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From Roman Immunitas to Merovingian Emunitas - Remarks on the Evolution of Roman Fiscal Concepts in the Germanic Realms.

Streszczenie

Kodeks Teodozjański zawierał liczne prawa mające na celu zapewnienie uprzywilejowanego statusu Kościoła i kleru. Prawa owe były elementem szerszej polityki skierowanej na umocnienie chrześcijańskiego imperium rzymskiego. Zwolnienia fiskalne grały tu znaczną rolę. Po upadku Zachodniego Cesarstwa, *regna* barbaro-rzymskie zachowały rzymskie dziedzictwo prawne i koncepcje prawodawcy oraz właściwego modelu relacji władzy monarszej i duchowieństwa. Utrzymano też w dużej mierze rzymskie rozwiązania skarbowe. Rozwijały się tez nowe idee i instytucje ustrojowe. Immunitety skarbowe Merowingów są tu dobrym przykładem. Królowie z tej dynastii starali sie naśladować wzorce cesarskiej polityki wobec duchownych. Jednak zmienione okoliczności polityczne i gospodarcze sprawiały, że rzymskie instytucje przekształcały się w więzi feudalne.

Słowa kluczowe: Prawo rzymskie, historia prawa średniowiecznego, immunitet, prawo frankijskie, historia średniowiecza, imperium rzymskie.

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1). Roman legal heritage

a). Introduction

When the end of the old order had come and the new Earth was being born in pain - with those words begins a hymn in honour of Saint Benedict of Nursia[1]. The epoch of saints like Benedict was a time of destruction and decay, but it was also the time of innovation and evolution. In this paper, I would like to focus on one aspect of this process, namely on the changes and accommodations of Roman ecclesiastical privileges in fiscal matters as they occurred in the Germanic states of Latin Europe.

The new realms, established on the remains of Roman social structure, had to keep internal coherence and efficient mechanisms of power in the profoundly changed social and economic circumstances. They utilized a number of Roman political and cultural ideas and notions. Still those had to be accommodated, also in the fiscal sphere, to the conditions of the predominantly rural economy and "feudal" mentality of the ruling elite, especially in the Merovingian domains.

No matter how different from late Roman aristocracy, the new elite was Christian almost from the beginning and included prominent churchmen. In the epoch under discussion the Universal Church, which was one of the few institutions which did not cease to continue their existence. In spite of the fall of imperial rule in the West, it functioned as a union of numerous local communities under bishops' power and with the recognition of papal primacy and the communion of faith[2]. In Roman times, the city church with a bishop as its head was the basic

[1] *Liturgia Horarum, (Liturgia Godzin,* Poznań 1996) feast of Saint Benedict of Nursia, Patron of Europe (11th of July), Hymn for the *Officium Lectionis,* the first two verses.

[2] See examples of use in the texts and understanding of the word *ecclesia* collected by H. Leclercq s.v. *Eglise,Dictionnaire de`Archelologie Chretienne et de Liturgie*, Paris, 1907-1953, (hereafter DACL) IV.2, cols. 2220-2238. The catholicity of the Church found its expression in the Roman Canon of the Mass, which is of a very early origin (3rd century?; see e.g. B.Nadolski, s.v. *Kanon Rzymski*, s.v. *Te Igitur* [in:] *Leksykon Liturgii*, Poznań 2006), in the words *pro Ecclesia tua Sancta Catholica, quam adunare, pacificare et custodire digneris toto orbe terrarum* (…); also the Mozarabic liturgy has similar wording: *Ecclesia toto orbe in pace diffusa; per universum orbem in tua pace diffusa*; commemoration of the Pope of Rome is confirmed in the 5th century Milan, in 529 it was recommended by the Council of Vaison, (B. Nadolski, *loc.cit*). See also from the newer works e.g. C. Hovorun, *Evolution of church governance: from the diaspora-model to pentarchy*, IURA ORIENTALIA IX

entity in the canon law. In the Merovingian domains monasteries rose to prominence. Ecclesiastical holdings developed quickly and extensively thanks to numerous donations. For example, already in 314 Emperor Constantine the Great ordered that Bishop of Carthage, Caecilian should receive a substantial sum of 3,000 *folles* from the imperial treasury as a kind of financial support. Similar payments were promised to the churches of Africa[3]. *Patrimonia* of the Church of Rome were scattered across the Mediterranean lands[4]. The network of churches and chapels also developed quickly[5]: as early as the 4th century, Rome boasted over 40 large churches[6]. Donations and foundations continued in the new realms along with missionary work and peregrinations to the shrines of prominent local saints.

The imperial policy towards the Church was conducted, *inter alia*, through legal means, especially enactments of general character. Most of them are known to us thanks to the Theodosian Code, which was designed as a new and comprehensive basis for adjudication and administration. It was intended to prevent applying obsolete legislation, forgeries and laws known only to a limited number of people[7]. Still quite soon after its promulgation, the Western Empire fell into the hands of invaders. Even though the new rulers did not intend to revoke imperial law, the Code had to cope with the changed circumstances.

b). Immunitas ecclesiarum clericorumque

Apart from detailed legislation, law contained statements, which justify particular provisions. They can be seen as declarations of ideas and beliefs about the function of law. Those

(2013), pp. 91-99. Texts of Roman law are quoted after the website The Roman Law Library (droitromain.upmf-grenoble.fr (retrieved: 14.05.2016)) if not stated otherwise.

[3] Euseb. Historia Ecclesiastica 10. 6, also his *Vit. Const*. 4. 28.

[4] See J. Gaudemet, *L'Église dans l'Empire Romain : (IVe-Ve siècles),* Paris 1958, pp. 153- 172; H. Leclercq s.v. *Domaines Ruraux* [w:] DACL, 4.1, cols. 1289-1346; also e.g. R. Finn, *Almsgiving in the Later Roman Empire: Christian Promotion and Practice (313-450)*, Oxford 2006.

[5] See e.g. J. P. Thomas, *Private religious foundations in the Byzantine Empire*, Washington 1987,pp. 8-10.

[6] Optatus, *De schism. Donat*. 2.4 mentions *quadraginta* (...) *basilicas* (Minge *Patrologia Latina (*hereafter: PL), 11. 954).

[7] A. Honore, *Law in the Crisis of Empire,* Oxford 1998, pp. 127-128. See also *Theodosiani libri* XVI, ed. Th. Mommsen, P.M. Kruger, Berlin 1905, vol. I.1: *Prolegomena*, pp. IX-XIII and D. Liebs [in:] A. K. Bowman, et al. (red.), *Cambridge Ancient History*, vol. 12-14, Cambridge, 1970-2001, (hereafter: CAH), v. 14 p. 245.

parts of legislation can be understood as an inspiration and a source of general directives also in the Germanic kingdoms.

For example, in C.Th. 16.5.47 (409 AD) *salus communis* was declared to be synoymous with *utilitas* of the Catolic Church*: Si quis contra ea, quae multipliciter pro salute communi, hoc est pro utilitatibus catholicae sacrosanctae ecclesiae, adversus haereticos et diversi dogmatis sectatores constituta sunt, etiam cum adnotationis nostrae beneficio venire temptaverit, careat impetratis*[8]. Const. Sirm. 13. (419 AD) makes a clear statement that the empire has the *ecclesiasticae defensionis munimen*, which is part of or similar to imperial *humanitas,* which estalibshes the real equity or fairness. The *Novella Maioriani* VI in the *proemium* declares, that the emperor shall reflect on how the state (*res publica*) is conserved and flourishes owing to the laws, the army and the *religionis reverentia*[9]. Subsequently, those three must cooperate to ensure the well-being of the Roman body politic. A concept of *symphonia* is implicitly introduced here. Such ideas are also visible in the *proemium* of Nov. 17 (445 AD) of Theodosius and Valentinian.

It is noticeable that C. Th. 16.2.16 (361 AD)[10] served as a kind of a "general clause" and a directive of interpretation for the proper application of fiscal laws as it states that persons of "great virtue" shall live in "perpetual safety" (*securitas perpetua).* This wording provides a reason for various privileges of the clergy, especially freedom from the *munera*. General justifications of legal policy of Christian emperors are visible in other laws of the epoch. For example, C.Th. 16.5.1 declares, that *privilegia* were granted because of the *contemplatio religionis (scil. ortododoxae)* and they shall be cherished only by *catholicae legis observatories* - followers of the orthodox doctrine[11].

All the constitutions dicussed above provide general interpretative directives and *rationes legum* for particular laws concerning the privileges of the Church and the clergy.

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[8] Cf. the wording in Const. Sirm. 9. (408 Nov. 27): [...] *Utinam quidem ii tantum clericorum nomen induerent, quorum in deteriorem partem relabi vita non possit. Esset laetitia communis et facile pios ritus cultusque divinos veneratio humana sequeretur.* [...] and expressions like *cultus pietatis aeternae*, *sacrosanctae religionis obsequium* employed in the Const. Sirm. 11 (412 AD).

[9] Cf. also the wording of *Nov. Valentiniani* III (439 AD) *proemium*, mentioning *catholica religio servata* in the context of the confirmation and renovation of older laws aimed at the public good.

[10] See in addition C.Th. 16.2.47 (425 AD) *proemium* and sec. 1; also similar wording of Const. Sirm. 6.

[11] Cf. C.Th. 16.5.1 (326 AD), which explains that exceptions can be enjoyed only by the orthodox priests.

Those laws will be shortly characterized in order to provide an outline of the most important part of the "legal environment" of the issues under discussion.

C.Th. 16.2.1 is of rather a detailed character as it provides freedom of the clergy from *nominationes* - appointments to perform curial duties, and *susceptiones*- obligations to act as a tax collector. C.Th. 16.2.2 provides freedom of the clergy from the burdens of public service (*qui clerici appellantur, ab omnibus omnino muneribus excusentur*)[12]. The law allowed arguing in favour of a rather general immunity of the clergy from any public duties.

C.Th. 16.2.10[13]. exempts clergy from taxes and grants freedom from the *munera* and payment of immovable property tax for clerics, their wives, children and servants. It also confirms freedom of the clergy engaged in trade from paying *chrysargyron*[14].

C.Th. 16.2.8 is addressed not to an imperial official, but to the clergy. This is unique in the entire Code[15]. Clerics obtained here an exemption from new taxes, whereby they were not obliged to bear fiscal burdens introduced after the constitution became valid. Moreover, they did not have to provide accommodation for the soldiers and public officials (*hospitalitas*)[16]. In addition, freedom from the payment of *chrysargyron*[17] was confirmed. Also in C. Th. 16.2.15 **(**360 or 359 AD**)**, clerics received an exemption from the *chrysargyron* due from revenues of the petty trade carried on to provide for their families[18].

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[12] See Е. В. Сильвестрова, *Второй Титул Шестнадцатой Книги Кодекса Феодосия*, Вестник православного Свято-Тихоновского гуманитарного университета, 30 (2010), p. 36.

[13] See L. Bove, *Immunita...*, p. 891. and C.Th. 16.2.4.4.and C.Th. 16.2.14 of confirmatory character.

[14] Cf. *Syro-Roman Law Book* (*Fontes Iruis Romani Anteiustiniani*, ed. V. Aragnio-Ruiz *et al*., Firenze 1968,vol. 2. p. 749): *Constantinus ... liberavit* κληρικούς *omni tributo ut neque argentum capitis dent neque* χρυσάργυρον *neque quid eiusmodi*. See also about the proper reading of this law: *Theodosiani libri XVI... op.cit.* vol. II,p. 838, J. Godefroy, *Codex Theodosianus cum perpetuis commentariis,* vol. 6.1, Leipzig 1743, p. 40, About C.Th. 16.2.10: L. Bove L. *Immunita fondiaria di chiese e chierici nel Basso Impero*, Synteleia Vincenzo Arangio-Ruiz. 1964. Vol. 2, pp. 890-891.

[15] Е. В. Сильвестрова, *Второй титул...*,, p. 42.

[16] Cf. Е. В. Сильвестрова, *Второй титул...*,, p. 42.

[17] In 401 AD the C.Th. 16.2.36 ordered that priests who sell food supplies according to law, were free from paying *collatio lustralis*, that is *chrysargyron*, or, as the text of the law has it, *auraria pensio.* Thus the terminology was vague.

[18] Late imperial law tried to prevent the clergy from conducting secular activities (Novel 35 of Theodosius and Valentinian of 425 AD, 7; C. Th. 16.4.24. = C. I. 1.3.17). This corresponded with the Scripture, church canons and papal admonitions.

C.Th. 16.2.9 (349 AD) confirmed the immunities, but introduced an obligation of the sons of the priest to enter the clergy if they were not obliged to enter city councils. Thanks to this law the clergy obtained an exemption from curial duties and the so-called "civil duties" - *civilium functionum*. Those *functiones* seem to be synonymous with *munera, and* they are a wide category, including almost every fiscal duty[19].

C.Th. 16.2.11[20] confirms the prohibition of nominating priests and bishops without possessions to perform curial duties. Moreover, the law stressed that the offspring of the clergy should not be obliged to perform curial duties even if the children are of proper age, but have no adequate financial means. Additionally, an immunity from *munera* was granted to the sons of the clergy until they were under their fathers' power. Additionally, C. Th. 16.2.24 (377 AD) [21] established the immunity of presbyters, deacons, exorcists, lectors and other church servants and lower clergy from the *munera personalia*.

As the Church had become a prominent landholder already in the 4th and 5th century, it is rather obvious that issues of land taxes played an important role. The first testimonies about the general tax exemptions of the church real property have been known to us since the times of Constantine the Great or Constans[22], which is soon after widespread donations had begun. According to the C.Th. 11.1.1, the tax immunity of church estates from the land tax was established in 315. This law stated that the exemptions could be granted only to the property of certain persons of very high social standing, enumerated in the constitution. Officials who granted other exemptions without reason, were to compensate for the loss from their own resources.

C.Th. 16.2.15 **(**360 or 359 AD**)** mentions and confirms the regulation, according to which ecclesiastical land is free from fiscal burdens. Private estates of the clergy did not receive any special immunity[23].

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[19] Cf. L. Neesen, *Die Entwicklung der Leistungen und Ämter (munera et honores) im römischen Kaiserreich des zweiten bis vierten Jahrhunderts*., Historia: Zeitschrift für Alte Geschichte 2 (1981),. pp. 210-216 with extensive references.

[20] See on the proper reading of the text : *Theodosiani libri*... p. 838.

[21] See discussion on the correct reading of the text: J. Godefroy, *Codex Theodosianus...*, pp. 62-63.

[22] Cf. L. Bove, *Immunita*, pp. 886-887 i *passim*.

[23] About the duties mentioned in C.Th. 16.2.15.2: L. Bove, *Immunita*, s. 900-901 and C.Th. 16.2.33.

In the C.Th. 16.2.40 (412 AD) the emperors confirm and justify the duty of "*ecclesiae urbium singularium*" to pay the land tax[24]. The law in clearly declares that the *canonica illatio* is to be paid by the churches. This law can be seen as a testimony to a tendency to establish equal imposition of the land tax in the whole state with no privileged groups or individuals[25].

As for real estate tax, imperial policy seems to be quite strict. However, it is good to remember that lack of permanent and full exemption of the church real estate from the property tax was considered as justified by Ambrosius of Milan[26] and Gregory the Great[27]. The conclusion that the church paid real estate tax is supported indirectly by the contents of C. Th. 11.1.37 (436 AD) as it grants to the Bishop of Afrodisis a privilege to pay the tax in gold, which indicates that no immunity was granted. C.Th. 11.24.6 (415 AD) also allows one to argue that there was no general immunity of the ecclesiastical property[28]. Such a situation demonstrates that neither emperors nor the ecclesiastical circles regarded ecclesiastical privileges as a total exclusion of any obligation towards the state.

That attitude is corroborated by, for example, C.Th. 16.2.40 (412 AD), mentioned above. This law granted immunity to the ecclesiastical immovable property, termed as *praedia usibus caelestium secretorum dicata*[29], which belonged to the *ecclesiae urbium singularum*. They were to be free from *munera sordida* and from taxation except *canonica illatio*.

C.Th. 11.1.33 (424 AD) corroborates the full immunity of the Church in Thessalonica[30]. In the Theodosian Code, the law still seems to be binding only locally. Nonetheless, the author

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[24] This law is also conserved as Const. Sirm. 11; shortened and slightly changed version: C. 1.2.5.

[25] L. Bove, *Immunita*..., p. 894.

[26] Ambrosius, Ep. 22, *C. Auxent*, 33 (PL 16. 1017B): *Si tributum petit, non negamus*. *Agri Ecclesiae solvunt tributum: si agros desiderat imperator, potestatem habet vindicandorum; nemo nostrum intervenit*. *Ibidem,* 35: (PL 16.1018B): *solvimus quae sunt Caesaris Caesari et quae sunt Dei Deo. tributum Caeasaris est, non negatur. Ecclesia Dei est, Caesari utique non debet addici*., also remarks in *Comm. in epist. ad Rom*, 13.1-7 (PL 17.162-164B).

[27] Ep. I.66.: (...) Clericorum siquidem vel aliorum consuetudinem te oportet illibatam servare, eisque annis singulis quae sunt consueta transmittere. Nobis autem de caetero, ne quid transmittere debeas, inhibemus. PL 77.523A (cf. Joannes. Diaconus, Vita Gregorii Magni, 3.24., PL75.144).

[28] L. Bove, *Immunita,* pp. 896-900, see also C.I. 1.3.16.

[29] *Praedia dicata* may signify, if understood in a restrictive manner, only the property with churches and other consecrated buildings in which sacraments (*caelestia secreta)* were to be celebrated or bodies of saints kept (*martyria).*

[30] L. Bove, *Immunita*... p. 895.

of this paper thinks that it could be interpreted as a general law and applied as a basis of extensive and "friendly" interpretation of the privileges established in other imperial enactments[31], However, it is good to remember that such a directive did not allow anyone to act *contra* or *praeter legem* and create new privileges without legal sanction.

In spite of intensive legislative policy towards ensuring the privileged status of the clergy and safeguarding their freedom from burdensome secular duties, it was already in 423 AD that the C.Th. 15.3.6 repealed the exemption from the obligations of financing the maintenance of public roads and bridges[32]. In 441 Valentinian III decided to declare expressly that the obligation to pay taxes is of general character: Nov. 10: *Neque domum divinam neque ecclesiam aut aliquam persona a quolibet munere publico excusandam*. He justified his decision with the requirements of justice and urgent needs of the treasury[33]. However, generally speaking, the privileged status of the clergy and of the church possessions survived the hardships of the 5th century.

2). Barbarian kingdoms and the ecclesiastical immunity - continuation and change

a). Law, taxation and the royal treasury

Roman law as such played important role in the early Middle Ages[34]. After the fall of the Roman rule in the West, "Roman law" came to be understood there as the Theodosian Code and the rules were contained in the so-called *Leges Romanae Barbarorum*. The official collections partially reflected the so-called "vulgar law" or "Germanic Roman law".

[31]See *Ibidem*, p. 895. Many other confirmatory laws have been preserved: C.Th. 16.2.13 (357 AD); C.Th. 11.16.21 and 16.2.30 of 397 AD, C.Th. 16.2.34 (399 AD), C.Th.16.2.38 (407 AD).; C.Th. 16.2.46, (425 AD), see also J. Godefroy, *Codex Theodosianus*..., pp. 43-44.

[32] This was justified by a statement that such a duty does not belong to *munera sordida*, cf. C.1.2.7.

[33] L. Bove, *Immunita*... pp. 901-902. This law was promulgated for the West, cf. C.I. 1.2.11 (445 AD) and J. Gaudemet, *L'Église*... pp. 314 and 179.

[34] Cf. W. E. Brynteson, *Roman Law and Legislation in the Middle Ages*, Speculum, Vol. 41, No. 3 (Jul., 1966), p. 420.

Roman law as it was applied then is characterized as a kind of written customary law, somehow simplified, "vulgarized" and without active legislators[35]. Still, in the early 6th century, the Theodosian Code was used throughout Gaul[36]. Compilations or edicts prepared in the new *regna* did not aim at being a comprehensive and exclusive legislation. Apart from the statements about the importance of the statutory law, it was declared that it was necessary to preserve old customs[37].

One nation of Germanic barbarians (apart from the Vandals) after another tried to copy and emulate the Roman ideal and doctrine of an active state, which legislates according to the precepts of justice and ensures efficient rule of law and equity[38]. King Recceswinth's law calls the king - *artifex legum*, obliged to work towards ensuring *utilitas populi*. He has to protect and establish *utilitas communis omnium civium*[39]. Roman law including Roman fiscal law, provided the new states with examples of developed regulation and with a model of ecclesiastical policy based on mutual support, cooperation and privileged status of the ecclesiastical property and the clergy in the state[40].

Such aims were to be achieved not only thanks to legislative measures undertaken by professional lawyers, but also through strict cooperation with ecclesiastical hierarchy, represented by bishops convened in synods[41].

Was the promulgation of written law only a formality and was the law in the Germanic kingdoms, especially in the Merovingian realm, of overwhelmingly customary character? Obviously, a large amount of law had such a character and was believed to be discovered rather

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[35] See *ibidem*.

[36] T.M. Charles-Edwards [in:] CAH,vol.15, p. 282. Cf. about the value and usefulness of legal knowledge in the realities of barbarian realms: Gregory of Tours, *Historia Francorum* (hereafter: HF). 4.46.

[37] W.E. Brynteson, *Roman Law*... p. 426, Cf. P. Vinogradoff, *Roman Law in Medieval Europe*, Oxford 1909 pp. 1-13, E. Levy, *West Roman Vulgar Law: the Law of property*, Philadelphia 1951, pp. 1-18; M. Cohn, H. U. Kantorowicz, *Romisches Recht im Fruhesten Mittelalter*, ZSS RA, 47 (34) 1913, pp. 13-45.

[38] D. Liebs [in:] CAH, vol. 15, p. 238.

[39] Leges Visigothorum, I, I. 3 (MGH *Leges Nat. Germ*. vol. I/1, Hannover-Leipzig 1902): *tunc primo requirendum est, ut id, quod inducitur, possibile credatur. Novissime ostendendum, si non pro familiari conpendio, sed pro utilitate populi suadetur, ut appareat cum, qui legislator existit, nullo privatim commodo, sed omnium civium utilitati communi motum presidiumque oportune legis inducere*, Roman Law and Legislation... p. 425.

[40] Cf. W. E. Brynteson, *Roman Law*..., pp. 421-422.

[41] See M.E. Moore, *Sacred Kingdom*, Washington D.C. 2011, *passim*.

than created. Still, it is worth noticing[42] that Isidore of Seville knew well that law could be established, not only "discovered"[43]. Isidore had a certain general knowledge about Roman law and about the rules of legislation[44]. He stated, that *lex* is a source of law[45].His writings show that customs were not the unique source of law in the early Middle Ages. In certain situations they could be considered just as an auxiliary source of law[46]. Such a statement is justified by the legislation, diplomas and regal policy in the field of fiscal immunities, where the late Roman policy of ecclesiastical privileges was continued and developed further.

Isidore also noticed that law should be drafted *pro communi utilitate*[47]. This idea reflects statements conserved in the Theodosian Code and Novels about the purpose of legislation in ecclesiastical matters. Additionally, the *Interpretatio* to the *Breviarium*5.12.1 states that *consuetudo* can replace *leges* only as long as this is not against public interest[48]. Custom gains the force of law only if there is no proper legislation or when the interpretation of existing law is not clear[49]. Preservation of the *tranquilitas regni* is synonymous with the enforcement of common utility[50].

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[42] Cf. W. E. Brynteson, *Roman Law*..., p. 423.

[43] *Etymologiae*, 5.5.20: *Factae sunt autem leges ut earum metu humana coercetur audacia, tutaque sit inter inprobos innocentis, et in ipsis improbis [inpiis], formidato supplicio, referentur nocendi facultas.*

[44] W. E. Brynteson, *Roman Law*..., p. 423.

[45] *Etym*. 5.3.1-4.: *Ius generale nomen est, lex autem iuris est species. Ius autem dictum, quia iustum* [est]. *Omne autem ius legibus et moribus constat.* [2] *Lex est constitutio scripta. Mos est vetustate probata consuetudo, sive lex non scripta. Nam lex a legendo vocata, quia scripta est.* [3] *Mos autem longa consuetudo est de moribus tracta tantundem. Consuetudo autem est ius quoddam moribus institutum, quod pro lege suscipitur, cum deficit lex.* (...). The ideas of Isidore are similar to the words of D. 1.3.32, (see W.E. Brynteson, *Roman Law and New Law: the Development of a legal idea*, RIDA 3rd ser. XII (1965, pp. 61-81). Still, it is hard to talk about any "Isidorian theory of legislation" (W. E. Brynteson, *Roman Law* ... p. 423).

[46] W. E. Brynteson, *Roman Law*..., pp. 423- 424.

[47] Etym. 5.21.

[48] W. E. Brynteson, *Roman Law*..., p. 424.

[49] *Ibidem.*

[50] Cf. the *proemium* to the Nov. 114 of Justinian.

A statement of the law of Recceswinth about the statute as a *medicamentum*, and the idea of a monarch as a doctor bears obvious similarities to the concept of *lex salubris* of the Theodosian Code[51]. The statement in the *Leges Visigothorum* I, II. 2: *Lex est emula divinitatis, antestis religionis, fons disciplinarum, artifex iuris, boni mores inveniens adque conponens, gubernaculum civitatis, iustitie nuntia, magistra vite, anima totius corporis popularis*[52] mentions at the same time the *divinitas*, *religio* and *disciplina*, thus stressing the strict cooperation of the royal and church power in the proper government of society and the establishment of the common good.

Consequently, it is not surprising that a kind of imitation of Roman legislation is noticeable. The very titles of Salic and Burgundian *leges barbarorum* were borrowed from the Theodosian Code. Roman lawyers were active in the writing down of Germanic customary law. It is also worth noticing that Childebert II's last edict is attested by Asclepiodotus, who was previously active as a referendary to Guntram. His name suggests that he was of Gallo-Roman descent[53]. The establishment of the Italian Kingdom of the Ostrogoths did not cause changes in the administrative staff or in the legal situation of the Church[54].Certain laws promulgated by the new rulers were intended to apply both to the Romans and the Barbarians. The preface to the Edict of Theodoric, which mentions general validity of *leges* and *ius publicum,* and the Edict of Athalaric are good examples[55]. Similar legislation was prepared in the Burgundian realm[56].

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[51]W.E. Brynteson, *Roman Law*... pp. 424-425 cf. T. M. Charles-Edwards [in:] CAH vol. 15, pp. 265-285 about the Brugundian law, about the *Lex Salica* as a piece of legislation, *ibidem,* pp. 275-278; use of Roman legal terminology to talk about a king as a judge: Remigius of Reims; *Epist. Austras*., no. 1 (MGH, *Epistolae Merowingici et Karolini Aevi*, ed. Gundlach, Berlin 1892, pp. 112 -113): *Dominus meus, repelle de tuo corde tristitiam (...) regnum sagacius gubernare, erectiora sumentes studio sereni tatis consilia. Laetum cor membra conforta; (...), acrius invigilabitis ad salutem : manet vobis regnum administrandi et, Deo auspice, properandi. Populorum caput estis et regimen sustinetis* (...) .

[52] MGH *Leges Nationum Germanicarum*, Hannover, Leipzig 1902, p. 41. Compare this wording with the one of Nov. Just. 105 2.4 *in fine* about the *lex animata*: *Omnibus enim a nobis dictis imperatoris excipiatur fortuna, cui et ipsas deus leges subiecit, legem animatam eum mittens hominibus*:, and W. E. Brynteson*, Roman Law and Legislation*... pp. 425-426.

[53] T. M. Charles-Edwards [in:] CAH 15, p. 270.

[54] L. Duchesne, *Early history of the Christian Church,*. ., tr. C. Jenkins, London 1909-1924, vol. III, p. 450.

[55] T. M. Charles-Edwards, [in:] CAH 15, p. 283.

[56]*Ibidem,* p. 284; *Constitutiones Extravagantes* (MGH Leges Nat. Germ., Hannover 1892, pp. 120-121), XIX (a letter to "all counts"), XXI.11 (*ut omnes comites, tam Burgundionum quam Romanorum*).

The distinction between primary and secondary rules is useful here[57]. The Theodosian Code and the Novels, especially the parts devoted to the public law, were probably seen as a kind of a higher or learned law, especially at the beginning of the new order. Then, it seems to the author of this paper that the kings, as those of the Merovingian dynasty, began to issue their own enactments such as acts granting a new kind of immunity. They fused Roman notions, like *immunitas* and *beneficium* conserved in the Code of 438 with Germanic concepts such as *mundeburgium,* and transformed both of them. This alteration was also adjusted to the needs of contemporary politics based on the strong union of royal houses and bishops. Merovingian model of the so-called "symphony" of Church and State is a case in point here[58].

Declarations of Theodoric the Great or Sigismund of Burgundy[59] about being fair-minded imitators or servants of the Roman Empire can be seen either as a mere rhetoric or a diplomatic lip service to the imperial court. However, Theodoric found it necessary to appear as part of the empire, therefore he deliberately issued an "edict" like a Roman magistrate[60]. Still, the Visigoths were formally independent from the Empire since 466[61], which does not mean that Roman laws, fiscal legislation included, were rejected.

New rulers of the former Roman domain in the West "imitated" the emperors of the East, and in so doing they also tried to emulate their legislative activity. Such a stance is visible not only in the Edict of Theodoric, but also in the politics of immunizing the ecclesiastical land and hierarchs in the Merovingian realm. This practice is quite well known to us thanks to various diplomas and formulas.

Under the Visigoths the tax system of the Roman times remained operational. In Gaul under the rule of the Visigoths, *comites*, who were appointed by the king, were both of Roman and Germanic origin. A kind of discrimination against the Roman population was brought to an end by the *Codex revisus* of Leowigild. Provisions of the Council of 589 allowed Arian

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[57] T. M. Charles-Edwards [in:] CAH v. 15, p. 284.

[58] See M.E. Moore, *Sacred Kingdom*, op.cit., p. 52 ff.

[59] Theodoric: Cass. Var., I.1.3: *Regnum nostrum imitatio vestra est, forma boni propositi, unici exemplar imperii: qui quantum vos sequimur, tantum gentes alias anteimus*. (...).; Sigismund: Avitus de Vienne, Ep. 83, PL 59,285B: *Cumque gentem nostram videamus regere, non aliud nos quam milites vestros credimus ordinari.*

[60] T. M. Charles-Edwards [in:] CAH vol. 15 p. 285.

[61] *Ibidem*.

Church hierarchs to join the Catholic Church and abolish their particular status[62]. Decurions of the city councils played the same role as under Roman rule. The *Breviarium* includes a variety of imperial laws promulgated with a view to preventing decurions from the evasion of their fiscal duties[63]. The privileges of the members of the imperial senate were not included in the *Breviarium*, which is significant when compared with the inclusion of a law granting privileges to the clergy. However, the application of the law in practice, especially forcing the most potent landowners to pay the due tax could be complicated[64].

Under the Merovingian rule, *annona, vestis militaria, aurum coronarium, gleba senatoria* had disappeared, and also units of tax assessment– *capita* and *iuga* - ceased to be used. It seems that in Merovingian domains *curiales* ceased to be authorized and responsible for the collection of land-tax, which was probably collected by representatives of a *comes*[65]. Roman *munera*, at least some of the wide catalogue, known from the Theodosian Code, were replaced by a new duty of providing hosting and upkeep of the travelling king and his officials[66].Yearly tributes from private lands paid by *Romani possessores* to the royal treasury were called *consuetudinariae functiones*[67]. *Tributum* was paid by free royal subjects. It was collected through tax farming carried out by local officials. Such practice could lead to abuses and seeking royal protection, especially through diplomas, which granted immunity or royal *mundeburgium*.

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[62] E.g. M. Jaczynowska *Historia*…,, p. 645-46. About the specific method of tax collection on two levels (*coloni* - latifundists - royal treasury) see W. Goffart, *Barbarians and Romans A.D. 418-584: The Techniques of Accommodation*, Princeton 1980, pp. 78-79, 92, 101.

[63] H.W.G. Liebeschuetz [in:] CAH vol. 15 pp. 207-208, 231-232.

[64] *Ibidem*, p. 232.

[65] HF. 4.2, 5.34, 9.30; H.W.G. Liebeschuetz [in:] CAH,vol. 15 p. 235. HF. 10.7 mentions tax collectors –*exactores*, W. Goffart (*Old and New in Merovingian taxation,* Past & Present 96/1982, p. 3 n. 2) argues that such collectors cannot be identified with the *curiales.*

[66] HF 6.45; 8.42, W. Goffart (*Old and New…)* characterizes this obligation as a conversion of Roman fiscal duties towards the *cursus publicus*, especially when compared with the Nov. Maior. 7.13; 17 (458 AD); *Lex Burgundionum* 38; Cass. Var. 5.14.5,7; 12.15.6-7.Felix Dahn (*Zum merowingischen Finanzrecht* [in:] *Germanistische Abhandlungen zum 70. Geburstag Konrad von Maurers*, Gottingen 1893 p. 345) argued, that at the beginning of the Merovingian rule, the whole Roman tax system stayed unchanged (after W.Goffart, *Old and New*… pp. 4-5; Cf. also his, *Caput and Colonate: Towards a History of Late Roman Taxation* (Phoenix suppl. vols. XII, Toronto 1974, pp. 22-30).

[67] See A.C. Murray, *Immunity, Nobility, and the Edict of Paris*, Speculum, 69⁄1 (January, 1994), p. 20.

It is interesting that even the *Lex Baiuvariorum* in Chapter 1.13 demonstrates a kind of preservation of Roman ideas, at least in ecclesiastical circles, as it regulates peasants' or serfs' duties towards the Church in a manner similar to the Roman *delegatio*[68]. Additionally, a method used to level the amount of taxes called *pearequatio* or *ordinatio* was still in existence[69]. Certain duties could have been a continuation or transformation of Roman *munera sordida* and *angariae*[70]. However, the same law introduces a number of new concepts - *mansus*, denoting arable land area, used in the tax assessment, *riga* - a type of corvée and a special military tax - *hostilicium*.

b). Immunitas in the new realms

According to the *Lex Romana Visigothorum* ecclesiastical property was *res divina*[71]. The *Breviarium* included the constitution C.Th.16.2.2 (= *Breviarium Alarici*, 16.1.1).The *interpretatio* of this law is interesting as it declares that the clergy are to be free from any *munus.* This *munus* is then briefly defined as any *officium* and any *servitus.* This is how the *interpetatio* interpreted the words *ab omnibus omnino muneribus excusentur* of the constitution. The clergy are not to be ordered to perform duties of tax collectors (*exactores, allecti)*. Any violation of this precept was to be considered as a sacrilege[72].The provision of the Breviary is

[68] See W. Goffart, *From Roman Taxation to Mediaeval Seigneurie*: *Three Notes*, Speculum 47 (1972), pp. 390-391.

[69] W. Goffart, *Merovingian Polyptychs: Reflections on Two Recent Publications*, Francia, IX 1982.

[70] B. Guerard, *Polyptyque de l`abbe Irminion*, Paris 1844, 2 vols.; vol. I pp. 793-801; W. Goffart, *From Roman Taxation*… pp. 390-391 and note 202. In the manuscripts of the *Lex Baiuvariorum* the word *angarias* has a gloss added, which shortly defines it as "*vel fuora opera*", therefore, the term meant any type of transport with carts and horses.

[71] *Epitome Gai seu Liber Gai* I [IX]. *De Rebus*: 1. *Omnes itaque res aut nostri iuris sunt, aut diuini, aut publici.* (...) *Diuini iuris sunt ecclesiae, id est, templa Dei, uel ea patrimonia ac substantiae, quae ad ecclesiastica iura pertinent.* (...).

[72] An 8th cent. *Epitome* of the *Brev.. 13.2.2,* prepared in the Frankish state, says: (...) *Virgines, viduae, pupili non debent inter reliquam plebem censeri, sed immunes sunt, et hi, qui se sacrae religionis obsequio dedicaverunt. (Epitome suppl. lat. 215*. ed. G.Haenel, *Lex Romana Visigothorum*, Leipzig 1849, p. 240*).* Canons of the Council of Clichy of 626 or 627, no. 7 and 8 (MGH Concilia Mer. Aevi, p. 198) attempted to reinforce Roman precepts as they stated that: *7. Si iudex cuiuslibet ordinis* [also a fiscal or a private official] *clericum publicis actionibus inclinare presumpserit aut pro quibuslibet causis absque conscientia et permissum episcopi distringere aut calumniis vel iniuriis affici presumpserit, a communione privetur*, (...) 8. *Hi vero, quos puplicus census expectat,*

therefore very general and generous. However, there always existed a possibility to ask for additional favours and acts of royal largesse.

We know about an individual tax exemption granted by Theodoric the Great to certain Arian *antistes* (bishop) named Unscilla and to his church[73]. This exemption seems to reflect the adherence to the so-called principle of personality of law - a Gothic priest and his congregation would have to obtain an individual exemption from taxes, because Roman law did not apply to them[74].

However, in the context of the preface to the *Edictum Theodorici*, which stresses the necessity to respect *leges,* it is much more probable that Unscilla received an exemption of a wider scope than that prescribed by Roman law and obtained royal confirmation of the privileged status of his Church[75]. This was granted as a kind of royal protection similar to the Merovingian *mundeburgium*[76]. Such an opinion is also supported by the fact that in the realm of the Ostrogoths, the Germanic populace was subjected to Roman fiscal order[77].

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sine permissu principis vel iudicis se ad religione sociare non audeant (as this causes a prvileged status). Cf. also Councils of Toledo: 3rd, can. 18; 4th, can. 19, 32 and 47.

[73] Cass. Var. 1.26.2: *Unde quia religiosi studii reverentia commonemur, ut quae dudum ecclesiae viri venerabilis Unscilae antistitis praestitimus, valere in perpetuum censeamus,nunc quoque illustrem magnificentiam tuam duximus admonendam, quatenus superindicticiorum onera titulorum praefata ecclesia in ea summa non sentiat, qua usque a magnifici viri patricii Cassiodori, pura nobis fide et integritate comperti, temporibus est soluta.*

[74] Another act cancelling the tax due from an estate granted by Theodoric as an allotment (*sors*) to an Arian priest is known to us (Cass.Variae 2.17.) Was this privilege actually the diversion of local tax revenues to the priest, whose *sors* therefore comprises the tax revenues from the piece of land? Such an idea bears certain similarity to the Merovingian solutions. However, a much simpler interpretation that just a cancellation of the liability is meant (so M. Innes, *Land, freedom and the making of the medieval West*. Transactions of the Royal Historical Society 16/2006, p. 57) is acceptable.

[75] Cass. Var. 1.26.1 speaks of *beneficium prior* which should not be reduced or annulled. The king is obliged by the *fides.* In the realm of Theodoric the Arian Church was, just like the Catholic one and secular owners, obliged to pay the land tax. The king did not resign from a vast source of income, which was the land tax collected from numerous church estates. Such avpolicy corresponded with the provision of the *Edictum* ensuring the growth of ecclesiastical property (*Ed. Theodorici* 26, cf. C. Th. 5.3 and C.J. 1.3.20 and G. Pfeilschifter, *Der Ostgotenkönig Theoderich der Große und die katholische Kirche*, Münster 1896, pp. 229-231). See also A.H.M. Jones, *Late Roman Empire*, p. 259; Cassiodor mentioned a payment in gold currency (*tributarius solidus, asssis publicus,)*, but gold in pieces is also possible (Cass. Var. 5.39.5; 12.16.3); about the Italian *negociatores* active in the tax collection: Cass.Var. 2.26; 30; 38; 5.35; Ed.Theod. 149.

[76] See still useful work by N.D. Fustel de Coulanges, *Etude sur l'immunite merovingienne*, Paris 1883, p. 51 ff. *Emunitas* became fused with the royal protection or patronage. (Cf. *ibidem*, p. 55).

[77] The royal fiscal grant for Unscilla can be termed as a gift- *Schenkung* (G. Pfeilschifter, *Der Ostgotenkönig...,* p. 230).

The Church presided over by Unscilla received annulment or exemption from certain sums due to be paid as a tax. However, its estates were still burdened with the *superindicta*. As a result, the bishop petitioned Theodoric to grant alleviation of the *superindicta* and ordinary land taxes. The king granted freedom from the *superindictio* due from the estates already possessed by the Church before the benefice was granted. The estates acquired later received no immunity at all[78]. Also, Alaric II granted a kind of similar *immunitas* or, to be more precise, *beneficium,* from a certain number of *capita* to the Church of Arelatum[79].

Such royal enactments of individual character served as a supplementation of general immunities granted by the imperial constitutions of the 4th and 5th centuries. The rather reserved attitude towards granting full exemptions is also noticeable. It can be seen as a kind of continuation of the imperial policy of the final years of the Western empire, when attempts to increase the revenue and prevent decay of public infrastructure were reflected in the legislation.

As the situation in the former Roman Gaul will be discussed now, it should be borne in mind that there were two main components of the Merovingian model of immunity:

a). fiscal immunity - exemption from taxes and a determined fiscal burden. This type of immunity may be understood as a kind of continuation of Roman ideas[80], still with certain modifications. This is the kind of immunity referred to by the 5th Canon of the Orleans Council of 511. This Canon mentions an *immunitas concessa* for the ecclesiastical real property. The funds saved[81] were to be spent on repairs of churches, support of the clergy, the needy

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[78] W. Goffart, *Old and New*… p. 12; Cass. Var. 1.26.2-3. A similar case is mentioned in HF 3.25: (...) *Erat enim regnum cum iustitia regens, sacerdotes venerans, eclesias munerans, pauperes relevans et multa multis beneficia pia ac dulcissima accommodans voluntate. Omne tributo, quod in fisco suo ab eclesiis in Arvernum sitis reddebebatur, clementer indulsit*. Cf. also HF 9.30.and HF 10.7: *In supradicta vero urbe Childeberthus rex omnem tributum tam eclesiis quam monasteriis vel reliquis clericis, (...) larga pietate concessit. Multum enim iam exactores huius tributi expoliati erant, eo quod (...) colligi vix poterat hoc tributum; quod hic, Deo inspirante, ita praecipit emendare, ut, quod super haec fisco debitur, nec exactore damna percuterent nec eclesiae cultorem tarditas de officio aliqua revocaret*.

[79]*Testamentum beati Caesarii*: *Nam absit ut de tua, piissime pontifex, inscientia inculperis; quia, ut supra jam dixi, pietas divina concessit ut per meam humilitatem immunitas Ecclesiae [H]in tot capitibus daretur*..(PL 67.1142B); Sidonius, *Carmina*. 13.20.

[80] A. Callander Murray, *Merovignian Immunity Revisited*, History Compass 8/8 (2010), p. 915.

[81] Those sums were saved thanks to the remissions of taxes known to the Roman fiscal law (*functiones publicae capitatio humana et terrena)*. There were also new tributes: *bannus (heriban), freda, mansiones*, certain compulsory works, toll and market fees (H. Leclercq s.v. *Immunite* DACL, VII.1, 345-346); Cf. also diploma of Dagobert I *(Diplomata*, ed. K. Pertz, pp. 16-17, n. 15: *quicqud exinde fiscus forsitan de eorum hominibus aut de ingenuis aut de servientibus aut in eorum agris commanentibus vel undecumque poterat sperare, ex nostra Indulgentia* (…) *tam nobis in Dei nomine viventibus quam per tempora succedentibus legibus debeant cuncta*

and poor and for the redemption of captives. Additionally, Chlotar II decided that the Church should receive tithes from pastures and arable land[82]. The same monarch granted to the clergy and churches an exemption from *functiones*[83]. Merovingian rulers gradually immunized the clergy from the poll tax. The real estate tax (the land tax) was generally preserved, with many individual privileges, though. An exemption from *onera canonica* was understood as a special kind of *immunitas* or *beneficium*[84]. Merovingian kings granted *villae* and other estates *sicut a fisco nostro fuit possessa*. This phrase meant a donation *cum emunitate*[85].

b). "judicial" immunity, that is an explicit and strict prohibition of the entrance of royal "judges" (*introitus iudicum*)[86], especially counts and their functionaries, into the lands of the beneficiary to adjudicate, collect fines and court fees. This type of immunity first appeared in Merovingian diplomas in the 7th century[87].In a similar manner, the edict of Chlotar II of 614[88] mentions the *emunitas* of the Church and *potentes,* described as an exclusion of royal (public) jurisdiction (*judices publici atque audientia)*.

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proficere", such clauses are typical of the Merovingian diplomas. They were effective cessions of public or regnal rights to the beneficiary. They can be seen as a kind of delegation of public duties together with fiscal revenues.

[82] [*A*]*graria, pascuaria vel decimas porcorum*, Boretius, Cap. I.19., MGH Capitularia Merovingici Aevi, p. 11.

[83] *Ecclesia vel clericis nullam requirant agentes publici* [= *missi regii*] *functionem, qui avi vel genitoris* [*aut germani*] *nostri immunitatem meruerunt*.(MGH *Capitularia* vol. I,, ed. A. Boretius, Hannover 1893, p.19); Probably *immunity* granted by Chilperic and Chlotar I is meant here (Cf. G. Waitz, *Deutsche Verfassungsgeschichte*, vol. II (1882) p. 279, vol. IV (1885) p. 125; W. Goffart, *Old and New*…pp. 17-18).

[84] B.H. Rosenwein, *Negotiating space : power, restraint, and privileges of immunity in early medieval Europe,* Ithaca N.Y. 1999, p.29.

[85] H. Leclercq s.v. *Immunite*, DACL, VII.1, 335-336.

[86] E.g. Marculfi Formulae 1.14: "*decernemus (...) ut ipsa villa illa antedictus vir ille (...) in integra immunitate absque ullius introitus iudicum de quaslibes causas freta exigendum, perpetualiter habeat concessa*". Diploma of immunity granted for the monastery in Rebais by the chancery of Dagobert I states: *Ut nulli penitus judicium vel culibet hominum licentia sit de rebus praefati monasterii* (...) *aliquod defraudare aut termerario spiritu quicquam exinde sius usibus usurpare* (…) *ut nulla judiciaria potestas nec presens nec succidua ad causas audiendum aut aliquod exactandum ibidem non praesumat ingredi*. (Diplomata, ed. K. Pertz, MGH, n. 15, p. 16-17).The issue if the judicial immunity was always coupled with the fiscal one is discussed (A. Callander, Murray, *Merovignian immunity....* pp. 920-921).

[87] See A. Callander Murray, *Merovignian Immunity...,* p.. 915, who remarks that both privileges had a fiscal character. Apart from the immunity, there were also exemptions from customs.

[88] MGH *Capitularia* vol. I,, p. 22.

Grants of fiscal privileges protected the beneficiaries from abuses of royal officials and guarded an estate from their "unlawful entry". In Merovingian times, special immunity officials appear in the sources: *agens, cissus, iudex*[89].

The statement that a grant of *emunitas* did not create any personal right[90] seems to be unjustified. Violation of this royal privilege was penalized with a fine shared between the royal treasury and the victim[91].This was an innovation and departure from the Roman regulations. Such a solution is very similar to the *compostitio* of Germanic law. Thus, the distinction between "public" and "private" sphere and law became rather blurred here.

Grants of immunity were substantiated by stating that the beneficiary contributes to the general prosperity and public good in a different manner than performing his fiscal duties towards the king[92]. Such justifications are very similar to those found in the Roman legislation, which was described above: the clergy shall be free from *munera* because they have their own *munus* - religious services, which bring valuable benefits to the whole society.

In the Merovingian domains, the institution of *immunitas* (*emunitas*) preserved, at least partially, public character; it constituted a royal grant, an act of royal benevolence. It was an exemption from various duties, especially fiscal ones, towards the king (the person of the monarch was identified with the state)[93].This *immunitas* did not have a general character: it was not addressed to any class of subjects[94].

Therefore, a kind of particularism begun to develop. The scope of an immunity granted in a royal diploma slightly differed from case to case. This way of regulating matters became

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[89] *Iudex* of the immunized land - *iudex privatus* (N.D. Fustel de Coulanges, *Etude...*, p. 62).

[90] Ibidem, , pp. 25, 30, 49-50, 68.

[91] Canon 11 of the Council of Chalon, 639-654 AD, MGH Concilia, p. 210: *Pervenit ad sancta synodo, quod iudicis publici contra veternam consuetudinem per omnes parrochias vel monasteri, quas mos est episcopis circuire, ipsi inlicita praesumptione videantur discurrere, etiam et clericus vel abbatis, ut eis praeparent, invitus adque districtus ante se faciant exhibere, quod omnimodis nec relegione convenit nec canonum permittit auctoritas. Unde omnes unianimiter censuemus sentientis, ut deinceps debeant emendare* (...).

[92] A. C. Murray, *Merovignian Immunity...,* pp. 917-918 argues that the *immunitas* was granted as a kind of remuneration for certain merits of social significance. The ecclesiastical immunities were justified in a similar manner by the Council of Orleans of 511 (*ibidem*). See also his *Immunity, Nobility, and the Edict of Paris,* Speculum, 69/ 1 (January, 1994), pp. 19-20.

[93] See A. C. Murray, *Immunity... passim*. The notions of *res publica* and *res regis* were fused (N.D. Fustel de Coulanges, *Etude...*, p. 25).

[94] *Ibidem...*, p. 24.

important in the further development of the institution. According to the documents, immunities were perpetual, still, in practice, they could be revocable in an arbitrary manner[95]. This may indicate why in the case of Unscilla discussed above royal *fides* is mentioned.

It is worth mentioning here that Gregory of Tours wrote that the royal tax revenue became a kind of "luxury" of the king, a kind of occasional or unsure source of money. This is an exaggeration or a metaphor reflecting problems with the enforcement of fiscal regulations of Roman origin along with the new types of taxes. It may also reflect the spread of territorial immunity. The rulers needed land to reward their allies and followers and to be able to act as protectors and benefactors of the Church. They seem to have acted in such roles not by using monetary payments, but by donating estates and issuing immunity diplomas. What is specific and different from the Roman understanding of the fiscal *immunitas is* that the landowner granted with an immunity kept the tax which he received from the *coloni* or tenants and other people residing or economically active in the domain instead of passing it to the functionaries of the king[96]. This encouraged particularism, decentralization and a certain type of financial autonomy and self-government. In the West, church building was temporarily interrupted by the turmoil and wars of the mid 5th century, but it is significant that it was resumed in the late 5th and 6th centuries. This growth corresponds with the policy of immunization. The decentralization and the development of countryside centres of ecclesiastical territorial power based on grants of the new type of immunity is visible already in the 6th century. We know of Nicetus, Bishop of Trier, who not only possessed his city residence in the town, but also a fortress (a castle) on the Moselle[97]. This stronghold owned by a bishop indicates the arrival of a new era.

3). Conclusion - transition from an ancient empire to the feudal realms

[95] N.D. Fustel de Coulanges, *Etude...*, p. 24.

[96] J. Liebeschuetz [in:] CAH, v. 15, p. 235.

[97] *Ibidem*, p. 209, 229-236; Venantius Fortunatus, *Carmina* 3.12. (MGH *Auctores antiquissimi* 4.1, ed. F. Leo, Berlin 1881, p. 64), Cf.. About the new aims of being a town resident: Cass. Variae 8.31 and J. Liebeschuetz [in:] CAH, v. 15, p. 235, pp. 221-222, 232-233.

The Theodosian Code intended to strengthen the privileged position of the Christian Church in society[98]. Laws addressing ecclesiastical matters create an impression that the emperor drafted the core of their content by himself. However, it is more probable that the initiative and proposals came from the bishops[99]. Imperial law was often negotiated instead of being arbitrarily imposed in a political and intellectual vacuum[100].Such negotiation and preparation of an act or a piece of legislation was present also in the new kingdoms, as it is clearly demonstrated in Merovingian capitularies and diplomas and in the work of Cassiodore. This approach corresponded well with one of the basic political responsibilities of Frankish kings, that is with the settlement of disputes and keeping the *pacem atque disciplinam* in the land. Here support of the clergy was of the utmost importance[101].

The repetition of the law in the Theodosian Collection, which is visible also in the sections devoted to the fiscal privileges of the Church, seems to indicate lack of proper enforcement of the law. Still, it could as well serve as a reminder and confirmation of the previous regulation. Moreover, emperors intended to be seen as supporters of the initiatives that were beneficial to the Commonwealth, although from the juristic point of view, there was no need to issue new regulations. Emperors tended to avoid being seen as neutral and passive rulers. The Code of 438 did not try to eliminate repetitions[102].Such repetitions and corroborations seem to have added strength to and increased the implementation of the law[103]. Tendencies to stress the prominent position of the law and to establish the rule of justice, which emanates from the person of the king as the supreme judge of his realm and protector of the Church, are clearly visible in Germanic states. The new rulers and their officials were under the influence

[98] A. Honore, *Law...* p. 124, Although the law in strong words condemned "old superstition" and declared privileges of pagan priests null and void (C.Th. 16.10.14), the Code of 438 was not going to depart from the intellectual heritage of the Roman jurists, also in the sphere of tax exemptions (Cf. A. Honore, *Law...*, pp. 124-125). What was useful was to be preserved and adapted. Can this legislation be considered as a programme of reform? See B. Sirks, *Reform and Legislation in the Roman Empire* https://mefra.revues.org/1871?lang=fr#bodyftn1, (retrieved: 3.05.2016).

[99] A. Honore, *Law*..., s. 133, Sozomen, HE 9.1.5-6.

[100] J. Harries, *Law and empire in late antiquity,* Cambridge, UK ; New York 1999*,* p. 36; cf. p. 58.

[101] Cf. P. Fouracre, R. Gerberding, *Late Merovngian France*, New York 1996, p. 2 and I. Wood, *The Merovingian Kingdoms* 450-751, London-New York 1994, pp. 201-202.

[102] A. Honore, *Law...* p. 133-134, in a similar manner J. Harries, *Law...* pp. 78, 84-85.

[103]*Ibidem*,. p. 86.*Interpretationes* and extracts also show that the law was studied and applied.

of Roman ideas of church politics, albeit they did not avoid efficient adjustment to the exigencies of new reality of politics and government.

For example, the *interpretatio* of the constitution C.Th. 16.2.2=brev.16.1.1, as other *intepretationes*[104], tried to accommodate legal precepts of the emperors to current requirements. It can be seen as a kind of "law in action"[105] written down. Many of those short "explanations" at first glance, seem to be mere summaries or paraphrases. On close scrutiny, it becomes visible that they contain a new rule. This rule is similar although not identical to the one they seem to summarize. It is possible that the Theodosian Code, especially the part devoted to administrative and fiscal matters, was seen in the barbarian kingdoms as a type of sophisticated, learned "higher written law"[106], reflecting important aspects of the proper social order. This *lex generalis et superior* was to be supplemented, explained and made effective through the royal legislation, in which the king acted as *imitator imperii Romani*. A similar role was also played by the *interpretationes* and royal diplomas, which continued the politics of privilege and cooperation between the sovereign and the clergy[107]. However, the Roman legal heritage of the *ius publicum* gradually ceased to be applied as a living law, also in fiscal matters, and was replaced with the new order of the so-called "feudal society".

This is not surprising as the Theodosian Code contained laws prepared within an urbanized state. The code was to be used by trained bureaucracy. However, western medieval culture in the epoch under consideration was of increasingly rural character, where cities gradually had ceased to be the dominant centers of administration and intellectual life[108]. Political power, especially in the Merovingian domains, "begins to sit upon the land directly"[109].

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[104] See e.g. the *interpretatio* to C.Th. 1.1.1 [=Brev.1.1.1], where the word "*leges*" is used instead of "*consitutiones sive edicta*". *Interpretatio* to C.Th. 1.1.2 replaced the word "*consitutiones*" with the words "*leges*" and "*statuta*". Those seem to be synonymous, but the words of the *interpretatio* have wider meaning. Cf. also *interpretationes* to C.Th. 1.2.9 and C.Th. 1.3.1.

[105] As opposed to the so called "law in books".

[106] It is probably no coincidence that Books 2 to 5 were conserved only partially, while the public law legislation is preserved in full and in fine manuscripts. (D. Liebs [in:] CAH 15, p. 246).

[107] *Indulgentiae,* as those mentioned in HF 3.25, 10.7, seem to be a continuation of old imperial policy in the new circumstances.

[108] See e.g. P. Fouracre, R. Gerberding, *Late Merovignian France*, op. cit. p. 1 and *.passim.*

[109] *Ibidem*.

The Visigoths' and Ostrogoths' states seem to be more conservative in their approach towards the adaptation of Roman law to the new circumstances. However, Frankish *emunitas* can be interpreted as a creative and innovative development and accommodation of Roman solutions in the context of a king's duty to preserve *pacem regni*[110]. Charters granting immunization could also be a useful tool for the monarch in shaping his church policy, especially as they did not address general categories but individual beneficiaries[111].

An interesting and picturesque analogy while using Roman heritage in practice can be drawn between immunities and the use of *spolia* in church construction. For example, in the crypts of Jouarre, colourful decorative shafts of Roman marble columns were reused, still, they were combined with white capitals made by Merovingian sculptors[112]. Both in such cases and when it comes to fiscal privileges, Roman achievement was combined with new additions, thus creating pieces of their own character.

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From Roman Immunitas to Merovingian Emunitas - Remarks on the Evolution of Roman Fiscal Concepts in the Germanic Realms

Summary: The Theodosian Code contained a variety of laws aimed at the assurance of a privileged status of the Church and the orthodox clergy. Those laws were part of a general imperial policy aimed at the establishment of the Christian Roman Empire. Fiscal exemptions played an important role here . After the fall of the Western Empire, new Germanic realms respected and preserved the Roman legal heritage and ideas of legislation and relations of ecclesiastical and royal power. Roman fiscal solutions were also generally maintained. On the other hand, new ideas and institutions developed. Fiscal immunities of the Merovingian Age are exemplary here. Frankish kings tried to imitate Roman emperors' ecclesiastical policy and legislative measures. However, the profoundly changed political and economic circumstances led to a transformation of Roman fiscal institutions into new types of feudal bonds.

[110] Cf. P. Fouracre, R. Gerberding, *Late Merovignian France*, op. cit., p. 2, I. Wood, *The Merovignian Kingdoms,* op.cit. pp. 60-61.

[111] Cf. I. Wood, *The Merovingian Kingdoms* op.cit.,. 204 ff. Additionally, as charters did not have to be irrevocable, additional room for maneuver was available (see *ibidem*).

[112] Other creative adaptations were numerous, e.g. the baptistery of St. Jean in Poitiers.

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