

OUTLINE — LAW SECTION 3

The Germanic Peoples and Their Codes

Germanic Language Groups:

<i>West</i>	<i>North</i>	<i>East</i>
OHG	ONorse	Gothic
OSax		
ONeth		
OFris		
OEng		

Germanic Kingdoms in 600:

<i>West</i>	<i>Center</i>	<i>East</i>
Anglo-Saxon	Saxons	Saxons
Franks	Franks	Thuringians
Visigoths	Lombards	Bavarians

Germanic Kingdoms in 486:

<i>West</i>	<i>Center</i>	<i>East</i>
Anglo-Saxon	Saxons	Saxons
Franks	Franks	Thuringians
Visigoths	Alemanni	? ? ?
	Burgundians	Ostrogoths
	Odoacer	

Position of the 'Germanic Tribes' c. 200 A.D.

<i>North Sea</i>	<i>Rhine-Weser</i>	<i>Elbe</i>	<i>Oder-Vistula</i>	<i>Scand.</i>
Angles	Franks	Alemanni	Goths	Norse
Saxons		Bavarians	Burgundians	
'Jutes'		Lombards	Vandals	
Frisians				

The Chief Monuments of Roman Law in the Period of the 'Germanic Kingdoms':

a. The *lex romana visigothorum (breviarium Alarici)* (Alaric II, 506)

Bibliog: *Lex romana visigothorum*, G. Haenel ed. (1845); *Breviarium Alarici*, M. Conrat (Cohn) ed. & trans. (1890)

b. The *lex romana burgundionum* (Gundobad 506)

Bibliog: *Leges Burgundionum*, ed. F. Bluhme (MGH Leges 3, 1863, repr. 1925); *Leges Burgundionum*, ed. L.R. von Salis (MGH Legum sec. 1, Leges nationum Germanicarum 2.1, 1892); *Gesetze der Burgunden*, F. Beyerle ed. (Germanenrechte Texte und Übersetzungen 10,

1936)

c. The so-called *edictum Theodorici* (?Theodoric the Ostrogoth, 493–507)

Bibliog: *Edictum Theodorici regis*, F. Bluhme ed. (MGH Leges 5, 1875)

Germanic Codifications in Areas of Strong Roman-Law influence:

a. The Visigoths (*lex Visigotorum, liber judiciorum, fuero juzgo* (first rec. Euric (466 X 484), others: Leowigild (568 X 586), Rekeswind (653 X 672), Erwig (680 X 687).

Bibliog: *Formulae Visigothicae*, in *Formulae Merowingici et Karolini aevi*, K. Zeumer ed.

(MGH Legum sec. 5, 1886); *Gesetze der Westgothen*, E. Wohlhaupter ed. & trans.

(Germanenrechte, Texte u. Übersetzungen 11, 1936); *Leges Visigothorum antiquiores*, K.

Zeumer ed. (MGH Fontes juris Germanici antiqui, 1894); *Leges Visigothorum*, K. Zeumer ed.

(MGH Legum sec. 1, Leges nationum Germanicarum 1, 1902); *El Código de Eurico*, ed. A.

d'Ors (*Estudios Visigóticos* 2, 1960)

b. The Burgundians (*lex Burgundionum* (1st rec. [first recension] before 516))

Bibliog: As above for the *lex romana Burgundionum* plus *The Burgundian Code*, K. Drew trans.

(1949) (*lex Burgundionum* only)

c. The Lombards (Rothair (643), Liutprand (713 X 735), with various additions)

Bibliog: *Leges Langobardorum*, F. Bluhme, A. Boretius edd. (MGH Leges 4, 1868, repr. 1925);

Edictus ceteraque Langobardorum Leges cum constitutionibus et pactis principum

Beneventorum, F. Bluhme ed. (MGH Fontes iuris Germanici antiqui, 1869); *Die Gesetze der*

Langobarden, F. Beyerle ed. & trans. (1947); *The Lombard Laws*, K. Drew trans. (1973)

Germanic Codifications in Areas of Weak Roman-Law Influence:

a. The Salic Law (*pactus legis salicae* (1st rec. c. 500)

Pactus legis Salicae I, K. Eckhardt ed., 2 vols. (1=Einführung u. 80 Titel-Text;

2=Systematischer Text) (Germanenrechte n.f., Westgermanisches Recht 1.1, 1.2, 1954–1957);

Pactus legis Salicae II, K. Eckhardt ed., 2 vols. (1=65 Titel-Text; 2=Kapitularien u. 70 Titel-

Text) (*id.* 2.1, 2.2, 1955–1956); *Lex Salica 100 Titel-Text*, K. Eckhardt ed. (*id.* 3, 1953); *Gesetze*

des Merowingerreiches 481–714, K. Eckhardt ed. & trans., vol. 1 (=Pactus legis Salicae,

recensiones Merovingicae) (Germanenrechte Texte u. Übersetzungen, 2d ed. 1955); *Gesetze des*

Karolingerreiches 714–911, *id.* (*id.* 2d ed. 1953); *Laws of the Salian and Ripuarian Franks* T.J.

Rivers trans. (AMS studies in the Middle Ages 8, 1986)

b. The Anglo-Saxon Laws (Aethelberht (c. 600), Hlothere & Eadric (c. 680), Wihtred (c. 695), Ine (688 X 694), Alfred (c. 900), etc.)

Bibliog: *Die Gesetze der Angelsachsen*, F. Liebermann ed., 3 vols. (1903–1916); *The Laws of the*

Earliest English Kings, F. Attenborough ed. & trans. (1922); *The Laws of the Kings of England*

from Edmund to Henry I, A. Robertson ed. & trans. (1925); *Gesetze der Angelsachsen 601–925*,

K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 13, 1958); *Leges Anglo-*

Saxonum 601–925, K. Eckhardt ed. (Germanenrechte n.f. Westgermanischesrecht 4, 1958)

c. The Alamannian Law (*Pactus* (7th c.); *Leges* (712 X 725))

Bibliog: *Leges Alamannorum*, K. Eckhardt ed., 2 vols. (1=Einführung u. Recensio Chlothariana (*Pactus*); 2=Recensio Chlothariana) (Germanenrechte n.f. Westgermanisches Recht 5–6, 1958–1962); *Gesetze der Merowingerreiches 481–714*, K. Eckhardt ed. & trans., vol. 2 (=Pactus legis Alamannorum: Recensio Chlothariana) (Germanenrechte Texte u. Übersetzungen, 2d ed. 1957); *Gesetze des Karolingerreiches 714–911, id.*, vol. 3 (=Recht der Alemannen) (*id.* 2d ed. 1953)

d. The Bavarian Law (first recension [1st rec.] ? 743 X 744)

Bibliog: *Lex Baiuvariorum*, J. Merkel ed. (MGH *Leges* 3, 1863); *Lex Baiuvariorum*, E. Frhr. von Schwind (MGH *Leges nationum Germanicarum* 5.2, 1926); *Recht der Bayern*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.4, 1934)

Carolingian Codifications:

a. The Ripuarian Law (1st rec. 9th c., contents date back to 7th)

Bibliog: *Lex Ribuaria*, F. Beyerle, R. Buchner edd. (MGH *Leges nationum Germanicarum* 3.2, 1954); *Lex Ribuaria*, K. Eckhardt ed. (Germanenrechte n.f., Westgermanisches Recht 7–8, 1959–1966); *Recht der Ribuarischen Franken*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.2, 1934); *Laws of the Salian and Ripuarian Franks* T.J. Rivers trans. (AMS studies in the Middle Ages 8, 1986)

b. The Chamavian Franks (early 9th c.)

Bibliog: *Lex Francorum Chamavorum*, R. Sohm ed. (MGH *Leges* 5, 1875–1889); *Lex Ribuaria et lex Francorum Chamavorum*, R. Sohm ed. (MGH *Fontes juris Germanici antiqui* [6], 1883); *Das Recht der chamavischen Franken*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.7, 1934)

c. The Frisian Law (rec. prob. early 9th c. of very diverse material, some obviously pagan)

Bibliog: *Lex Frisonum*, K. Frhr. von Richthofen ed. (MGH *Leges* 3, 1863); *Recht der Friesen*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.8, 1934)

d. The Saxon Law (1st rec. early 9th c.)

Bibliog: *Leges Saxonum*, K. Frhr. von Richthofen, K. F. von Richthofen edd. (MGH *Leges* 5, 1875–1889); *Leges Saxonum u. Lex Thuringorum*, Cl. Frhr. von Schwerin ed. (MGH *Fontes iuris Germanici antiqui* [4], 1918); *Recht der Sachsen*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.5, 1934)

e. The Thuringian Law (1st rec. early 9th c.)

Bibliog: *Lex Thuringorum*, K. F. von Richthofen ed. (MGH *Leges* 5, 1875–1889); *Leges Saxonum u. Lex Thuringorum*, Cl. Frhr. von Schwerin ed. (MGH *Fontes iuris Germanici antiqui* [4], 1918); *Recht der Thuringer*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.6, 1934)

1. THE CODE OF AETHELBERHT AND THE BURGUNDIAN CODE COMPARED

1. Why is this stuff so hard?

- a. Writing does not come easy to these guys. In the case of both Aethelbert's Code and the Burgundian Code, we have reason to believe that neither of them was written by a native-speaker of the language. The Burgundian code was not even written in Burgundian. It was written in Latin, though it's a pretty queer Latin.
 - b. The problem of the self-understood in legal history. This is a perpetual problem, even with highly literate peoples. By and large people don't write down what everyone knows.
2. So the best way we have to try to begin to figure out what is going on is to range widely and make comparisons.
 3. The first kind of comparison and the most dangerous is the one made forward or backward in time. One of the great concepts that we find in later English law is the concept of the king's peace. It is striking that this concept of peace occurs what is now our very first English law. It says literally "church peace two fold; assembly (*mæthl*) peace two fold." Now I would suggest that we might posit as a working hypothesis that there is a notion that a peace adheres in certain kinds of activities, like going to church, and that extra compensation payment is owed is someone busts up a church gathering. There's support for this in other A-S texts; there may even be support for this in the notion of *mund* that we talked about last week. Protection and peace may not be quite the same thing but they are related. There's even more here. The word *mæthl*, which your translation gives as assembly, is a perfectly good Germanic word, with cognates in Frankish and in other Germanic languages as well, and there's no reason to believe that there's anything new in Abt's time about the people coming together in assemblies. In pagan Iceland it was called the *Allthing*. What is new in Abt's time is churches; and it is hard not see here a very early example of legal reasoning by analogy. What do we do with a guy who busts up a church? The same thing that we do with a guy who busts up an assembly. Make him pay two-fold.
 4. Now another very simple and also somewhat dangerous way of making comparisons is to look at what contemporaries or near contemporaries did when they were writing in other languages. We spoke last week of Bede, who writes in the early 8th century and in Latin, calls Aethelbert's code: *decreta judicialia* = (in Spain) *forum iudicum* / *fuero juzgo*, = *domas*.
 5. Another way of making comparisons is to look at similar laws and see if the similarities and the differences tell us anything. Most of what we have is in the form of compensation payments, and we are mightily ill-informed about how the system worked or didn't (although something must have happened in the *mæthl*), but we do have what they thought things were worth and we can compare different compensation payments to get some idea of value. We also can get something out of the way that they organized them. Aethelbert's Code is quite well organized; the Burgundian Code is not, but its organization is mirrored in the *Lex Romana Burgundionum*.
 6. The broader we go the more dangerous the comparisons are, but with so little to go on we have to range widely. In comparing Abt to the Burgundian code we're stretching across a quite long space over some gap in time from an area in which Roman law influence is weak to one in which it is quite strong, from one in which the overwhelming majority of the population is probably Germanic to one in which the Germanic people are a conquering minority, from one Germanic language family to a quite distant cousin. Much of what we

see will be by way of contrast. Certainly the two codes have nothing in common with regard to their organization.

7. I'd like to close by offering some comparisons between the two codes in their laws about marriage, which forms a part of the rather extensive set of provisions on women, Abt 72-77.2. I offer two translations, the one by Lisi Oliver that is in your materials and an older one, by a man named Attenborough.

[Oliver] 77. If a person takes a maiden by force: to the owner [of her protection] 50 shillings, and afterwards let him buy from the owner his consent [to marry her].

77.1. If she should be betrothed to another man by goods [i.e., the bride-price has been paid], let him pay 20 shillings [to that man as well].

77.2. If return [of the stolen maiden] occurs, 35 shillings and 15 shillings to the king.

[Attnb] 82. If a man forcibly carries off a maiden, [he shall pay] 50 shillings to her owner, and afterwards buy from the owner his consent.

83. If she is betrothed, at a price, to another man, 20 shillings shall be paid as compensation.

84. If she is brought back, 35 shillings shall be paid, and 15 shillings to the king.”

The two translations do not differ substantially. Oliver spells out some of the implications, but she does so in brackets. There's obviously a problem with the word used c. 77.1 that Oliver translates as goods and Attenborough as price (*sceat*).

Now take a look at L.B. tit. 12.

L.B. “12.1. If anyone shall steal a girl, let him be compelled to pay the price set for such a girl ninefold, and let him pay a fine to the amount of twelve solidi.

12.2. If a girl who has been seized returns uncorrupted to her parents, let the abductor compound six times the wergeld of the girl [would this be on a 150, 200, 300 scale?] (the text does not say *wergeld*; it says *petium*); moreover, let the fine be set at twelve solidi.

12.3. But if the abductor does not have the means to make the above-mentioned payment, let him be given over to the parents of the girl that they may have the power of doing to him whatever they choose.

12.4. If, indeed, the girl seeks the man of her own will and comes to his house, and he has intercourse with her, let him pay her marriage price (*pretium nuptiale*) threefold; if moreover, she returns uncorrupted to her home, let her return with all blame removed from him.

12.5. If indeed a Roman girl, without the consent or knowledge of her parents, unites in marriage with a Burgundian, let her know that she will have none of the property of her parents.”

In abduction cases, the Burgundians have a clear distinction based on the will of the woman. Do the A-S too? That depends on what we make of Abt 77 (82-84).

Back to Abt 76 with the two translations:

[Oliver] 76. If a person buys a maiden with a [bride-]price, let the bargain be [valid], if there is no deception.

76.1 If there is deception, afterwards let him bring [her to her] home, and let him be given his money.

76.2 If she bears a living child, let her obtain half the goods [belonging to the household] if the husband dies first.

76.3 If she should wish to dwell with the children, let her obtain half the goods [of the household].¹

76.4 If she should wish to take a man [i.e., another husband], provision as for one child [i.e., the inheritance is split equally between the mother and each of the children].

76.5 If she does not bear a child, her paternal kin should obtain [her] property and the morning-gift.²

[Attnb] 77. If a man buys a maiden, the bargain shall stand, if there is no dishonesty.

§ 1. If however there is dishonesty, she shall be taken back to her home, and the money shall be returned to him.

78. If she bears a living child, she shall have half the goods left by her husband, if he dies first.

79. If she wishes to depart with her children, she shall have half the goods.

80. If the husband wishes to keep [the children], she shall have a share of the goods equal to a child's.

81. If she does not bear a child, [her] father's relatives shall have her goods, and the "morning gift."

The key difference between the two translations is that Attenborough breaks up the provisions on marriage and hence makes 76.3 and 76.4 refer to divorce. We can't get into the details, but it is not obvious that he is wrong.

Now let's take a look at L.B. tit. 34 (Mats. p. IV-24):

"1. If any woman leaves (puts aside) her husband to whom she is legally married, let her be smothered in mire.

2. If anyone wishes to put away his wife without cause, let him give her another payment such as he gave for her marriage price and let the amount of the fine (*multae nomine*, perfectly classical; it may be a loan word from Sabine) be twelve solidi.

3. If by chance a man wishes to put away his wife, and is able to prove one of these three crimes against her, that is, adultery, witchcraft, or violation of graves, let him have full right to put her away: and let the judge pronounce the sentence of the law against her, just as should be done against criminals.

4. But if she admits none of these three crimes, let no man be permitted to put away his wife for any other crime. But if he chooses, he may go away from the home, leaving all household property behind, and his wife with their children may possess the property of her husband."

The Burgundians are clearly much tougher on divorce than are the A-S. This assumes that Abt 76.3 and 76.4 deal with divorce. If they don't, we don't know what Abt does with divorce, but maybe that is significant in itself. In either case do 76.3 and 76.4 help to

interpret the A-S provision on sale?

L.B. “42.2 [Mats. p. IV-26]. Let that remain in effect which has been stated previously concerning the morning gift (*moregengeba, morginegiva*).”

Cf. Abt 76.5 (*morgengyfe*). They’ve certainly got the word; whether the concept is the same as it is among the A-S is a different story. Unfortunately we may not have what has been stated before. This is the first time that the word is mentioned in the L.B; the question is whether a previous Latin term refers to the same institution. We can’t solve that problem in the time that we have here, but we can, nonetheless, make a start on a comparison. We might conclude that the provisions on marital payments are complicated. They can be fit into the same general pattern, but the question is whether we are forcing them if we do so.

II. WHAT HAPPENS WHEN THE TWO CULTURES COME TOGETHER?

1. Hence, we now have three starting points: Roman law, church law, and Germanic law.
2. Nicholas I to the Bulgarians

Avoiding the verbiage that would be necessary to rehearse the custom that you say that the Greeks have in marital unions, we will strive immediately to show you the usage that the Holy Roman Church had of old and still has in this kind of union. Our people, both men and women, do not wear on their heads filigree of gold or silver or any other kind of metal when they contract nuptial covenants, but after espousals, which are the promised covenants of future nuptials,¹ are celebrated by the consent of those who contract these things and with that of those in whose power they are, and after the espoused man gives earnest to the espoused woman by placing a ring on her finger of faith, and [after] he has handed over to her before those who are invited the *dos*² that was agreed on with a writing containing this thing, either soon or at an appropriate time, lest such a thing be presumed to be done before the time defined by law,³ both are led to the nuptial covenants. And first they stand in the church of God with offerings, which they ought to offer to God by the hand of the priest, and then at length they receive the blessing and the heavenly veil, after the example of the Lord who blessed the first men in paradise, saying “Increase and multiply, etc.” [*Genesis* 1:28: “And God blessed them and said: ‘Increase and multiply’, etc.”] Indeed, Tobias, also, before he came together with his wife, is said to have prayed to the Lord with her. [*Tobias* 8:6–10] Nevertheless, those who are marrying for the second time do not receive the veil. Afterwards they leave the church carrying crowns on their heads, crowns that are commonly kept in the church.⁴ And the nuptial feast having been celebrated, they direct their way to

¹ This is probably a reference to D.23.1.1: “Espousals are the proposal and promise back of future nuptials.” If it is, it is the last time that the *Digest* is cited in the West until Ivo of Chartres does so in the late 11th century. The following material on parental consent may also be from D.23.1, but it need not be, because the same requirement is to be found in JI.1.10pr (*Materials* I-6).

² *Dos* in classical Roman law was dowry, a payment made by the bride or the bride’s father (or relatives) to the groom. Here, a payment by the bridegroom seems to be contemplated. Such payments were known to the classical Romans, at least in the later Empire, but they are never called *dos* but “gift before nuptials” (*donatio ante nuptias*). On the basis of this text, it has been suggested that the Germanic custom of the husband’s making a marriage payment had penetrated as far south as Rome in the mid-ninth century.

³ There was no fixed period in Roman law that had to elapse between the espousal and the nuptials. This is either a reference to the minimum ages for marriage fixed by Roman law (12 for the bride, 14 for the groom) or it is a reference to the period fixed by the agreement of espousals (the word *lex* being used in Roman law not only for laws passed by the Roman people but also those to which parties bind themselves by private agreement).

⁴ Nicholas does not say how these crowns differ from those that he says the Greeks wear and the Romans do not.

leading an undivided life thereafter,⁵ the Lord willing. These are the laws of nuptials (*iura nuptiarum*); these are the solemn pacts of marriage unions (except for other things that I do not at present remember). We do not say, however, that it is a sin if all of these things are not present in a nuptial covenant, as you say that the Greeks are instructing you, particularly when such great poverty can constrain some people that they do not have the means to prepare these things, and for this [reason], **the consent alone of those whose joining is at stake suffices according to the laws.**⁶ **If this consent alone is lacking, everything else, even if it is accompanied by carnal union, is frustrated, as the great doctor John Chrysostom testifies when he says “Carnal union does not make marriage but will.”**⁷

3. 74T (i.e., The Collection in 74 Titles, a canonical collection written sometime between 1050 and 1073 in Italy, of which more tomorrow):
 - a. TITLE 62: ON LAWFUL MARRIAGES *Evaristus to all bishops*. A marriage cannot otherwise be legitimate unless the wife is sought from those who have lordship over the woman and by whom she is protected; and she is espoused by her nearest kin and lawfully dowered; and she is sacerdotally blessed at the proper time with prayers and offerings by a priest; and, accompanied by bridesmaids and escorted by those closest to her, she is solemnly given and received at a suitable time. Let them spend two or three days in prayer and preserve their chastity, so that good offspring might be produced, and they may please the Lord and beget not bastard sons, but lawful and legitimate heirs. Therefore, most beloved sons, know that marriages performed in this manner are lawful; but have no doubt that unions made otherwise are not marriages, but are adulteries, concubinages, lusts or fornications rather than lawful marriages, unless full consent is given and lawful vows are made.
 - b. TITLE 63: ON MARRIAGES FOR SOME REASON SEPARATED *Bishop Leo to Bishop Nicetas of Aquileia*. The scourge of war and the terrible onslaughts of hostility have so disrupted some marriages that wives have been left all alone when their husbands were taken prisoners of war, and because they came to believe that their husbands were either dead or that they would never be released from their captivity, they entered another union because of their own need and anxiety. If ever any of those who were considered dead return, we should of necessity believe that the unions of

⁵ Perhaps an echo here of the definition of nuptials in JI.1.9.1: “Nuptials, moreover, or matrimony is the joining of man and woman, involving an undivided habit of life.”

⁶ It is probably significant that Nicholas says “according to the laws” (*leges*) and not “according to the canons” (*canones*), i.e., he is referring to Roman law.

⁷ Not by John Chrysostom but by an anonymous author of a collection of homilies on Matthew’s Gospel. The mistaken attribution is old, and probably antedates Nicholas. That Nicholas is citing a great father of the Greek Church in the context of an argument with the Greeks will not escape notice. In context, this passage is less powerful than it seems because the author of the homily is arguing that separation without remarriage does not violate the prohibition on divorce found in *Matthew* 19:9. See C.27 q.1 c.1, quoted below.

⁸ The reference may be to Novel 128.40.

⁹ Matt. 19:6.

¹⁰ Matt. 5:32.

¹¹ Matt. 19:5.

¹² Gilchrist adds ‘both’ here, without warrant in the Latin text.

¹³ 1 Cor. 7:4.

¹⁴ Matt. 5:32.

their lawful marriages should be restored and, after the evils which the hostility brought have been removed, each should have what he lawfully had. However, no one should be judged culpable and considered an intruder into another's right if he married the wife of a husband who was thought no longer to exist. If, however, wives are so enraptured with love for their second husbands, that they prefer to live with them rather than return to their lawful union, they are rightly to be censured so that they are deprived of ecclesiastical fellowship until they return to their lawful union.

- c. TITLE 64: THAT MARRIAGES MUST NOT BE DISSOLVED FOR THE SAKE OF RELIGION. *Gregory to the Patrician Theotista*. There are some who say that marriages ought to be dissolved for the sake of religion. Truly, it must be known that even if human law permitted this,⁸ nevertheless divine law prohibited it. For the Truth himself says, "What God joined let no man separate."⁹ He also says, "A man is not allowed to put away his wife, except by reason of fornication."¹⁰ Who, therefore, would contradict this heavenly legislator? We know that it is written, "They shall be two in one flesh."¹¹ If, therefore, husband and wife are one flesh and for the sake of religion the husband dismisses his wife or the wife her husband, leaving them to remain in this world or even to move to an illicit union, what is this religious conversion when one and the same flesh¹² in part moves to continence and in part remains in pollution? If they both agree to lead a life of continence, who would dare fault them? But if the wife does not follow the continence which the husband seeks, or the husband refuses what the wife seeks, the union may not legally be broken, because it is written, "The wife does not have the power of her body but the husband; and similarly the husband does not have the power of his body but the wife."¹³
- d. LIKEWISE ABOUT THE SAME MATTER. *Gregory to the Notary Adrian of Palermo*. The woman Agathosa has complained that her husband was converted to the monastery of the Abbot Urbino against her will. Therefore, we order your honour to conduct a diligent inquiry, lest perchance he was converted by her wish or she herself promised to change. And if he learns this was so, let him both arrange for the husband to remain in the monastery and compel the wife to change as she promised. If, indeed, it is none of these, and you find that the aforesaid woman did not commit any crime of fornication on account of which it is lawful to dismiss a wife, in order that his conversion should not be an occasion of damnation to the wife left in the world, we wish you to return her husband to her even if he has already been tonsured, dismissing all excuses, because although the secular law orders that a marriage can be dissolved for the sake of conversion, even if one party is unwilling, nevertheless the divine law does not permit this to happen. Except for fornication it in no way allows a husband to dismiss the wife¹⁴ because after the consummation of marriage husband and wife are made one body, which cannot be partly converted and partly remain in this world.
- e. LIKEWISE ABOUT THE SAME MATTER. *Gregory to Felix, bishop of Siponto*. It has come to our attention that your nephew Felix seduced the daughter of Evangelus your deacon. If this is true, although he ought to be punished with the full force of the law, we want the rigour of the law to be somewhat relaxed, in this way, that is, that either he should take the woman he seduced as his wife or, if he considers that he must refuse this, he should be severely and corporally punished and excommunicated, and put away in a monastery where he should do penance and from which he shall have no right to depart

without permission.