

THE
VISIGOTHIC CODE

(*FORUM JUDICUM*)

TRANSLATED FROM THE ORIGINAL LATIN, AND EDITED BY

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Lex est magistra vitæ

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TO
MY FELLOW MEMBERS
OF THE COMPARATIVE LAW BUREAU
IN THE HOPE THAT IT MAY PROVE AN ACCEPTABLE CONTRIBUTION
TO THE LITERATURE OF THE NOBLE SCIENCE OF THE LAW
THIS TRANSLATION
OF ONE OF THE MOST VENERABLE MONUMENTS OF JURISPRUDENCE
IS DEDICATED

LAWS OF THE JUDGES.

BOOK I.

CONCERNING LEGAL AGENCIES.

TITLE I. THE LAWMAKER.

- I. *What the Method of Making Laws Should Be.*
- II. *How the Lawmaker Should Act.*
- III. *What Should be Required of the Lawmaker.*
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- V. *How the Lawmaker Should Impart Advice.*
- VI. *What Manner of Speech the Lawmaker Should Use.*
- VII. *How the Lawmaker Should Act in Rendering Judgment.*
- VIII. *How the Lawmaker Should Comport Himself in Public and Private Affairs.*
- IX. *What Instruction it is Fitting that the Lawmaker Should Give.*

I. What the Method of Making Laws Should Be.

We, whose duty it is to afford suitable assistance in the formation of the laws, should, in the execution of this undertaking, improve upon the methods of the ancients, disclosing as well the excellence of the law to be framed, as the skill of its artificer. The proof of this art will be the more plainly evident, if it seems to draw its conclusions not from inference and imitation but from truth. Nor should it stamp the force of argument with the subtlety of syllogism, but it should,

with moderation, and by the use of pure and honorable precepts, determine the provisions of the law. And, indeed, reason plainly demands that the work be performed in this manner. For, when the master holds in his hand the finished product, in vain is sought the reason for its having been impressed with that particular form. On subjects that are obscure, reason eagerly seeks to be informed by examination; in matters, however, that are well known and established, action alone is required. Therefore, when the matter in question is not clear because its form is unfamiliar, investigation is desirable; but it is otherwise in affairs known to all men, where not speculation, but performance, becomes essential. As we are more concerned with morals than with eloquence, it is not our province to introduce the personality of the orator, but to define the rights of the governor.

II. How the Lawmaker Should Act.

The maker of laws should not practise disputation, but should administer justice. Nor is it fitting that he should appear to have framed the law by contention, but in an orderly manner. For the transaction of public affairs does not demand, as a reward of his labors, the clamor of theatrical applause, but the law destined for the salvation of the people.

III. What Should be Required of the Lawmaker.

First, it should be required that he make diligent inquiry as to the soundness of his opinions. Then, it should be evident that he has acted not for private gain but for the benefit of the people; so that it may conclusively appear that the law has not been made for any private or personal advantage, but for the protection and profit of the whole body of citizens.

IV. What the Conduct of the Lawmaker Should Be in his Daily Life.

The framer of laws and the dispenser of justice should prefer morals to eloquence, that his speech may be characterized rather by virtuous sentiments, than by elegance of expression. He should be more eminent for deeds than for

words; and should discharge his duties rather with alacrity than with reluctance, and not, as it were, under compulsion.¹

V. How the Lawmaker Should Impart Advice.

He should be mindful of his duty only to God and to himself; be liberal of counsel to persons of high and low degree, and easy of access to the citizens and common people; so that, as the guardian of the public safety, exercising the government by universal consent, he may not, for personal motives, abuse the privileges of his judicial office.

VI. What Manner of Speech the Lawmaker Should Use.

He should be energetic and clear of speech; certain in opinion; ready in weighing evidence; so that whatever proceeds from the source of the law may at once impress all hearers that it is characterized by neither doubt nor perplexity.

VII. How the Lawmaker Should Act in Rendering Judgment.

The Judge should be quick of perception; firm of purpose; clear in judgment; lenient in the infliction of penalties; assiduous in the practice of mercy; expeditious in the vindication of the innocent; clement in his treatment of criminals; careful of the rights of the stranger; gentle toward his countrymen. He should be no respecter of persons, and should avoid all appearance of partiality.

VIII. How the Lawmaker Should Comport Himself in Private and Public Affairs.

All public matters he should approach with patriotism and reverence; those concerning private individuals and domestic

¹ It must be remembered that under the Gothic polity, the legislator, invariably a member of the ecclesiastical order, was frequently called upon to exercise the exalted functions of the judge. In some instances, the two officials had concurrent jurisdiction; in others, the bishop was authorized to decide questions of law and fact in the absence of the magistrate. Especially was this the case where the interests of the Church were, in any way, concerned. Hence arises the apparent confusion of the duties of legislator and judge, in this and other chapters of the Visigothic Code.—[ED.]

controversies he should determine according to his authority and power; so that the community may look up to him as a father, and the lower orders of the people may regard him as a master and a lord.

He should be assiduous in the performance of his duties so that he may be feared by the commonalty to such a degree that none shall hesitate to obey him; and be so just that all would willingly sacrifice their lives in his service, from their attachment to his person and to his office.

IX. What Instruction it is Fitting that the Lawmaker Should Give.

Then, also, he should bear in mind that the glory and the majesty of the people consist in the proper interpretation of the laws, and in the manner of their administration. For, as the entire safety of the public depends upon the preservation of the law, he should attempt to amend the statutes of the country rather than the manners of the populace; and remember that there are some who, in controversies, apply the laws according to their will, and in pursuance of private advantage, to such an extent that what should be law to the public is to them private dishonor; so that, by perversion of the law, acts which are illegal are often perpetrated, which should obviously be abolished through the power of the law itself.

TITLE II. THE LAW.

- I. *What the Lawmaker Should Observe in Framing the Laws.*
- II. *What the Law Is.*
- III. *What the Law Does.*
- IV. *What the Law Should Be.*
- V. *Why the Law is Made.*
- VI. *How the Law Should Triumph over Enemies.*

I. What the Lawmaker Should Observe in Framing the Laws.

In all legislation the law should be fully and explicitly set forth, that perfection, and not partiality, may be secured. For, in the formation of the laws, not the sophisms of argument, but the virtue of justice should ever prevail. And here is required not what may be prompted by controversy, but what energy and vigor demand; for the violation of morals is not to be coerced by the forms of speech, but restrained by the moderation of virtue.

II. What the Law Is.

The law is the rival of divinity; the oracle of religion; the source of instruction; the artificer of right; the guardian and promoter of good morals; the rudder of the state; the messenger of justice; the mistress of life; the soul of the body politic.

III. What the Law Does.

The law rules every order of the state, and every condition of man; it governs wives and husbands; youth and age; the learned and the ignorant; the polished and the rude. It aims to provide the highest degree of safety for both prince and people, and, in renown and excellence, it is as conspicuous as the noon-day sun.

IV. What the Law Should Be.

The law should be plain, and not lead any citizen to commit error or fraud. It should be suitable to the place and the time, according to the character and custom of the state;

prescribing justice and equity; consistent, honorable, worthy, useful, and necessary; and it should be carefully noted whether its provisions are framed rather for the convenience, than for the injury, of the public; so that it may be determined whether it sufficiently provides for the administration of justice; whether or not it appears to be contrary to religion, and whether it defends the right, and may be observed without detriment to any one.

V. Why the Law is Made.

Laws are made for these reasons: that human wickedness may be restrained through fear of their execution; that the lives of innocent men may be safe among criminals; and that the temptation to commit wrong may be restrained by the fear of punishment.

VI. How the Law Should Triumph over Enemies.

Domestic peace having been once established and the plague of contention having been entirely removed from prince, citizen, and the populace, expeditions then may be made safely against the enemy and he may be attacked confidently and vigorously, in the certain hope of victory; when nothing is to be anticipated or feared from dissensions at home. The entire body of the people being prosperous and secure, through the influence of peace and order, they can set forth boldly against the enemy and become invincible, where salutary arts are aided by just laws. For men are better armed with equity than with weapons; and the prince should rather employ justice against an enemy than the soldier his javelin; and the success of the prince will be more conspicuous when a reputation for justice accompanies him, and soldiers who are well governed at home will be all the more formidable to a foe. It is a matter of common experience, that justice, which has protected the citizen, overwhelms the enemy; and that those prevail in foreign contests who enjoy domestic peace; and while the moderation of the prince insures temperance in the enforcement of the law, so the united support of the citizens promotes victory over the enemy. For the administration of the law is regulated by the disposition

and character of the king; from the administration of the law proceeds the institution of morals; from the institution of morals, the concord of the citizens; from the concord of the citizens, the triumph over the enemy. So a good prince ruling well his kingdom, and making foreign conquests, maintaining peace at home, and overwhelming his foreign adversaries, is famed both as the ruler of his state and a victor over his enemies, and shall have for the future eternal renown; after terrestrial wealth, a celestial kingdom; after the diadem and the purple, a crown of glory; nor shall he then cease to be king; for when he relinquished his earthly kingdom, and conquered a celestial one, he did not diminish, but rather increased his glory.

BOOK II.

CONCERNING THE CONDUCT OF CAUSES.

TITLE I. CONCERNING JUDGES AND MATTERS TO BE DECIDED IN COURT.

- I. *When Amended Laws should come in Force.*
- II. *The Royal Power, as well as the Entire Body of the People, should be Subject to the Majesty of the Law.*
- III. *It is Permitted to No One to be Ignorant of the Law.*
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- XIII.** *It shall be Lawful for No One to Hear and Determine Causes except Those Whom either the King, the Parties by Voluntary Consent, or the Judge, shall have Invested with Judicial Powers.*
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- XXVIII.** *Concerning the Power, conferred upon Bishops, of Restraining Judges who Decide Wrongfully.*
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I. When Amended Laws should come in Force.

In assigning their place to laws which have been amended, we have considered it proper to give them the most important rank, for, as clearness in the laws is useful in preventing the misdeeds of the people, so obscurity in their provisions interferes with the course of justice. For many salutary edicts are drawn up in obscure and contradictory language, and are instrumental in promoting the controversies of litigants; and, while they should put an end to chicanery, they, in fact, give rise to new sophisms and abuses. For this reason, therefore, litigation increases; disputes between parties are encouraged; the judges become undecided, so that, in attempting to dispose of false claims and charges, they are unable to form definite conclusions, as all seems perplexed and uncertain. And because all questions which arise in suits at law, cannot be disposed of in a few words, except those which have been determined in our presence; we have decided that certain laws should be amended in this book; that doubtful matters should be made clear; that profit should be extracted from those things that are evil; clemency from those that are mortal; clearness from those that are obscure; and that perfection should be given to those that are incomplete; whereby the people of our kingdom, whom our peaceful government alone restrains, may be checked and controlled, hereafter, by the aid of said amended laws. And therefore, these laws as amended, and approved by us, and our new decrees, as set forth in this book and its titles, as well as such as may be

subsequently added, shall be enforced from the second year of our reign, and the twelfth Kalends of November, and shall be binding thereafter upon all persons subject to our empire, irrespective of rank. Those laws, however, which we have promulgated against the offences of the Jews, we decree shall be valid from the date when they were confirmed by us.

THE GLORIOUS FLAVIUS RECESVINTUS, KING.

II. The Royal Power, as well as the Entire Body of the People, should be Subject to the Majesty of the Law.

The Omnipotent Lord of all, sole Founder and Provider of the means of human salvation, ordered the inhabitants of the earth to learn justice from the sacred precepts of the law. And, because the mandate of Divinity has been thus imposed upon the human race, it is fitting that all terrestrial creatures, of however exalted rank, should acknowledge the authority of Him whom even the celestial soldiery obey. Wherefore, if God should be obeyed, justice should be highly esteemed, which, if it were thus esteemed, would be constantly practised, as every one loves justice more truly and ardently when a feeling of equity unites him with his neighbor.¹ Willingly, therefore, carrying out the Divine commands, let us give temperate laws to ourselves and to our subjects; laws such as we and our successors, and the whole body of the people, may readily obey; so that no person of whatever rank or dignity may refuse to submit to the power of the law, which the necessity and will of the King has deemed it proper and salutary to inculcate.

¹ Preambles, such as the above, which are of frequent occurrence in this body of laws, show unmistakably its ecclesiastical origin, and the theocratic principles, which, at all times, dominated those who framed it. The Mosaic Code alone, among those of great antiquity, is constantly pervaded by similar religious sentiments; which, emanating from the high authorities of the Church, undoubtedly exerted great and beneficial influence over an ignorant and superstitious people. Such additions to legal enactments would seem strangely out of place at the present day.—[ED.]

FLAVIUS RECESVINTUS, KING.**III. It is Permitted to No One to be Ignorant of the Law.**

All true science declares that ignorance should be detested.¹ For while it has been written, "he need not understand who desires to act with propriety," it is certain that he who does not wish to know, despises an upright life. Therefore, let no one think that he can do what is unlawful because he was ignorant of the provisions of the laws, and what is sanctioned by them; for ignorance does not render him innocent, whom guilt has subjected to the penalties of the criminal.

FLAVIUS RECESVINTUS, KING.**IV. The Business of the King shall First be Considered, then that of the People.**

God, the Creator of all things, in his arrangement of the human form, placed the head above the body, and caused all the different members of the latter to originate from it, and it is, therefore, called the head; there being formed the brightness of the eyes, by which all things that produce injury can be discerned; there being born also the power of intelligence, through which the members connected with, and subject to, the head, may be either controlled or protected. For this reason it is the especial care of skilful physicians to provide the remedies for the head before treating the other members of the body; which, indeed, may not be thought unreasonable, when properly explained; because, if the head should be healthy, it is reasonable to suppose that the other members can be readily cured. For if disease attacks the head, health cannot be imparted by it to the members

¹ The first sentence of this chapter is directly at variance with the maxim subsequently inculcated with such diligence by the Church of Rome; through the rigid enforcement of which it long maintained its despotic empire, and which it still regards as one of the most important sources of its power: "Ignorance is the mother of Devotion."

It may be conjectured from the above, that the familiar legal axiom, "*Ignorantia legis neminem excusat*," already ancient, and well established in the seventh century, is probably as old as the law itself.—[ED.]

which are constantly being wasted by weakness. The most important duties of the prince are, therefore, the preservation of health and the defence of life; so that the proper method may be adopted in the conduct of the affairs of the people; and while the health of the king is cared for, the preservation of his subjects may be the better maintained.

THE GLORIOUS FLAVIUS RECESVINTUS, KING.

V. How the Avarice of the King should be Restrained in the Beginning, and How Documents Issued in the Name of the King should be Drawn Up.

Earthly greatness appears the more sublime when compassion for our neighbors is displayed; and, therefore, it should be the duty of every monarch to pay more attention to the safety of his subjects than to his own personal advantage. For the greater the number of his subjects, the greater the benefit to be derived by him from them; as, however much the king may desire to profit by his individual efforts alone, there is little to be gained therefrom. Hence, the well-being of the people, whose bounds are not defined by the will of one, but affect the prosperity of all, is directly concerned. Wherefore, that the favor of the prince may not seem to be manifested rather in words than in deeds, he should be attentive to the unspoken wishes of his subjects; and thus unsolicited compassion may often effect what otherwise crowded assemblies would hardly be able to obtain.

For the reason that, in former times, the unbridled greed of princes despoiled the people of their possessions, and the wealth of the state was persistently wrung from the misery of its citizens; as we have already given laws to the subject, we deem it in accordance with the teachings of the Holy Spirit to place restraints upon the exactions of the prince. Hence, after sincere deliberation, as well for our own glory as for that of our successors; God being our mediator; we decree that no king shall, by any means, extort, or cause to be extorted, any documents whatever in acknowledgment of any debt, whereby any person can unjustly, and without his