Roman Law in the regnum Italiae under the Emperor Lothar I (817-855): Epitomes, Manuscripts, and Carolingian Legislation

by Stefan Esders

"Roman law" could mean very different things in the Carolingian period, and refers to a great variety of legal texts. This becomes particularly visible from the abbreviated versions of Roman law that were produced and circulated since the sixth century. The paper contrasts the so-called *Epitome Aegidii*, a Gallic compilation based on the Breviary of the Visigothic king Alaric II, with the so-called *Epitome Iuliani*, a short version of the novels of the emperor Justinian, as both abbreviated compilations were used in the *regnum Italiae* under the Frankish emperor Lothar I for legislation and legal practice. Both compilations attest to different aspects of the Roman legal tradition, and to the divergent purposes of the Frankish rulers when trying to make use of Roman law. Surprisingly, we also find elements of Ostrogothic law incorporated into what was perceived of in Carolingian Italy as the manifold resources of the Roman legal tradition.

Early Middle Ages; Lothar I; Roman Law; *Edictum Theoderici*; Capitulary Legislation; Legal Pluralism; Legal Manuscripts.

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Abbreviations

ChLA², XCVII = *Chartae Latinae Antiquiores. Facsimile-edition of the Latin Charters*, 2nd series, ed. G. Cavallo – G. Nicolaj, part XCVII, Italy LXVII, ed. A. Zuffrano, Dietikon-Zürich 2018.

MGH, Capit.1 = *Capitularia regum Francorum I*, ed. A. Boretius, Hannover 1883.

MGH, LL 4 = *Leges Langobardorum*, ed. F. Bluhme, Hannover 1868.

MGH, LL 5 = *Leges Saxonum. Lex Thuringiorum. Edictum Theoderici regis. Remedii* (...), Hannover 1875-1889.

1. *Introduction*

In Italy, during the Later Roman Empire, Roman law functioned as something very like the nervous system of state and society. It defined the social order, imposed administrative measures, while also regulating religious life to a considerable extent. Roman private law prescribed legal procedures and defined the privileges that Roman citizens enjoyed in contrast to people subject to different legal systems. If we move forward in time over 400 or 500 years into the Carolingian period, we have a panorama very different from the late Roman one. Since political and legal fragmentation went hand in hand in Italy, studies for individual cities and regions are indispensable[1]. It seems clear that Roman legal culture lost some of the dominance it had once exercised during the period of the Western Empire: however, the idea of "decline" is of little help in understanding what actually happened to Roman law. Here, as always, the concept of "transformation"[2], which places more emphasis on a common starting point for what became transformed into something different later, is much more helpful than the adherence to a teleology in which things are assumed to have ended. Roman law underwent regional differentiation in Italy and became a legal resource that continued to exercise considerable influence, albeit in a different manner. Thus, what has sometimes misleadingly been called the "survival", or indeed the "Nachleben", of Roman law in the early Middle Ages[3] needs to be seen against the backdrop of new legal cultures that emerged during this period[4]. In terms of legal identities in Italy, we see a legal dualism that came up with the first barbarian settlements when, in addition to Roman law, we arose with first Ostrogothic, and later Lombard law in the fifth and sixth centuries[5]. Moreover, for the Carolingian period, we can speak of an eth-

[1] For Ravenna, imperial capital, *sedes regia*, residence of the exarch and episcopal city during the period under review here, see Corcoran, *Roman law in Ravenna*; for Byzantine and papal Rome, see Loschiavo, *Was Rome still a Centre of Legal Culture between the 6th and 8th centuries?*.

[2] Wood, *The European Science Foundation's Programme*. See the series *The Transformation of the Roman World*, 14 voll., Leiden-Boston, 1997-2004.

[3] For the Frankish kingdom, see e.g., Gaudemet, *Survivances romaines*; for a more open perspective, see Siems, *Zum Weiterwirken römischen Rechts*; Esders, *Roman law*.

[4] Savigny, *Geschichte des römischen Rechts*; on this work see also Rückert, *Friedrich Carl von Savigny*.

[5] For a general perspective, drawing upon evidence from Merovingian Gaul, see Esders – Reimitz, *Legalizing ethnicity*.

nically-defined legal pluralism when, after the Carolingian conquest, several barbarian law-codes from North of the Alps were newly introduced into Italy, in addition to Roman and Lombard law[6]. While this seems to suggest an ongoing process in which Roman law lost some of its importance during the course of the sixth to ninth centuries, one has to point out that Roman law embraced simply too many things to become marginal. It is an interesting task to explore what Roman law actually meant in this period, for whom, and which parts of Roman law remained relevant or became important after the end of the Western Empire. For, although Roman imperial legislation had largely ceased after Justinian, Roman legal texts circulated widely in Italy in the following centuries for a number of reasons[7]. Naturally, Roman law remained the most important legal order for the people classified as *Romani*, and the Roman legal tradition encompassed all sorts of political topics, ranging from the crime of lèse-majesté to the stipulations of private law and to notarial practice. The legal status of churches and monasteries, and several ecclesiastical rules, although regulated by canon law and papal decrees, was also firmly rooted in late-Roman imperial law. It is therefore necessary to be as precise as possible as to which particular aspect of Roman law we are focusing on.

The approach taken in the following study is to focus on Roman legal texts that were available in Carolingian Italy. Most important here were texts which emanated in one way or another from the codification projects of the emperors Theodosius II and Justinian, which were, as is well known, very different in character[8]. The early Middle Ages can be characterized as a period of legal history in which, for the first time, abbreviated versions of legal compilations became an important instrument in Roman legal practice and beyond[9]. However, we need to look further into the details. In the early medieval West, a great number of summarized versions of Roman law[10] were indeed based on the *Breviarium Alarici* (or *Lex Romana Visigothorum*), which in itself was already an abbreviated version of the Theodosian Code[11]. By contrast, the *Epitome Iuliani* was not based on the Justinianic Code, but provided a short Latin version of Justinian's Novels, which were understood to add new material to the Justinianic Code issued in 529 and 533[12]. Both abbreviations thus had as a source reference texts that differed largely in character, while the short versions they provide also make it difficult to regard "epitomes" as a clear-cut genre. What they had primarily in common was that their sources were considered too large to be useful in several practical contexts[13], while

6 Esders, *Agobard, Wala*.
7 Liebs, *Die Jurisprudenz*.
8 Liebs, *Das Codexsystem*.
9 See most recently, Meyer, *Römisches und kanonisches Recht*, esp. pp. 33-38.
10 Gaudemet, *Le Bréviaire d'Alaric*; Liebs, *Römischrechtliche Glut*; Liebs, *Legis Romanae Visigothorum Epitome Sangallensis*; Liebs, *Scintilla de libro legum*; Ganivet, *L'«epitomé de Lyon»*.
11 Conrat, *Breviarium Alaricianum*; *Le Bréviaire d'Alaric*, ed. Rouche – Dumézil.
12 Kaiser, *Die Epitome Iuliani*.
13 Meyer, *Römisches und kanonisches Recht*, pp. 32-33.

an abbreviated version could function both as a legal resource for practical purposes and as a tool for an elementary study of law.

We find some of these texts in several manuscripts that originate from ninth-century Northern Italy. Approaching the topic of Roman law in Carolingian Italy from legal manuscripts has been made easier by the considerable progress made in this field within the last two decades as, in addition to important older studies[14], we now have both more abundant and more reliable evidence for the spread of Roman legal texts in Italy. The manuscript-based monographs by Wolfgang Kaiser, and most recently by Dominik Trump, provide valuable insights into the emergence and spread of the *Epitome Iuliani*[15] and the *Epitome Aegidii*[16], the latter being one of the abbreviated versions of Alaric's Breviary. There were other texts circulating, too, and several more abbreviated versions, but these two surely have the richest manuscript tradition, of which more than twenty codices each are extant today, some of them from Italy. In the following contribution, which consists of two parts, I will focus on these two abbreviated texts, proceeding from an individual manuscript, in order to ask what sort of Roman law these manuscripts represented; what may have been their precise function in the given context of legal pluralism in Carolingian Italy; and how texts were gathered from these short versions for the use of Carolingian legislation. A chronological focus will be the reign of the emperor Lothar I (817-855), to whom we may not only credit the consolidation of what our sources call the *regnum Italiae*[17], but who also introduced important legal reforms18 and issued a sequence of relevant legislative texts[19].

2. *Roman law as an ecclesiastical legal resource: the* Epitome Iuliani *in Northern Italy*

The sixth-century *Epitome Iuliani*[20] was, as demonstrated by Wolfgang Kaiser, first conceived in Constantinople, as an introductory lecture into the study of Justinianic law, notably of Justinian's 124 novels[21]. It thus provided short Latin summaries of these novels. However, in the post-Roman West, it became the most important source for Justinian's legislation and novels, as the original laws supplementing the Justinianic Code, many of which had been written in Greek, do not seem to have spread widely in Italy and be-

[14] On the later ninth-century North Italian canon law collections containing provisions taken from Roman legal sources see Russo, *Tradizione manoscritta di Leges Romanae*.
[15] Kaiser, *Die Epitome Iuliani*.
[16] Trump, *Römisches Recht im Karolingerreich*.
[17] Jarnut, *Ludwig der Fromme*.
[18] Bougard, *L'empereur Lothaire*; Breternitz – Mischke, *Das italienische Notariat*.
[19] Geiselhart, *Die Kapitulariengesetzgebung Lothars I.*
[20] The standard edition is *Iuliani Epitome Latina Novellarum Iustiniani* by G. Haenel.
[21] Kaiser, *Die Epitome Iuliani*; Kaiser, *Wandlungen im Verständnis der Epitome Iuliani*.

yond. This seems relevant, as the novels of Justinian contain some of this ruler's most important laws regulating the life and legal status of the Christian churches and monasteries, both in Constantinople and beyond.

One of the oldest codices transmitting the *Epitome Iuliani* is an important ninth-century manuscript which, at some time in the Middle Ages, belonged to the Church of Aquileia and later of Udine, before Gustav Haenel bought this *Codex Uticensis,* and eventually gave it to the university library of Leipzig, where it is kept in two parts today[22]. However, scholars agree that the manuscript was actually written in Verona[23], while some even believe that several of the marginal annotations to be found throughout the manuscript can be attributed to Pacificus of Verona[24]. At any rate, a closer look at the codex and the texts it contains reveals a characteristic interest and "user-profile"[25]. The *Epitome Iuliani* forms the bulk of it, covering half of the folios (ff. 1-171b); it is, however, not complete, as it now contains only the *Epitome*'s chapters 25-141, 237-421 and 513-564, which might be explained on the assumption that today's codex is missing two quires. In addition to two late antique appendices to the *Epitome* (ff. 171b-183b and ff. 199a-225a)[26], we find some Latin novels of Justinian in the codex (ff. 183b-186a), several portions of the Justinianic Code of book VII (ff. 186b-193b) on manumission by testament, and further provisions[27].

While the *Epitome Iuliani* is, for the most part, though by no means exclusively, devoted to ecclesiastical issues, we find in this manuscript, from f. 192b onwards, a larger section with short compilations of Roman and canon law texts relating to ecclesiastical matters, mostly Latin constitutions (often in summary) and novels of the emperors Justinian and Justin II. These are the *Constitutiones de rebus ecclesiasticis* (ff. 193b-194a)[28], the *Lex episcoporum et ceteris clericorum* (ff. 195a-195b)[29] and the *Sacra privilegia concilii Vizaceni* (ff. 225a-232b)[30]. All of these are compilations containing both canon and Roman law, with the choice of material clearly following ecclesiastical interest[31]. While the *Sacra privilegia concilii Vizaceni* deal with topics such as ecclesiastical manumission, the law of asylum, monastic life etc., and were

[22] Leipzig, Universitätsbibliothek, Cod. Haen. 8 and 9 (old signature: 3493 + 3494). A detailed description can be found in the *Manuscripta mediaevalia*, and in Kaiser, *Die Epitome Iuliani*, pp. 106-118.
[23] See *Lex Romana Curiensis*, p. XVIII (based on B. Bischoff).
[24] See Kaiser, *Die Epitome Iuliani*, pp. 117-118, with note 538. On the debate as to what extent Pacificus was responsible for work that has been attributed to him, see La Rocca, *Pacifico di Verona*.
[25] The manuscript's two parts are digitized: <https://www.ub.uni-leipzig.de/forschungsbibliothek/digitale-sammlungen/mittelalterliche-handschriften/signaturengruppen-einzelner-provenienzen/>.
[26] See Kaiser, *Die Epitome Iuliani*, pp. 15-18.
[27] Kaiser, *Die Epitome Iuliani*, pp. 109-114.
[28] *Ibid*., pp. 435-548, esp. 453-458.
[29] Krah, *Lex episcoporum et ceteris clericorum*, with an edition at pp. 42-44.
[30] See Kaiser, *Authentizität und Geltung*.
[31] See Fiori, *Roman Law Sources and Canonical Collections*.

probably compiled in Churraetia[32], the *Lex episcoporum et ceteris clericorum* deals with the legal status of clerics with regard to secular jurisdiction and to their possessions, and with the law of asylum[33]. An ecclesiastical selection seems to be confirmed by inserted excerpts from the Council of Chalcedon (ff. 192b-193a)[34] and a chapter taken from Rufinus of Aquileia's Ecclesiastical History (ff. 194a-194b) which deals with penal jurisdiction over clerics[35], and is used here as a historical precedent for handling a problem that is dealt with at length in Justinian's novel 123[36]. As we also encounter a short extract from Justinian's institutions (ff. 196a-197a)[37], we may safely assume that large parts of the *Corpus iuris civilis* must have been available in ninth-century Verona[38], although we do not have any evidence of the Digest being so.

Interestingly enough, in the same codex, we even find a brief excerpt of three provisions taken from the *Edictum Theoderici*, dealing with fugitive slaves (f. 225a)[39]. It is remarkable to trace the influence of Ostrogothic legislation here, even more so since the manuscript originated from Verona, an Ostrogothic "lieu de mémoire"[40]. As our only full textual witness of Theoderic's Edict is the sixteenth century *editio princeps* by Pierre Pithou based on two currently lost manuscripts[41], it is important to note that further traces of it have been detected in Carolingian manuscripts from Northern Italy. The manuscript Florence, Biblioteca Medicea Laurenziana, Edili 82, written in the later ninth century in Northern Italy, and for the most part containing the *Collectio canonum Vaticana*, has, on its last folio (f. 169v), right at the end and as a later addition, the Edict's chapter 20 on *raptus*[42]. The late ninth-century Italian *Collectio canonum Anselmo dedicata* transmits a chapter based on *Edictum Theoderici*, 15, on homicide[43], while the so-called *Lex Romana canonice compta* (or *Capitula legis Romanae*), also originating from later ninth-century Northern Italy, possibly Bobbio or Pavia,[44] contains two chapters taken from the Edict on judges (*Edictum Theoderici*, 7) and on the punishment of adultery (*Edictum Theoderici*, 38), which the compiler claimed to have taken from the

[32] Kaiser, *Authentizität und Geltung*, pp. 443-451.
[33] Krah, *Lex episcoporum et ceteris clericorum*, p. 32.
[34] Edited by Kaiser, *Die Epitome Iuliani*, pp. 120-121.
[35] Rufinus, *Historia ecclesiastica*, X, 2 (Eusebius, *Werke*, vol. 2, p. 961). See Krah, *Lex episcoporum et ceteris clericorum*, p. 31.
[36] *Novellae*, 123, 21. See Krah, *Lex episcoporum et ceteris clericorum*, p. 31.
[37] *Institutiones*, 4, 2, *praefatio* 1.
[38] See Liebs, *Römisches Recht im frühmittelalterlichen Italien*.
[39] *Edictum Theoderici*, 85-87. English and German translations with commentary are given by Lafferty, *Law and Society*, and König, *Edictum Theoderici*. For recent study, see Ubl, *Das Edikt Theoderichs*.
[40] See, e.g. Garbulowska, *Il palazzo di Teodorico a Verona*; Wiemer, *Theoderich der Große*, pp. 457-459 and 635-637.
[41] Pithou, *Edictum Theoderici*.
[42] On this manuscript, see Kaiser, *Authentizität und Geltung*, pp. 203-212, on the chapter of the Edict esp. pp. 205-206.
[43] Gloeden, *Das römische Recht*, pp. 147-149.
[44] See Fiori, *Roman law and canonical collections*, pp. 7-8.

Justinianic Code (VII, 38)[45]. This seems to suggest that in Carolingian Verona, in addition to the Roman legal texts mentioned above, a full copy of the *Edictum Theoderici* must also have been at hand. To judge from these, and possible further occurrences[46], Theoderic's Edict must have been regarded as an important legal resource in Northern Italy in the Carolingian period. However, nothing suggests that it was regarded as relevant because its provisions were authored by the Ostrogothic king Theoderic. That these were "Ostrogothic law", or more fittingly legal regulations once issued by an Ostrogothic ruler, did not become apparent from the Carolingian manuscripts. Rather, it seems that, at least in certain ecclesiastical circles at Verona[47], they were considered to be texts belonging to the Roman legal tradition[48].

It is remarkable that in the Leipzig manuscript, we also find a brief section on testaments made by clerics and monks, taken from the *Epitome Aegidii* (f. 196a)[49], a compilation of late Roman law originating in seventh-century Gaul, which we can only explain by assuming some Frankish influence, a point to be dealt with in more detail later. The large text of the *Lex Romana Curiensis* (ff. 243-354), a compilation of Roman law created in eighth-century Churraetia on the basis of the Breviary[50], which forms the manuscript's last part, also attests to some influence coming from the North. It is this text which provides a strong argument in favor of the Veronese provenance of the manuscript.

The selection of legal materials in this manuscript thus seems to suggest an immediate ecclesiastical interest. But why did the *Epitome Iuliani* specifically matter so much for the Carolingian Church? For reasons of space, one needs to pick out here one topic alone, the administration of Church property. It is well known that all Church property was considered inalienable in the Middle Ages, and that this goes back to Roman imperial law. However, if we search for the legal base for the claim that Church property was to be inalienable (and thus only subject to contractual lease, benefice and so on), we do not find any significant source for this in the Theodosian Code, for it was only in 470 that the East Roman emperor Leo I forbade any alienation of Church lands in Constantinople[51]. This law is included in the Justinianic Code alone. And it was Justinian himself who, in a lengthy novel of 535 and several further novels, enacted it as a general rule for the whole Roman Empire that Church property be held inalienable. Justinian even prescribed in detail what

[45] *Capitula legis Romanae*, 204: Mor, *Lex romana canonice compta*, pp. 8 and 147; Russo, *Tradizione manoscritta*, p. 166.
[46] See Kaiser, *Die Epitome Iuliani*, pp. 162, 721, 729 and 761.
[47] A detailed study of the possible impact of the *Edictum Theoderici* on Carolingian legislative measures is a desideratum.
[48] See Kaiser, *Die Epitome Iuliani*; p. 761, on the excerpts of the Leipzig manuscript: «Sie lassen sich daher durchaus als römisches Recht verstehen».
[49] *Epitome Aegidii Nov. Marc.*, 5 (p. 304).
[50] On this text see Meyer-Marthaler, *Römisches Recht*, and Siems, *Zur* Lex Romana Curiensis. For an attempt to consider the text as the personal law of the Romani see Soliva, *Die* Lex Romana Curiensis *und die Stammesrechte*.
[51] Esders – Patzold, *From Justinian to Louis the Pious*.

should be considered as an alienation of Church property, and he was very skeptical about contracts of emphyteusis which granted a perpetual right to any tenant to use a possession belonging to a church and to transmit this right to his heirs. These regulations, of fundamental importance for the administration of Church property in the following centuries, became known in the West through their inclusion and Latin translation in the *Epitome Iuliani*. Interestingly, Lothar I, as ruler of the kingdom of Italy, issued a capitulary provision addressing this problem as early as 823:

> Si quis episcopus aut propinquitatis affectu aut muneris ambitione aut causa amicitie xenodochia aut monasteria uel baptismales ecclesias sue ecclesiae pertinentes cuilibet per enfitheuseos contractus dederit se suosque successores poena multandos conscripserit, potestatem talia mutandi rectoribus ecclesiarum absque poena conscripte solutione concedimus[52].

This was clearly an interpretation of provisions contained in the *Epitome Iuliani*.[53] We know that this posed a major problem in Italy at that time since, before their election, candidates to episcopal seats promised their supporters to grant them ecclesiastical land, houses and rights in reward for their support, which they did in a lawful manner when they were in office. This was quite attractive in economic terms since, for instance, guesthouses or monasteries were often also economically flourishing units, while baptismal churches were entitled to collect the ecclesiastical tithe, thus bringing in large sums of money[54]. Moreover, it has been suspected that many bishops involved in these practices had come from North of the Alps, and now sought to give ecclesiastical possessions and income to their followers[55]. However, the emperor Lothar I and his advisors took a fairly radical stance towards this problem. They sought to encourage such contracts to be dissolved by the bishop's successors and, to achieve this, they declared the contractual penalties in such cases to be void[56]. In fact, we know of a prominent case of a bishop of Fiesole

[52] *Capitulare Olonnense*, 1 (MGH, Capit. 1, n. 157, p. 316, a. 823): «In case a bishop has given – out of love for his kinsmen, to obtain a gift, or out of friendship – to someone guesthouses (*xenodochia*), monasteries or baptismal churches belonging to his Church, based on a contract of emphyteusis, and has fixed a contractual penalty for himself and his successors: [In such a case] we grant to the rectors of these churches the right to void [the contract] without being obliged to pay the fixed penalty» (my translation); see also *Capitulare Olonnense*, 10 (MGH, Capit. 1, n. 163, p. 327).

[53] See as referenced laws in particular *Epitome Iuliani*, 7, 3 (34): «Quo modo emphyteusis rerum ad sanctos locos pertinentium contrahitur»; 7, 7 (38): «Quibus poenis subiicitur, qui inlicitum emphyteuseos contractum iuris venerabilis loci componit»; 111, 4 (412): «De alienationibus et aliis contractibus immobilium rerum, vel annonarum civilium, vel rusticorum mancipiorum, quae ad loca venerabilia pertinent».

[54] *Emphyteusis*, often regarded as unlawful alienation of church property, played a crucial role in the lease of churches, see Boyd, *Tithes and Parishes in Mediaeval Italy*, pp. 69-72; Cortese, *Il diritto nella storia medievale*, pp. 338-345.

[55] As suspected by Geiselhart, *Die Kapitulariengesetzgebung*, pp. 53-54.

[56] On the dissolution of such contracts without punishment see *Epitome Iuliani*, 7, 7 and 111, 4. An Italian provision is contained in the *Liber Papiensis*, 53, which is attributed to Louis the

at that time, who wanted to dissolve the contracts his predecessor had made, and was eventually drowned in the Arno river by his opponents, who were afraid that they might lose many of their leases and their income[57]. Thus, for Lothar and his advisors, who intended to remedy this abuse, the legal regulations on emphyteusis contracts regarding Church property, as contained in the *Epitome Iuliani,* were extremely helpful for application to guesthouses, monasteries and baptismal churches.

While this is sufficient as an example, it should be pointed out that Justinian's extensive legislation on monasteries and their affairs[58], also preserved to some extent in the *Epitome Iuliani*, could be a highly relevant resource for the Frankish rulers, too, since Louis the Pious also legislated heavily on monastic rules and on the administration of monastic property[59], while his son Lothar I did so with regard to monasteries situated in Italy[60]. But this is a matter for future research, which should not focus on the new laws issued by Carolingian rulers alone but should also take into account what legal resources were available in legal theory and practice.

3. *Roman law as a personal law: the Frankish* Epitome Aegidii *in the* regnum Italiae

When taking a closer look at the *Epitome Aegidii*, we step into an altogether different world. The *Epitome Aegidii* was a Roman law compilation that originated somewhere in seventh or eighth-century Gaul under Frankish rule, almost certainly at a place where Roman legal culture was still prevalent, probably somewhere in Southern Gaul[61]. Like the *Lex Romana Curiensis* already referred to, the *Epitome Aegidii* was compiled by drafting material from the Breviary, that is the *Lex Romana Visigothorum* compiled in South Western Gaul shortly after 500. The *Epitome Aegidii* thus draws essentially on Roman imperial laws as they had once been codified within the Theodosian Code in 438, augmented by novels and legal writings such as the *Liber Gai* and the Sentences of Paul. The *Epitome Aegidii* is thus entirely free of any influence of the legislation and codification projects of the sixth-century

Pious, consequently claims that dissolving such contracts without punishment was in accordance with Roman law: «Ut omnis ordo ecclesiarum secundum Romanam legem vivat: et sic inquirantur et defendantur res ecclesiasticae, ut emphyteusis unde damnum ecclesiae patiuntur non observetur sed secundum legem Romanam destruatur, et poena non solvatur» (MGH, LL 4, p. 539 = MGH, Capit. 1, n. 168, p. 335).

[57] *De S. Alexandro martyre episcopo Fesulano in Hetruria*, 5-6: *Acta Sanctorum*, June 1, p. 739.

[58] Hasse-Ungeheuer, *Das Mönchtum*.

[59] Semmler, *Die Beschlüsse*; Semmler, *Benedictus II*.

[60] See his so-called *Capitula de inspiciendis monasteris*, MGH, Capit. 1, n. 160, pp. 321-322; on this capitulary, see now Pokorny, *Magister Dungal*.

[61] See Liebs, *Römische Jurisprudenz in Gallien*, pp. 111 and 221-230; Kaiser, Die *Epitome Iuliani*, pp. 713-717 and 777-791, and now Trump, *Römisches Recht im Karolingerreich*, pp. 29-35.

emperor Justinian. It contains far fewer legal texts that deal with the Church, but focuses much more on matters of public and private law instead.

Under Frankish influence, the *Epitome Aegidii* was introduced into Italy, which may seem like a case of bringing owls to Athens. Again, the manuscript evidence allows for a more precise assessment. We have two full early medieval copies of the *Epitome Aegidii* that stem from Italy – one of them from Southern Italy[62], another from the *regnum Italiae*[63]. The testament drawn up by Margrave Eberhard of Friuli[64] with his wife Gisela around 863/864[65] mentions, in addition to Lupus' *liber legum*, books containing Lombard and Roman law (*liber Aniani*) – the latter either being Alaric's Breviary (Lex Romana Visigothorum), or, more likely in my view, its Frankish derivate, the *Epitome Aegidii*[66]. As mentioned before, the ninth-century Veronese manuscript of the *Epitome Iuliani* contains a single chapter of the *Epitome Aegidii*[67]. This seems to indicate that this text may have once been more widespread in Northern Italy than seems to be obvious today[68].

A closer look at a legal manuscript kept today at the Stiftsbibliothek of the monastery of St. Paul in Carinthia allows us to address the uses of the *Epitome Aegidii* in Carolingian Italy more precisely[69]. It is, for the most part, likely to have been written shortly before 820, as suggested by Massimiliano Bassetti, apparently at the monastery of Bobbio[70]. Most likely the Bobbio scribes produced it at the behest of a Frankish count, a *comes*, who must have held office in Emilia, either in Piacenza or in Cittanova, which later became Modena[71]. An illumination placed at the head of the manuscript seems to depict a lay official with his sword, while the woman presented in the right field might be an illustration of a person in need of legal protection, who is receiving justice administered by the count. Though the precise meaning of this illumination is a matter of dispute, the manuscript was clearly compiled at the behest of a lay official, who was expected to use the legal texts contained in it for handling legal cases. This can be safely deduced from the manuscript's contents. It starts with a brief section of Carolingian capitularies issued for the kingdom of Italy by King Bernard in Mantua in 813, while the bulk of the

[62] London, British Library, Add. 47676 (10th cent.). See Kaiser, *Die Epitome Iuliani*, pp. 716-717, and Trump, *Römisches Recht im Karolingerreich*, pp. 60-66 and 197.
[63] See below, note 69.
[64] Kershaw, *Eberhard of Friuli*, pp. 77-105.
[65] *Cartulaire de l'abbaye de Cysoing et de ses dépendances*, n. 1, pp. 1-5. See Riché, *Les bibliotheques*, and La Rocca – Provero, *The dead and their gifts*.
[66] *Epitome Aegidii*, pp. 2-3.
[67] See above note 49.
[68] See also Kaiser, *Die Epitome Iuliani*, p. 717.
[69] Saint Paul in Carinthia, Stiftsbibliothek, cod. IV, 1, written shortly before and after 820. On the manuscript and its contents see the detailed descriptions by Mordek, *Bibliotheca capitularium regum Francorum manuscripta*, pp. 685-698, and in Esders – Bassetti – Haubrichs, *Verwaltete Treue*.
[70] See Bassetti, *St Paul, Stiftsbibliothek* (above, note 69).
[71] Esders, *Deux libri legum*.

codex actually contains six different secular laws, that is the law-codes of the Ripuarian Franks (ff. 6vb-26vb) and Salian Franks (ff. 27ra-57va), the Bavarians (ff. 57va-93va), the Alamans (ff. 93va-116va), and the Burgundians (ff. 135ra-153v)[72], but also the Romans, as in between the latter two we find the *Epitome Aegidii* (ff. 116vb-134rb). Within this constellation, the latter clearly appears as the personal law of the *Romani* who were living in the Carolingian kingdom of Italy. The codex does not contain Lombard law, interestingly, but we may assume that the count in charge of this manuscript will have had at least one other codex that contained the Lombard laws. The combination of the *Epitome Aegidii* with these other laws makes clear that this manuscript was destined for a count dealing with secular justice according to the principle of the personality of law[73]. It is well known that in Carolingian Italy, these laws were to be applied to those people among the conquerors who had come to settle in Italy, along with the laws of the Lombards and Romans.

The *Epitome Aegidii*, which follows in the manuscript immediately after the Alamannic law-code, has a similar layout to the other law-codes contained in this manuscript. It contains the preface by the Visigothic king Alaric, before a full table of contents is given. The text continues, book by book, and chapter by chapter, with abbreviated versions of the laws contained in the Theodosian Code, the novels appended to it by fifth-century emperors, and the *Liber Gai,* along with the sentences of the Roman jurist Paul (*Sententiae Pauli*). The version of the Epitome contained in this manuscript misses certain chapters[74]. As has been recently shown by Dominik Trump, it has more in common with West Frankish manuscripts transmitting the Epitome than with the manuscript from Southern Italy[75]; indeed, it belongs to a group of nine manuscripts which are closely related to one another, and of which two are closely associated with the royal court[76]. It thus seems very likely that the version contained in the codex of St Paul, of a fairly early date, was transmitted to Northern Italy from Francia by members of the administrative elite who were sent to Italy. Bobbio, it seems, was another center of legal learning in the kingdom of Italy, with close links to the North Alpine regions, and the Bobbio scribes produced legal manuscripts for both clerical and lay officials[77].

[72] Also in several ninth- and tenth-century manuscripts from North of the Alps the *Epitome Aegidii* was combined with other *leges*: Paris, Bibliothèque nationale, lat. 4416; lat. 4418; lat. 4633; nouv. acq. lat. 204; Leiden, Bibliotheek der Rijksuniversiteit, Voss. Lat. Q. 119; St. Gallen, Stiftsbibliothek, 729; Vatikanstadt, Biblioteca Apostolica Vaticana, Reg. Lat. 991. See in more detail Trump, *Römisches Recht im Karolingerreich*, pp. 37-130.

[73] Neumeyer, *Die gemeinrechtliche Entwicklung*; Guterman, *The Principle of the Personality of Law*; Hoppenbrouwers, *Leges nationum*; for Italy, see Storti Storchi, *Ascertainment of customs*.

[74] Haenel, in his edition, p. LXXVIII; Trump, *Römisches Recht im Karolingerreich*, pp. 112-113.

[75] See Trump, *Römisches Recht im Karolingerreich*, p. 134.

[76] *Ibidem*. The two manuscripts of the *Epitome Aegidii* that form the core base of this group are Paris, Bibliothèque nationale, lat. 4418 and Vatican City, Biblioteca Apostolica Vaticana, Reg. Lat. 991.

[77] Bassetti, *St Paul, Stiftbibliothek*.

The *codex* of Saint Paul is the only Italian manuscript containing several *leges barbarorum* that also transmits the *Epitome Aegidii*. This seems to indicate that in the region for which the manuscript was written there was still a large number of Romans present, who, when called to court, could respond according to their law of birth. In Emilia, as a region neighboring on the former exarchate of Ravenna, such an assumption seems plausible. Here we find an ethnically heterogeneous population, whose laws the Carolingians claimed to respect. The principle of the personality of law was a device to protect the legal interests of these minorities[78], in particular of those whose members had immigrated to Northern Italy following the Frankish conquest, and stayed there[79], while the principle of personality of law can also be seen as an incitement to further groups North of the Alps to emigrate to Italy and keep their own law there[80].

In fact, in 818-819 Louis the Pious began a comprehensive reform of the *leges barbarorum*[81] addressing such mobile landholding elites who had moved to Italy and elsewhere[82]. From the 820s we have the earliest examples of professiones iuris, that is solemn declarations by which individuals stated their law of birth when producing a legal act to dispose of their property[83].

In the 820s, the plurality of ethnic laws also became a subject of Lothar I's capitulary legislation for Italy[84]. As in the first part of this article, it is only possible to dwell here on a single text to illuminate how the Carolingian rulers used Roman law in order to regulate the legal status and the mixing of ethnic groups in the kingdom of Italy. Lothar's provision stated: «Ut mulier romana que virum habuerit langobardum defuncto eo a lege viri sit soluta et ad suam legem revertatur, hoc vero statuentes, ut similis modus servetur in ceterarum nationum mulieribus»[85]. This regulation, transmitted in three manuscripts, leads us straightforwardly into the field of "ethnicity and law", so characteristic for Carolingian and post-Carolingian Italy in particular. To make the principle of the personality of law work, it was indispensable that there should be

[78] See above, note 73.
[79] Hlawitschka, *Franken, Alemannen, Bayern und Burgunder*; Castagnetti, *Transalpini e vassalli*.
[80] See Hoppenbrouwers, *Leges nationum and ethnic personality of law*.
[81] Ubl, *Intentionen der Gesetzgebung*.
[82] See Esders, *Agobard, Wala*.
[83] See, e.g. ChLA², XCVII (Italy LXVII), n. 1 (a. 823): «iuxta lege nostra»; Castagnetti, *Una carta inedita di Morgengabe*.
[84] See Geiselhart, *Die Kapitulariengesetzgebung Lothars I.*, pp. 233-234; Esders, *Agobard, Wala*.
[85] *Memoria Olonnae comitibus data*, 16: «A Roman married woman (*mulier Romana*), who had a Lombard husband (*quae virum habuerit Langobardum*), should, after he died (*defuncto eo*), be absolved from her husband's law (*a lege viri sit soluta*) and return to her own law (*ad suam legem revertatur*); and we state that the similar mode should be observed with regard to married women from the remainder nations (*in ceterarum nationum mulieribus*)» (MGH, Capit. 1, n. 158, p. 319; my translation). Contrary to the old MGH edition, this regulation has come down to us as a single provision that circulated individually, not as part of a specific capitulary. See Esders, *Agobard, Wala*.

clear rules in order to ascertain which ethnically defined law was to be applied to an individual. And it was these rules that Lothar's novel provision apparently sought to address, by altering the rule to be observed in case of mixed marriages where a husband was of Lombard origin and his wife had a Roman or other legal background. This rule presupposed that a non-Lombard woman, when marrying a Lombard man, assumed her husband's legal identity and became herself a Lombard. Lothar's novel, however, stated that such a woman should, upon her husband's death, return to the legal identity she had had as a girl (or, more precisely, before her marriage with a Lombard). This seems to demonstrate a fairly pragmatic attitude of the Carolingian rulers to legal identity, as they expected a woman to switch her ethnically defined legal identity almost overnight. What had Lothar and his advisers in mind, and what were they aiming at when issuing this novel regulation?

They were confronted here with the legal heritage of the Lombard kingdom, where the problem posed by mixed Roman-Lombard marriages had brought about an important regulation by King Liutprand in 731:

> Si quis Romanus homo mulierem Langobardam tolerit, et mundium ex ea fecerit, et post eius decessum ad alium ambolaverat maritum sine volontatem heredum prioris mariti, faida et anagrip non requiratur; quia, posteus Romanum maritum se copolavit, et ipse ex ea mundio fecit, Romana effecta est, et filii, qui de eo matrimonio nascuntur, secundum legem patris Romani fiunt et legem patris vivunt; ideo faida et anagrip menime conponere devit qui eam postea tolit, sicut nec de alia Romana[86].

Liutprand had legislated for the opposite case when a Lombard woman married a Roman husband who, through this marriage, became his wife's legal guardian. If in this case the man died and his wife decided to marry again without obtaining the consensus of her relatives, this should not be regarded as a just cause for entering a feud, since the woman, through her first marriage by which her Roman husband became her guardian, herself became a Roman, while the children born from this marriage also became legally Roman. And since she was considered to be a Roman now, the second husband, upon marrying her after her first husband's death, was not obliged to make payments under the term of *faida* or *anagrip* in order to evade her relatives' feud (for having ignored their consensus to marry her), nor did he have to pay for infringing upon the rights of her legal guardian. What we see here, therefore, is a classical "collision rule": in the case of an ethnically mixed marriage,

[86] *Leges Liutprandi regis*, 127/XI (*Edictus Langobardorum*, MGH, LL 4, p. 160; Fischer Drew, *The Lombard Laws*, pp. 199-200): «If a Roman man marries a Lombard woman (*si quis Romanus homo mulierem Langobardam tolerit*) and acquires her *mundium*, and if after his death the widow marries another man without the consent of the heirs of her first husband, feud and the penalty for illegal intercourse shall not be required; for after she married a Roman man and he acquired her *mundium*, she became a Roman (*Romana effecta est*) and the children born of such a marriage shall be Roman and shall live according to the law of their Roman father (*et filii, qui de eo matrimonio nascuntur, secundum legem patris Romani fiunt*). Therefore the man who marries her after the death of her first husband ought not to pay composition for illegal intercourse just as he would not pay it for another Roman woman».

children born from such a relationship followed the legal condition of their father, so that in this case, they became Romans. What is even more striking is that the woman, though Lombard by birth, became Roman from one day to the next. This is why her Lombard relatives, as was made clear by Liutprand, could not make a claim for payments concerning feud and guardianship when the woman decided to marry again. The crucial point was that the woman had become a Roman, and was not a Lombard anymore – and in Roman law, in stark contrast to Lombard law, there was neither the right to feud nor such a rigid interpretation of legal guardianship.

Liutprand's regulation thus originated from a discrepancy between Roman and Lombard family law. It served to protect a woman of Lombard origin against claims that could be made by her Lombard relatives, insofar as Lombard family law had far-reaching consequences on the status of a woman. In fact, in the Edict of Rothari, issued in 643, it had been fixed as a general rule that no free Lombard woman could live without having a man as her legal guardian. This guardian would be her father as long as she remained unmarried (and her fathers' relatives when her father died), or her husband when she married; and if her husband died, her children could become her legal guardians, or a guardian needed to be appointed by law, who could even be the king. In neither case would she be allowed to dispose of her property without her guardian's consent[87]. Naturally, this radically restricted a Lombard woman's legal competency. Against this backdrop, it made sense that Lothar I and his legal advisors should legislate for the opposite case of a Roman woman who had married a Lombard husband, and state that such as woman, who by marriage had become a Lombard, should return to the law of her birth after her husband's death. In legal terms, this meant that she once again became a Roman. Lothar thus extended this rule by stating that all non-Lombard women who had married a Lombard husband should return to their birth law after their husbands' deaths. The ruling makes amply clear that it was meant to free these widows from the influence of Lombard law, in particular from the Lombard regulations on legal guardianship over widows in case of mixed marriages. It was a regulation in favour of all non-Lombard women who had once married a Lombard but lost him and would now need and want to regain their legal competency. Negotiating between different legal traditions, Roman legal practice, with its restriction of the feud and its milder conception of guardianship, in some sense became an alternative model to counter Lombard family law, and to that extent it became applied to other non-Lombard laws as well in Lothar's legislation.

[87] *Edictus Rothari*, 204: «Nulli mulieri liberae sub regni nostri ditionem legis Langobardorum viventem liceat in sui potestatem arbitrium, id est selpmundia vivere, nisi semper sub potetate virorum aut certe regis debeat permanere; nec aliquid de res mobiles aut inmobiles sine voluntate illius, in cuius mundium fuerit, habeat potestatem donandi aut alienandi» (*Edictus Langobardorum*, MGH, LL 4, p. 50). See on this Hellmuth, *Frau und Besitz*, pp. 79; 99-103 and 120-121; on evidence for the *mundium* as provided by charters see Pohl-Resl, *Quod me legibus contanget auere*, pp. 204-205.

The provision given by Lothar I around 823 can therefore tell us something about the conditions and the advantages to be had when an individual or a family was subject to Roman law. This becomes clear when we see what advantages a woman could draw if she was allowed to return to the law of her birth after her Lombard husband's death: as a widow, she would henceforth not be subject to guardianship according to Lombard law, but could dispose of her property more freely, and in a judicial dispute, she could present her own witnesses. This example shows that for women, being subject to Roman law gave them much more legal capacity and freedom to dispose of their property. This was a lesson to be learned from the *Epitome Aegidii* and the texts it contained, and explains why it made sense to maintain one's Roman legal identity whenever possible. Such a ruling was more immediately directed against Lombard law, as it favoured Roman law. Its general tone suggests that the plurality of ethnically defined laws in Carolingian Italy made it relevant to maintain one's legal identity as far as possible also in case of ethnically mixed marriages.

It is for these reasons that I believe that Lothar I in his novel reacted to a spectacular Italian law case of the early 820s involving a non-Lombard widow who was eventually killed by her guardian[88]. This case had made the structural problems inherent in the collision rules of Lombard Italy very visible. They appear to have become aggravated under Carolingian rule, as Lothar's regulations were deliberately extended to all non-Lombard women who had married a Lombard husband. As we can see from many Carolingian capitularies issued for Italy, Lombard law can be considered as the dominant legal system in the *regnum Italiae*. Since many marriages were concluded among an aristocracy composed of Lombard, Roman and North-Alpine families, such a transgression of ethnic boundaries is likely to have happened frequently. As was demonstrated by Eduard Hlawitschka[89], and more recently by Andrea Castagnetti[90], members of the military elite of Alaman, Frankish, Bavarian and Burgundian origins remained in Italy after the Frankish conquest and settled there. They preserved their law of birth according to the principle of the personality of law[91]. Against this backdrop, it seems that Lothar's provision was addressing a problem that could easily arise among the second generation of immigrants from north of the Alps, whose daughters married Lombard men. Lothar aimed at restoring to these women the ability to dispose of their property after their husband's death more freely. At the same time, he wanted to prevent the fact that, through such mixed marriages and with the help of Lombard law (according to which the married women had to live), their property came permanently under the control of those Lombard

[88] I have developed this argument in more detail in my forthcoming book: Esders, *Agobard, Wala und die Vielfalt gentiler Rechte*.
[89] Hlawitschka, *Franken, Alemannen, Bayern und Burgunder*.
[90] Castagnetti, *Transalpini e vassalli*.
[91] See above, note 73.

families into which the women had married. In Italy and elsewhere, it was always easier to improve the legal status of a minority than to alter the legal condition of a majority. It was thus advisable for the Carolingian rulers to let Lombard law on guardianship untouched in principle, but to improve the status of non-Lombard widows instead. The price that Lothar and his advisors were willing to pay for such a legal reform in the interest of the elites of North Alpine origin, was a remarkable pragmatism with regard to the ethnic status of women. Ethnic identity was handed over from generation to generation in the male line, while a woman, under certain circumstances in the course of her life, would have to change her legal identity several times – when marrying a Lombard, but also when becoming his widow.

4. *Conclusions*

Roman law could mean many different things in Carolingian Italy, of course, but the two aspects singled out here show different strands of the development that Roman law and legal practice took – as a legal resource for churches, and in the interest of the *Romani* as one group among inhabitants who had different ethnically defined laws. Our manuscript evidence suggests that abbreviated versions of Roman law were considered as highly important texts in both contexts, and that they were copied for this reason in important scribal and ecclesiastical centers such as Bobbio and Verona, but by no means in the ecclesiastical interest alone. We can see that both strands of Roman law were also addressed by Carolingian legislation. The two capitulary provisions cited, while presupposing intimate knowledge of Roman law[92], were aiming to create new norms in a situation characterized by a degree of legal pluralism that had been unthinkable in the fifth or sixth century. Within the Carolingian kingdom of Italy, as regards the legal status of individuals, Roman law was but one legal identity among others, as there were also Franks, Alamans, Bavarians, Burgundians and of course Lombards, who were allowed to maintain, and live according to, their respective law of birth, following the so-called "principle of the personality of law". If we look, therefore, at the long-term development of Roman law between post-Ostrogothic and Carolingian Italy, we find it all there: survivals, revivals, and ruptures, but also, and perhaps more importantly, different degrees of change when it came to transforming older institutions and regulations into something new. The plurality of laws appears to have been the most important feature of Carolingian Italy, and the Franks, by guaranteeing that people should be judged according to their law of origin, and by creating rules aimed at solving the problems posed by a potential legal collision, saw their role as dignified managers of legal pluralism.

[92] For a more general perspective, see Ganshof, *Contribution à l'étude de l'application du droit romain*.

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