Law and Society in the Age of Theoderic the Great

A Study of the Edictum Theoderici

SEAN D. W. LAFFERTY

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This book explores the evolution of Roman law and society in Italy from 493, with the proclamation of the Ostrogoth Theoderic the Great as King, until about 554, when the eastern Emperor Justinian was able to re-establish imperial authority in the region. Drawing upon evidence from a variety of legal and historical sources, it investigates how Theoderic and his successors attempted to govern the peninsula in the wake of foreign invasions, the collapse of civic administration, the break-up of the Mediterranean economy, and the emergence of new forms of religious and secular authority. It challenges long-held assumptions as to just how peaceful, prosperous, and Roman-like Theoderic's Italy really was. Its primary focus is the *Edictum Theoderici*, a significant but largely overlooked document that offers valuable historical insights into the complex and sometimes contested social, political, and religious changes that marked Italy's passage from Antiquity into the Middle Ages.

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Abbreviations

Amm. Marc.	Ammianus Marcellinus, *Res Gestae*
Anon. Val.	*Anonymi Valesiani pars posterior*
Cass., *Hist.*	Cassiodorus, *Historia ecclesiastica tripartita*
Cass., *Var.*	Cassiodorus, *Variae*
CCSL	*Corpus Christianorum, Series Latina*
CG	*Codex Gregorianus*
CH	*Codex Hermogenianus*
CJ	*Codex Justinianus*
CJC	*Corpus Iuris Civilis*
CLA	*Codices Latini Antiquiores*
Collatio	*Mosaicarum et Romanorum Legum Collatio*
Confess.	Augustine of Hippo, *Confessions*
Cons. Phil.	Boethius, *Consolation of Philosophy*
CSEL	*Corpus Scriptorum Ecclesiasticorum Latinorum*
CTh	*Theodosiani Libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum Pertinentes*
Dig.	*Digesta*
EMC/CV NS	*Echos du Monde Classique/Classical Views New Series*
ÉFR	*École française de Rome*
EHR	*English Historical Review*
Ep.	*Epistulae*
ET	*Edictum Theoderici*
FIRA	*Fontes Iuris Romani Anteiustiniani*
Fr.	*Fragmenta*
FV	*Fragmenta Vaticana*
Gai., *Inst.*,	Gaius, *Institutiones*
Get.	Jordanes, *Romana et Getica*
Hist. Goth.	Isidore of Seville, *Historia Gothorum Wandalorum Sueborum*

Inst.	*Institutiones*
Itpr.	*Interpretationes*
JECS	*Journal of Early Christian Studies*
JRA	*Journal of Roman Archaeology*
JRS	*Journal of Roman Studies*
LRE	Arnold H. M. Jones, *The Later Roman Empire 284–602: A Social, Economic and Administrative Survey*
LRV	*Lex Romana Visigothorum*
LV	*Leges Visigothorum*
MEFRA	*Mélanges de l'École française de Rome: Antiquité*
MGH	*Monumenta Germaniae Historica*
MGH AA	*MGH Auctores Antiquissimi*
MGH SRM	*MGH Scriptores rerum merovingicarum*
MGH SS	*MGH Scriptores*
Nat. Hist.	Pliny, *Natural History*
Not. Dig.	*Notitia Dignitatum omnium tam civilium quam militarium*
Nov. Anth.	*Novellae Anthemii*
Nov. Maj.	*Novellae Majoriani*
Nov. Val.	*Novellae Valentiniani*
Pan. Th.	Ennodius, *Panegyricus dictus clementissimo regi Theoderico*
PBSR	*Papers of the British School at Rome*
P-Ital	*Die nichtliterarischen Lateinischen Papyri Italiens aus der zeit 445–700*
PL	*Patrologiae Cursus Completus, Series Latina*
PLRE	*The Prosopography of the Later Roman Empire*, vol. 2: AD 395–527
Proc., *BG*	Procopius, *De Bello Gothico*
PS	*Pauli Sententiae*
RE	*Real-Enclopädie der classischen Altertumswissenschaft*
Reg. Ulp.	*Regulae Ulpiani*
RHDFE	*Revue historique de droit français et étranger*
RHS	*Royal Historical Society*
RIDA	*Revue internationale des Droits de l'Antiquité*
SDHI	*Studia et Documenta Historiae et Iuris*
TAPA	*Transactions of the American Philological Association*
V. Epiph.	Ennodius, *Vita Ephiphanii*
ZSS (RA)	*Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)*

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Introduction

This book explores the evolution of Roman law and society in Italy from 493, with the proclamation of the Ostrogoth Theoderic the Great as King, until about 554, when the eastern Emperor Justinian was able to re-establish imperial authority in the region. Drawing upon evidence from a variety of materials, including extant laws, records of court cases, literary and historical sources, it investigates how Theoderic and his barbarian successors attempted to maintain peace and order in the peninsula in the wake of foreign invasions, the collapse of civic administration, the break-up of the Mediterranean economy, and the emergence of new forms of religious and secular authority. The primary focus is the *Edictum Theoderici*, or *Edict of Theoderic* (hereafter simply *ET*), a largely overlooked law code of unknown date and disputed origin comprising 154 provisions, a prologue, and epilogue. The purpose is to situate this text within its proper historical and legal context, to understand better the processes involved in the creation of new law in the post-Roman world, as well as to appreciate how the law reflected the complex and sometimes contested social, political, and religious changes that marked Italy's passage from Antiquity into the Middle Ages.

A brief history of Italy in Late Antiquity

By the beginning of the sixth century Italy had long been in a period of decline. As early as the third century the peninsula was experiencing significant economic hardship – a situation brought about by the decreasing availability of individuals and resources to work the land, and the tendency of the state to over-tax in a bid to compensate for diminishing revenues. Economic decline was hastened by the barbarian invasions of the late fourth and fifth centuries, which had thoroughly and permanently overturned imperial political control in the other Roman provinces. By 476, the western Roman Empire had become unrecognizable as a political or territorial entity; nearly all of its provinces had been occupied by barbarian forces, and

its physical boundaries were reduced to the Italian peninsula. Indeed, this was a Roman Empire in name alone, and so it was fitting that in the same year the last western Emperor, the aptly named Romulus Augustulus ("Little Augustus"), was deposed by Odovacer, a general of Germanic extraction who in turn declared himself King – an event that has traditionally symbolized the end of the Roman Empire in the West. Like Britain, France, Spain, and North Africa before it, Italy had devolved into a barbarian kingdom.

The process by which the provinces of the western Roman Empire came under the control of barbarian warlords and Kings was not one of peaceful transition, but rather one of unprecedented upheaval. Indeed, the period from the battle of Adrianople in 378 to the removal of Romulus Augustulus was one of irrevocable change for the worse for the western Empire.[1] Contemporary and later sources stressed the destructive nature of the barbarian invasions that brought down the imperial administration in the provinces of Britain, Gaul, Africa, and Italy over the course of the fifth century.[2] Italy, in particular, suffered heavily. Between 401 and 412, the peninsula was subjected to sporadic Gothic incursions that left widespread damage. In 410, Rome itself, the true symbol of eternal imperial authority, a city which had not been invaded by a foreign army in roughly eight centuries, was sacked by the Visigothic King Alaric. News of the event reverberated around the Mediterranean world in a violent demonstration of how helpless the western Empire had become in the years following the death of the Emperor Theodosius I in 395. It stunned the imagination of this and later centuries and spurred Augustine, Bishop of Hippo on the coast of North Africa, to compose his apocalyptic *City of God*.

Whatever the psychological effects of the Visigothic looting of Rome, the imperial regime in Italy proved itself remarkably resilient once the threat of a barbarian domination of the peninsula had been removed. Within a year of the sack, the Emperor Honorius dispatched forces to restore imperial

[1] For excellent surveys on Rome's dissolution and disintegration in the West, with different emphases on the role played by the barbarian invaders, see Edward A. Thompson, *Romans and Barbarians: The Decline of the Western Roman Empire* (Madison, WI, 1982); Ian Wood, "The Fall of the Western Empire and the End of Roman Britain," *Britannia* 18 (1987), 251–62; Averil Cameron, *The Later Roman Empire,* AD *284–430* (Cambridge, MA, 1993; repr. 2001); Averil Cameron, *The Mediterranean World in Late Antiquity,* AD *395–600* (London, 1993); Michael E. Jones, *The End of Roman Britain* (Ithaca, NY 1996); Walter Pohl (ed.), *Kingdoms of the Empire: the Integration of the Barbarians in Late Antiquity* (New York, 1997); Bryan Ward-Perkins, *The Fall of Rome and the End of Civilization* (Oxford, 2005). For a general summary, see Thomas F. X. Noble (ed.), *From Roman Provinces to Medieval Kingdoms* (London/New York, 2006), 1–27; Clifford Ando, "Decline, Fall, and Transformation," *Journal of Late Antiquity* 1.1 (2008), 31–60.

[2] Ward-Perkins, *The Fall of Rome*, chapter 2.

control in at least the southern parts of Gaul; eastern and northern sections remained yet to be resuscitated. Britain, however, had to be left in practice to fend for itself.[3] Nevertheless, the events of 410 were but symptoms of deeper problems within the western half of the Empire, the consequences of which led to a second, much more violent and systematic sack of the Eternal City at the hands of the Vandals in 455, and ultimately the capitulation of the western imperial administration to Odovacer in 476. The main policy of the late Roman government for dealing with barbarian aggression was to grant the offending tribe an area of settlement within imperial territory in return for military service. First made in 382, such grants became a regular occurrence. Their result by the 450s was the emergence of politically autonomous units of Goths, Vandals, and Burgundians within the provinces of the western Empire. Where once there was a *res publica* united under a single authority, there were now competing *regna* ruled by generalissimos and Kings who ultimately retained the upper hand.[4] Of course, barbarian invasions were not the only problem. Throughout the fifth century the western Empire was plagued by bouts of civil war and social unrest. At a time when the Empire required a concerted and united effort against barbarian invaders, what it got instead were usurpations and rebellions, which often were prioritized over foreign threats.

Significantly, the deposition of Romulus Augustulus caused remarkably little stir among contemporary sources. It was, in the words of the Italian historian Arnaldo Momigliano, the "noiseless fall of an Empire."[5] That this event passed almost unnoticed is because the western Empire, and the associations of Roman power that came along with it, had long since disappeared in all but name by the time Odovacer removed the Little Augustus. From 410 onwards, successive Emperors became increasingly incapable of holding on to territory as a consequence of growing military threats and barbarian invasions. In terms of constitutional theory, real authority in all areas relating to the army, military strategy, the making of major political appointments, and civic administration was exercised by imperial appointees in the form of Masters of Soldiers. By the early fifth century, supreme military command was in the hands of barbarian warlords. Odovacer was no different from these generalissimos, save for the fact

[3] Jones, *The End of Roman Britain*; Wood, "The Fall of the Western Empire," 251–62.

[4] On the general subject of barbarian integration into the Roman Empire, see Pohl, *Kingdoms of the Empire*.

[5] Arnaldo Momigliano, "La caduta senza rumore di un impero nel 476 d.C," *Annali della Scuola Normale Superiore di Pisa*, ser. III, vol. III.2 (1973), 397–418 (repr. in his collected essays *Sesto contributo alla storia degli studi classici e del mondo antico*, I (Rome, 1980), 159–79).

that he, like Theoderic afterwards, chose to call himself King rather than Emperor.[6]

Writing to the eastern Emperor Zeno (474–91) shortly after his ousting of the enfeebled Romulus Augustulus, Odovacer proclaimed that Italy no longer required its own Emperor. Instead, he would rule as King and patrician, subordinate to the Emperor's authority. Zeno eventually agreed to this arrangement as he had a number of political and military challenges at home that required his attention. One such problem was how to manage the various warlike bands that had taken up residence in the Balkan provinces of Pannonia, Moesia, and Thrace following the disintegration of Attila's Hunnic Empire in the 450s. Zeno's policy was to play these groups off against each other, using one to fight another. But such diplomatic double-dealing did not alleviate the threat of attack, and Constantinople was frequently besieged by these warbands throughout the 470s and 480s.[7]

One of these warbands was a collection of soldiers and their families based in Pannonia and commonly referred to as the Ostrogoths, or Eastern Goths, as a way of distinguishing them from the Visigoths of Spain and the Gallic kingdom of Toulouse. Their leader was Theoderic, son of Thiudimur, who claimed descent from a royal clan called the Amals. Relying upon the brief *History of the Goths* (or *Getica*) written in Constantinople by Jordanes around 551, many historians have accepted the claim of Theoderic and his family to be of Amal descent. However, it has also been suggested that this was a spurious claim, intended to give *de iure* legitimacy to Theoderic's rule. Nevertheless, in the aftermath of the collapse of the Hun supremacy north of the Danube that resulted from the death of Attila and the defeat of his sons by their subject peoples in the battle of the Nedao River in 454, a number of Germanic groups were admitted into the Empire. Among them were the followers of a certain Valamer, who were settled in Pannonia in the western Balkans by agreement with the Emperor Marcian (450–7). Valamer was killed soon afterwards and his position was taken by his brother Thiudimur, Theoderic's father, thus giving him a claim of legitimacy to rule over the Goths.

Theoderic spent his youth as a hostage at the imperial court at Constantinople from 461 until his return to the Balkans in 471. For the next fourteen years he attempted, through a combination of diplomacy and threat, to secure a permanent homeland for his Gothic followers. In 488,

[6] Penny MacGeorge, *Late Roman Warlords* (Oxford, 2002).

[7] Patrick Amory, *People and Identity in Ostrogothic Italy, 489–554*, Cambridge Studies in Medieval Life and Thought: Fourth series (Cambridge, 1997), 7.

perhaps as a means of getting rid of him, Zeno petitioned Theoderic to invade Italy as *patricius et magister militum praesentalis* and remove Odovacer. A contemporary historian, the so-called Anonymous Valesianus, reports that pending a successful outcome of his campaign, Theoderic was to rule in Odovacer's place on a strictly interim basis – only until Zeno could return:

> Zeno accordingly rewarded Theoderic for his support, made him a patrician and a Consul, gave him a great sum of money and sent him to Italy. Theoderic came to an agreement with him that if Odovacer should be defeated, in return for his own labors he would rule in Odovacer's place only until the Emperor's arrival.[8]

Officially, Theoderic was to have but limited rights over Roman Bishops and Senators, requiring the consent of the Emperor in most regards. He was unable to appoint offices, and was not authorized to enact laws (*leges*), but only, like a Praetorian Prefect, to issue edicts – legal pronouncements that addressed matters particular to the peninsula and surrounding environs that fell under his jurisdiction.[9] These included Sicily (reconquered by Theoderic in the early 490s), the provinces of Dalmatia and Suavia (504), Provence, the Narbonnaise, and most of Spain, where Theoderic allowed his young Visigothic grandson Amalaric to rule as nominal King, and installed a regent from Italy named Theudis (507).

Presented with the opportunity to rule over a lasting and independent Ostrogothic kingdom in the rich and famous lands of Italy, Theoderic readily agreed to the Emperor's terms. In the following year he led his army – a number comprising some 20,000 troops and sundry hangers-on – across the River Isonzo in Istria and defeated Odovacer at Verona, forcing the latter to retreat to the former imperial capital of Ravenna.[10] For the next four years Italy suffered the ravages of war and famine as Odovacer remained holed up in Ravenna. On 5 March 493, having been unable to breach the dense swamps and heavy fortifications that protected the city,

[8] Anonymous Valesianus 11.49, ed. and trans. John C. Rolfe, *Ammianus Marcellinus*, 3 vols., Loeb Classical Library (Cambridge, MA, 1935–40): "Zeno itaque recompensans beneficiis Thodericum, quem fecit patricium et consulem, donans ei multum et mittens eum ad Italiam. Cui Theodericus pactuatus est, ut, si victus fuisset Odoacar, pro merito laborum suorum loco eius, dum adveniret, tantum praeregnaret."

[9] Arnold H. M. Jones, "The Constitutional Position of Odovacer and Theoderic," *JRS* 52 (1962), 126–30; John Moorhead, "Theoderic, Zeno and Odovacer," *Byzantinische Zeitschrift* 77 (1984), 261–6; John Moorhead., *Theoderic in Italy*, (Oxford, 1992), 39–51.

[10] Thomas S. Burns, "Calculating Ostrogothic Population," *Acta Antiqua Academiae Scientiarum Hungaricae* 26 (1978), 457–64 (estimates 35,000 to 40,000); Herwig Wolfram, *History of the Goths*, trans. Thomas J. Dunlap, 2nd edn. (Berkeley, CA, 1988), 279 (estimates about 100,000); and similarly, Wilhelm Ensslin, *Theoderich der Grosse*, 2nd edn. (Munich, 1959), 62–4.

Theoderic finally capitulated and formalized an agreement with Odovacer by which the two would jointly rule over Italy. Ten days later during a banquet to celebrate the occasion, Theoderic murdered his coregent and assumed supreme control of the peninsula. John of Antioch, writing in the seventh century, provides the most vivid account:

> Theoderic and Odovacer made an agreement with each other to the effect that they both should rule over the Roman Empire and they used to meet each other quite often thereafter. The tenth day had not yet passed when, while Odovacer was visiting Theoderic, two of Theoderic's men approached Odovacer as suppliants and grasped both his hands; at once those who were lying in ambush in the small chambers on either side rushed upon him with drawn swords, but, terrified at the sight, they did not attack him, and so Theoderic leaped forward and struck him on the collar bone with his sword, while Odovacer cried out, "Where is God?" Theoderic replied, "This is what you have done to my people." The blow was mortal for it pierced Odovacer's body through to the lower part of the back, and Theoderic is reported to have said, "This scoundrel does not even have a bone in his body."[11]

The account goes on to say that Theoderic murdered Odovacer's surviving family members and supporters, including his older brother Hunulf, who had sought sanctuary in a church; his wife Sunigilda starved to death while in confinement. One might interpret Theoderic's treacherous act as a sign of primitive barbarism. In fact, Theoderic's actions were decidedly Roman. The fourth-century historian Ammianus Marcellinus, for example, describes no less than five occasions when Roman commanders made dinner invitations an opportunity for dispensing with opponents.[12]

[11] John of Antioch, fragment 214a, ed. and trans. Sergei Mariev, *Ioannis Antiocheni Fragmenta Quae Supersunt Omnia* (Berlin, 2008), 444–5: "Ὅτι Θεοδώριχος καὶ Ὀδόακρος συνθήκας καὶ ξυμβάσεις ἐποιήσαντο πρὸς ἀλλήλους ἄμφω ἡγεῖσθαι τῆς Ῥωμαιων ἀρχῆς, καὶ λοιπὸν ἦσαν αὐτοῖς ἐντεύξεις παρ' ἀλλήλους φοιτῶσι συχναί. Οὕπω δὲ ἠνύετο ἡμέρα δεκάτη, καὶ, τοῦ Οδοάκρου γενομένου παρὰ τὸν Θεοδώριχον, προσελθόντες τῶν αὐτοῦ ἄνδρες δύω τὰς τοῦ Ὀδοάκρου ἅτείκεται γενόμενοι κατέχουσι χεῖρας, μεθ' ὃ τῶν προλοχισθέντων ἐν τοῖς παρ' ἑκάτερα οἰκίσκοις ἐπελθόντων ἅμα τοῖς ξίφεσιν, ἐκ δὲ τῆς θέας καταπλαγέντων καὶ οὐκ ἐπιτιθεμένων τῷ Ὀδοάκρῳ, Θεοδώριχος προσδραμὼν παίει τῷ ξίφει αὐτὸν κατὰ τὴν κλεῖδα, εἰπόντα δέ· ποῦ ὁ θεός; ἀμείβεται·τοῦτό ἐστιν ὃ καὶ σὺ τοὺς ἐμοὺς ἔδρασας. Τῆς δὲπληγῆς και ρίας καὶ μέχρι τῆς ὀσφύος διελθούσης τὸ Ὀδοάκρου σῶμα, εἰπεῖνφασιν Θεοδώριχονώς· τάχα οὐ δὲ ὀστοῦν ἦν τῷ κακῷ τούτῳ." For Theoderic's victory over Odovacer, see Ennodius, *Pan. Th.*, ed. and trans. Christian Rohr, *Der Theoderich-Panegynicus des Ennodius, MGH* studien und Texte 12 (Hannover, 1995), 14, 25; Ennodius, *Vita Epiphanii*, ed. W. Hartel, *CSEL* 6 (Ennodius, *Opera*) (Vienna, 1882); Jordanes, *Romana et Getica*, 57.289–91, ed. Theodor Mommsen, *MGH AA* 5.1 (Berlin, 1882), 53–138; Proc., *BG* v. i. 9–26, in Procopius, *History of the Wars*, ed. J. Haury and trans. H. B. Dewing, Loeb Classical Library, 5 vols. (Cambridge, MA, 1914–28). See further Wolfram, *History of the Goths*, 278–80; Moorhead, *Theoderic in Italy*, ch. 1; Peter Heather, *The Goths* (Oxford, 1996), 216–20.

[12] *Res Gestae*, 31.5.5–8; 21.4.1–5; 27.10.3; 29.4.2–4; 29.6.5; 30.1.18–21.

In the aftermath of victory, Theoderic emerged the undisputed master of Italy. In response, the Gothic army declared him King, thus signaling the start of a long and successful reign that would last for thirty-three years, until Theoderic's death on 30 August 526. His grand mausoleum, the size and composition of which parallels those of Augustus and Hadrian, stands today outside Ravenna as a testament to a barbarian King who drew inspiration from Rome's glorious past as he attempted to resurrect Italy after more than a century of neglect.[13]

The precise implications of Theoderic's confirmation as King require some consideration. The Anonymous Valesianus describes Theoderic as *rex* only after this event, persistently styling him patrician beforehand, thus implying that it was this election that signified Theoderic's royal status. But there can be no doubt that Theoderic was the "King of the Goths" (*rex Gothorum*) long before he arrived on Italian soil. That he required authorization from Constantinople to continue in that position, any more than did his contemporary counterparts elsewhere in the West, is inconceivable. The kingship in question was presumably over the Romans. Apparently, Theoderic wished to receive the title from the Emperor himself, but unable to secure it on his own terms, allowed the matter to be settled by his Goths. It is clear that by the end of the decade Constantinople had recognized, albeit in ambiguous terms, Theoderic's rule. The Anonymous Valesianus reports (12.67) that in 497 or thereabouts, Theoderic sent an embassy to Constantinople; peace was made concerning Theoderic's assumption of the kingdom, and the Emperor returned to Italy the palace ornaments which had remained in Rome after the attack of the Vandals in 455 and then been transmitted to Constantinople by Odovacer.[14]

If we are to believe his contemporaries, Theoderic's reign was a veritable golden age that contrasted sharply with the dark and distracted period that followed. Over the course of the sixth century, successive generations of Ostrogothic rulers engaged in divisive fratricidal strife, while at the same time the competing kingdoms of the Franks and Vandals began to assert their autonomy and establish dominance in regions once united under Theoderic's rule. Although not as enfeebled as the Merovingian *rois fanéants*, the last of the Ostrogothic Kings were nevertheless unable to maintain the standard of governance and culture which historians associate

[13] Deborah M. Deliyannis, "The Mausoleum of Theoderic and the Seven Wonders of the World," *Journal of Late Antiquity* 3.2 (2010), 365–85.

[14] Jones, "The Constitutional Position of Odovacer and Theoderic," 126–30; Moorhead, "Theoderic, Zeno and Odovacer," 261–6; Moorhead, *Theoderic in Italy*, 39–51; Peter Heather, "Theoderic, King of the Goths," *Early Medieval Europe* 4.2 (1995), 145–73.

with Theoderic's rule. His grandson and successor Athalaric (516–34) was a mere child when he took the throne; effective control rested with his mother Amalasuntha. When the young King died, the throne passed on to Theodahad (534–6), an elderly nephew of Theoderic, who then had Amalasuntha murdered.[15] In the East, the Emperor Justinian (527–65) considered Theodahad a usurper, and using Amalasuntha's death as justification, launched his Gothic War – a massive undertaking that was part of a larger, albeit ultimately futile, endeavor to restore the whole of the Roman Empire.

In 535 an expeditionary force of some 7,500 men, commanded by the general Belisarius, landed on the shores of Sicily. Belisarius quickly took hold of the island, encouraging Justinian to order the invasion of Italy itself. For the next twenty years Gothic and Byzantine forces waged war for control of the peninsula. Belisarius took the early advantage, as he advanced north to Rome without meeting any opposition from the Gothic forces.[16] Incensed by an apparent lack of leadership, high-ranking members of the Gothic army rebelled against Theodahad and elected as King one of their own by the name of Witigis (536–40).[17] On February 21, 537, Witigis and his forces attempted to retake Rome, and for more than a year subjected the city to a brutal siege. Although severely under-manned and beleaguered by hunger and disease, Belisarius was able to hold out and eventually repulse the Gothic army to Ravenna, where he forced Witigis to surrender. But between 542 and 550, the Gothic army, under their newly elected King Totila, reconquered the whole of Italy and Sicily (with the exception of a number of coastal towns including Ravenna) in a series of swift and efficient campaigns. The wars ravaged on until 552, when the Byzantine Eunuch Narses defeated and killed Totila at the battle of Busta Gallorum, as well as the King's successor Teias later in the same year in a final confrontation near Mount Vesuvius. A small contingent of Goths, together with a Franco-Aleman army, continued to fight on until 554, when they agreed to terms that secured them land in return for their allegiance to the Emperor. With their surrender, the Ostrogothic kingdom of Italy officially came to an end.[18]

The Gothic War devastated Italian society and brought about greater ruin to the peninsula than did all of the barbarian invasions of the previous one hundred and fifty years. The sixth-century Byzantine historian Procopius (*c.* 500–65), whose narrative of the conflict fills nearly four volumes of his histories, describes appalling conditions, including widespread famine and

[15] Proc., *BG* v.iv.4–11; Jordanes, *Romana et Getica*, 306. [16] Proc., *BG* v.xiv.1–14.
[17] Proc., *BG* v.xi.1–9. [18] Proc., *BG* viii. xxix.1–xxxii.36, xxxiii.6–xxxv.29.

disease, as early as 538.[19] Cities and towns were despoiled and populations uprooted. In 550 the city of Rome was entirely depopulated for the first time in its history. Writing in 556, Pope Pelagius I (556–61) described his Italian estates as being desolate.[20] Such was the destruction that after the 550s the Goths disappeared as a nation, leaving no trace of their presence in Italy in the archaeological record.[21] And in 568, when the Lombards invaded and established a kingdom of their own in the north, along with semi-independent duchies based in Spoleto and Benevento in the centre and south, the political unity of Italy as a whole was broken and would not be restored until the nineteenth century.

Given the unprecedented scope of devastation associated with the end of Ostrogothic rule in Italy, it is little wonder that historians, ancient and modern alike, regard Theoderic's reign in such a favorable light. While Belisarius was attacking the Gothic kingdom in 535, Procopius remarked about the dead Theoderic:

> . . . [A]fter gaining the adherence of such of the hostile barbarians as chanced to survive, he [i.e. Theoderic] secured the supremacy over both Goths and Italians. And though he did not claim the right to assume either the garb or the name of Emperor of the Romans, but was called 'rex' to the end of his life (for thus the barbarians are accustomed to call their leaders), still, in governing his own subjects, he invested himself with all the qualities that appropriately belong to one who is by birth an Emperor. For he was exceedingly careful to observe justice, he preserved the laws on a sure basis, he protected the land and kept it safe from the barbarians dwelling round about, and he attained the highest possible degree of wisdom and manliness . . . And although in name Theoderic was a usurper, yet in fact he was truly an Emperor as any who have distinguished themselves in this office from the beginning; and love for him among both Goths and Italians grew to be great, and that, too, contrary to the ordinary habits of men.[22]

[19] Proc., *BG* v1. xx. [20] Pelagius in *MGH Epp*. 3, 72–3.

[21] Chris Wickham, *Early Medieval Italy: Central Power and Local Society 400–1000* (Michigan, 1981), 26.

[22] Proc., *BG* v. i.25–30 (trans. Dewing, 11–13): "ἀπ' αὐτοῦ βαρβάρων τῶν πολεμίων προσποιησάμενος ὅσους περιεῖν ξυνέπεσεν αὐτὸς ἔσχε τὸ Γότθων τε καὶ Ἰταλιωτῶν κράτος. καὶ βασιλέως μὲν τοῦ Ῥωμαίων οὔτε τοῦ σχήματος οὔτε τοῦ ὀνόματος ἐπιβατεῦσαι ἠξίωσεν, ἀλλὰ καὶ ῥὴξ διεβίου καλούμενος (οὕτω γὰρ σφῶν τοὺς ἡγεμόνας καλεῖν οἱ βαρβάροι νενομίκασι), τῶν μέντοι κατηκόων τῶν αὑτοῦ προὔστη ξύμπαντα περιβαλλόμενος ὅσα τῷ φύσει βασιλεῖ ἥρμοσται. δικαιοσύνης τε γὰρ ὑπερφῶς ἐπεμελήσατο καὶ τοὺς νόμους ἐν τῷ βεβαίῳ διεσώσατο, ἔκ τε βαρβάρων τῶν περιοίκων τὴν χώραν ἀσφαλῶς διεφύλαξε, ξυνέσεώς τε καὶ ἀνδρίας ἐς ἄκρον ἐληλύθειώς μάλιστα . . . ἦν τε ὁ Θευδέριχος λόγῳ μὲν τύραννος, ἔργῳ δὲ βασιλεὺς ἀληθὴς τῶν ἐν ταύτῃ τῇ τιμῇ τὸ ἐξ ἀρχῆς ηὐδοκιμηκότων οὐδενὸς ἧσσον, ἔρως τε αὐτοῦ ἔν τε Γοτθοις καὶ Ἰταλιώταις πολὺς ἤκμασε, καὶ ταῦτα ἀπὸ τοῦ ἀνθρωπείου τρόπου."

Perhaps surprisingly, a generally favorable view was also taken by the Anonymous Valesianus:

> For Theoderic did nothing wrong. He so governed two races (Romans and Goths) as one, that although he himself was Arian, he nevertheless attempted nothing against the Catholic religion; he gave games in the circus and amphitheater, so that even the Romans called him "Trajan" or "Valentinian," whose times he took as a model; and because of his *Edict*, by which he established justice, the Goths judged him to be their best King in all respects.[23]

It has generally been assumed that the Goths adhered to a non-Nicene version of Christianity, which maintained that the Divine Son was "like" the Divine Father rather than "of the same essence," as had been asserted by the Council of Nicaea in 325 and later ratified by the Council of Constantinople in 381. Commonly referred to as "Arianism," this is in fact an older version of Christianity that was transmitted, it is believed, to the Goths by the fourth-century missionary Ulfilas, who translated the Bible and various other Christian service books into the Gothic language.[24] Although as Roman in origin as the Nicene Creed, by the sixth century, adherence to "Homoean" (from the Greek word for "like") Christianity, could, and did, serve to undermine relations between Goths and Romans. Despite the fact that Theoderic could show great respect for the Orthodox Church, he actively revived the Homoean Church at the expense of the former, thereby earning the condemnation of many Christian contemporaries.[25] Among these was the Anonymous Valesianus, whose history was intended to show that although he was a great ruler, Theoderic's Arianism ultimately turned him into an enemy of God and brought about his downfall, a turn of events portended by several bizarre and apocryphal events, such as the appearance of devils, a comet, and a woman giving birth to four snakes.[26] Final proof of the Gothic

[23] Anon. Val. 12.60: "Nihil enim perperam gessit. Sic gubernavit duas gentes in uno, Romanorum et Gothorum, dum ipse quidem Arrianae sectae esset, tamen nihil contra religionem catholicam temptans; exhibens ludos circensium et amphitheatrum, ut etiam a Romanis Traianus vel Valentinianus, quorum tempora sectatus est, appellaretur, et a Gothis secundum edictum suum, quo ius constituit, rex fortissimus in omnibus iudicaretur."

[24] On the life of Ulfila and the Gothic Bible (with translations and samples of the text itself), see Peter Heather and John Matthews, *The Goths in the Fourth Century* (Liverpool, 1991), chapters 5–7.

[25] Wolfram, *History of the Goths*, 327–8; Moorhead, *Theoderic in Italy*, 97–100 (concerning Jews); Thomas S. Brown, "Everyday life in Ravenna under Theoderic: an Example of his 'Tolerance' and 'Prosperity'?" in *Teoderico il Grande e i Goti d'Italia: atti del XIII Congresso internazionale di studi sull'Alto Medioevo, Milano 2–6 novembre 1992* (Spoleto, 1993).

[26] Anon. Val. 82–84. See further Sam J. Barnish, "The *Anonymous Valesianus* II as a source for the last years of Theoderic," *Latomus* 42 (1983), 572–96; John Moorhead, "The Last Years of Theoderic," *Historia* 32 (1983), 106–20; Henry Chadwick, *Boethius: The Consolations of Music, Logic, Theory, Philosophy* (Oxford, 1981), 291 n. 67.

King's unsuitability in God's eyes was the fact that he died of dysentery – a fate that befell Arius himself.

Not surprisingly, the impression given by Cassiodorus (*c.* 490–585), Theoderic's minister of propaganda and chief collaborator among the Romans, is a highly laudatory one.[27] According to his *Variae*, a collection in twelve books of 468 letters, proclamations, *formulae* for appointments, and edicts related to the Ostrogothic administration, Theoderic successfully maintained peaceful relations with Constantinople, and achieved harmony between his barbarian followers and the native population by cooperating with Rome's senatorial class and fulfilling Roman expectations of continuity.[28] He maintained the offices of the imperial government, and the care of justice and the revenue was delegated according to the principles, and even the forms, of Roman jurisprudence and organization. He is also said to have revived various ancient and politically significant aspects of the imperial administration, including the free distribution of corn and other foodstuffs to the poor in the city of Rome, and the holding of costly but popular circus games.[29] Perhaps the most extravagant of these were the games held in Rome in 500 to celebrate Theoderic's *decennalia*.[30]

In contrast to the preceding century which witnessed decades of rivalry between ambitious generals, greedy aristocrats, and generally incompetent Emperors that culminated in the deposition of Romulus Augustulus and the seizure of power by Odovacer, Cassiodorus presents Theoderic's reign as an age of peace and prosperity of a kind not experienced since the glory days of the early empire. In large part because of this assessment, modern

[27] The standard treatment of Cassiodorus' life and works is that of James J. O'Donnell, *Cassiodorus* (Berkeley, CA, 1979).

[28] For the edition of the text: Theodor Mommsen, *MGH AA* 12 (Berlin, 1894), 1–385; trans. (select) by Sam J. Barnish, *The Variae of Cassiodorus Senator*, Translated Texts for Historians, vol. 12 (Liverpool, 1992).

[29] Cass., *Var.* 6.18 (concerning Theoderic's arrangement of 12,000 *modii* of grain to be supplied to the people of Rome on an annual basis). On the history of this long-established Roman right, which seems to have gone into abeyance in the fifth century, see Federico Marazzi, "The Last Rome: From the End of the Fifth to the End of the Sixth Century," in Sam J. Barnish and Federico Marazzi (eds.), *The Ostrogoths from the Migration Period to the Sixth Century: An Ethnographic Perspective* (Woodbridge, 2007), 279–302, esp. 295–6. Theoderic also had maintained other free provisions including pork. On this, see Cass., *Var.* 6.18.4; and Sam J. Barnish, "Pigs, Plebeians and *Potentes*: Rome's Economic Hinterland, c. 350–600 AD," *PBSR* 55 (1987), 157–85. Cass., *Var.* 11.34 implies that the supply of pork was provided by Lucania and Bruttium – a situation that seems to have continued from the later Empire. In legislation from the Emperor Valentinian III (*Nov. Val.* 36.1, 4), for example, we learn that the province of Samnium, as well as Lucania and Bruttium, were involved in the meat supply of Rome.

[30] *Decennalia* celebrations: Ferrandus Diaconus, *Vita s. Fulgentii*, ed. and trans. G.–G. Lapeyre (Paris, 1929), chapters 9, 55–6. See also Moorhead, *Theoderic in Italy*, 60–3 (who suggests the event marked a military victory).

historians have held a favorable opinion towards the age of Theoderic, treating it as a short interlude of Roman renewal, evoking both nostalgia for a peaceful and prosperous time and regret for the unavoidable fact that it was as fleeting and illusory as an Indian summer.[31]

It is important to remember, however, that inasmuch as it was intended as a semi-official record of the barbarian regime, the *Variae* was a product of political expediency that presents over three decades of Ostrogothic history in a flattering light, in particular the deeds of Theoderic. It was compiled in 537/8 towards the end of Cassiodorus' troubled service as Praetorian Prefect of Italy, while war was raging and the Ostrogothic King Witigis was besieging the Byzantine commander Belisarius in Rome. Its purpose was to instruct members of the Italian civil service through moral and religious exhortation, and to demonstrate their legitimacy and suitability for resuming palatine services following Justinian's reconquest of the peninsula.[32] Throughout, Cassiodorus deliberately glossed over disturbances (such as the downfall and execution of the Senator and philosopher Boethius in 524), and highlighted in deliberate fashion the perception of the order and *civilitas*, that is, the civilized rule of law, associated with Ostrogothic rule.[33] At the same time, he emphasized a connection between the barbarian regime and the late imperial administration both in terms of ideology and organization.

[31] See, e.g., Thomas S. Brown, *Gentlemen and Officers: Imperial Administration and Aristocratic Power in Byzantine Italy,* AD *554–800*, British School at Rome (Rome, 1984), 4; Moorhead, *Theoderic in Italy*, chapter 1.

[32] On the problems surrounding the *Variae* as a propagandistic text, see Shane Bjornlie, "What Have Elephants to Do with Sixth-Century Politics? A Reappraisal of the 'Official' Governmental Dossier of Cassiodorus," *JLA* 2.1 (2009), 143–71; Andrew Gillett, "The Purposes of Cassiodorus' *Variae*," in A. C. Murray (ed.), *After Rome's Fall: Narrators and Sources of Early Medieval History Essays Presented to Walter Goffart* (Toronto, 1998), 37–50. For the religious dimensions of the text see Sam J. Barnish, "Sacred Texts of the Secular: Writing, Hearing, and Reading Cassiodorus' *Variae*," *Studia Patristica* 38 (2001), 363–70. On the authenticity of the *Variae* as part of an actual chancery tradition, see Stefan Krautschick, *Cassiodor und die Politik seiner Zeit*. Habelts Dissertationsdrucke, Reihe Alte Geschichte 17 (Bonn, 1983), 41–5, 118–22; Moorhead, *Theoderic in Italy*, 2–3, 145; O'Donnell, *Cassiodorus*, 59; Gunhild Vidén, *The Roman Chancery Tradition: Studies in the Language of Codex Theodosianus and Cassiodorus' 'Variae'* (Göteborg, 1984), 84, 88, 142.

[33] E.g., Cass., *Var.* 1.1 (a letter in Theoderic's name to the Emperor Anastasius, remarking that the King's rule was in direct imitation of the Emperor's, and noted how his Gothic followers obeyed Roman law); 1.27 (here, the Roman Senate is instructed by Theoderic to uphold the rule of Roman law); 1.44 (a letter to the people of Rome instructing them to obey the authority of the newly-appointed Urban Prefect); 3.17 (a letter in Theoderic's name to the Gothic inhabitants of Gaul, instructing them to obey Roman law); 3.43 (a letter to the same provinces of Gaul, Theoderic reiterates the point that Roman law was to be followed by all provincials). In the preface to the *Variae*, Cassiodorus exclaims how he was frequently encouraged by Theoderic to embrace the laws of the ancient Romans: "hortamini [i.e. Theoderic] me [i.e. Cassiodorus] frequenter, ut diligam senatum, leges principum gratanter amplectar. . ." For this definition of *civilitas*, see Moorhead, *Theoderic in Italy*, 79; *contra* Amory, *People and Identity*, 43.

From all of this there emerges a highly civilized and Romanized picture of things – a picture that does not necessarily reflect conditions as they actually were, but rather as they were hoped for. A much different and more accurate picture comes to us from the unknown authors of one of the most debated texts of the early medieval era – the *Edictum Theoderici*. This is a significant document that offers valuable historical insights into the formative social, political, and cultural developments taking place on Italian soil during Late Antiquity, as the beliefs, institutions, and customs of the ancient world were slowly transformed or replaced by those of the medieval. It also challenges long-held assumptions as to just how peaceful, prosperous, and Roman-like Theoderic's Italy really was.

Overview

The principal reason for the exclusion of the *ET* as a useful historical source in most modern studies of the period is the fact that historians have been unable to agree upon two important issues surrounding the text – namely, the identity of the individuals responsible for its creation, and when this was carried out. Chapter 1 addresses several questions surrounding the document, including: debates about its authorship and manuscript tradition, the date of its production, the circumstances surrounding its composition, the purposes for which it was created, and the subject matter with which it deals. It is argued that the *ET* was drawn up in accordance with imperial legal tradition by a group of unknown Roman jurists working under the authority of the office of Quaestor, and issued perhaps as early as 500 to coincide with the King's *decennalia* celebrations in Rome. Its purpose was to restore peace and order in the peninsula by reinforcing, clarifying, and, in most cases, updating existing Roman law.

Chapter 2 contextualizes the *ET* in terms of the developments taking place in Roman law and society in Italy from the third to early sixth century, in particular how the text fits within the evolving framework of Roman law in Late Antiquity. Many of the 154 provisions of the *ET* contain words, phrases, and concepts that differ significantly from earlier and contemporary Roman legal texts. Many of these variances reflect the sorts of changes – social, political, economic, and cultural – taking place in Italy as a result of the decline and eventual collapse of Roman rule in the peninsula. Some express an interest in ancient or outmoded customs and practices, and others a concern for present day circumstances. Still others are merely haphazard and of little importance. By way of example the significance of these variations is discussed. The investigation offers a

revealing glimpse into the character of Roman law and society in early sixth-century Italy.

Drawing upon evidence from a variety of sources, Chapter 3 provides a detailed account of how a case was initiated, brought to court and heard, and of how judgment was made and executed. It explores how the judicial system in sixth-century Italy was organized, the role of the judge and litigant in legal disputes, and how threats to the public order were dealt with through circumscribed penalties. The focus here is strictly on the court system and the rules of evidence and procedure that appear in the law, not less formal (but by no means less legal) forms of dispute settlement that took place outside of the courtroom. By using late imperial decrees as a model, the investigation demonstrates that while many aspects of the late Roman justice system were selectively appropriated by Theoderic and his successors, many others were re-worked or ignored altogether, thus raising important questions – and doubts – as to just how efficient, organized, and Roman-like the barbarian King's judicial system really was.

The *ET* is a valuable source for the prevailing social and economic conditions of early sixth-century Italy. Provisions pertaining to aspects of private law, including legal status and personality, property (including slaves), contract and sale, ownership and possession, marriage and divorce, succession and inheritance, take up the bulk of the collection. The text also sheds light on such topics as the Ostrogothic monetary system, the commercial activities of merchants and traders, as well as the dangers that threatened the Italian economy, including governmental corruption, counterfeiting, the decline of urban life, and a lack of available men and resources to maintain available income-producing land. Chapters 4 and 5 explore the various and interrelated subjects of Roman private law found in the *ET*. The survey is useful for two reasons. First, it documents extremely well some of the characteristic features of the *ET*: its range, its thoroughness, its reasonableness, its concern with the practical and tangible, its tendency for the particular provision and not the general principle. Second, and more importantly, behind the starkly revealing information yielded by the provisions may be glimpsed, though obscurely, the day-to-day life experienced, or perhaps endured, by the overwhelming majority of inhabitants of Theoderic's Italy – a majority for which there is no other source so informative.

To serve as a reference point and foster further study of the *ET*, a translation of the text is provided in the Appendix. Wherever possible, I have provided notes that contain references to possible sources and analogous texts to individual provisions, brief explanations of technical terms and legal

concepts, a discussion of interesting points of the law or debates about its meaning, and specific instances in our sources that involve the operation of the law in question. A brief note concerning the translation: the language and style of the *ET* are essential for understanding its purpose and the audience for which it was aimed. The *ET* was intended to edify not only judges and legal experts, but also the general public at large. To ensure clarity and precision it purposefully lacks the excessively verbose and intricate style of the imperial collections of Theodosius and Justinian, as well as the eloquence on display in the *Variae*. These texts were intended to impress a small, educated elite. To that end, artistic elaboration and grandiloquence was as, if not more, important than the need for the content to be comprehensible for the average person.[34] The translation offered here limits the use of colloquialisms and idioms in an effort to retain, to a worthwhile degree, the original meaning and spirit of the compilers.

Significance

This is first and foremost a study of a Roman legal text from early sixth-century Italy, but the implications extend far beyond the bounds of legal history. For the survival of Roman law is intimately connected with the wider question of the way in which the world of Antiquity came to an end. Traditionally, the removal of Romulus Augustulus in 476 marked the end of imperial rule in the West. But whether this date actually constituted an end of the Roman world is a matter of perspective. Since Edward Gibbon more than 200 years ago wrote his monumental treatise, *Decline and Fall of the Roman Empire*, the degree of disruption or gradual change associated with the end of Antiquity has been debated. Did Rome collapse, or was it merely transformed? Was the Empire destroyed by barbarian invaders, or was its decline a natural and inevitable consequence of immoderate greatness? To be sure, Gibbon concluded that Rome did indeed fall, attributing its fate to a number of contributing internal and external factors, such as the decay of ancient military virtues, the loss of political freedom, the increasing burden of taxation, a weakening moral authority, the development of the Church as the principal object of loyalty for a new governing elite, and of course the barbarians. While he could not provide straightforward answers as to which

[34] Vidén, *The Roman Chancery Tradition*; Nicholas Everett, *Literacy in Lombard Italy, c. 568–774* (Cambridge, 2003), 22, 24; and Barnish, "Sacred Texts of the Secular," 367–8. For the artistic style of Tribonian, the jurist primarily responsible for putting together Justinian's legal corpus, see Tony Honoré, *Tribonian* (London, 1978), 244–5.

of these factors was more important in bringing about Rome's demise, Gibbon nevertheless regarded the period during which Europe was given over to the rule of Goths, Burgundians, Franks, and other barbarians as one of unprecedented destruction and devastation.[35] For Gibbon, influenced as he was by his admiration for all things Roman, the disintegration of the Roman Empire in the West brought about changes which, for the most part, fundamentally changed Europe for the worse; Late Antiquity was a confused and distracted period haunted by the immortal past of a once glorious Rome.

Gibbon's model, which emphasizes the destructive nature of Rome's collapse, has endured for centuries. In the last four decades, however, a number of alternative models have been put forth by scholars attempting to revise the pessimistic view of Gibbon. These scholars prefer to see change and transformation where Gibbon and others only saw destruction. The trailblazer of this revisionist approach is the historian Peter Brown. Beginning with his brief but influential survey *The World of Late Antiquity*, followed soon after by his seminal article "The Rise and Function of the Holy Man in Late Antiquity," Brown changed the way scholars have viewed the end of the Roman world.[36] He articulated a new period, "Late Antiquity," beginning with the accession of the Emperor Diocletian in AD 284 and lasting right up to the eighth century, which was characterized not by the decline and dissolution of the western Roman Empire but by vibrant intellectual, religious, and cultural debate. For Brown, Late Antiquity was a period of transition and transformation in which the fundamental elements of the classical world survived and evolved in different, though no less inferior, forms. Of central importance for this transition were the holy men. Acting as intercessors not only between the increasingly disenfranchised common man and the ruthless, corrupt elite, but also between the earthly and heavenly realms, these "saintly" leaders embraced the spiritual *avant-garde* of the age, and in so doing provided a vital link between the classical and medieval worlds.

[35] Gibbon was not alone in this pessimistic estimation. The French scholar André Piganiol, e.g, declared (*L'Empire chrétien (325–395)*, Histoire Romaine 4 (Paris, 1947), 222) that the Roman Empire did not die a natural death but was assassinated by the Germans. In light of the fact that Piganiol was writing in France so soon after World War II, such sentiment is hardly surprising.

[36] Peter Brown, *The World of Late Antiquity: From Marcus Aurelius to Muhammad* (London, 1971); Peter Brown, "The Rise and Function of the Holy Man in Late Antiquity," *JRS* 61 (1971), 80–101. Other notable works of Brown include *The Making of Late Antiquity* (Cambridge, MA, 1978); *Society and the Holy in Late Antiquity* (Berkeley, CA, 1982); *The World of Late Antiquity: AD 150–750*, rev. edn. (London, 1989); *Power and Persuasion in Late Antiquity: Towards a Christian Empire* (Madison, WI, 1992). On the significance of Peter Brown in the scholarship of Late Antiquity, see James Howard-Johnson and Paul Antony Hayward (eds.), *The Cult of Saints in Late Antiquity and the Middle Ages: Essays on the Contribution of Peter Brown* (Oxford, 1999).

Along a parallel route, some historians have called into question the very notion that the Roman Empire in the West came to an end as a direct result of hostile and violent barbarian invasions. Just as words like "decline" and "crisis" were replaced with "transition" and "transformation" to account for the cultural change in this period, so "accommodation" is now used to explain how barbarians came to live within the Empire and eventually rule it. For these historians, there was no brutal catastrophic onrush of barbarian invaders in the fourth century. Rather, there was a slow evolution during which time the Empire became progressively Germanized while, inversely, the Germans adapted to the mode of existence of the Roman populations. And when, in 476, the western Roman Empire died of exhaustion and not because it was invaded, the new masters in fact understood, or ended by understanding, that they had everything to gain by maintaining rather than upsetting the existing status quo.[37] As Alfons Dopsch put it, "The Germans did not behave as enemies of culture, destroying or abolishing it; on the contrary they preserved and developed it."[38]

Other historians have gone even further than this, notably Walter Goffart, who challenged the very premise of barbarian invasions. Rather than regard the relationship between the Romans and barbarians in terms of conquest and consolidation, Goffart proposed a new paradigm that emphasizes integration and cooperation between the two. The barbarians were incorporated into the fold as protectors of the Roman way of life through an ingenious and effective tax arrangement.[39] In other words, the Romans accommodated the barbarians on essentially Roman terms through existing institutional mechanisms.[40] While allowing for a degree of crisis and disruption, Goffart's model envisions the transition of the Roman world as a relatively peaceful process. The fall of the Roman Empire was, in his words, "an imaginative experiment that got a little out of hand."[41]

[37] See, e.g., Brian Croke, "AD 476: The Manufacture of a Turning Point," *Chiron* 13 (1983), 81–119; Raymond Van Dam, *Leadership and Community in Late Antique Gaul* (Berkeley, CA, 1985); Charles E.V. Nixon, "Relations between Visigoths and Romans in Fifth-Century Gaul," in J. Drinkwater and H. Elton (eds.), *Fifth-Century Gaul: A Crisis of Identity?* (Cambridge, 1992), 64–74; Ralph W. Mathisen, *Roman Aristocrats in Barbarian Gaul: Strategies for Survival in the Age of Transition* (Austin, 1993); Pohl, *Kingdoms of the Empire*.

[38] Alfons Dopsch, *The Economic and Social Foundations of European Civilization*, trans. M. G. Beard and N. Marshall (London, 1937), 386.

[39] Walter Goffart, *Barbarians and Romans: Techniques of Accommodation, AD 418–584* (Princeton, 1980), esp. chapter 3.

[40] Goffart reiterates this point in his *Barbarian Tides: The Migration Age and the Later Roman Empire* (Philadelphia, PA, 2006), the title of which reinforces the notion that there was no such thing as a barbarian invasion.

[41] Goffart, *Barbarians and Romans*, 35.

In recent years there has been a mini-revival in "disruption" models. The most notable of these is that of Bryan Ward-Perkins.[42] It was the unwelcome arrival of barbarian invaders, Ward-Perkins argues, that brought about a violent and decisive end to the Roman world. In the aftermath of this collapse, civilization sank to a primitive level. For Ward-Perkins, the fall of Rome was a destructive event that marked a decisive break from the classical past and ushered in the Dark Ages. If there was any continuity beyond the fifth century, it failed to live up to the greatness of the preceding era; by whatever standards one might wish to use, life in post-Roman Europe was culturally inferior to, economically retarded by comparison with, and politically backward when measured against the standards of the Graeco-Roman world. While Ward-Perkins' views might be extreme in their elaborations of the social, political, and economic developments associated with Rome's administrative demise, they have reignited the debate among historians wishing to account for Rome's fall or measure its passing.[43]

Scholarship on Ostrogothic Italy has been rooted in these interpretive paradigms. Those interested in the destructive forces of the barbarian invasions have tended to emphasize the "otherness" and "barbarian" qualities of Theoderic and his followers, or point towards "un-Roman" activities within the Ostrogothic regime.[44] Those who support the notion of accommodation have in turn explored a number of angles including the legal mechanisms of the Gothic settlement in Italy; the constitutional position of Theoderic *vis-à-vis* the Roman Empire in the East; and Roman collaborators among the ruling senatorial class who worked together with their barbarian overlords.[45]

This book brings greater clarity to these issues by exploring how Roman law, the institutions of legal administration, and society survived and evolved in Italy long after the official collapse of the western imperial administration, when the maintenance of peace and order was the responsibility of Theoderic and his successors. Despite the fact that scholars have

[42] Ward-Perkins, *The Fall of Rome*.

[43] For a similar view but with less emphasis on the negative impact of the barbarians, see Peter Heather, *The Fall of the Roman Empire: A New History of Rome and the Barbarians* (Oxford, 2006).

[44] E.g., Ward-Perkins, *The Fall of Rome*, 72–3.

[45] E.g., Goffart, *Barbarians and Romans*, chapter 3 (Gothic settlement); Jones, "The Constitutional Position of Odovacer and Theoderic," 126–30; Moorhead, "Theoderic, Zeno and Odovacer," 261–6; Paul S. Barnwell, *Emperors, Prefects and Kings: The Roman West, 395–565* (London, 1992), part 3 (Theoderic's position *viz.* Constantinople); Moorhead, *Theoderic in Italy*; James O'Donnell, "Liberius the Patrician," *Traditio* 37 (1981), 31–72; Sam J. Barnish, "Taxation, Land and Barbarian Settlement in the Western Empire," *PBSR* 54 (1986), 170–95.

focused on the connection that exists in so many respects between the legal conditions prevailing in the successor kingdoms of the Franks, Visigoths, and Burgundians and those of the later Roman Empire, there is as yet no modern legal history of the Ostrogothic kingdom such as that offered here, one that brings together the administrative and judicial features, laws and legal procedures, social and economic conditions of the Italian peninsula, and attempts to put these into a legal-historical perspective.

In this regard the *ET* is an important source that should not be overlooked. On the one hand it fully bears out the longevity of Rome's classical legal heritage. By the early sixth century the imperial administration had largely disappeared, but, however selective and modified, the *ET* was a practical guidebook of Roman law that presupposed a population still concerned with formalities that had their origins in an ancient institution. And with the exception of a few references to barbarians, nothing within the text would suggest that an army of Goths had taken up residence within the Italian peninsula. For many scholars, this sort of continuity is sufficient grounds for concluding that Rome lived on, both as a city and above all as a concept, well after the date that marks its official demise, serving as a model for the relatively primitive Germanic peoples who came to inherit its administration over the course of the fifth and sixth centuries.[46] Proponents for this school of thought have also drawn attention to patterns of land occupation and urban settlements, the social status of nobles and peasants, bonds of kinship, cult practices and religious life, and traditions in education, arguing that in these areas, too, continuity was the rule and not the exception. In so doing they have called into question the notion that the Empire had fallen.[47]

[46] See, e.g., John M. Wallace-Hadrill, *Early Germanic Kingship in England and on the Continent* (Oxford, 1971); John M. Wallace-Hadrill, *The Long-Haired Kings, and Other Studies in Frankish History* (London, 1962), 9; David Ganz, "Bureaucratic Shorthand and Merovingian Learning," in Patrick Wormald with Donald Bullough and Roger Collins (eds.), *Ideal and Reality in Frankish and Anglo-Saxon Society* (Oxford, 1983), 58–75; Ian Wood, "Administration, Law and Culture in Merovingian Gaul," in Rosamond McKitterick (ed.), *The Uses of Literacy in Early Medieval Europe* (Cambridge, 1990), 63–8; Ian Wood, *The Merovingian Kingdoms, 450–751* (London/New York, 1994); Jill Harries and Ian Wood (eds.), *The Theodosian Code. Studies in the Imperial Law of Late Antiquity* (London, 1993); Jill Harries, *Law and Empire in Late Antiquity* (Cambridge, 1999); John F. Matthews, *Laying Down the Law: A Study of the Theodosian Code* (New Haven, CT, 2000); Michael E. Jones, "The Legacy of Roman Law in Post-Roman Britain," in Ralph W. Mathisen (ed.), *Law, Society and Authority in Late Antiquity* (Oxford, 2001), 45–57.

[47] For discussions on the continuity of social order in early medieval Europe, see: Walter Ullman, *The Carolingian Renaissance and the Idea of Kingship* (London, 1969); François L. Ganshof (ed.), *The Carolingians and the Frankish Monarchy*, trans. Janet Sondheimer (Ithaca, NY, 1971); Janet Martindale, "The French Aristocracy in the Early Middle Ages: A Reappraisal," *Past and Present* 75 (1977), 5–45; Edward James, *The Origins of France: From Clovis to the Capetians, 500–1000* (London, 1989), 73–92; Wickham, *Early Medieval Italy*, 80–145. On bonds of kinship,

But to suggest from this sort of continuity alone that Theoderic's Italy constituted a renewed Empire is to overlook far more important questions that the *ET* raises. For instance, how much of the population had access to legal experts and the courts? Were the judges capable of dispensing justice swiftly and equitably? Were they honest and upright? Were the rights of citizens reasonably secure against greedy officials and powerful magnates?[48] To judge from the amount of attention devoted to these kinds of questions in the *ET*, it would seem that the availability of skilled and honest judges who could effectively settle cases at the local level was limited, and this posed a significant challenge for the central administration to maintain peace and order effectively throughout the provinces. The manuscript also casts doubt on the supposed prosperity of Ostrogothic Italy as suggested by some rather ambiguous references in the *Variae*. While the peaceful conditions Cassiodorus attributed to Theoderic's reign certainly allowed for a measure of recovery, such recovery was temporary at best; and it is questionable whether it extended to the entire population. As the *ET* bears witness, Theoderic was unable to remedy certain structural weaknesses that had afflicted the peninsula for more than a century: specifically, the problem of manpower shortage and the insecurity of property in the provinces. Such pressures only served to undermine a superficially stable social fabric that disintegrated completely with the crisis of war that enveloped Italy shortly after Theoderic's death in 526.

Of course, there are problems in using legal materials as an historical source. It is notoriously easy to interpret legal precept as evidence of social practice, and to assume that a measure, by merit of its existence alone, was necessarily enforced. Moreover, it must be appreciated that within these sources it is often the *unusual* that is provided for, especially in those laws that we would classify as criminal. Therefore, our picture may be an exaggerated one or one that never existed, except as an ideal. Despite such

see Joseph H. Lynch, *Godparents and Kingship in Early Medieval Europe* (Princeton, NJ, 1986). For cult practices and religious life, see (in addition to the works of Peter Brown): Raymond Van Dam, *Saints and their Miracles in Late Antique Gaul* (Princeton, 1993); Yitzhak Hen, *Culture and Religion in Merovingian Gaul,* AD *481–751* (Leiden/New York, 1995); Daniel Caner, *Wandering, Begging Monks: Spiritual Authority and the Promotion of Monasticism in Late Antiquity* (Berkeley, CA, 2002). And on continuity in the area of education: Max L. W. Laistner, *Thought and Letters in Western Europe,* AD *500 to 900* (Ithaca, NY, 1966); Rosamond McKitterick, *The Carolingians and the Written Word* (Cambridge, 1989); John Contreni, *Carolingian Learning, Masters and Manuscripts* (Aldershot, 1992); Erich Auerbach, *Literary Language & its Public in Late Antiquity and in the Middle Ages* (Princeton, NJ, 1993); Richard E. Sullivan (ed.), *"The Gentle Voices of Teachers": Aspects of Learning in the Carolingian Age* (Columbus, OH, 1995).

[48] Tony Honoré, "Roman Law AD 200–400: From Cosmopolis to Rechtstaat?" in Simon Swain and Mark Edwards (eds.), *Approaching Late Antiquity. The Transformation from Early to Late Empire* (Oxford, 2004), 109–32, at 112.

problems, the rewards in such an approach are entirely justified by the fact that no other source has the evidential value possessed by the law for understanding the objectives and ideals of an ancient society, from the governing elite who created and administered the law to the undifferentiated masses that were subject to its authority. For the law was shaped not by jurists working in isolation, but by wider social and cultural changes. Such social developments in turn affected the form and content of the law through the actions of judges, lawyers, Emperors, Kings, churchmen, and laymen, who were themselves products of their social environment. It is because of this that we can turn to the *ET* for understanding some of the profound social, political, and economic developments associated with Italy's transition from Roman province to barbarian kingdom.

CHAPTER I

The historical context

Introduction

The *ET* offers us a splendid picture of Italy in the early sixth century. The subject matter is so diverse that virtually no aspect of public and private life is left untouched. The provisions shed light upon the organization and administration of the judiciary, economy, and society; they deal with marriage and guardianship, slavery and manumission, aristocracy and religion; they illustrate the relationship of King and people, of Roman and Goth, of landlord and tenant; they regulate sales and donations, loans and testaments. Topics range from murder to the destruction or theft of property, from necromancy to grave-robbing, from forgery to rape. But continuing disputes over its paternity have limited the potential of this extraordinary document as an historical source. In fact, the list of candidates for authorship is a veritable who's who of the Late Antique world. The most notable include: Eparchius Avitus, western Roman Emperor between 455 and 456; Majorian, who succeeded Avitus and reigned as Emperor between 457 and 461; Theoderic II, who ruled the Visigothic kingdom of Aquitaine in southern Gaul from 453 to 466; Magnus of Narbo, the *Praefectus Praetorio Galliarum* from 458 to 459; Odovacer; and, of course, Theoderic the Ostrogoth.[1] Some scholars have gone so far as to suggest that the *ET* is a forgery, the spurious creation of the sixteenth-century French humanist Pierre Pithou.[2] Any study on the historical significance of the *ET* must therefore begin with the question of authorship.

[1] For a summary of earlier scholarship, see Clausidieter Schott, "Der Stand der Leges-Forschung," *Frühmittelalterliche Studien* 13 (Berlin, 1979), 29–55.

[2] See, e.g., Piero Rasi, "Sulla paternità del c.d. Edictum Theodorici Regis," *Archivio Giuridico* 145 (1953), 105–62; Bruno Paradisi, "Critica e mito dell'editto teodericano," *Bollettino dell'Istituto di diritto romano* 68 (1965), 1–47.

Authorship

The issue of the *ET*'s authorship is a persistent one that stems from problems connected to the uncertainty of the manuscript tradition, the date of composition, and the identity of those who compiled it. In 1579, Pierre Pithou published the first edition of the *ET*. The circumstances of that edition are well known through a letter dated 2 January 1579 and addressed to Eduard Molé, an acquaintance of Pithou.[3] In it, Pithou refers to his recent publication of the *Variae*, and proposes to have published as an accompaniment to that work an edition of the *ET*. According to the letter, Pithou was in possession of a surviving manuscript and obtained a second from Molé: "I wanted the Edict of the wisest prince [i.e. Theoderic] to appear in your name . . . by whose kindness I have obtained another copy."[4] Unfortunately, neither exemplar has survived, leaving Pithou's edition as our only witness to the original text. The relationship between the two manuscripts, and how Pithou drew from them for his own edition, is not known.

Pithou's edition was originally published as part of a larger collection of works, principally those of Cassiodorus. Five subsequent editions of the *ET* were similarly published as part of Cassiodorus' general works: two in Paris in 1588 and 1600 by Marc L'Orry, and three in Geneva in 1609, 1650, and again in 1663. During the eighteenth century the *ET* was republished several times, in each instance as part of a larger collection of various legal sources: Melchior Goldast included a copy in his *Collectio constitutionum imperialium*; Pietro Georgisch in his *Corpus iuris germanici antiqui*; and Paulo Canciani's *Leges antiquae barbarorum* likewise contained the text. In 1816, Gotthard Friedrich Rhon published a new edition of the text complete with commentary. This was soon followed (1824) by a revised edition of Ferdinand Walter in his *Corpus iuris germanici antiqui*, and again by Felix Dahn in 1866, who provided for the first time references to the analogous Roman sources that presumably served as models for individual provisions of the *ET*. Subsequent editions have added to the list of possible analogues, the most comprehensive (and accurate) being that of Friedrich Bluhme, who worked directly from Pithou's original edition. Bluhme's served as the basis for the subsequent editions of Guido Padelletti and Johannes Baviera.

[3] The letter accompanied the 1579 edition (*editio princeps*) as well as subsequent editions of Nivellius (1589), l'Orry (1588, 1600) and Brosse (1600, 1609). See further Giulio Vismara, "Edictum Theoderici," *Ius Romanum Medii Aevi*, part 1, 2 b *aa* α (Milan, 1967), 6–7.

[4] "Edictum vero prudentissimi principis in tuo nomine apparere volui . . . cuius beneficio alterum eius exemplar nactus sum." On the contents of the letter, see Vismara, "Edictum," 6.