

Terms of Dependency in Post-Roman Law Codes

‘Terms of dependency’ sounds a bit defensive when we are concerned with ‘norms of dependency’. My examination of late and post-Roman law collections will look at the terms that these collections assign to certain forms of dependency. Only in a second step will I inquire about their normative content. By ‘post-Roman law codes’ I mean those collections and law codes that emerged in the fifth and sixth centuries in the area covering the western half of the Roman empire. First, I will outline which law collections or compilations of legal texts we know of in the early medieval west. In doing so, I will also show which primary sources they contain or build on. In a second step, I will examine some particularly illustrative terms that indicate dependency relationships.

1 Post-Roman Law Codes

To speak of ‘law codes’ is imprecise. These texts are not strictly speaking ‘codifications’.¹ They are in part compilations of older written law, in part records or collections of customary law. Although these law codes were legislative acts of the kings in the post-Roman *regna*, they did not create new law on a regular basis.² They can be distinguished in three ways:

a) First, by the addressees of the texts. The so-called *leges Romanae* were addressed to the Roman population, that is to say those people who already lived under Roman law. It is worth mentioning that in the post-Roman kingdoms (*regna*) which were set up within the boundaries of the former empire, Romans continued to live under

1 On the difference between ‘compilation’ and ‘codification’ (albeit in early modern examples), see Gunter Wesener, “Kodifikationen und Kompilationen. Reformprogramme und Landrechtsentwürfe des 17. und 18. Jahrhunderts,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 127 (2010): 202–44.

2 Cf. Patrick Wormald, *Legal Culture and the Early Medieval West* (London: The Hambledon Press, 1999) (early medieval law codes were not so much ‘written and codified laws’ – *lex scripta* – as signs of the oral (royal) proclamation of the laws – the *verbum regis*; this was the constitutive act to which the written texts bore witness). On this discussion see Karl Uhl, “Das Edikt Theoderichs des Großen. Konzepte der Kodifikation in den post-römischen Königreichen,” in *Theoderich der Große und das gotische Königreich in Italien*, ed. Hans-Ulrich Wiemer (Berlin: De Gruyter, 2020): 223–38.

Roman law. This was common practice in antiquity, and had also been practiced by the Roman emperors.³ But the *Constitutio Antoniniana* of 212 AD conferred Roman citizenship on almost all inhabitants of the empire. This meant that, from the fifth century onwards, immigrating *gentes* encountered a rather homogenous population living under Roman law.⁴ On the other hand most of the rulers in the post-Roman *regna* saw themselves as legitimate successors of the Roman emperors. Both aspects favoured special compilations of Roman law for the Roman inhabitants, similar to the *Codex Theodosianus* enacted by Theodosius I and Valentinian III in 438.⁵ Among those collections were the *lex Romana Visigothorum* and the *lex Romana Burgundionum*, which were compiled and published in the early sixth century.⁶

In addition to those compilations there were collections of laws that only applied to the non-Roman population (which I will label ‘Germans’⁷). Among these are the *lex Burgundionum* and the Frankish *lex Salica*. Finally, some legal collections addressed Germans and Romans alike. The oldest examples, and indeed the oldest post-Roman

3 On this subject see Ernst Schönbauer, “Studien zum Personalitätsprinzip im antiken Rechte,” in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 49 (1929): 345–403; the general observation by Karl Uhl (‘Rom hatte von allen Barbaren, egal ob laeti oder dedicii, stets verlangt, sich römischem Recht unterzuordnen’) is therefore incorrect; cf. Karl Uhl, *Sinnstiftungen eines Rechtsbuchs. Die Lex Salica im Frankenreich* (Ostfildern: Jan Thorbecke, 2017): 94.

4 Cf. Stefan Esders, “Roman Law as an Identity Marker in Post-Roman Gaul (5th–9th Centuries),” in *Transformations of Romanness in the Early Middle Ages: Regions and Identities*, ed. Walter Pohl, Clemens Gantner, Cinzia Grifoni and Marianne Pollheimer-Mohaupt (Berlin: De Gruyter, 2018): 325–44.

5 Cf. Theodor Mommsen and Paulus Meyer, eds., *Theodosiani libri XVI cum constitutionibus Sirmondianis et leges novellae ad Theodosianum pertinentes* (Berlin: Weidmann, 1905 [repr. 1954 and 1970]); an English translation has been produced by Clyde Pharr, *The Theodosian Code. And Novels. And the Sirmondian Constitutions. A Translation with Commentary, Glossary, and Bibliography* (Princeton: Princeton University Press, 1952). On the Code itself cf. Jill Harries and Ian Wood, *The Theodosian Code. Studies in the Imperial Law of Late Antiquity* (London: Duckworth, 1993), and Adriaan J. Boudewijn Sirks, *The Theodosian Code. A Study* (Friedrichsdorf: Éditions Tortuga, 2007).

6 Detlef Liebs, “Geltung kraft Konsenses oder kraft königlichem Befehl? Die *lex Romana* unter den Westgoten, Burgundern und Franken,” in *Recht und Konsens im frühen Mittelalter*, ed. Verena Epp and Christoph H.F. Meyer (Ostfildern: Jan Thorbecke, 2017): 64–71 with regard to the *lex Romana Visigothorum*.

7 Cf. Walter Pohl, “Vom Nutzen des Germanenbegriffs zwischen Antike und Mittelalter: Eine forschungsgeschichtliche Perspektive,” in *Akkulturation. Probleme der germanisch-romanischen Kultursynthese in Spätantike und frühem Mittelalter*, ed. Dieter Hägermann, Wolfgang Haubrichs and Jörg Jarnut (Berlin: De Gruyter, 2004): 18–34, and Noel Lenski, “Germanic Law and the Practice of Slaveholding in the Post-Roman West,” in this volume, p. 91–130; but see also Jörg Jarnut, “Germanisch. Plädoyer für die Abschaffung eines obsoleten Zentralbegriffes der Frühmittelalterforschung,” in *Die Suche nach den Ursprüngen. Von den Bedeutungen des frühen Mittelalters*, ed. Walter Pohl (Vienna: Verlag der österreichischen Akademie der Wissenschaften, 2004): 107–13, and in *Leges – Gentes – Regna. Zur Rolle von germanischen Rechtsgewohnheiten und lateinischer Schrifttradition bei der Ausbildung der frühmittelalterlichen Rechtskultur*, ed. Gerhard Dilcher and Eva-Marie Distler (Berlin: Erich Schmidt, 2006): 69–77.

law codes, are the Visigothic *Codex Euricianus*, which dates to the second half of the fifth century, and the Ostrogothic *Edictum Theoderici* from around 500.

b) The law codes can be further distinguished according to the way in which they were compiled. The *leges Romanae*, above all the *lex Romana Visigothorum*, were composed of late Roman law collections (e.g. the *Codex Theodosianus*) and excerpts from Roman legal writings. This corresponded to their intention to record the law that applied to Romans on the basis of the Roman legal sources available in the west. Conversely, however, we cannot exclude the possibility that the law books intended for non-Romans – or for both Germans and Romans – also drew on Roman sources. Both the Visigothic *Codex Euricianus* and the Ostrogothic *Edictum Theoderici* did not simply reproduce Roman legal texts, although many provisions were closely based on such. The extent to which they reproduced Roman law depended on two main factors. This was, firstly, the degree to which society was already shaped by Roman culture and habits, and, secondly, on the legal experts who compiled the law codes. The *lex Salica*, by contrast, kept a distinct distance from Roman law.

c) The post-Roman law codes can also be distinguished in a third respect,⁸ namely according to whether they belonged to the first or the second generation of post-Roman legislation. The first generation comprised those codes or compilations that could only draw on written Roman law, while ‘Germanic’ law had yet to be written down. As mentioned above (b), the first contact with written Roman law by no means implied that the barbarian codes or collections were exclusively based on the former. Rather, the reason laws were written down was primarily due to the Roman model. Laws were in competition before courts and public officials. Written law – unlike customary law, which was oral in character – did not require additional proof. Written law was also an essential identification marker for a group, a tribe, or an empire:⁹ it symbolised the uniformity of order. And finally, by issuing law codes the Germanic rulers placed themselves in the tradition of the Roman provincial governors, who could issue edicts; or even that of the emperors, who issued laws that were valid throughout the empire. In the law books of the first generation, the rulers imitated the Roman model in terms of content; they addressed their people and the territory ruled by themselves and by their laws. These law codes thus reflected the collapse of Roman rule.¹⁰

⁸ A similar, albeit not identical, classification has been proposed by Hermann Nehlsen, *Skavenrecht zwischen Antike und Mittelalter. Germanisches und römisches Recht in den germanischen Rechtsaufzeichnungen* (Göttingen: Musterschmidt, 1972): 61.

⁹ Cf. again Stefan Esders, “Roman Law as an Identity Marker” (n. 4): 327–32; similarly Patrick Wormald, “The *Leges Barbarorum*: Law and Ethnicity in the Post-Roman West,” in *Regna and Gentes. The Relationship between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World*, ed. Hans-Werner Goetz, Jörg Jarnut and Walter Pohl (Leiden: Brill, 2003): 21–54.

¹⁰ See for the *lex Salica* Uhl, *Lex Salica* (n. 3): 92–97.

This first generation of law books includes the Visigothic *Codex Euricianus* or *Edictum Eurici regis*¹¹ (475/76) as well as the Ostrogothic *Edictum Theoderici* (around 500)¹² and without a doubt also the Frankish *lex Salica*, in its earliest version attributed to king Clovis I (*recensio Chlodovea*, c. 507/511¹³). The *lex Burgundionum* (a collection of laws and decrees of the early Burgundian kings, from 517) also belongs to this category. Two examples for law books which were intended to create a uniform and comprehensible body of law for the Romanic population are the *lex Romana Visigothorum* (507) and the *lex Romana Burgundionum* (c. 520).

Among the second generation of legal books I count those that originated in reaction, imitation or continuation of older post-Roman law codes. These include the Visigothic *Liber Iudiciorum* (often referred to as *lex Visigothorum*, 653),¹⁴ which, although it does not reject Roman models in either form or content, is a standalone legal book based on older Visigothic models. The second generation certainly includes the *lex Baiuvariorum* (before 756),¹⁵ the *lex Alamanorum* (around 730?),¹⁶ and the *lex Ribuaria* (623/633). The legal books that emerged from the Carolingian legal reforms, such as the *lex Saxonum* (802) or the *lex Thuringorum* (802/803), may be considered a third generation of legal books, which would also include the *lex Romana Curiensis* (around 765) which seems to be an epitome of the *lex Romana Visigothorum*.¹⁷

11 The latter title has been proposed by Detlef Liebs, *Römische Jurisprudenz in Gallien (2. bis 8. Jh.)* (Berlin: Duncker & Humblot, 2002): 158; Detlef Liebs, "Geltung kraft Konsenses" (n. 6): 65.

12 It is still debated if the *edictum* is of Ostrogothic or Visigothic origin, cf. Giulio Vismara, *Edictum Theoderici* (Milano: Giuffrè, 1967), on the one hand, and on the other Hermann Nehlsen, Review of *Edictum Theoderici*, by Giulio Vismara, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 86 (1969): 246–60. See now also e.g. Rainer Jakobi, "Zur Verfasserschaft des *Edictum Theoderici*," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 139 (2022): 359–62.

13 Ubl, *Lex Salica* (n. 3): 96, argues for an earlier origin (475–486/7); more in detail below at 2c.

14 See most recently Michael J. Kelly, "A Visigothic Literary Guide to Institutional Authority and Self Interest," in *The Visigothic Kingdom. The Negotiation of Power in Post-Roman Iberia*, ed. Sabine Panzram and Paulo Pachá (Amsterdam: Amsterdam University Press, 2020): 257–72, and Michael J. Kelly, *Isidore of Seville and the Liber Iudiciorum. The Struggle for the Past in the Visigothic Kingdom* (Leiden: Brill, 2021).

15 Cf. Peter Landau, *Die Lex Baiuvariorum. Entstehungszeit, Entstehungsort und Charakter von Bayerns ältester Rechts- und Geschichtsquelle* (Munich: Verlag der Bayerischen Akademie der Wissenschaften, 2004); Roman Deutinger, *Lex Baiuvariorum. Das Recht der Bayern* (Regensburg: Pustet, 2017).

16 Both age and authenticity of the *lex* (not of the *pactus Alemannorum*) are disputed, cf. Clausdieter Schott, "Die Entstehung und Überlieferung von *Pactus* und *Lex Alamannorum*," in *Recht und Kultur im frühmittelalterlichen Alemannien. Rechtsgeschichte, Archäologie und Geschichte des 7. und 8. Jahrhunderts*, ed. Sebastian Brather (Berlin: De Gruyter, 2017): 139–51; Steffen Patzold, "Die 'Lex Alamannorum' – eine Fälschung von Mönchen der Reichenau?" in *Recht und Kultur im frühmittelalterlichen Alemannien* (as above): 153–68.

17 Cf. Harald Siems, "Zur *Lex Romana Curiensis*," in *Schrift, Schriftgebrauch und Textsorten im frühmittelalterlichen Churrätien*, ed. Heidi Eisenhut et al. (Basel: Schwabe, 2008): 109–36.

For my purposes, the first generation law codes are of particular interest, as we can expect the confrontation of traditional forms of dependency and Roman legal terminology to be most evident in them. To inquire into changes in the social structure of the new *regna*, however, the law codes of the second or third generation are undoubtedly also instructive.

2 Visigothic Law, Ostrogothic Law and the Frankish *lex Salica*

For an overview over what those legal works covered and how each of them phrased the norms it regulated, I chose four law codes which I will here present briefly. A fifth code will illustrate a long-term development in structuring forms of dependency.

a. Of the oldest code cited here, the *Codex Euricianus*, we only know fragments from a palimpsest held in Paris;¹⁸ some other sections can be reconstructed from later versions of the *Codex*. This legal text was divided into several hundred chapters that regulated procedural, civil and criminal law topics in equal measure. It is written in a Latin closely modelled on the late classical Roman legal language. In terms of content, too, there are sometimes considerable similarities to Roman law. For example, in cap. 277, which deals with the distinction between remunerated and gratuitous depositing (*commendatio*), the code applies the Roman principle of utility (*utilitas*),¹⁹ i.e. it differentiates the depositary's liability according to whether or not he has received money for safekeeping.²⁰ Also striking are the clichéd uses of Roman criteria to justify or to limit liability. The liability of the remunerated depositary is measured by *culpa* and *negligentia*,²¹ while *ruina*, *incendium* and *naufragium*, as in the Roman sources, absolve the debtor. These three events (disaster, fire and shipwreck) are the typical cases of *vis maior*, *force majeure*, cited by the Roman jurists.²² The relevant text of the *codex Euricianus*²³ also corresponds in terms of subject matter with a late antique col-

¹⁸ Paris Lat. 12161; on the editing history see Hermann Nehlsen, "Codex Euricianus," in *Reallexikon der Germanischen Altertumskunde*, vol. 5 (Berlin: De Gruyter, 1984): 42–47, https://www.degruyter.com/database/GAO/entry/RGA_973/html [accessed 24.08.2023].

¹⁹ Unsurpassed is Dieter Nörr's "Die Entwicklung des Utilitätsgedankens im römischen Haftungsrecht," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 73 (1956): 68–119.

²⁰ Cod. Euric. cap. 278, cited according to the edition of Karl Zeumer, ed., *Leges Visigothorum. Monumenta Germaniae Historica, sectio I: Legum Nationum Germanicarum*, vol. 1 (Hannover and Leipzig: Hahn, 1902): 6 (online: [https://www.dmgh.de/mgh_ll_nat_germ_1/index.htm#page\(V\)/mode/1up](https://www.dmgh.de/mgh_ll_nat_germ_1/index.htm#page(V)/mode/1up) [accessed 15.03.2024]).

²¹ Ibid.; Cod. Euric. cap. 281 (MGH LL nat. Germ. 1.8).

²² For example in D. 2.13.6.9 (Ulp. 4 ad ed.); D. 47.9.1 pr. (Ulp. 56 ad ed.).

²³ Cod. Euric. cap. 282 (MGH LL nat. Germ. 1.9).

lection called *Pauli Sententiae*,²⁴ a version of texts attributed to the celebrated Roman lawyer Julius Paulus that were probably compiled for teaching purposes.²⁵ Such similarities can be found not only with the *Pauli Sententiae*,²⁶ but also with fragments recorded later in Justinian's Digests or Codex, or other late antique collections. Zeumer attempted to identify these sources in his edition published in the *Monumenta Germaniae Historia*.²⁷

In addition, the code also contains original regulations, such as the provisions on the limitation of claims arising from ownership of land. A thirty-year limitation period applied to almost all claims, the only exception being a fifty-year period which was to apply to the division of land between Goths and Romans and to the reclamation of fugitive slaves.²⁸ This number seems to derive from the Biblical Jubilee (Hebr. *yovel*), while the limitation period of thirty years was obviously inherited from late Roman law.²⁹ All in all, the Codex testifies to an independent regulatory interest, even though in many areas it depended on Roman law – both in terms of language and content.

b. Of a completely different format is the *lex Romana Visigothorum*, which Alaric II commissioned for the Roman people living under Visigothic rule, and which came into force in 506 or 507. It is a compilation of late classical *leges* or parts of law collections with some jurisprudential writings which frequently circulated in the Roman west. Its core component is the *Codex Theodosianus*, a collection of Roman imperial laws from the time of Constantine onwards issued by Theodosius II and Valentinian III in 438. In post-Roman law codes the *lex Romana Visigothorum* is therefore sometimes referred to as the *Theodosiani corpus*, i.e. it is effectively identified with Theodosianus. However, the *lex Romana Visigothorum* also contains later (post-Theodosian)

24 I.e. Paul. Sent. 2.4.2.

25 On the *Pauli Sententiae* cf. Detlef Liebs, *Römische Jurisprudenz in Africa: mit Studien zu den pseudo-paulinischen Sentenzen*, 2nd ed. (Berlin: Duncker & Humblot, 2005).

26 E.g. Cod. Euric. Cap. 299 (prohibition of selling one's own children, MGH LL nat. Germ. 1.15), compare with Paul. sent. 5.1.1; generally on this subject see Detlef Liebs, "Die Rolle der Paulussentenzen bei der Ermittlung des römischen Rechts," in *Hermeneutik der Quellentexte des römischen Rechts*, ed. Martin Avernarius (Baden-Baden: Nomos, 2008): 157–75.

27 Above in n. 20.

28 Cod. Euric. cap. 277 (MGH LL nat. Germ. 1.5); on this subject see Stefan Esders, "Prescriptive Limitations on Judicial Action in the Liber iudiciorum: The title De quinquagenarii et tricennalis temporis intentione as a Testimony to (Almost) Three Centuries of Visigothic Possessory and Political History," in *Visigothic Law from Antiquity to Modernity: Essays on the Liber Iudiciorum*, ed. Damián Fernández and Noel Lenski (forthcoming, 2025).

29 Esp. Cod. Iust. 7.39.3 (Theod.); cf. Harry Dondorp, "Limitation and Prescription in Justinian's Corpus Iuris Civilis," in *Limitation and Prescription. A Comparative Legal History*, ed. Harry Dondorp, David Ibbetson and Eltjo J.H. Schrage (Berlin: Duncker & Humblot, 2019): 44–67 (esp. 63–65); for more detail see section 4b below.

imperial laws and some from the *Codex* of Gregorianus (dating probably to 291) and Hermogenianus (295). Moreover, it contains the so-called *Gai(i) epitome*, a shortened and partly vulgarised form of the *Gaii institutiones*,³⁰ as well as excerpts from the *Pauli sententiae*. With the exception of the texts from the *Gai epitome*, all fragments of the *lex Romana Visigothorum* were given a contemporary ‘*interpretatio*,’ which often simply restated its content, but sometimes also provided explanations and additions. Due to its excerpts of classical legal writings the *lex Romana Visigothorum* is an important testimony to the simplifying tendencies of late Roman law – the ‘vulgarisation’ of Roman law, as Ernst Levy called it.³¹ For my purposes, it is important that the imperial decrees contained in the *Codex Theodosianus* reveal a diversification of the status of dependents. There were no longer only *servi* and *coloni* – as in late classical law – but also other groups of dependents for whom it is difficult to judge whether they were counted among the free or the unfree. We will take a closer look at this later. The *lex Romana Visigothorum* is significant in that it offers a snapshot of a legal situation that had been in effect in the western provinces of the empire at the time the Goths took control.

That this legal situation gradually changed under the rule of the Goths (as well as in other parts of post-Roman Europe under the rule of the Burgundians, Franks or Lombards) is shown in particular by the new version of Visigothic law, the so-called *Liber Iudiciorum*,³² which was issued in the seventh century by King Reccesvinth (653–672)³³ and divided into twelve books. It contained parts of the old law (the so-called *Codex Euricianus*), but replaced the *leges Romanae*, which were superseded by it. Reccesvinth even criminalised³⁴ the use of Roman law, which he called the law of *alien(a)e gentis*, and allowed its use at most for legal training (*ad exercitiam*).³⁵

c. The Ostrogothic *edictum Theoderici*,³⁶ issued around 500, was a sort of counterpart to the *Codex Euricianus*. From a legal-political point of view, it is remarkable that the

30 Still worth reading is Gian Gualberto Archi, *L’Epitome Gai. Studio sul tardo diritto Romano in Occidente* (Milano: Giuffrè, 1937).

31 Ernst Levy, *West Roman Vulgar Law. The Law of Property* (Philadelphia: American Philosophical Society, 1951); Ernst Levy, *Weströmisches Vulgarrecht: Das Obligationenrecht* (Weimar: Böhlau, 1956).

32 See the edition by Karl Zeumer, ed., *Leges Visigothorum. Monumenta Germaniae Historica, sectio I: Legum Nationum Germanicarum*, vol. 1 (Hannover: Hahn, 1902): 33–456, [https://www.dmgh.de/mgh_ll_nat_germ_1/index.htm#page/\(V\)/mode/1up](https://www.dmgh.de/mgh_ll_nat_germ_1/index.htm#page/(V)/mode/1up) [accessed 15.03.2024].

33 According to Liebs, “Geltung kraft Konsenses” (n. 6): 71, in the year of 654.

34 Lex Visig. 2.1.10 and 1 (MGH LL nat. Germ. 1.58–59).

35 Cf. Lex Visig. 2.1.10 (MGH LL nat. Germ. 1.58); cf. also Liebs, “Geltung kraft Konsenses” (n. 6): 71.

36 In general see Giulio Vismara, *Edictum Theoderici* (Milano: Giuffrè, 1967); Sean D.W. Laffery, *Law and Society in the Age of Theoderic the Great* (Cambridge: Cambridge University Press, 2013); Orazio Licandro, *Edictum Theoderici. Un misterioso caso librario del Cinquecento* (Rome: L’Erma di Bretschneider, 2013); Sebastian Schmidt-Hofner and Hans-Ulrich Wiemer, “Die Politik der Form: Das Edictum Theoderici, das Prätorische Edikt und die Semantiken königlicher Rechtsetzung im postimperialen Westen,” *Chiron* 52 (2022): 335–412.

Ostrogothic king Theoderic the Great only issued ‘edicts’ (as it says in the preamble) and not – like Euricianus – a collection of laws as the Roman emperors (Theodosius/Valentinian) had done. The collection is considerably slimmer than the *Codex Euricianus*; it contains only 154 chapters, most of which are rather short. The arrangement of the chapters seems to be random; occasionally different rules seem to be linked by association. Criminal law predominates, along with procedural law, but some civil law and a few canonical points are also regulated. In some cases, the Roman references are easily recognisable. Friedrich Bluhme noted them in the footnotes of his 1870 edition for the MGH.³⁷ Predominant are those Roman sources on which the *Codex Euricianus* also drew, and which are prominently preserved in the *lex Romana Visigothorum*: the *Pauli sententiae*, the *Gai epitome* and the *Codex Theodosianus*. Occasionally, however, the *edictum* also seems to quote from classical legal literature.³⁸

d. The *lex Salica* clearly differs from both the *Codex Euricianus* and the *edictum Theoderici*. It contains almost exclusively provisions of criminal and procedural law, none of which seem to have been taken directly from Roman sources – although the *lex Salica* widely adopted Roman legal terminology. The *lex Salica* was written for the Franks and, according to prevailing scholarly opinion, was enacted by the Merovingian king Clovis I between 507 and 511. Karl Ubl recently argued for an earlier origin, naming the decade from 475 to 486,³⁹ when the Franks, after the collapse of the Roman regime, sought to distance themselves from Roman culture and to recall their own cultural roots. In any case, the *lex Salica* is the law code that is at the greatest remove from the Roman legal tradition.⁴⁰ Its historical core, which has been handed down in numerous manuscripts, does not go back before the time of Clovis I; even Ubl assumes that the oldest recorded version was the one composed by Clovis.⁴¹ There is some disagreement as to whether the *lex Salica*, following the ancient principle of personality, applied only to Franks or to Romans as well. Stefan Esders assumed the latter,⁴² while Liebs, pointing to the widespread use of the *lex Romana Visigothorum* in the Frankish Empire,⁴³ disagreed.

37 Friedrich Bluhme, ed., *Edictum Theoderici Regis ex Petri Pithoei editione repetitum adnotatione indicibusque instruxit, Monumenta Germaniae Historia, legum tom. V* (Hannover: Hahn, 1875–1879): 145–68.

38 E.g. Ed. Theodor. cap. 128 I similar to D. 9.4.33 (Pomponius 14 ad Sab.); cap. 136 seems to repeat D. 41.1.7.12 (Gaius 2 rer. cottidianarum).

39 Ubl, *Lex Salica* (n. 3): 92–97, esp. 96.

40 Ubl, *Lex Salica* (n. 3): 67: “Schon auf den ersten Blick zeigt sich somit die große Distanz zur römischen Jurisprudenz”. He therefore considers it (68) ‘ein Werk sui generis’.

41 Ubl, *Lex Salica* (n. 3): 109.

42 Stefan Esders, *Römische Rechtstradition und merowingisches Königtum. Zum Rechtscharakter politischer Herrschaft in Burgund im 6. und 7. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 1997): 157.

43 Liebs, “Geltung kraft Konsenses” (n. 6): 76–77.

Liebs referred to a capitulary of the Merovingian king Chlotarius II⁴⁴ which states, *inter Romanus negotia causarum romanis legebus praecepemus terminari* – ‘We order that transactions concluded between Romans be decided according to Roman laws.’⁴⁵ A very similar provision can be found at the beginning of the *lex Burgundionum*, which did follow the principle of personality.⁴⁶ However, this question is hardly relevant for the interpretation of the social hierarchies reflected in the code. Characteristic of the *lex Salica* is the subordination of the Romans to the Franks, which is expressed particularly in the fact that only half the wergild was to be paid for killing or injuring a Roman. But more on this later.⁴⁷ It should be noted here, however, that with the exception of a few provisions on family and inheritance law, the *lex Salica* contains almost exclusively criminal law. This criminal law was largely based on the so-called *compositio* (a system of settlements or fines), i.e. criminal offences were to be fined with a specified amount of money. Other forms of punishment like extradition, exile, forfeiture of property or execution occur only rarely.

3 Terms of Dependency in the *lex Romana Visigothorum*

If we had expected insights into post Roman dependencies from juxtaposing social hierarchies of the Germanic *regna* with Roman legal terminology, the findings are, at first glance, disappointing. While the *lex Romana Visigothorum* reflects the social structures of late Roman society in the west, the *lex Salica* only tells us that slaves and freemen were strictly differentiated. The *lex Salica* gives almost no insights into the gradation of dependencies. One might hope for more information from the *Codex Euricianus* and the *Edictum Theoderici* – after all, they are legal books that sought to regulate Germanic conditions with the help of Roman law. But here, again, we are disappointed: there is nothing more than the Roman triad of *ingenui* (freeborn), *servi/mancipia* and *coloni*. Nevertheless, it is worth taking a closer look at the individual rules because they indicate in various respects that social relations changed under Germanic rule.

It is advisable to start with a closer look at the *lex Romana Visigothorum*, because it provides us with the historical starting point for later developments. It was based on the well-known Roman division of people into free and slaves. The so-called *Gai*

⁴⁴ Cf. Alfred Boretius, ed., *Monumenta Germaniae Historica, legum sectio II: Capitularia Regum Francorum*, vol. 1 (Hannover: Hahn 1883): 18, arranged in the time of Chlothar II (584–628).

⁴⁵ Praec. Chlotharii II, c. 4 (= MGH Capit. 1.19).

⁴⁶ Lex Gundobada 1.8; ed. Ludwig Rudolf de Salis, “Leges Burgundionum,” in *Monumenta Germaniae Historica, legum sectio I: Legum nationum Germanicarum II 1* (Hannover: Hahn, 1902): 32.

⁴⁷ Below, at 4c.

epitome (Gai. epit. 1 pr.) in the *lex Romana Visigothorum* pointed to the text on which it was modelled (Gai. inst. 1.9–10):

Gaii institutionum liber primus dicit omnes homines aut liberos esse aut servos, sed ex his ipsis, qui liberi sunt, alios esse ingenuos alios libertinos.

The first book of the Institutions of Gaius states that all people are either free or slaves, and among those who are free, some are born free and others have been manumitted.

This was wholly in line with the legal situation in the classical period: within the slave status there was no further gradation;⁴⁸ only among the free were there differences in legal capacity. In classical law, however, the distinction between *ingenui* and *liberti* did not remain unchanged; rather, according to the *lex Aelia Sentia*, the legal status of freedmen or -women depended on their age, on the type of manumission and on whether they had committed criminal offences as slaves.⁴⁹ In the latter case, they would only acquire the status of *dediticii*, of those subjugated in war.⁵⁰ As such, they could neither acquire the *civitas* nor the ability to inherit or bequeath. All other freedpeople also acquired the citizenship upon manumission – unless they were below thirty years of age, or there had been no formal act of release, in which case they acquired the status of *Latini* – i.e. not citizenship, but a status that was largely equal to that of free persons under civil law.⁵¹

This distinction lost its frame of reference for *ingenui* as early as 212 AD, when Caracalla (= Severus Antoninus) granted *civitas* to all free inhabitants of the empire. However, as the *lex Romana Visigothorum* shows, the gradation of full freedom, Latin freedom and the status of *dediticius* continued to be significant for freedpeople. Other late Roman legal acts also testify to this gradation. In the *lex Romana Visigothorum*, however, it was shortened and had somewhat evolved: Latins were now also incapable of inheriting, although they could at least acquire by *fideicommissa* (i.e. informal entails). Nor was there any mention of the numerous cases in which Latins could acquire full citizenship. The *lex Aelia Sentia* was no longer mentioned at all in the *Gai epitome*. Conversely, the owner's power over life or death of his slave, which was still

⁴⁸ That is, no further gradation in terms of the legal status was concerned; but see now Martin Schermaier, ed., *The Position of Roman Slaves. Social Realities and Legal Differences*, Dependency and Slavery Studies 6 (Berlin: De Gruyter, 2023); Edward E. Cohen, *Roman Inequality. Affluent Slaves, Businesswomen, Legal Fictions* (Oxford: Oxford University Press, 2023).

⁴⁹ On this subject see in general William Warwick Buckland, *The Roman Law of Slavery. The Condition of the Slave in Private Law from Augustus to Justinian* (Cambridge: Cambridge University Press, 1908): 533–51; Max Kaser, *Das Römische Privatrecht*, vol. 2, *Die nachklassischen Entwicklungen*, 2nd ed. (Munich: C.H. Beck, 1975): 121.

⁵⁰ See Gai. inst. 1.14–15.

⁵¹ Gai. inst. 1.13; 1.16–17; 1.28–32; cf. Egbert Koops, “Masters and Freedmen: Junian Latins and the Struggle for Citizenship,” in *Integration in Rome and in the Roman World*, ed. Gerda de Kleijn and Stéphane Benoist (Leiden: Brill, 2014): 105–26.

recorded in the classical text of Gaius (inst. 1.52–53), had been explicitly excluded in the *Gai epitome* (Gai. epit. 3.1):

occidendi tamen servos suos domini licentiam non habebunt, nisi forte servus, dum pro culpa modo caeditur, casu forsitan moriatur.

Owners are not allowed to kill their slaves, unless a slave chanced to die after having been beaten for his delinquency.

This was in line with Constantinian legislation as found in Cod. Theod. 9.12.1–2 (a. 319), and therefore also in the *lex Romana Visigothorum*.⁵² The *Gai epitome* explicitly stated that only public courts could impose capital punishment on slaves.

Even other rules introduced to improve the legal position of slaves since Constantine are reflected in the *lex Romana Visigothorum*. Noxal liability, according to which a slave who had harmed another person could be handed over to the injured party, was replaced by judicial punishment of the slave himself.⁵³ In general, the personal liability of slaves became more prominent in tort law. In the case of sale or inheritance, slaves could not be separated from their family members (in case a parent or child was sold) or from their spouse (Cod. Theod. 2.25.1). Certain forms of punishment of slaves (such as branding) were now prohibited (Cod. Theod. 9.40.2). Acquiring liberty by *usucapio* became possible after twenty years of living in freedom (Cod. Theod. 4.8.9). Furthermore, slaves were rewarded with freedom for reporting certain crimes.⁵⁴ Formal manumission was facilitated by the disappearance of the old *manumissio vindicta* and the recognition of manumission before the provincial presbyter or *in ecclesiam* as fully valid.⁵⁵

The *coloni*, the agricultural workers who were tied to the soil, were not formally regarded as *servi*, but as free. Nevertheless, their legal status was in many respects the same as that of the *servi*. Cod. Theod. 5.19.1 is significant in this respect: it referred to the landowner as *patronus*, but in the accompanying *interpretatio* (derived from the *lex Romana Visigothorum*) he was already called *dominus*. *Coloni* belonged to the *proprietas* (Cod. Theod. 5.18.1.2) of the landowner and were compared to ‘freemen’ (*ingenui*).⁵⁶ However, they were considered capable of owning property, so they could become owners of land or were considered owners of their crops.⁵⁷ Furthermore, they could marry among themselves or even a free woman.⁵⁸ However, they were bound to the land and so could not leave it. Those who attempted to escape were pun-

52 See also Paul. sent. 5.23.6; and see Kaser, *Das römische Privatrecht*, vol. 2 (n. 49): 126.

53 Paul. sent. 5.4.22; cf. Kaser, *Das Römische Privatrecht*, vol. 2 (n. 49): 431.

54 For references see Buckland, *Roman Law of Slavery* (n. 49): 598–602; Kaser, *Das römische Privatrecht*, vol. 2 (n. 49): 132.

55 Gai. epit. 1.4 (*in fine*): *aut testamento aut in ecclesia aut ante consulem manumittantur* [. . .].

56 Nov. Valent. 31.6 (with *interpretatio*); Kaser, *Das römische Privatrecht*, vol. 2 (n. 49): 147.

57 Rich evidence in Kaser, *Das römische Privatrecht*, vol. 2 (n. 49): 147 n. 42.

58 Cod. Theod. 12.19.1; on this (and similar texts) see Elemér Pólay, *Die Sklavenehe und das römische Recht* (Szeged: University “Attila József”, 1967): 49–50; Kaser, *Das römische Privatrecht*, vol. 2 (n. 49): 147.

ished like slaves.⁵⁹ *Coloni* could only be sold together with the land, not – like slaves – as individuals. The landowner could free them under certain circumstances, but a *colonus* could also acquire the freedom of the land by *usucapio*.⁶⁰

Compared to what it had been in the third or fourth century, the position of *servi* and *coloni* had thus become more similar by the fifth century; the position of slaves improved, that of the *coloni* deteriorated somewhat.⁶¹ In the *Codex Euricianus* (cap. 291–92), for example, slaves were granted the same status as *coloni*, in that they themselves were the owners of their *peculium*. These and other improvements were probably not a sign of a change in social attitudes towards slavery, but the result of a dogmatic simplification.⁶²

The complex classical construction, which had contrasted the property of the *dominus* with the power of disposition of the *servus*, was no longer followed in the post-classical period in the Roman west. The actual impression that the slave could independently determine what happened to the *peculium* determined how he was legally classified. Similar abridgements can be found in the rules of descent. According to Roman law, a child always followed the status of the mother. The child of a slave also became a slave if the mother knew the slave status of the father⁶³ or if the master of the mother disapproved of the union.⁶⁴ These and similar exceptions probably led the legislator of the *lex Romana Burgundionum* to reverse the principle and always have the child follow the ‘inferior line’ (*linea deterior*).⁶⁵

Before we go into more detail on later adaptations, we should note some terminology for persons of diminished freedom, namely terminology found in the *Codex*

59 Cod Theod. 5.17.1; on punishment for those who sheltered them cf. Cod. Theod. 10.12.2.3.

60 References in Kaser, *Das römische Privatrecht*, vol. 2 (n. 49): 149.

61 In general see Luis A. Garcia Moreno, “From coloni to servi: A History of the Peasantry in Visigothic Spain,” *Klio* 83 (2001): 198–212; Noel Lenski, “Slavery among the Visigoths,” in *Slavery in the Late Antique World, 150–700 CE*, ed. Chris L. de Wet, Maijastina Kahlos and Ville Vuolanto (Cambridge: Cambridge University Press, 2022): 251–80; Boudewijn Sirks, “The Colonate in the Later Roman Empire,” *Tijdschrift voor Rechtsgeschiedenis* 90 (2022): 129–47. Less informative is Hannah Basta, “Slaves, Coloni, and Status Confusion in the Late Roman Empire,” *Journal of the National Collegiate Honors Council* (2017): 47–58; more comprehensive is Oliver Schipp, *Den Kolonat neu denken. Zur Aktualität eines Forschungsproblems* (Heidelberg: Propylaeum, 2023): 125–53, <https://books.ub.uni-heidelberg.de/propylaeum/catalog/book/1190> [accessed 15.03.2023].

62 Kaser, *Das römische Privatrecht*, vol. 2 (n. 49): 127 n. 37, speaks of a ‘laienmäßigen Anschauung’ (‘amateurish attitude’).

63 Gai. inst. 1.86.

64 Gai. inst. 1.91.

65 LRB 37,5 (ed. FIRA II 744): *Inter ingenuum vero et ancillam, sive servum et ingenuam, sicut consensus contubernia facere possunt, ita nuptiae non vocantur, et qui ex his nati fuerint, deteriore lineam secuti dominis adquiruntur.* ([A union] between a freeborn man and a slave woman, or between a slave man and a freeborn woman can with their consent only give rise to a *contubernium* and is therefore not called a marriage, and those who are born from such a union follow the inferior line and therefore belong to the *dominus*.)

Theodosianus or in the *Gai epitome*. First of all, there is the term *originarius* or *originaria*; this presumably refers to *coloni*.⁶⁶ *Origo* refers to a person's place of origin;⁶⁷ this implies his or her connection to a piece of land or to a dominion. The *inquilinus*, the 'inhabitant', was probably also a *colonus*. In addition to these familiar examples, there are new ones, such as *mercennarius*.⁶⁸ In classical law, this denoted a freeman or a slave who worked for a third party for a salary. In the *lex Romana Visigothorum* the *mercennarius* was free, but because of his work he occupied a slave-like position.⁶⁹ When the *codex Theodosianus* speaks of *dediticii*,⁷⁰ *laeti*⁷¹ or *foederati*,⁷² it regularly refers to settled strangers who were mercenary soldiers in the Roman army or settled as *coloni*.⁷³

A new form of private dependency emerged in the relationship of a freeman to his *actor* or *procurator*. Whereas under classical law these could be free or freed, they were now regularly regarded as administrators who depended on the principal, and who – like slaves or *coloni* – could be sanctioned with corporal punishment. Moreover, their own property was treated like the *peculium* of a slave or *colonus*: it was not accessible to third parties until the master's claims had been satisfied. In late Roman sources such administrators are called *institores*. In classical law, this signified someone acting in the capacity of a manager, who could be either a slave or a freedman. In the *Pauli sententiae*, *institor* is counted among the *ministeria urbana*, i.e. among the tasks that could be carried out by an urban slave – comparable to the work of a *cellarius*, *cubicularius*, *coquus* or *tonsor*. The fact that this does not simply refer to professions, but to slaves engaged in certain activities, becomes clear from the context: the *sententiae* enumerate what a testator meant by *servus* when he bequeathed him.

66 Cf. Cam Grey, "Contextualizing Colonatus: The Origo of the Late Roman Empire," *Journal of Roman Studies* 97 (2007): 155–75, esp. 170–74.

67 See in general Dieter Nörr, "Origo," in *Paulys Realencyclopädie der classischen Alterumswissenschaft*, vol. supplementum 10 (Stuttgart: J.B. Metzler, 1965): 433–73; Dieter Nörr, "Origo. Studien zur Orts-, Stadt- und Reichszugehörigkeit in der Antike," *Tijdschrift voor Rechtsgeschiedenis TR* 31 (1963): 525–600.

68 Paul. sent. 2.8.3 (*interpretatio*); for further references see Alfons Bürge, "Der mercennarius und die Lohnarbeit," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 107 (1990): 80–136, esp. 131–34.

69 Cf. Paul. sent. 2.18.1; on this subject see Francesco de Robertis, *Lavoro e lavoratori nel mondo romano* (Bari: Adriatica editrice, 1963): 143–47; critical Dieter Nörr, "Zur sozialen und rechtlichen Bewertung der freien Arbeit in Rom," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 82 (1965): 67–105, esp. 86–87 and 103–5.

70 E.g. Cod. Theod. 7.13.16.

71 Cod. Theod. 7.20.10; 7.12.12 pr.; 13.11.10; on the last text cfr. the contribution of Esders, n. 26 (in this volume).

72 Cod. Theod. 7.13.16.

73 See Kaser, *Das Römische Privatrecht*, vol. 2 (n. 49): 122.

4 Terms of Dependency in the Non-Roman Law Codes

4.1 Visigoths

If one compares this to the rest of Visigothic law, to the *Codex Euricianus* and the more recent *lex Visigothorum* (or *Liber Iudiciorum*), one is surprised to find that they frequently speak of *servus*, *mancipium* or *ancilla*, but never of *colonus* or *originarius*. Nehlsen even suggested that *servus*, along with *iudex*, is the most frequently used legal term in the *codex Euricianus* and the *liber iudiciorum*.⁷⁴ But why does *colonus* not appear at all? Nehlsen assumed that by the time of the Visigoths at the latest, the *coloni* had sunk ‘auf die Stufe der *servi*’ (‘to the level of *servi*’).⁷⁵ However, if one considers the late Roman variety of semi-freemen that the *lex Romana Visigothorum* has to offer, another assumption is more likely: from the point of view of the Visigoths (and perhaps also other Germanic tribes), all semi-freemen were unfree, i.e. *servi* in Roman terminology. Hence, they were collectively referred to as *servi*. Rio is right in saying (without advocating this thesis) that it is impossible in most cases to infer with certainty a status of a given *servus* from the description in the early medieval sources.⁷⁶ This does not mean that the Visigothic sources do not mention different occupations of *servi*, such as *stabularii* (grooms), *argentarii* (moneyers) or *coqui* (cooks).⁷⁷ But such functional descriptions did not indicate gradations of social or legal statuses.

However, from the fragments of the *codex Euricianus* we do learn of two new forms of diminished freedom, that of the *buccellarius* (cap. 310) and of the *saionis* (cap. 311). Both, one suspects, are arms-bearing clients of a patron; but we do not know any details about how this client-patron relationship was organised.

The *Liber Iudiciorum* provides more distinctions. In numerous places it adds a descriptive attribute to the simple *servus*. He may be *idoneus* or *rusticus* (or *vilius* or *inferior*). Verlinden⁷⁸ and, following him, Rio,⁷⁹ assume that the *servus idoneus* was a domestic slave, while *rusticus* or *vilis* denoted ‘farmhands and unfree tenants’. Nehlsen, on the other hand, thinks that the terminology does not serve to distinguish between where and how the slave was employed, but referred to the type of service he

⁷⁴ Nehlsen, *Sklavenrecht* (n. 8): 165.

⁷⁵ Nehlsen, *Sklavenrecht* (n. 8): 167.

⁷⁶ Alice Rio, *Slavery after Rome, 500–1100* (Oxford: Oxford University Press, 2017): 15: ‘[I]t is almost impossible to tell what exactly the word *servus* was intended to describe when it is found in an early medieval text without further contextual information.’

⁷⁷ Cf. Lenski, “Slavery among the Visigoths” (n. 61): 257–58 and 268.

⁷⁸ Charles Verlinden, *L’esclavage dans l’Europe médiévale*, vol. 1, *Péninsule ibérique, France* (Bruges: de Tempel, 1955): 80–81.

⁷⁹ Rio, *Slavery after Rome* (n. 76): 145.

performed.⁸⁰ However, the two are not necessarily mutually exclusive: in classical Latin, too, the ‘country man’ (*rusticus*) was typically the uneducated man. Conversely, uneducated slaves would have been regularly employed as ‘farmhands’ by their owners. The degree of social gradation is interesting: the criminal law of the *Liber Iudiciorum* distinguished between *idoneus* and *vilis*, applying this to both perpetrator and victim: if a freeman cut the hair of a *servus idoneus* against his will, the penalty was a fine of ten solidi and one hundred lashes. If he did the same to a *servus rusticanus*, he only had to pay the fine.⁸¹ A *servus idoneus* who violated the honour of a freeman was punished with forty lashes, a *servus vilior* with fifty.⁸²

The legal position of slaves in general even improved in the *Liber Iudiciorum* compared to the *lex Romana Visigothorum*. For the Visigoths, slaves were not only capable of bearing arms,⁸³ but also of taking legal action, particularly in tort law.⁸⁴ Slaves suffered some restrictions with regard to their capacity for owning property; they were only partially granted the power of disposal if they had a *peculium*.⁸⁵ However, the protection of slaves under criminal law is interesting. The older Visigothic law followed Roman law in that injury to a slave could be prosecuted as either damage to property or as *iniuria*, thus entitling the injured *dominus* to a claim for damages according to the severity of the injury. In addition, a *compositio vulneris* was imposed.⁸⁶ The *Liber Iudiciorum* as edited by Reccesvinth (in the mid-seventh century) replaced these provisions with a system of *compositio* in which a slave was generally assigned half the value of a free man.⁸⁷ A comparable differentiation was applied to the offender: a slave who injured a free man or another slave was punished more severely than a free man. According to a *lex* of Chindasvinth,⁸⁸ this resulted in the following system of *compositio*.⁸⁹

LVis. 6.4.1: *Si ingenuus ingenuum quolibet hictu in capite percusserit, pro libore det solidos V, pro cute rupta solidos X, pro plaga usque ad ossum solidos XX, pro osso fracto solidos C. Quod si ingenuus hoc in servo alieno commiserit, medietatem superioris compositionis exolvat. Si vero servus in*

⁸⁰ Nehlsen, *Sklavenrecht* (n. 8): 179–82, esp. 181; in the same sense Lenski, “Slavery among the Visigoths” (n. 61): 258.

⁸¹ Lex Visig. 6.4.3; see Nehlsen, *Sklavenrecht* (n. 8): 180.

⁸² Lex Visig. 6.4.7.

⁸³ Lex Visig. 9.2.9; Nehlsen, *Sklavenrecht* (n. 8): 171.

⁸⁴ Lex Visig. 2.2.9; Nehlsen, *Sklavenrecht* (n. 8): 170–71.

⁸⁵ See Nehlsen, *Sklavenrecht* (n. 8): 169–70.

⁸⁶ Vgl. Lex Visig. 6.4.9 and 11.

⁸⁷ An interesting parallel can be found in the Twelve Tables (about 450 B.C.): XII tab. 8.3 = Paulus Coll. 2.5.5: *manu fustive si os fregit libero, CCC, servo, CL poenam subit sesteriorum* (‘if someone with his hand or a stick breaks the bone of a free man, he has to pay a fine of 300 [sesterces], if a slave’s, 150 sesterces’). The *Collatio legum Mosaicarum et Romanarum* (Coll.), in which that provision is quoted, was compiled around 400 AD.

⁸⁸ Cf. Nehlsen, *Sklavenrecht* (n. 8): 173 and 208–9.

⁸⁹ Ed. Zeumer, MGH (n. 32): 263.

servo hoc fecerit, tertiam eisudem compositiones adimpleat et L flagella suscipiat. Si autem servus ingenuum vulneraverit, ita componat, sicut cum ingenuus servum vulneraverit alienum, et LXX flagella suscipiat. Si vero dominus noluerit pro servo componere, servus tradatur pro crimine.

If a freeborn man strikes the head of another freeborn man he has to pay five solidi for causing a swelling, ten solidi for an open wound (lit.: for broken skin), twenty for a blow that goes to the bone, one hundred for a cranial fracture. If a freeborn man inflicts such an injury to a slave, half of the previous compensation is due. But if a slave harms another slave in this way, he has to pay a third of this amount and is to be given fifty lashes. If a slave injures a freeborn man, compensation is due as when a freeborn man injures another's slave, and (in addition) he is to be given seventy lashes. If the owner refuses to pay compensation for his slave, he has to give up the slave (to the injured party) because of the crime.

If we leave aside the possibility of noxal liability, which is mentioned in the last sentence, what we have here is a system of punishment that comes close to the late Roman distinction between *honestiores* and *humiliores*:⁹⁰ those of lower class were punished more severely than those of higher class, and if the latter violated the law, their higher class in turn justified lighter punishments. In this respect, the contrast between *ingenui* and *servi* no longer seems to be a difference in status, but in class. This accords with Chindasvinth's rule that one who killed a foreign slave was prosecuted for *homicidium* and must expect life-long banishment.⁹¹ Killing or injuring a slave was therefore no longer mere damage to property.

4.2 Ostrogoths

The slave law of the *Edictum Theoderici* shows similar, albeit less pronounced, tendencies, but it does distinguish terminologically between *servi* or *mancipia* and *coloni* or *originarii*. Sometimes a distinction was also made between *manipia rustica* and *famuli urbani*. Legally, however, these distinctions were meaningless: the Edict treated slaves and *coloni* in the same way. This might therefore have been a different way of expressing what I assume was done in Visigothic law, namely that *coloni* and slaves were considered equally unfree. The fact that the terminological distinction was maintained reflects the fidelity to Roman legal language, which is particularly evident in the *Edictum*. *Coloni* could easily be separated from the plot of land and sold,⁹² and according to Cassiodorus' testimony much use was made of this.⁹³

Unlike in Visigothic law, the position of slaves in the Edict remained unchanged compared to late Roman legislation. Although slaves were considered to be the own-

⁹⁰ On this subject see Rolf Rilinger, *Humiliores – Honestiores: Zu einer sozialen Dichotomie im Strafrecht der römischen Kaiserzeit* (Munich: Oldenbourg, 1988).

⁹¹ Lex Visig. 9.2.9; Nehlsen, *Sklavenrecht* (n. 8): 172–73.

⁹² Ed. Theodor. 142; on this see Nehlsen, *Sklavenrecht* (n. 8): 125–26.

⁹³ Cass. Var. 8.33.4 and 5.16.2; on both texts Nehlsen, *Sklavenrecht* (n. 8): 126–27.

ers of their *peculia*, they were entitled neither to bear arms nor to litigate, nor could they enter into marriage other than a *contubernium*.⁹⁴ The latter also applied to *coloni*. In fact, relevant provisions of the *Edictum* regularly mentioned *servi* and *coloni* side by side. If a slave or a *colonus* committed an offence, Roman noxal liability applied; even the principle of *nox caput sequitur* appears in the *Edictum* (cap. 120). In a few criminal offences (such as robbery), the handing over of the slave to the injured party was replaced by their being handed over to the public authority for the purpose of torture and/or punishment.⁹⁵ Capital crimes, arson and relations of a male slave or a *colonus* with a free woman were subject to the state's penal power anyway.

Apart from *servi* and *coloni* (for whom, as mentioned, sometimes different nomenclature applied), the Edict mentions *curiales* and *collegiati* in the same breath as *servi*. Ed. Theodor. 69 runs,

Quisquis curialem, aut collegiatum, aut servum, per triginta annos possederit, qui nullam patriae suae conlationem subisse monstratur, eos praediorum dominis iubemus adquiri [. . .].

Whosoever possesses a *curialis*, or a *collegiatus*, or a slave for thirty years, who cannot be shown to be a member of an association of his hometown, we order that such a one is to become the property of the landowner.

So a *curialis* or *collegiatus* could, after thirty years, be acquired by means of prescription just like a slave. That sounds odd. The provision was related to the so-called *longissimi temporis praescriptio*, according to which all claims and rights could become time-barred after thirty years. The idea of a general limitation of claims went back to Constantine I,⁹⁶ the limitation period of thirty years (in case of hitherto unlimited claims) had been introduced by Theodosius II in 424.⁹⁷ The limitation of claims resulted in previous owners not being able to claim back their property after the period (of thirty years) had expired. This put unauthorized possessors into an unchallengeable position: the limitation of claims led to a kind of acquisitive prescription on things. However, the fact that even the rights to another person could be acquired after thirty years was new. Valentinian III (in 365)⁹⁸ still insisted that slaves or *coloni*

⁹⁴ On *contubernium* and slave marriage in Roman law see Marcel Simonis, *Cum servis nullum est contubernium. Untersuchungen zu den eheähnlichen Verbindungen von Sklaven im westlichen Mittelmeerraum des Römischen Reiches* (Hildesheim: Olms, 2017); esp. on the relevant Ostrogothic provisions see Christoph D. Müller, *Das Recht der Ehe Voraussetzungen in den Leges der Goten, Burgunder und Franken unter besonderer Berücksichtigung des römischen Vulgarrechts* (Berlin: Duncker & Humblot, 2015): 104–10.

⁹⁵ Ed. Theodor. 109; in detail Nehlsen, *Sklavenrecht* (n. 8): 135–40.

⁹⁶ Mentioned in P.Columb. 181/82, published in: Vincenzo Arangio-Ruiz, “Negotia,” in *Fontes iuris romani AntJustiniani*, vol. 3, ed. Salvatore Riccobono et al. (Florence: Barbèra 1968): 318–28, and in Cod. Iust. 7.39.2 (a. 365). See Dondorp, “Limitation and Prescription” (n. 29): 64–65 with further references.

⁹⁷ Cod. Theod. 4.14.1 (a. 424) = C. 7.39.3; the text of this constitution has been translated into English by Dondorp, “Limitation and Prescription” (n. 29): 63.

⁹⁸ Cod. Iust. 7.39.1.

could not be acquired by way of prescription. But in 419, Theodosius II allowed the acquisition by prescription of another's *colonus* after thirty years.⁹⁹ What was behind the new regulation of the *Edictum Theoderici*?

Apparently, the provision was a kind of prescription of *curiales* and *collegiati*. *Curiales* were free members of a community who were liable for the community's tax revenue.¹⁰⁰ *Collegiati* were members of professional associations (*corpora*),¹⁰¹ of 'guilds'. The provision in the *Edictum* goes back to a constitution of the Roman emperor Majorian from 458 (which begins with the words: *curiales nervos esse rei publicae* [. . .] *nullus ignorat*).¹⁰² With this, Majoran wanted to prevent *curiales* from being lost to their *civitas* when they entered into a marriage with *coloni* and thus risked forfeiting their freedom.¹⁰³ The *civitas* was able to reclaim them from the landowner (together with their wives) within a period of thirty years after such a marriage.

This public interest on the part of the city community transformed the edict into a private-law provision and also reversed the perspective: after thirty years, a landowner could not only acquire foreign (fugitive?) slaves, but also *curiales* and members of a *collegium*. The statement regarding the acquisition of *curiales*, who had been free until then, was only a consequence of Majoran's constitution: if the city did not reclaim the *curialis*, he became a *colonus* of the landowner. But the fact that the Edict equated this process with the acquisition of a slave shows that *curiales* and *collegiati* were now also counted among the unfree, or at least among the lesser free, if one assumes that Ostrogothic law also parted with the institutional separation of slaves and free according to status.

4.3 *Lex Salica*

The slave law of the *lex Salica* leads us into another world, which is most closely comparable to that of the Roman empire. In the *lex Salica* in its oldest version (of Clovis I), a slave was almost exclusively a *servus* and an *ancilla*, rarely a *mancipium*. By contrast Title X of the *lex* (in its earlier versions) separates *servi* and *ancillae* on the one hand from *mancipia* on the other.¹⁰⁴ They were largely without rights: they had no

⁹⁹ Cod. Theod. 5.6.3; confirmed in Nov. Valent. 27.6 (a. 449).

¹⁰⁰ In general see Kaser, *Das römische Privatrecht*, vol. 2 (n. 49): 150; more specific on *curialis* (in Roman times) see Charles H. Coster, "Synesius, a curialis of the Time of the Emperor Arcadius," *Byzantion* 15 (1940–41): 10–38; Alexander Baumann, *Freiheitsbeschränkungen der Dekurionen in der Spätantike* (Hildesheim: Georg Olms, 2014).

¹⁰¹ Kaser, *Das römische Privatrecht*, vol. 2 (n. 49): 150, 153–56.

¹⁰² Nov. Maior. 7 (esp. §§ 1–2).

¹⁰³ Cf. Nov. Valent. 31.5; on this subject see Elemér Pólay, *Die Sklavenehe und das römische Recht* (Szeged: University "Attila József", 1967): 56–57.

¹⁰⁴ Lex Sal. (A) 10, ed. Karl August Eckhardt, "Pactus legis Salicae," in *Monumenta Germaniae Historica, legum sectio I: Legum nationum Germanicarum IV 1* (Hannover: Hahn, 1962): 50–55. I follow the

property and could not enter into marriage; their master could treat them as he pleased and even kill them. In the event a slave was abducted or murdered, the perpetrator had to compensate the *dominus* for the value of the slave and, in addition, pay a fine of 35 solidi (or 1400 denarii); this was the fine also due for the theft of an ox or a horse.¹⁰⁵ There is no mention of *coloni* in the *lex Salica*; only in later Frankish sources do *servi casati* appear,¹⁰⁶ who apparently occupied a role similar to that of the Roman *coloni* but who may have had a distinct legal status.¹⁰⁷ It is more likely that the Roman *coloni* were now called *romani tributarii*.¹⁰⁸

It remains unclear who the *laeti* or *liti* in the *lex Salica* were. Stefan Esders discusses this question in detail in this volume.¹⁰⁹ They were either freedmen who were given a piece of land to cultivate, or foreigners who (like the *laeti* of the *Codex Theodosianus*) served as retinue; they were certainly obliged to military service.

The Frankish wergild is a useful instrument for reconstructing the social hierarchy. At first, the *lex Salica* shows a clear division between *servi* and *ingenui*. Other than in the *Liber Iudiciorum*,¹¹⁰ the killing of *servi* was treated under the heading of theft and damage to property. The *dominus* could claim *compositio* for the killing or theft of his slaves, but this did not match the wergild due for killing or injuring a free man. *Servi* seemed to be regarded as assets owned by their *dominus* and were thus treated as livestock. This is best shown in cap. 10.1, whereby the theft of *servi* is treated equal to the theft of oxen or horses:¹¹¹ the offender had to pay 35 solidi. In later versions of the *lex*, the killing or manumission of another's slave was punished in the same way.¹¹² Other provisions confirmed this in the case of manumission,¹¹³ but not in the case of the theft and subsequent sale of another's person's slave (*expoliatio*). In that case the *lex* differentiated according to the

edition of Eckhardt, though it has been thoroughly criticised, lastly by Magali Coumert, *La Loi Salique. Retour aus manuscrits* (Turnhout: Brepols Publishers, 2023).

105 Lex Sal. (A): 35.1–2 (MGH LL nat. Germ. 4.1.128–29).

106 Cf. Nehlsen, *Sklavenrecht* (n. 8): 270; for further references see Margarete Weidemann, “Spätantike Traditionen in der Wirtschaftsführung frühmittelalterlicher Grundherrschaften,” in *Von der Spätantike zum frühen Mittelalter: Kontinuitäten und Brüche, Konzeptionen und Befunde*, ed. Theo Kölzer and Rudolf Schieffer (Ostfildern: Patmos, 2009): 287–318, 302.

107 On antique foundations of *servi casati* cf. Weidemann, “Spätantike Traditionen” (n. 106): esp. 301–5; on the differences between *coloni* and *servi (casati)* see Hans-Werner Goetz, “Serfdom and the Beginnings of a ‘Seigneurial System’ in the Carolingian Period: A Survey of the Evidence,” *Early Medieval Europe* 2 (1993): 29–51, esp. 47–48.

108 Oliver Schipp, *Der weströmische Kolonat von Konstantin bis zu den Karolingern (332 bis 861)* (Hamburg: Kovac, 2009): 373; Oliver Schipp, *Den Kolonat neu denken* (n. 61): 145.

109 Stefan Esders, “Laeti and liti. Legal Status, Military Lands and the Changing Nature of Dependency from Late Antique Gaul to the Carolingian Empire,” in this volume, at p. 131–153.

110 Above, at 4.1.

111 Lex Sal. (A) 10.1 (MGH LL nat. Germ. 4.1.51–52); similar is Lex Sal. (A) 41.1 (MGH LL nat. Germ. 4.1.182–83).

112 Lex Sal. (C), (H), (K) 10.3 (MGH LL nat. Germ. 4.1.53).

113 Lex Sal. (A) 26.2 (MGH LL nat. Germ. 4.1.96–97).

slave's value.¹¹⁴ if it amounted to more than 45 dinars, the robber was punished with a fine of thirty solidi; if it was less, he had to pay 15 solidi. It is obvious from all these provisions that Frankish slaves had a significantly lower standing than their Visigothic or Ostrogothic counterparts.

Interestingly, the theft of another's *laetus* was punished with a fine of thirty-five solidi,¹¹⁵ whereas theft of a slave could be fined with thirty solidi.¹¹⁶ That indicates a similar or only slightly higher social position of *laeti*. The difference was much bigger in the case another person's *laetus* was manumitted. In that case, the spurious manumitter was bound to pay one hundred solidi¹¹⁷ – instead of 35 solidi which were due for the manumission of another's slave.¹¹⁸ Nevertheless, the differentiation between *servi* and *laeti* is not entirely clear. Both are likewise ascribed as slaves to the parents of an *ingenuus*, if they killed him.¹¹⁹ And the *lex Salica* assumed that even *servi* had enough money to pay a fine, such as the *compositio*, in the case a slave had intercourse with another person's *ancilla*.¹²⁰ The clearest difference between *servi* and *laeti* seems to be the wergild for the latter which was half of that of a free man. But this wergild for a *laetus* is never expressly quantified. Only cap. 42.4 asserts that in the special case of a person being killed by a member of his household (*a contuberniis*),¹²¹ the amount for a *laetus* was to be half that to be paid for the killing of an *ingenuus*.¹²² With reference to cap. 42.1 this was one hundred solidi. Because the *laetus* was mentioned together with a *Romanus*, it seems possible that a *laetus* might have been a member of a royal entourage, which is mentioned in cap. 42.2. In that case, the wergild for a *laetus* would amount to an astounding 900 solidi. Such an assertion is difficult to reconcile with another provision, namely that the manumission of another's *laetus* also incurred a fine of one hundred solidi.¹²³ Even if we assume that the wergild for a *laetus* never exceeded one hundred solidi, how could we explain that a *laetus* fought side by side with *ingenui* and *Romani* and at the same time could be manumitted? At any rate, from the point of view of the *dominus*, killing or manumission of his *laetus* were equally unpleasant: therefore in both cases the wergild (one hundred solidi) was due.

The hierarchy of early Frankish society may have been even more complex than the division into *ingenui*, *servi* and *laeti* might indicate. A point of reference is the

114 Lex Sal. (A): 35.2 (MGH LL nat. Germ. 4.1.128–29).

115 Lex Sal. (A): 35.5 (4) (MGH LL nat. Germ. 4.1.130–31).

116 Cf. above, at n. 114.

117 Lex Sal. (A) 26.1 (MGH LL nat. Germ. 4.1.96–97).

118 Cf. above, n. 113.

119 Lex Sal. (A): 35.8 (5) (MGH LL nat. Germ. 4.1.130–31); on this subject see Nehlsen, *Sklavenrecht* (n. 8): 290–302.

120 Lex Sal. (A) 25.5 (7) (MGH LL nat. Germ. 4.1.94–95).

121 Presumably soldiers who shared a tent or cabin.

122 Lex Sal. (A) 42.4 (MGH LL nat. Germ. 4.1.163–65).

123 Lex Sal. (A) 26.1 (MGH LL nat. Germ. 4.1.96–97).

wergild due for a free Frankish man (or for a foreigner who lived under Frankish law),¹²⁴ for whose death 200 solidi had to be paid.¹²⁵ If (as *convivus regis*) he belonged to the king's retinue, 600 solidi were due. A *Romanus*, on the other hand, was worth only one hundred solidi; three hundred if he was a *convivus regis*. The sum of one hundred solidi for a killed *Romanus* was even reduced down to 62 solidi if he had not been a *possessor* (i.e. someone who owned land) but a *tributarius* (i.e. someone who had to pay royalties to the landowner).¹²⁶ It has been debated at length why the *lex Salica* downgraded freeborn *Romani* vis-à-vis free Franks.¹²⁷ Did that really indicate an inferior social position? Karl Uhl, following Marc Bloch,¹²⁸ argued that the higher wergild was intended as an incentive for Romans to submit to Frankish law and the Frankish king.¹²⁹ Patrick Wormald therefore described the higher wergild as a tool for 'ethnic engineering'.¹³⁰

The *lex Salica* is undoubtedly the most 'Germanic' of the early medieval law codes, but it provides comparably rich information about gradations of freedom beyond the dichotomy of *servi* and *ingenui*. At first glance it preserved the Roman division into free and slaves, but on closer inspection it shows a variety of unfree and half-free classes. The poor position of the *servi* in Frankish law (compared to Visigothic and Ostrogothic law) is difficult to explain. Perhaps it had to do with the small-holder structure of Frankish farming economy which did not require large numbers of trained domestic slaves. Perhaps it was due to the low degree of Romanisation of this society. The difference could also be explained by the use of the term *servus* in the different societies: if the Franks used the term only for those who stood at the lowest rank of their social order and the Visigoths used it for dependent people in general, the differences become comprehensible without necessitating us to assume totally different social structures in the various *regna*. The *lex Salica* has indeed a broader set of terms for dependency relationships than the law codes of the Goths.

5 Conclusion

We can at any rate make one observation about the transition from late Roman to early medieval slavery: the confrontation of non-Roman societies with Roman law lead to different results in the law codes. While the *lex Salica* apparently preserved

124 Cf. Lex Sal. (A) 14.2–3 (MGH LL nat. Germ. 4.1.64–65).

125 On the following provisions, cf. Lex Salica (A) 41 (MGH LL nat. Germ. 4.1.154–61).

126 Compare Lex Sal. (A) 41.9 (6) to Lex Sal. (A) 41.10 (7); both in (MGH LL nat. Germ. 4.1.156–57).

127 Cf. Uhl, *Lex Salica* (n. 3): 74–76.

128 Marc Bloch, "Un pseudo-problème: le Romanus des lois franques," *Revue historique du droit français et étranger* 25 (1946–47): 1–10.

129 Uhl, *Lex Salica* (n. 3): 75.

130 Wormald, "The Leges Barbarorum" (n. 9): 32.

the contrast of slave and free, the Gothic law books dissolved it. In them, being a slave was no longer a marker of status but of class. Slaves were not simply unfree, but less free or half-free. However, it remains unclear whether and how many other types of less-than-free persons there were in the various law codes here considered, besides *servi* (and – if mentioned – *coloni*). We saw differentiations within the slave class in Visigothic law, and Ostrogothic law at least mentioned *curiales* and *collegiati*. But was that all?

Some provisions in the *lex Salica* hint at a more versatile social structure. On the one hand there are the mysterious *laeti*, on the other we have two classes of Romans: those who owned land, and those who had to pay tribute. Beyond that we may assume that the Franks used different forms of manumission which produced additional forms of semi-free statuses. An indication is the manumission *ante regem*, which is mentioned in cap. 26.¹³¹ This act of manumission echoed the Roman claim on *ingenuitas*¹³² which was adjudicated in the *cognitio extra ordinem*, i.e. before the court of the emperor, or the *natalium restitutio* by an act of clemency.¹³³ This would explain why even *laeti* remained under a kind of patronage¹³⁴ until they were awarded *ingenuitas*. It would also be a clear indication that minor forms of manumission existed in Frankish law.

The latter finding is confirmed by Frankish glosses to the *lex Romana Visigothorum*, which indicate that Frankish jurists differentiated between several classes within the Roman population, beyond the dichotomy of *Romanus possessor* and *tributarius*. Apparently, it was usual in the territories where the *lex Romana Visigothorum* applied to let the manumitting *dominus* choose whether he wanted to make his slave a free Frank or a Roman. This may have had various legal consequences, but it certainly reduced the wergild in the event of injury or death. Recently discovered Frankish glosses¹³⁵ in a manuscript of the *lex Romana Visigothorum* (Paris, BN lat. 4416),¹³⁶ which comment on Gai. epit. 1, show that the master had the opportunity to differentiate: if he manumitted the slave as a Roman, he could also choose whether to make him a Roman citizen (*cives*), a Latin or a *dediticius*. Depending on this, the wergild varied: for a citizen it was forty solidi (one hundred if he owned land), for a Latin thirty-five, and for a *dediticius* only twenty.¹³⁷ We also know this gradation from for-

131 Lex Sal. (A) 26 (MGH LL nat. Germ. 4.1.96–97).

132 Cf. D. 40.14 (*si ingenuus esse dicetur*) and C. 7.14 (*de ingenuis manumissis*); on this subject see Buckland, *Roman Law of Slavery* (n. 49): 672–75; Max Kaser and Karl Hackl, *Das Römische Zivilprozessrecht*, 2nd ed. (Munich: C.H. Beck, 1996): 457.

133 Cf. D. 40.11 (*de natalibus restituendis*); cf. Kaser, *Das römische Privatrecht*, vol. 2 (n. 49): 141–42.

134 Similar, but using a different argument, Stefan Esders, “Laeti and liti” (n. 109): at n. 74.

135 By Karl Uhl, cf. Detlef Liebs, “Vier Arten von Römern unter den Franken im 6. bis 8. Jh.,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 133 (2016): 459 first n., 462.

136 Liebs, “Vier Arten von Römern” (n. 135): 459–68; Dominik Trumpf, “Die Tironiana der Handschrift Paris, Bibliothèque Nationale, lat. 4416,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 135 (2018): 607–18.

137 Liebs, “Vier Arten von Römern” (n. 135): 462.

mulary practice. Although it had fallen into disuse in late Roman law and was completely abolished by Justinian, it lived on in post-Roman law codes, indicating a rather fine-grained hierarchisation of those societies.

This last observation goes beyond our present task, i.e. to enquire into the terms of dependency in post-Roman law codes. But it fits well into the picture provided by the *lex Salica*: the codes adopted both the Roman terms and the Roman institutions of dependency, and either juxtaposed them with their own social hierarchy (*lex Salica*) or merged the two (*codex Euricianus*; *edictum Theoderici*). Unsurprisingly, this alter-nativity coincided with the decision either to compile a code for both Romans and Goths (*codex Euricianus*; *edictum Theoderici*) or one that only applied to Franks (*lex Salica*). Apart from this, *servus* became a blanket term for dependent people in all law codes. Though the *lex Salica* contains a wide variety of dependency relationships, with *servi* and *ancillae* occupying the lowest social rank, we cannot deduce that they were wholly without rights. As in other cases, the meaning and relevance of legal terms derived from their application in practice.

