of disposal over her dos in the time of Leovigild is directly witnessed by the Antiqua LV V.2.4: De rebus extra dotem uxori a marito conlatis, which explicitly excludes the dos from the restrictions which it otherwise specifies as existing on her freedom to do as she wishes with gifts from her husband: Si mulier a marito extra dotem ... quodcumque donatum acceperit, si filii de eodem coniugio fuerint procreati, mulier usque ad diem obitus sui secura possideat et de quinta tantumdem parte earum rerum faciendi quod voluerit potestatem obtineat. The very next law, LV V.2.5 (Antiqua), speaks simply of rebus a marito mulieri concessis - including, that is, in contrast to its predecessor, the dos. The main theme of the law is the woman's obligation, on pain of loss of quidquid de facultate mariti sui fuerat consecuta, to conduct herself in a proper fashion after the death of her husband, but in one place the law talks of her right de rebus sibi a marito donatis possidendi et post obitum
suum, si filios non habuerit, relinquendi cui voluerit. But this should not be taken to mean that her right of disposal of the dos was conditional upon the absence of children of the marriage, even though the dos should be considered as being included in the res donatae. Some such restrictive phrase as si filios non habuerit was a necessity, since gifts in general from husband to wife were being dealt with here, and those gifts which were extra dotem were, as the preceding law had established, not in the power of the woman to dispose of when children existed: to have omitted the phrase si filios non habuerit and to have spoken simply of the woman's right de rebus ... donatis ... relinquendi cui voluerit would have been to make nonsense of LV V.2.4. We must assume that another law of the CR specified the woman's free right of disposal over her dos and that it was to this that Chindasvind referred when he declared abrogata legis illius sententia.

The Eurician predecessor of LV V.2.5, CE 319, had no restrictive phrase, but ran simply: De res sibi a marito donatis possidendii et post obitum suum relinquendi cui voluerit habeat potestatem. It was Leovigild, therefore, who introduced the restrictions on those gifts which were extra dotem and who was consequently obliged to introduce the phrase si filios non habuerit in his redaction of CE 319. The phrase of Chindasvind's law LV IV.5.2 - mulieres, quibus dudum concessum fuerat de suis dotibus iudicare quod voluissent -
can now be seen to refer back to a state of affairs which had existed already in the time of Euric.\(^{(1)}\) Whereas the woman had at that time the right of disposing in whatever way she wished of all gifts from her husband - subject only to the condition that she *in nullo scelere adulterii fuerit conversata* - this right was already restricted by Leovigild as far as gifts *extra dotem* were concerned, and the restriction was then extended by Chindasvind, though with rather different terms, to cover the *dos* itself.\(^{(2)}\) Similarly, Chindasvind clamped down on the previously existing right of a woman to exclude her children from inheritance to that property which had not originated with her husband.\(^{(3)}\)

The freedom which the wife of the CE enjoyed in the testamentary disposition of gifts *ex marito*, including the *dos*, is in stark contrast to the restrictions which hedged around her counterpart of the LRV. This latter was not, as we have seen, entitled to receive gifts from her husband during the marriage,\(^{(4)}\) and the question of her disposition of these cannot, therefore, even arise. But it was a usual concomitant of late Roman marriage for the bride to receive from the bridegroom before, and in view of, marriage, a gift usually denoted in the texts as *donatio ante nuptias* or *sponsalitia largitas*, and distinct from a simple betrothal present by virtue of its considerable value.\(^{(5)}\) Unknown
in the Republic and early Empire,\(^{(1)}\) the \textit{donatio ante nuptias} became an institution of great importance in the later period.\(^{(2)}\)

In 428 the Emperors found it necessary to point out that the \textit{donatio ante nuptias} was not an essential requirement for the validity of a marriage\(^{(3)}\) - a clear indication that it was common enough to be thought so in some quarters - and in the LRB it appears as in fact an essential.\(^{(4)}\)

Originally, the \textit{donatio ante nuptias} had passed into the full ownership of the woman, to be disposed of as she might wish.\(^{(5)}\)

But in the LRV the woman's rights are severely limited.\(^{(6)}\) Already at the end of the fourth century, the Emperors had provided, in two constitutions which both found a place in the Breviary, that the widow who remarried within a year of her husband's death should lose all the property which had come to her \textit{iure sponsaliorum vel iudicio defuncti}\(^{(7)}\) and that even legitimate remarriage after that period should have as its consequence the loss of her absolute right of ownership over property, including the \textit{donatio ante nuptias}, received from her husband, and the replacement of this with a right solely of life-long usufruct, with the reversionary rights in the property invested in the children of the marriage.\(^{(8)}\)

Despite the maintenance of the legal right of full ownership over the \textit{donatio ante nuptias} by the widow who remained unmarried,
it is probable that already at this time it was common practice for the widow to make a point of reserving the property for her children. (1) This practice eventually received legal consecration in the only Novel of Severus contained in the LRV. (2) The woman's right to the sponsalia was now established as solely usufructuary: Ut post viri obitum sponsalia in usumfructum tantum mater habeat. This was the case whether or not she remarried: Sive in alias\textit{nuptias venerit, sive non venerit}. The\textit{ donatio ante nuptias} was to pass intact to the children of the first marriage on her death: she had no right to alienate the property, or to exclude, or bestow a disproportionate amount on, any of the children, though she was, naturally enough, permitted to dispose of the usufruct itself during her lifetime as she thought fit. If she were in fact guilty of alienation, the children were entitled to reclaim the property. If there were no children of the marriage, the\textit{ donatio ante nuptias} was at the disposal of the widow, though she could retain only half of the property concerned when the parents of her dead husband still survived. (3)

Property which devolved upon the widow in any other way from the estate of her dead husband - by will or \textit{donatio mortis causa}, for example - was subject to similar restrictive regulations in the LRV. But interestingly enough this was the result of the work not of the Emperors, but of the interpreter. A Novel of Theodosius II,
LRV. NT 7.1, had confirmed, (1) **inter alia** that a widow's right of ownership of the **donatio ante nuptias** and other property received from her husband, should be converted in the event of remarriage to a right solely of usufruct, and had provided that a widower's rights over property gained from his wife should be subject, **mutatis mutandis**, to the same regime. (2) It was no doubt in accordance with vulgar practice that the interpreter wrote, when he produced an explanation of the Novel which deviated radically from its original. (3) Remarriage is now no longer a condition of the change in legal title: all absolute rights in the property received from husband or wife are lost to the surviving spouse when children of the marriage exist. A widow must conserve for the profit of the children all the goods which have come to her in any manner from the property of her husband: so too must a widower preserve for the children whatever he has received from his wife. Remarriage is beside the point. If alienation takes place, the children have the right to reclaim the property involved, wherever it may be.

In short, all property which came to a woman from her husband was held, according to the LRV, solely in usufruct when children of the marriage existed. Freedom of disposition was totally lacking. The differences between this regime and that of the CE
are unequivocal. The widow of the CE was clearly in an eminently favourable position as compared with her counterpart of the LRV, and even after the restrictions introduced by Leovigild on the free disposal of goods *ex marito*, but *extra dotem*, the contrast with the system of the Breviary remained. One cannot reasonably talk of the 'compatibility' of the CE and CR with the LRV, given these decisive distinctions of treatment in a matter of such crucial importance.

Two further points may now be briefly discussed to round off this survey of the rights enjoyed by the widow of the CE/CR and the LRV with regard to her husband's property. Firstly, the codes coincide in their refusal to allow the widow the right to succeed to her husband's estate, when he dies intestate,\(^1\) except in the most unlikely of circumstances. But it is worth noting that these circumstances are in fact defined in different terms in the different codes. Both the CE and a later Antigua require the absence of any claimant within seven degrees of kinship as the condition for the succession of the widow,\(^2\) while the LRV allows no right of inheritance when any relative of the deceased survives.\(^3\) In practice, of course, the distinction is small, but it exists, and can fairly be cited as another, though trivial, example of the more favourable treatment accorded to women by the CE.\(^4\)

But secondly, the CE and the CR after it allow the widowed
mother a partial claim on her husband's intestate estate, (1) unlike the LRV. (2) She is entitled to receive a share of the estate equal to that of any one of the children of the marriage: that is to say, the estate is divided in such a way that she and each of the children has an equal portion. Her claim is admittedly restricted. It is only in usufruct that she may hold her share, and this usufruct ceases on remarriage - or, naturally, on death. Alienation is not allowed: neither is the bestowal of a disproportionate amount of the property upon any one or more of the children, though the mother has the right to confer the actual exercise of the usufruct on whichever of the children she wishes. Despite these restrictions, this claim on the intestate estate of a dead husband again places the widowed mother of the CE/CR in an obviously favourable position as compared with the widow of the LRV, who disposes of no such right.

In both the acquisition and disposal of property ex marito, then, the uxor of the CE receives treatment different from, and superior to, that which is accorded to her counterpart of the LRV. A similar distinction of regime exists in the matter of her right, as mother, to succeed ab intestato to a dead child.

The LRV deals at some considerable length with the question of the rights of succession of a mother in the estate of a child
who has died intestate. In early Roman law, the mother had possessed no claim at all in such a case, except when, as the uxor of a manus marriage, she could be regarded as a quasi-sister of the deceased and thus succeed as an agnatus proximus.\(^{(1)}\) In classical law she was given further rights as a result of pre- torian reform, which recognised the mother not in manu as an heir of the third class, unde cognati,\(^{(2)}\) and by the Senatus- consultum Tertullianum, which bestowed upon the mother with the ius liberorum the right to succeed to her child's estate after his issue, his father, and his consanguineous brothers. The mother was entirely excluded by any of these, but in their absence shared the estate with any consanguineous sisters who might have survived, and if there were none, took the inheritance in its entirety, excluding those agnates, particularly the paternal uncles, whose claims as heirs of the class unde legitimi were preferred to those of her counterpart without the ius liberorum.\(^{(3)}\)

This regime appears as considerably modified in the LRV.\(^{(4)}\) The mother is still totally excluded by non-emancipated brothers of the deceased,\(^{(5)}\) and, if she does not enjoy the ius liberorum, by his sisters:\(^{(6)}\) but beyond this point a complex series of provisions regulates the rights inter se of emancipated brothers, emancipated and non-emancipated patrui,\(^{(7)}\) and mothers with and without the ius liberorum. The rights of the mother with this
privilege have, on the one hand, suffered considerable diminution: on the other, those of the mother without have been appreciably extended.

Firstly, the classical law, whereby in the absence of non-emancipated brothers and sisters the inheritance passed to the mother if she had the *ius liberorum* and to the agnate *patruis* if she did not, undergoes radical alteration. Emancipated brothers appear now as co-heirs with the mother, to the absolute exclusion of the *patruis*. (1) The amount falling to the mother is dependent upon her status. If she enjoys the *ius liberorum* she takes two-thirds of the inheritance; if she does not, she takes one third. (2) Both the mother without the *ius liberorum* and the emancipated brothers are now possessed of rights of succession superior to those which they formerly enjoyed, while the claims of the mother with the *ius liberorum* have diminished, as have those of the agnatic *patruus*.

Secondly, the paternal uncles and the mother now always possess joint rights in the absence of prior claims. The uncles are no longer totally excluded by the mother with the *ius liberorum*, but equally the mother without this privilege is no longer totally excluded by the agnatic *patruis*. The privileged mother appears now as entitled to only two-thirds of the estate, the uncles,
whatever their status, taking the other third.\textsuperscript{(1)} The mother without the \textit{ius liberorum} also takes two-thirds, when sharing the inheritance with emancipated \textit{patrul},\textsuperscript{(2)} but only one third when she is co-heir with an agnate uncle.\textsuperscript{(3)}

There seems no good reason to believe that this was a wholly academic regime, neither applied nor meant to be applied after the promulgation of the Breviary.\textsuperscript{(4)} There is no evidence that the \textit{ius liberorum} had become a forgotten privilege in the eighty years which separate the latest Imperial constitutions to mention it\textsuperscript{(5)} from 506. The \textit{Interpretatio} to LRV. CT V.1.1 gives the impression that it was seen as an automatic consequence of the birth to a freewoman of three living children: \textit{Si mater ius liberorum non habeat, hoc est, si ingenua tres partus vivos ... non ediderit ...}\textsuperscript{(6)} If enjoyment of the privilege depended simply upon the facts of the situation, one can see no reason why the judges who applied the laws of the LRV should not have obeyed Alaric's instructions - \textit{iuxta eius seriem universal causarum sopiatur intentio}\textsuperscript{(7)} - by treating the inheritance rights of the freewoman who had borne three children differently from those of the freewoman who had not. The distinction between those emancipated and those not so was so basic to Roman law, and figures so constantly in the provisions of the LRV, that again there seems no reason to doubt its perpetuation as a matter of living law.
It is true, on the other hand, that the contemporary LRB makes no mention, when dealing with the inheritance of mothers and uncles, of the ius liberorum, even though it refers specifically to a Constantinian constitution in which this had figured. LRB 10.5 provides that:

De successione vero matrum vel patruorum, qualiter filio defuncto succedant, evidenter exprimitur, ut de hereditate defuncti filii mater tertiam, bisse patruus vel, si plures fuerint, patrui consequantur; quam et in portionem filius patrui et nepos per virilem sexum agnationis iure veniens debet succedere, secundum legem Theudosiani, titulo supra scripto ad Bassum praefectum Urbis datum. (1)

But quite apart from the danger of using the law current in one region as evidence of that in force in another, it is not necessarily the case that this text reflects a simplification and generalisation of the varying provisions of the CT. (2) The Burgundian law's stipulation of one third for the mother, two-thirds for the paternal uncles, corresponds with what is provided in the CT - and the LRV - only for the case of the co-succession of the mother without the ius liberorum with paternal uncles who had not undergone capitis deminutio (3) - in other words, for
the mother who disposed of no extraordinary rights and the uncle whose status was normal. The regime of LRB 10.5 is thus a quite precise reiteration of what is in the CT and LRV the 'normal' regime governing the joint succession of the mother and the patruus.

Now, the LRB is not extensive enough to be considered in any way a comprehensive statement of the law valid for the Romans in the Burgundian kingdom, (1) and it is reasonable to hold that what we have here is not a provision of universal application in the event of the joint succession of any mother and patruus, but rather an assertion of the standard rule to be followed in such cases. Special cases, as when the mother enjoyed the ius liberorum, or when emancipated uncles were involved, may well have continued to be dealt with differently - presumably in accordance with the laws of the CT. The ius agnationis is mentioned in the text with reference to the rights of succession of the filius patrui et nepos - clear evidence that the distinction of agnatic from emancipated patruus continued - and it may be that the right of the patruus mentioned earlier is assumed, without further ado, to be of the same agnatic order. (2)

If this is not the case, if LRB 10.5 is meant to regulate all cases of the co-succession of mothers and paternal uncles
(and their descendants), then we are faced here with evidence of three striking deviations from the Theodosian regime. Firstly, the children and grandchildren of simply cognate paternal uncles no longer enjoy the rights of inheritance which that very Constantinian constitution to which the Burgundian text makes reference had allowed them. (1) Secondly, their fathers possess rights superior to those given them by the same constitution. And thirdly, there has taken place a surprising regression in the position of the mother among the Romans of the Burgundian kingdom which is quite out of keeping with that general improvement in the woman's lot which otherwise characterises Roman post-classical legal development. (2) It may be remembered that under Justinian the mother's claims are so far advanced as entirely to exclude the paternal uncles. (3)

But there is no need, for our present purpose, to lay stress upon this argument. Even if we admit that the ius liberorum of the LRV was a defunct privilege, no longer of practical application, we are still left with a regime which provided for the total exclusion of the mother by the non-emancipated brothers of her dead child, (4) and for her partial exclusion by his emancipated brothers or his paternal uncles. (5) In these two vitally important respects the regime of the LRV differs fundamentally from that of the CE.
The basic law of succession of the CE appears in CE 336, a fragmentary text, but one of which the first part at least can be reconstructed with virtual certainty from the Antiqua LV IV.2.2. (1) The first claim on an intestate estate, this Eurician text establishes, belongs to the issue of the deceased: \textit{In hereditate illius, qui moritur intestatus, si filii desunt, nepotibus debetur hereditas.} Si nec nepotes fuerint, pronepotes vocantur ad hereditatem. This is totally in agreement with the law of the LRV, where the successory rights of a dead person's children are absolute, (2) though we shall have occasion later to notice that the right of the unmarried daughter of the CE is, unlike that of her counterpart in the LRV, limited to a usufruct over the immovables concerned. (3)

It is the next lines of CE 336 which are important for our present purposes: \textit{Si vero qui moritur nec filios nec nepotes nec pronepotes reliquerit, pater aut mater hereditatem sibi vindicabit.} The LRV had maintained the right of the father to succeed to his dead child in the absence of direct issue; the same right is recognised here in CE 336. But while the LRV specifies a further exclusive claim as belonging to non-emancipated brothers of the deceased, and only in their absence allows any rights to the mother - who even then is not the sole heir, but co-heir with emancipated brothers or with paternal uncles - CE 336 establishes
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the next claim as existing in the person of the mother alone. Brothers and sisters of the dead person are not mentioned: if there is no issue, pater aut mater hereditatem sibi vindicabit. The right of inheritance belongs, then, according to CE 336, first to the descendants of the deceased, then to the ascendants: (1) the likelihood is that the rest of the law goes on, in accordance with the Antiqua LV IV.2.3, to establish collaterals as the third group: Si personae desunt, quae aut de superiori aut de inferiori genere discreto ordine veniunt, tunc illae personae, quae sunt a latere constitutae, requirantur, ut hereditatem accipiant. (2)

Despite CE 336, it has been asserted that in the regime established by the CE, the mother - though not the father - was excluded by the brothers of the deceased, and in their absence shared with the sisters. (2) The justification for this view would appear to be nothing else but the fact that this was the Roman regime. (3) Against this wholly conjectural supposition the following points militate very strongly. Firstly, CE 336 is quite explicit. (4) If, as is suggested, there had existed rights of succession in the persons of the brothers and sisters of the dead child, and these had come, in the order of precedence, after those of the father but before, or together with, those of the mother, it would have been a simple - and, one imagines, a natural - step to have made reference to them in the general statement of the law of succession which
is CE 336. There exists no such reference. Secondly, CE 327 establishes the mother's right of succession to a child who dies patre defuncto and in the absence of direct descendants.\(^{(1)}\) The text would be unlikely to specify patre defuncto unless the mother was considered - wholly in accordance with CE 336 - as next in succession. Thirdly, there exists no text, either in the CE or in the LV, which refers to either the total or the partial exclusion of the mother by the brothers and sisters of the deceased. And lastly, one text - admittedly of Chindasvind - makes it clear that the mother inherited despite the existence of other children - brothers or sisters of the deceased. LV IV.2.18 (Chind.) provides that patre defuncto si filius filiave ... discesserit, quid-\(\text{et} \) ei de facultate patris competere poterat, mater sibi debeat vindicare and that she is to leave this - as is the father to leave what he has acquired in similar fashion - to the grandchildren, if there are no children: Ita ut pater vel mater, quibus ista successio competit, si filios non reliquerint, integram et in temp-\(\text{et} \)eratam eandem luctuosam hereditatem dividendum omnibus nepotibus derelinguat. The existence of other children is here clearly envisaged: the inheritance nevertheless passes to the mother, not to these brothers or sistern of the de cuius.

The rights of brothers, sisters and paternal uncles alike are excluded in the CE, then, by those of the mother. No surviving
text deals with the rights which brothers and sisters did possess, though the probability is that there were laws, not preserved, devoted to these.\(^{(1)}\) But we are fortunate enough to possess in CE 327 a law which almost certainly refers back to an earlier stage at which paternal uncles and the mother shared in the inheritance: the law declares that this regime is to be replaced and that the mother is in future to have sole claim, entirely excluding the uncles.\(^{(2)}\) This interpretation seems secure, despite the fragmentary state of the opening lines of CE 327, but the bad state of preservation does not, unfortunately, allow us any knowledge of the details of the earlier regime. The most recent edition begins simply:

\[
\text{In priori lege fuerat constitutum ut si patruus aut patrui filii cum matre \ldots vindicarentur. Nos modo meliori ordinatione censuimus ut patre defuncto, si filius decesserit, omnem facul tatem eius sibi mater dibeat vindicare, quae tamen sit post obitum vidua.}\(^{(3)}\)
\]

But it is not the earlier regime in which we are primarily interested from the point of view of comparison with the LRV, but the new regime which the CE introduces. The right of the mother to inherit \textit{patre defuncto} - and, naturally, in the absence of direct issue from the deceased\(^{(4)}\) - is here established in
perfect accordance with the general provision of CE 336. The terms on which she inherits are unfortunately not at all clear: the reading *quae tamen sit post obitum vidua* is not necessarily correct.\(^1\) It may be that her right ceases on remarriage: but would the text not then specify to whom the inheritance passes, when it leaves her possession - whether it is to her heirs or to those of the dead child? And are we to consider her right absolute, if she did not remarry, or solely usufructuary? The freedom which, we have seen, the mother enjoyed up until the time of Chindasvind in the disposal of her goods\(^2\) should perhaps incline us to think that the right was absolute;\(^3\) an alternative reading of the last words of the section of CE 327 quoted above might be conjectured as *quae tamen sit potestatis viduae*.\(^4\)

Whatever the conditions under which the mother inherited, enough has been said to make it clear that totally different principles underlie the regimes governing the law of succession in the CE and the LHV.\(^5\) In the latter, the mother is entirely excluded by the non-emancipated brothers of the *de cuius*, and partially so by his emancipated brothers or paternal uncles: in the CE, on the other hand, these groups are all passed over in favour of the prior right of the mother.\(^6\) The contrast which exists here between the two codes is acute and basic. Certainly
there can be no question of the compatibility of provisions in such total conflict, while Alaric's instructions that all cases should be judged in accordance with the laws of the LRV do not permit us, as has already been said, to think in terms of an essentially didascalic code. In fact, it is surely impossible to believe that even in a didascalic code, a legislator could have included laws which regulated the vastly important matter of succession *ab intestato* not simply in a manner distinct in detail from that of the allegedly territorial and still valid CE, but in a form based upon principles entirely different from those of the CE. In this fundamental divergence of the LRV and the CE lies a convincing indication of the debility of the whole 'compatibility' argument.

In contrast with the freedom which we have seen the woman of the CE possess in her capacities as wife, widow and mother are the restrictions which govern the unmarried daughter with regard to her inheritance of the parental estate. In this respect, the *filia* of the CE is in a worse position than her counterpart of the Breviary.

The *filia* of the LRV possessed the same right of inheritance to the intestate estate of a dead parent as did her brothers: no distinction was made between the sexes. The principle of equal
capacity to succeed ab intestate is indeed nowhere stated with the same succinct emphasis as in the LV, but there was of course no reason why a code of exclusively Roman law should make explicit mention of such a long-established and fundamental tenet. In any case, the principle emerges clearly enough in the Breviary. LRV.CT V.1.4, for example, establishing, inter alia, the rights of grandchildren ex filia, opens with the words: Si defunctus cuiuscunque sexus aut numeri reliquerit filios et ex filia defuncta cuiuscunque sexus aut numeri nepotes, eius partis, quam defuncti filia, superstes patri, inter fratres suos fuisset habitura, duas partes consequuntur nepotes ex eadem filia. The Interpretatio refers also to the portion due to the daughter: Si aliquis moriatur intestatus et filios vel filias superstites ... derelinguat, filii in sua portione succedunt.

Another text which witnesses the daughter's participation in the parental inheritance and which in addition makes clear the relationship existing between her portion and her dowry, is LRV.CT IV.2.1. A woman dowered by her father at the time of her marriage is not additionally entitled to an equal share with the other children in his inheritance: she has the choice between remaining content with the dowry alone or taking an equal share of the common fund formed by the inheritance and the dowry together: Si in reliqua patris substantia vult cum aliis fratribus aequalis
accedere, dotem ... hereditati paternae cum fratribus dividendam confundat. Quod si noluerit, sit his, quae percepit, pro sua portione contenta.\(^{(1)}\) When she predeceases her father, her children have the same choice open to them on his death: they can either accept her dowry as their inheritance or bring it into a common fund with the property left by their grandfather and take the share from this which their mother would have had if she had survived: Nepotes ex filia ... hac conditione succedant, qua et matres, si viverent, hereditatem patrum sibi cum fratribus vindicarent.\(^{(2)}\) In fact, as the law goes on to say, if they choose this latter course they forfeit one third of their mother's portion.\(^{(3)}\)

In another place, LRV.NS 1.1, we find the children entitled, without distinction of sex, to equal shares of the betrothal gifts, the usufruct of which was enjoyed by their mother after their father's death: the mother was obliged not to alienate the property or bestow a disproportionate amount on any one or more of the children: Nihil exinde alienare praesumat ... neque aliis, nisi tantum omnibus filiis suis ex eodem patre genitis, cuius donatio est, haec ipsa sponsalitia largitas aequaliter dimittatur.\(^{(4)}\)

Nothing in the LRV indicates that the daughter was in any way discriminated against when she came to succeed:\(^{(5)}\) nor does any restriction appear as placed upon the unmarried daughter's
control of the share she gained. (1) The married daughter could not dispose at will of the dos which in practice formed part of her portion, for during the course of the marriage this was formally in the ownership of her husband. (2) But there is no reason to think that the additional property which she had the opportunity of gaining at her father's death by taking an equal share of the amalgam of dos and the inheritance proper was also subject to the dotal regime, and after her husband's death the dos was in her full ownership, to dispose of as she wished. (3)

The Antiquae of the LV present much the same picture. LV IV.2.1 states with uncompromising clarity the basic principle of the equal capacity to succeed of the two sexes:

Ut sorores cum fratribus equaliter in parentum hereditatem succedant

Si pater vel mater intestati discesserint, sorores
cum fratribus in omni parentum faculitate absque aliquo objectu equali divisione succedant. (4)

This is not to say, however, that the right of a daughter was inviolate, or that she could not be deprived after the event of the share she had gained. If a woman married absque cognitione et consensu parentum she was excluded from the succession she otherwise enjoyed with her brothers: Mulier cum fratribus suis in faculitate parentum non succedat. (5) The text makes this exclusion dependent upon her
parents' refusal to accept her back in favour: *Si ... eam parentes in gratia recipere noluerint*. A daughter similarly lost the right to her portion when she was guilty of fornication - *adulterium* - but afterwards married the man concerned, with her parents' permission: again, however, her disinheritance was dependent upon the wishes of her parents: *Mulier vero de parentum rebus nulam inter fratres suos, nisi parentes voluerint, habeat portionem*.(1)

In both cases we should probably be right in thinking that simple reconciliation with the parents would not have been sufficient to re-entitle the offending woman to her share of their estate, but that they would have had to make express provision for her, presumably by testamentary disposition.(2) This would at any rate seem to be the implication of the *Antiqua LV III.2.8*,(3) where the provision that the woman shall be excluded in the event of unauthorised marriage *si ... eam parentes in gratia recipere noluerint* is shortly followed by the concession that *de rebus suis si aliquid parentes donare voluerint, habeant potestatem*. The statement here that the *parentes* should have the power - *habeant potestatem* - to make gifts to their daughter, and the explicit declaration in the subsequent words of the law that the daughter has free right of disposal over these gifts: *Ipsa quoque de donatis et profligatis rebus faciendi quod voluerit libertatem habebit* would perhaps indicate that at an earlier stage the woman who
misconducted herself in this fashion was irrevocably excluded in favour of the other children: if such stipulations were necessary, it is not likely that anything short of a proven gift would have been sufficient to establish for the woman who had offended any claim on the dead parent's estate.

Sexual misconduct which is not afterwards followed by marriage is not specified in any law of the LV as involving automatic loss of inheritance rights\(^{(1)}\) - though it was of course always open to the parents to exclude their daughter by disposing elsewhere of their estate by will.

The essential provisions of LV III.2.8 (Antigua) were obviously considered still to apply when the parents of the woman were dead, and she had already entered upon her inheritance. For the Antigua LV III.1.8\(^{(2)}\) provides that a woman who marries in defiance of her brothers - who assume guardianship of her after the death of both her parents\(^{(3)}\) - shall not lose her portion - *integram a fratribus, que ei de parentum hereditate debetur, per- cipiat portionem* - if she marries after her brothers have turned down prospective suitors two or three times and if she does not marry a man of inferior status: if, on the other hand, her brothers withhold their consent because they wish to provide a worthier husband for their sister (rather than because they wish to keep
control of the property she has inherited) and if she nevertheless turns to an 'inferior' man, she does lose her share - portionem suam ... quam de facultate parentum fuerat consecutur, amittat - though not her right to succeed to the estates of other relatives, including the brothers themselves.

The Antiquae of the LV otherwise contain no restrictive provisions concerning the right of a daughter to share equally with her brothers in the parental inheritance. But at an earlier stage other restrictions certainly did exist which disappeared in the CR, (1) for these are revealed to us by the surviving fragments of the CE.

The crucial text here is CE 320, which is unfortunately in a deplorable state of preservation. The most recent edition of the text is as follows: (2)

Si parentes testati decesserint ...(sequuntur 4 versus in quibus singulae tantum litterae legi possunt).../ de ea ...eas ad facu< tat(es) ... sorores ...ccipient ... cu(m fr- at)ribus suis in terris vel in aliis rebus ae(quale)m habeant portionem. 2. Quod si aliqu(a sine) viro fuerit relict(a, et ad coniugium (expet)ens sponte transierit, totam por(tione)m quam acceperat suis fratribus vel (eor)um hereditibus relinquit. 3. Quod si ipsa (virgo)
permanserit, quamdiu advixerit in (rebus) vel in
culturis cum fratribus habeat (porti)onem; post obitum
vero eius terras ad heredes superius comprehensos sine
(mora) revertantur, reliquas facultates (cui vo)luerit
donatura. 4. Circa sanctimonialem autem quae in castitate
permanserit vo(luntat)e parentum, praecipimus permanere.
5. (Quod s)i parentes sic transierint ut nullum (fueri)t
testamentum, ea puella inter fra(tres a)equalem in omnibus
habeat portio(nem), quam usque ad tempus vitae suae
usu(fruc)tuario iure possideat, post obitum (vero s)uum
terras suis heredibus relinquat; (de rel)igua facultate
faciendi quod voluerit in eius potestate consistat.

Now, the recently expressed opinion that the law can be divided,
as to subject matter, into two parts, the first - comprising sec-
tions 1 to 4 - dealing with testate, and the second - section 5 -
with intestate succession, (1) would not seem justified. (2) How,
on this hypothesis, can we explain the reference in the first
section to sorores ... cum fratribus suis in terris vel aliis rebus
aequalem habeant portionem? What can the phrase "equal portion"
be doing here? Why should the legislator refer to equality of share -
which is allegedly guaranteed to the woman in the case of intestate
succession by section 5(3) - when dealing with testamentary dis-
position, where the likelihood is that the shares would be specified
as of disparate size? (4)
A more reasonable interpretation would seem to be this. The law deals with both testate and intestate succession, in their relation to both the sanctimonialis and the 'ordinary' woman. The law deals with both testate and intestate succession, in their relation to both the sanctimonialis and the 'ordinary' woman. In the case of the former, section 4 decrees that the will of the parents is to be executed: voluntas here is used as it is elsewhere to mean the disposition of the deceased. Section 5 is connected with section 4 - as the quod with which it begins implies - and provides for the case when there is no will - quod si parentes sic transierint ut nullum fuerit testamentum. In this event, the sanctimonialis is to have an equal share with her brothers in the parental estate, but - as far as the lands are concerned - this share is to be usufructuary only, and to pass to her heirs on her death. The particular guarantee here of the rights of succession ab intestato of the sanctimonialis is probably given in order to counteract the notion current among the Romans, and doubtless therefore not without influence upon the Visigoths, that she was not entitled to participate in the intestate parental inheritance. Disinheritance of the sanctimonialis by will, however, was open to the parents: Circa sanctimonialem ... voluntate(m) parentum praeceptimus permanere.

Just as these two sections deal with the testate and intestate succession of the sanctimonialis, so it would seem most likely that the first three sections deal with the parallel rights of the 'ordinary'
woman. We should perhaps be right in thinking that the opening words of the law - *si parentes testati decesserint* - are followed by a provision along the lines of that contained in section 4 - that is to say, guaranteeing the disposition of the will with regard to the daughters - and that the law then goes on to regulate the question of intestate succession, just as does section 5. The words which immediately precede section 2, with their reference to *aequalem portionem*, would certainly seem to refer to intestate succession, and it is suggested here that they establish a general right of the daughter, whatever her status, to this equal share.

It is clear, at any rate, that the daughter unmarried at the death of her parents had the right to an equal share of the intestate estate, for section 2, dealing with the girl *sine viro relicta*, refers to the *portionem quam acceperat*; the final clause of section 1 - *cum fratribus suis in terris vel in aliis rebus aequalem habeant portionem* - must therefore be considered to establish a right for unmarried daughters. But it is not reasonable to believe that the married daughter would not have enjoyed the same right of equal succession to the parental estate as did her unmarried sister, and the possibility that the clause *cum fratribus ... portionem* refers to unmarried daughters alone can therefore be discounted. The likelihood is that the clause is of general
application, establishing a right for the daughter, married or not, against her brothers: the opening words of section 2 - quod si aliqua sine viro fuerit relicta - serve to strengthen this impression, in that they imply that what precedes includes the case of the filia cum viro.

Sections 2 and 3 of CE 320 establish two qualifying stipulations to this preliminary general provision. The girl who marries without the approval of her brothers - for so we should understand sponte transierit\(^{(1)}\) - loses the equal share which she has inherited.\(^{(2)}\) Disinheritance figures in the CR, as we have seen, as the consequence of a daughter's marriage against the wishes of her parents, while another Antiqua refers to the forfeiture of the daughter's portion in the very case which is considered here - marriage without the consent of her brothers when they are her guardians. The obvious implication of section 2 is that the filia retained her portion when she married with her brothers' consent - just as she did according to LV.III.1.8 (Antiqua).

Section 3 goes on to deal with a second condition under which the unmarried daughter possesses her equal portion, when it specifies her solely usufructuary right to the lands included if she remains unmarried. On her death the lands - but not the reliquae
facultates, over which she has full right of disposal - pass to her brothers or their heirs. Again, the inference is clear: the lands do not pass to her brothers or their heirs if she marries. The provision would not be restricted to the case of virgo if this were so, but would be couched in more general terms. (1) Confirmation of this view appears in CE 327(2) where, among other things, the rights of succession of grandchildren whose mother has predeceased their grandparent are dealt with. The children have a Warterecht on that portion of their grandparent's estate which would have fallen to their mother if she were still alive: Nam nepotes ex ea filia quae ante patrem mortua est de ea portione quam mater fuerat habitura tertiam portionem perdant. The children are not entitled to all the portion, it should be noted, but only to two-thirds: the remaining third passes, it is most likely, to the children's uncles - the original fratres of the original filia. (3) It is impossible to believe that if these children have such a right when their mother has predeceased their grandparent, they would not have the same right when she has survived him and has entered upon her share of the inheritance. Most probably they would then succeed ab intestato to the totality of their mother's portion, not just to the two-thirds allowed them by CE 327. (4)

Sections 2 and 3, then, deal with the daughter who marries irregularly after her parents' death, or who remains unmarried:
in both cases the daughter's rights over her share of the intestate parental estate are subject to restriction. What, however, of the daughter who marries in regular fashion, either with the approval of her parents, or - after their death, and thus after she has entered into her inheritance - with that of her brothers? The fact that there is no regulation of the fate of the aequalis portio which she too must be considered to have inherited must lead us to believe that no restrictions existed upon her free disposal of this as she wished. Freedom of testamentary disposition was a characteristic feature of Roman legal practice, a feature which it is clear was adopted by the Visigoths and the general statement that "sisters should have an equal portion with their brothers" would, if unaccompanied by explicit restriction upon the disposal of that portion, be naturally understood to mean that it passed into their full ownership. The restrictions of sections 2 and 3 do not concern the regularly married daughter, whose right to the aequalis portio must therefore be considered a full one.

The only alternative to this interpretation is to accept that the married daughter possessed solely usufructuary rights over the lands of her portion, and that these passed on her death to the children of the marriage - for we have seen that they certainly did not pass to her brothers or their heirs, and it is
equally certain that they did not pass to her husband. (1) But nothing in the other texts of the CE, or in the Antiquae, supports such a conclusion, and one very important consideration militates against it. One of Chindasvind's laws (2) refers to an earlier right of the mother to confer her property on persons other than her children: Ideo, abrogata legis illius sententia, qua ... mater ...

... in extraneam personam facultatem suam conferre, si voluissent, potestatem haberent ..., and other laws make it clear that this facultas is not considered to include her dos or other donationes ex marito. (3) It must therefore be thought of as consisting in the main of inherited property. (4) If Euric's code provided that the mother have only the right of usufruct over the lands she inherited from her parents, and that these passed on her death to her children, we have to assume that the law which Chindasvind abrogates is a revision, presumably Leovigildian, of Euric's provision, a revision which favoured the mother, by allowing her free right of disposal, as against the children. But precisely the opposite tendency would appear to have inspired Leovigild. For while Euric permitted the wife to dispose as she wished of gifts from her husband, it was Leovigild who insisted that, at least as far as gifts extra dotem were concerned, the mother must preserve these for the children of the marriage. (5) It is difficult indeed to believe that he would have concomitantly conceded to
the mother a right to deprive the children of property hitherto guaranteed to them by an Eurician law.

CE 320 would seem, then, to be best interpreted as providing the following regime. 1). The testamentary dispositions of the parents were to be obeyed, in the case of both the 'ordinary' daughter and the *sanctimonialis* (sections 1 and 4). 2). The daughter had the right to an equal share of the intestate parental estate, whatever her status (sections 1 and 5). In the absence of explicit, regulations to the contrary, this would naturally involve her right to dispose of the share at will. 3). If she married irregularly after her parents' death, she forfeited the share she had inherited (section 2). 4). If she remained unmarried, the lands included in her share passed on her death to her brothers or their heirs (section 3).

It will have been seen that the Eurician law of succession with regard to daughters is not easily reconstructed from the fragments of the code which remain, and we would certainly not be justified in comparing all the aspects of this admittedly conjectural regime with those of the LRV. But despite the problems presented by CE 320, one thing is certain. The unmarried daughter participated with the other children in the equal division of an intestate estate, but had no right to dispose of the lands which
formed part of this inheritance.\(^{(1)}\) Whatever interpretation we put upon CE 320, this conclusion stands, whether we buttress it by reference to section 3 or to section 5 of the law. Whatever the regime governing the married daughter, the contrast of this restriction with the freedom which the filia is seen to possess in the LRV is striking indeed.\(^{(2)}\) There can surely be no talk of compatibility between two codes which witness such distinct methods of treating the daughter's right over her inheritance.

Incompatibility of CE and LRV apart, there is another factor which must be mentioned. The whole trend of Roman legal development had been, under the especial influence of Christianity, towards the progressive amelioration of the woman's lot.\(^{(3)}\) Even in the time of the Twelve Tables, women had enjoyed equal rights with their brothers as sui heredes.\(^{(4)}\) Pretorian law and imperial legislation alike had acted to establish many new successor rights for women:\(^{(5)}\) alongside this the manus marriage and the tutela perpetua mulierum had both declined and disappeared by post-classical times.\(^{(6)}\) In Justinian's day the concept of the equality of the sexes, long preached by Christians in the moral field,\(^{(7)}\) had become recognised as a principle founded on nature, on the ius naturale, and as the very basis of the law of succession.\(^{(8)}\) Nothing in the legal sources of the post-classical period leads us to think that this development had been interrupted,
or that vulgar practice differed from the written law. Yet to accept the territoriality of the CE is to accept that the Romans of the Visigothic kingdom were made by Euric to suffer an abrupt and radical change of regime, to accept a succession law Roman in its provision for the equal division of the estate among all the children, but essentially Germanic in its refusal to allow the daughter - at least, the unmarried daughter - the full ownership and disposal of the lands she inherited. (1)

If Euric imposed such a law on his Roman subjects, his action is wholly inexplicable, given both the paramount necessity not to provoke unnecessarily the conquered population, and the sheer pointlessness of interfering with such a politically unimportant but socially significant institution as the law of succession. The application of the law of CE 320 to the Romans is impossible to accept, for it makes no sort of sense. The clear incompatibility of the law of the Eurician text with that of the Breviary is perhaps of secondary importance to this as an argument against the attribution of territoriality to Euric's code.

One further text of the chapter De successionibus needs now to be briefly discussed. CE 321, (2) the substance of which is repeated in the Antiqua LV IV.2.13, (3) regulates the question of the res maternae. Although a comparison of the Eurician regime with that of the LRV presents no such striking contrasts
of basic principles as have been noticed above, particular variations of treatment, of no little importance, do exist.

The widower of CE 321 has the administration of the estate which his wife has left, but his control is only temporary, ceasing on remarriage, when the res maternae have to be passed immediately and in their entirety to the children of the marriage.\(^{(1)}\) If the widower does not remarry, his control is still restricted. He holds the maternal estate, in effect, in trust for the children, having no authority to alienate the property in any way. When a child marries, the father is required to hand over the share of the maternal goods due to the child, less one third, which he is permitted to keep and enjoy in usufruct. Even if unmarried, the child similarly has the right to a half of his or her share on reaching the age of twenty: the remaining half stays with the father, again in usufruct. The law ends by providing that the same regime be applied in the case of grandchildren.

The similarity between the regime of CE 321 and that of the LRV is remarkably close. The widower of the Breviary is also obliged not to alienate the maternal property which he holds in trust for his children,\(^{(2)}\) he is required to transfer to the child a half of the due share when the child reaches the age of twenty and he is allowed to retain the other half in life usufruct.\(^{(3)}\)
But in certain other respects the widower is shown by the LRV to have rights in the res maternae at variance with those which his counterpart possesses in the CE; the differences are not considerable, but they are sufficient to show the difficulty, at least, of adherence to a thesis of compatibility.

Firstly, the marriage of a child in the LRV does not in itself oblige the father to payment of two-thirds of the portion of the maternal goods due to the child. This requirement is attendant in the LRV upon emancipation rather than marriage.\(^1\) It would be most unwise to attach too great a weight to this distinction between the codes, for it was increasingly the practice that marriage brought with it emancipation.\(^2\) Nevertheless, the former did not necessarily involve the latter, and it was therefore possible, according to the law of the LRV, for a father to retain the whole of the share due to his child until this latter- even though already married - had reached the age of twenty.

Secondly, the requirement that half of the due portion should be handed over when the child reached this age\(^3\) was in fact rather a moral than a legal one. For the law recognised no enforceable right of the child to the half-portion while he, or she, remained in potestate.\(^4\) Strictly speaking, it was possible for the widower of the LRV to retain an actual usufruct until his
death over the whole of the *res maternae*, by refusing to emancipate his children and by withholding the half-shares due to them at the age of twenty.

Emancipation itself did involve the obligation to payment of two-thirds of the due share.⁽¹⁾ But there is a significant point or distinction, thirdly, in the treatment accorded by the LRV and the CE to the remaining third. In the CE this was enjoyed by the father in usufruct, until death or remarriage:⁽²⁾ in the LRV, on the other hand, it became the father's in full ownership.⁽³⁾ The law exhorted him, admittedly, to leave it to his child,⁽⁴⁾ but it is clear that no legal obligation existed on him to act thus.

Remarriage, lastly, which in the CE involved the forfeiture of all control over the *res maternae* by the father⁽⁵⁾ would appear to have had no such effect in the LRV. No text is specific in that it expressly provides for his retention, after remarriage, of what he might hold, but equally there is nothing which can be construed as obliging him to its repayment, and the stipulation that the third which he receives as gift from an emancipated child is his in full ownership certainly cannot be reconciled with any such obligation. The half-share retained in usufruct after a child's twentieth year is specified, too, as his *in diem vitae suae*.

The contrasts noted here between the provisions of the CE
and the LRV with regard to the res maternae are by no means as profound as those which have been discussed above. Nevertheless they exist and amount to further evidence against any view of straightforward compatibility between the two codes.

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It should not be thought that contrasts between the CE and the LRV exist only in the laws which have been discussed above. Minor points of distinction appear in other texts. One thinks, for example, of CE 274,\(^1\) where the penalty of a fine of twenty solidi for freemen\(^2\) and of fifty lashes for slaves found guilty of the deliberate removal of boundary-markers is far less severe\(^3\) than the punishment meted out by the LRV - labour in the mines for the slave, public works for the humilior, exile and the loss of a third of his property for the honestior.\(^4\) CE 277\(^5\) stipulates that no fugitive may be recalled to slavery who has remained undiscovered for fifty years: the LRV provides the lesser period of thirty years.\(^6\) In CE 285\(^7\) all right to interest on a loan is lost when the agreement provides for a rate of interest in excess of the permitted 12 1/2\%: the LRV decrees a fourfold restitution by the creditor of the extra interest he has received.\(^8\) In CE 289 the unauthorised seller of another's property
is required to repay the owner in duplum and give back the purchase price: (1) in the LRV it is the buyer who receives the purchase price in duplum. (2)

But if these examples, minor as they are, nevertheless militate against any idea of complete compatibility between the CE and the LRV, the laws of the chapter De successionibus surely leave no doubt that the divergencies between the two codes are quite profound, and irreconcilable with any 'compatibility' view, except on the supposition that the laws of the LRV, in this highly important matter of inheritance law, are wholly academic. As has been said above, such a hypothesis has not a scrap of evidence in its favour, and against it stand not only the circumstances in which the LRV was promulgated, but also the inclusion in this allegedly 'dead' code of the law of Theudis and, most important of all, the language of the Commonitorium.

If the evidence of these fundamental contrasts of the CE and the LRV excludes the possibility of compatibility, just as much does it forbid our acceptance of the view that the LRV was a code which replaced the CE and was in turn replaced by the CR. It is surely not possible to believe that legal development could have taken the erratic course which this theory - given that the contrasts of the CE and the LRV are maintained in the CR and the LRV - entails.
Both the territorialist versions of the relationship between various codes of the Visigothic kingdom collapse, it would seem, in face of the fact of the differing law which these codes contain. But quite apart from the question of relationship, the imputation of territoriality to the CE is in itself inadmissible, given the character of the law of the code. Is it credible that Euric would have altered so radically the law by which his Roman subjects were accustomed to be ruled? Is it believable that he would have concerned himself with the imposition of new legal norms upon them, when such an imposition could have no possible advantage for him and the Goths, but would, in the circumstances of 476(?), carry with it the possibility of political disaster? How, if the code were intended also for the Romans, could the legislator have failed to deal with such basic institutions as the Roman curiales? the Roman dos? the colonate? To reconcile the content and the omissions of the CE with its rule over the Romans is surely a task of impossibility. As content, if not omissions, is beyond doubt, it is rule over the Romans which must be rejected.

The laws of the CE appear, in short, to offer the very strongest of evidence in favour of the non-territorial - that is to say, the national, Gothic - character of the code. The pages above have shown, it is hoped, that no convincing terri-
torialist arguments exist, either in relation to the CE or with regard to the other codes of the Visigothic kingdom, and that the evidence permits most readily of interpretation in conformity with the traditional view of the national character of the codes of Euric, Alaric and Leovigild. It was with Chindasvind that this system came at last to an end and that for the first time a single legal code ruled all the inhabitants of the kingdom of Toledo. It is the firm conviction of the present writer that, despite the ingenuity and scholarship of those who expound the territorialist theme, the older view which they seek to overthrow remains in essentials vindicated.