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Norms of Dependency in Late Antique and Early Medieval Societies

Contextualising Roman Legal Terminology

Edited by
Martin Schermaier, Julia Winnebeck and Matthias Becher

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Julia Winnebeck, Martin Schermaier, Matthias Becher

Introduction

Since 2019, the Bonn Center for Dependency and Slavery Studies has been dedicated to researching social relations of asymmetrical dependency, including but not limited to slavery. One of its research *foci* is the exploration of such relations in the premodern societies of late antique and early medieval Europe with a special emphasis on the Latin west. Scholarship in this area can draw on a number of excellent studies that refuted the influential (Marxist) narrative according to which slavery declined with the Western Roman Empire, and demonstrated the continuing relevance of chattel slavery for late antique and early medieval societies. One factor in the deconstruction of this narrative is the unchanged terminology used in the sources with regard to the representation of slavery and other relationships of dependency. Indeed, late antique and early medieval normative sources frequently employ Roman legal terminology to denote a person's legal inferiority (such as *servus, ancilla, puer, colonus, famulus* etc.), and thus suggest the continued relevance of the concepts associated with these terms. However, it is far from clear to what extent the use of identical terminology actually indicates the similarity of the phenomena described. For while some normative sources do indeed point to the continuity of the institution of slavery and related legal practices such as manumission, there is also ample evidence of important changes regarding the rights and duties of enslaved persons and the development or emergence of other, new forms of asymmetrical dependency. This raises the question to what extent consistency in terminology and legal practice is actually an indicator of the stability of social structures. Conversely, one might ask whether changes in terminologies (and legal practices) in fact indicate significant changes in social structures.

Against this background, a group of scholars of legal, ecclesiastical, and social history were invited to a conference at the BCDSS in March 2022 to scrutinise different law codes and legal sources for their evidence of dependencies. The result is this edited volume of ten papers that truly enhance our understanding of slavery and other dependency relations in late antique and early medieval societies. They span a period of eight centuries, from c. 100 to c. 900 CE, and the geographical areas of southern and western Europe and Roman Palestine.

The individual contributions in this volume are organised according to three lines of enquiry that reflect broader discourses in legal, political, and social history.

1. The first part comprises studies that undertake fundamental research on 'The Presence of Slavery and other Dependency Relations in Normative Sources.' These studies expand our knowledge of the different institutional and social contexts in which dependency relations emerged and evolved, such as the household, the church, and legal practice. They uncover the possible incentives that led institutions to promote structures of dependency (Winnebeck) and the possible motives and constraints that

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drove individuals into dependency relations (Sirks). Furthermore, they draw attention to the gap between normative frameworks and the lived experiences of individuals in such relationships (Hezser).

Catherine Hezser examines analogies between women's, children's, and slaves' dependencies on the male householder in ancient Jewish and Roman households. She focuses on similarities between rabbinic and Roman legal rules concerning marriage and the purchase of slaves, divorce and manumission, the property rights of women, slaves, and adult children, and the householder's ability to physically punish children and slaves. Her study indicates both analogies and differences in the ways in which rabbinic and Roman legal texts present the dependencies of these three groups within the family unit. The literary and legal descriptions of these dependency relations in texts that were formulated from the perspective of the male householder do not necessarily reflect the actual experience of the dependents, however. In addition, there were distinctions between freeborn family members and slaves. The independence and property rights of wives increased with widowhood or divorce, and children grew up to be honourable members of society. Manumitted slaves, on the other hand, continued to carry the stigma of slavery associated with 'unchastity, theft, and deceit.' They were therefore unable to fully integrate into both ancient Jewish and Roman society.

Julia Winnebeck's contribution investigates the council records of the late antique and early medieval western church, enquiring what might have guided the church's legislation on slavery during the period in question. In a detailed study, she demonstrates that the relevant provisions largely served two goals: on the one hand, they reflect the church's concern for the inalienability of its property, including slaves and other dependents, and the assertion of its pragmatic (legal) authority over the lay population. On the other hand, the canons express a concern for the appropriate treatment of slaves and other dependents with regard to the salvation of their masters and patrons. Winnebeck notes that while the council records provide no evidence that the church made any serious attempts to change the fate of slaves, the provisions on church sanctuary can be seen as an indication of its efforts to grant them at least basic legal protection. At the same time, the conciliar legislation testifies to the active promotion of corporal punishment, detention, and enslavement within the ecclesiastical realm. A possible explanation might be that the church favoured these penal practices because they not only allowed sinners to atone before their death, but also offered the church and Christian masters an opportunity to demonstrate clemency for the sake of their own salvation.

Boudewijn Sirks investigates collections of notarial formularies from the Merovingian era of the Frankish Kingdom. He argues that these *formulae* not only demonstrate the high value that was placed on written proof of legal status during this period, but that they also contain vital information about the actual lives of dependent persons in Merovingian Gaul. In the *formulae* they appear as dependent labourers of agrarian landowners and as people whose only means of meeting debts was to enter (temporary) relations of asymmetrical dependency in the form of debt bondage. Sirks

reaches the conclusion that by the seventh century, the difference in social and legal status no longer defined the terms of the actual dependency or the extent of a person's subjection. Instead, subjection itself, which was expressed as being *alieni iuris*, equalled dependency and defined the status of an individual.

2. The second section assembles contributions which, at their core, wrestle with the question of 'Continuities and Discontinuities in Slave Legislation and Slaving Practices.' This is closely related to the wider debate in the scholarship on the post-Roman period about the feasibility of subsuming different traditions and peoples under the umbrella term 'Germanic,'[1] and the related problem of recovering the cultural and legal principles of these peoples from sources that originated under the influence of Roman law and the Christian church. The papers in this section illustrate that, depending on the historical context and the social structures dominating the respective societies, Roman legal terminologies and practices were sometimes adopted, sometimes used side by side with other ones, and sometimes reinterpreted or superseded.

Martin Schermaier scrutinises the post-Roman law codes for the information they offer on different types of dependency relations. His introduction offers a concise survey of the various legal compilations, their sources and likely addressees. The main section examines the various terms used in these codes to designate dependents, and analyses their meaning with regard to the rights and obligations associated with these dependents. Schermaier argues that the confrontation of non-Roman societies with Roman law yielded different outcomes in the various legal codes in terms of the concepts of slavery and dependency. Frankish law in the *Lex Salica* appears to have retained the Roman distinction between slaves and free individuals. Within this binary framework, however, a more intricate social hierarchy emerged with various classes of unfree and semi-free individuals. In contrast, Gothic law in the *Codex Euricianus* and the *Edictum Theoderici* diluted the Roman dichotomy of slave vs. free as legal statuses. Instead, slavery was seen more as a marker of social class that could apply to all types of dependent individuals, whether legally enslaved, semi-free or 'less free' (*Minderfreie*). Thus, while all post-Roman law codes adopted Roman terms and Roman institutions of dependency to some extent, they either used them alongside their own social hierarchy (such as the *lex Salica*) or merged the two (e.g. the *codex Euricianus* or the *edictum Theoderici*).

While acknowledging the difficulties associated with the reconstruction of a 'Germanic' legal culture, **Noel Lenski** argues that it is nevertheless possible to uncover some basic principles that were shared across the so-called *leges barbarorum*, particularly in terms of how they addressed slavery. By means of a detailed comparative

1 See e.g. Jörg Jarnut, "Germanisch. Plädoyer für die Abschaffung eines obsoleten Zentralbegriffes der Frühmittelalterforschung," in *Die Sucht nach den Ursprüngen. Von der Bedeutung des frühen Mittelalters*, ed. Walter Pohl (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2004): 107–13, and see also Esders in this volume.

study of the surviving law codes, he demonstrates that 'Germanic' legal norms related to slaveholding differed in three respects from their Roman counterparts: firstly, in regard to the practice of enslaving free men who entered into marital relations with enslaved women; secondly, in responding to the killing of slaves; and, thirdly, in the use of penal enslavement. On the basis of these findings, Lenski concludes that 'Germanic societies had their own shared practices of slaveholding that arose independently of those of their Roman neighbours.' He suggests that the root of the differences between 'Roman' and 'Germanic' slave legislation may have been the 'distinctly Germanic legal concept of *Wergeld*' which assigned a monetary value to each human body.

Stefan Esders also looks at the broader theme of continuities in dependency relations in the Roman Empire and post-Roman Gaul. In his contribution, he explores the question of whether a case can be made for a connection between late Roman *laeti* and early medieval *liti* – two groups of dependents who cannot easily be linked because of the chronological and geographical distance of the sources that attest to their existence. Esders therefore traces possible historical links between the two groups by comparing the ways in which the sources describe the members of each, their rights and their duties. He finds that in late antique Rome, the term *laeti* usually denoted barbarians who 'were integrated into the late Roman military by being settled in colonies that lay in part on fiscal land.' Their dependency consisted mainly in their attachment to the land and their obligation to perform military service. In early medieval Francia, on the other hand, the term *liti* labelled people who were legally free but, together with their pieces of land, belonged to a lord or a church or a monastery. The dependent status of a *litus* was comparable to that of a freedman, in the sense that both enjoyed a kind of 'limited freedom', which was reflected in their different legal treatment and the various duties assigned to them. Esders suggests that the early medieval or Frankish *liti* derived from the integration of colonies of 'barbarian' *laeti* – along with their lands – into the Frankish military and society. It therefore looks as though both late Roman emperors and Frankish kings used fiscal property to integrate various groups of persons into society by requiring them to perform specific public duties, including but not limited to military service. These dependent people held an intermediate status, which meant that they were legally free but still distinct from both free and unfree people.

Dominik Leyendecker focuses on the development of slave legislation at another historical point of transition with the first detailed discussion of the continuities and discontinuities between Merovingian and Carolingian legislative approaches to the punishment of *servi* who had committed a crime. On the basis of a thorough analysis of the sources, he demonstrates how the Carolingian Law Codes adopted a dichotomy of compensatory payments for the free, and corporal punishment for the unfree. Leyendecker argues that the continued differentiation of punishment according to legal status cannot simply be attributed to the wish to emphasise legislative continuity. He concludes instead

that while the boundaries between different legal statuses may have become increasingly blurred, they certainly remained relevant in Carolingian Francia.

3. The final section – 'Case Studies' – explores the role of dependencies as both a precondition and a result of legal measures and practices. The studies demonstrate how the imposition of dependency relations could be a strategy of the ruling elites to eliminate political threats (Hillner/Mawdsley), or be deliberately sought in order to escape hardship or other, gender and age related, dependencies (Becher and Kasten).

Julia Hillner's and **Harry Mawdsley**'s paper, 'The Exiling of Women from Antiquity to the Early Middle Ages', examines the often-overlooked experience of women exiled during late antiquity (c. fourth to mid-seventh century CE). Using a dataset of 84 cases, the authors compare these instances with women's exile in the Roman Empire, highlighting four notable differences in the reasons for and the conditions and frequency of banishment. Firstly, Hillner and Mawdsley note an increase in the number of women banished in consequence not of their own wrongdoings, but their husbands' actions. This might be due to a growing importance of marriage within the family unit with the downside of an increased dependency of women on their husbands. Secondly, the authors observe an increase in the banishment of royal women, particularly in the wake of a 'regime change'. Apparently these women were considered a greater threat to rulers after the collapse of the Roman Empire, because they were seen as 'useful assets for men looking to stake a claim on the throne.' Finally, Hillner and Mawdsley argue that the increasingly arbitrary nature of exile, coupled with the heightened political influence of royal women in late antiquity, led to more restrictive forms of banishment, including confinement to monasteries. This shift, they suggest, may reflect a change in how rulers addressed the political threat posed by women. Banishing women to monasteries was a most effective way of neutralising them, while it could also be perceived as a merciful action at the same time.

Matthias Becher's study focuses on a body of sources that has been rather neglected by students of the social history of the early middle ages, namely imperial decrees or 'capitularies'. He investigates Charlemagne's edicts concerning poor people which seemingly aimed to reduce the pressure of the less well-off free land owners. Becher shows how these edicts were part of the emperor's greater scheme to secure a willing army. He argues that in practice they may even have resulted in a greater dependency of free commoners on their local counts, who took their land in exchange for letting the men off from costly military deployment. Becher concludes that Charlemagne's campaign on behalf of the poor should not be regarded as a failure, but rather as an expression of the resilience of the social circumstances to political intervention. While early medieval rulers could issue orders, their implementation on the ground was a matter of complicated negotiation on all levels.

Brigitte Kasten scrutinises the so-called *praecaria* for information on dependency relations. Most of the extant *precaria* are agreements between lay persons and monasteries, with the lay persons signing over their property in exchange for lifelong rights of

residence, sustenance and care. These contracts were, in principle, concluded between parties of equal legal status. However, Kasten argues that the wording of these contracts allows us to see the underlying social and economic dependencies of the contractual partners. The motives for entering into *precaria* comprise dependencies caused by old age and illness, political considerations, and the dependency of small landowners on agricultural yields. By entering into precarial contracts, individuals could secure a certain standard of living in exchange for (part of) their inheritance. For the monasteries such *precaria* were attractive as they ultimately meant an expansion of the monastery's property and wealth. In addition to information on underlying dependencies, precarial contracts provide vital evidence for the study of slaves and other dependents who lived and worked on the land and in the donated households.

Overall, the studies confirm the impression that dependencies such as slavery, debt bondage, penal servitude, and gender inequality were a ubiquitous part of the complex fabric of late antique and early medieval societies. This points to the conclusion that structures of asymmetrical dependency were fairly resilient to changes in culture, politics and religion. Yet, as the studies assembled in this volume find, this stability cannot be attributed to the formative character of ancient societies in general or Roman law in particular.

Rather, Roman (and indeed biblical) legal terminology and institutions provided a sort of reservoir for describing and regulating the (pre-existing) relationships of dependency in post-Roman societies. Some of these societies evidently made more use of this reservoir than others. The extent to which Roman terminology and legal institutions were adopted may have depended on the extent to which the overall social structure of a given culture resembled the Roman one (Schermaier).

Terminological agreement, however, does not necessarily imply consistency in structure or practice. For example, the use of identical or similar terms such as *servi*, or *laeti* and *liti*, for a particular group of people does not mean that the groups so denoted shared identical rights and duties (Esders). Furthermore, the conformity of legal terminologies or institutions does not necessitate the conformity of actual practice or experience. What these dependency relations looked like in a given historical situation depended not only on the normative legal frameworks or the ways in which these norms were subsequently (re)interpreted and applied in different contexts. It depended first and foremost on the agency of the individual actors and on the positions they were assigned in a given society. The question of whether or not we can trust the ways in which normative texts depict forms of dependency will thus always remain a matter of careful consideration of the texts in the context of other relevant testimonies.

Even though it may be difficult from today's perspective to understand the specific nature of the dependencies that lie behind the supposedly continuous legal norms and concepts, the authors of this volume have succeeded in adding new pieces to the multi-coloured mosaic of late antique and early medieval societies.

I The Presence of Slavery and other Dependency Relations in Normative Sources

Catherine Hezser

Women, Children, and Slaves as Dependants of the Householder in Rabbinic and Roman Law

In Palestinian rabbinic texts not only slaves but also women and (minor) children are presented as dependants of the free male Israelite householder in a number of regards. The collective reference to the categories of "women, slaves, and minors", to whom specific halakhic rules apply, appears in tannaitic texts already.[1] The equation of these three status groups in their relation to the householder was widespread in antiquity, as is also indicated by Graeco-Roman and Christian sources.[2] In patriarchal societies the free male householder has authority over other members of his household as long as they stand in a dependent relationship to him. For married women, this relationship ends with their husbands' death or divorce, for slaves with manumission or sale, for female children with marriage, and for male children with adulthood. Rabbis and Roman jurists devised legal rules that indicate various degrees of dependency and similarities and differences between the respective categories of dependants. Dependency is expressed in restrictions of one's legal power, the violation of physical boundaries, and the lack of possession rights over property.

Before investigating these aspects in more detail, it is necessary to point to potential differences between legal theory and actual practice in daily life. Ancient rabbis proposed behavioral guidelines but lacked official authority to enforce them. While members of their own family, their immediate circles of students, and a few local sympathizers may have followed their guidance, other Jews may not.[3] Furthermore,

1 Catherine Hezser, *Jewish Slavery in Antiquity* (Oxford: Oxford University Press, 2005): 69–82; Catherine Hezser, "Women, Children, and Slaves in Rabbinic Law," in *The Oxford Handbook of Biblical Law*, ed. Pamela Barmash (Oxford: Oxford University Press, 2019): 489–503. On the treatment of the three categories in the Hebrew Bible see: Hilary Lipka, "Women, Children, Slaves, and Foreigners," in *The Oxford Handbook of Biblical Law*, ed. Pamela Barmash (Oxford: Oxford University Press, 2019): 59–78; for the New Testament see Susan E. Hylen, "Women, Children, Slaves and the Law in the New Testament Period," in *The Oxford Handbook of Biblical Law*, ed. Pamela Barmash (Oxford: Oxford University Press, 2019): 505–17.

2 Sandra R. Joshel and Sheila Murnaghan, *Women and Slaves in Greco-Roman Culture: Differential Equations* (London: Routledge, 1998); Suzanne Dixon, *The Roman Family* (Baltimore: Johns Hopkins University Press, 1992). On slavery in ancient Christian societies see Jennifer A. Glancy, *Slavery in Early Christianity* (Oxford: Oxford University Press, 2002); Mary E. Sommar, *The Slaves of the Churches: A History* (Oxford: Oxford University Press, 2020): especially 38–106.

3 On limitations to individual rabbis' influence see Stuart S. Miller, *Sages and Commoners in Late Antique 'Erez Israel: A Philological Inquiry into Local Traditions in Talmud Yerushalmi* (Tübingen: Mohr Siebeck, 2006): 218, who generally agrees with Lee I. Levine that "[t]he influence of the rabbis on the greater community indeed may have been limited".

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rabbis differed amongst themselves in many regards, so that diverse and partly contradictory rules are transmitted in the literary compilations. While Roman civil law was more official and enforceable than rabbinic law, it also had its limitations, especially with regard to private behaviour carried out in families and households.[4] Whether and to what extent women and slaves were able to engage in business transactions, had decision-making power, and determined their own and their household's fate ultimately depended on the individual actors themselves rather than on abstract behavioral guidelines devised by the male intellectual elites.

1 Dependency and Reciprocity

In ancient patriarchal societies the free male householder, called *paterfamilias* in Roman sources and *ba'al ha-bayit* in rabbinic texts, held the highest authority within his family and household. In Roman society, paternal power in its different forms[5] (*patria potestas*, *manus*, *dominium*) was the "central institution of the Roman family" and "was exercised over all members of the *familia* [. . .]".[6] Similarly, rabbinic civil law "is almost exclusively orientated to the dominant position of the man as *ba'al ha-bayit* (head of the family and household) and thus focal point of the economic and social order".[7] In general, such authority could amount to decisions over the life or death of children, the physical punishment and sale of slaves, and the divorce of a wife her husband was no longer pleased with. Both rabbinic *halakhah* and Roman law were formulated from the perspective of the free male householder and served to legitimize his power over his dependants. Nevertheless, a simple centrifugal model of authority emanating from the householder to his wife, children, and slaves seems inadequate to express the much more complex socio-economic, emotional, and gender-specific relationships amongst family members.[8] In fact, one could argue that the

4 Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (New Brunswick: Transaction Publishers, 2009): 193, points to the discrepancy between Roman civil law and social law or norms of behaviour that were not covered by law. Furthermore, the enforceability of certain rules varied over time, see Andrew M. Riggsby, *Roman Law and the Legal World of the Romans* (Cambridge: Cambridge University Press, 2010): 267, with regard to *fideicommissum*.

5 Cf. Max Kaser, *Das römische Privatrecht*, vol. 1, *Das altrömische, das vorklassische und klassische Recht*, 2nd ed. (Munich: C.H. Beck, 1971): 56–58; Francesca Lamberti, "Hauskinder (filii familias)," in *Handbuch des Römischen Privatrechts*, vol. 1, ed. Ulrike Babusiaux et al. (Tübingen: Mohr Siebeck, 2023): 863–69.

6 Myles McDonnell, *Roman Manliness: "Virtus" and the Roman Republic* (Cambridge: Cambridge University Press, 2006): 173. On patriarchal authority see also Richard Saller, *Patriarchy, Property, and Death in the Roman Family* (Cambridge: Cambridge University Press, 2009): 102–32.

7 Peter Schäfer, *The History of the Jews in Antiquity* (London: Routledge, 1995): 165.

8 On households in rabbinic sources see Hayim Lapin, "The Construction of Households in the Mishnah," in *The Mishnah in Contemporary Perspective*, vol. 2, ed. Alan Avery-Peck and Jacob Neusner (Lei-

male householder was as dependant on his wife, children, and slaves as these household members were on him. Their relationship was therefore reciprocal, at least to some extent.

An adult man would become a householder only once he was married and had children.[9] Therefore the family and his relationship to its members were the necessary prerequisite for his social status, whereas his legal status depended on the mere fact that he himself was not subject to *patria potestas*.[10] Tal Ilan has pointed out that the rabbis of the Mishnah and Tosefta associated the biblical commandment to "be fruitful and multiply" (Gen. 1:28) with men but not with women (m. Yebam. 6:6; t. Yebam. 8:4).[11] The explanation given in the Talmud Yerushalmi is that the continuation of the verse, "[. . .] and fill the earth and subdue it" (Gen. 1:28) applies to men only (y. Yebam. 6:6, 7c). Adult male power depended on the ability to establish a family. While slaves were not essential members of a *bayit*, wives and children were. They constituted the nuclear family unit, which became increasingly important in Roman times. Since slave ownership was most common amongst the wealthy strata of society, to whom only a few rabbis belonged, for most rabbis and male Jewish householders their dependants would have consisted of their wives and minor children only.[12] According to a statement attributed to R. Yose in the Babylonian Talmud (b. Shabb. 118b; see also b. Yoma 13a), the term *bayit* can be applied to the wife, who constitutes the very nucleus of the home.[13] A man cannot have a *bayit* without a wife, who also gives birth to his children.

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den: Brill, 2006): 55–80; Alexei Sivertsev, *Private Households and Public Politics in 3rd–5th Century Jewish Palestine* (Tübingen: Mohr Siebeck, 2002).

9 Similarly, Judith Evans Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood* (London: Routledge, 2002): 155, points out that *patria potestas* only existed in the context of the *conubium*, that is, it "was a feature of Roman marriage only".

10 Cf. D. 50.16.195.2 (Ulp. 46 ad ed.): *pater autem familias appellatur, qui in domo dominium habet, recteque hoc nonime appellatur, quamvis filium non habeat: non enim solam personam eius, sed et ius demonstramus* [. . .].

11 Tal Ilan, *Jewish Women in Greco-Roman Palestine: An Inquiry into Image and Status* (Tübingen: Mohr Siebeck, 1995): 107.

12 On slave ownership in ancient Jewish society see Hezser, *Jewish Slavery in Antiquity* (n. 1): 285–98.

13 Cynthia A. Baker, *Rebuilding the House of Israel: Architectures of Gender in Jewish Antiquity* (Stanford: Stanford University Press, 2002): 56–57, argues that "the homology wife/woman = house [. . .] has much to do with sexual activity and cohabitation" (57). I suggest a sociological understanding, since the acquisition of a wife constitutes the foundation of a household.

2 Similarities in the Establishment and Dissolution of the Husband-Wife and Master-Slave Relationships

The rabbinic configuration of marriage and slavery relationships stresses the authority and agency of the free male householder. The used terminology seems to defy differences between the wife's free status and the slave's bondedness by emphasizing both the wife's and the slave's dependency on the householder.

The ways in which wives were supposed to be "acquired" by their husbands – the verb קנה, "to purchase" is used in both cases – resembled the acquisition of slaves, namely, through money or a document (in both m. Qidd. 1:1 [wife] and 1:2 [slave] the terms כסף, "money", and שטר, "deed", are used). The third way to "acquire" a wife was through sexual intercourse (m. Qidd. 1:1), which could be forced upon her, thus resembling what we would nowadays call rape. This practice resembles the Roman *usus*, a relatively unregulated way[14] of acquiring *manus* over a wife (note that the term is also part of *mancipatio* and *emancipatio* in relation to slaves or children).[15] In rabbinic law it resembles usucaption, which rabbis considered a legitimate way of acquiring so-called Canaanite, that is, non-Jewish slaves (m. Qidd. 1:3). In all of these cases, the free male Israelite (and adult Roman citizen) physically took hold of another human being, whether a woman or a slave, to possess them and make them physically subservient to his own needs.

Whether and to what extent the procedure of marriage through sexual intercourse constituted rape obviously depended on the question of consent. Vandiver distinguishes between the abduction of the Sabine women for marriage purposes and the rape of Lucretia in Roman literature and art: "Clearly, the Sabine women are abducted *against* their wills, but Livy does not ever state that they are actually raped;" rather, "their consent was essential for the *fait accompli* of their marriages to have moral validity."[16] This example already indicates how difficult, if not impossible, it is to determine consent based on ancient narratives. As far as Jewish women are concerned, Hauptman has pointed out that "consent, [. . .], is indirect" and assumed on the basis of a woman's subsequent behaviour.[17] Even in the Babylonian Talmud, where discussions on consent have evolved to the next level, "the question that the rabbi must address is whether the woman's response to the man's proposal consti-

14 Kaser, *Das Römische Privatrecht*, vol. 1 (n. 5): 78.

15 George Mousourakis, *Fundamentals of Roman Private Law* (Berlin: Springer, 2012): 102.

16 Elizabeth Vandiver, "The Founding Mothers of Livy's Rome: The Sabine Women and Lucretia," in *The Eye Expanded: Life and the Arts in Greco-Roman Antiquity*, ed. Frances B. Titchener and Richard F. Moorton (Berkeley: University of California Press, 1999): 209.

17 Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, CO: Westview Press, 1998): 70.

tutes consent."[18] One may assume that, in general, marriage through sexual intercourse would have taken place only once the man was certain of the woman's consent. In some cases the sequence would have been reversed, however: victims of rape are asked whether they agree to marriage with their rapist, a rabbinic innovation which, according to Hauptman, "give her a measure of control over her own future".[19]

Only the husband could initiate a termination of the marriage by having a writ of divorce written and delivered to his wife and only the master could commission a manumission or sales document for his slave. m. Git. 1:4 states explicitly: "All the same are writs of divorce for women and writs of emancipation for slaves: they resemble each other with regard to bringing [them from overseas] and taking [them overseas]. And this is one of the ways in which divorce documents and writs of emancipation [of slaves] are the same".[20] The agency of the householder is emphasized here. Hauptman points to the "patriarchal construction of divorce. It is the man who has virtually all the power in this area: He decides to divorce, issues the bill of divorce to the woman – just as one issues the writ of manumission to a slave – and she can neither initiate nor resist. Since she cannot remarry without a *get*, she is dependent upon him for her future marital well-being."[21] Similarly, slaves depended on the manumission document for a change of their status from enslaved to freed.

In both cases, the new status put the subject into a socially inferior position in comparison to a woman who was never married before and a person who had never been enslaved. A divorced woman was considered less "valuable" than a virgin (see m. Ketub. 1:2) and a freed slave (עבד משׁחרר) was inferior to a freeborn person (see m. Hor. 3:8, where freed slaves stand at the very end of the rabbinic status hierarchy). The householder's physical use of the woman during marriage and of the slave during servitude left a lasting mark on them, rendering them inappropriate for certain types of marital unions. According to biblical law, a female divorcee cannot marry into a priestly family (see already Lev 21:6–7). While rabbis reckon with the possibility that a male freed slave marries an Israelite, Levite, or priestly women, the offspring of such a union will have the status of the manumitted slave, that is, the children's status will be inferior to that of ordinary Israelites (t. Qidd. 4:14). For freed female slaves marriage to a priest is prohibited (cf. m. Bik. 1:5, t. Qidd. 5:3), probably because her former sexual subjection to her master renders her body "used" and

18 Hauptman, *Rereading the Rabbis* (n. 17): 71.

19 Hauptman, *Rereading the Rabbis* (n. 17): 78. On this topic see also Catherine Hezser, "Plurisignation in Biblical and Rabbinic Law: The Meaning and Punishment of 'Rape'," in *Making History: Studies in Rabbinic Literature, History, and Culture in Honor of Richard L. Kalmin*, ed. Carol Bakhos and Alyssa Gray (Providence: Brown Judaic Studies, 2024): 383–405.

20 All translations of rabbinic sources are my own.

21 Hauptman, *Rereading the Rabbis* (n. 17): 79–80.

therefore imperfect, whereas the male slave was believed to be able to maintain his sexual agency.

3 Wives' and Slaves' (Lack of) Property Ownership

3.1 Wives' Property Rights

The rabbinic innovation of the *ketubbah* or marriage contract is of utmost importance for investigating the dependency relationship between husbands and wives. Hauptman has called the *ketubbah* a "social contract" between husbands and wives.[22] It served as official documentation of the mutual obligations of the marriage partners. The husband's obligations toward his wife include her redemption from slavery, provision of medical care in case of illness and maintenance after his death.[23] The wife's obligations toward her husband included various household tasks, some of which could be delegated to female slaves if she brought them into the marriage (m. Ketub. 5:5). According to Hauptman, "the *ketubah* consolidates some basic rights for women, even if it leaves patriarchy in place, it was an improvement over what was the case prior to the time it was instituted [. . .]".[24]

The rabbinic perception of property rights in marriage resembled the Roman *cum manu* or *in manu* marriage: the property which the woman brought into the marriage passed into the power of the husband, who could use it for his business purposes. Mousourakis writes that "this mode of marriage rendered her *alieni iuris* and her property at the time of conclusion of the marriage as well as all that she subsequently acquired passed to her husband or his *pater*."[25] Whereas Roman families adopted the new form of *sine manu* marriage from the time of the late Republic onwards, giving wives a greater amount of independence in financial matters and consequently also in other areas of life,[26] in the rabbinic imagination wives' financial subjection under their husbands continued in late antiquity.[27] According to Michael

22 Hauptman, *Rereading the Rabbis* (n. 17): 68.

23 See Hauptman, *Rereading the Rabbis* (n. 17): 66–67 with references.

24 Hauptman, *Rereading the Rabbis* (n. 17): 67.

25 Mousourakis, *Fundamentals of Roman Private Law* (n. 15): 102; more detailed: Kaser, *Das römische Privatrecht*, vol. 1 (n. 5): 79–80; Jakob Fortunat Stagl, "Ehegüterrecht," in *Handbuch des Römischen Privatrechts*, vol. 1, ed. Ulrike Babusiaux et al. (Tübingen: Mohr Siebeck 2023): 876

26 Kaser, *Das römische Privatrecht*, vol. 1 (n. 5): 321, 329–31. On Roman marriage law see also Judith Evans-Grubbs, "Marriage Contracts in the Roman Empire," in *Ancient Marriage in Myth and Reality*, ed. Lena Larsson Lovén and Agneta Strömberg (Cambridge: Cambridge Scholars Publishing, 2010): 78–101.

27 On the introduction of Roman *sine manu* marriages see Mousourakis, *Fundamentals of Roman Private Law* (n. 15): 102.

Satlow, the "legal system [was] heavily biased toward the rights of the husband over the property of his wife", creating financial dependency.[28]

Financial dependency also determined the lives of minor children and slaves. In the case of minor children this is not surprising and is still the case today. Like wives, children and slaves were supposed to be maintained by the householder, the provision of accommodation, food, and clothing serving as a compensation for the loss of financial independence. Yet male adult slaves were sometimes employed as their masters' business managers and instrumental in the increase of his wealth. While wives were expected to surrender their property to their husbands, slaves' knowledge and business acumen was put to profitable use. At least theoretically, all of the proceeds belonged to the householder and he was the one in charge of decision making.

Despite this rigid system of financial dependency, there were also ways to circumvent it – which would have depended on a male householder's goodwill. As far as women were concerned, fathers could give daughters gifts in contemplation of death, which functioned outside proper inheritance laws that favoured sons over wives and daughters.[29] Through such gifts, "a man can choose to give part of his estate to his daughter".[30] The donation, made by declaration on his deathbed, would be effective after his death. Such deathbed gifts are also mentioned in Roman law under the name of *donatio mortis causa*.[31] Whether and to what extent Jewish women could use such gifted property depended on their status and on the time when they received the gift. The issue is discussed at length in Mishnah Ketubbot 8:1, where the stages before betrothal, between betrothal and marriage, and after marriage are distinguished. The discussion shows that while rabbis were generally in favour of a husband's control over his wife's property, they were undecided with regard to property she received as a gift at any of these stages.

The first part of Mishnah Ketubbot 8:1 distinguishes between women before and after their betrothal. The Houses of Hillel and Shammai allegedly agreed that a woman can do whatever she wants with property she received before her betrothal. They differed, however, with regard to property she received after her betrothal. According to the House of Hillel, she no longer has decision rights over the property, that is, she may not sell it or give it away, whereas the House of Shammai continues to grant her authority over the gifted property. The following sentence states, however, that both schools agreed that if she had used such property, she should not be penalized and her decision and action would be considered valid. According to

28 Michael Satlow, *Jewish Marriage in Antiquity* (Princeton: Princeton University Press, 2001): 219.

29 On this legal regulation see Reuven Yaron, *Gifts in Contemplation of Death in Jewish and Roman Law* (Oxford: Oxford University Press, 1960).

30 Hauptman, *Rereading the Rabbis* (n. 17): 184.

31 See Andrew Borkowski, *Deathbed Gifts: The Law of Donatio Mortis Causa* (London: Blackstone, 1999), who traces them from Roman to English law; David Rüger, *Die donatio mortis causa im klassischen römischen Recht* (Berlin: Duncker & Humblot, 2011).

R. Gamliel's response to sages, who asked him whether the prospective husband has not acquired possession of her property together with possession of the woman, rabbis were "at a loss [to find reason to giving him right] over her new [possessions acquired after betrothal], and would you even burden us with the old also!" (ibid.), meaning that they found it difficult to prevent her from using property gifted to her before her actual marriage.[32]

In the second part of the *mishnah* property gifted to a woman after her marriage, once her *ketubbah* was already written, is discussed. Sages allegedly agreed that like the *ketubbah* such additional property should be under the custody of the husband: "These and these agree that if she sold or gave away [such property], the husband retrieves it from the hand of the purchasers" (ibid.), that is, any transaction she made with this property is considered invalid. Uncertainty pertains, however, to a situation where she received property while not married (that is, marriage was not on the cards yet) and then she was (suddenly?) married. Again, R. Gamliel is said to have decided in favour of the woman: "If she has sold or given away [such property], [the transaction] is valid" (ibid.). He again stated that they were "at a loss" with regard to the husband's right of possession of such property (ibid.).

R. Gamliel's knowledge of Roman law may have contributed to this indecision and ambiguity. In regard to Roman women, Melville writes: "All property belonging to the wife that was not included in the dowry (*dos*), whether acquired before or after marriage, was known as "paraphernal" property (*parapherna*); it remained the separate property of the wife, and the husband had no rights in or over it except such as his wife might choose to accord him".[33] The *parapherna* comprised "[a]ll of the wife's property other than the *dos* [dowry] and the gift because of marriage [the husband's *donatio ante nuptas*] [. . .] Of this she is and continues to be the absolute owner".[34] She can use it in whatever way she chooses without requiring her husband's permission. If she wishes, she can give him administrator's rights (*res in parapherna datae*).[35]

Rabbis must have been aware of married women's greater executive power over property in Roman law. They may have feared that Jewish women might turn to Roman adjudicators to validate the transactions they made with property gifted to them. By enabling women to make use of property received after betrothal and before marriage, rabbis maintain the husband's general right of control over their wife's

32 See also Ilan, *Jewish Women in Greco-Roman Palestine* (n. 11): 168–69, on this text.

33 Robert Dundonald Melville, *A Manual of the Principles of Roman Law Relating to Persons, Property, and Obligations* (Edinburgh: W. Green & Son, 1915): 164; in more detail: Erich Gerner, *Beiträge zum Recht der Parapherna. Eine ehegüterrechtliche Untersuchung* (Munich: C.H. Beck, 1954); Kaser, *Das römische Privatrecht*, vol. 1 (n. 5): 329–30.

34 Ferdinand Mackeldey, *Handbook of the Roman Law*, trans. and ed. Moses A. Dropsie (Philadelphia: T. & J.W. Johnson & Co., 1883): 432.

35 Mackeldey, *Handbook* (n. 34): 432.

property by, at the same time, enabling parents to transfer property to daughters that would remain outside of their (later) husband's control. Especially in families without sons such mechanisms would have been crucial in protecting property from the husband's potential business losses and in transmitting it to the daughters' children.

The phenomenon of fathers gifting property to their daughters, when they were their only children, is also reflected in the Babatha and Salome Komaise papyri from the Judean desert. In her study on the relationship between Roman and local law in these documents, Oudshoorn points out that gifts enabled fathers to transfer parts of their estate to daughters from an earlier marriage, if they decided to remarry and potentially gain male heirs.[36] In P. Yadin 19 her father Judah makes a gift to his daughter Shelamzion after his marriage to Babatha. The gift probably consisted of real estate. P. Yadin 20 addresses a conflict that arose after his and his brother's death between Shelamzion and the guardians of his male nephews. The document confirms Shelamzion's right to a courtyard in Ein Gedi, which belonged to her grandfather Eleazar Kthousion and then to her father Judah.[37] Czajkowski writes: "Behind this is apparently an implication that, when Eleazar died, his property was not divided in the way that it should have between Judah and his brother Jesus. This would have had implications for the property Jesus' sons would then have inherited."[38] Shelamzion's right to the property is confirmed here, however, which indicates that daughters could receive property from their fathers, even if the transfer was not called "inheritance". Since Shelamzion was married at the time when her rights to the courtyard were confirmed, this property would have been her personal possession to which her husband lacked the usufruct.

3.2 Slaves and Property

Slaves lacked the right to property possession during the time of their enslavement but they could be employed to administer and do business with their master's property. Whether and to what extent their master rewarded them for the gains they achieved was entirely up to him.

In Roman law the term *peculium* is used for slaves' holding and use of property which they did not possess themselves (D. 41.2.49.1, Pap. 2 def.). Slaves could serve as business managers for wealthy Romans, although the number of rich Romans who

36 Jacobine G. Oudshoorn, *The Relationship between Roman and Local Law in the Babatha and Salome Komaise Archives. General Analyses and Three Case Studies on Law of Succession, Guardianship and Marriage* (Leiden: Brill, 2007): 239.

37 Oudshoorn, *The Relationship between Roman and Local Law* (n. 36): 226.

38 Kimberley Czajkowski, *Localized Law: The Babatha and Salome Komaise Archives* (Oxford: Oxford University Press, 2017): 53.

needed such managers may have been relatively small.[39] Rabbis reckoned with a similar use of slaves in ancient Jewish society. According to t. B. Qam. 11:2, "the son who does business with what belongs to his father, and likewise the slave who does business with what belongs to his master, behold, they [the proceeds] belong to the father; behold, they [the proceeds belong to the master]." It seems that sons could gain property rights over their fathers' property only once they had inherited it. Until then, the father maintained all rights over his property and decided what he would give to his sons, even if they were adults. This seems to be indicated in m. B. Bat. 8:7, which rules that as soon as fathers write over their property to their sons, they can no longer sell the property; but the sons cannot sell it either, since it is still in the father's domain, that is, the property is locked and in limbo until the father dies and the sons inherit. During this intermediate period, the father still has the usufruct, which he can give to whomever he wants.

In Roman law sons were also dependent on their fathers until they inherited his property.[40] Sons *in potestate* were subjected to their father's *patria potestas* even if they were adults. They could engage in economic enterprises only if their father permitted and financed them. Since they had no independent ownership rights, the proceeds would belong to the father. Sons *in potestate* resembled slaves with regard to their lack of property ownership rights.[41] Saller has suggested to distinguish between wealthy property owners and small-holders. Owners of small plots may have had their sons work their land and share in the income, so that "the balance of economic power between aging parents and adult sons was more nearly equal".[42]

The rabbinic principle that "the hand of a slave is like the hand of his master", which appears in various contexts in the Talmud Yerushalmi (see, e.g., y. Peah 4:6, 18b), meant that a slave could not even take possession of a found object (see m. B. Mes. 1:5). He shared this inability to possess a find with minor children and wives, whereas adult children and divorced wives could take possession of the find and be recognized as its owners (ibid.). The rules indicate similarities in the dependency sta-

39 Peter Hunt, *Ancient Greek and Roman Slavery* (Hoboken: Wiley Blackwell, 2018): 47, thinks that "[o]nly a few thousand Romans can have been rich enough to need a business agent"; more information can be found in Martin Schermaier, ed., *The Position of Roman Slaves. Social Realities and Legal Differences*, Dependency and Slavery Studies 6 (Berlin: De Gruyter 2023), esp. Richard Gamauf, "Peculium: Paradoxes of Slaves With Property," in *The Position of Roman Slaves. Social Realities and Legal Differences*, ed. Martin Schermaier, Dependency and Slavery Studies 6 (Berlin: De Gruyter 2023): 87–124, and Richard Gamauf, "Dispensator: The Social Profile of a Servile Profession in the Satyrica and in Roman Jurists' Texts," in *The Position of Roman Slaves. Social Realities and Legal Differences*, ed. Martin Schermaier, Dependency and Slavery Studies 6 (Berlin: De Gruyter 2023): 125–63.

40 Antti Arjava, "Paternal Power in Late Antiquity," *Journal of Roman Studies* 88 (1998): 148–49; in more detail: Lamberti, *Handbuch des Römischen Privatrechts I* (n. 5): 869–75.

41 See Arjava, "Paternal Power" (n. 40): 148.

42 Richard P. Saller, *Patriarchy, Property and Death in the Roman Family* (Cambridge: Cambridge University Press, 1994): 125.

tus of slaves, wives, and minor children. For adult sons the dependency relationship was less severe: they could keep finds and were more likely to benefit from work they did on their father's landed property.

There was another way for a slave to acquire ownership of property, namely, through a gift by a third party. Such gifts are mentioned in Roman literary and legal sources and served as a reward for a slave's loyalty and efficiency.[43] The same is true for inheritances and bequests in favour of slaves.[44] A *baraita* in the Talmud Yerushalmi transmits a dispute between R. Meir and sages. Whereas R. Meir denied a slave ownership to property that someone else had given him "[on condition] that your master has no right to it", sages clearly approved of the validity of such a gift: "And sages say: The slave has acquired ownership, [but] his master has not acquired ownership" (y. Qidd. 1:3, 60a). Interestingly, the way in which slaves could acquire ownership resembles that of women: through gifts made by third parties, whether the women's father or a slave's relative or friend. Slaves could use the gift to do business with it, enabling them to increase their independent property and eventually purchase their freedom (see m. Qidd. 1:3: a slave may redeem himself with the money given to him by others). In Roman law the *peculium* could contain gifts from the master and from others, if they were added with the master's approval. This money would be considered the slave's own property (Digest 15.1.39). Rabbis ruled that a slave could even purchase his own slaves under the condition that he rather than his master would have possession and authority over them (y. Yebam. 7:1, 8a).

It seems, then, that the general rule that wives, children, and slaves were financially dependent on the householder could be circumvented to enable each of these categories to obtain rights over property they received as a gift from others or from the householder himself. The Babatha and Salome Komaise papyri indicate that wealthy families made use of this option to transfer property to daughters if they lacked sons. Particularly accomplished slaves, who were able to expand their master's business, are likely to have benefitted from their management skills by being rewarded by their masters. In the households of the middle and lower strata of society, in which wives and adult children contributed to the family income with their labour, the actual use of the ensuing property (e.g., in the form of crops or money from the sale of goods) may have been more equally distributed in any case.

43 Richard Gamauf, "Slavery: Social Position and Legal Capacity," in *The Oxford Handbook of Roman Law and Society*, ed. Paul J. du Plessis et al. (Oxford: Oxford University Press, 2016): 392 and ibid. n. 47 with references to Justinian's *Digest*. Such gifts could be used to purchase liberty.

44 Wolfram Buchwitz, *Servus alienus heres. Die Erbeinsetzung fremder Sklaven im klassischen römischen Recht* (Vienna: Böhlau, 2012); Wolfram Buchwitz, "Giving and Taking: The Effects of Roman Inheritance Law on the Social Position of Slaves," in *The Position of Roman Slaves* (n. 39): 165–85.

4 The Householder's Power over Women's, Children's and Slaves' Bodies

Another type of women's, children's, and slaves' dependency on the householder was his authority over their bodies. Fathers guarded over the virginity of their daughters and decided when and whom they should marry. Householders had their wives and slaves at their sexual disposal. Fathers could exert physical punishment over their children and masters had total control over their slaves' bodies.[45] They also decided where their dependants would live, what they would wear, and what food they ate.

Besides this picture of male householders' control over the lives and lifestyles of the members of their household, which the legal sources present, there are instances of rebellion, such as Josephus' stories of plots undertaken by wives and slaves of the Herodian royal family,[46] rabbinic parables that express masters' fears of servile wet-nurses' and teachers' influence on their children,[47] and wives who defy their husband's wishes.[48] There are also references to masters who allegedly refrained from harsh punishments of their slaves and treated them well and parents who allowed daughters to marry the men they loved. In daily life, these "exceptions" may have been more common and significant than the enforcement of patriarchal rules of control over the dependants' bodies.

According to both rabbinic and Roman law, householders could use physical punishments to discipline their children and slaves. In early Roman law the already mentioned *patria potestas* even included the father's decision over the life or death of a child.[49] At least theoretically, newborn babies could be killed or abandoned to control

45 This was also the case in Christian households, see Julia Hillner, "Family Violence: Punishment and Abuse in the Late Roman Household," in *Approaches to the Byzantine Family*, ed. Leslie Brubaker and Shaun Tougher (Farnham: Ashgate, 2013): 21–44.

46 Whether and to what extent such stories had a historical basis or are a stereotypical presentation of "the theme of the king who cannot control his own family" remains uncertain. For examples of "plotting women" in both Josephus and Graeco-Roman literature see R. Alan Culpepper, "Mark 6:17–29 and Its Narrative Context," in *Mark as Story: Retrospect and Prospect*, ed. Kelly R. Iverson and Christopher W. Skinner (Atlanta: Society of Biblical Literature, 2011): 151–52.

47 See Hezser, *Jewish Slavery in Antiquity* (n. 1): 360–62.

48 A prominent example is the rabbinic story in Leviticus Rabbah 9:9 about the wife who went to listen to R. Meir's sermon in the synagogue on Friday nights, against her husband's wishes. On this story see Burton L. Visotzky, *Golden Bells and Pomegranates: Studies in Midrash Leviticus Rabbah* (Tübingen: Mohr Siebeck, 2003): 111: "One might be tempted to see her as a feminist heroine". See also Galit Hasan-Rokem, *Tales of the Neighborhood: Jewish Narrative Dialogues in Late Antiquity* (Berkeley: University of California Press, 2003): 67, who suggests that her husband might have suspected her of evading her marital obligations of sex with him on Friday nights.

49 Cf. Kaser, *Das römische Privatrecht*, vol. 1 (n. 5): 60–63; Lamberti, *Handbuch des Römischen Privatrechts I* (n. 5): 860–63.

the size of the family, number of heirs, and number of girls in need of a dowry.[50] Masters could exert such harsh punishments on slaves that they led to the slaves' death. In Justinian's *Institutes* master's total power over slaves is justified by the "law of nations": "Therefore slaves are in the power of their masters. This power indeed comes from the law of nations: for we can see that amongst all nations alike masters have power of live and death over their slaves" (ibid. 1.8.1).

Women also experienced violence in domestic settings. Dossey has argued that "Greek men displayed more qualms than Latins about beating their wives;" in late antiquity, Greek men considered wife-beating shameful, whereas Roman men considered it "good family discipline".[51] Reasons for men's violence against their wives could be the wife's drunkenness and suspected adultery, or even looking out of a window for too long. Augustine "took it as a matter of course that men would strike their wives for faults such as joking with other men or looking out of windows immodestly".[52] Hillner refers to "immoral conduct" and "un-wifely behaviour" as a pretext for beating a wife at the time of Justinian.[53] As far as rabbinic sources are concerned, measures to "put a wife in her place" included the threat of divorce with the loss of her ketubbah, which not only meant the loss of her maintenance but also the loss of the property which she brought into the marriage. Wives suspected of adultery (*sotah*) were meant to undergo the bitter water ordeal, a biblical institution which is discussed at length in the Mishnah, Tosefta, and Talmud (*Sotah* tractates) but was perhaps more theoretical than real in rabbinic times.[54] The physical coercion of wives, on the other hand, is hardly ever mentioned in classical Palestinian rabbinic texts.[55]

50 On child abandonment in ancient Jewish society see Catherine Hezser, "The Exposure and Sale of Infants in Rabbinic and Roman Law," in *Jewish Studies Between the Disciplines. Judaistik zwischen den Disziplinen. Papers in Honor of Peter Schäfer on the Occasion of his Sixtieth Birthday*, ed. Klaus Herrmann et al. (Leiden: Brill, 2003): 3–28.

51 Leslie Dossey, "Wife-Beating and Manliness in Late Antiquity," *Past & Present* 199 (2008): 4.

52 Dossey, "Wife-Beating" (n. 51): 10. See also Patricia Clark, "Women, Slaves, and the Hierarchies of Domestic Violence: The Family of St. Augustine," in *Women and Slaves in Greco-Roman Culture: Differential Equations*, ed. Sandra R. Joshel and Sheila Murnaghan (n. 2): 109–29.

53 Hillner, "Family Violence" (n. 45): 29.

54 See the discussion in Ilan, *Jewish Women in Greco-Roman Palestine* (n. 11): 137–40, who points to controversy over the trial of the sotah at the end of the Second Temple period already.

55 See also Nahum Rakover, *Jewish Law and Current Legal Problems* (Jerusalem: Library of Jewish Law, 1984): 150, who emphasizes that coercion of wives in rabbinic law "is of a financial nature". Daniel Boyarin, *Unheroic Conduct: The Rise of Heterosexuality and the Invention of the Jewish Male* (Berkeley: University of California Press, 1997): 166 n. 44, points to "[t]he prevailing unconditional opposition of medieval rabbis to wife-beating". Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe*, The Tauber Institute Series for the Study of European Jewry (Hanover, NH: Brandeis University Press, 2004): 212–30, provides a detailed discussion on "Violence Toward Women", including wife-beating, in medieval Jewish societies and texts.

Obviously, this does not preclude the possibility that it actually happened in daily life.[56]

More recently, scholars have questioned the extent to which such patriarchal powers were used in daily life. Was the householder the despot the legal sources enabled him to be? Gardner has suggested to distinguish between law and life, theory and practice: "[. . .] studies have challenged the assumption that such paternal control was a social reality for much of the lifetime of many Romans".[57] Rather than using their power over life and death, householders would have been guided by other aspects of *patria potestas*, namely, the preservation of their property and legal liability for their household members' actions.[58] Similarly, Saller defines *patria potestas* as "a father's duty to protect those in his power".[59] Family relations were guided by the value of *pietas*, which involved children's and, needless to say, slaves' submission to and obedience towards their father and master.[60] If they disobeyed and upset the family harmony based on hierarchical power relationships, the householder had the right to rectify the situation in whatever way he considered appropriate. Both philosophers and agricultural writers advised householders not to act upon their anger and to remain calm and rational in their handling of conflicts.[61] Hillner has emphasizes that "[c]orrect behaviour within the household became one of the prime indicators of male elite morality".[62] As blood relatives of the householder children were probably treated better than slaves. Cicero already points to the distinction between the disciplining of children and the coercion of slaves (rep. 3.37).[63] Yet slaves were the householder's property, which they had an interest in preserving. They would not want to render slaves unable to work or to be sold on.

According to rabbinic law, "he who injures his fellow is liable to him [to pay compensation] on five counts: injury, pain, medical costs, loss of [work] time, and indignity" (m. B. Qam. 8:1). In the following sections of the Mishnah, distinctions are made with regard to who injured whom an in which circumstances. Hebrew, that is, formerly Jewish slaves take precedence over Canaanite, that is, non-Jewish slaves and slaves belonging to others to slaves owned by the householder himself. Whereas

56 See Naomi Graetz, *Silence is Deadly: Judaism Confronts Wifebeating* (Lanham, MD: J. Aronson, 1998).

57 Jane F. Gardner, *Family and Familia in Roman Law and Life* (Oxford: Clarendon Press, 1998): 269; another aspect ("Komplementarität") is emphasized by Evelyn Höbenreich, "Rechtsstellung der Frauen," in *Handbuch des Römischen Privatrechts*, vol. 1, ed. Ulrike Babusiaux et al. (Tübingen: Mohr Siebeck, 2023): 750–53.

58 See Gardner, *Family and Familia* (n. 57): 269.

59 Saller, *Patriarchy, Property and Death* (n. 42): 104.

60 Saller, *Patriarchy, Property and Death* (n. 42): 106–7.

61 See, e.g., Seneca, *De ira*, on controlling anger. William V. Harris, *Restraining Rage: The Ideology of Anger Control in Classical Antiquity* (Cambridge, MA: Harvard University Press, 2001).

62 Hillner, "Family Violence" (n. 45): 22–23.

63 See also Saller, *Patriarchy, Property and Death* (n. 42): 145, with regard to Cato's advice.

anonymous sages imposed liability to compensation on someone who injured Jewish slaves and slaves belonging to others, individual rabbis condoned the unlimited corporal punishment of slaves: "R. Judah says: Slaves are not subject to compensation for indignity" (m. B. Qam. 8:3). Since slaves were considered to lack honour, they were not compensated if treated in a disgraceful way. In the following Mishnah, injuring a slave of any background is equated to injuring women and minors: "He who injures them is liable;" yet the compensation is paid to them only after divorce and manumission (m. B. Qam. 8:4). In all of these cases the injury is not specified as a punishment for misdemeanor, though.

According to Saller, "[o]ne of the primary distinctions between the condition of a free man and a slave in the Roman mind was vulnerability of the latter to corporal punishment, in particular lashings at another man's private whim".[64] Yet (minor) children could be disciplined with lashes too. Therefore, the question is whether and to what extent the corporal punishment of slaves differed from that of children. Were legal distinctions made between the physical punishment of children and slaves?

It needs to be noted first that there were many similarities. The disciplining of both children and slaves was generally considered beneficial to them and done in the hope that it would improve their behaviour. Not only fathers and masters themselves but also elementary teachers, domestic pedagogues, and instructors[65] could discipline children and estate managers and supervisors could give lashes to slaves. The biblical image of the "rebellious son", who disobeys his parents and should be punished by public stoning (Deut 21:18–21) is held up by rabbis (cf. m. Sanh. 8:2–3 and y. Sanh. 8:1, 26a). Sivan has already pointed out that the biblical punishment could hardly be executed in Roman-Byzantine times, however.[66] She also points to rabbinic texts that "aspire to hedge the unlimited power of fathers over their children by penalizing intentionally inflicted damage on children".[67]

Tosefta B. Qam. 9:3 differentiates between minor and adult children. Fathers are considered liable for injuries inflicted on adult children but not for those inflicted on minors: "[If he injures] his own minor children (*ketanim*), he is not liable on any count".[68] In the case of minor daughters, an exception to this rule applies, however: "If he injures his minor daughter [more than necessary], the damages [for the bodily injuries] are hers and he is exempt from the rest [of the counts]".[69] Physical injuries inflicted on daughters could lower their marriage opportunities. In the case of sons, too, excessive violence against children was criticized by rabbis: "A father who injures

64 Saller, *Patriarchy, Property and Death* (n. 42): 137.

65 Cf. D. 9.2.5.3 (Ulp. 18 ad ed.) and D. 19.2.13.4 (Ulp. 32 ad ed.).

66 Hagith Sivan, *Jewish Childhood in the Roman World* (Cambridge: Cambridge University Press, 2018): 56–57.

67 Sivan, *Jewish Childhood* (n. 66): 57.

68 Translation with Sivan, *Jewish Childhood* (n. 66): 57.

69 Sivan, *Jewish Childhood* (n. 66): 57.

[excessively] his minor son is liable on all counts [. . .]. A father who hits his son and a teacher who smites his pupil, if they injure them they are exonerated but if they exceeded the appropriate measure they are liable" (ibid.). How to decide between "normal" and excessive punishment is not specified here, however, and probably left to the testimony of onlookers to decide.[70]

Like children, slaves were vulnerable to their masters' and supervisors' execution of power over them. As already pointed out, the right of masters to kill their slaves is considered universal ("the law of nations") in Justinian's *Institutes* (1.8.1).[71] We may assume that slaves were killed by their masters or their agents much more frequently than children by their parents and that the reasons for doing so were less stringent. While masters and estate supervisors may have inflicted grave injuries on slaves who caused their anger, in the case of freeborn children fathers and teachers would have been more restrained, aware of the need to preserve the minors' dignity.

Biblical law allows masters to severely punish their slaves but not to kill them instantaneously: "When a man strikes his slave, male or female, with a rod, and he dies there and then, he must be avenged. But if he survives a day or two, he is not to be avenged, since he is the other's property" (Exod. 21:20–21). In the latter case one could argue that the lashes were not meant to kill the slave. If he eventually died of his injuries, the master is not held liable for killing him. A statement attributed to R. Yehudah in m. B. Qam. 8:3 points to a significant aspect in the perception of slaves: unlike children, who were raised to become honorable adults, slaves stood beyond distinctions of honour and shame. Therefore, physical punishments' impact on the slave's dignity, mental state, and reputation were considered irrelevant. Just as rabbinic rules distinguish between minor and adult sons, they distinguish between Hebrew (originally Jewish) and Canaanite (non-Jewish) slaves with regard to the householder's liability: a father who injures adult children and a master who injures Hebrew slaves is liable, whereas a father who injures minor children and a master who injures Canaanite slaves is not, unless they belonged to others, in which case he damaged another master's property (m. B. Qam. 8:3.5; but see t. B. Qam. 9:10).

70 On the punishment of children in Jewish law see also Benjamin Shmueli, "Corporal Punishment of Children in Jewish Law," *Jewish Law Annual* 18 (2009): 137–211; Solomon Schimmel, "Corporal Punishment of School Children: The Teacher's Tory Liability in Jewish Law," *Jewish Education* 45 (1976): 32–41; Yitzchak Levi and Avraham Sherman, "Corporal Punishment by Parents and Teachers," *Crossroads: Halacha and the Modern World* 5 (1999): 143–57.

71 On restrictions of the *dominica potestas* (the master's power) see. Richard Gamauf, "Sklaven (servi)," in *Handbuch des Römischen Privatrechts*, vol. 1, ed. Ulrike Babusiaux et al. (Tübingen: Mohr Siebeck, 2023): 958–63.

5 Conclusions

In her book *The Creation of Patriarchy* (1986) Gerda Lerner argues that in patriarchal societies, whether ancient or modern, "various forms of dependency and unfreedom coexisted".[72] Patriarchal family relations and slavery coexisted in ancient Near Middle Eastern societies such as Babylonia and Egypt and in the Mediterranean region throughout Hellenistic and Roman times. These societies did not know the modern Human Rights "concept of freedom as an inalienable right of all human beings".[73] Slaves, and to some extent also wives and children, were considered the male householder's "property", whose own rights were limited or non-existent. These members of the household stood under the householder's legal authority. Any property they might have owned would remain under his control as long as they were part of his household. He was at liberty to make use of their sexuality and labour.

Lerner argues that it is not women as such who are "reified" – free women maintain a certain amount of agency – but their "sexuality and reproductive capacity" are turned into commodities and controlled by male householders, whether fathers or husbands.[74] She identifies various "degrees of unfreedom" that existed "on a spectrum ranging from the slave woman [. . .] to the 'free' wife".[75] In her book, *Chattel or Person? The Status of Women in the Mishnah*, Judith Romney Wegner also identifies sexuality as the key for distinguishing between chattel and person as far as the representation of women in the Mishnah is concerned: "Whenever some man has a proprietary interest in the sexual and reproductive function of a specified girl or woman, the Mishnah's framers treat the woman as the man's chattel in all matters that affect his ownership of her sexuality; in all other contexts, the dependent woman is treated as a person".[76] As we have seen, for example, there are differences between the property rights of women before marriage, while married, and after divorce and distinctions between her dependency on her father (women before betrothal and marriage) and her husband (during marriage).

Degrees of dependency also existed between children and slaves. Here the basis of dependency was not sexuality but the notion that the child and slave were not fully fledged persons able to make their own decisions and handle things independently. Whereas the child would eventually grow into an adult person and had to be treated with this future development in mind, the slave's personhood was denied, at least as

72 Gerda Lerner, *The Creation of Patriarchy* (Oxford: Oxford University Press, 1986): 95.
73 Lerner, *The Creation of Patriarchy* (n. 72): 95.
74 Lerner, *The Creation of Patriarchy* (n. 72): 213.
75 Lerner, *The Creation of Patriarchy* (n. 72): 215.
76 Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (Oxford: Oxford University Press, 1988): 19.

far as the legal texts are concerned.[77] "Roman slaves partake only of the personhood of their master, and are categorized as an *instrumentum* rather than a person [. . .]".[78] The rabbinic rule that "the hand of the slave is like the hand of the master" seems to point to a similar concept. Therefore, in contrast to all of the other categories of dependants discussed here, the slave's dependency on his master was absolute and to some extent continued after manumission. Whereas women would become independent after the death of their husband or divorce and children would grow into responsible adults, the stigma of slavery would haunt their offspring for generations and was associated especially with unchastity, theft, and deceit, misdemeanors that did not fit the notion of a respectable Roman citizen or free male Israelite.[79] When slaves had become independent and no longer under the immediate control of their masters, common prejudices against them continued and denied them full integration into free(born) society. They remained in limbo between slavery and freedom.[80]

77 Slaves are categorized as "persons" (*persona*) in Gai. inst. 1.9 (similar Inst. 1.3 pr.) and esteemed as naturally born free (*iure naturali omnes liberi nascerentur* [. . .], D. 1,1,4 pr. (Ulp. 1 inst.). On this issue see also Catherine Hezser, "The Perception of Slaves as Human Beings and Property in Ancient Jewish and Graeco-Roman Texts," in *Human Dignity and Human Rights in Ancient Near East, Israel, and Hellas*, vol. 2, ed. Evangelia G. Dafni and Evangelos Chrysos, Orbis Biblicus et Orientalis (Leuven: Peeters, forthcoming 2025).

78 John Frow, "Personhood," in *The Oxford Handbook of Law and Humanities*, ed. Simon Stern et al. (Oxford: Oxford University Press, 2020): 284.

79 See Hezser, *Jewish Slavery in Antiquity* (n. 1): 151, with references.

80 On the status and situation of manumitted slaves see especially Rachel Zelnick-Abramovitz, *Not Wholly Free: The Concept of Manumission and the Status of Manumitted Slaves in the Ancient World* (Leiden: Brill, 2005). On manumitted slaves in rabbinic sources see Hezser, *Jewish Slavery in Antiquity* (n. 1): 108–15.

Julia Winnebeck

Dependents in the Conciliar Legislation of the Church in Gaul (c. 400–700)

1 Introduction

The Christian church's handling of slavery and other dependency relations in late antiquity and the early Middle Ages has only recently received increased attention. There are two main reasons for the delayed interest in this topic: The first is the influential narrative that slavery ceased to exist shortly after the fall of the western Roman Empire, and that it was replaced by other forms of labor, such as servitude.[1] The second, related, reason is the equally influential narrative that Christianity was a driving factor towards the abolition of slavery. While most researchers today reject the notion that the late antique and early medieval church actively fought slavery, these narratives continue to influence the evaluation of the evidence pertaining to practices of slavery in the post-Roman kingdoms and the involvement of the Christian church with such practices.[2]

Some of this evidence was presented as early as 1908 at the International Historical Congress in Berlin by the Dutch church historian Frederik Pijper.[3] Since then, a wealth of studies on slavery in late antiquity and the Middle Ages have stressed the importance of the Christian church as a 'slave owning institution.'[4] It took until 2020,

1 Cf. Samuel Sutherland, "The Study of Slavery in the Early and Central Middle Ages: Old Problems and New Approaches," *History Compass* 18 (2020): 1–12, who offers a recent, excellent overview of the history of research.

2 According to Stefan Jurasinski, *The Old English Penitentials and Anglo-Saxon Law*, Studies in Legal History (New York: Cambridge University Press, 2015): 92, 'the Church [has] retained its role in more recent scholarship as ultimately an agent of slaves' liberation [. . .].' Cf. e.g. Hartmut Hoffmann, "Kirche und Sklaverei im frühen Mittelalter," *Deutsches Archiv für Erforschung des Mittelalters* 42 (1986): 1–24; Martin Ritter, "Christentum," in *Handwörterbuch der antiken Sklaverei*, vol. 1, ed. Heinz Heinen et al. (Stuttgart: Franz Steiner, 2017): 552–53.

3 Frederik Pijper, "The Christian Church and Slavery in the Middle Ages," *The American Historical Review* 14, no. 4 (1909): 675–95.

4 David Wyatt, *Slaves and Warriors in Medieval Britain and Ireland, 800–1200*, The Northern World 45 (Leiden: Brill, 2009): 29–30. Cf. Jennifer Glancy, *Slavery in Early Christianity* (Oxford: Oxford University Press, 2002); Elisabeth Herrmann-Otto, "Sklaverei," in *Reallexikon für Antike und Christentum*, vol. 31, ed. Christian Hornung et al. (Stuttgart: Anton Hiersemann Verlag, 2021): 691–751; Elisabeth Herrmann-Otto, *Grundfragen der antiken Sklaverei. Eine Institution zwischen Theorie und Praxis* (Hildesheim: Olms, 2015): 32–33; David Pelteret, *Slavery in Early Mediaeval England: From the Reign of Alfred until the Twelfth Century*, Studies in Anglo-Saxon History 7 (Rochester, NY: Bodydell & Brewer, 1995); Ritter, *Christentum* (n. 2): 543–61, 552–53; Alice Rio, *Slavery After Rome: 500–1100*, Oxford Studies in Medieval European History 5 (Oxford: Oxford University Press, 2017).

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however, before the first systematic treatment of the extant evidence for the church as a major slave owner was published by Mary E. Sommar.[5] Her study on 'The Slaves of the Churches' presents, at its core, an analysis of the church's own legislation on the question of how to deal with slaves and other dependent persons between the first and thirteenth centuries. It therefore provides an excellent foundation for more detailed studies.[6]

In an attempt to provide such a study, I sifted through the conciliar legislation of the Western Gallic Church between the years 400 and 700. We are aware of around seventy Gallic synods and councils that took place during these three hundred years, but written records survive of only about forty-five of them. According to the extant written evidence, twenty-three of the documented councils and synods dealt in one way or another with slaves and other dependent persons.[7] The 60 canons that were passed by these gatherings discuss a variety of legal problems posed by the existence of slaves in society and within the church. The canons do not treat these different problems in a systematic way. This is due to the fact that the legislation of church councils and synods was largely reactive: These assemblies ruled on problems that seemed pressing at the time and required a more united approach. While the individual provisions of course often built on earlier rulings, writings of the Church Fathers or secular law, various combinations, omissions and additions show that they were tailored to address a specific historical situation. Therefore, one could argue that these provisions resist any attempt of coherent systematization and are best understood in the context of the individual council or synod where they were created – which is of course often unknown to us.[8]

Nonetheless, it is possible to identify some recurring themes within the conciliar legislation on slaves and other dependents and to reconstruct practices associated with them. These themes can be grouped according to the two leading motives which appear to have guided the church's legislation on slavery during the period in question: First, the church's aim to protect its authority (or jurisdiction) and its property,

5 Mary E. Sommar, *The Slaves of the Churches: A History* (Oxford: Oxford University Press, 2020).

6 Sommar treats the conciliar evidence in chapter 5, 'Ecclesiastical Slavery in the Germanic Kingdoms', under the sub-heading 'Canon Law'.

7 The records of the councils and synods from this time period and region have been edited in two volumes by Charles Munier, *Concilia Galliae* A. 314–A. 506, Corpus Christianorum Series Latina 148 (Turnhout: Brepols, 1963), and Carl de Clercq, *Concilia Galliae* A. 511–A. 695, Corpus Christianorum Series Latina 148A (Turnhout: Brepols, 1963). Records survive of roughly 60% of the councils reported in these volumes.

8 Cf. Patrick Griffith, "Canon Law in Post Imperial Gaul" (PhD diss., King's College, 2018), https://kclpure.kcl.ac.uk/portal/ [accessed: 19.10.2023]; Gregory Halfond, *The Archaeology of Frankish Church Councils, AD 511–768* (Leiden: Brill, 2009); Odette Pontal, *Die Synoden im Merowingerreich*, trans. Isolde Schröder, Konziliengeschichte, Series A: Darstellungen (Paderborn: Ferdinand Schöningh, 1986).

and second the church's aim to aid and protect salvation. In the first part of my paper I will therefore present the canonical evidence pertaining to the church's concern for slaves as inalienable church property, the protection and lasting obligation of freed-people, and church sanctuary. In the second part I will survey the canons concerned with the appropriate handling of slaves and other dependents with a view to salvation.

2 The Protection of Church Property and Jurisdiction

2.1 *Servi* as Inalienable (Church) Property

When it came to dependents, church and state alike were primarily concerned with the inalienability of their property. Slaves and other dependent people were considered part of the church's property and labor pool, there to be preserved for future generations. Accordingly, a range of canons decree that church slaves should not randomly be sold or freed.[9] One canon of the Council of Epao (517) justifies the prohibition to free church slaves by arguing that it would unnecessarily burden monks with hard physical labor:[10]

> [. . .] *Mancipia uero monachis donata ab abbate non leceat manumitti; iniustum enim potamus, ut monachis cotidianum rorale opus facientebus serui eorum libertatis otio potiantur.*
>
> [. . .] Slaves who have been donated to the monks may not be freed by the abbot; for we consider it unjust that, while monks do the daily agricultural labour, their slaves have the leisure of freedom.[11]

The general prohibition to free church slaves meant that the usual roads to liberation were not open to these dependents. This has led Mary Sommar to stress the perma-

9 Cf. e.g. *Concilium Agathense* (506), cn. 7, ed. Munier, *Concilia Galliae* (n. 7): 195–96; *Concilium Aurelianense* I (511), cn. 15, ed. de Clercq, *Concilia Galliae* (n. 7): 9; *Concilium Aurelianense* IV (541), cn. 9, ed. de Clercq, *Concilia Galliae* (n. 7): 134; *Concilium Clippiacense* (626/627), cn. 15, ed. de Clercq, *Concilia Galliae* (n. 7): 294; Cf. also Isidor of Sevilla's *Regula Monachorum*, ed. Julio Campos Ruiz, *Reglas monásticas de la España visigoda* (Madrid: Biblioteca de Autores Cristianos, 1971): 90–125. On this topic, cf. Susanne Baumgart, *Die Bischofsherrschaft im Gallien des 5. Jahrhunderts: Eine Untersuchung zu den Gründen und Anfängen weltlicher Herrschaft der Kirche*, Münchener Arbeiten zur alten Geschichte 8 (Munich: Münchener Universitätssschriften, 1995): 72; Sommar, *Slaves of the Churches* (n. 5): 366, 375–76.

10 *Concilium Epaonense* (517), cn. 8, ed. de Clercq, *Concilia Galliae* (n. 7): 26. Cf. appendix to the records of the council of Agde (506), cn. 9 (56), ed. Munier, *Concilia Galliae* (n. 7): 226. On this provision cf. Sommar, *Slaves of the Churches* (n. 5): 375.

11 The Latin text also allows the alternative translation: 'Slaves who have been donated to the monks by the abbot may not be freed; [. . .].'

nence of church slavery as one of its few distinct characteristics.[12] This permanence is particularly palpable in a canon from the Council of Arles (541) which reads as follows:[13]

> *De genere seruili decreuimus obseruandum, ut discendens* [sc. descendens] *inde posteritas, ubicumque quamuis post longa spatia temporum repperitur, in locum, cui auctoris* [sc. auctores] *eius constat fuisse depotatus* [sc. deputatos], *reuocata studio sacerdotis, in ea, quae constituta est a defunctis, condicione permaneat. Cui praecepto si quis saecularium humanae cupiditatis inpulsu crededirit obuiandum, quousque se corrigat, ab ecclesia suspendatur.*
>
> Regarding the lineage (*genus*) of slaves we have decreed that it is to be observed that the posterity descending from them (i.e. their descendants), wherever they may be found after however long a time, shall be called back through the efforts of the priest to the place of which it is stated that their ancestors were assigned to. They (i.e. the descendants) shall remain under the condition established by the deceased. If any secular person has thought that he could deviate from this prescription on an impulse of human cupidity, he shall be suspended from the church until he corrects himself.

This canon seems to be concerned with the descendants of slaves who had been donated to the church. Apparently, there was an acute possibility that the descendants of their former masters would claim these dependents to make them work in their households or on their estates. The main objective of this provision appears to be to defend the church's indefinite claim to all descendants of those bequeathed to it, regardless of whether they were freedpeople or remained enslaved according to the will of their former masters.

There were, however, a few exceptional circumstances under which church slaves could be sold or freed. They could be sold to free up funds for the redemption of captives or to remove Christian slaves from a non-Christian household.[14] They could also be traded in for other, more 'useful' or 'worthy,' dependents.[15] The records of the fourth Council of Orléans (541) further indicate that church slaves were occasionally liberated by bishops – possibly with a view to preparing them for church office:[16]

> *Vt episcopus, qui de facultate propria ecclesiae nihil relinquid, si quid de ecclesiae facultate, id est si aliter, quam canones elocuntur* [*sc. eloquantur*], *obligauerit, uindedirit aut distraxerit, ab eccle-*

12 Cf. esp. Sommar, *Slaves of the Churches* (n. 5): 250–51.

13 *Concilium Aurelianense* IV (541), cn. 32, ed. de Clercq, *Concilia Galliae* (n. 7): 140. The text together with a French translation is also available in Jean Gaudemet and Brigitte Basdevant-Gaudemet, eds., *Les canons des conciles mérovingiens (VIe–VIIe siècles)*, Sources Chrétiennes 353–54 (Paris: Editions du Cerf, 1989): 284–85. In this particular case, Gaudemet's reconstructed Latin text is preferable to that given in de Clercq's edition.

14 *Concilium Aurelianense* IV (541), cn. 30, ed. de Clercq, *Concilia Galliae* (n. 7): 139–40.

15 *Concilium Aurelianense* V (549), cn. 6, ed. de Clercq, *Concilia Galliae* (n. 7): 150.

16 *Concilium Aurelianense* IV (541), cn. 9, ed. de Clercq, *Concilia Galliae* (n. 7): 134.

siam reuocetur. Sane si de seruis ecclesiae libertos fecerit nomiro conpitenti, in ingenuitate permaneant, ita ut ab officio ecclesiae non recedant.

[We decree] that a bishop, who has not left any of his own wealth to the church, if he has pawned, sold or squandered anything of the church's wealth, that is, other than the canons decree, it shall be recalled by the church. However, if he has made freedpeople out of the slaves of the church in adequate numbers,[17] they shall remain of noble status (i.e. free), so that that they do not (have to) leave the (clerical) service of the church.

As we can see in this particular example, the liberation of people enslaved to the church was restricted to particular purposes which ultimately safeguarded the church's economic interests. For a slave who had been freed to become a member of the clergy was by no means lost to the church.

In general, however, the church did not allow the ordination of slaves and other dependent persons such as *coloni*.[18] We can discern two reasons for this prohibition in conciliar legislation: First, the ordination of dependents entailed a potential violation of the interests of their secular masters. Second, the tasks assigned to dependent persons were seen as incompatible with the purity and sanctity of the ministry. Accordingly, three sixth-century councils impose sanctions for church personnel who knowingly ordained dependents to the offices of presbyter or deacon.[19] The ordination itself, however, seems to have been considered valid irrespective of the status of the ordained individual. Consequently, the provisions stipulate compensation in the form of payments or other slaves to be offered to the secular masters in exchange for the ordained slaves. Alternatively, they express the expectation that ordained slaves were relieved from certain 'non-Christian' or impious tasks.[20]

The regulations concerning the ordination of dependent people point to the problem most frequently addressed in my sample of the council records: For arguably the biggest bulk of conciliar legislation on slavery concerns conflicts of interest between the church and secular masters. These conflicts seem to have occurred predominantly over questions of the rights and obligations of freedpeople and (the purview of) church sanctuary.

17 One could argue on the basis of context and terminology that an alternative reading for *nomiro conpitenti* might be *numero competentium*, i.e. 'from the number/ranks of the candidates for baptism'. Cf. Matthieu Pignot, *The Catechumenate in Late Antique Africa (4th–6th Centuries). Augustine of Hippo, His Contemporaries and Early Reception*, Vigiliae Christianae, Supplements 162 (Leiden: Brill, 2020).

18 On this problem cf. more generally Richard Klein, "Die Bestellung von Sklaven zu Priestern," *Klio. Beiträge zur Alten Geschichte* 73 (1991): 601–5.

19 Cf. *Concilium Aurelianense* I (511), cn. 8, ed. de Clercq, *Concilia Galliae* (n. 7): 7; *Concilium Aurelianense* III (538), cn. 29, ed. de Clercq, *Concilia Galliae* (n. 7): 124–25; *Concilium Aurelianense* V (549), cn. 6, ed. de Clercq, *Concilia Galliae* (n. 7): 150.

20 *Concilium Aurelianense* V (549), cn. 6, ed. de Clercq (n. 7): 150.

2.2 The Protection of Freedpeople and their Lasting Obligations

A number of canons appear to be concerned with protecting the rights of freedpeople against unlawful attempts to re-enslave them or impose lasting obligations (*obsequium*) or dependent labor (*conditio colonaria*) on them.[21] They sanction any such attempts with exclusion from the Christian community. On closer examination, the majority of these provisions are explicitly concerned with dependents who were freed in a church ceremony, i.e. by means of the so-called *manumissio in ecclesia*, or who had been bequeathed to the church in a will. The Synod of Orange (441), for example, decrees that

> *In ecclesia manumissos, uel per testamentum ecclesiae commendatos si quis in seruitutem uel obsequium uel ad colonariam conditionem imprimere tentauerit, animaduersione ecclesiastica coercebitur.*[22]
>
> If anyone has tried to impose servitude or obedience or the condition of the colonate onto those freed in the church, or bequeathed to the church in a will, he will be punished by an ecclesiastical punishment.

This canon did not contest the notion that freedpeople remained somewhat dependent even after their legal liberation.[23] Instead, it aimed at establishing that this particular group of dependents owed obligations not to their former masters, but to the church.[24]

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21 Cf. *Concilium Nemavsense* (394/396), cn. 7, ed. Munier, *Concilia Galliae* (n. 7): 51; *Concilium Lugdunense* II (567–570), cn. 3, ed. de Clercq, *Concilia Galliae* (n. 7): 201; *Concilium Clippiacense* (626–627), cn. 19, ed. de Clercq, *Concilia Galliae* (n. 7): 295.

22 *Concilium Arausicanum* 441, cn. 6 (7), ed. Munier, *Concilia Galliae* (n. 7): 79; cf. *Concilium Arelatense* II 442–506, cn. 33, ed. Munier, *Concilia Galliae* (n. 7): 121. The two canons are almost identical in that they both name *manumissio in ecclesia* and *per testamentum* as the means of liberation and in naming *servitium*, *obsequium*, and *conditio colonaria* as the three conditions of dependency.

23 Cf. *Concilium Aurelianense* V (549), cn. 7, ed. de Clercq, *Concilia Galliae* (n. 7): 150, according to which the masters had to determine which tasks exactly their dependents were to be relieved from after the change to their legal status. This implies that legal freedom did not necessarily entail the end of the former relationship of asymmetrical dependency. Cf. also *Concilium Parisiense* III (556–573), cn. 9, ed. de Clercq, *Concilia Galliae* (n. 7): 209, which implies that a freedperson was usually assigned a patron, who offered protection but also guaranteed that the manumission agreements were not broken.

24 Cf. Sommar, *The Slaves of the Churches* (n. 5): 206–7: 'Canon 6 made it clear that the church would defend its own: ecclesiastical sanctions were to be imposed on anyone who tried to impose servitude or *obsequium* (duties of a freedman to his former master) on a slave who had been freed in a church ceremony (*manumissio in ecclesia*), or who had been both freed and bequeathed to the church. This canon sheds light on a curious provision concerning *servi* and their relationship to the church: if you had received your freedom by means of the *manumissio in ecclesia* ceremony, your obligations were not to your former owner, as had been the Roman custom, but rather to the church where the ceremony had taken place. The church would defend its right to your services in the same way that it

This assumption probably did not go unchallenged. Indeed, we can infer from two canons of the Second and Fifth Councils of Arles that there were exceptions to this rule.[25] Both canons concede the legality of re-enslavement for reasons which are reminiscent of those accepted under Roman law.[26] The Second Council of Arles, for instance, considers the 'ingratitude' of a freedperson towards their former master a valid reason to return them to servitude:[27]

> *Si quis in ecclesia manumissum crediderit ingrati titulo reuocandum, non aliter liceat nisi eum gestis apud acta municipum reum esse ante probauerit.*
>
> If anyone has thought he could call back (i.e. reclaim) a freedperson manumitted in the church under the claim of ingratitude, it shall not be permitted in any way unless he has previously made plausible with reference to the public records (*acta municipum*) that he (i.e. the freedman) is guilty by his actions.

Thus, while the church seems to have accepted in principle the former masters' legal right to reverse a liberation, it tried to restrict the immediate access to freedpeople under its care by mandating a more formalized process.[28] The church's general effort to limit arbitrary re-enslavement is also evident in two provisions of the Council of Paris (614) and the related *Edictum Clotarii*, which indicate a direct involvement of the church in assessing the legitimacy of re-enslavement:[29]

> *Libertus cuiuscumque ingenuorum a sacerdotibus, iuxta textus cartarum ingenuetatis suae contenit, defensandus, nec absque praesentia episcopi aut praepositi aeclesiae esse iudicandus uel ad publicum reuocandus.*

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would defend its rights to any property acquired through a bequest.' Cf. also Sommar, *The Slaves of the Churches* (n. 5): 207–8.

25 *Concilium Arelatense* II 442–506, cn. 34, ed. Munier, *Concilia Galliae* (n. 7): 121; *Concilium Aurelianense* V (549), cn. 7, ed. de Clercq, *Concilia Galliae* (n. 7): 150–51. Cf. Mary Sommar, "Ecclesiastical Servi in the Frankish and Visigothic Kingdoms," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 33 (2010): 57–79, 77.

26 For Roman laws on the re-enslavement of *liberti ingrati* cf. *Cod. Theod.* 4.10.1–2 and *Cod. Iust.* 6.7.2. Cf. Wilhelm Felgentraeger, *Antikes Lösungsrecht*, Romanistische Beiträge zur Rechtsgeschichte 6 (Berlin: De Gruyter, 1933): 32–33; Kyle Harper, *Slavery in the Late Roman World AD 275–425* (Cambridge: Cambridge University Press, 2011): 486–89.

27 *Concilium Arelatense* II 442–506, cn. 34, ed. Munier, *Concilia Galliae* (n. 7): 121.

28 On the question of what these formal proceedings may have looked like and how they were documented cf. Warren C. Brown, "The gesta municipalia and the public validation of documents in Frankish Europe," in Warren Curtis Brown, Marios J. Costambeys, Matthew J. Innes, and Adam Kosto, eds., *Documentary Culture and the Laity in the Early Middle Ages* (Cambridge et. al.: Cambridge University Press, 2013): 95–124.

29 *Edictum Clotarii* II, cn. 7, ed. de Clercq, *Concilia Galliae* (n. 7): 285; cf. *Concilium Parisiense* (614), cn. 7, ed. de Clercq, *Concilia Galliae* (n. 7): 276–77.

> The freedperson of any freeborn persons shall be defended by the priests according to what the text of the charters of his freedom (*textus cartarum ingenuetatis*) contains, and shall not be judged or called back to public service in the absence of a bishop or a church leader.

By demanding that a church representative attend decision-making processes on re-enslavement, the church certainly claimed jurisdiction over those dependents who had been freed in a church ceremony. It is possible that the church also considered itself responsible for all other freedpeople on the basis that their liberation had aided towards their Christian masters' salvation and ought therefore not lightly be reversed.

2.3 Church Sanctuary

Another relatively large group of provisions regulated the church's prerogative or duty to provide sanctuary to slaves who had fled from their masters in fear of harsh punishment, or in order to protect marital unions.[30]

Over the course of the fourth century, Christian churches increasingly became places of refuge for lawbreakers and the non-privileged, including slaves.[31] This placed the church in a delicate situation: On the one hand, granting sanctuary allowed it to fulfill its duty to provide *caritas* to the needy in the form of intercession and protection from instant punishment. On the other, offering sanctuary to someone else's dependents was likely to be perceived as both a violation of the masters' or patrons' property rights, and an attempt to undermine the social order of the household within which the *pater familias* principally enjoyed unrestricted authority. This might explain why councils and synods felt the need to regulate this institution in such detail. Initially, the church's right to offer sanctuary was regulated and

30 On sanctuary in cases of illegitimate marriages, cf. *Concilium Aurelianense* IV (541), cn. 24, ed. de Clercq, *Concilia Galliae* (n. 7): 138.

31 On the topic of sanctuary in late antiquity and the early Middle Ages and its precursors cf. more generally Richard Gamauf, *Ad statuam licet confugere. Untersuchungen zum Asylrecht im römischen Prinzipat*, Wiener Studien zu Geschichte, Recht und Gesellschaft/Viennese Studies in History, Law and Society 1 (Vienna: Peter Lang, 1999); Daniela Fruscione, *Das Asyl bei den germanischen Stämmen im frühen Mittelalter*, Konflikt, Verbrechen und Sanktion in der Gesellschaft Alteuropas, Fallstudien 6 (Cologne: Böhlau, 2003); Karl Shoemaker, *Sanctuary and Crime in the Middle Ages, 400– 1500* (Fordham University Press, 2011): 47–77; Christian Traulsen, *Das sakrale Asyl in der Alten Welt. Zur Schutzfunktion des Heiligen von König Salomo bis zum Codex Theodosianus*, Ius Ecclesiasticum 72 (Tübingen: Mohr Siebeck, 2004): 267–310. Alternatives to seeking church sanctuary were to seek the protection of an influential person (*ad patrociniam confugere*) or of the imperial service (*ad militiam confugere*), cf. Traulsen, *Das sakrale Asyl* (n. 31): 271. Traulsen first states that these options usually meant that the less privileged exchanged one dependency relation for another ('ersetzte Abhängigkeit durch Abhängigkeit'), but then considers church sanctuary somewhat different in this regard.

limited in Roman Law.[32] From the fifth century onwards, however, a large part of the legislation on this topic is preserved in conciliar legislation. In the surviving canons dealing with this matter,[33] the clergy are instructed to take fugitive slaves into their care and not hand them over without first conducting negotiations with their respective masters.[34] To enforce this type of intercession, the masters were threatened with the ecclesiastical punishment of exclusion from the community if they dared to violently retrieve their slaves from the churches or to seize church slaves in place of their own before the negotiations had concluded.[35] The main aim of the clerical mediation was to induce the slaves' masters to refrain from overly harsh physical punishments. The canons imply that during this mediation process, the masters were persuaded to swear an oath (*sacramentum*) to this effect which amounted to an act of forgiveness akin to the remission of sins by a church representative.[36] On this subject a canon from the first Council of Orléans (511) declared that

> *Seruus qui ad ecclesia[m] pro qualibet culpa confugerit, si a domino pro admissa culpa sacramenta susciperit, statim ad seruitium domini redire cogatur; sed posteaquam datis a domino sacramentis fuerit consignatus, si aliquid poenae pro eadem culpa, qua excusatur, probatus fuerit pertulisse, pro contemptu ecclesiae uel praeuaricatione fidei a communione et conuiuio catholicorum, sicut superius conpraehensum est, habeatur extraneus. Sin uero seruus pro culpa sua ab ecclesia defensatus sacramenta domini clerecis exigentibus de inpunitate perciperit, exire nolentem a domino liceat occupari.*[37]

32 The first proper concession of the legality of Church sanctuary (in contrast to laws limiting its purview) is a constitution by Honorius from November 419. The context of the five preserved constitutions on church sanctuary in the Codex Theodosianus are legal proceedings in criminal cases. It is noteworthy that the right to seek sanctuary did not apply to slaves. Cf. Traulsen, *Das sakrale Asyl* (n. 31): 291–92.

33 Cf. e.g. *Concilium Arausicanum* (441), cn. 5, ed. Munier, *Concilia Galliae* (n. 7): 79; *Concilium Arelatense* II (442–506), cn. 30, ed. Munier, *Concilia Galliae* (n. 7): 120; *Concilium Matisconsense* (585), cn. 8, ed. de Clercq, *Concilia Galliae* (n. 7): 242–43.

34 Cf. Traulsen, *Das sakrale Asyl* (n. 31): 272.

35 Cf. *Concilium Arausicanum* (441), cn. 5, ed. Munier, *Concilia Galliae* (n. 7): 79: *Eos qui ad ecclesiam confugerint tradi non oportere, sed loci reuerentia et intercessione defendi. (6) Si quis autem mancipia clericorum pro suis mancipiis ad ecclesiam confugientibus crediderit occupanda, per omnes ecclesias districtissima damnatione feriatur.* German translation in Traulsen, *Das sakrale Asyl* (n. 31): 292: '(5) Diejenigen, die zur Kirche geflohen sind, dürfen nicht ausgeliefert werden, sondern müssen um der Ehrfurcht vor dem Ort und der Interzession willen geschützt werden. (6) Wenn aber jemand meint, sich der Sklaven von Klerikern zum Ersatz für eigene Sklaven, die zur Kirche geflohen sind, bemächtigen zu sollen, so soll er von allen Kirchen strengste Strafen erfahren.' On this text cf. also Sommar, *The Slaves of the Churches* (n. 5): 206.

36 Cf. *Concilium Aurelianense* V (549), cn. 22, ed. de Clercq, *Concilia Galliae* (n. 7): 156. Cf. also Shoemaker, *Sanctuary and Crime* (n. 31): 64.

37 *Concilium Aurelianense* I (511), cn. 3, ed. de Clercq, *Concilia Galliae* (n. 7): 5–6.

> A slave who has fled to the church for whatever offence, if he has received the oaths (*sacramenta*) from his master for the offence committed, he shall be compelled to return into his master's service immediately; but if, after it has been verified that he had received the oaths (*sacramenta*) from the master, it is found that he (i.e. the slave) has received any punishments for the same offence for which he had been pardoned, he (i.e. the master) shall, as we stated above, be considered excluded from the communion and fellowship (*communio et conuiuium*) of the Catholics for contempt of the church and neglect of faith. But if a slave who had been defended by the church for his offence has received his master's oaths (*sacramenta*) for his impunity according to the clerics' demand, his master is allowed to seize him if he does not want to leave.

According to another canon of the same council and the records of the Council of Clichy (626–627), the oath was sworn on the Holy Scriptures and entailed the promise not to kill, mutilate or in any other way punish the culprits beyond the satisfaction agreed in the mediation process.[38] If the masters subsequently violated their oaths or the promises made to the church, they were to be excluded from the communion and treated like strangers.[39] Pagan or Jewish masters did not swear such oaths, but had to find a Christian representative who would vouch for them.[40] If they dared to subsequently punish their slaves, they were to permanently lose their slaves to the church.[41] As is evident from the previous example, however, all masters retained the

38 Cf. *Concilium Aurelianense* I (511), cn. 1, ed. de Clercq, *Concilia Galliae* (n. 7): 4–5; *Concilium Clippiacense* (626–627), cn. 9, ed. de Clercq, *Concilia Galliae* (n. 7): 293. On this cf. Stefan Esders, "Rechtsdenken und Traditionsbewußtsein in der gallischen Kirche zwischen Spätantike und Frühmittelalter. Zur Anwendbarkeit soziologischer Rechtsbegriffe," *Francia* 20, no. 1 (1993): 97–125, 109. The oath may have resembled the oath of Childebert reported in Gregory of Tours, *History of the Franks*, Book IX 38, printed ibid.: 109, annot. 64. It is unclear if the slaves had to undertake any kind of penance for their offences. In view of the marginal role they play in the penitentials of the time, it seems unlikely.

39 *Concilium Arelatense* II (442–506), cn. 30, ed. Munier, *Concilia Galliae* (n. 7): 120; *Concilium Aurelianense* I (511), cn. 3, ed. de Clercq, *Concilia Galliae* (n. 7): 5–6. A gruesome example of how this intercessional arbitration may have played out is narrated in Book V of Gregory of Tours' *History of the Franks*. Two slaves married without the permission of their cruel master, Rauching, and, in fear of punishment, remained in the local church for protection. When Rauching came to claim them, the resident priest made him swear an oath that he would allow them to stay together and refrain from physical punishments. Rauching swore an oath to this effect, but then had the couple buried alive – together. In this story, there are no immediate consequences for Rauching – probably because he was too powerful. The priest merely succeeded in having the two slaves dug up again, thereby saving the male slave's life. Rauching later (in Book IX) dies a violent death, reflecting his awful character. Cf. Shoemaker, *Sanctuary and Crime in the Middle Ages* (n. 31): 65–67.

40 Cf. *Concilium Aurelianense* V (549), cn. 22, ed. de Clercq, *Concilia Galliae* (n. 7): 156.

41 Cf. *Concilium Aurelianense* III (538), cn. 14 (13), ed. de Clercq, *Concilia Galliae* (n. 7): 120. German translation in Heinz Schreckenberg, *Die christlichen Adversus-Judaeos-Texte und ihr literarisches und historisches Umfeld (1.–11. Jahrhundert)*, Europäische Hochschulschriften 23, 172 (Frankfurt am Main: Peter Lang, 1999): 400: 'Wenn christlichen Judensklaven von ihren Herren auferlegt wird, was die christliche Religion ihnen verbietet oder wenn sie [sc. die jüdischen Besitzer] von der Kirche bereits Entsühnte wegen des verziehenden Vergehens etwas zu strafen oder zu schlagen wagen und sie [sc. die Sklaven] erneut zur Kirche ihre Zuflucht nehmen, dass sie dann keinesfalls von dem Priester wieder (dem jüdischen Besitzer) überstellt werden sollen, es sei denn, der Taxwert des Sklaven wird

right to seize a slave who refused to leave sanctuary after the intercession had concluded.[42] Furthermore, there are indications that subsequently the masters were free to impose penal measures on their slaves, as long as these were not 'corporal' punishments. At least this is what the following canon of the Council of Epao implies:[43]

> *Seruus reatu atrociore culpabilis si ad ecclesiam confugerit, a corporalibus tantum suppliciis excusetur. De capillis uero uel quocumque opere placuit [a] dominis iuramenta non exegi [sc. exigi].*
>
> If a slave guilty of an atrocious offence has fled to the church, he shall be excused only from corporal punishments. Regarding the (shaving of) hair or whatever (penal) task it has been agreed, that oaths are not requested of the masters.

For slaves, who were denied access to the courts, refuge to a sanctuary offered the only route to quasi legal interventions.[44] In the cases of lay people, seeking sanctuary can be regarded as the activation of ecclesiastical arbitration. The ensuing mediation process between lay people under the guidance of a church representative amounted to a formal legal procedure which – in theory – rendered other available measures of conflict resolution unnecessary.[45] Indeed, the records of the first Council of Arles contain one particularly interesting provision which indicates that church sanctuary might have served as a starting point for legal proceedings in which church authorities could decree (and possibly also enforce) enslavement as a punishment:[46]

> *De raptoribus autem id custodiendum esse censuimus, ut, si ad ecclesiam raptor cum rapta confugerit et femina ipsa uiolentiam pertulisse constiterit, statim liberetur de potestate raptoris et raptor mortis uel poenarum inpunitate concessa aut seruiendi conditione subiectus sit aut redimendi se liberam habeat facultatem. Sin uero quae rapitur patrem habere constiterit et puella raptori aut rapienda aut rapta consenserit, potestati patris excusata reddatur et raptor a patre superioris conditionis satisfactione teneatur obnoxius.*
>
> Regarding abductors, however, we decide that it should be observed that if an abductor has fled to the church with a female abductee and the woman herself confirms that she has endured violence, she shall be freed immediately from the power of the abductor, and the abductor shall, after having been granted impunity from death or punishments, be subjected to the condition of being a slave or have the possibility to redeem himself. But if she who has been abducted confirms that she has a father, and the girl has consented to the abductor either prior to or during her abduction, she shall be delivered back into her father's power as an excused person, and the

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erlegt (=hinterlegt?).' Cf. Paul Mikat, *Die Judengesetzgebung der merowingisch-fränkischen Konzilien*, Nordrhein-Westfälische Akademie der Wissenschaften, Vorträge G 335 (Opladen: VS Verlag, 1995): 43.

42 Cf. *Concilium Aurelianense* I (511), cn. 3, ed. de Clercq, *Concilia Galliae* (n. 7): 5–6.

43 *Concilium Epaonense* (517), cn. 39, ed. de Clercq (n. 7): 34.

44 Cf. e.g. Detlev Liebs, "Strafrechtlicher Schutz von Sklaven gegen Willkür ihrer Herren im vorchristlichen, im christlichen Altertum und im Frühmittelalter," *The Legal History Review* 85 (2017): 13–14.

45 It resembles the proceedings envisioned in a range of penitential canons dealing with severe sins or crimes, such as the penitential process imagined for killing, cf. e.g. *P. Vinniani* 23; *P. Columbani* B 1.

46 *Concilium Aurelianense* I (511), cn. 2, ed. de Clercq, *Concilia Galliae* (n. 7): 5.

> abductor shall be held dependent by the woman's father under the aforementioned condition as compensation.

From the perspective of the fugitive, church sanctuary offered hope of protection from torture and death without due process. For severe crimes such as the abduction of a virgin, the only viable alternatives to these punishments were the enslavement of the culprit or the payment of substantial compensation – which in most cases would have resulted in debt bondage or enslavement, too.[47] From the perspective of the Church, sanctuary offered an opportunity to avoid further sin through bloodshed and to facilitate redemption

The conciliar evidence thus indicates that by the sixth century church sanctuary had developed into a complex legal institution which served multiple purposes: Firstly, it allowed the church to protect the vulnerable from arbitrary punishment and to grant them at least limited access to formalized legal proceedings.[48] Secondly, church sanctuary served as a starting point for the church to expand its 'pragmatic authority'[49] over the lay population and thus its overall power. Thirdly, church sanctuary provided the clergy with an opportunity to suppress or sanction behavior on the part of members of the ruling elite that was considered detrimental to their salvation. Sanctuary and the subsequent mediation process not only protected slaves and lawbreakers from being killed without the chance to redeem themselves, but also the salvation status of their masters and prosecutors by dissuading them from polluting themselves with bloodshed and violence perpetrated in anger. In addition to the aim to protect church property and jurisdiction, it seems to have been this concern for the souls of free Christians which prompted the ecclesiastical legislation on slavery.

3 The Handling of Dependents and Salvation

Therefore, we will now turn to the conciliar canons that focus on the appropriate handling of slaves and other dependents with a view to salvation.

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47 On the question of the Church's involvement with penal enslavement cf. Julia Winnebeck, "Life in the Service of God: Penal Servitude and Dependent Labour in the Ecclesiastical Domain of Early Medieval Francia (c. 500–800)," in *Punishment, Labour and the Legitimation of Power*, ed. Adam Fagbore, Nabhojeet Sen and Katherine Roscoe (Amsterdam: Amsterdam University Press, 2025): 193–212.

48 However, Traulsen, *Das sakrale Asyl* (n. 31): 292, argues that the Church, in line with the state, did not extend proper sanctuary to slaves. In order to properly understand the differences between sanctuary for freepeople and that granted to dependents, a thorough comparison of the conciliar legislation is required.

49 Claudia Rapp, *Holy Bishops in Late Antiquity: The Nature of Christian Leadership in an Age of Transition*, The Transformation of the Classical Heritage 37 (Berkeley: University of California Press, 2005). Shoemaker, *Sanctuary and Crime* (n. 31): 56, speaks of 'political authority.'

3.1 The Masters' Salvation

The presence of slaves in monasteries and in the households of both clergy and Christian laypeople provided a dangerous temptation for Christian men and women to sin. Clerics, masters, and mistresses alike were considered to be in constant danger of either (ab-)using their slaves for sexual gratification or of resorting to uncontrolled violence towards them. In order to minimize the temptation to commit sexual sins, conciliar legislation restricted the points of contact between male clergy and female slaves:[50]

> *Ancillas uel libertas a cellario uel a secreto ministerio et ab eadem mansione, in qua clericus manet, placuit remoueri.*
>
> Female slaves or freedwomen are to be removed from the storerooms or from private duties and from the same house in which a cleric lives.

Interestingly, sexual contact between male clergy and female slaves was sanctioned in the same way as sexual contact with any other woman, namely with deposition and exclusion from the community.[51] In contrast to this, the penitentials evaluated the sexual sins of laymen according to the status of the woman involved (i.e. married, nun, unmarried or slave).[52]

Contrary to what one might expect, Gallic canon law has no provisions that sanction the excessively cruel treatment of dependent people beyond its implicit condemnation within the provisions on sanctuary.[53] One provision of the Council of Epao, however, sanctions the arbitrary killing of slaves with temporary excommunication:[54]

> *Si quis seruum proprium sine conscientia iudicis occiderit, excommunicatione[m] biennii effusionem sanguinis expiauit* [*sc. expiauerit*].
>
> If someone has killed his own slave without the knowledge (*conscientia*) of a judge, he shall expiate the shedding of blood with two years of excommunication.

It is noteworthy that the provision is not overly concerned with the fate of the slave, i.e. the fact that they had fallen victim to a violent crime. Instead, the primary concern

50 *Concilium Agathense* (506), cn. 11, ed. Munier, *Concilia Galliae* (n. 7): 200. Cf. *Concilium Arelatense* II (442–506), cn. 4, ed. Munier, *Concilia Galliae* (n. 7): 114; *Concilium Agathense* 506, cn. 28, ed. Munier, *Concilia Galliae* (n. 7): 205; *Concilium Claremontanum seu Arvernense* (535), cn. 16, ed. de Clercq, *Concilia Galliae* (n. 7): 109–10; *Concilium Turonense* II (567), cn. 11 and cn. 20, ed. de Clercq, *Concilia Galliae* (n. 7): 179–80, 183–84.

51 Cf. *Concilium Aspasii* (551), cn. 2, ed. de Clercq, *Concilia Galliae* (n. 7): 163. Cf. also *P. Cummeani* II 1–4 and 17.

52 Cf. *P. Vinniani* 36–40; *P. Cummeani* II 26–27; *P. Theodori* (U) I XIV 12.

53 The only exception appears to be a canon of the eleventh council of Toledo in Visigothic Spain, cf. Sommar, *Slaves of the Churches* (n. 5): 370: 'In 675, XI Toledo [cn. 6] forbade harsh punishments for ecclesiastical servi, such as the amputation of a limb.'

54 *Concilium Epaonense* (517), cn. 34, ed. de Clercq, *Concilia Galliae* (n. 7): 33.

of this canon appears to be the fact that the killing had not been carried out in the 'proper way,' that is, after formal consent by a judge that the slave indeed deserved to die. While the killing of slaves by their masters could indeed be considered lawful,[55] depending on the circumstances, bloodshed in anger, which seems to be envisioned in this canon, was perceived a pollution with sin that required adequate penance lest the salvation of the person who had committed the offense be endangered.

This concern for the salvation status of free Christians in handling their dependants also provides the background against which the rare provisions which advocate a kind treatment of slaves should be read. The understanding that Christian or church slaves should enjoy better conditions than other enslaved persons is expressed, for example, in the demand that they, too, should be granted days of rest on important Christian feast days.[56] It further finds expression in conciliar legislation which stipulates that church slaves, unlike other slaves, should be entitled to a quarter of their earnings:[57]

> *Si quis uero pro remedium animae suae mancipia uel loca sanctis ecclesiis uel monasteriis offerri curauerit, conditio, quam qui donauerit scripserit, in omnibus obseruetur; pariter et de familiis ecclesiae id intuitu pietatis et iustitiae conuenit obseruari, ut familiae Dei leuiorem quam priuatorum serui opere teneantur, ita ut quarta tributi uel quodlibet operis sui benedicentes Deo ex presente tempore sibi a sacerdotibus concessa esse congaudeant.*
>
> Indeed, if anyone for the remedy of his soul made sure that his slaves (*mancipia*) or land are offered to holy churches or monasteries, the condition which he who has donated had written down shall be observed in all matters; similarly, as regards the families of the church it shall be observed for the sake of piety and justice, that the slaves of the family of God are held to lighter work than slaves of private persons, in order that those praising God can rejoice that henceforward the priests will concede to them the fourth part of their tribute or of whatever work.

As we can infer from this canon and similar provisions, the donation of slaves to the church as well as their liberation in a church ceremony or through a will was considered beneficial primarily for the benefactor's soul.[58] The dependents themselves benefitted only indirectly from the grace of their pious patrons. Consequently, much in the same way as in the provisions on sanctuary, the Christian masters' ideal conduct towards their dependents is portrayed as a sort of *imitatio Dei*: Just like Christ, they were to grant forgiveness of sin (by way of foregoing the right to punish their slaves) and give life (by way of liberating people enslaved to them).

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55 According to Roman Law, masters were not allowed to kill their slaves on their own accord. If slaves died from their injuries during or following harsh punishment, but without intent, the masters were excused. On this cf. Liebs, *Strafrechtlicher Schutz* (n. 44): 1–25.

56 Cf. *Concilium Aurelianense* I (511), cn. 27, ed. de Clercq, *Concilia Galliae* (n. 7): 11–12; *Concilium Matisconense* II (585), cn. 2, ed. de Clercq, *Concilia Galliae* (n. 7): 240.

57 *Concilium Aspasii* (551), cn. 6, ed. de Clercq, *Concilia Galliae* (n. 7): 164.

58 Cf. also *Concilium Turonense* II (567), *Epistula episcorum prouinciae Turonensis ad plebem*, ed. de Clercq, *Concilia Galliae* (n. 7): 197–99, 197.

3.2 The Slaves' Salvation

In comparison, conciliar legislation is not overly concerned with the souls or the salvation status of dependent people. The only exceptions are provisions concerned with Christian slaves in Jewish or pagan households. The fourth Council of Orléans (541) offers a striking example:[59]

> *Id etiam decernimus obseruandum, ut, si quicumque Iudaeos [sc. Iudaeus] prosilitum, qui aduina dicitur, Iudaeum facire praesumpserit aut Christianum factum ad Iudaeicam superstitionem adducire uel si Iudaeo Christianam ancillam suam crededirit sociandam uel si de parentibus Christianis natum Iudaeum sub promissione fecerit libertatis, mancipiorum amissione multetur.* [. . .].
>
> We also decree that it should be observed, that if any Jew dared to make a proselyte, who is also known as a stranger (*advena*), into a Jew, or to seduce one who had been made a Christian to the Jewish superstition (*superstitio*), or thought it fit to join his female Christian slave to a Jew, or if he has turned someone born to Christian parents into a Jew under the promise of freedom, he shall be punished with the loss of his slaves. [. . .].

In a similar manner to this example, a number of canons postulate scenarios in which Christian slaves are made to do things or to perform tasks that were considered at odds with their Christian faith. They therefore recommend that the slaves be bought or seized from their non-Christian masters.[60] For the same reason, Christians were not allowed to sell slaves to Jews or pagans.[61] In issuing these provisions, the councils and synods implicitly recognized that the observation of Christian ethics and pious practice were largely beyond the control of dependent individuals,[62] and could best be guaranteed by their submission to a Christian master or patron. Consequently, it was the masters who were thought ultimately responsible for the salvation of their dependents, as they were for all other aspects of their lives.

It seems likely that the general recognition of their dependency even in matters of faith is the reason why slaves, freedmen, and other dependent persons are rarely mentioned as 'special case[s]'[63] in the council records. In the few instances where they are, they are treated rather differently from free Christians. This is at least indi-

59 *Concilium Aurelianense* IV (541), cn. 31, ed. de Clercq, *Concilia Galliae* (n. 7): 140.

60 Cf. e.g. *Concilium Aurelianense* III (538), cn. 14, ed. de Clercq, *Concilia Galliae* (n. 7): 120; *Concilium Aurelianense* IV (541), cn. 30, ed. de Clercq, *Concilia Galliae* (n. 7): 139–40; *Concilium Matisconsense* I (581–583), cn. 16 and cn. 17, ed. de Clercq, *Concilia Galliae* (n. 7): 227; *Concilium Clippiacense* (626–627), cn. 13, ed. de Clercq, *Concilia Galliae* (n. 7): 294. Cf. Mikat, *Die Judengesetzgebung* (n. 41).

61 Cf. *Concilium Clippiacense* (626–627), cn. 13, ed. de Clercq, *Concilia Galliae* (n. 7): 294; *Concilium Cabilonense* (647–653), cn. 9, ed. de Clercq, *Concilia Galliae* (n. 7): 305.

62 Cf. for example Rio, *Slavery after Rome* (n. 4): 222.

63 Rio, *Slavery after Rome* (n. 4): 223: 'This relative lack of interest in slaves as a special case in penitentials, church councils, or hagiography remains striking—especially in view of these sources' willingness to recognize that different personal circumstances called for different treatment, and also especially in view of the fact that in at least one context church councils plainly acknowledged and

cated by a number of provisions which impose different ecclesiastical punishments according to the sinner's social status. The provincial council which convened under bishop Aspasius of Eauze in 551, for instance, punished superstitious practices with excommunication for persons of higher status (*personae superiores*). But sinners of lower status or indeed slaves (*personae humiliores uel serui*) were to be 'corrected by blows' (*uerberibus corrigere*).[64] Similarly, the Second Council of Macon (585) sanctioned the breach of the Sunday rest in the case of *servi* and *rustici* with lashing, whereas monks and clerics were to be excluded from the community for six months for the same offence.[65] The evidence of the council records thus suggests that while the clergy and free Christians were granted access to 'proper' penance in the form of (temporary) exclusion from the Eucharist and extended periods of fasting, almsgiving etc., the church held that if people of lower status committed religious offences, corporal punishments were more fitting. Together with the notion that a dependent person's salvation was largely the responsibility of their Christian master or patron, this raises the question to what extent dependents were actually considered 'full' Christians who participated in all aspects of Christian life and worship.

4 Conclusion

The analysis of the Gallic Church's conciliar legislation on slavery has produced some interesting observations which call for further investigation:

Firstly, the council records offer no reliable evidence that the church made any serious attempts to significantly change the fate of dependent people, let alone to ban slavery. At the same time, the provisions on sanctuary in particular give some indication of the church's efforts to protect dependents from arbitrary punishment and to

insisted on the perils of conflict between duties to earthly masters and duties to God as divine master: that is, in the case of priests.'

64 *Concilium Aspasii* (551), cn. 3, ed. de Clercq, *Concilia Galliae* (n. 7): 163–64: *De incantatoribus uel eis, qui instinctu diabuli cornua praecantare dicuntur, si superiores forte personae sunt, a liminibus excommunicatione pellantur ecclesiae, humiliores uero personae uel serui correpti a iudice fustigentur, ut, si se timorem dei corrigi forte dissimulant, uelut scriptum est, uerberibus corrigantur*. 'Concerning the conjurers or those who are told through the devil's inspiration to enchant (drinking?) horns: If they happen to be of higher rank, they should be banished from the thresholds of the church by excommunication, but persons of lower rank or slaves should, after having been punished by a judge, be beaten, so that if they pretend that their fear of God has improved, they are improved by beating, as it is written.'

Cf. Bernadette Filotas, "Popular Religion in Early Medieval Pastoral Literature," in *Le petit peuple dans l'Occident médiéval: Terminologies, perceptions, réalités*, ed. Pierre Boglioni et al. (Paris: Éditions de la Sorbonne, 2002): 535–48.

65 *Concilium Matisconsense* II (585), cn. 1, ed. de Clercq, *Concilia Galliae* (n. 7): 239–40; cf. *Concilium Narbonense* (589), cn. 6 and cn. 15, ed. de Clercq, *Concilia Galliae* (n. 7): 255, 257.

provide them with access to legal proceedings. In this respect, it supports the more general hypothesis of legal scholars that Roman legislation which protected the interests of dependents largely survived in ecclesiastical law.

Secondly, canon law provisions contain evidence of the church's active promotion of corporal punishment, detention, and enslavement. It seems that church authorities initially favored these practices over severe and potentially lethal torture and mutilation, revenge killings, and the death penalty, for two reasons: First, these punishments allowed sinners – including dependent persons who were often considered sinners by status – to atone before death. Second, they offered Christian prosecutors (including church representatives) an opportunity to demonstrate clemency while protecting (or enhancing) their own salvation status.

Finally, the evidence of the council records suggests that the fate of the dependents' souls was thought to be bound to that of their masters, who acted as intermediaries not only in legal matters, but also in matters of faith. If and when dependents were granted access to ecclesiastical legal proceedings like penance, different rules applied to them than to free Christians.

Boudewijn Sirks

Dependencies in the Formulae in the Frankish Kingdom

1 Introduction

After the defeat of the Visigoths in 507 at Vouillé a new era began for Gaul south of the Loire. The Visigoths withdrew almost completely to Spain while the Franks, who already possessed the north of Gaul, now Francia, took over almost all of their territory. West and east of the Rhône there was the Burgundian kingdom, but that too was conquered by the Franks, in 532/534.[1] In this expanded Frankish realm we encounter subjected persons: slaves (*mancipia*) and *coloni*. What constituted their status? There is also the act of enfranchisement, which made a former slave free, but we also see that they could be attached to a church or monastery, hence still be in a state of dependency be it probably less oppressive. But was it a asymmetrical dependency? Was one party able to bar the other party from leaving the relation? Did the dependent people have occasion for agency?

2 The Sources

Our sources are the Formulae, collections of paragon texts, used as models to record legal deeds, which are found in the Frankish realm of the sixth and later centuries.[2] In several of these texts, references are made to Roman law or Roman law institutions, such as the recording of a legal act in the *gesta municipalia*. There are also phrases or terms which strongly suggest that some or many of these formulas were copies, adapted or not, of formulas used in the Roman empire, in any case in the west, by scribes and notaries. Such a practice of formula collections, in use by successive generations of scribes and notaries, is known for Egypt[3] and there is no reason to as-

1 For Italy it begins with the establishing of the Ostrogothic Kingdom in 489/493.

2 See for an extensive and thorough survey on the Formulae Harald Siems, *Handel und Wucher im Spiegel frühmittelalterlicher Rechtsquellen* (Hannover: Hahnsche Buchhandlung, 1992): 343–84; on their value for interest stipulations 646–53; also but with less references Alice Rio, *The Formularies of Angers and Marculf, Two Merovingian Legal Handbooks* (Liverpool: Liverpool University Press, 2008); Alice Rio, *Legal Practice and the Written Word in the Early Middle Ages, Frankish Formulae, c. 500–1000* (Cambridge: Cambridge University Press, 2009).

3 See Salvatore Riccobono, Vincenzo Arangio-Ruiz and Giovanni Baviera, eds., *Fontes iuris Romani antejustitiani*, vol. 3 (Florence: S.A.G. Barbera, 1968): nr. 108, P. Heidelberg 311, a formula of the sixth century, ed. Ernst v. Druffel, *Papyrologische Studien zum byzantinischen Urkundenwesen im Anschluss an P. Heidelberg 311* (Munich: C.H. Beck, 1915); Druffel compares this with the Ravennate papyri and

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sume that in other provinces such a tradition did not exist. Another source, viz. the royal court, is not likely and indeed rejected by Rio. She opts for local scribes since the subject matter reflects local practice.[4] Yet it is almost impossible to compare them to existing documents because what has been preserved are generally charters which establish land ownership, important for the church and monasteries.[5] And even if there were comparable documents, Rio assumes the models would have been adapted which makes it difficult if not impossible to link them.[6]

There are several collections which reach as to their contents back into the 6th century, all edited by Zeumer:[7] those of Angers (Andecavenses, *And.*), the diocese of Sens (Senonenses, *Sen.*) and Clermont-Ferrand (Arvernenses, *Arv.*). The Formulae Andecavenses, found in a manuscript of the early 8th century, mention in nr. 1 and 34 king Childebert (570–596) and their edition would therefore date from the 6th century.[8] The edition of the Formulae Senonenses distinguishes two collections: the Cartae Senonicae (with an Appendix) and the Formulae Senonenses recentiores (*Sen. rec.*). They are found in a manuscript of the 9th century. Zeumer concludes the first collection (Cartae Senonicae, *Sen.*) must have been edited between 768 and 775. The Appendix Cartarum Senonicarum (*App.*) may have been older. As to the second collection, the Cartae Senonicae recentiores, this dates from the early 9th century.[9] The Formulae Arvenses are found in a manuscript of the 9th century and were definitively drawn up in Arvernorum caput, i.e. Clermont-Ferrand. The text of the first formulae indicates a period around 532, when a rebellion of the Arvernenses was suppressed by the Franks.[10] Other collections I leave out because their texts, presumably taken from previous collections, may have been re-edited, like those of Marculf.[11]

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further deals with the institution on the *gesta municipalia* in Egypt. See further the commentary by Arangio-Ruiz in FIRA.

4 Rio, *The Formularies of Angers and Marculf* (n. 2): 8–9.

5 Rio, *The Formularies of Angers and Marculf* (n. 2): 4–5.

6 Rio, *The Formularies of Angers and Marculf* (n. 2): 26–27.

7 Karl Zeumer, *Formulae Merowingici et Karolini aevi accedunt Ordines iudiciorum dei* (Hannover: Hahn, 1886).

8 Zeumer, *Formulae Merowingici et Karolini* (n. 7): 1–25.

9 Zeumer, *Formulae Merowingici et Karolini* (n. 7): 182–226.

10 Zeumer, *Formulae Merowingici et Karolini* (n. 7): 26–31.

11 These are The Formulae Marculfi (Zeumer, *Formulae Merowingici et Karolini* [n. 7]: 32–106, Suppl. 107–9, Add. 110–12), the Formulae Marculfinae aevi Karolini, the Formulae Turonenses, die Formulae Salicae Bignonianae, die Formulae Salicae Merkelianae, die Formulae Salicae Lindenbrogianae, die Collectio Flaviniacensis, die Reichenauer Fornularsammlung und die Formulae Imperiales: see on these in detail Siems, *Handel und Wucher* (n. 2): 348–49.

3 The Language

They are drawn up in a Latin which Rio calls 'often strikingly unorthodox'. She mentions two possibilities, either the abnormalities reflect the spoken language, or the distortions are the result of the ignorance of the scribes of classical Latin. The discussion among philologists turns around the question whether written language was still the way to communicate or meant to exclude the lower classes.[12] To that question there is still no answer but in my opinion the formulae indicate that the written language was appreciated by the 'common people' to communicate, or else the formulae, which are meant for everyday life, would not have been written in this kind of Latin. Since the Latin of bishops of these centuries is excellent, demonstrating the quality of education in the upper stratum of society, it cannot be that there was no possibility at all to draw up formulae in good Latin. And the abbots we encounter in the formulae who were to supervise proceedings will have known Latin well or sufficiently too. Whence, then, the flaws in the texts? Rio assumes that the authors were ecclesiastical scribes and not lay notaries. She bases this on the provenance of the texts. They all come from ecclesiastical archives, but she does not exclude that their origin lay in a lay environment.[13] That is indeed most probable but that exacerbates the problem: if finally written in an ecclesiastical environment, which one (abbey, church)? and why was the Latin not improved like we see with the collection drawn up in the Carolingian period (*vide* the Formulae Marculfi)? Particularly as she suggests herself that they were used in such an environment. It remains an open question which calls for a philological analysis of the various Romance dialects in Francia. Could the formulae reflect the *lingua Romana rustica aut thiotisca* to which bishops in 813 refer when discussing the need to transferred their sermons for the rural people?[14] What *lingua* may that have been that sermons from the bishops' Latin had to be turned into? Was it the dialect Latin which we may assume existed? Does the language of the Formulae reflect that? If we compare that with Old-French or Provençal, there is a difference with the Formulae. But if the formulae originate in authentic documents, and if these

12 Rio, *The Formularies of Angers and Marculf* (n. 2): 18–20.

13 Rio, *The Formularies of Angers and Marculf* (n. 2): 10.

14 See Rosamond McKitterick, *The Carolingians and the Written Word* (Cambridge: Cambridge University Press, 1989): 8–9; Concilium of Tours, a. 813, MGH I, p. 288: XVII. *Visum est unanimitati nostrae, ut quilibet episcopus habeat omelias continentes necessarias ammonitiones, quibus subiecti erudiantur, id est de fide catholica, prout capere possint, de perpetua retributione bonorum et aeterna damnatione malorum, de resurrectione quoque futura et ultimo iudicio et quibus operibus possit promereri beata vita quibusve excludi. Et ut easdem omelias quisque aperte transferre studeat in rusticam Romanam linguam aut Thiotiscam, quo facilius cuncti possint intellegere quae dicuntur*. Although McKitterick refers to doubts whether *transferre* might mean translate, the connection with *lingua* makes clear that we are not dealing with simple abridgements. The language of the formulae could certainly be called a *lingua Romana rustica*, while *thiotisca* refers to the people (from *theodiscus*). This means that the formulae were drawn up in a local situation where the common people lived.

were drawn up in classic Latin, how is it possible that so many aberrations occur? If the distortions are not the result of ignorant scribes copying, the originals must already have been drawn up in a language which may at best be called a 'transitional' Latin, suggesting the transition from late Latin to the Romance vernaculars: orthography is often absent, the grammar is flawed. It would reflect the classic Latin be it in a degraded form. Or at some moment somebody rephrased the classic Latin in his vernacular so that his clients would understand the contents better. In any case, it seems to me more probable than other suggestions that they originated in formularies used by lay notaries. We do not know anything of them for the sixth to eight centuries in Francia but the contemporaneous prescriptions in the Lex Burgundionum to draw up documents presume the existence of a notarial praxis on local level, and in Ravenna around 600 there were public scribes (e.g. in Manchester, Latin MS 1). The latter may have remained of the municipal officials who once recorded the *gesta municipalia* or whatever remained of that administrative service. They may have gradually turned into notarial occupations.[15] We would have to assume in that case that in the lower ranks of the Church and in the monasteries the vernacular was also rule because otherwise the Latin would have been improved, as later happened with the Formulae Marculfi. It would mean it was a society with two languages for each social stratum. It would explain why these texts were formulated in this 'transitional' Latin and not corrected.

That brings the question, who were the people who used the formularies? Sometimes Franks are mentioned, but the overall impression is that they were the local inhabitants, the conquered Gallo-Romans, who would have spoken this Romance vernacular. It is probably a bit early to assume that the Franks had already taken to late Latin c.q. a Romance dialect when the Formulae started to be collected, viz. in the sixth century. That also argues for an origin of the formulae on local level.[16]

Did it matter that the Latin of these formulae is often far from correct? Rio thinks that read aloud the participants understood them well.[17] That is possible. She also assumes that it may also have sufficed to have drawn up a document of an act of which participants knew what it was about and which buttressed the testimony of witnesses. Their value lay in the actual documenting and in the document as such, the tangible and controllable proof of an act between individuals, the recording of the witnesses, and less in the contents of the document. There would always be witnesses as well, both to the act as to the drawing up of the document. Literacy and orality comple-

15 McKitterick, *The Carolingians* (n. 14): 10. It is the hypothesis of Wright that before 800 late Latin was early Romance, implying that Latin was pronounced in a different way, until under the Carolingians the pronuntiation of Latin was renewed, which made a different rendering of Romance necessary. But the problem here is the reverse: the Latin is written differently, presumably in the way it was spoken, in sources of an earlier date; unless they were all copied after that reform; *quod non*.

16 See the previous note 10.

17 Rio, *The Formularies of Angers and Marculf* (n. 2): 24.

mented each other.[18] Hence the Latin, orthography and grammar may not have been that important. The fact that the formularies attest the importance of documents confirm her assumption.

4 Their Function

What was their function? Rio has amply discussed the Formulae of Angers and Marculf in this respect. They testify to, so Rio, to a continuing interest in the written word.[19] That is certainly true but also a bit meager. For us the question what function the Formulae had for legal practice is important. Were they really blank texts, used for actual cases to produce a document? Rio discusses this too and concludes that they could have been used as such notwithstanding that there are no actual documents found which could be said to have been drawn up after such a form. We simply lack comparable cases. That is true too.

Still, I think more can be said. In a way the collections give us an answer. Those of Angers and Seine have a formula to draw up a legal and registered document, which reminds of the Late Antiquity *gesta municipalia*. There are formulae for the restoring of lost documents (the *apenna*) and there are many kinds of these documents (see below, under Cartae). There are formulae which regulate the gift to a church. There are references to possible claims of heirs. Any subjection to the power of another person (see the *obnoxiatio*) had to be documented or else the subjection was not valid (see the *vacuaturia*). Although there may not have remained archival records of these, it is indisputable that the formulae demonstrate the great importance attached to documents. Combine this with their setting: a country where towns have lost their former importance, a manorial system having taken over the land exploitation, life centered around churches, monasteries and the royal court, with as actors bishops, abbots and the king and his entourage. The administration has been reduced, but a minimum of registration has remained, probably in the cities, vide the texts about the *gesta municipalia*. Those with a bishop's seat will have provided some centre of literacy and administration. Taking merely these together and it is clear that already for these acts, in which the omnipresent church and monasteries had a interest to defend against heirs, also omnipresent, it was important to authenticate their acquisitions by way of documented transfers and documented gifts. Likewise rich private persons were interested in documenting their important transactions and testaments. Behind the churches and monasteries Rome towered. I assume that although we may not find corresponding documents in the archives of churches and monasteries of those times (as we have the Ravenna Papyri), or in other archives interesting

18 Rio, *The Formularies of Angers and Marculf* (n. 2): 24.

19 Rio, *The Formularies of Angers and Marculf* (n. 2): 22–23.

for private law, the interest in the formulae lay with the church and they used them for their own sake, and the same goes for private persons. Proof of the importance attributed by the church to such documents are the testaments of Remigius of Rheims, of Abbo and Vincent of Huesca which were most probably archived because they contain many gifts to the church; likewise the Ravenna papyri which were archived in the Ravenna church archives. McKitterick focuses on the later, Carolingian period for the importance of writing in the legal process, but also mentions that this interest was already existing long before.[20] Thus the Lex Burgundionum prescribes in several places that a document must be made (such as of judicial decisions, praef. 7). Important is also Lex Burgundionum 99 because this prescribes an authentification of the purchase of land, vineyard, plot of land, or a house, either by confirming this or by subscribing a document by at least three witnesses.[21] The confirmation may have referred to a sufficient number of witnesses, which apparently was the Burgundian way to authenticate.[22] Similarly manumissions were to be recorded by a document or by five or seven witnesses.[23] So it seems that on the whole documents were mandatory for Romans and optional for barbarians, but that in any case they had as function to testify that a legal act had been performed. Although the Burgundian realm did not include Angers or Tours, and probably also not Clermont-Ferrand, it is testimony to the use of written documents among the Roman population and there is no reason to assume that it was different in the Visigothic area where the Lex Romana Visigothorum was valid. The Formulae testify to that.

But if we consider the contents of the formularies, it seems that their function was not just to be a document of a legal act, to testify at a later moment to its having

20 McKitterick, *The Carolingians* (n. 14): 24.

21 See for a survey McKitterick, *The Carolingians* (n. 14): 60–75. Lex Burgundionum 99. *De venditionibus, quae sine testibus scribuntur. [1.] Si quis mancipium aut agrum aut vineam aut aream vel domum factam in quocumque loco comparaverit, iubemus, ut, si non fuerit firmata aut subscripta, pretium perdat; certe si loci illius consistentibus scriptura ipsa subscripta aut signata non fuerit, aut septem aut quinque testibus. [2.] Certe si quinque testes ad praesens inventi non fuerint, tres idoneos testes loci illius consistentes, quorum fama numquam maculata est, praecipimus subscribendos; certe si non, invalidam scripturam ipsam iubemus esse.*

22 Lex Burgundionum 60 [2]. *Ceterum si quis post haec barbarus vel testari voluerit vel donare, aut Romanam consuetudinem aut barbaricam esse servandam, si vult aliquid firmitatis habere quod gesserit, id est: ut aut scripturis legitimis, quod largiri cuicumque voluerit, teneatur, aut certe quinque ingenuorum testimonio, quod dimittere voluerit vel donare, robur accipiat et in eius, cui res deputata fuerit, iura commigret.*

23 Lex Burgundionum 88. *De libertatibus. Libertatis vero causa, quantum possessionis iure maior, tantum debet diligentius observari. Et ideo observandum est, ut manumittere volens aut per scripturam lege constantem servum, quem libertate donaverit, manumittat aut, si sine scriptura libertatem mancipio suo quicumque donare voluerit, non minus conlata manumissio quam quinque aut septem ingenuorum hominum testimonio roboretur.*

turam manumittens minorem numerum convenit adhibereram manumittens minorem numerum convenit adhibere.

taken place. The contents show also that the legal act was a ritual, a moment in which the real and ideal world of law fused and the real transcended, to return in its new consistence, with relations between humans and between humans and things set anew.[24] To the first category belong also dependencies. The formularies often prescribe how the ritual must proceed in order that the new relation is in order, and it serves to lay this performed ritual down in a document.

Another question is: by whom were the formulae made? According to Rio, in view of where they were found, scil. in ecclesiastical manuscripts, they were in their present state the work of ecclesiastical scribes. The Lex Burgundionum does not say who had to draw up the documents but in the Ravenna Papyri it is public scribes who do the job, so it seems unlikely that the church had taken over this task. There must have been as already set out some notariate in the form of public scribes who would have used such models. Hence their original form will have been designed and used by lay notaries.[25]

For whom precisely were the formularies meant? I mean this: in the 6th and 7th century there must still have been a division between the Gallo-Romans for whom the Roman law as comprised in the Breviary of Alaric applied south of the Loire and the Lex Romana Burgundionum for the Romans on both flanks of the Rhône, and the Franks who had their customary law. The formularies on manumission make the freedmen Romans, which means they were used by the Romans, and then the other formulae were for them as well. Where it concerns transfer of property and contracts, it is likely that the Franks also used the formularies, because we see this happening with the Ostrogoths in the Ravenna papyri regarding these legal acts. With the Burgundians there was a barbarian and a Roman way of making a record. But what with those formularies which deal with the law of persons? What 'nationality' would a freedman of a Frank have? Did the Franks use these formularies at all for their enfranchisements? It is a point we have to keep in mind. However, for the question of dependencies it does little matter.

5 Relations between Collections?

Another question in this context any scholar must pose: do formulae contain texts copied from another collection of formulae? In the context of this research this question is not dealt with. Indeed, the collections present texts on the same subjects, and this might be the result of copying. But equally this may have been caused by the fact that the matters dealt with were likely to have occurred everywhere. Moreover, in

24 Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973): 112.

25 Rio, *The Formularies of Angers and Marculf* (n. 2): 10. See for the survival and decline of the formulae and their use Rio, *The Formularies of Angers and Marculf* (n. 2): 13–17.

the case of copying we would expect similar spelling, language and phrasing and that is not the case, which pleads for different origins. Here the focus is on the contents of the formulae.

6 Dependencies in the Formulae

Dependencies are likely present in several formulae. Assuming that they represent the same social structure or at least similar social structures in the Frankish realm, and that formulae may have been copied, I shall deal with them according to subject matter and not according to source. Unless, of course, if it appears that there were significant differences.

7 Slavery

The first category of dependency, that of a strong asymmetrical dependency, is, as assumed, that of slavery. It should be attested by the enfranchisement formulae. In the Lex Burgundionum manumission may be attested in two ways: by writing or by witnesses: the Roman or the barbarian way. As McKitterick observes, the Burgundian Code values the document at the equivalent of seven witnesses.[26] Hence the importance of the formulae as model for a manumission document.

In *And.* 20 (R: *incipit ingenuitas a diae presente*) Ego declares that Tu will be an *ingenuus* from now on, as if he was born from *ingenui* parents, and that he will be no longer obliged to perform *servicium* or *obsequium* to the enfranchiser or his heirs. His freedom is protected by the church or monastery. In *And.* 23 (R: *incipit ingenuitas*) the Ego declares that the Tu is released from the yoke of *servitudo*, that he has no longer to perform *servicium*, and that he may lead the life of an *ingenuus*, with his *peculiare* which he may have or earn by work, as if born from *ingenui* parents. But the snag is that this only applies after the death of Ego, till then he has to perform service. Further, it seems that the protection of the church or monastery may cost him *obsequium*

26 McKitterick, *The Carolingians* (n. 14): 60–75, here 74. The example is Lex Burgundionum 60.2: *Ceterum si quis post haec barbarus vel testari voluerit vel donare, aut Romanam consuetudinem aut barbaricam esse servandam, si vult aliquid firmitatis habere quod gesserit, id est: ut aut scripturis legitimis, quod largiri cuicumque voluerit, teneatur, aut certe quinque ingenuorum testimonio, quod dimittere voluerit vel donare, robur accipiat et in eius, cui res deputata fuerit, iura commigret.* Lex Burgundionum 80: *Libertatis vero causa, quantum possessionis iure maior, tantum debet diligentius observari. Et ideo observandum est, ut manumittere volens aut per scripturam lege constantem servum, quem libertate donaverit, manumittat aut, si sine scriptura libertatem mancipio suo quicumque donare voluerit, non minus conlata manumissio quam quinque aut septem ingenuorum hominum testimonio roboretur; turam manumittens minorem numerum convenit adhibere.*

(cfr *Sen.* 44). *Sen.* 1 (R: *ingenuitas*) has the same elements as *And.* 23 and enumerates the faculties of a free man, amongst which that to choose one's protector (*defensione vel mundeburdo aecclesiarum aut bonorum hominum ubicumque se eligere voluerit*), i.e. to put oneself into a dependency relation. *App.* 3 describes an enfranchisement in the church where a *famulus* is enfranchised (*manomittere*) and formally liberated (*vendictaque liberare*). He belongs now to the Roman citizenship, as if born from *ingenui* parents and is not obliged to services on account of his enfranchisement. *Sen. rec.* 9 has been embellished and although having the rubric *ingenuitas*, deals with a *colonus*, about which below. In *Arv.* 3 (R: *libertatem*) the Ego liberates (*liberare*) the *ancilla* with her children, which he has *de alode*, viz. from his inheritance,[27] and declares them to be *bene ingenui* and released publicly (*absolutus in puplico*), that is, in the church before the bishop, from the yoke of his servitude (*de iugum servitutis meis*). The rest of the formula, which calls the Tu *mancipium*, cites the typical Roman law faculties of a free person: no *servicium*, no *letimonium*,[28] no *honus patronati*, no *obedientia* is required from Tu. The Ego in *Arv.* 4 (R: *item obsolutionem*) releases (*obsolvimus*) the *servus* Tu which he has acquired from the *alode* of his parents or by a cession, so that he entered the rank of *ingenui cives Romani*, and as in *Arv.* 3 no services etc. are required. The mention of *cives Romani* and of an *integra et plena libertas* we find in the *interpretatio* to Cod. Theod. 4.7.1 (Lex Romana Visigothorum 4.7.1), which may have served as inspiration. The constitution does not have that unlimited freedom. Was it a consequence of the mode of manumission, or was the status of freedman with *obsequium* to perform no longer existent? This point will return below.

The formulae of Arverna (Clermont-Ferrand) mention the word *alode*. Does this refer to property owned only by Franks who were vassals? But the freed slaves became Romans. Or does it refer to property owned without restrictions (as might be the case for property owned by freedmen) by Romans or Franks and should we not bother about this? The enfranchisements took place in a Church and, as in the other cases, is done for the salvation of the soul. Since the Church lived according to Roman law, it is possible that it imposed Roman law jargon on Franks if they manumitted in the Church. In any case, it is clear that here a contraposition of freedom and slavery

27 *Alode*, see Old French *aleu* (from Frankish *al-ôd, propriété complète): domain hérédité pour lequel l'hommage de vassalité était dû au seigneur; propriété, domaine.

28 According to Zeumer this phrase was inserted here; but it also figures in Sen 1 as *litimonio*. For the meaning see Du Cange: *Obsequium et servitium cui Litus vel Lidus erga dominum obnoxius est. Chartæ Ludovici Imper. et Caroli Calvi apud Hariulphum lib. 3. cap. 2. 7*. Du Cange: *Litus, lidus, ledus: Ascriptitius, servus glebæ. Glossæ interlineares Legis Salicæ: Litus, fiscalinus, vel sanctuarius, id est, qui in publicis, privatis, aut Ecclesiarum fiscis seu prædiis degit. Charta ann. 794. apud Henschenium ad Vitam S. Ludgeri Episc.: Id est, totam terram illam, quam Laudulfus Litus meus incolebat et proserviebat. Lex Longob. lib. 3. tit. 20. Carol. M. 83.: Aldiones vel aldiæ ea lege vivunt in Italia in servitute dominorum suorum, qua fiscalini vel Liti vivunt in Francia.*

is meant. *Arv.* 4 refers to the purchase of persons which proves that it concerns slaves.

That is not so clear in the formulae of Angers and Sens.[29] The term *ingenuus* is ambiguous. It may refer to freeborn persons, but in Late antique law texts it also designates the person who is free and not subjected to the *potestas* of another person, unlike the *filius familias* who is freeborn (*ingenuus*) but still *alieni iuris* due to being in the *potestas* of his *pater*. If one is not an *ingenuus*, services are due, which end with the enfranchisement. True, *And.* 20 and 23 say that the enfranchised will live as if born from *ingenui* parents, thus as if freeborn, but it applies also to the category of *filii* who are *alieni iuris*. *Sen. rec.* 9 is a warning that the *ingenuitas* may be given to such people. On the other hand, *App.* 1, which is a formula for a donation, mentions among the appurtenances of land *mancipia*, which term is usually applied to slaves, i.e., people who can be sold and bought.

It is clear that we are dealing here with the enfranchisement of slaves or, to be careful and not at once determinative, with people who are bound to do services to another person who releases them from these. Not that there were no slaves present in the sixth century. We find the term *mancipia* in the testaments of Abbo, a rich man from the Provence who died 739, and of Remigius of Rheims, who died in 533. Pope Gregory the Great asked in 595 Candidus, a bishop who went on a mission to Gaul, to buy English slaves of seventeen or eighteen years old *ut in monasteriis dati Deo proficiant*, to serve in monasteries, because he could not spend the Gallic solidi in Italy (ep. VI.10). These were without doubt obliged to do service and obsequities. The reason that I am careful in using the word slave here is the use of the words *ingenuus* and *ingenuitas*. The classic translation and meaning is 'freeborn', 'the state of being freeborn'. That is strange for the outcome of a manumission. It is of course flattering for a slave to hear that he will be as if born from freeborn parents but it is nonsense, he is not and he will according to classic Roman law be a freedman, subjected to *operae*, *obsequium* and limited in suing his manumitter. But is that law applicable here?

8 The Terms *ingenuus* and *ingenuitas*

It would indeed be wrong to apply without more the classic Roman law on these documents. The term *ingenuus* had got a second meaning in late antique legal texts. Apart from the *filius familias*, it refers to a person not subjected in public law to the *potestas* of another person. He was in the context of administrative law *alieni iuris*; in other respects he was *sui iuris*. It did not mean therefore that he was a slave or half-slave.

29 Sen. rec. 9 is a warning that the *ingenuitas* may be given to such people. On the other hand, App. 1, which is a formula for a donation, mentions among the appurtenances of land *mancipia*, which term is usually applied to slaves, i.e., people who can be sold and bought.

Slaves were also *alieni iuris* but at the same time basically non-persons in law, could be sold etc. The persons meant here were people who were free Roman citizens, who could marry legitimately, have legitimate children, could contract, have property, make testaments. The only restriction was that they had somebody else or an instance who exercised power over them. This power was also restricted: it comprised of being able to recall them at will to him or his place, and to demand particular services (e.g., a *colonus*: agricultural services; a *collegiatus*: municipal services; a *gynaecearius*: silk weaving). This position was called *condicio* and to distinguish it from the position (*condicio*) of, e.g., a town councillor or an ordinary citizen, called a *condicio deterior*. The general name for them was *condicionales*. It concerned several groups: *coloni* and those who worked in the imperial works or supplies, or in municipal services, and were indispensable. The other, better condition was not embellished with an adjective, there was no need for: you were an *ingenuus* or you were not. The persons of a *deterior condicio* could theoretically be released from their subjection but we know of only a few instances of this.

Considering the texts and the vocabulary it is clear, or at least it deserves serious consideration, that the enfranchisement deeds may not without more be compared to the classic manumission texts. If we assume that *ingenuitas* in them refers to the state of not being subjected to the power of somebody else, their field of application becomes wider, they may be applied to slaves but also to other people who are in some kind of subjection: the *condicionales*. Of these in the late fifth century only the *coloni* and the *collegiati* were present in the west. Reversely, such a use of the term *ingenuus* and *ingenuitas* would reflect a society in which dependency as criterium of the state of a person has replaced the classic division of freeborn, freedmanship and slavery. Was this indeed the case? Have we to read the *integra et plena libertas* of the *interpretatio* to Cod. Theod. 4.7.1 in this sense? (In Cod. Theod. 4.7.1 of 321 a manumission would release of all *condiciones*, including a *condicio deterior*.) How did the Church envisage slavery? Certainly a useful component of society and confirmed by the Council of Gangra of 340,[30] but there were slaves who were Christians too. What distinguished them in church from the free Christians, when the Pope calls himself *servus servorum*? Only this: that they legally have to serve others. Is it possible that such a change caused the use of these terms in deeds? For an answer we have also to look at deeds in which somebody becomes subjected: the *obnoxiationes*.

30 Conc. Gangrense: [. . .] *servos a dominis recedentes, et per hunc inusitatum regionis suae habitum sub specie religionis dominos contempsisse* [. . .]*, and canon 3: Si quis servum, divini cultus praetextu, dominum contemnere doceat, et ab ejus obsequio discedere, nec ei bona fide et omni honore servire, anathema sit.*

9 The *obnoxiatio*

The second group of deeds concern *obnoxiationes*, 'submissions', a better term than 'self-sale',[31] although the deeds carry the rubric *vindicio* which must refer to the *venditio* not as an act of selling but as act of transfer of authority. There are quite a lot of them. In *And.* 2 (R: *hic est vindicio qui se ipsum vindit*) a thief who cannot pay himself the composition (*transagere non possum*) has to oblige (*inplecare*, *oblegare*) his entire (*integer*) *status* to service (*servicium*) to the victims. This is done in as far as he receives a sum from them (apparently to pay them as composition) in exchange for which they can demand from him whatever they like, just as with their other subjected persons (*de memetipso facere volueritis sicut et de reliqua mancipia vestra obnoxia*). They have full power over him. His relatives or other persons cannot act against this voluntary *vindicio* and if trying this, are fined. The same we find in *And.* 4 (R: *hic est vindicio de homine in esceno posito*), where the *mancipia* are also *originaria*. *And.* 9 (R: *incipit vindicio quem facit nam qui se ipso vindit*) is about the transfer of status for a loan. The transferee may do what he wants, even donate, sell or exchange him (*donande vindende seu conmutandi*). Again, was this actually possible or is it merely to indicate the fullness of authority of the transferee over the debtor? If the first was indeed the case, then in any case restricted for the duration of the loan. In *And.* 19 (R: *incipit vindicio*) it is hard times and an ensuing debt which force Ego to transfer his entire *status* to another person, entirely voluntarily, in exchange for a sum of money. Here the *mancipia* are *obnoxia*. Probably we have to read *mancipia* in *And.* 2, 4 and 19 not as synonym for slaves but as a general term for all persons *alieni iuris*. *And.* 25 (R. *incipit vinicio qui se ipsum vindit*) is slightly different. Ego transfers not only himself and presumably his wife but also his *peculiare*, house, land, vineyard, as possessed on the land of a villa in the land of Angers or elsewhere, and receives a price as agreed. The transferees are called *emptores*. Hence *vindicio* again means the wider sense of 'transfer of authority', because it comprises also possessions.

Rather different is *Arv.* 5 (R: *redemturia*). Ego is in custody on account of his fault and cannot redeem himself because he has no property or money. He has only his body and status (*formam et statum meum*) which he has as an *ingenuus* but now wants to transfer for this to Tu in *servitium*. Tu redeems him. This is done thus: Ego asks that his *carta patrociniale* of his *status*, in which he is an *ingenuus*, is transcribed to Tu or affirmed by Ego, so that he is now legally in the service (*servitium*) of Tu. Neither Ego nor his heirs or any other person may object to the present *carta patrociniale*, on penalty of a fine. Again the jargon is more Roman and correct, *redemptura* can indeed mean the same as *venditio*, but can also mean the taking over of a case. Remarkable is the *carta patrociniale*. It seems to be a document in which the act of submision has been laid down. If we may take the word *patrociniale* as a derivate

31 Used by Rio, *The Formularies of Angers and Marculf* (n. 2): 50.

from *patrocinium*, the relation would seem more that of patron and client than of master and slave.

Sen. 4 (R: *obnoxiatione*) deals with the same – penury, a loan, no possibility of repaying – yet the name focuses on the status effect. Here the terminology is stronger: *Propterea obnoxiatione de capud ingenuitatis meae in te fieri et adfirmari rogavi, ut, quicquid de mancipia tua originalia vestra facitis, tam vendendi, commutandi, disciplina inponendi, ita et de me ab hodierno die liberam et firmissimam in omnibus potestatem faciendi habeas*. – 'Because I have requested to make to you and confirm an *obnoxiatio* of my *ingenuitas* so that whatever you may do regarding your original slaves, as selling, exchanging, correcting, likewise in everything you have the free and firm power over me from today onwards'. His status of *ingenuitas* ends, the creditor may do with him similarly to what he does with his *mancipia originaria*, he may even exchange or sell him. *App.* 6 (R: *obnoxatio*) is a similar *obnoxatio*, now because a horse thief cannot pay and therefore, in order to escape the death penalty, pleads for *obnoxatio* from the horse owner.

The reverse of these *vindiciones* are the *vacuaturiae*. In *And.* 17 (R: *incipit vacuaturia*) the text is spoken by an official person. If someone has transferred his entire status to somebody else and his wife, but the *vindicio* cannot be found, i.d., the document of the transfer, then a *vacuaturia* is issued. If the *vindicio* document is found, it is declared void and useless; while this act, the *vacuaturia*, remains firm. Another *vacuaturia* (*And.* 18, R: *incipit item vacuaturia*), again done by an official, refers to a loan in exchange for which the beneficiary would submit his status and serve for a number of years; of which agreement a *caucio* was drawn up. If the document cannot be found, a *vacuaturia* is drawn up as if the lender had returned the loan.[32] It is more than a release or a deed of annulment.[33] *Vacuus* may also mean: without master, and that is precisely what the deed says. With debts, the debtor would receive his debt acknowledgement (chirograph) back upon payment of the debt.[34] Here, apparently, people had submitted themselves and then were released, the proof of the release lay in the return of the *obnoxiatio*, but they were not in possession of the deed of submission because it had not been returned. Hence they might still be claimed on basis of that. The *vacuaturia* is a substitute for the returned document, safeguards the freedom in a procedure and annuls the *vindicio* if it turns up later. The claimant will of course have had to prove that had fulfilled the conditions for release. He was a free person who had been subjected to somebody else, yet the only proof of this lay in a deed. And that deed was an *obnoxiatio* (see below, Form. And. 38).

32 *And.* 18: *Dum cognetum est, qualiter aliquos homo nomen illi aliquo homine nomen illo caucione inmissa habuit pro statum suum, quo ei beneficium fecit argento untias tantas, ut inter annis tantus, qualecumque ei servitium iniunxerita, ei facere debiret,* [. . .].

33 Rio, *The Formularies of Angers and Marculf* (n. 2): 63.

34 Receiving the chirograph was the best way to thwart off renewed claims.

Then, do these cases of *And.* 17 and 18 refer with *vindicio* to a real sale? The texts speak of subjection and rendering services, some rubrics say *vindicio*, there is in *Sen.* 4 an equalisation with slavery (selling or exchanging). Yet we are not dealing with the classic self-sale of a free man, because freedom lost could not be reinstated by merely returning the document of sale, whereas here it is the absence of that document which leads to an official act releasing the person from a subjection due to transfer of status.[35] The term *obnoxiatio* is known from late antique administrative law. If somebody was liable for a public charge, he had to acknowledge, *agnoscere*, that he was *obnoxius* for the charge.[36] In that context it implies that somebody is and remains a free person but submits himself in as far as the charge to the authority of the administration. It may impose the charge on him and check him, while he remains free.

More information provides *And.* 38 (R: *incipit caucio de homine*). Someone received a sum of money as loan (he has to return it) and in lieu of a pledge he pledges himself in that he transfers half of his status and will work for so many days per week whatever is imposed on him (*in loco pignoris emitto vobis statum meum medietatem, ut in unaquisque septem ad dies tantis qualecumque operem legitema mihi iunexris facere debiammus*). And when he has repaid his creditor, he will receive the *cautio*. If he does not do or do well what is imposed, he will be fined. This transfer of status seems more a kind of pledge or *antichresis*. The act resembles the *paramonè* known for the first to third century and later for the colonate. That was an agreement in which the debtor promised his creditor to work for him and put himself under his power, in lieu of paying interest. Such an agreement could, as any agreement, be dissolved.[37] It is definitively not slavery, yet it is an asymmetrical relation as are the other relations related above. Those are strong also because it is not in the power of the weaker parties to release themselves unless they fulfill their obligations. In *And.* 38 the debtor can release himself by paying the loan back.[38] *Sen.* 3 (R: *caucione*) is differently phrased but is the same.

We cannot therefore simply assume it concerns enslavements in which somebody loses his freedom. It concerns submissions in which persons remain free but become as it would have been termed in the fifth century *alieni iuris*, and become subjected in the same way as the *coloni originarii* in the sixth century in Italy and Gaul (be it

35 See Max Kaser, *Das römische Privatrecht*, vol. 1, *Das altrömische, das vorklassische und klassische Recht* (Munich: C.H. Beck, 1971): 292.

36 See Adriaan Johan Boudewijn Sirks, "Obnoxietas: Questions de responsabilité," in *XLVème Session de la SIHDA* (Miskolc: Gazdász Elasztik, 1993): 325–32, and Adriaan Johan Boudewijn Sirks, "Did the Late Roman Government Try to Tie People to Their Status or Profession?" *Tyche. Beiträge zur Alten Geschichte Papyrologie und Epigraphik*, vol. 8 (Vienna: Verlag A. Holzhausens Nfg., 1993): 159–75.

37 See Adriaan Johan Boudewijn Sirks, "The Colonate in the Later Roman Empire," *Tijdschrift voor Rechtsgeschiedenis* 90 (2022): 129–47.

38 Siems, *Handel und Wucher* (n. 2): 650 with note 644 doubts about the words *in loco pignoris* and presumes it rather refers to 'fremdbestimmten Diensten', 'an Stelle eines Pfandes'. But *antichresis* is precisely the services rendered instead of a pledge.

that the submission of these was hereditary). These submissions are the reverse of the enfranchisements we saw before in as far as somebody is subjected to the power of somebody else. There is a debt, either originating in a delict or crime where the culprit cannot pay the composition, or in a loan or debt, and in order to pay this, the debtor submits himself to the creditor and works for it. Status is a flexibel concept. It looks like 'Schuldsklaverei' but it is not slavery because, notwithstanding the used terminology, the indebted person does not become a slave. He loses only his *ingenuitas*. And in the case of *And.* 38 he loses it only for three days per week till he has repaid the loan. It does not mean that slavery did not exist. It did, but it is present in other texts (see hereafter).

Returning to the enfranchisements, these were, as the above makes clear, not for people subjected on basis of an *obnoxiatio* or *caucio*. Hence they must have concerned in the first place slaves and, likely, those subjected by the heredity of their status, viz. the *collegiati* and *coloni*, because these did not submit themselves to an *obnoxiatio*.

10 The *cartae*, Deeds

We have already seen several deeds. In *Sen.* 38, which describes the procedure to replace documents lost by fire by a new document (the *apennis*), a number of deeds are mentioned: *venditiones, donationes, cessiones, iudiciis, obnoxationes, cautiones, commutationes, cetera scriptura* by which *dominium* or *potestas* is acquired. *And.* 32 and 33 mention as the result of shipwrecking or burglary the loss of *strumenta cartarum vindicionis caucionis cessionis donacionis dotis conposcionalis pactis conmutacionis convenientis securitatis vacuaturias iudicius et noticias*. *Cartae agnationem* or *patrocinialae* are not enumerated but the list may not have been meant to be complete.

Slavery is clearly present in the *carta agnationem* of *Sen.* 6 (R: *carta agnationem*). Ego declares in this *aepistola agnatione* that a said woman wants to join his slave (*servo*) in marriage and that he may call her and her children into servitude (*servitio*). But he declares voluntarily that they may remain in freedom with their assets (*sub integra ingenuitate cum omni peculiare eorum*). Follows the typical faculties of freedom: making a testament, choosing a patron (which might be done by deed: *carta patrociniale*). A slave did not have these. Similar to the *carta agnationem* is the *epistola* of *And.* 59. It deals with the marriage of a free woman with a slave (*servo nostro*). His master and mistress do not want the woman become *in servicio* but remain, as the children born, in freedom (*ad ingenuetatem capitis eorum*). If they need to enter in service (*ad servicio caput eorum inclinatur*), the consent of master and mistress as of their heirs is required. Of the earnings of the woman gained during the marriage she may retain one-third. Of this decision a letter is issued (*And.* 59). The underlying rule is that of the senatusconsultum Claudianum. It was analogously applied to *coloni* and

other *condicionales*, but of that there is no trace in the formularies. What is called slavery here, is definitively slavery in the classic sense of the word.

Again another approach to the nature of the dependencies are other texts about slaves. In *Sen.* 9 (R: *notitia de servo*) a slave is bought and transferred on the market or elsewhere an his price it paid. Contrariwise, in *Sen.* 12 (R: *carta dinariale ante rege*) a slave deposits a coin before the king and according to the lex Salica he dismisses his slavery for freedom, which redemption the king confirms.

The references to the *cartae* (hence: *cartula*, 'chartre', charter) are the undeniable evidence of the purpose of the formulae: to provide musters for a whole range of legal acts. They demonstrate the wish and need for written documents and evidence the presence of some kind of notarial system.

11 The *coloni*

A separate group are the *coloni*. *Sen.* 20 (R: *Notitia de colonito*) is the formula to recall someone who has distanced himself from the place where he is attached to as *colonus* (the *colonaticum*). As basis for the claim serves the contention that his parents or his mother were *coloni*, so that he himself ought to be *colonus*. If the defendant cannot give a good reason why he is not in the *colonaticum* and the plaintiff recognises him, then he will be returned. Similar recall procedures are in *And.* 10 and in *Sen. rec.* 1. In *And.* 10 (R: *incipit iudicius*, *incipit noticia ad supradicto iudicio*) the denying defendant is interrogated about his *agnatio*, whether other relatives of him were in *servicium*. He denies to be obligated either by *agnatio* or by purchase (*conparato*; in the fourth century it was impossible to 'purchase' *coloni* without the land, but in the fifth it was possible).[39] Then the defendant must swear before twelve men that during 30 or more years he never performed services and resided as an *ingenuus*. *Sen. rec.* 1 (R: *notitia de colono evindicato*) is laconic about the proof, but detailed about the way an adjudicated *colonus* is returned to the *casa Dei*. The procedure in both cases devolved before an abbot, with an advocate of the monastery (by advocate will have been meant a person assisting the abbott, not a professional jurist). It is in *Sen. rec.* 2 (R: *carta sacramentale*) that the actual evidencing is described. The defendant's father is said to be a *colonus* from a villa of Saint X, that he owes *colonitium* to it and failed to be there. He denies this and says he is from a Frankish father and born by a Frankish mother. Apparently Franks could not be *coloni*. An assembly of twelve relatives (and if dead, twelve Franks) may deliver him from this predicament by an oath. *Sen. rec.* 4 is the complement to these two texts: it is the verdict given, in which the defendant acknowledged his own *colonitium* and is returned. *Sen. rec.* 5 is the parallel to *Sen. rec.* 1: it is the *vindictio*, the reclaim (*vindicatio*) of a *colona*. If her grandfather or father

39 The prohibition in Cod. Iust. 11.48.2 and 7 pr; the possibility in Ed. Theoderici 142.

was a *colonus* of that villa, she must be *colona* of it too and has mala fide deserted her *colonitium*. She may deny this and maintain that she has *ingenui* parents. She too may be saved by an oath of twelve relatives or, if dead, twelve Salic Franks.

Two other texts provide a little more information about the *coloni*. *Sen. rec.* 3 (R: *notitia de servo*) is about a fugitive slave, purchased by a *colonus* of a monastery from a Frank. It is the abbot who conducts the case and he presents the testimony of Frankish men that the *colonus* bought him to have him serve. Legally (*per lege*) he became the slave of the monastery. The verdict is formulated in *Sen. rec.* 6 where reference is made to a document of purchase.

With *colonitium* the obligation of being a *colonus* is meant, which consists in the first place of being present at a defined estate, in the formularies an estate of a monastery or church. This shows that these formularies were in the first place drawn up for clerical use. It implied rendering services (see above). The *colonitium* is established by the descendance from a father or grandfather *colonus*, or by birth from a *colona*. Counterproof is possible by either evidencing a different descendance or by belonging to the Franks;[40] or by evidencing that one had not delivered services for 30 years (actually the old Roman prescription of limitation); or by oath. A *colonus* could buy slaves but did not own them. This is not a decisive argument that a *colonus* was not a slave as well: in classical Rome slaves could buy slaves. But the *coloni* of the fifth century were free Romans and could own but his estate owner had to approve any alienation. There was a lien on his property and it was called *peculium*. That in the case of *Sen. rec.* 3 the slave became slave of the monastery may have been that he was now part of the *peculium*. It also explains why it is the abbot who sues and not the *colonus*. Remarkable is that we do not find an enfranchisement of a *colonus*, unless the enfranchisement formularies covered also *coloni*.

And. 40 is a gift formulary. The gift includes a farm with appurtenances as slaves (*mancipia tanta his nominibus illus et illus*). *And.* 46 is a formulary of a gift of land to the church. It includes slaves (*cum* [. . .] *mancipiis*). In *Sen.* 25 a dowry is described with slaves (*seo mancipias tantas his nominibus ill. et ill.*). Similarly the gift of land in *Sen.* 31 (R: *donatio ad casa Dei*) includes men and slaves (*hominibus* [. . .] *una cum mancipia tanta his nominibus ill.*). If the *homines* do not include the slaves (whose property value is indicated, as elsewhere, by having the individualised by their names), they may concern free men, bound to the land. *Sen.* 41 (R: *prologus de cessione*), a gift formulary, and 42 (R: *heredetoria*), a formulary for a testament, enumerate all kinds of landed property, and then also *peculium presidium utriusque genere sexus*, in which the heir succeeds. It is not, apparently, a description of slaves. It might concern the property of *coloni* or in any case of free people in a dependency relation. *App.* 1, a donation formulary, enumerates *terris mansis una cum superpositis domibus aedificiis utriusque generis sexus peculiis mancipiis ibidem commanentis tam*

40 Because they were the ruling military class?

ibidem quam et aliunde translatus. The *mancipia* must be slaves, but the preceding *peculia* which apparently belong to persons of both sexes might refer to free people whose property belong to the donator. His power over them may have been indicated by the *presidium*.

12 The Testament of Abbo

Until now we dealt with formulae and on basis of these, assuming they were modelled after real cases or formulated with real cases in mind, conclusions about dependency were made. But is there other information available which refer directly to dependencies in 'real life'? There is not much, the testament of Remigius does only mention slaves and *coloni*.[41] The only sizeable text dates from a later period and refers to Burgundian territory, but there is no reason why we may not apply it to the period and areas of the formulae. As indicated above, the terminology regarding dependency is not as clear as we would like it. We must assume that it was sufficiently clear to the contemporaries, they must have thought in different categories as we do. This text is the testament of Abbo, where various relationships are suggested. Drawn up in 739 AD, it concerns the many belongings of a rich man in the Provence.[42] The testament shows traces of Roman law. Abbo, a rich man, left all his possessions to the church of the monastery of Novalesa which he founded.[43] The testament mentions of course the real estate as detailed as possible. Next to houses, land like vineyards, *colonicae* are distinctly brought up.[44] Next to that the testament often says *una cum mancipiis, libertis, colonis, inquilinis, et seruis*, but not in connection with *colonicae* (except in c. 17: the *colonica* in the land of Vienne). In c. 20 the freedman Siguald has the *colonicae* in the Gironde in benefice; in c. 22 the freedmen Theudoald and Honorius and their heirs have the *colonicae* in the valley of the Gironde and in Realon; in c. 24 has the slave Marius the *colonica* in the place Baratier, and the freedman Baron-

41 See Alice Hanson Jones, Philip Grierson, John Anthony Crook, "The authenticity of the 'Testamentum S. Remigii'," *Revue belge de philologie et histoire* 35 (1957): 356–73.

42 For text and translation see Patrick Joseph Geary, *Aristocracy in Provence: The Rhône Basin at the Dawn of the Carolingian Age* (Philadelphia: University of Pennsylvania Press, 1985): 38–49.

43 It appears that a church was considered to be a legal entity capable of ownership and the *testamenti factio passiva*. Since it is not likely the church building itself, with church the congregation of a church will have been meant, analogously to the congregation of the inhabitants of a town, who were represented by their council; here the bishop was the representative.

44 In P.Ital. 13.8 of 553, a donation to the Ravennate Church, there are *colonicae*, neighbouring part of a group of *massae*; and in P.Ital. 3.II,1,11–13 a *colonia*, perhaps the same. If there is an economic difference between a *massa* and a *colonica*, it is likely that the first consisted of a group of farms managed together by a supervisor, while a *colonica* would be a self-managing farm, perhaps with *coloni originarii* who could not leave anyway. But we see with Gregory the Great that there were *massae* where the workers were also bound to their *massa*. See further next note.

tas the *colonicae* in the place Ubaye. The latter Abbo gave Barontas so that it would pertain to the church. Further in c. 25 the freedman Savina has the *colonicae* in Boresius in benefice; in c. 29 has the freedman Bertarius the *colonica* at Souribes: his children should have it (apparently Bertarius died) and it should pertain to the church; in c. 32 there are *colonicae* and land on which Abbo's mother transferred the freedman Maroaldus, his wife and sons from the place Geneva. According to Geary the basic agrarian unit was the *colonica* which might be isolated and might be administratively or fiscally attached to a distant estate.[45] Considering the *interpretatio* to Cod. Theod. 2.30.1 it is indeed possible that the combination of such a unit with a *colonus* was in those days a fiscal unit, the *colonus* providing the owner with the tax for it.[46] Certain is in view of the formulating of the testament that a *colonica* was indeed a separate agricultural unit. Considering the connection with *coloni* and that several were given *in benefitio*, it seems that they were run independently by *coloni* and that the beneficiaries enjoyed the revenues. The term *aspicere*, literally meaning 'to regard' and rendered by Geary as 'belong to', probably on basis of Du Cange who also gives *pertinere*. In that case the farm would already have been granted, or is granted to the church under the (existing) charge of a benefice. Another possibility is that Abbo had already donated the estate with reservation of usufruct for the freedman, eventually also his children (cfr. *Sen.* 15 and 32 *quamdiu advivo*).[47] Or it was already granted and transferred but retransferred with the obligation to pay a rent (*precaria*).[48] In that case the *aspicere* would refer to the rent. In this testament the term freedman (*libertus*) turns up several times, next to slaves (*mancipia*, *servi*) and *coloni*. Was the *libertus* always a former slave? Or could he also be a former *colonus*, who likewise in late Roman law was manumitted? It remains an open question.

13 Conclusion

It is clear that the old distinction between freeborn, freed and slaves, or between *honestiores* and *humiliores* no longer applied in sixth and seventh century Francia as is demonstrated by the formulae. The distinction is between *ingenuitas* and what I call

45 Geary, *Aristocracy in Provence* (n. 42): 20.

46 The *interpretatio* to Cod. Theod. 5.17.1 renders the *capitatio* by *tributa eius*. Does that refer to the poll tax? Or are these the taxes on land *coloni* owned privately? Cod. Theod. 5.19.1 allows for that. More likely, however, is the explanation suggested by the interpretation to Cod. Theod. 2.30.1, which forbids the seizing of slaves on the land because they provide by their work the *tributa*. The revenues were used for the tax on the land. It may imply that such units of land and *colonus* were considered tax units.

47 Jean Gaudemet, "Survivances romaines dans le droit de la monarchie franque du Ve au Xe siècle," *Tijdschrift voor Rechtsgeschiedenis* 23 (1955): 149–206, here 190.

48 Gaudemet, "Survivances romaines" (n. 47): 149–206, here 192.

with the previously used term *conditio deterior*, between not being subjected to the power of another and being subjected to a power which may order you to work anywhere at any time. Petot speaks of a 'hiérarchie de dépendence' and that is probably a good point of departure for further research.[49] Slaves could be released by an *ingenuitate*, the release of those in *obnoxiatione* by a *vacuaturia*; and probably *coloni* still by manumission. In Abbo's testament we have *colonicae* and farms, either given in benefice to freedmen or slaves. Those differences should still be examined. The basis of dependency changed. No longer the difference in social and legal status defined dependency and subjection, but subjection itself, expressed as being *alieni iuris*, equalled dependency and defined status.

49 Pierre Petot, "L'hérédité de la condition servile," in *Mélanges Ph. Meylan*, vol. 2 (Lausannne: Imprimerie Central, 1963): 15–19.

II Continuities and Discontinuities in Slave Legislation and Slaving Practices

Martin Schermaier

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 Ubl, "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.

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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 Ubl ('Rom hatte von allen Barbaren, egal ob laeti oder dediticii, stets verlangt, sich römischem Recht unterzuordnen') is therefore incorrect; cf. Karl Ubl, *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, *Sklavenrecht 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* Ubl, *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. 507/511[13]). 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. Giuglio Vismara, *Edictum Theoderici* (Milano: Giuffré, 1967), on the one hand, and on the other Hermann Nehlsen, Review of *Edictum Theoderici*, by Giuglio 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 Baioariorum. 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 [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 pseudopaulinischen 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 Dondort, 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 criminalised[34] 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: Giuffré, 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 [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: Giuffré, 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 II[44] which states, *inter Romanus negutia 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 occurr 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 ingenous 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 culpae 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 father[63] 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, deteriorem 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 *vilior* or *inferior*). Verlinden[78] 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 conmiserit, medietatem superioris conpositionis 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 conpositionies adinpleat 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 conponere, 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 *manicipia 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 *noxa 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 conubium. 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 Ehevoraussetzungen 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. Salavatore 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] *Collegati* 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 solidi[117] – 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 Ubl, 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 smallholder 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. Ubl, *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 Ubl, *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 patronage[134] 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 glosses[135] 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 Ubl, 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 Trump, "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 alternativity 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.

Noel Lenski

Germanic Law and the Practice of Slaveholding in the Post-Roman West

1 Introduction: A Germanic Law of Slavery?

The rate of publication on late antique and early medieval slavery in western Europe has grown exponentially in recent decades. Major contributors have included Pierre Bonnassie, who argues that a system close to Classical chattel slavery survived in the west down to the year 1000;[1] Michael McCormick, who posits a decline in the economic importance of slavery in late antiquity followed by a rebirth in the ninth and tenth centuries driven by the export of enslaved humans from the west to the eastern Mediterranean;[2] Chris Wickham, who conceives of a trend toward the dissolution of large-scale agricultural enterprises of the sort characteristic of Classical Rome in favour of more pixelated productive units populated not by enslaved but by peasant labourers;[3] Kyle Harper, who holds that a characteristically Roman 'slave society' prevailed through the long fourth century but collapsed with the decline of the western empire in the fifth;[4] Didier Bondue, who holds that a gradual transformation took place under the influence of Christianity by which the chattel '*servi*' of Roman times came instead to operate as dependent labourers by the ninth century;[5] and Alice Rio, who contends that conceptions of legal personhood gradually shifted from Roman models that emphasized a stark free / slave divide to more flexible schemes that allowed people to think of their own free status as a divisible and negotiable commod-

1 Pierre Bonnassie, *From Slavery to Feudalism in South-Western Europe*, *Past and Present Publications* (Cambridge: Cambridge University Press; Editions de la Maison des sciences de l'homme, 1991); Wendy Davies, "On Servile Status in the Early Middle Ages," in *Serfdom and Slavery: Studies in Legal Bondage*, ed. Michael L Bush (London: Longman, 1996): 225–46, offers a useful summary of the arguments up to the 1990s. Heike Grieser, *Sklaverei im spätantiken und frühmittelalterlichen Gallien (5.–7. Jh.): Das Zeugnis der christlichen Quellen*, Forschungen zur antiken Sklaverei 28 (Stuttgart: Franz Steiner, 1997), remains useful, although it does not enter into larger interpretive debates.

2 Michael McCormick, *Origins of the European Economy: Communications and Commerce A.D. 300– 900* (Cambridge: Cambridge University Press, 2001).

3 Chris Wickham, *Framing the Early Middle Ages: Europe and the Mediterranean 400–800* (Oxford: Oxford University Press, 2005).

4 Kyle Harper, *Slavery in the Late Roman World, AD 275–425: An Economic, Social, and Institutional Study* (Cambridge: Cambridge University Press, 2011).

5 Didier Bondue, *De servus à sclavus: la fin de l'esclavage antique (371–918)* (Paris: Presses de l'université Paris-Sorbonne, 2011), building on the work of Duby.

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ity, leading to a softer kind of servitude than had prevailed in the high Roman period.[6] Each of these approaches has value in helping us understand this complex and multi-faceted question. All are nonetheless united in their common assumption that Rome and its slaveholding practices should be taken as the normative reference point not just by which to judge the history that follows, but also from which all subsequent developments derived.

This study will challenge this preconception by arguing that at least some of the major trends in the evolution of slaveholding in the late antique and early medieval west were not simply continuations or transformations of Roman norms and practices but that they represent instead new social and legal forms introduced to the region by the Germanic peoples who gained hegemony over Rome's former western territories from the early fifth century onward.[7]

The concept 'Germanic' requires some explanation. As recently as forty years ago, it might not have occasioned discomfort, but beginning in the 1980s a wave of scholars has drawn into question the validity of the terms 'German' and 'Germanic' as ethnic categories in late antiquity and the early Middle Ages. A growing number of academics in Great Britain and North America, and increasingly in Germany and France as well, now hold that the ethnonym '*germanus*' was rarely used as an overarching qualifier in antiquity, and always only by Roman authors; therefore that it has been wrongly misappropriated by modern historians (already beginning in the sixteenth century, and culminating in the twentieth) in order to promote ethno-nationalist

6 Alice Rio, *Slavery after Rome, 500–1100*, Oxford Studies in Medieval European History (Oxford: Oxford University Press, 2017). See also Alice Rio, "Freedom and Unfreedom in Early Medieval Francia: The Evidence of the Legal Formulae," *Past & Present* 193 (2006): 7–40; Alice Rio, "High and Low: Ties of Dependence in the Frankish Kingdoms," *Transactions of the Royal Historical Society* 18 (2008): 43–68; Alice Rio, "Self-Sale and Voluntary Entry into Unfreedom, 300–1100," *Journal of Social History* 45 (2012): 661–85; Alice Rio, "'Half-Free' Categories in the Early Middle Ages: Fine Status Distinctions Before Professional Lawyers," in *Legalism: Rules and Categories*, ed. Paul Dresch and Judith Scheele (Oxford: Oxford University Press, 2015): 129–52; Alice Rio, "Penal Enslavement in the Early Middle Ages," in *Global Convict Labour*, ed. Christian G. De Vito and Alexander C. Lichtenstein, Studies in Global Social History 19 (Leiden: Brill, 2015): 79–107.

7 Further work on non-Roman ways of slaveholding in late antiquity at Noel Lenski, "Captivity, Slavery, and Cultural Exchange between Rome and the Germans from the First to the Seventh Century CE," in *Invisible Citizens: Captives and Their Consequences* (Salt Lake City: University of Utah Press, 2008): 80–109; Noel Lenski, "Schiavi Armati e Formazione Di Eserciti Privati Nel Mondo Tardoantico," in *Ordine e Sovversione Nel Mondo Greco e Romano: Atti Del Convegno Internazionale, Cividale Del Friuli, 25–27 Settembre 2008*, ed. G. Urso (Pisa: ETS, 2009): 145–75; Noel Lenski, "Captivity and Slavery among the Saracens in Late Antiquity (ca. 250–630 CE)," *AnTard* 19 (2011): 237–66; Noel Lenski, "Captivity among the Barbarians and Its Impact on the Fate of the Roman Empire," in *The Cambridge Companion to the Age of Attila*, ed. Michael Maas (New York: Cambridge University Press, 2014): 230–46; Noel Lenski, "The Late Roman Colonate: A New Status between Slave and Free," in *The Oxford Handbook of Greek and Roman Slaveries*, ed. Stephen Hodkinson and Kostas Vlassopoulos (Oxford: Oxford University Press, 2022).

agendas of the sort that eventuated in the horrors of National Socialism.[8] Although scholars continued to use the designation 'Germanic' without much controversy in the generation following World War II, the past thirty years have witnessed a full scale retreat from 'Germanic' as a category of analysis for any period before early modernity.

I believe this new orthodoxy is misguided. This is not because I refuse to accept the important objections raised against the excesses of Germanism / *Germanische Altertumskunde* in past scholarship, let alone because I sympathize in any way with the agenda of National Socialism. I am simply not convinced that we must or should jettison the idea that the cultures arising from the territories roughly collocated east of the Rhine and north of the Danube in the Roman and post-Roman period shared a cultural koine that might allow us to speak of them as a cohesive whole. While these peoples divided themselves into diverse political units that only began to emerge as distinct nations beginning in the third century, there is sufficient evidence to argue that they shared common elements of language, religion, family organization, social structure, and civic and legal principles that might trace back even further, and that they therefore merit classification as a broader cultural group that might justifiably be termed an *ethnos*.

The primary set of sources upon which this study is built are the post-Roman law codes – formerly widely designated 'Germanic' but in most recent scholarship generally referred to by the contentless designation *Leges*. These include the early sixth-century Frankish *Pactus Legis Salicae* (507 CE) and the Burgundian *Liber Constitutionum* (517), as well as the seventh-century *Lex Ribuaria* (also Frankish, 633/634), the Lombardic *Edictum Rothari* (643), the *Leges Visigothorum* (654, also called *Liber Iudiciorum*), the *Lex Baiwariorum* (c. 630, reissued 745), and some of the early Anglo-Saxon codes (beginning with the *Ines cyninges asetnysse*, c. 690). Despite the fact that all of these except the Anglo-Saxon codes were written in Latin, they reflect collectively a legal anthropology that is largely foreign to that of the Roman – with the ex-

8 See, for example, Patrick Amory, *People and Identity in Ostrogothic Italy, 489–554*, Cambridge Studies in Medival Life and Thought: Fourth Series 33 (Cambridge, U.K. – New York: Cambridge University Press, 1997); Walter A. Goffart, *Barbarian Tides: The Migration Age and the Later Roman Empire*, The Middle Ages Series (Philadelphia: University of Pennsylvania Press, 2006); Guy Halsall, *Barbarian Migrations and the Roman West, 376–568*, Cambridge Medival Textbooks (Cambridge: Cambridge University Press, 2007); Ian N. Wood, *The Modern Origins of the Early Middle Ages* (Oxford: Oxford University Press, 2014); Sebastian Brather et al., eds., *Germanische Altertumskunde im Wandel: Archäologische, philologische und geschichtswissenschaftliche Beiträge aus 150 Jahren*, Ergänzungsbände zum Reallexikon der germanischen Altertumskunde 100,1 (Berlin: De Gruyter, 2021); Matthias Friedrich and James M. Harland, eds., *Interrogating the "Germanic": A Category and Its Use in Late Antiquity and the Early Middle Ages*, Ergänzungsbände zum Reallexikon der germanischen Altertumskunde 123 (Berlin: De Gruyter, 2021). See further references at Noel Lenski, "Law and Language in the Roman and Germanic Traditions – A Study of Liber Iudiciorum 6.4.3 and the Idea of Iniuria in Visigothic Law," *Atti Dell'Accademia Romanistica Costantiniana* 25 (2023): 357 n. 2.

ception of the Visigothic *Liber Iudiciorum*, which, as we shall see, intermingles Roman and Germanic principles. Thus, where Roman law is built of three primary parts – persons, things and actions, with the law of things being far and away the most important – Germanic laws have only stunted positive law concerning actions and things, but a highly developed law of persons. Status was thus much more important in Germanic than in Roman law and was broken into more highly differentiated gradations, membership in which dictated an individual's value at law – his or her *Wergeld*. Crucially, *Wergeld* is a notion entirely foreign to Roman law, yet it lies at the root of the entire law of persons in the Germanic codes, and this also has implications for the Germanic law of things. This is because, to a degree unheard of in Roman law, the Germanic codes are obsessed with the problem of 'delict' (tortious personal offenses), which it divides into minutely detailed categories and which much of its content governs. This stands in marked contrast with classical Roman law, which explicitly enumerated only four forms of delict (Gaius, inst. 3.182–225; Inst. Iust. 4.1–4) and which laid a heavier emphasis on regulating personal disputes through the notion of 'crime' (personal offenses against state order). As we shall see, these differences between Germanic and Roman law had implications that impacted directly on the law of slavery.

The study is divided into three parts: the first focuses on the enslavement of free males for engaging in sexual relations with enslaved females, a practice that is never attested in Classical or late Roman law but appears to have been common in the Germanic codes; the second will treat the question of murdering one's slaves, which came to be sanctioned in the Roman legal tradition but went largely unchecked in the Germanic codes; third, the enslavement of individuals as a judicial tool for the settlement of civil torts, for while Roman law never allowed a civil plaintiff to enslave a defendant for personal wrongs, Germanic law had regular recourse to personal enslavement for the settlement of debits rooted both in credit and in delict. These distinctive practices are shared across the Germanic codes and should, I will argue, be taken as indicators of a shared legal anthropology. They did not, in other words, develop from Roman norms and precedents but expressly in divergence from them.

2 Enslavement of Free Males for Sexual Relations with Enslaved Females

Roman law had long granted masters the right to enslave females who cohabited with their male slaves. This option was created in 52 CE with the passage of the *Senatus Consultum Claudianum*, which allowed the owner of any male slave who had become aware of a sexual relationship between that slave and a free female to warn the

woman to desist and, if she refused after three warnings, to enslave her.[9] The precise impetus for the passage of this senatorial decree is a matter of dispute, but its logic was grounded in the principle upheld by the Roman slave system that the status of a child was dictated by the status of its birth mother: enslaved mothers bore slave children, free mothers free.[10] Because Roman enslavers sought to control the reproductive output of those enslaved to them so as to maximize profit, this law closed a loophole that would have permitted children born of the sexual unions of their male slaves with free women by forcing those women into slavery (and thus also their children) if they did not end the relationship. There was no need, however, for a reciprocal law to enslave free males, for any relationship these had with an enslaved female would result in enslaved children who would accrue to the assets of the mother's slaveowner regardless.

Thus, Roman law assumed that a free male's choice to cohabit with another's female slave had no consequence for that male's free status. Indeed, a law of Constantine from 318 states this explicitly:

> Even if it seems undignified for those who are not endowed with any rank to descend to the level of debased marriages with enslaved women, it is nonetheless in no way prohibited at law; but a marriage (*conubium*) is unable to be formed with servile persons, so from a union (*contubernium*) of this sort, the children are born enslaved.[11]

The law's primary concern was not, however, so much the – unproblematic – question of sexual unions between free men and enslaved females but rather the problems that would ensue if a higher status male, a person with enough property to be obliged to perform curial service in his home town, formed such a union as a way to obtain patronage from a wealthier property holder and thus to avoid his curial duties. In this instance, Constantine ruled, the female slave was to be condemned to the mines and the male decurion to be deported to an island after confiscation of his property. Constantine was thus expressly unconcerned with free male / enslaved female unions, except when they entailed extreme status mixing of a sort that compromised the resources of civic *curiae* – in which case he still protected the freeborn status of the

9 Tac. ann. 12.53; Gai. 1.84, 91, 160; Inst. Iust. 3.12.1; Paul. sent. 2.21^{A}.1; Cod. Theod. 4.12.1–7 (Lex Romana Visigothorum Cod. Theod. 4.11.1–6). W.W. Buckland, *The Roman Law of Slavery: The Condition of the Slave in Private Law from Augustus to Justinian* (Cambridge: The University press, 1908): 412–14; Elisabeth Herrmann-Otto, *Ex Ancilla Natus: Untersuchungen zu den "hausgeborenen" Sklaven und Sklavinnen im Westen des Römischen Kaiserreiches*, Forschungen zur antiken Sklaverei 24 (Stuttgart: Franz Steiner, 1994): 115–21, 169–230; Harper, *Slavery in the Late Roman World* (n. 4).

10 Buckland, *The Roman Law of Slavery* (n. 9)*:* 21–24.

11 Cod. Theod. 12.1.6 (dated to July 1, 318 by O. Seeck): *Nulla praeditos dignitate ad sordida descendere conubia servularum etsi videtur indignum, minime tamen legibus prohibetur; sed neque conubium cum personis potest esse servilibus et ex huiusmodi contubernio servi nascuntur.* The same principle had already been affirmed at Cod. Iust. 7.16.3 (a. 335, a rescript of Alexander Severus) and is implied at Cod. Iust. 7.16.29 (a. 294, a rescript of Diocletian).

male even while punishing him severely using a state managed sanctioning mechanism, relegation. Constantine's law had a long shelf-life, for it was subsumed into the *Codex Justinianus* and thus republished in 534,[12] making late Roman law on the matter clear and consistent. Because the sexual unions of free males and enslaved females could not be legally recognized as marriage, they were not a concern to the law, except when such unions might serve to undermine the maintenance of curial property, in which case they were sanctioned criminally.

Under Germanic law, the children of female slaves were also automatically born into slavery – a principle that is upheld in our sources even if direct affirmations are scanty.[13] And masters may even have been 'double covered' insofar as the Germanic codes seem fairly early to have upheld the standard that the children of mixed unions would follow the status of the lower-status parent.[14] This makes it especially surpris-

12 Cod. Iust. 5.5.3; cf. Novell. Iust. 12.1 (535). And see the related Novell. Major. 7.1–3.

13 See, e.g. Edict. Roth. 156; Formulae Senonicae 42; Greg. Tur. Franc. 4.3. Note that Lombardic law, which showed heavy Christian influence concerning matters of marriage and sexuality, punished slaveowners who attempted to usurp the wives of their own slaves by automatically freeing the slaves (Leg. Lang. Liutpr. 140.II), and it required slaveowners who wished to marry their female slaves to free them first (Edict. Roth. 222; Leg. Lang. Liutpr. 106).

14 The principle is first securely attested at Burg. Rom. 37.5 (a. 517): *qui ex his nati fuerint, deteriorem lineam secuti dominis adquiruntur*. It may already be present in the Visigothic *interpretatio* at Lex Romana Visigothorum Cod. Theod. 4.8.3 (a. 506): *Si quis in libertate positus ancillam sibi copulaverit in coniugium, si filii ex ipsis nati fuerint, origo matrem sequatur; simili modo, si liberta servum duxerit maritum, agnatio servum sequatur, quia ad inferiorem personam vadit origo*. However, Theodor Mommsen et al., eds., *Theodosiani libri XVI cum Constitutionibus Sirmondianis*, vol. 3 (Berlin: Weidmann, 1904): 185, believed the clauses here cited from the Lex Romana Visigothorum *intrepretatio* represented a later gloss and omitted them from his edition of the Codex Theodosianus. The principle is again attested in the seventh century, e.g. Lex Rib. 61.11: *generatio eorum semper ad inferiora declinentur*; Lex Visig. 4.5.7 [Wamba]: *dum his, qui de tam infami coniugio nascitur, inferioris parentis adsequens sexum una cum rebus suis omnibus eccleisastice servituti addicitur*; cf. Lex Visig. 3.2.3; 9.1.16. Earlier, many scholars spoke of a principle of 'the worse hand' (*die ärgere Hand*), a term found in later medieval and early modern sources; these took the automatic assignment of the status of the lower parent to be distinctly a Germanic legal custom, Richard Schröder, *Lehrbuch der deutschen Rechtsgeschichte*, vol. 3 (Leipzig: Veit & comp, 1898): 458. But because the principle closely resembles that applied to Roman *coloni* already in the fifth century (esp. Novell. Valent. 31.6 and *interp.*; cf. Novell. const. post Iust. Coll. 1 no. 13 at C.E. Zachariä von Lingenthal, *Ius Graecoromanum, pars III: Novellae constitutiones Imperatorum post Justinianum quae supersunt collatae et ordine chronologico digestae* [Leipzig: T.O. Weigel, 1857]: 24), it is difficult to determine the degree to which it grew out of Roman or Germanic traditions – or the fusion of the two. Based on an exhaustive reading of the sources but above all on analysis of Gaius Inst. 1.85–86 and Novell. Valent. 31.6, W.E. Voss, "Der Grundsatz der 'ärgeren Hand' bei Sklaven, Kolonen und Hörigen," in *Römisches Recht in der europäischen Tradition: Symposion aus Anlass des 75. Geburtstages von Franz Wieacker*, ed. O. Behrends, M. Diesselhorst and W.E. Voss (Ebelsbach: Verlag Rolf Gremer, 1985): 117–84, argues that the principle of 'die ärgere Hand' developed entirely out of Roman law, but the argument builds on a priori assumptions (that slaves and *coloni* are to be equated, that barbarian law lacked its own solutions to 'Mischehen') which vitiate the argument and thus leave the question open.

ing that Germanic legal culture refused to abide Roman law's tolerance for a free male's sexual unions with someone else's female slave. In laws on the matter, which generally base their motivation for enslavement on the need to punish sexual misbehaviour, both free females and free males were to be enslaved for sexual relations with an enslaved person of the opposite sex:

- Sal. Merov. 13.8–9: Concerning the abduction of free men or women. 8. But if a free girl follows anyone from these (royal slaves) willingly, she shall lose her liberty. 9. If a free male takes on another person's slave woman (*ancilla aliena*), he should suffer the same.[15] (Or, in some manuscripts: If a free male takes in marriage another person's slave woman (called *honema* in the Malberg gloss), he should remain with her in slavery (*in servitio*).[16]
- Sal. Merov. 25.3–4: Concerning the adulterous relationships (*adulteria*) of slave girls and slaves. 3. The freeman who openly joins himself with another man's slave girl shall remain with her in servitude. 4. And likewise the free woman who takes someone else's slave in marriage shall remain in servitude.[17]
- Lex Ribuar. 61.9: But if an ecclesiastical freedman marries a royal or ecclesiastical enslaved woman or the enslaved woman of an ecclesiastical freedman, he must remain a slave (*servus*) with her. But if he only fornicated with her (*moechatus fuerit*), he shall be judged liable for eight and a half solidi or should swear with six (oath helpers). But if an ecclesiastical freedwoman (*tabularia*) does this, she and her offspring shall fall into slavery (*in servitio inclinetur*).[18]
- Lex Visig. 3.2.3 [Recc.] (Antiqua): If a freeborn woman partners herself in matrimony with the slave of another person or of the king, or if she presumes to conjoin with him in adultery, the moment that a judge comes to know of this, he should not delay in hastening to separate them in order that they receive the penalty they merit, which is one hundred lashes of the whip for each of them. And if

15 MGH LL nat. Germ. 4.1.61–62: *De rapto ingenuorum uel mulierum.* 8. *Si uero ingenua puella [ali] quemcumque de illis sua uoluntate secuta fuerit, ingenuitatem suam perdat.* 9. *<Ingenuus si ancilla aliena prisserit, similiter paciatur.>* On these Frankish laws, see H. Nehlsen, *Sklavenrecht zwischen Antike und Mittelalter: Germanisches und römisches Recht in den germanischen Rechtsaufzeichnungen*, Göttinger Studien zur Rechtsgeschichte 7 (Göttingen: Musterschmidt, 1972): 271–72.

16 MGH LL nat. Germ. 4.1.62: 9. *Si [quis] ingenuus ancillam alienam in coniugium praeserit, mallobergo honema, cum ea ipse in seruitio permaneat*. The same principle is confirmed at Sal. Merov. (VII Capitulare) 3.14, a ninth-century text, see K.A. Eckhardt, *Pactus Legis Salicae II.2 Kapitularien und 70 Titel-Text* (Göttingen: Musterschmidt, 1956): 452.

17 MGH LL nat. Germ. 4.1.93–94: *De adulteriis ancillarum <uel seruorum>*. 3. *Si quis <uero> ingenuus cum ancilla aliena publice se iunxerit, ipse cum ea in seruitio permaneat.* < 4. *Similiter et ingenua, si seruo alieno in coniugio acceperit, in serui(t)io permaneat.>*

18 MGH LL nat. Germ. 3.2.111–12: *Si autem tabularius ancillam regiam aut ecclesiasticam seu ancillam tabularii in matrimonium sibi sociaverit, ipse cum ea servus permaneat. Si autem cum ea tantum moechatus fuerit, octavo dimidio solido culpabilis iudicetur, aut cum sex iuret. Quod si tabularia hoc fecerit, ipsa et generatio eius in servitio inclinetur*. Cf. Lex Rib. 61.14–16.

> after this intervention they conjoin themselves again, the judge should order them to be apprehended and produced in his presence in order that he not refrain from imposing one hundred blows of the whip on each one of them again. But if they refuse to separate themselves a third time, we order them likewise to be afflicted with one hundred lashes of the whip and the woman to be given into the power of her own relatives. But if afterward the relatives release her again, she should become a slave woman to the lord of her slave man. Nevertheless, any children who happen to be born from this iniquity, whenever that may be and however many they may be, should follow the condition of their father so that they remain in servitude; and her relatives should acquire the fortune of the woman by legal succession. But we order this law to be observed also concerning freeborn men who have coupled with slave girls of the king or of anyone, so that the form of this principle is observed.[19]

Thus, the Salian and Ripuarian Franks as well as the Visigoths not only required the enslavement of free females for cohabiting with an enslaver's male slave (as did the Romans), but they also required the enslavement of free males for cohabiting with another person's female slave (which the Romans did not).

Even so, the last of these citations differs from the first four insofar as the Visigothic code clearly alludes to the principle of requiring three warnings for free females that was a hallmark of the Roman *Senatus Consultum Claudianum*. There can be no denying, then, that Roman law influenced Visigothic law on the question of mixed slave / free unions. Yet Lex Visig. 3.2.3 is clearly anything but a simple repetition of Roman law, for it has a number of features that align much more closely with Germanic principles: the (initial) consignment of the free female transgressor into the custody of her family rather than enslavement to her partner's master; the enslavement of her children even if they were born to her while she was free; and, of course, the application of the same principle not just to free females but also to free males. This hybridization of Roman and Germanic legal principles should come as no sur-

19 MGH LL nat. Germ. 1.134–35: *Si mulier ingenua servo alieno, sive regis, se matrimonio sociaverit sive etiam per adulterium iungere presumserit, statim, ubi primum hoc iudex agnoverit, eos ad separandum festinare non differat, ut penam, quam merentur, hoc est, singuli eorum centena flagella suscipiant. Et si post hanc contradictionem se iterum coniuncxerint, eos iudex conprehendi iubeat et in sua presentia exiberi, ut unicuique eorum iteratim centena flagella inponere non desistat. Quod si tertia vice se separare noluerint, similiter centena flagella eis inponi iubemus, et ipsa mulier parentibus suis in potestate tradatur. Quod si postmodum eam parentes retrorsum dimiserint, sit ancilla domino eius servi. Filii tamen, et quandocumque et quanticumque, qui ex ea iniquitate fuerint procreati, condicione patris sequantur, ut in servitio permaneant; facultate vero mulieris propinqui sui legali successione conquirant. Ipsam autem legem precipimus custodire et de viris ingenuis, qui regias ancillas vel etiam cuiuscumque habuerint copulatas, ut condicionis hec forma servetur*. Lex Visig. 3.2.4 applies the same principle to *libertae* and *liberti* – if either joins an enslaved person in a permanent union, they are to be enslaved.

prise. Indeed, the Visigothic Code regularly integrates Roman and Germanic law for the reason that it represents a seventh-century 'territorial' amalgamation of two 'personal' codes that had formerly prevailed in the Visigothic kingdom – the *Lex Romana Visigothorum* (also known as the *Breviarium Alarici*), a compendium of Roman laws issued under Alaric II in 506, and the *Codex Revisus*, Leovigild's Gothic code issued in the 580s, which was based on the first known Germanic code, the *Codex Euricianus,* issued c. 476.[20] The designation 'Antiqua' at the head of Lex Visig. 3.2.3 indicates that this law derived from Leovigild's *Codex Revisus,* probably more or less in its current form. But we also know that the *Codex Revisus* itself regularly melded Roman with Gothic principles in the manner we find in this law, making the hybrid nature of this provision typical.[21]

The readiness of Germanic law to enslave freeborn males for their sexual unions with enslaved females would appear to arise less from an effort to maximize profit from slave reproductivity (the prime concern in Roman law) and more from an elevated concern with the regulation of sexuality between status groups and with the social necessity to punish wrongs done to the authority of the householder through the sexual defilement of those under his charge.[22] This is apparent already in the laws quoted above, and it is also reflected in other Germanic codes, which levy harsh physical punishments and/or monetary fines against free or freed males for 'defiling' the members of one's household, enslaved or free.[23] Indeed this same punitive spirit is also applied to free females for forming mixed unions. Thus, the seventh-century Lombardic *Edictus Rothari* requires that, if an enslaved man and free woman have established a sexual union, the slave may be killed while the woman is to be handed over to her relatives to be dealt with by killing her or selling her as a slave outside the kingdom; if these failed to do so, she was to be made a slave to the king.[24] In the same

20 More on this process at Lenski, "Law and Language" (n. 8): 358–64, with earlier bibliography, esp. Paul D. King, "The Alleged Territoriality of Visigothic Law," in *Authority and Power: Studies on Medieval Law and Government Presented to Walter Ullman on His Seventieth Birthday*, ed. Brian Tierney and Peter Lineham (Cambridge: Cambridge University Press, 1980): 1–11; Paul D. King, "King Chindasvind and the First Territorial Law-Code of the Visigothic Kingdom," in *Visigothic Spain: New Approaches*, ed. Edward James (Oxford: Clarendon Press, 1980): 131–57.

21 Both Karl Zeumer, "Geschichte der westgotischen Gesetzgebung III," *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* 24 (1899): 592–94 and Álvaro D'Ors, *El Código de Eurico. Edición, Palingenesia, Índices* (Madrid: Consejo Superior de Investigaciones Científicas, 1960): 135–37, agree that this hybrid law was a product of Leovigild, cf. Nehlsen, *Sklavenrecht zwischen Antike und Mittelalter* (n. 15)*:* 241–45.

22 As with the Roman system, there was no regulation of a male master's access to sexual relations with females enslaved to him, cf. Greg. Tur. Franc. 4.3; 4.25–27; 10.8; and see Grieser, *Sklaverei im spätantiken und frühmittelalterlichen Gallien* (n. 1): 101–6.

23 Thus Edict. Roth. 194; 205–12; Pactus Legis Alamannorum 22.15 (MGH LL nat. Germ. 5.1.33). See more below.

24 Edict. Roth. 221 (MGH LL 4.53): *Si servus liberam mulierem aut puellam ausus fuerit sibi in coniugium sociare, animae suae incurrat periculum, et illa qui servum fuerit consentiens, habeant parentes*

vein, the early sixth-century Burgundian code (*Liber Constitutionum*) orders that, if a freeborn girl (*puella*) establishes a union with a male slave, both are to be killed – apparently by her family – but if her relatives refuse to inflict this punishment on their daughter, the female is to be enslaved to the king.[25] Striking about these Lombardic and Burgundian laws is not just their punitive spirit, but also the fact that both align with the Visigothic law (Lex Visig. 3.2.3 [Recc.]) quoted above in leaving it up to the relatives of the free female to kill or enslave their own daughter for her sexual transgressions.[26]

Of note in the case of the Burgundian law, it appears to be directly contradicted by another Burgundian law, not in the *Liber Constitutionum* but rather in the *Lex Romana Burgundionum* (37.3–6). This allows mixed couples of enslaved and free, be they male or female, to remain in unions (*contubernia*) and explicitly forbids the enslavement of the free party, although that same free individual was not permitted to depart from the estate of his partner's enslaver and their children were to be kept in slavery.[27] This contradiction needs to be understood in the context of a Burgundian legal system which, like the Visigothic system of the fifth and sixth centuries, was also 'personal': individuals claiming 'Burgundian' ethnicity were governed by the *Liber Constitutionum*, which punished with death any free females who formed unions with slaves, while those who identified as 'Roman' followed the *Lex Romana Burgundionum*, which offered a much milder solution – one entirely in keeping with Roman law traditions. Driving home the divergence, *Lex Romana Burgundionum* 37.3–6 states explicitly that it derives its principles from the *'Novella de advenis'*, by which it means *Novella Valentiniani* 31.5–6 – a Roman law, concerned not with punishing such unions

potestatem eam occidendi aut foris provincia transvindendi, et de res ipsius mulieris faciendi quod voluerint. Et si parentes eius hoc facere distulerint, tunc liciat gastaldium regis aut sculdhais ipsam in curte regis ducere et in pisele inter ancillas statuere. Cf. Leg. Lang. Liutpr. 24.VI; 120; Leg. Lang. Ratch. 6.II (MGH LL 4.188). See also Edict. Roth. 217, which orders the enslavement of an *aldia* or freedwoman who marries a slave owned by another householder; and Edict. Roth. 193, on unions between free women and male slaves who flee the kingdom to continue their relationship. Curiously, Lombard law did not insist on the enslavement of a free male or *aldius* who married an enslaved woman, Edict. Roth. 219; Leg. Lang. Liutpr. 66.II.

25 Burg. lib. const. 35.2–3 (MGH LL nat. Germ. 2.1): 2. *Si vero ingenua puella voluntaria se servo coniuncxerit, utrumque iubemus occidi.* 3. *Quod si parentes puellae parentem suam punire fortasse noluerint, puella libertate careat et in servitutem regiam redigatur*. For similar principles, see Burg. lib. const. 101.1–2, punishing sexual unions across status classes – *optimas, mediocris, leudes.*

26 To be sure, Roman law had permitted a paterfamilias the right to execute his own adulterous daughter, but only if she was caught in the act, and only he was granted this license and not other relatives, and never was any family member allowed to enslave their own daughter, cf. Thomas A. McGinn, *Prostitution, Sexuality, and the Law in Ancient Rome* (New York: Oxford University Press, 1998): 140–215.

27 Burg. Rom. 37.3–6 (MGH LL nat. Germ. 2.1.156–7), esp. 37.5: *Inter ingenuum vero et ancillam, sive servum et ingenuam, sicut consensus contubernia facere possunt, ita nuptiae non vocantur, et qui ex his nati fuerint, deteriorem lineam secuti dominis adquiruntur*.

but only with regulating control over the offspring.[28] Meanwhile *Liber Constitutionum* 35.2–3, its Burgundian counterpart, is clearly based on the Germanic tendency to punish persons who establish mixed unions with death or, in the instance of the free partner, enslavement.[29]

Returning to the question of punishing free males for their unions with enslaved females by enslaving them, we arrive at the Ostrogothic *Edictum Theoderici*, issued c. 500, where we might expect to find provisions that differ from the Germanic codes, for the *Edictum Theoderici* reproduced almost entirely Roman legal principles.[30] Yet, as its preface and colophon confirm, this code was explicitly issued to regulate relations between 'Barbarians and Romans', with the result that it sometimes applies principles foreign to Roman law that are found instead in the Germanic tradition.[31] This latter would seem to be the case with Edict. Theodor. 64, 'If someone defiles another person's virgin female slave or bound tenant':

> If any free male defiles someone else's enslaved virgin female, be she of whatever age, provided he is not in any way obligated to a city, if the owner wishes or the defiler himself asks for it and he makes a statement to this effect in the public record, he should remain in the power of the owner of the woman (*in domini mulieris potestate*), and he should not abandon this cohabitation with the female he diminished, nor even when she dies should he have the ability to depart. But

28 Novell. Valent. 31 concerned only *coloni* and not slaves, but its principles were modified at Burg. Rom. 37.3–6 to govern both. Burg. Rom. 6.3 also applies the principles at Novell. Valent. 31 to both slaves and *coloni*. On the assimilation of *colonus* status to that of slaves, see Lenski, "The Late Roman Colonate" (n. 7): C.24 p.1–C.24 p.58.

29 Rio, "Freedom and Unfreedom" (n. 6): 16–23, argues that the abundance of Frankish formulae which guarantee freedom to women who have entered into sexual relations with a landowner's slaves provide evidence of a new and more flexible legal system than what prevailed in Roman law (see Formulae Andecavenses 59; Formulae Marculfi 2.29; Cartae Senonicae 6; Formulae Salicae Bignonianae 11; Formulae Salicae Merkelianae 31; Formulae Salicae Lindenbrogianae 20; Formulae Morbacenses 18–19; Formulae Augienses Coll. B 41 [MGH Form. 1.25, 93–94, 187–88, 232, 253, 281, 334, 363]). This is hardly true. First, Roman law had already permitted such agreements, see Gai. 1.84; cf. Paul. Sent. 2.19.6. But second, the formulae in question make it abundantly clear that they are intended to grant a *personal exception* for women whom a master would otherwise have had every right to enslave on the basis of existing statute. They represent, in other words, a sort of 'quit claim' agreement through which masters could surrender a 'right to enslave' to which they were entitled at law – a workaround to the 'normal' process.

30 See Sean D.W. Lafferty, *Law and Society in the Age of Theoderic the Great: A Study of the Edictum Theoderici* (Cambridge: Cambridge University Press, 2013): 54–100; Ingemar König, ed., *Edictum Theodorici regis. Das "Gesetzbuch" des Ostgotenkönigs Theoderich des Großen. Zweisprachige Gesamtausgabe. Lateinisch und deutsch*, Texte zur Forschung 112 (Darmstadt: WBG Academic, 2018): 28–33; Sebastian Schmidt-Hofner and Hans Ulrich Wiemer, "Die Politik der Form: Das Edictum Theoderici, das Prätorische Edikt und die Semantik königlicher Rechtsetzung im postimperialen Westen," *Chiron* 52 (2022): 335–412.

31 On '*barbari romanique*', see Edict. Theodor. Praef., 155, cf. 34, 43–44. And see Hans Ulrich Wiemer, *Theoderic the Great: King of Goths, Ruler of Romans*, trans. John Noël Dillon (New Haven: Yale University Press, 2023): 131–33.

> if the owner of the enslaved female does not consent or the perpetrator does not wish to make a statement, then he should hand over two slaves of the same value to the owner which will remain in his authority, provided he has the means; or if he is unable to fulfill this, he should be beaten quite harshly with clubs and enrolled in the guild (*collegium*) of the neighbouring city; and the judge of that region should fulfil and safeguard this, mindful of his written order.[32]

Previous literature on this law has associated it with *Novella* 31 of Valentinian III, discussed in the preceding paragraph.[33] But Edict. Theodor. 64 differs from the Valentinianic Novel on four counts: first, where Novell. Valent. 31 applies only to relationships between a freeborn male (*ingenuus*) and female *colona* (whom it terms '*originaria*'), Edict. Theodor. 64 (like Burg. Rom. 37.3–6) extends its principles to relationships with a female slave (*ancilla*); second, while Valentinian's law restricts itself to enduring unions, Edict. Theodor. 64 takes as determinative any sexual relationship – operating very much in the punitive spirit we have seen in the Germanic codes; third, while the Valentinianic law explicitly affirms that the free status of the male partner should endure (*salva ingenuitate*) despite its restrictions on his freedom of movement (as with Burg. Rom. 37.3–6), Edict. Theodor. 64 affirms the *enslavement* of the free male (*in domini mulieris potestate*) and thus his ongoing ties to the enslaved woman's master after her death (*nec, eadem mortua, discedendi habeat facultatem*); and fourth, while Novell. Valent. 31.5 lays out a process whereby free males could voluntarily opt into a permanent union with an *originaria* on the condition they enroll themselves as permanent residents of her owner's estate, Edict. Theodor. 64 treats any sexual encounter between a free male and an estate owner's enslaved or dependent female as an offense which must be punished, whether by permanent enrolment as a slave or *originarius*, or by the surrender of two slaves of equal value, or by corporal punishment and enrolment in a municipal *collegium*. Theoderic and his legislators have thus not adopted the Roman law wholesale. Rather, they have adapted it using Germanic principles favouring the enslavement of any free person who dared to have sex with a householder's slaves, punishing even free male offenders with beatings, fines, and potential enslavement.[34]

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32 Edict. Theodor. 64 (König ed., *Edictum Theodorici regis* (n. 30): 116): *Ancillam alienam virginem vel originariam cuiuslibet aetatis, quisquis ingenuus, nulli tamen quolibet modo obnoxius civitati, corruperit, si dominus voluerit, aut corruptor ipse rogaverit, et apud gesta professus fuerit, mansurus in domini mulieris potestate, eius quam vitiavit contubernium non relinquat, nec, eadem mortua, discedendi habeat facultatem. Quod si dominus ancillae non consenserit, aut ille profiteri noluerit, tunc aut huius meriti duo mancipia domino tradat, eius iuri profutura, si eius substantia patiatur: aut si hoc implere non potuerit, caesus districtissime fustibus vicinae civitatis collegio deputetur: quod iudex eiusdem loci, periculi sui memor, implere et custodire debebit.*

33 Novell. Valent. 31.5 (31 Jan. 451); cf. Lafferty, *Law and Society* (n. 30): 268; König ed., *Edictum Theodorici regis* (n. 30): 116–17.

34 See also Edict. Theodor. 142, a law with no parallel in the Roman codes (pace König ed., *Edictum Theodorici regis* [n. 30]: 187–88), which erases the distinction between *originarii* and *servi* by allowing the former to be moved off their birth-estate and treated as *servi urbani* or even sold as chattels.

The application of this law for the purpose of enslaving free males in the Ostrogothic kingdom is confirmed by a passage from the anonymous letter *Ad Gregoriam*, a text which likely derives from early sixth century Italy – and is thus precisely contemporary with the *Edictum Theoderici*. Here the author states matter-of-factly:

> Your handmaid certainly takes on a husband on this condition, that both of them should be subject to you in their servitude, and if the man she takes on as husband happens to be sprung from a freeborn line, his union nevertheless brings him under your rule. Yet is it not impious that, through your handmaid, you yourself should obtain as a slave a man who owes you nothing, and that through yourself as His handmaid God should lose His servant, a man he bought with his own precious blood?[35]

The author is not simply reporting this new reality, he clearly found it jarring and discordant with his sense of justice.

The Roman emperor Justinian did as well. Shortly after finishing his reconquest of Italy in 554, Justinian issued a lengthy *Pragmatic Sanction* attempting to bring Italian law into line with the laws of the Roman east. These included the longstanding provision – dating from early in the Classical period, well before the issuance of the *Corpus Iuris Civilis* – that freeborn males could not be enslaved for their sexual relations with another person's slaves, even if they could be charged with the tort actions of *iniuria* or *damnum iniuria datum* for harm done to the enslaver's 'property' through their sexual unions.[36] The fifteenth section of Justinian's *Pragmatic Sanction* shows not just that Justinian hoped to abide by this traditional norm but also how displeased he was that the Germanic custom of enslaving freeborn males (and females) for their sexual unions with enslaved partners had taken root in Italian society:

> If any male living in slavery is found to have married a free woman in the most heinous times of Gothic ferocity (*per Gothicae ferocitatis nefandissima tempora*), or also if female slaves have been conjoined to free men, these should earn the right to depart (from this situation) as free persons in keeping with the present pronouncements, in such a way that slave women or slave men should return into the jurisdiction of their masters, with no prejudice to the masters of the male or female slaves being generated through the passing of time. But if they think these marriages should be upheld into the future, they should suffer no prejudice in regard to their personal lib-

35 Lib. ad Greg. 8 (CCSL 25A.204): *Certe hac condicione tua maritum accipit ancilla, ut utrique suo tibi seruiant famulatu, et si forte is, quem maritum accipit, ingenua sit sorte progenitus, sui copula tuo illum inclinat imperio. Et nefas non est ut tu per ancillam tuam illum qui nihil tibi debebat seruum obtineas, et per te ancillam suam suum deus famulum perdat, quem pretioso suo sanguine conparauit?* See Mark Humphries, "From Emperor to Pope? Ceremonial, Space, and Authority at Rome from Consantine to Gregory the Great," in *Religion, Dynasty, and Patronage in Early Christian Rome, 300–900*, ed. Kate Cooper and Julia Hillner (Cambridge: Cambridge University Press, 2007): 44–53 on dating and context.

36 Paul. Sent. 1.13A.6; D. 47.10.25 (Ulp. 18 ad ed.). But see the special case of D. 1.18.21 (Paul. l. s. de off. adsess.).

> erty, but the children should follow the maternal condition; which we order also to apply in the case of those who were born from such a union.[37]

Justinian's language indicates that he felt he was uprooting an explicitly Gothic practice when he granted freedom to all freeborn males who had been subjected to slavery for their sexual unions with enslaved females. Thus, to make sure the new (or rather the old) Roman norm would stick, he forbade these males to be enslaved even if they chose to continue their marital unions with another person's slavewoman in the years to come.

Curiously, Justinian applies the same principles to freeborn females who had been enslaved because of unions with another's male slave. This ruling would appear to contradict longstanding Roman practice under the *SC Claudianum*, but this egalitarian application of freedom to freeborn members of both sexes involved in unions with enslaved persons can be better understood when we take account of the fact that Justinian had also abolished the *Senatus Consultum Claudianum* in the eastern Roman empire already in 530/1 with the issuance of Cod. Iust. 7.24.1. In that law he states his grounds for doing so explicitly: "we thought it quite impious that some women should be deprived of their liberty and that a practice introduced by the ferocity of enemies (*ab hostium ferocitate*) contrary to natural liberty should also be the result of the caprice of worthless men."[38] The verbal echoes between Cod. Iust. 7.24.1 and *Pragmatic sanction* § 15 appear to indicate that Justinian associated the enslavement of freepersons for their sexual unions with slaves with barbarian 'ferocity' and more specifically with the Goths. The east Roman emperor, along with the compilers of the *Lex Romana Burgundionum* and the author of the *Ad Gregoriam,* thus perceived a salient difference between the legal customs of the Romans and Germanic barbarian peoples with regard to the enslavement of freepersons, especially freeborn males, for their unions with enslaved partners. Moreover, in another law of 531, Justinian even ordered that any master who permitted a marital union between his enslaved female and a free male had, by this very act, granted the slave woman full freedom. The eighth-century *Ecloga* expanded this measure further by taking any master-sanctioned marital union between a male or female slave and a freeperson as a trig-

37 Novell. Iust. App. 7.15: *Si qui per Gothicae ferocitatis nefandissima tempora servi constituti liberas uxores inveniantur duxisse, vel etiam liberis hominibus ancillae coniunctae, licentiam quidem liberae personae discedendi per praesentes nostros mereantur affatus, ancilla videlicet vel servo in dominorum suorum iura remeantibus, nullo praeiudicio dominis servorum vel ancillarum ex praeterito tempore generando. Si vero in posterum etiam coniugia tenenda esse putaverint, nullum praeiudicium circa libertatem propriam patiantur, filii vero maternam condicionem sequantur; quod etiam in illis, qui ex tali coniugio nati sunt, obtinere iubemus*. On the Pragmatic Sanction, see David Miller and Peter Sarris, *The Novels of Justinian. A Complete Annotated English Translation* (Cambridge: Cambridge University Press, 2018): 1116–30.

38 Cf. Inst. Iust. 3.12.1.

ger for automatic manumission.[39] This is precisely the opposite of what was happening in the contemporary west, for the Germanic codes punish any union between free and enslaved partners with the enslavement of the free party. Far from developing out of Roman traditions, then, the barbarian codes of the west differed from them *ab initio*, and the gap between the two traditions only widened over the course of late antiquity as the east Roman empire reacted against developments in the west by doubling down on Roman law's more robust defense of personal liberty.

3 Killing One's Own Slave

In a general way, slaves lack legal standing as persons, being classed instead as property. Under early Roman law, this meant that masters were permitted to murder their slaves with impunity. Beginning in the first century CE, emperors became increasingly concerned with the wanton mistreatment of slaves and began to place some restrictions on slave killing. Claudius ordered that all slaves whose owners had abandoned them to die because of illness should go free if they survived, and that those who chose to kill a sick slave to avoid paying for healthcare could be charged with murder; Hadrian is reported to have forbidden the killing of slaves by their masters, although details are scarce; and in a rescript mentioned in Gaius' Institutes and the Digest, Antoninus Pius is said to have ordered masters who killed their own slaves without just cause to be punished in the same manner as those who killed the slaves of a third-party.[40] Elsewhere, Gaius reports that the owner of a slave that had been killed by a third party had the choice of either suing the killer for damages or prosecuting the perpetrator on a capital charge (*capitali crimine reum facere eum*), which indicates that a master's murder of their own slave could also have resulted in a capital prose-

39 Cod. Iust. 7.6.1.9: *Sed et si quis homini libero suam ancillam in matrimonio collocaverit et dotem pro ea conscripserit, quod solitum est in liberis personis solis procedere, ancilla non latina, sed civis efficiatur romana. si enim hoc, quod frequentissime in cives romanas et maxime in nobiles personas fieri solet, id est dotalis instrumenti conscriptio, et in hac persona adhibita est, necessarium est consentaneum effectum huiusmodi scripturae observari*; Ecloga 8.1.1, 3: Ἐπιτίθεται οἰκέτῃ ἐλευθερία [. . .] ἐὰν ὁ κύριος τὸν ὑποκείμενον αὐτῷ δοῦλον ἐλευθέρῳ ζεύξῃ προσώπῳ. See M. Mellusso, *La schiavitù nell'età giustinianea: Disciplina giuridica e rilevanza sociale* (Besançon: Presses Universitaires Franc-Comtoises, 2000): 89.

40 Claudius: Suet. Claud. 25.2; Dio Cass. 60.29.7; D. 40.8.2 (Mod. 6 reg.). Hadrian: Hist. Aug. 18.7; cf. Coll. Mos. 3.3.4. Antoninus Pius: Gai. 1.53 = D. 1.6.1.2 (Gai. 1 inst.); Coll. Mos. 3.3.1–3; Inst. Iust. 1.8.2; cf. Hist. Aug. 18.7–11. See also D. 48.8.11.1–2 (Mod. 6 reg.), cf. D. 18.1.42 (Marcian. 1 inst.), for a prohibition on condemning one's slaves to the games without a trial before a magistrate. See more at Francesco Lucrezi, *L'uccisione Dello Schiavo in Diritto Ebraico e Romano*, Studi Sulla "Collatio" 1 (Turin: G. Giappichelli 2001): 62–73; Alexander Nogrady, *Römisches Strafrecht nach Ulpian: Buch 7 bis 9 De Officio Proconsulis*, Freiburger rechtsgeschichtliche Abhandlungen, neue Folge 52 (Berlin: Duncker & Humblot, 2006): 163–65, 256–60.

cution.[41] And Pius also forbade the turning over of one's slave to be killed by beasts in the arena without a prior judicial hearing.[42] Over time, the Romans thus became uncomfortable with the arbitrary killing of slaves – even by the enslaver – and, by the mid-second century, began to punish it as a civil and at times criminal offense.

For their part, Jews had long been uncomfortable with the deliberate killing of slaves which, they felt, violated the sixth commandment against murder. Exodus holds a master guilty of killing if he strikes his enslaved male or female so severely that the slave 'dies under his hand' (וּמֵת תַּחַת יָדוֹ) and thus punishes the master (נָקֹם יִנָּקֵם), although not if the slave dies one or two days later 'for it is his money' (כִּי כַסְפּוֹ הוּא, i.e. his property).[43] This same scriptural prohibition found its way into Christian canon law already in 306 at the Council of Elvira, which preserved the three-day prescriptive limit on responsibility for slave killing but added the additional element of intent: if a female master (*domina*) had killed her enslaved woman (*ancilla*) intentionally (*voluntate*), she was to be excommunicated for seven years, but if by bad luck (*casu*), for just five.[44] Not long thereafter, Constantine adopted the same principles into Roman law, with clear reference to the notions expressed at Elvira. Preserved as Cod. Theod. 9.12.1, this law states that if slaves died in the course of corrective punishment, regardless of the number of days, masters were not criminally responsible; but if masters did violence to their slaves in a manner clearly designed to kill, this constituted evidence of intent (*voluntate*) and could be punished as homicide.[45] Intent is, of course, difficult to prove, but Constantine clarified the matter by enumerating an extensive list of violent actions that were *ipso facto* to be taken as evidence of intention. This was a significant elaboration on the second-century principles noted above and shows how Christian values had begun to intermingle with classical legal regulations on slaveholding in ways that tightened enforcement against the killing of one's own slave.[46]

41 Gai. 3.213; cf. D. 48.8.2 (Ulp. 1 de adult.); Coll. Mos. 1.3.2; Edict. Theodor. 152. A rescript of Diocletian preserved at Coll. Mos. 3.4.1 = Cod. Greg. 14.1 indicates that charges were at times pursued. More at Olivia F. Robinson, *The Criminal Law of Ancient Rome* (London: Duckworth, 1995): 43.

42 D. 48.8.11.1–2 (Mod. 6 reg.).

43 Exod. 21.20–21, cited in Latin translation at Coll. Mos. 3.1.1. See also Catherine Hezser, *Jewish Slavery in Antiquity* (Oxford: Oxford University Press, 2005): 207–8; Lucrezi, *L'uccisione Dello Schiavo in Diritto Ebraico e Romano* (n. 40): 101–33.

44 Conc. Eliberitanum a. 306 can. 5 (Johannes Mansi, *Sacrorum conciliorum nova et amplissima collection*, vol. 2 [Florentiae, 1795]: 2.6 = Karl Joseph Hefele, *Conciliengeschichte* [Freiburg im Breisgau: Herder, 1873]: 1.138 = Engbert Jonkers, ed. *Acta et symbola conciliorum quae saeculo quarto habita sunt* [Leiden: Brill, 1975]: 6).

45 Cod. Theod. 9.12.1 = Cod. Iust. 9.14.1 De emendatione servorum (May 11, 319), esp. *tunc reus homicidii sit, si voluntate eum vel ictu fustis aut lapidis occiderit* . . . . See also Cod. Theod. 9.12.2 (Apr. 18, 329 Seeck), which indemnified masters whose slaves died during corrective punishment without, however, repealing the original law. For the same principle, see Paul. Sent. 5.23.6 and Basil. Epist. 188.8.

46 More on this process at Noel Lenski, "Constantine and Slavery: Libertas and the Fusion of Roman and Christian Values," *Atti dell'Accademia romanistica costantiniana* 18 (2011): 235–60; Noel Lenski,

In light of our general awareness of the nearly unlimited de facto power of masters over those enslaved to them, most scholars have doubted that the Roman prohibition on slave killing had any significant effect on lived praxis. But a careful look at the sources shows that this assumption may not be correct. At the very least, the prohibition was upheld in legal pronouncements by subsequent rulers and jurists in the east Roman tradition.[47] And the same prohibition was also upheld in western canon law, with the obvious proviso that enforcement was limited to excommunication.[48] More importantly, some literary sources – though admittedly few in number – show an awareness in the broader society that slave killing was prohibited at law and that the prohibition could be enforced.[49] This is not to deny that masters continued to murder their slaves with impunity, for few accusers would have chosen to bring charges against a master for killing his own slave, and even if they had, it would have been difficult to convict the master by proving intent.

Even so, we do have one illustrative example of an imperial agent implementing the slave-murder prohibition which happens also to shine a light on differences between Roman and Germanic custom in this arena. Describing the Roman general Narses' preparations for his decisive battle over Alamannic and Frankish forces at the Battle of Casilinum in 554, Agathias reports that one of Narses' allied chieftains, a Herul, had murdered a slave he owned on a slight pretext. Narses was infuriated and brought the Herul before him to answer for his behaviour:

> In answer to his enquiries the barbarian admitted full responsibility for what had been done and even went so far as to say that masters were at liberty to dispose of their own slaves as they wished and that, if the others did not behave themselves, they too would receive similar treatment.[50]

"Monothéismes," in *Les mondes de l'esclavage: une histoire comparée*, ed. Paulin Ismard (Paris: Seuil, 2021): 815–32.

47 Gai. epit. 1.3.1 (early fifth century); Inst. Iust. 1.8.1–2 (533 CE); SRRB (Walter Selb and Hubert Kaufhold, eds., *Kommentar*, vol. 3, *Das syrisch-römische Rechtsbuch* [Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2002]: 76, c. 500 CE); Ecloga 17.49 (741 CE, Ludwig Burgmann, ed., *Ecloga: Das Gesetzbuch Leons III. und Konstantinos' V*, Forschungen zur byzantinischen Rechtsgeschichte 10 [Frankfurt am Main: Löwenklau-Gesellschaft, 1983]).

48 Conc. Agathense (a. 506) can. 15(62) (CCSL 148.227); Conc. Epaonense (a. 517) can. 34 (CCSL 148A.33); Conc. Toletanum XI (a. 675) can. 6 (Vives 360), which also orders imprisonment against clerical violators; cf. Conc. Arelatense II (a. 442–506) can. 53 (CCSL 148.124).

49 Priscus, Frag. 8.111–13 Carolla (= Roger C. Blockley, ed., *The Fragmentary Classicising Historians of the Later Roman Empire: Eunapius, Olympiodorus, Priscus and Malchus,* ARCA [Liverpool: F. Cairns, 1983]: 11.2; = Karl Müller, ed., *Fragmenta Historicorum Graecorum*, vol. 5,1 [Paris: Firmin Didot, 1873]); Liban. Orat. 25.35.

50 Agath. 2.7.1–5, quotation at 3: ἐπεὶ δὲ αὐτῷ πυνθανομένῳ τὸ πραχθὲν ἀνωμολόγει ὁ βάρβαρος καὶ οὐκ ἀνήνετο, τοὐναντίον μὲν οὖν καὶ ἐφικτὸν εἶναι ἔφασκε τοῖς κεκτημένοις τοὺς σφετέρους δούλους ᾗ βούλονται μετιέναι, ὅτι τε καὶ οἱ ἕτεροι, εἰ μὴ σωφρονοῖεν, ἀλλὰ γὰρ καὶ οἵδε παραπλήσια πείσονται.

In the face of this defiance, Narses ordered the Herul chief to be executed by the sword, even despite the fact that this judgment would lead to serious protests among his Germanic allies before a major battle.[51] The culture clash between these two approaches to slave killing thus points to differences in slaveholding practices that prevailed in an environment where Roman law was not the only nor even the predominant normative system.

Indeed, Germanic law seems not to have forbidden the killing of one's own slaves.[52] Although it would be impossible to prove the absence of a rule, what we can say with certainty is that Germanic law was, in general, averse to criminalizing murder. It dealt with unlawful killing not through criminal prosecution in the name of state authority but rather through the tort system of compensatory personal damages described in the opening section of this paper – the system of *Wergeld*.[53] Thus, while Roman law from the first century BCE onward had treated murder as a crime of interest to the state and therefore subjected it to prosecution on behalf of the *res publica*, the barbarian codes of the sixth through eighth centuries treat it as a delictual matter to be recompensed with money compositions to be paid to the relatives of the victim.[54] These compositions were set according to the value assigned to a given individual on the basis of their sex, status, and social position, with fully free males netting the highest value and enslaved persons the lowest. All the early Germanic codes report fixed settlements to be paid in the instance of killing a slave by a third party, and correspondingly diminished sums for permanent injuries done to them.[55] Under these

51 On the Heruli as a Germanic people, see Jan Prostko-Prostynski, *A History of the Herules* (Poznań: Archeobooks, 2021).

52 Nehlsen, *Sklavenrecht zwischen Antike und Mittelalter* (n. 15)*:* 272–73; cf. 175–77. Examples of masters killing slaves with impunity at Greg. Tur. Franc. 5.3; 7.46; cf. 3.15. Note that Tac. Germ. 25.1 states explicitly that slave killing occurred with impunity in Germanic society.

53 See R. Schmidt-Wiegand, "Wergeld," in *Germanische Altertumskunde Online*, ed. Sebastian Brather, Wilhelm Heizmann and Steffen Patzold (Berlin: De Gruyter, 2010): https://www.degruyter.com/database/GAO/entry/RGA_6436/html [accessed 07.05.2024], and the studies at Lukas Bothe et al., eds., *Wergild, Compensation and Penance: The Monetary Logic of Early Medieval Conflict Resolution*, Medieval Law and Its Practice 31 (Leiden: Brill, 2021) with earlier bibliography. For the development of the death penalty in Germanic law, see H. Nehlsen, "Entstehung des öffentlichen Strafrechts bei den germanischen Stämmen," in *Gerichtslauben-Vorträge. Freiburger Festkolloquim zum fünfundsiebzigsten Geburtstag von Hans Thieme*, ed. Karl Kroeschell (Sigmaringen: Thorbecke, 1983): 3–16.

54 On the Roman law of murder, see Olivia F. Robinson, *The Criminal Law of Ancient Rome* (n. 41): 41–46; Judy E. Gaughan, *Murder Was Not a Crime: Homicide and Power in the Roman Republic*, Ashley and Peter Larkin Series in Greek and Roman Culture (Austin: University of Texas Press, 2010): 134–40. On Germanic law and deadly violence, see William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago: University of Chicago Press, 1990).

55 Burgundian law: Burg. lib. const. 10.1–5, 46.3–4 (MGH LL nat. Germ. 4.1.50–51, 77); cf. Burg. Rom. 2.6 (MGH LL nat. Germ. 2.1.127). Frankish law: Lex Sal. Merov. 35.1, 104.10–11, 121 (MGH LL nat. Germ. 4.1.128, 261, 264); Lex Rib. 29(28) (MGH LL nat. Germ. 3.2.84); cf. Lex Rib. 65(62) (MGH LL nat. Germ. 3.2.117), and see Lex Sal. Merov. (VII Capitulare) 2 (Eckhardt, *Pactus Legis Salicae II.2* [n. 16]: 450). Lombardic law: Edict. Roth. 14, 129–36, 252, 334, 376 (MGH LL 4.15, 30–31, 61–62, 76, 87); Lex Lang. Liut. 124.

circumstances, because an enslaver was the only person who could claim compositions for damages done to their slaves, there could be no penalty assessed for the damage or destruction wrought on persons that the enslaver claimed as his property. Moreover, these same Germanic codes regularly prescribe death for enslaved persons when these committed even relatively minor delicts, particularly theft.[56] Slave killing was not, in other words, ever considered a criminal matter – and the killing of one's own slaves was not considered a legal matter whatsoever.

This unconcern with killing one's slaves is well illustrated in Gregory of Tours' account concerning the Frankish slaveholder Rauching, who became enraged over the conjugal affair of two of his slaves, to which he had not consented. Seeking protection, the slave couple fled to a church for asylum, a move which canon law attempted to protect by prescribing that church clerics should safeguard such couples by negotiating the return of the slaves to their master on the condition that no harm come to them without, however, consecrating the union. But after negotiating their return in keeping with the canon law, Rauching deliberately broke his oath by having a capsule specially crafted out of a hollow log inside of which he entombed the couple and suffocated them. This was precisely the sort of deliberate slave killing which Constantine had forbidden, but Rauching appears to have felt fully entitled to enact his wrath on these two humans with impunity – because they were his slaves.[57] Germanic law thus shows no moral compunction about slave killing, nor any concern that it might represent a threat to state order. Instead, as the Herul leader told Narses in Agathias' account, it granted to masters wanting to kill their slaves the power to do 'whatever they wished' with them (ᾗ βούλονται).[58] This puts the Germanic tradition entirely at odds with contemporary Roman law, for Constantine's prohibition used state authority to punish the slave-killing master precisely for doing so 'willingly' (*voluntate*).

Moreover, what appears to be the lone exception to this principle turns out to be the case that proves the rule. The mid-seventh-century Visigothic King Chindaswinth (r. 642–53) issued a series of laws favourable to slaves among which was an order prohibiting private slave killing in the absence of a public judicial ruling – very much in

VIII (MGH LL 4.159–60); Lex Lang. Ratch. 7.III (MGH LL 4.188–89). Visigothic law: Lex Visig. 6.5.9 (MGH LL nat. Germ. 1.273).

56 Burgundian law: Burg. lib. const. 4.2, 7.1, 35.1–3, 50.3–4, 77.1–2 (MGH LL nat. Germ. 2.1.44, 48, 68–69, 82, 101–2); cf. Burg. Rom. 4.4, 19.1–3 (MGH LL nat. Germ. 2.1.128, 143). Frankish law: Lex Sal. Merov. 40.5 (MGH LL nat. Germ. 4.1.148). Lombardic law: Edict. Roth. 33, 142–43, 237, 239, 370 (MGH LL 4.18, 32–33, 59, 86); Lex Lang. Grim. 3 (MGH LL 4.92–93); Lex Lang. Liut. 64.XI (MGH LL 4.133).

57 Greg. Tur. Franc. 5.3; cf. Conc. Aurelianense IV (a. 541) can. 24 (CCSL 148A.138).

58 It is impossible to know whether Agathias believed he was quoting the precise words of the Herul chief, but he does show remarkable linguistic fidelity to source material, Robert Rollinger and Josef Wieshöfer, "'Even the Valleys and Hollows of the Mountain Thickets He Filled with Corpses . . .': Agathias, Shabhur and Ancient Near Eastern Topoi of Royal Heroism," in *From East to West in Late Antiquity. Studies in Honor of Jan Willem Drijvers*ed, ed. Noel Lenski et al., Munera 55 (Bari, forthcoming 2024).

keeping with the Roman rule first introduced by Antoninus Pius.[59] Masters who violated the rule were to be punished with perpetual exile and the loss of their fortunes.[60] To understand why Chindaswinth's law differs from other Germanic systems on the question of slave killing, we must return to the argument laid out above concerning the amalgamation of Germanic and Roman principles in the Visigothic system. Prior to the reign of Chindaswinth, the Gothic kings had operated with a 'personal' system under which 'Gothic' subjects followed the *Codex Euricianus* while 'Roman' subjects were governed by the *Lex Romana Visigothorum* (*Breviarium Alarici*).[61] Unsurprisingly, the latter (issued in 507 and still valid down to the early seventh century) still retains Antoninus Pius' principle requiring a public trial of slaves whose crimes might merit execution by their masters before any slave killing could occur.[62] Meanwhile, no extant portion of the *Codex Euricianus* says anything directly on the matter, although one extant 'Antiqua' (a law known to derive from the sixth-century *Codex Revisus* and, ultimately, probably from the *Codex Euricianus*) does report useful information:

> If a slave steals something from his master or from a fellow slave, it rests in the power of the master to do whatever he wishes with him (*in domini potestate consistat, quid de eo facere vellit*); nor should a judge intervene in this matter, unless the slave's lord happens to wish this.[63]

This obviously grants the master broad latitude to punish his criminous slave without interference from state judicial oversight. It grants this 'power' with the distinctive general relative clause 'to do whatever he wishes with him,'[64] a phrase we saw already in Agathias' passage on the slave-murdering Herul chief. More importantly, Chindaswinth's law on slave killing – the primary subject of this discussion – also contains a very similar proviso: while it requires all masters to turn offending slaves over

59 On Chindaswinth's mitigatory slave legislation, see 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): 257–58, 271–72.

60 Lex Visig. 6.5.12 [Recc.] (MGH LL nat. Germ. 1.274–78).

61 See above n. 20.

62 Lex Romana Visigothorum Epit. Gai 1.3.1: *occidendi tamen servos suos domini licentiam non habebunt (domini)* [. . .] *Nam si servus dignum morte crimen admiserit, iis iudicibus, quibus publici officii potestas commissa est, tradendus est, ut pro suo crimine puniatur*. Interestingly, Constantine's law forbidding slave killing was not transmitted into Visigothic law through the Breviarium Alarici, which preserves only Constatnine's second Theodosian Code law exempting masters who killed their slaves in the course of corrective punishment from prosecution, Lex Romana Visigothorum Cod. Theod. 9.9.1.

63 Lex Visig. 7.2.21 (MGH LL nat. Germ. 1.296): *Si servus domino suo vel conservo aliquid involaverit, in domini potestate consistat, quid de eo facere vellit; nec iudex se in hac re admisceat, nisi dominus servi fortasse voluerit*.

64 In post-classical Latin, indefinite and general relative pronouns are greatly simplified, such that what would have been *quicquid* reverts to *quid* here, see Veikko Väänänen, *Introduction au Latin vulgaire* (Paris: Klinckseick, 1963): 134, 174–75.

to a judge for adjudication of their misdeeds, it leaves open the possibility that the judge might still allow the master to execute his own slave:

> But this should happen in such a way that, if the judge does not wish to kill the culprit, he should make a written decree concerning his death sentence, and it should remain in the power of his master to decide whether he wishes to kill him or to save his life (*et utrum interficere eum dominus eius an vite reservare voluerit, in eius potestate consistat*).[65]

The verbal parallels between the two Visigothic passages are unmistakable and offer clear signs of a formulaic relationship – a relationship likely born from a common origin in what was the original Visigothic principle granting the master the 'power to do whatever he wished' (*voluerit*) with his slave. This was, once again, diametrically opposed to Constantine's ruling strictly forbidding slave killing if it was deemed to be *willful* (*voluntate*).

In an earlier article, I have shown that Chindaswinth merged Gothic and Roman principles in a lengthy and important law (Lex Visig. 6.4.3) concerning personal assaults (*iniuriae*).[66] With this law on slave killing (Lex Visig. 6.5.12) we see the same sort of merger: a melding of the Roman law prohibiting slave killing without a prior trial, with the Germanic law granting masters wide latitude over the punishment and execution of their slaves as they wished. Moreover, we have direct testimony to the social discomfort occasioned by this merging of the two distinct legal traditions. Chindaswinth's law is transmitted in the *Liber Iudiciorum,* which was first finalized and issued by his son Recceswinth in 654. Thirty years later, the staunchly traditionalist King Erwig (r. 680–687) issued a new recension of *Liber Iudiciorum* that significantly weakened Chindaswinth's law against slave killing and entirely omitted another Chindaswinthian ruling forbidding a master's punishment of his own slaves with bodily mutilation – a law directly connected with the abovementioned Lex Visig. 6.4.3 on *iniuriae*.[67] Erwig's successor, Egica (r. 687–702), in his revisions to the *Liber Iudiciorum* in the 690s, chose to restore both of Chindaswinth's original laws, which is why we have the two divergent copies.[68] But these vacillations, made apparent by the manuscript tradition, offer clear evidence of a controversy over the question of slave killing and mutilation and thereby leave us with a textual tradition that highlights the diver-

65 Lex Visig. 6.5.12 (MGH LL nat. Germ. 1.275): *ita tamen, ut, si reum iudex occidere noluerit, mortis eius sententiam scriptis decernat, et utrum interficere eum dominus eius an vite reservare voluerit, in eius potestate consistat*.

66 Lenski, "Law and Language" (n. 8).

67 Lex Visig. 6.5.12 [Erv.] (MGH LL nat. Germ. 1.274–78). On mutilation, see Lex Visig. 6.5.13 (MGH LL nat. Germ. 1.278–79). See also Conc. Emeritanum (a. 666) can. 15 (Vives 335–36); Conc. Toletanum XI (a. 675) can. 6 (Vives 360) which show the church continuing to fight against the mutilation and killing of slaves by clergy.

68 Lex Visig. 6.5.13* (MGH LL nat. Germ. 1.279–80).

gence between these two strains of Visigothic law and the social difficulties this occasioned.

The Germanic law tradition thus arrived at a legal prohibition on slave killing only very late and only in the Visigothic system, which finally melded its formerly personal codes of Germanic and Roman law into a single territorial system in the seventh century. Even here, however, the Visigoths implemented this new blanket prohibition against slave killing in the absence of a judicial hearing in desultory fashion, first introducing it, then weakening the prohibition, and finally – at the very end of the seventh century – embracing it. All the while, however, even Visigothic law preserved a space for the master to do 'whatever he wished' with slaves he regarded as worthy of execution, as with those he believed guilty of theft. As such, all the Germanic codes bear a marked difference with contemporary Roman law on the question of slave killing, for the Roman system had long since rejected the notion that the master's will could be left unimpeded by state intervention.

4 Enslavement for Crimes and Delicts

Although the Romans of the Republican period put too high a premium on citizenship and freeborn status to permit individuals to be enslaved for crimes, the growing arena of 'criminal' law under the emperors burgeoned into a system of state behavioural control that came to include enslavement among its catalog of retributions for criminous behaviour. Termed *servitus poenae* (enslavement to one's penalty), the practice became widespread by the first century as citizens convicted of a growing list of *crimina* were made liable to impressment into servile activities such as labouring in imperial mines, quarries, and factories, or fighting in the arena.[69] But even if *servi poenae* were considered a kind of 'slave', they were always distinguished from other Roman slaves in that they were not available for sale or conveyance on the open market. They were not, in other words, made into chattels but were enslaved to the state, more akin to convict labourers than privately held bondsmen.

Meanwhile the *ius civile* remained firm that *ingenuitas* was inalienable well into late antiquity. Apart from the *SC Claudianum*, discussed above, the only other excep-

69 Peter Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford: Clarendon, 1970): 131–36, 164–65; Fergus Millar, "Condemnation to Hard Labour in the Roman Empire, from the Julio-Claudians to Constantine," *Papers of the British School at Rome* 52 (1984): 128–47; Julia Hillner, *Prison, Punishment and Penance in Late Antiquity* (Cambridge: Cambridge University Press, 2015): 199–211; Aglaia McClintock, *Servi Della Pena: Condannati a Morte Nella Roma Imperiale*, Pubblicazioni Della Facoltà Di Economia, Università Degli Studi Del Sannio, Benevento, Sezione Giuridico-Sociale 65 (Napoli: Edizioni scientifiche italiane, 2010) and Aglaia McClintock, "Servi Poenae: What Did It Mean to Be 'Condemned to Slavery'?" in *The Position of Roman Slaves. Social Realities and Legal Differences*, ed. Martin Schermaier, Dependency and Slavery Studies 6 (Berlin: De Gruyter, 2023): 187–201.

tion was made for cases involving collusion between two co-conspirators who planned to profit by having one of the two sell the other to a third-party buyer, then seeking freedom for the purchased one once his *ingenuitas* was revealed, in theory allowing the two to pocket the money taken from the buyer in the fraudulent sale. The penalty for such chicanery was, ironically, enslavement – albeit pursuant to a fraud claim rather than as a result of the self-sale itself.[70] The generalized application of this rule surely explains why we have almost no evidence for self-sale in the period of the high empire; and even the attestations we do have tend to involve provincials who did not have Roman citizenship and whose *ingenuitas* was not, therefore, defended by Roman law.[71]

The Roman prohibition on the enslavement of freeborn individuals continued in force into the fifth century when, for example, Emperor Honorius allowed landowners who had ransomed freeborn Roman captives from the barbarians to retain these as dependent labourers for up to five years if they could not repay their ransom costs, but insisted that their freeborn status (*ingenuitas*) was never compromised and that they could walk free as *ingenui* (and not *liberti*) at the close of the five years.[72] The statutory defence of freeborn status in Roman law continued throughout the fifth century and into the sixth when, for example, Justinian forbade creditors from using the children of their debtors as pledges against debts.[73] On similar principles, Justinian also abolished 'enslavement' for crimes: while still allowing condemnation to hard labour, he removed the status of '*servitus poenae*' formerly attached to it so as not to compromise the marital status of the convict (since enslaved persons could not legally be married).[74]

While the Roman state worked to defend freeborn persons against chattel enslavement and even did away with penal enslavement in late antiquity, the post-Roman Germanic successor states fully embraced enslavement as a solution to a series of legal problems, including debt and criminality.[75] This split occurred in no small part because the Germanic societies of late antiquity had a much less fully articulated sense of statehood than the Empire, but above all – once again – because Ger-

70 D. 1.5.5.1 (Marcian 1 inst.); D. 28.3.6.5 (Ulp. 10 ad Sab.); D. 40.12.7 (Ulp. 54 ad ed.); D. 40.13 (passim); D. 40.14.2 (Saturn. 1 de off. procons.); Cod. Iust. 7.16.5; 7.18.1; Cf. Edict. Theodor. 82.

71 Jacques Ramin and Paul Veyne, "Droit Romain et Société: Les Hommes Libres Qui Passent Pour Esclaves et l'esclavage Volontaire," *Historia* 30 (1981): 472–97, assemble the evidence, most of which points to imperial interventions to overturn self-sales and uphold the inalienability of *ingenuitas*.

72 Const. Sirmond. 16 = Cod. Theod. 5.7.2 = Cod. Iust. 8.50.20 (a. 408), esp. *habituros incolumem, si in ea nati sunt, libertatem.* See also Cod. Theod. 10.10.25 (408); Cod. Theod. 11.11.1 = Cod. Iust. 11.55.2 (a. 368); Cod. Theod. 3.3.1 (391); Novell. Valent. 33 (451).

73 Novell. Iust. 134.7 (556); cf. Mellusso, *La schiavitù nell'età giustinianea* (n. 39): 223.

74 Novell. Iust. 22.8 (a. 535): οὐδένα τῶν ἐξ ἀρχῆς εὖ γεγονότων ἐκ τιμωρίας γίνεσθαι συγχωροῦμεν οἰκέτην; cf. Mellusso, *La schiavitù nell'età giustinianea* (n. 39): 56–59.

75 See especially Heinrich Brunner, "Abspaltungen der Friedlosigkeit," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 11 (1890): 62–100, esp. 88–98; Detlef Liebs, "Sklaverei aus Not im germanisch-römischen Recht," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Roma-*

manic legal anthropology displayed an entirely different conception of personhood. The question of 'statehood' remains subject to ongoing debate, but there can be no denying that these post-Roman kingdoms of the West had only a fraction of the institutional infrastructure witnessed in the high imperial Roman state.[76] This diminished political armature surely helps explain why post-Roman legal systems show only scanty concern with criminal law – if by 'criminal law' we mean state sanctioning of offenses deemed harmful to the public order. Instead, post-Roman law in western Europe provided a framework for the sanctioning of most offenses through its highly developed system of torts. There is thus no evidence for anything mirroring Rome's state-managed penal servitude (*servitus poenae*). To be sure, individual kings sanctioned some acts as criminally unlawful, especially in the instance of the Visigothic state, which came the closest of any successor kingdom to reproducing Roman state structures and which punished some offenses – such as treason, counterfeiting, prostitution, and draft-dodging – with enslavement to the king.[77] Yet, in contrast with Roman *servitus poenae* which sequestered criminal convicts (*servi poenae*) from the emperor's own slaves (*servi Caesaris*), the Visigothic king treated criminally enslaved persons as his own chattels, even to the extent that he could gift these to other private persons.[78]

By the same token, the post-Roman Germanic states had a much more comprehensive concept of personal delict than one finds in Roman law. In Germanic law, delicts such as theft, assault, and even murder represented an offense not against the state order but against the person of the victim. As a consequence, such offenses were

nistische Abteilung 18 (2001): 286–311; cf. Nehlsen, *Sklavenrecht zwischen Antike und Mittelalter* (n. 15): 339.

76 See, for example, Damián Fernández, "Taxation, Landownership, and the Infrastructural Power of the Visigothic State," in *Ancient States and Infrastructural Power: Europe, Asia, and America. Empire and After*, ed. Clifford Ando and Seth Richardson (Philadelphia: University of Pennsylvania Press, 2017): 243–71. On Roman 'statehood', see Brent D. Shaw, "Was the Roman State a State?" *Medieval Worlds* 18 (2023): 3–71.

77 Conc. Toletanum XIII (a. 683) can. 1; Lex Visig. 3.4.17; 7.6.2; 9.2.8–9 (MGH LL nat. Germ. 1.157, 310, 370–79). Other examples at Lenski, "The Late Roman Colonate: A New Status between Slave and Free" (n. 7): 263–64.

78 In the Visigothic kingdom, apart from instances listed in n. 77, see Cod. Euric. Rest. 2 (MGH LL nat. Germ. 1.28, incestuous marriage); Lex Visig. 3.6.2 (MGH LL nat. Germ. 1.167–69, fraudulent divorce); Lex Visig. 4.5.7 (MGH LL nat. Germ. 1.205–7, violating marriage restrictions for ecclesiastical freedmen); Lex Visig. 12.2.11, 14, 17 (MGH LL nat. Germ. 1.417, 420–23, 425–26, Jews refusing conversion); Lex Visig. 12.2.12 (MGH LL nat. Germ. 1.417, Jews circumcising Christian slaves); Lex Visig. 12.2.18 (MGH LL nat. Germ. 1.426–27, unconverted Jews continuing to trade with Christians). At Fredegar, Chronicon 4.82 (MGH SS rer. Mer. 2.162–63) Chindaswinth is reported to have gifted the wives and daughters of those rivals whom he had executed to his supporters, along with their fortunes. Most disturbing of all, in 694, Egica decreed the enslavement of all Jews in the kingdom for redistribution as chattels to his subjects for the alleged crime of supporting the usurper Suniefred and for continuing to resist conversion (Conc. Toletanum XVII can. 8 [Vives 534–6]). In a Frankish context, Vita Desiderii 8 (CCSL 117.352). In the Bavarian tradition, enslavement to the fisc was prescribed for *minores personae* who established 'incestuous' marriages, Lex Bai. 7.3; cf. 16.11 (MGH LL nat. Germ. 5.2.348, 439–40).

redressed not through state sanctions on the perpetrator's freedom but through the payment of monetary compositions.[79] This was, as noted above, the Germanic system of *Wergeld*, a system for which there is no evidence in Roman legal practice of the Classical and post-Classical period.

In yet another marked contrast with Roman law, when offenders could not afford to meet the costs of compositions, which were often enormous, they were forced to enter into slavery to the plaintiff.[80] The classic description of the legal procedure subtending this process in Frankish society can be found in title 58 of the *Pactus Legis Salicae* (c. 507) '*De chrenecruda*' ('On mudslinging', a Frankish word – and concept):

> If someone kills a man and, once his entire fortune has been given over, he does not have enough wealth to pay a composition so as to fulfill the law, he should offer twelve oathhelpers to the effect that neither above the earth nor beneath the earth does he have any more wealth except what he has given [. . .]

A ceremony is then described in which the bankrupt defendant collects dirt from the floor of the four corners of his house and slings it over his shoulders at various family members who can offer him no more money; he must then jump over the wall of his farmstead shirtless and barefooted and flee.

> Then he who has the man who committed the homicide in his surety *(sub sua fide)* should present him in court, and after presenting him in four courts so they might remove his surety. And if no one grants him surety in paying the composition, that is so as to redeem him from the debt he has not paid, then he should make the composition with his life.[81]

The last phrase may have implied execution of the delictual debtor or it may instead have resulted in his enslavement to the party to whom the unpaid composition is owed.[82] A somewhat different version of the process is reported in the considerably later *Lex Langobardorum Liutprandi* of the early eighth century:

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79 Though penalties were often supplemented with payments to the king for 'the peace' or for 'feuding' Lenski, "Law and Language" (n. 8): 378–79.

80 If we are to believe Tacitus (Tac. Germ. 24.2), debt slavery went very far back among Germanic societies.

81 Lex Sal. Merov. 58.1, 6 (MGH LL nat. Germ. 4.1.218, 221): *Si quis hominem occiderit et, tota facultate data, non habuerit, unde componat, ut totam legem impleat, XII iuratores donet, quod nec super terram nec subtus terram plus de facultate non habeat, quam iam donauit* [. . .] *Quod si uero nec ipse habuerit, unde totam legem <per>solvat, tunc illum qui homicidium fecit, <ille> qui eum sub <sua> fide habet, in mallo praesentare debet, et sic postea eum per quattuor mallos ad suam fidem tollant. Et si eum in compositionem nullus ad fidem tulerit, hoc est ut eum redemat de <hoc>, quod non persolsit, <tunc> de sua uita conponat*.

82 Heinrich Geffcken, *Lex Salica zum akademischen Gebrauche* (Leipzig: Von Veit, 1898): 201 contends that '*de vita sua componat*' implies the death penalty, but because the formularies (e.g. Formulae Andecavenses 3 [MGH Form. 6]) make it clear that slavery could be substituted for execution, Lex Sal. Merov. 58.6 will often have resulted in enslavement. Brunner, "Abspaltungen der Friedlosigkeit" (n.

> If a man who is prodigal or disastrous has sold or dissipated his fortune and does not have enough to pay a composition, and he commits theft, or adultery, or a breach of the peace and inflicts blows on another man, and the composition itself is worth twenty solidi or more, then a public representative should give him into the hand of the one to whom he did such illicit things, and that man may have him as his slave. But if the composition is worth less than twenty solidi, as can happen when it is up to six or twelve solidi, then a public representative should give him into the hand of the one to whom he committed this fault as a slave in order that he may serve him for as many years as it takes for the fault to be redeemed, and afterward he may be absolved and go wherever he wishes.[83]

The legal procedures obviously differ between the two systems – with the earlier Frankish form having every appearance of tribal custom while the Lombardic law reflects less rustic ceremonial and a greater involvement of state representatives – but both clearly entail practices rooted in the distinctly Germanic system of *Wergeld*. The perpetrator of a delictual offense who is unable to afford the composition prescribed at law (and whose relatives cannot help) is to be enslaved to the plaintiff, usually the victim or a member of their family.

Similar principles allowing the private enslavement of a defendant who could not afford to pay an adjudicated *Wergeld* composition can be found across the Germanic codes, for this remedy is applied to a wide range of offenses:

- Burg. lib. const. 12.3 (MGH LL nat. Germ. 2.1.51): rape and bride theft
- Lex Sal. Merov. IV Cap. 113 (MGH LL nat. Germ. 4.1.262–63): general provision for all insolvent defendants[84]
- Lex Visig. 2.1.21 (Antiqua, MGH LL nat. Germ. 1.68–69): giving fraudulent judgments
- Lex Visig. 2.4.6, 9 (Chindaswinth, MGH LL nat. Germ. 1.98–99, 102): bearing false witness
- Lex Visig. 3.3.5 (Antiqua, MGH LL nat. Germ. 1.142): kidnapping a freeborn female who is betrothed to a third party
- Lex Visig. 4.4.1, 3 (Antiqua, MGH LL nat. Germ. 1.193–94): exposing a child
- Lex Visig. 5.4.11 (Antiqua, MGH LL nat. Germ. 1.221): selling free men or women into slavery
- Lex Visig. 6.1.5 = Cod. Euric. Rest. 11 (Chindaswinth, MGH LL nat. Germ. 1.252–55): bringing a false accusation that results in the death of a slave tortured in court
- Lex Visig. 6.4.2 (Antiqua, MGH LL nat. Germ. 1.263): burglary

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75): 96–98 is thus correct to argue that '*de vita sua componat*' involved either execution or enslavement; cf. Richard Behrend, *Lex Salica*, 2nd ed. (Weimar: Böhlau, 1897): 24.

83 Lex Lang. Liut. 152.X (MGH LL 4.175): *Si autem minus de vigenti solidis fuerit ipsa conpositio, sicut solit fieri usque ad sex aut duodecim solidos, tunc debeat eum publicus dare in manum eius, cui tale culpa fecerit, pro servo in eo ordine, ut serviat ei tantos annos ut ipsa culpa redimere possit, et vadat postea ubi voluerit absolutus.*

84 Cf. Chilperici Edictum 8 (MGH Capit. Reg. Franc. 1 Cap. 4.8 pp. 10–11), enslavement for debt incurred by failure to pay a composition for theft.

- Lex Visig. 7.1.1 (Antiqua, MGH LL nat. Germ. 1.286–87): bringing false accusations
- Lex Visig. 7.1.5 = Cod. Euric. Rest. 10 (Antiqua, MGH LL nat. Germ. 1.288): committing a capital offense (poisoning, magic, theft, or any other illegal acts)
- Lex Visig. 7.2.13–14 (Chindaswinth, MGH LL nat. Germ. 1.293): theft of chattels or slaves
- Lex Visig. 7.3.2 (Chindaswinth, MGH LL nat. Germ. 1.298): kidnapping of slaves
- Lex Visig. 7.5.2 (Chindaswinth, MGH LL nat. Germ. 1.304–5): forging signatures or documents
- Lex Visig. 8.2.1 (Antiqua, MGH LL nat. Germ. 1.318–20): arson
- Lex Visig. 9.1.2 (Antiqua, MGH LL nat. Germ. 1.352–53): releasing a fugitive slave
- Lex Lang. Liut. 20.II (MGH Leg. 4.117): homicide
- Lex Lang. Liut. 63.X (MGH Leg. 4.132–33): false testimony
- Lex Lang. Liut. 80.XI (MGH Leg. 4.139–40): theft
- Lex Lang. Aist. 22.XIII (MGH Leg. 4.204): theft
- Lex Bai. 1.10 (MGH LL nat. Germ. 5.2.281–82): killing a bishop
- Lex Bai. 2.1 (MGH LL nat. Germ. 5.2.291–93; cf. Lex Bai. 7.5 (MGH LL nat. Germ. 5.2.351–52): committing a capital offense (*mortale crimen*)
- Lex Bai. 7.4 (MGH LL nat. Germ. 5.2.349–51); cf. Lex Alamannorum 38 (MGH LL nat. Germ. 5.1.98): performing manual labour on Sunday
- Lex Bai. 9.4 (MGH LL nat. Germ. 5.2.370–71): kidnapping a free man and selling him into slavery
- Wihtred 26 (Attenborough 1922, 28)[85]: theft[86]
- Ine 3.2 (Attenborough 1922, 36): performing manual labour on Sunday (cf. Edward and Guthram 7.1 [Attenborough 1922, 106])[87]
- Ine 7.1 (Attenborough 1922, 38): theft (cf. II Edward 6 [Attenborough 1922, 120]; VI Æthelstan 12.2 [Attenborough 1922, 168])
- Ine 74.1 (Attenborough 1922, 60): homicide

It was also the case that some Germanic codes permitted the direct enslavement of a perpetrator without ever offering the chance for redemption through a composition. We find this direct path to enslavement to the plaintiff in the following instances:

85 Frederick Levi Attenborough, *The Laws of the Earliest English Kings* (Clark: The Lawbook Exchange, 1922).

86 This law offered three options – death, sale into slavery overseas, or ransom for the perpetrator's *Wergeld*. On the problem of enslavement for even petty theft in Anglo-Saxon England, see Wulfstan, Archbishop of York, *Sermo Lupi ad Anglos* at D. Whitelock, ed., *English Historical Documents, 500–1042*, vol. 1 (London: Eyre & Spottiswoode, 1955): 856.

87 On the person enslaved for crimes and delicts (*witeþeow*) in Anglo-Saxon law, see D.A.E. Pelteret, *Slavery in Early Mediaeval England: From the Reign of Alfred until the Twelfth Century*, Studies in Anglo-Saxon History 7 (Woodbridge: Boydell Press, 1995): 42, 93, 120–23, 162–63, 247–48.

- Lex Sal. Merov. 13.7–9 (MGH LL nat. Germ. 4.1.61–62): enslavement of royal servants and freedmen (*leti*) who abduct a free girl, and of any free girl who consents[88]
- Burg. lib. const. 40.1–2 (MGH LL nat. Germ. 2.1.72): generic offenses
- Burg. lib. const. 47.1–3 (MGH LL nat. Germ. 2.1.77–78): enslavement of wives and adult children who conceal the horse and cattle thefts of their husbands or fathers
- Lex Visig. 3.1.2 (Antiqua, MGH LL nat. Germ. 1.122–23): enslavement of a female and her lover if she breaks her betrothal to another man
- Lex Visig. 3.2.2 (Antiqua, MGH LL nat. Germ. 1.133–34): enslavement of a female slave owner who has sexual relations with her own slave but succeeds in gaining asylum in a church
- Lex Visig. 3.2.6 (Antiqua, MGH LL nat. Germ. 1.137): enslavement of both a woman whose husband had been missing and any man who was her lover if these married and later the missing husband returned
- Lex Visig. 3.3.1–2 (Antiqua, MGH LL nat. Germ. 1.139–41): enslavement of the kidnapper of a freeborn female who violates his victim
- Lex Visig. 3.3.11 (Chindaswinth, MGH LL nat. Germ. 1.144–45): enslavement of those who solicit adultery with another man's wife
- Lex Visig. 3.4.1 (Antiqua, MGH LL nat. Germ. 1.147): enslavement for raping another man's wife, and of an adulterous couple if the woman consents to the sex
- Lex Visig. 3.4.2 (Antiqua, MGH LL nat. Germ. 1.147–48): enslavement of a betrothed female who commits adultery
- Lex Visig. 3.4.3 (Antiqua, MGH LL nat. Germ. 1.148): enslavement of a couple convicted of adultery after the fact
- Lex Visig. 3.4.9 (Antiqua, MGH LL nat. Germ. 1.150–51): enslavement of a woman for marrying a man who is already married
- Lex Visig. 3.4.12 (Chindaswinth, MGH LL nat. Germ. 1.151–52): enslavement of an adulterous wife
- Lex Visig. 3.4.13 (Erwig, MGH LL nat. Germ. 1.152–55): enslavement of an adulterous couple when a third party brings the accusation
- Lex Visig. 3.4.14 (Antiqua, MGH LL nat. Germ. 1.155–56): enslavement for raping a widow
- Lex Visig. 3.6.1 (Antiqua, MGH LL nat. Germ. 1.166–67): enslavement of a couple for marrying while a divorce is pending
- Lex Visig. 3.6.2 (Chindaswinth, MGH LL nat. Germ. 1.167–68): enslavement of an adulterous wife

88 Conc. Aurelianense I (a. 511) (CCSL 148A.5) can. 2 offers the related principle that abductors who had fled to the church were to be handed over to the father of the abductee for execution or enslavement if they had violated the girl, or for enslavement if the girl had consented.

- Lex Visig. 6.2.3 (Chindaswinth, MGH LL nat. Germ. 1.259): enslavement of a poisoner
- Lex Visig. 6.3.1 = Cod. Euric. Rest. 3 (Antiqua, MGH LL nat. Germ. 1.260): enslavement for administering abortifacients
- Lex Visig. 7.3.3 (Antiqua, MGH LL nat. Germ. 1.298–99): enslavement for kidnapping freeborn children
- Lex Visig. 11.1.6 [Erv.] (Antiqua, MGH LL nat. Germ. 1.402): enslavement of doctors for killing patients during a phlebotomy
- Lex Lang. Liut. 130 (MGH Leg. 4.163): enslavement of a male who fornicated with a married woman by her husband's consent to the relatives of that woman
- Edward & Guthrum 4 (Attenborough, 1922, 104): enslavement for incest (*syblegerum*), to the king for the male and to the bishop for the female.

The sheer number of offenses catalogued shows the way in which the *Wergeld* system of Germanic law became a powerful mechanism by which to effectuate enslavement following private legal disputes. Moreover, the concinnity of the evidence presented here is striking not just because the various Germanic codes are so many and varied – an indication that this method of punishment was a shared cultural practice – but also for two further important reasons.

First, classical Roman law would not have allowed a private plaintiff to settle a delictual suit through the enslavement of the defendant. Astonishingly, this fact has escaped mention by a number of contemporary scholars, who have argued for continuity with the Roman law tradition and have treated the private enslavement of plaintiffs for delictual offenses in post-Roman law as just another form of 'penal enslavement' akin to Roman *servitus poenae*.[89] It cannot be stressed enough that Roman penal slavery did not generate chattel slaves, while Germanic law operated on the default assumption that enslavement for delictual offenses *was* chattel slavery. Moreover, our late antique actors were aware that there was a difference across the two traditions. This is made particularly clear by comparing the provisions of the *Liber Constitutionum* and the *Lex Romana Burgundionum*, i.e. the two 'personal' codes issued respectively for 'Barbarian' and 'Roman' members of Burgundian society in 517. While both codes punish unmitigated homicides with death, the *Liber Constitutionum* says explicitly that it does so in lieu of a *Wergeld* composition and orders homicides perpetrated under mitigating circumstances (by accident or during a brawl) to be dealt with strictly through the *Wergeld* system.[90] The *Lex Romana Burgundionum*, by contrast, adopts elements of Wergeld only haltingly and with the explicit proviso that it does so because Roman law otherwise lacked any *Wergeld* system:

89 Especially Rio, "Penal Enslavement" (n. 6); cf. Rio, *Slavery after Rome* (n. 6): 46–50.

90 Burg. lib. const. 2.1–7 (MGH LL nat. Germ. 2.1.42–43).

> But concerning the freeborn homicide who lodges within a church, a judgment must be awaited from the king concerning the monetary price for the murder victim; and because Roman law clearly makes no provision for monetary prices for those killed, Our Lord has established that the following must be observed: that if a freeborn person is killed by a freeborn person and the homicide takes asylum in a church, the one who committed the homicide should be handed over to the heirs of the dead man to serve as his slave, along with half of his property; the other half of his estate should be left to the heirs of the homicide.[91]

The mention of 'Our Lord' almost certainly references Gundobad, the father of king Sigismund under whom these two parallel codes were published. It thus highlights how the process of reconciling Burgundian and Roman law forced barbarian kings to grapple with the fact that the Roman law lacked any notion of *Wergeld*, the base structuring principle of Germanic law. This reality forced Gundobad (and in turn Sigismund) to apply valid Burgundian law in instances where a homicide was not simply to be executed, i.e. in cases involving asylum, for which the king imposed on the perpetrator the 'price' of enslavement to the family of the victim along with the loss of half his estate. Nothing could make it clearer that enslavement for delictual offenses, being as it was a sort of extension of *Wergeld* composition, was considered by contemporaries not to be 'Roman law'.

Second, striking in the lists above is the degree to which Germanic law dealt with what it regarded as sexual offenses using personal enslavement. Of the 24 laws enslaving persons directly for their offense, 15 are offenses involving sexual transgressions. The situation is brought into clear focus with the single example of Lex Visig. 3.3.11, punishing those who attempted to force women into sexual relations by prescribing that they were to be:

> arrested at the solicitation of a judge and handed over into the power of the man whose wife or daughter they are found to have been soliciting, so that the person whom either marital status or parental relationship holds up as the legal vindicator of this crime might have the freedom to make whatever judgment they wish concerning them.[92]

This surrender of the body of the offender into the power of the male responsible for the female victim may seem to imply a whole range of options for the defendant's fate, but as we have already indicated, the indefinite construction ('whatever judg-

91 Burg. Rom. 2.5 (MGH LL nat. Germ. 2.1.126–27): *De ingenuo vero homicida intra ecclesiam posito de interempti precio principis est expectanda sententia; et quia de preciis occisorum nihil evidenter Lex Romana constituit, dominus noster statuit observandum: ut si ingenuus ab ingenuo fuerit interemptus, et homicida ad ecclesiam confugerit, is ipse, qui homicidium admisit, cum medietate bonorum suorum occisi heredibus serviturus addicatur; reliqua medietas facultatis eius homicidae heredibus derelinquatur*. See also Burg. Rom. 2.1, in codex C5 (MGH LL nat. Germ. 2.1.125).

92 Lex Visig. 3.3.11 (MGH LL nat. Germ. 1.145): [. . .] *iudicis instantia conprehensi in eius potestate tradantur, cuius uxorem vel filiam sollicitasse repperiuntur; ut illi quoque de eis quod voluerint sit iudicandi libertas, quem vel coniugalis ordo vel parentalis propinquitas huius ultorem criminis legaliter esse demonstrat*.

ment he wishes') has a semantic range applying specifically to enslavement and more broadly to treating a person or thing as property. This fact sets the first part of our study in a new light, for in contrast with Roman norms (which were largely unconcerned with the sexuality of slaves provided their reproductive energy could be channelled toward the propagation of new enslaved children), the post-Roman western systems treated all manner of '*adulterium*' (an extremely broad category in Germanic law) as a personal affront which was to be punished severely by the offended party. This was especially true in cases involving the sexuality of one's free relatives, but it was even true when it involved one's slaves.

We can witness the effects of this draconian punishment of 'sex crimes' in Gregory of Tours' report that a certain cleric of the Urbs Cinomannica (Le Mans) initiated an adulterous relationship with another man's wife, inducing the couple to flee to another town; when the woman's family found out, they executed her by burning her alive; they then hoped to sell the offending cleric as a slave or, if a buyer could not be found, kill him; but instead he had the good fortune that his superior, Aetherius bishop of Lisieux, arranged to pay 20 gold pieces to redeem him – the normal price for adult slaves in this period.[93] The same principles also affected the decision at the Third Council of Toledo in 589 to deal with the problem of clerics who persisted in sexual relationships with the women who had been their wives before they converted from Arian to Nicene Christianity. Because Nicene clerics were forbidden to marry, their ongoing sexual relations with their wives represented a form of *adulterium*; to deal with this problem, the council chose a classic Germanic solution: enslave the women and sell them off, then piously donate the proceeds to the poor.[94] For all that Chindaswinth himself regularly activated this same tradition of enslaving persons for sexual offenses, in keeping with his broader concern for the fate of the oppressed, he also took pains to protect his subjects from the extortionate behaviour that the Germanic tradition of personal enslavement for 'sex crimes' could elicit from the property holding classes. Thus, he issued a law punishing any master who deliberately pretended his male slave was free so as to entice a free woman to marry him, then – after revealing the male's enslaved status – to impress the free woman into slavery. To counter this, Chindaswinth ordered that such deceptive masters should suffer *infamia,* be forced to regard the male slave they had pretended was free as in fact free, and even surrender any property they had promised the free woman for her bride price unto her.[95]

When the documentary record for Iberia becomes more robust in the tenth century, we find regular attestations of just this sort of high-handed behaviour on the part of landowners with the regular enslavement of women and men for various

93 Greg. Tur. Franc. 6.36; cf. 9.38.

94 Conc. Toletanum III (a. 589) can. 5; Conc. Spalense I (a. 590) can. 3; cf. Conc. Toletanum VIII (a. 653) can. 5.

95 Lex Visig. 3.2.7.

forms of sexual offense they are alleged to have committed with their slaves.[96] The same could be said of eleventh-century France, where the *Book of Serfs* of Marmoutier employs the same legal principles to ensure that mixed marriages between free and slave always resulted in the enserfment of the free spouse and of the resultant offspring.[97] Germanic law's strict norms of sexual regulation and its distinctive practice of subjecting violators to personal chattel enslavement – sometimes without even the option of reconciliation through a composition – could thus serve to entrap people into servitude in consequence of fulfilling their human urges.[98] It seems then that once this characteristically Germanic legal mechanism was locked in place, it displayed remarkable powers of endurance.

Further sealing the case for the distinctly Germanic character of this sort of enslavement for adultery is a law from Ostrogothic Italy issued as part of an edict of King Athalaric in 533/534 and preserved in Cassiodorus's *Variae*:

> But if someone disdains the honourability of marriage and with excessive and foul desire chooses to enter the embraces of a concubine: if she (i.e. the concubine) happens to be freeborn, let her be fully subjected to the yoke of slavery (*iugo servitutis*) along with her children to his wife in order that she (the concubine) might know that by honest judgments she has been set beneath that person (the wife) over whom she thought she could be made superior through illicit love. But if an enslaved woman (*ancilla*) arrives at such disgraceful behaviour, she should be subjected to the wife's vengeful punishment (*matronali ultioni*), but without bloodshed, in order that she might endure having that person as her judge whom, when absent, she should have feared.[99]

Despite the fact that Ostrogothic law, especially the law reflected in the *Edictum Theodorici*, generally follows Roman precedent, this ruling stands out for having nothing

96 See Adam J. Kosto and Adam C. Matthews, "The Liber Iudiciorum and Iberian Legal History in the Medieval Documentary Record," in *Visigothic Law from Antiquity to Modernity: Essays on the Liber Iudiciorum*, ed. Damián Fernández and Noel Lenski (Cambridge: forthcoming); Graham Barrett, "The Transmission of the Liber Iudiciorum in the Early Middle Ages," in *Visigothic Law from Antiquity to Modernity: Essays on the Liber Iudiciorum*, ed. Damián Fernández and Noel Lenski (Cambridge: forthcoming); cf. Paul Freedman, *The Origins of Peasant Servitude in Medieval Catalonia*, Cambridge Iberian and Latin American Studies (Cambridge: Cambridge University Press, 1991): 79–83, 106–18.

97 Paul Fouracre, "Marmoutier and Its Serfs in the Eleventh Century," *Transactions of the Royal Historical Society* 15 (2005): 29–49.

98 The conceptual apparatus underpinning this legally constructed reality spawned the proverb, 'trittst Du mein Huhn, so wirst Du mein Hahn' ('If you mount my hen, then you'll be my rooster'), Wilhelm Körte, *Die Sprichwörter und sprichwörtlichen Redensarten der Deutschen* (Leipzig: Brockhaus Verlag, 1847): 217 no. 2973.

99 Cassiod. Var. 9.18.8: *Si quis autem superflua turpique cupidine coniugali honestate despecta ad concubinae elegerit uenire complexus: si ingenua fuerit, iugo seruitutis cum filiis suis modis omnibus addicatur uxori, ut illi se per honesta iudicia sentiat subdi, cui per illicitam libidinem credidit posse praeponi. Quod si ad tale flagitium ancilla peruenerit, excepta poena sanguinis matronali subiaceat ultioni, ut illam patiatur iudicem, quam formidare debuisset absentem.* On this edict, see Schmidt-Hofner and Wiemer, "Die Politik der Form" (n. 30): 384–87.

to do with Roman law. In a late antique context, the prohibition on married men keeping a concubine was settled law, but Roman law ordered only the separation of the pair, not the enslavement of the female.[100] Instead, this ruling coincides entirely with what we find in the Germanic codes – personal enslavement of the adulterer to the offended party for them to do with them as they wished. Indeed, the similarity between the language and sentiments of this law and that of the Visigothic law cited above (Lex Visig. 3.3.11) confirms that the two pronouncements are part of a shared tradition that appears to be distinctly Gothic. And this in turn sets in high relief Justinian's indignity expressed at both Cod. Iust. 7.24.1 and *Pragmatic sanction* § 15 with the '*ferocitas hostium*' and '*Gothica ferocitas*' he witnessed in the Gothic tendency to force persons into slavery for their sexual transgressions, as discussed in the first section of this study. The pointed dialogue between the two traditions becomes even clearer when we consider that the first of these Justinianic laws was issued in in 530/531, immediately before Athalaric's pronouncement of 533/534, and the second in 554, immediately after Justinian gained full control of Italy from the Goths. The timing, the principles, and the wording of these various rulings make it clear that they arise from two distinct traditions whose operators were conscious of these divergences and persisted in pursuing distinctive solutions to the question of transgressive sexuality and human freedom in opposition to one another.

5 Post-Roman Self Sale and Enslavement for Debt and their Roots in the *Wergeld* Principle

Because Germanic legal systems revolved around settlements effectuated through *Wergeld* compositions, these could regularly lead to enslavement for debts amassed when a convicted defendant could not afford to pay the money composition prescribed for a given offense. Thus, in addition to the 24 separate laws listed above in which defendants found guilty of a specific offense were automatically condemned 'to act as a slave' (*servire*) to their plaintiff, we also have 29 which use enslavement to the plaintiff as an alternative punishment for perpetrators who lacked the financial means to pay a composition. In the same vein, the Visigothic Code explicitly equates debt amassed through credit with debt obligations arising from delictual settlements in a law granting collective ownership over any defendant who might have had unpaid credit and delictual obligations.[101] Of course, such a system readily invited abuse on the part of the powerful, so much so that laws had to be issued to impede 'the awful greed of perverse per-

100 Paul. Sent. 2.20.1; cf. Cod. Iust. 5.26.1, a. 326; cf. Antti Arjava, *Women and Law in Late Antiquity* (Oxford: Oxford University Press, 1996): 205–10.

101 Lex Visig. 5.6.5 (MGH LL nat. Germ. 1.233).

sons' that was inclined to ensnare innocent people into slavery through fraudulent claims.[102]

It is in this context that we can better understand the abundance of 'self-sale' documents attested for the early medieval period. These are transmitted to us especially in the Merovingian formularies – handbooks of pre-written legal documents dating to the late sixth through early eighth centuries. A considerable number of these lay out provisions by which their signatories could commit themselves to enslavement to a plaintiff because of their inability to pay a composition for some offense:

- Formulae Andecavenses 2 (MGH Form. 5): enslavement for failure to pay a composition for theft
- Formulae Andecavenses 3 (MGH Form. 6): enslavement for failure to pay a composition for theft
- Formulae Marculfi 2.28 (MGH Form. 28): enslavement to a third party who had paid a compensation on behalf of the person being enslaved because of an unspecified offense
- Formulae Salicae Bignonianae 14 (MGH Form. 233): enslavement for failure to pay a composition for the negligent destruction of property on deposit
- Formulae Salicae Bignonianae 27 (MGH Form. 237): enslavement for failure to pay a composition for burglary of the victim's storehouse
- Formularum Pithoei Fragmenta 75 (MGH Form. 598): enslavement for the failure to pay a composition for theft.

The sixth-century poet Venantius Fortunatus offers us literary testimony to the same process in a poem lamenting the fate of a peasant girl who had been wrongly accused of theft. Lacking the means to pay the composition, she was taken into slavery by her plaintiff, leaving Venantius with little recourse but to seek support from his friend, Gregory of Tours. We have no idea how the case turned out, but given that the girl's family was poor and could not muster oathhelpers to defend her innocence, the law would not have been on her side.[103] We also have at least one document of practice that seems to point in the same direction. *Pizarra* 40, a Visigothic legal slate recovered from Diego Álvaro in northern Spain, records a *Professio de ser[vitute]* which, although fragmentary, seems to describe litigation (*lirigare*) between two parties, (H)un-

102 Lex Visig. 2.5.8 (MGH LL nat. Germ. 1.109): *dira perversorum cupiditas*; cf. Lex Visig. 5.7.5 (MGH LL nat. Germ. 1.236). And, in Ostrogothic Italy, see Edict. Theodor. 8; 9.9 and Cassiod. Var. 5.29; 5.30; 8.28; 9.5, which offer support to various individuals whose *ingenuitas* had been challenged over property claims.

103 Venant. Fort. Carm. 5.14 (MGH AA 4.21).

igildus and Froilanus, over fraud (*fraude*) which results in Froilanus's enslavement to serve as a labourer in the strawberry fields at the 'House of Busanus'.[104]

To be sure, many other self-sale formularies were written so as to enable their signatories to surrender themselves into servitude because of financial distress brought on by food scarcity, credit default, or other forms of financial ruin.[105] Even here, however, we cannot help but notice the influence of Germanic practice, especially because of our knowledge that Germanic law assigned a monetary value to every individual, whether freeborn, freed, or enslaved, while Roman law stubbornly refused to assign money values to free individuals on the grounds that their worth should never be quantified.[106] This Roman reticence by all means introduced problems of its own, for it made it all but impossible for individuals whose body had been harmed through some unjust action to obtain damages under the Roman statute for the recuperation of damages, the *lex Aquilia*; this fact forced plaintiffs to turn for redress instead to the delictual law of *iniuria*, a tricky avenue given the very personal nature of this offense.[107] In the Germanic legal environment, by contrast, all human bodies were treated as monetizable with their status being one important factor in the determination of their worth. In this environment, status itself could be treated as a commodity and could therefore be bargained with as a unit of exchange when debts arose – whether through credit or delict. This baseline reality must be reckoned with if we hope to understand the regular occurrence of enslavement for torts so common in the Germanic tradition.

It also goes most of the way toward explaining why the post-Roman formularies regarding self-sale sometimes divide personal status into parts – 'full freedom' or

104 Isabel Velázquez Soriano, *Las pizarras visigodas (Entre el latín y su disgregación: la lengua hablada en Hispania, siglos VI–VIII)*, Colección Beltenenebros 8 (Burgos: Fundación Instituto Castellano Leonés de la Lengua, 2004): 219–34.

105 Formulae Andececavenses 19; 25; 35; 38 (MGH Form. 10–12, 16, 17); Formulae Marculfi 2.27 (MGH Form. 93); Formulae Turonenses 10 (MGH Form. 140–41); Cartae Senonicae 4 (MGH Form. 10-1216-17, 93, 150, 187). Compare details on self-sale in Carolingian capitularia at Decretum Vermeriense cap. 6 (MGH Capit. I no. 16 p. 40, a. 758/768); Capitula Legi Salicae Addita cap. 6 (MGH Capit. I no. 142 p. 292, a. 819); Memoria Olonnae Comibitus Data cap. 1 (MGH Capit. I no. 158 p. 317, a. 822–823); Canones Extravagantes Concilio Triburiensi Addicti can. 2 (MGH Capit. II no. 252 p. 247, a. 895). Rio, "High and Low" (n. 6) describes the spectrum of dependency relationships possible in early medieval society.

106 On this point see Lenski, "Law and Language" (n. 8): 381–82, contra P.S. Barnwell, "Emperors, Jurists and Kings: Law and Custom in the Late Roman and Early Medieval West," *Past & Present* 168, no. 1 (2000): 6–29.

107 More on the *lex Aquilia* and *iniuria* at W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian* (Cambridge: Cambridge University Press, 1921): 580–88; Jill Harries, *Law and Crime in the Roman World*, *Key Themes in Ancient History* (Cambridge: Cambridge University Press, 2007): 46–50; cf. Max Kaser, *Das Römische Privatrecht*, vol. 2, *Die nachklassischen Entwicklungen* (Munich: C.H. Beck, 1975): 437–40.

'half freedom'.[108] Alice Rio has posited that such differentiation results from the negotiation of terms between enslaver and dependent and that they therefore show the power of subaltern actors to cushion the impact of their descent into unfreedom by skillfull bargaining.[109] This may be true of those documents reporting the creation of dependency relationships wherein the subaltern party seeks patronage or subsistence relief, especially through new forms of dependency in the early medieval west such as *precaria* or *censualitas*. But a careful reading of the sources for enslavement for delictual or credit debt shows that the options in these cases were really just two: loss of full status or half status. This numerus clausus was a corollary of Germanic law's widespread practice of breaking status into the three levels – full freedom, half freedom, and enslavement, each with its own monetary value fixed by grade.[110] The middle status shows up repeatedly across the Germanic codes, which name half-free persons '*leti*' in the Frankish tradition, '*aldii*' in the Lombardic, '*fralets*' in the Bavarian, and '*liberti*' in the Visigothic. While Rio is surely right that those in more solid negotiating positions were able to secure half-free status in their self-sales, the formulae themselves make it clear that the options were not so much a matter of negotiation as they were of selecting between the bad and the less bad.

6 Conclusion

We have seen that Roman and Germanic legal norms related to slaveholding differed in three instances: first in the enslavement of free men who established marital relations with another person's female slaves; second, in granting masters unrestricted

108 Full status: Formulae Andecavenses 2 (MGH Form. 5, *integrum statum*); 3 (MGH Form. 6, *integrum statum*); 17 (MGH Form. 10, *integrum statum*); 19 (MGH Form. 10–11, *integrum statum meum*); Formulae Arvernenses 5 (MGH Form. 31, *statum meum*); Formulae Turonenses 10 (MGH Form. 140–41, *statum ingenuitatis meae*); Cartae Senonicae 4 (MGH Form. 187, *de capud ingenuitatis meae*); cf. Formulae Andecavenses 18 (MGH Form. 10, *pro statum suum*); 25 (MGH Form. 25, *estatus nostros*); Formulae Visigothicae 32 (Ioannes Gil, in *Miscellanea Wisigothica*, 2nd ed. (Seville: Secretariado de Publicaciones de la Universidad de Sevilla, 1991): 101–2, *statum meum*). Half status: Formulae Andecavenses 38 (MGH Form. 17, st*atum meum medietatem*); cf. Formulae Marculfinae 2.27 (MGH Form. 93).

109 Rio, "Self-Sale" (n. 6); cf. Rio, "Freedom and Unfreedom" (n. 6): 27–32; Rio, *Slavery after Rome* (n. 6): 48–57, which is surely correct that self-sale in periods of economic or subsistence crises offered a new survival strategy in post-Roman contexts. Nevertheless, the failure to distinguish these instances from the abundant records for self-sale and enslavement resulting from delictual liability vitiates the broader argument.

110 See Peter Heather, "Roman Law in the Post-Roman West. A Case Study in the Burgundian Kingdom," in *Das Vermächtnis der Römer: Römisches Recht und Europa: Referate einer Vorlesungsreihe des Collegium Generale der Universität Bern im Frühjahrssemester 2011*, ed. Iole Fargnoli and Stefan Rebenich, Berner Universitätsschriften 57 (Bern: Haupt Verlag, 2012): 20–22; Lenski, "Law and Language" (n. 8): 395–96.

rights to murder their own slaves; and third, in the personal chattel enslavement of persons found guilty of committing delicts against a third party. None of these things was possible by Roman law, and in several instances we have seen that even our ancient sources were aware of these important differences. These divergences seem adequate to prove that Germanic societies had their own shared practices of slaveholding that arose independently of those of their Roman neighbours. After all, the Germanic states which replaced Roman hegemony in the western empire grew out of societies which were themselves slaveholding even before they encountered Rome. As such they developed their own culturally specific slaveholding norms and practices. Many of these divergences between the Roman and Germanic law of slavery grew out of the distinctly Germanic legal concept of *Wergeld*, with its universal monetary valuation of bodies and its use of systems of fractional valuation to settle legal disputes. By deploying the value assigned to human bodies as a mechanism for the monetary resolution of torts, the *Wergeld* system made the enslavement of individuals for transgressions unproblematic and vested in the master expansive rights to abuse and even eliminate the bodies of humans under his ownership according to his will. Here again, this was not Roman law and thus continues to point to a distinctly Germanic strain in western practice that should no longer be denied.

Stefan Esders

Laeti and *liti*: Legal Status, Military Lands and the Changing Nature of Dependency from Late Antique Gaul to the Carolingian Empire

In recent years the extent to which military organization and statehood in the early Middle Ages were indebted to late Roman models has become clearer.[1] Over the course of the fifth and sixth centuries, the so-called 'barbarian kingdoms' were established on the soil of former West Roman provinces by rulers who had been barbarian kings and Roman generals at the same time. As a result, these 'barbarian kingdoms' adapted Roman military institutions and office designations,[2] military lands,[3] but also Roman military laws[4] at various regional and institutional levels. Early medieval duchies,[5] counties,[6] and other institutions[7] also had Roman precursors, although this was probably not a case of continuity, but rather of adaptation and transformation of late Roman models by the newly established kingdoms upon the soil of former Roman provinces.[8]

1 Luca Loschiavo, ed., *The Civilian Legacy of the Roman Army. Military Models in the Post-Roman World*, History of Warfare 144 (Leiden: Brill, 2024).

2 Alexander C. Murray, "The Position of the *Grafio* in the Constitutional History of Merovingian Gaul," *Speculum* 61, no. 4 (1986): 787–805; Alexander C. Murray, "From Roman to Frankish Gaul: *Centenarii* and *centenae* in the Administration of the Merovingian Kingdom," *Traditio* 44 (1988): 59–100.

3 Bernard S. Bachrach, "Military Lands in Historical Perspective," *Haskins Society Journal* 9 (1997): 95–122.

4 Fabio Botta and Luca Loschiavo, eds., *Civitas, iura, arma. Organizzazioni militari, istituzioni giuridiche e strutture sociali alle origini dell'Europa (secoli III–VIII)* (Lecce: Edizioni Grifo, 2015); Stefan Esders, "Late Roman Military Law in the Bavarian Code," *clio@themis. Revue électronique d'histoire du droit* 10 (2016), https://journals.openedition.org/cliothemis/1168 [accessed 10.10.2023]; Stefan Esders, "Manlike Discipline and Loyalty against the 'Enemies of God'. Some Observations on the Militarised Frontier Society of Eastern Francia around 600," in *Early Medieval Militarization*, ed. Ellora Bennett et al. (Manchester: Manchester University Press, 2021): 181–95.

5 Stefan Esders, "Spätantike und frühmittelalterliche Dukate. Überlegungen zum Problem historischer Kontinuität und Diskontinuität," in *Die Anfänge Bayerns. Von Raetien und Noricum zur frühmittelalterlichen Baiovaria*, ed. Hubert Fehr and Irmtraut Heitmeier, vol. 1, 2nd ed. (St. Ottilien: Eos, 2014): 425–62.

6 Murray, "The Position of the Grafio" (n. 2).

7 Murray, "From Roman to Frankish Gaul" (n. 2); similarly Stefan Esders, "Persecuting *latrones*, Maintaining *disciplina*, Enforcing the *velox supplicium*: The Frankish *centena* According to Childebert II's Decree," in *The Civilian Legacy of the Roman Army* (n. 1): 195–222.

8 Stefan Esders, "Dukate als Strukturelemente spätantik-frühmittelalterlicher Raumordnung: Historische Zugänge und interdisziplinäre Forschungsperspektiven," in *Die Dukate des Merowingerreichs.*

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With this more institutional perspective in mind, the present contribution seeks to address a problem that has many implications for the field of social history and touches fundamentally upon the study of dependency in the late- and post-Roman period. Late Roman sources from the late fourth and fifth centuries, among them several that refer to Gaul, mention a group of barbarian soldiers of 'inferior' status called *laeti*. In early medieval texts, which date from the sixth well into the eleventh centuries and extend geographically into areas east and north of the Rhine, a social group called *liti* is frequently attested; these *liti* were also of 'inferior' status when compared to freeborn persons (*ingenui*), and their activities were similarly in some way related to the military, although their roles do not appear to have been solely military. The question of whether a case can be made for a connection between late Roman *laeti* and early medieval *liti* has only rarely been discussed so far[9] – quite understandably so, since tracing the development of a social group (or a group designation) on the basis of a fairly small number of sources over a period of no less than 600 years seems a risky and speculative undertaking. Since many early medieval *liti* are attested in regions of Frisia and Saxony that had never been part of the Roman Empire, a simple case for 'continuities' cannot be made, even though the terminology and roles of these groups suggest some sort of connection between the two. Tracing their historical links therefore requires a more complex model to understand the precise nature of their relationship. It thus seems worthwhile to inquire into the criteria by which these groups were defined, what their functions were and how we can describe the nature of their dependency. If we find parallels between *laeti* and *liti*, can we assume a historical evolution that led from the former to the latter? In what follows, I will attempt to outline the problem of analyzing possible links between the two groups on the basis of some of our extant sources, in order to refine the questions that we can ask. A definite solution to the questions raised does not seem feasible at the present stage, but I hope that some of my observations and reflections will help to tackle the problem in more precise ways than hitherto. My concluding hypothesis on how a spe-

Archäologie und Geschichte in vergleichender Perspektive, ed. Sebastian Brather (Berlin: De Gruyter, 2023): 9–30.

9 For instance, Dieter Hägermann and Andreas Hedwig, "Laeti (Laten, Lazen, Leten)," in *Lexikon des Mittelalters* 5 (1991): 2016–2017, discuss the economic importance and social status of early medieval *laeti* without any reference to late antique precursors, and, conversely, within in the same dictionary the late antique *laeti* are discussed without any reference to their potential early medieval 'successors,' see Gerhard Wirth, "Laeten," in *Lexikon des Mittelalters* 5 (1991): 1612. See also John F. Drinkwater, "Laeti. I. Begriff und Ansiedlung," in *Handwörterbuch der antiken Sklaverei*, vol. 2, ed. Heinz Heinen et al. (Stuttgart: Franz Steiner, 2017): 1715–16: "*Leti* appears as a term for dependent troops in the service of Merovingian kings, but whether this denotes continuity from the Roman period [. . .] or independent usage of an authentic Germanic term is impossible to say." – The sole exception is to my mind a chapter by Franz Staab (see below, n. 79), which does contain some discussion of late antique and early medieval continuities.

cific designation of dependency may have been transformed during the transition from the ancient to the medieval period must thus remain tentative.

Naturally, the late antique and early medieval sources referring to *laeti* and *liti* are extremely diverse in character: They range from narrative texts to legal documents such as laws and charters and cover a number of different regions. It should be emphasized that these sources take a very selective view on the two groups, with some concentrating on the personal status of members of these groups, while others focus on the group collectively or on the lands held by the *laeti* or *liti*. The sources therefore have to be treated with caution.

A third cautionary note, also on the sources, seems appropriate: The reflections that follow are strictly based on texts and deliberately exclude archeological evidence. In the 20th century, archeologists made several attempts to link the *laeti* mentioned in late Roman texts to a specific type of grave that can be found in Northern Gaul, for instance.[10] This method has been questioned for good reasons.[11] At the current state of research it therefore seems advisable not to conflate information gained from texts *prima facie* with such provided by material evidence.

1 *Laeti* and *liti*: Two Franko-Latin Words and their Meanings

The terminology employed by our Latin sources to designate the two groups is an obvious starting point. Philologists have pointed out that the late Roman term *laeti* apparently does not derive from the Latin adjective for 'happy,'[12] but is a Germanic noun.[13] A Frankish loanword based on Germanic **lêt*, it was Latinized as *laetus* and mentioned in a variety of different spellings by numerous late antique writers as early as in the fourth century. The early medieval Franco-Latin terms *liti* and *lati* and possibly even some vernacular equivalents such as *lazi* seem to derive from the word

10 Horst-Wolfgang Böhme and Helmut Castritius, "Laeten und Latengräber," in *Reallexikon der germanischen Altertumskunde*, vol. 17, 2nd ed. (2000): 580–88.

11 Guy Halsall, "The Origins of the Reihengräberzivilisation: Forty Years on," in *Fifth-Century Gaul: A Crisis of Identity?*, ed. John F. Drinkwater and Hugh Elton (Cambridge: Cambridge University Press, 1992): 196–207. For a more recent cautious treatment see Karl Heinz Lenz, "Germanische Siedlungen des 3. bis 5. Jahrhunderts n. Chr. in Gallien. Schriftliche Überlieferung und archäologische Befunde," *Bericht der Römisch-Germanischen Kommission* 86 (2005): 349–444.

12 See for example the discussion in John F. Drinkwater, "Laeti" (n. 9): 1715–16; Guy Halsall, *Barbarian Migrations and the Roman West, 376–568* (Cambridge: Cambridge University Press, 2007): 152, maintains the translation of *laeti* as "the joyous".

13 For a discussion of the early medieval evidence see Leonard Bloomfield, "Salic *litus*," in *Studies in Honor of Hermann Collitz* (Baltimore: Johns Hopkins Press, 1930): 83–94.

laeti, or are at least connected to it.[14] Semantically, *laetus*, *letus*, *ledus*, Old English *laet*, Old Saxon *lêt*, Old Frisian *lâz* or *lât*, but also Old High German *lâz*, all seem to denote a person who had undergone some kind of status-changing procedure. This is indicated by the fact that most of these terms are also attested in nouns combined with vernacular words such as *fra*, *frēo*, *frî* or *fry*, which refer to freedpersons (in modern German 'Freigelassene');[15] moreover, in Latin legal texts we find the term *litus* occasionally replaced by the word *libertus*.[16] Apparently, these people were regarded as 'free' or, more precisely, as having become free at a certain point in time, which seems to be the first aspect they had in common.

The fact that a vernacular term entered the Latin language and was widely used in numerous texts is in itself revealing. It points to a high degree of linguistic 'mobility' typical for the late Roman army, which was composed of mixed groups of Romans and 'barbarians.' The Roman army created a social environment which encouraged a certain fluidity between Latin, Greek and vernacular words, with many terms becoming Latinized. This is also attested by terms such as *burgus* for a special type of fortification; or by the military manuals. Against this background it should be emphasized that many late Roman texts that mention *laeti* were written in 'official' language that had legal implications. Late Roman legal terminology incorporated the barbarian term *laeti* to denote the distinct legal status of this specific group. Another important lesson to be drawn from the terminology is the fact that neither *laeti* nor *liti* appear to have designated specific ethnic groups. There is thus no need to fall into the trap of ethnic identities[17] or the question of continuities between ethnically defined groups.[18] This is why our search for possible links between the two groups and their designations has to focus on their legal status and military function alone.

14 See Gabriele von Olberg, "Lite," in *Reallexikon der germanischen Altertumskunde* 18 (2001): 516–19, who proposes a Frankish origin of the word which had already entered late Roman Latin and also came to influence Frisian and Old Saxon terminology in the early medieval period; see also von Olberg-Haverkate, "Liten," in *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 2, 2nd ed., ed. Albrecht Cordes et al. (Berlin: Erich Schmidt, 2016): 1013–15.

15 See Rosemarie Lühr, ed., *Etymologisches Wörterbuch des Althochdeutschen* 5 (2014): 1069–70; *Deutsches Rechtswörterbuch. Wörterbuch der älteren deutschen Rechtssprache* 8 (1991): 717–18 (s. v. "Lasse"). See also Gerhard Köbler, "Zur Lehre von den Ständen in fränkischer Zeit," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 89 (1972): 161–74.

16 Von Olberg-Haverkate, "Liten" (n. 14): 1013–14.

17 For an original argument and a balanced discussion see Avshalom Laniado, *Ethnos et droit dans le monde protobyzantin, V^e^–VI^e^ siècle: Fédérés, paysans et provinciaux à la lumière d'une scholie juridique de l'époque de Justinien* (Geneva: Droz, 2014).

18 See the discussion in Hans-Werner Goetz and Helmut Reimitz, "Kontinuitätsprobleme," in *Reallexikon der Germanischen Altertumskunde* 17 (2001): 210–19.

2 Late Roman *laeti*

In the late Roman period, *laeti* are attested in the Theodosian Code and its amendments, the *Notitia dignitatum*, in historiographical texts and in panegyrics delivered around 300.[19] Despite their being occasionally 'gentilized' as 'non-Romans' or 'barbarians' in late Roman historiographical sources, it has been pointed out that *laeti*, although they were often settled as communities of non-Romans, did clearly not belong to one specific ethnic group.[20] The term referred instead to the status of a specific legal category that had been created by Romans for non-Romans. *Laeti* were non-Romans settled on land which usually belonged to the fisc,[21] who served in military units under the command of a specific prefect (*praefectus laetorum*). Since their settlement on Roman soil seems to have been a defining element of *laeti*, these settlements have often been referred to as 'colonies of *laeti*.'[22] It has therefore been suggested that, in contrast to *deditícii*, for instance, *laeti*, apparently of barbarian origin, voluntarily joined the Roman army and were given land in reward for their service.[23] Their prime motivation apparently was to settle within the Empire, as they could simply have joined the army directly.[24] The obligation to perform military service seems to have been the price they paid for being able to settle as a group within the Empire.

19 For a general overview see Moritz Schönfeld, "Laeti," in *Pauly's Realencyclopädie der classischen Altertumswissenschaft* 23 (1924): 446–48. Further studies include L. Brosch, "Laeti. Untersuchungen über eine Kategorie germanischer Siedler und Soldaten im römischen Gallien" (PhD diss., Universität Hamburg, 1954) (*non vidi*); Heli Roosens, "*Laeti, foederati* und andere spätrömische Bevölkerungsniederschläge im belgischen Raum," *Die Kunde N.F.* 17 (1966): 89–109; Rigobert Günther, "Einige neue Untersuchungen zu den Laeten und Gentilen in Gallien im 4. Jahrhundert und zu ihrer historischen Bedeutung," *Klio* 59 (1977): 311–21; Christopher J. Simpson, "Julian and the *laeti*. A Note on Ammianus Marcellinus, XX, 8, 13," *Latomus* 36 (1977): 519–21; Christopher J. Simpson, "*Laeti* in Northern Gaul: A Note on Pan. Lat. VIII, 21," *Latomus* 36 (1977): 169–70; Domenico Lassandro, "I cultores barbari (Laeti) in Gallia da Massimo alla fine de 4. secolo d.C.," in *Conoscenze etniche e rapporti di convivenza nell'antichità*, ed. Marta Sordi (Milan: Vita e Pensiero, 1979): 178–88.

20 Schönfeld, "Laeti" (n. 19): 447; Adolf Lippold, "Laeti," in *Der Kleine Pauly. Lexikon der Antike* 3 (1969): 449–50; Peter Kehne, "Laeti," in *Der Neue Pauly*, vol. 6, ed. Hubert Cancik and Helmuth Schneider (Stuttgart: J.B. Metzler, 1999): 1061.

21 Joachim Szidat, "*Terrae laeticae* (Cod. Theod. 13, 11, 10)," in *Historische Interpretationen. Gerold Walser zum 75. Geburtstag dargebracht von Freunden, Kollegen und Schülern*, ed. Marlis Weinmann-Walser (Stuttgart: Franz Steiner, 1995): 151–59.

22 Joachim Szidat, "Laetensiedlungen in Gallien im 4. und 5. Jahrhundert," in *Actes du II^e^ colloque roumano-suisse sur la politique édilitaire dans les provinces de l'Empire romain* (Bern: Peter Lang, 1995): 283–93.

23 Lippold, "Laeti" (n. 20): 449; Szidat, "Terrae laeticae" (n. 21): 151–52; Drinkwater (n. 9): "Laeti": 1715 and Andreas Roth, "Laeti. II. Rechtsstellung," in *Handwörterbuch der antiken Sklaverei*, vol. 2, ed. Heinz Heinen et al. (Stuttgart: Franz Steiner, 2017): 1715.

24 Szidat, "Terrae laeticae" (n. 21): 152.

The lands of the *laeti*, clearly fiscal in nature, were classified as *praedia functioni obnoxia*.[25] This term designated land whose possessors were personally obliged to perform a specific type of public duty (*munus publicum*). In the case of the *laeti*, this was military service. A law from 399 is our most important source for these *terrae laeticae*:

> Since persons of many nations seek the felicity of the Romans and have betaken themselves to Our Empire, and since laetic lands must be furnished to them, no person shall obtain any of these lands except in accordance with Our special annotation. Since some men have either seized more land than they obtained from Us, or by the collusion of the chief decurions or of the municipal defensors, or by rescripts surreptitiously obtained have acquired a measure of land greater than reason demanded, a suitable inspector shall be dispatched who shall recall whatever lands have been either delivered illegally or seized wrongfully by any persons.[26]

The law makes it clear, firstly, that *laeti* were recruited from among many different groups of non-Romans (*ex multis gentibus*); and, secondly, that many of them were motivated by the chance to improve their economic status by becoming possessors of their own piece of land (*terra laetica*). It appears that such attempts were supported by large landowners,[27] and also by municipal authorities, while additional land was seized by them by means of obtaining surreptitious rescripts from the emperor.[28] The emperors made it clear that such lands should only be held by imperial permission. They appointed inspectors and so sought to curb the practice of acquiring additional property.[29] This seems to indicate that military considerations mattered more to the government than potential economic effects. The emperors' argumentation can thus

25 Szidat, "Terrae laeticae" (n. 21): 157–58.

26 Cod. Theod. XIII, 11 (*De censitoribus, peraequatoribus et inspectoribus*), 10: *[Impp. Theod(osius), Arcad(ius) et Hono(rius) AAA.] Messalae p(raefecto) p(raetorio). Quoniam ex multis gentibus sequentes Romanam felicitatem se ad nostrum imperium contulerunt, quibus terrae laeticae administrandae sunt, nullus ex his agris aliquid nisi ex nostra adnotatione mereatur. Et quoniam aliquanti aut amplius quam meruerant, occuparunt aut conludio principalium vel defensorum vel subrepticiis rescribtis maiorem, quam ratio poscebat, terrarum modum sunt consecuti, inspector idoneus dirigatur, qui ea revocet, quae aut male sunt tradita aut inprobe ab aliquibus occupata. Dat. Non. April. Med(iolano) Theodoro V. C. cons. Theodosiani libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum pertinentes*, ed. Theodor Mommsen and Paul M. Meyer (Berlin: Weidmann, 1905): 1, 768; translation from Clyde Pharr, *The Theodosian Code and Novels and the Sirmondian Constitutions. A Translation with Commentary, Glossary, and Bibliography* (Princeton: Princeton University Press, 1952): 403.

27 See Geoffrey de Ste. Croix, *The Class Struggle in the Ancient Greek World. From the Archaic Age to the Arab Conquests* (London: Duckworth, 1981): 591.

28 A point made by Szidat, "Terrae laeticae" (n. 21): 156 and 159.

29 For the (mostly fiscal) duties of late Roman officials called *discussores* or *inspectores* see Otto Seeck, "Discussor," *Paulys Realencyclopädie der classischen Alterumswissenschaft*, vol. 5,1 (1903): 1183–87; Otto Seeck, "Inspector," *Paulys Realencyclopädie der classischen Alterumswissenschaft*, vol. 9,2 (1916): 1562. See also Stefan Esders, "Die römischen Wurzeln der karolingischen *inquisitio* in Fiskalsachen," in *L'enquête au moyen âge*, ed. Claude Gauvard (Rome: École française de Rome, 2008): 13–28 (at 19–22).

be compared to some extent to that in the case of *terrae limitanei* where we encounter the same problem.[30] But whereas the *terrae limitanei* seem to have been held by members of regular border troops (the *limitanei*), the lands in question appear not necessarily to have been located along the frontier, but also in the hinterland. It seems that the *laeti* were military, but not part of regular frontier troops.

The law of 399 also allows us to draw certain conclusions regarding the size of the *terrae laeticae*. Interestingly, from the Roman government's perspective a *laetus* in possession of a *terra* constituted some sort of 'military household' in the sense that the land assigned to him was to allow him to perform his task and feed his family. His *terra* therefore needed to be measured and sized in relation to his duty and was to be neither 'larger than [he] deserved' (*amplius quam meruerant*) nor 'greater than reason demands' (*maiorem, quam ratio poscebat, terrarum modum*). As I will show below, this is the starting point for a scholarly debate about possible links to the lands held by early medieval *liti*.

As for the personal status of late Roman *laeti*, a law issued by the emperor Severus in 465 provides some relevant information:

> A complaint of all the provincials has come to Us through the Illustrious Ausonius, because [. . .] [t]he *laeti* [. . .] and other guilds assigned to public services have united themselves to the *coloni* and household slaves of certain persons without the knowledge of their masters, and now under the pretext of membership in a public guild they are attempting to absolve from the yoke of slavery the children that they have procreated. Therefore Your Sublime Magnificence shall know that by a divine imperial law which shall live forever, we have sanctioned that if any man or any woman from the public guilds anywhere at all, even from the guildsmen of the City of Rome, should suppose that he should be united with a slave or *colonus*, their children shall belong to those masters to whom it is proved that the *inquilinus* or *colonus* belonged. Those persons shall be excepted, who are known to have united themselves previously, when this law had not been issued to this effect.[31]

30 On *terrae limitanei* see Detlef Liebs, "Le terre dei *limitanei*," in *Atti dell'Accademia Romanistica Costantiniana XXII: Questioni della terra. Società, economia, normazione, prassi in onore di Mariagrazia Bianchini*, ed. Carlo Lorenzi and Marialuisa Navarra (Napoli: Edizioni Scientifiche Italiane, 2017): 63–81.

31 Novella Severi 2 [*De corporatis*]: *Impp. Leo et Severus AA. Basilio p(raefecto) p(raetorio) et patricio. Cum per virum inlustrem Ausonium cunctorum ad nos provincialium querella pervenit, eo quod [. . .] laeti et [. . .] aliaque corpora publicis obsequiis deputata quorundam se colonis vel famulis ignorantibus dominis sociassent, et nunc sub specie publicae corporationis procreatos liberos conantur iugo servitutis absolvere, idcirco agnoscat sublimis magnificentia tua divali nos in aeternum lege sanxisse, si qui vel si qua ex corporibus publicis ubi et ubi vel ex corporatis urbis Romae servis vel colonis se crediderint copulandos, agnationem eorum ad eos dominos pertinere, quorum inquilinus vel colonus fuisse constiterit: exceptis his, qui ante eam legem non taliter latam sese iunxisse noscuntur. Data VII Kal. Oct. Hermenrico et Basilico conss.* Taken from Theodor Mommsen and Paul Meyer, eds., *Theodosiani libri*: 2, 201–2 (Berlin: Weidmann, 1962); trans. Clyde Pharr, *The Theodosian Code* (Princeton: Princeton University Press, 1952): 568–69.

This law is important for several reasons: First, it counts the *laeti* among the *corpora publicis obsequiis deputata*, meaning that some *laeti* apparently had a sort of corporate identity as belonging to a *corpus* or *publica corporatio* which was defined by their obligation to yield 'public obedience.' Second, the law assumes that *laeti* could marry Roman women.[32] Third, and no less important, the law makes it clear that in case male or female *laeti* entered into relationships with *coloni* or slaves (*famuli*), the children born of such relationships were to be subject to servitude and belong to the master of the *colonus* or *inquilinus*. This clearly echoes a principle of Roman law according to which children born from a relationship between two partners of different legal statuses acquired the status of the lower-status parent.[33] This law therefore, clearly indicates that despite their barbarian origin, *laeti* were considered 'free' persons.[34] The status of a *laetus* also seems to have applied to his wife and children, as long as his wife was of equal legal status to himself. This seems to imply that, as a precondition for performing military service, either some sort of manumission or a formal recognition of a *laetus*' status must have taken place before he could become a member of such a *corpus*. At any rate, in contrast to *dediticii*, who had a lower status, *laeti* enjoyed a recognized legal status as 'free' men and could have a career in the Roman military.[35] Being subject to Roman law,[36] in particular to military law and to *ius gentium*,[37] gave them a certain legal capacity. If this assumption is correct, more precision is needed in describing the exact nature of the *laeti*'s dependency and to what degree their legal status meant that they belonged to the 'free.' It seems to me that any limitations were related to the land they held, rather than to their personal legal status.[38] This overlap of personal status and land holding – so typical for the late Roman period – is reminiscent, of course, of the debate about the late Roman colonate,[39] but the notion that *laeti* were tied to the lands they cultivated should not be pushed too far. It is true that pieces of allocated fiscal land in a colony were their

32 Oliver Schipp, "Römer und Barbaren: Fremde in der Spätantike und im Frühmittelalter," in *Fremd und rechtlos? Zugehörigkeitsrechte Fremder von der Antike bis zur Gegenwart. Ein Handbuch*, ed. Altay Coskun and Lutz Raphael (Cologne: Böhlau, 2014): 121–57, 140.

33 See Wulf Eckart Voss, "Der Grundsatz der 'ärgeren Hand' bei Sklaven, Kolonen und Hörigen," in *Römisches Recht in der europäischen Tradition. Symposion aus Anlass des 75. Geburtstages von Franz Wieacker*, ed. Okko Behrends et. al. (Ebelsbach: Gremer, 1985): 117–84.

34 An important point made by Castritius, "Laeten und Latengräber" (n. 10): 581.

35 Schipp, "Römer und Barbaren" (n. 32): 141.

36 Castritius, "Laeten und Latengräber" (n. 10): 581; Drinkwater, "Laeti" (n. 9): 1715. Ralph W. Mathisen deduces from the *laeti*'s right of *postliminium* that they may have enjoyed Roman citizenship, see his "Becoming Roman, Becoming Barbarian: Roman Citizenship and the Assimilation of Barbarians into the Late Roman World," in *Migration and Membership Regimes in Global and Historical Perspective. An Introduction*, ed. Ulbe Bosma, Gijs Kessler and Leo Lucassen (Leiden: Brill, 2013): 204–5 in 191–220.

37 Roth, "Laeti" (n.23): 1716–17.

38 Castritius, "Laeten und Latengräber" (n. 10): 582.

39 See, most recently, Adriaan J.B. Sirks, "The Colonate in the Later Roman Empire," *Tijdschrift voor Rechtsgeschiedenis* 90 (2022): 129–47.

individual rewards for performing military service. But it seems obvious that *laeti* were very often deployed in regions that were very distant from their settlements.[40]

Our main source for the regions where *laeti* can be traced in the late Roman period is the *Notitia dignitatum* a document that details the Empire's administrative organization. The part of this document relating to the western half of the Empire is commonly assumed to have been composed around 425.[41] It gives us a list of twelve prefects commanding *laeti* in Gaul, for the most part in various provinces of northern and north-eastern Gaul.[42] These prefects were subordinate to the *magister militum praesentalis a parte peditum*,[43] which suggests that the *laeti* fought as infantry, and that they did not belong to the frontier troops (*limitanei*),[44] but were deployed where the *magister militum* would send them.

The fact that *laeti* are predominantly attested in Gaul[45] has led many scholars to assume that they were mostly of Germanic origin.[46] The Notitia does indeed list *laeti*

40 Castritius, "Laeten und Latengräber" (n. 10): 582.

41 For an overview of the scholarship regarding this source and its composition see Klaus-Peter Johne, "Notitia dignitatum," in *Der Neue Pauly*, vol. 8, ed. Hubert Cancik and Helmuth Schneider (Stuttgart: J.B. Metzler, 2000): 1011–13; Daniëlle Slootjes, "Notitia dignitatum," in *Reallexikon für Antike und Christentum*, vol. 25 (2013): 1133–45.

42 Notitia dignitatum, In partibus occidentis 42:

33: *Praefectus laetorum Teutonicanarum, Carnunta Senoniae Lugdunensis.*

34: *Praefectus laetorum Batauorum et gentilium Sueuorum, Baiocas et Constantiae Lugdunensis secundae.*

35: *Praefectus laetorum gentilium Sueuorum, [. . .] et Cenomannos Lugdunensis tertiae*

36: *Praefectus laetorum Francorum, Redonas Lugdunensis tertiae.*

37: *Praefectus laetorum Lingonensium per diuersa dispersorum Belgicae primae.*

38: *Praefectus laetorum Actorum, Epuso, Belgicae primae.*

39: *Praefectus laetorum Neruiorum, Fanomantis Belgicae secundae.*

40: *Praefectus laetorum Batauorum Nemetacensium, Atrabatis Belgicae secundae.*

41: *Praefectus laetorum Batauorum Contraginensium, Nouiomago Belgicae secundae.*

42: *Praefectus laetorum gentilium, Remo et Siluanectas Belgicae secundae.*

43: *Praefectus laetorum Lagensium, prope Tungros Germaniae secundae.*

44: *Praefectus laetorum gentilium Sueuorum, Arumbernos, Aquitanicae primae.*

(ed. by Otto Seeck, *Notitia dignitatum accedunt Notitia urbis Constantinopolitanae et Latercula prouinciarum* [Berlin: Weidmann, 1876]: 216–17. See Christopher J. Simpson, "*Laeti* in the *Notitia dignitatum*: 'Regular' Soldiers vs. 'Farmer-Soldiers'," *Revue Belge de philologie et d'histoire* 66 [1988]: 80–85).

43 Not. Dig. Occ. 42, ed. Seeck (n. 42): 215.

44 See Castritius, "Laeten und Latengräber" (n. 10): 582.

45 A useful map illustrating *laeti* settlements can be found in Karl Heinz Lenz, "Germanische Siedlungendes 3. bis 5. Jahrhunderts n. Chr. in Gallien," *Bericht der Römisch-Germanischen Kommission* 86 (2005): 362; see also Reinhold Kaiser, *Die Franken: Roms Erben und Wegbereiter Europas?* (Idstein: Schulz-Kirchner, 1997): 178.

46 But it is also clear that this is not a compelling argument, as we know for instance that groups of Alans were also settled in Gaul, see Bernard S. Bachrach, "The Alans in Gaul," *Traditio* 23 (1967):

Francorum near Rennes (*Redon*),[47] but also various *laeti* more generally described as *gentiles*, for instance in Reims, Le Mans, Bayeux and Coutance.[48] It is also clear from one entry that their settlements could be scattered. A *Praefectus laetorum Lingonensium per diversa dispersorum Belgicae primae* is mentioned for the area of Langres in the province of *Belgica prima*, the capital of which was Trier.[49] It must be emphasized here that the *Notitia dignitatum* focuses exclusively on officeholders and troops. We cannot therefore argue from its silence that there cannot have been other colonies of *laeti* elsewhere.[50] Nevertheless, the entry makes it clear that, initially at least, the Roman government intended to recruit members of a colony of *laeti* from among a single tribe, and that over time, non-Romans from different tribal groups could be recruited as *laeti* and added to an already established settlement.[51]

The general picture that emerges from this brief discussion is that the term *laeti* was an administrative and functional label for groups of barbarians who were integrated into the late Roman military by being settled in colonies that lay in part on fiscal land. Their military function as infantry within the *comitatenses* (the regular late Roman army) attests to their importance, while the fact that they were settled in colonies and given fiscal lands does not allow us to describe their status as dependent in a way that is fully comparable to *coloni*. They certainly did not enjoy Roman citizenship, which means that their status as free inhabitants made them more likely to be subject to *ius gentium* and *ius militare* than to *ius civile*. If they were dependent, their dependency was rooted primarily in the land they held. The holding of fiscal land in reward for military service, which they could pass on to their sons if the latter assumed their fathers' military duties, may indeed have been an important factor in intergenerational continuity that could allow us to explain to some extent the importance of *liti* in post-Roman Gaul.

3 Early Medieval *liti*

An analysis of sources for the sixth and seventh centuries, when Gaul was under Frankish rule, results in the impression that *leti* or *liti* (as they were now mostly

476–89; Bernard S. Bachrach, "Another Look at the Barbarian Settlement in Southern Gaul," *Traditio* 25 (1969): 354–58.

47 Not. Dig. Occ. 42, 36, ed. Seeck (n. 42): 217.

48 Not. Dig. Occ. 42, 34, 35, 42, ed. Seeck (n. 42): 216–17.

49 Not. Dig. Occ. 42, 37, ed. Seeck (n. 42): 217.

50 Moreover, the 399 law referred to Italy, which is why scholars assume that *laeti* also existed in Italy (Szidat, "Terrae laeticae" [n. 21]: 152) despite the fact that the *Notitia* does not tell us anything about such groups in Italy. We therefore need to be careful not to rely exclusively on the *Notitia*, as it is incomplete.

51 Castritius, "Laeten und Latengräber" (n. 10): 582.

called) are attested in numerous regions not mentioned in the *Notitia dignitatum*. The evidence for early medieval *liti* is generally much richer in both geographical and quantitative terms. It comes largely from two groups of sources: First, references in the early medieval law codes which focus on the personal status of *liti*. Second, we have information on the pieces of land assigned to *liti*, the so-called *mansi lediles*, in polyptychs, charters and manorial records from the ninth century onward. This seems to imply that by the ninth century, large numbers of *liti* belonged, together with their pieces of land, to the manorial organization of churches and monasteries.

The law codes refer to the personal status of *liti*, but do not provide any evidence on their lands.[52] *Liti* are referenced in the Frankish *Lex Salica* and *Lex Ribuaria* of the sixth and seventh centuries, and also in the early ninth-century *Lex Francorum Chamavorum*; in addition, there are numerous references in the *Lex Frisionum* and *Lex Saxonum*, both of which were written under Charlemagne. Finally, there are brief mentions in the seventh-century *Pactus Alamannorum*. In geographical terms, this seems to confirm the impression that early medieval *liti* are predominantly attested in the former Gallic and Germanic provinces, with a significant early medieval expansion into Frisia and Saxony.[53]

Attempts to attribute this wide geographical spread of *liti* to a supposed 'Germanic' influence are both correct and misleading. It is correct to expect primarily members of non-Roman groups behind the label of *liti*, most of which spoke a Germanic language. This was, however, already true for the *laeti*. And, on a more general level, scholars have questioned, and for good reasons, the use of the linguistic label 'Germanic,'[54] as it does not help to identify these people and their culture. It strikes me as much more helpful to understand these groups as part of the militarized society in the western provinces of the late Roman empire, a society composed of groups of both Romans and non-Romans.[55] What complicates a 'Germanic' interpretation of the *laeti* or *liti* is the fact that the importance of land ownership as a defining element of social, functional and legal status can certainly not be attributed to 'Germanic' influences. For this reason, it makes much more sense to adopt a late Roman perspective and explain the spread of late Roman *laeti* by tracing how individuals and groups be-

52 For detailed references see Heinrich Boos, *Die Liten und Aldionen nach den Volksrechten* (Göttingen: Robert Peppmüller, 1874); for the most detailed discussion see Joseph Balon, "Les lètes chez des Francs," *Tijdschrift voor Rechtsgeschiedenis*, 33 (1965): 430–46; see also Gerald Beyreuther, "Die frühmittelalterlichen Liten. Untersuchungen zu ihrem sozialökonomischen und ständisch-rechtlichen Status" (PhD diss., Humboldt-Universität zu Berlin, 1981): 23–45.

53 For *laeti* in Kent see Beyreuther, *Die frühmittelalterlichen Liten* (n. 52): 19, and Lisi Oliver, "Who was Æthelberht's Laet?", in *Confrontation in late Antiquity. Imperial Presentation and Regional Adaptation*, ed. Linda James Hall (Cambridge: Orchard Academic, 2003): 153–66

54 See Jörg Jarnut, "Germanisch. Plädoyer für die Abschaffung eines obsoleten Zentralbegriffes der Frühmittelalterforschung," in *Die Sucht nach den Ursprüngen. Von der Bedeutung des frühen Mittelalters*, ed. Walter Pohl (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2004): 107–13.

55 See Laury Sarti, Ellora Bennett, Guido M. Berndt and Stefan Esders, "Introducing Early Medieval Militarisation, 400–900," in *Early Medieval Militarization* (n. 4): 1–28.

came integrated into the late Roman military, and by assuming that this model somehow continued to be practiced in the former provinces of Gaul and Germania under Frankish rule, i.e. by Frankish rulers who could dispose of fiscal possessions they had 'inherited' from Roman emperors and acquired by conquest. Naturally, much remains hypothetical here, but some conclusions may be inferred from analogy. It is well known that when they created the Frankish kingdom, the Merovingian kings, whose rule had already been formally recognized by the Roman Empire under the late fifth-century kings Childeric and Clovis, adopted a lot of the resources and infrastructure they found in Gaul, fiscal, military and other. These included military lands and even contingents of the late Roman army.[56] There is thus no reason to doubt that colonies of 'barbarian' *laeti* could have been integrated into the Frankish military, along with their lands, just as other categories of lands and troops were.[57]

While scholars disagree over the extent to which Roman military law formed the basis for much of the Lex Salica, it is clear that when Salic law was written down in Latin in the late fifth or early sixth century, it was strongly influenced by legal ideas ultimately deriving from the late Roman military.[58] It is also apparent that the wergild tariffs which dominate the legal world of the Lex Salica, and later *leges barbarorum*, were an attempt to integrate legal differences in status and function into a more or less coherent framework of monetary compensation.[59] Against this background it is striking that the Frankish law codes considered the *liti* principally as 'free' or at least 'freed' persons. In contrast to slaves, *liti* had full legal capacity[60] to act as witnesses, to

56 Stefan Esders, "Nordwestgallien um 500. Von der militarisierten spätrömischen Provinzgesellschaft zur erweiterten Militäradministration des merowingischen Königtums," in *Chlodwigs Welt. Organisation von Herrschaft um 500*, ed. Mischa Meier and Steffen Patzold (Stuttgart: Franz Steiner, 2014): 339–61.

57 Thomas Anderson, "Roman Military Colonies in Gaul, Salian Ethnogenesis and the Forgotten Meaning of *Pactus Legis Salicae* 59.5," *Early Medieval Europe* 4 (1995): 129–44.

58 Jean-Pierre Poly, "La corde au cou. Les Francs, la France et la loi Salique," in *Genèse de l'état moderne en méditerranée. Approches historique et anthropologique des pratiques et des representations*, ed. École française de Rome (Rome: École française de Rome, 1993): 287–320; Elisabeth Magnou-Nortier, "Remarques sur la genèse du *Pactus Legis Salicae* et sur le privilège d'immunité (IV^{e}–VII^{e} siècles)," in *Clovis – histoire et mémoire, 1: Clovis et son temps, l'événement*, ed. Michel Rouche (Paris: Presses de l'Université de la Sorbonne, 1997): 495–538; Soazick Kerneis, "Le pacte et la loi. Droit militaire et conscience Franque à la fin de l'Empire romain," in *Auctoritas. Mélanges offerts à Olivier Guillot*, ed. Giles Constable and Michel Rouche (Paris: Presses de l'Université Paris-Sorbonne, 2006): 129–41; Étienne Rénard, "Le *Pactus legis Salicae*, règlement militaire romain ou code de lois compilé sous Clovis?" *Bibliothèque de l'École des chartes* 167 (2009): 321–52; Karl Ubl, "Im Bann der Traditionen. Zur Charakteristik der *Lex Salica*," in *Chlodwigs Welt* (n. 56): 423–45; Karl Ubl, *Sinnstiftungen eines Rechtsbuchs. Die Lex Salica im Frankenreich* (Ostfildern: Thorbecke, 2016): 53–66.

59 Stefan Esders, "Wergild and the Monetary Logic of Early Medieval Conflict Resolution," in *Wergild, Compensation and Penance. The Monetary Logic of Early Medieval Conflict Resolution*, ed. Lukas Bothe et al. (Leiden: Brill, 2021): 1–37.

60 See Boos, *Die Liten und Aldionen nach den Volksrechten* (n. 52): 14.

recruit oath-helpers at court, and to pledge a *fides facta*.[61] They were able to enter into lawful marriages in which the husband bestowed a *morgangaba* on his wife. Moreover, as can be seen from another paragraph of the Lex Salica, there was a regular wergild for *liti*.[62] However, the picture emerging from the law codes is fairly differentiated: According to the Lex Salic*a*, the wergild of a *litus* was 100 *solidi*; i.e. half that of a free person, but three times as much as that of a slave,[63] while a Roman *tributarius* had a wergild of 62 ½ *solidi*.[64] This seems to suggest that the status of a *litus* was comparable to that of a freedman, in the sense that both enjoyed a kind of 'limited freedom.'[65] Indeed, the seventh-century Lex Ripuaria refers to a procedure by which a *servus* was manumitted into the status of a *litus*, although he was only assigned a wergild of 36 *solidi*.[66]

Interestingly, several provisions of the Lex Salica deal with a *litus alienus* or a *lita aliena*.[67] The status of being *alieni s iuris* as opposed to being *sui iuris* was clearly a category of Roman law[68] which, as provincial law of Gaul, seems to have influenced to some degree the definition of the legal status of *liti*. Another provision indicates that *liti* were expected to have a *dominus* to whom they owed some sort of loyalty and with whom they possibly went to war.[69] This latter clause is particularly interesting

61 Lex Sal. 50 (*De fide factas*), 1: *Si quis ingenuus aut letus alteri fidem fecerit, tunc ille, cui fides facta est, in XL noctes aut quomodo placitum fecerit, quando fidem fecit, ad dominium illius, qui fide fecit, cum testibus vel cum illis, qui praetium adpretiare debent, venire debet. Et si noluerit fide facta solvere, mallobergo thalasciasco hoc est, DC denarios qui faciunt solidos XV culpabilis iudicetur super debitum <vero>, quod fidem fecerit.* (*Pactus legis Salicae*, Karl August Eckhardt, ed. (Hannover: Hahn, 1962): 189–90.

62 Lex Sal. 42 (*De homicidiis a contubernio factis*), 4: *De Romanis vero occisis vel letis <et pueris> haec lex <superius conpraehensa ex> medietate solvatur*. (*Pactus legis Salicae*: 164).

63 Lex Sal. 26.1 and 42.3 (*Pactus legis Salicae*: 96–97 and 163–64).

64 Lex Sal. 42.4 and 41.10 (*Pactus legis Salicae*: 164 and 157).

65 See Gabriele von Olberg, "Halbfreie," in *Reallexikon der germanischen Altertumskunde* 13, ed. Heinrich Beck et al. (Berlin: De Gruyter, 1999): 401–5. This article also discusses the problematic category of 'semi-free' or 'half-free', which had often been used in older German scholarship.

66 Lex Rib. 65 (62) [*De homine qui servum tributarium facit*] 2: *Si quis servum suum tributarium aut litum fecerit, si quis eum interfecerit, 36 solidos culpabilis iudicetur*. (Franz Beyerle and Rudolf Buchner, eds., *Lex Ribuaria* [Hannover: Hahn, 1954]: 117).

67 Lex Sal. 13 (*De raptum ingenuorum vel mulierum*) 5: *Raptor vero MMD denarios qui faciunt solidos LXII semis culpabilis iudicetur. [. . .]* 7: *Si vero [quis] puer regis <fuerit> vel letus <qui> ingenuam feminam traxerit, de vita conponat. [. . .]* 10: *Si quis litam alienam ad coniugium sociaverit, mallobergo am (b)a(hto)nia, MCC denarius qui faciunt solidos XXX culpabilis iudicetur.* (*Pactus legis Salicae*: 60–62).

68 See Helge Dedek and Martin Schermaier, "Sui iuris," in *Encyclopedia of Ancient History*, ed. Roger Bagnall et al. (Oxford: Wiley-Blackwell, 2013): 11, 6440–6441.

69 Lex Sal. 26 (*De libertis <extra consilium domini sui> dimissis*) 1: *Si quis <homo ingenuus> alienum letum, qui apud domino suo in hoste fuerit, extra consilium domini sui ante rege per denarium ingenuum dimiserit et ei fuerit adprobatum, mallobergo maltho thi atomeo leto hoc est, IV M denarius qui faciunt solidos C (100) culpabilis iudicetur. Res vero leti ipsius legitime <domino> reformetur. 2. Si quis vero servum alienum per denarium ante regem ingenuum dimiserit et ei fuerit adprobatum, mallober-*

as it points to the possibility that a *litus* could be manumitted by the procedure of penny-throw in the presence of the king.[70] Such an act conferred the highest type of freedom available in Frankish society[71] on a *litus*, which gave him a wergild of 200 *solidi*; however, it required the consent of the *litus*'s lord. The provision in the Lex Ripuaria quoted above suggests that some sort of manumission was necessary if a person had not been born into the status of *litus*.[72] That the *liti* were expected to perform military service is also shown by a chapter of the Lex Salica that deals with homicide committed by an armed band, a *contubernium*.[73]

Regulations dealing with marriages suggest that the status of *litus* according to the Lex Salica was inferior to the *laeti* in late Roman law, and that the lawmakers sought to prevent a *litus* from entering into marriage with a higher-status partner: For instance, a free woman who married a *litus* was to lose her free status; a *litus* was to suffer the death penalty for touching a free woman.[74] The regulations concerning *liti alieni* also indicate that their legal capacity seems to have been limited by some sort of guardianship or tutelage. It is obvious that the compilers of the code were keen to keep this group separate and prevent it from mixing with higher-status groups.

The overall image we gain, especially from the Lex Salica, is one in which the *liti* appear as legally free, but significantly worse off than the free Franks, while their dependency becomes visible in their treatment as *alieni s iuris*. If we try to find a historical explanation for this, we may suspect that when the Franks integrated the various groups in Northern Gaul into wergild classifications, they respected the legal status of *liti* to some extent, since the latter had some military importance, but clearly sought to put them at some distance to the freeborn Franks who were considered the most important subjects of Salic law. This appears remarkable, since we may suspect that many *liti* had indeed been Franks, ethnically speaking. But their ethnic and functional status was overshadowed by their dependency on nobles. An explanation for this could be that after the establishment of Frankish rule over Northern Gaul, kings and nobles took possession of fiscal lands with military settlements, and thus became lords of the *liti*. But this has to remain rather speculative, as the Lex Salica is silent on

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gho maltho this atomeo theo hoc est, MCCCC denarios qui faciunt solidos XXXV culpabilis iudicetur et <insuper> praetium servi domino suo reddat. Res vero ipsius servi proprius dominus recipiat. (*Pactus legis Salicae*: 96–97). See on this Balon, "Les lètes chez des Francs" (n. 52): 438: "Nous pensons que si le législateur a créé une présomption de responsibilité dans le chef du *dominus*, c'est parce que le son lète était à son service et professionellement habile à manier les armes et expert dans l'art de tuer."

70 See Balon, "Les lètes chez des Francs" (n. 52): 435–37.

71 On this procedure, its effects and its use see Ute Maass, "Die Freilassung durch Schatzwurf in den Urkunden der karolingischen, sächsischen und salischen Kaiser und Könige. Studien zur Freilassungspraxis frühmittelalterlicher Herrscher" (PhD diss., Ruhr-Universität Bochum, 2007).

72 See above, n. 66. See also Beyreuther, *Die frühmittelalterlichen Liten* (n. 52): 32.

73 Lex Sal. 42 (*De homicidiis a contubernio factis*) 4: see above, n. 62.

74 Lex Sal. 13 (*De raptum ingenuorum vel mulierum*) 5, 7 and 10: see above, n. 67.

any connection between the *liti* and fiscal lands.[75] Nevertheless, we need to ask how the status of *litus* was defined, and how it was passed down to future generations. While the Lex Salica seems to imply that the status was acquired by birth, it makes more sense in my opinion to assume that the possession of land was the most effective way to make the military profession inheritable, if the son of a *litus* acquired his father's land in compensation for taking over the latter's military duties.[76] This was, after all, a well-established method in the later Roman Empire,[77] and there is no reason to think that the Frankish rulers departed from this tradition when they assumed power in the former Roman provinces of Gallia and Germania.

The careful calibration of wergild tariffs, so typical for the barbarian law codes, shows that the legal world as a whole underwent a fundamental process of transformation at this time. It led to an evaluation of individuals and groups according to their legal status and function, with free Franks being assigned the highest 'value'. In this profoundly changed legal world, which had abandoned many of the Roman binary distinctions, 'barbarian' was not simply 'barbarian' anymore. But it seems that for the *liti*, this process did not result in a significant improvement of their legal condition.

The law codes were interested only in the personal status of a *litus*, not in their possessions and lands. For information on what might have happened to the late antique *terrae laeticae* in the early medieval period, we need to turn to the eighth and ninth centuries. Sources that refer to the manorial economy of Carolingian monasteries such as Saint-Germain-des-Prés in Paris, or at Lorsch, Prüm and Fulda, provide more precise information in geographical terms and allow us to say something about the *liti*'s holdings and functions around this time. What is most striking here is that *liti* held special pieces of land that constituted a household (*mansa ledilia* or *hube lidorum*). This was a category clearly different from *mansi ingenuiles* and *mansi serviles*, that is 'free households' and 'unfree households.' There has been some debate about the precise function and on the origins of those land units, *mansus* or *huba*, that were so characteristic for early medieval manorial organization.[78] Before we can go on to define in more detail the nature of a *mansus ledilis*, it should first be emphasized that most, if not all, *liti* under ecclesiastical lordship had got there by way of royal donations.[79] This is illustrated by a royal charter issued by Charlemagne in 779. The Frank-

75 This was also emphasized by Balon, "Les lètes chez des Francs" (n. 52): 445.

76 See on this in particular Anderson, "Roman Military Colonies in Gaul" (n. 57).

77 Cf. Bachrach, "Military Lands in Historical Perspective" (n. 3) and Liebs, "Le terre dei *limitanei*" (n. 30).

78 Walter Schlesinger, "Die Hufe im Frankenreich" (1979), in Walter Schlesinger, *Ausgewählte Aufsätze 1965– 1979* (Sigmaringen: Thorbecke, 1987): 587–614; Dieter Hägermann and Ulrich Weidinger, "Hufe," in *Reallexikon der germanischen Altertumskunde* 15 (2000): 186–92.

79 Franz Staab, *Untersuchungen zur Gesellschaft am Mittelrhein in der Karolingerzeit* (Wiesbaden: Franz Steiner, 1975): 47–49 and 64.

ish king donated to the monastery of Fulda twenty-five *mansi* that had formerly been held by his *fidelis* Otkarius as a royal benefice.[80] These *mansi* were royal property, as is stated,[81] and were located in the city of Mainz, the former capital of the Roman province of *Germania superior*. It seems that here as in other regions along the Rhine the Frankish kings took over the Roman fisc and assumed control of numerous fiscal possessions,[82] often along with institutions such as mints, *gynaecea* and *fabricae*. However, the bestowal of such possessions on monasteries marks only a second step. The first step would have been the donation of a *mansus* as benefice to a royal *fidelis* such as Otkarius, who could recruit some sort of retinue out of it. Indeed, he may have been a lord of several *liti*, which would make him a *dominus* such as those mentioned in the Lex Salica.[83] In the case of Otkarius's benefice, twenty-five *mansi* basically equaled twenty-five households with their accompanying pieces of land, sixty-six slaves, vineyards etc. On those pieces of land we find seventeen *liti*, whose *mansi* therefore can most likely be classified as *mansi lediles* and who were clearly different from the sixty-six *mancipia*, the slaves. This seems to suggest that the position of *liti* was far better than that of the more numerous *mancipia*. The second step documented in the charter was the transferal of their land and functions to a monastery. This meant that the *liti*, since their status was intimately linked to the land held they held, now had an ecclesiastical lord, the monastery of Fulda. They would have been keen to ensure that in this transition from a royal to an ecclesiastical lord, their special status continued to be recognized and did not deteriorate.[84]

80 *Carolus [gratia Dei] rex Francorum et Langobardorum ac patricius Romanorum. Quicquid enim ad loca venerabilia sanctorum propter nomen domini concedimus vel concedendo firmamus. Hoc nobis ad salute et profectum animae atque stabilitatem regni nostri pertinere confidimus. Igitur notum sit omnium fidelium nostrorum magnitudini, qualiter nos propter nomen domini et animae nostrae salute donamus atque contradimus ad Fuldense monasterium, ubi praeciosissimus Christi martyr Bonifacius corporaliter requiescat et vir venerabilis Sturmio abba turmae monachorum praeesse videtur, donatumque in perpetuum esse volumus quasdam res proprietatis nostrae, hoc est in pago Wormacense, quicquid fidelis noster Otkarius per nostrum beneficium visus est habuisse, hoc est in Mogontia civitate mansos XXV et mancipia LXVI et XVI lidos et vineas ad ipsa beneficia pertinentes.* [. . .] *Die Urkunden Pippins, Karlmanns und Karls des Großen*, 2nd ed., ed. Engelbert Mühlbacher (Berlin: Weidmann, 1956): nos. 127, 177.

81 Cf. Staab, *Untersuchungen zur Gesellschaft am Mittelrhein* (n. 79): 47–48, and Beyreuther, *Die frühmittelalterlichen Liten* (n. 52): 53–54.

82 On problems related to 'fiscal succession' see Stefan Esders, "'Öffentliche' Abgaben und Leistungen im Übergang von der Spätantike zum Frühmittelalter: Konzeptionen und Befunde," in *Von der Spätantike zum frühen Mittelalter: Kontinuitäten und Brüche, Konzeptionen und Befunde*, ed. Theo Kölzer and Rudolf Schieffer (Ostfildern: Thorbecke, 2009): 234–42 in 189–244.

83 See above, n. 69.

84 On the *liti* of Fulda see also Beyreuther, *Die frühmittelalterlichen Liten* (n. 52): 52, 63 and 66.

Mainz lay at a distance of about one hundred miles from Fulda. But the status of this monastery, which had been founded by Boniface, was enormously elevated by Charlemagne through donations like the one discussed here.[85] In the ninth century, Fulda had between six and seven thousand *mansi*,[86] which means that it must have had more than 25,000 dependents scattered over several regions. It also maintained a militia of considerable size.[87] Charlemagne's charter thus seems to document an early stage of Fulda's rise to becoming an ecclesiastical principality. The monastery also played an important part in the Middle Rhine Valley.[88] However, the charter does not divulge whether the 17 *liti* at Mainz were military staff or whether they performed other tasks at the time when they were given to Fulda.

That their military function had not completely disappeared once the *liti* entered the large group of ecclesiastical dependents is clearly documented by the polyptych of the abbey of Prüm in the Moselle region, which was compiled in the late ninth century.[89] In two places called Gemmerich and Nastätten on the eastern bank of the Rhine, the monastery owned twenty-three and twenty-eight *mansa ledilia* respectively. The Gemmerich entry shows what a holder of a *mansus ledilis* was liable to pay per year: a pig with a worth of five *solidi*, two chickens, twenty eggs, flax, several types of wood, torches, etc. This category of dependent persons was also required to perform a number of services and tasks: certain types of corvée labor depending on the seasons, for instance during the harvest period; baking and brewing, but also transport services to the monastery of Prüm and to Sankt Goar, called *angaria*; horse transport called *parafredus*. There were also military duties, but these could be substituted by the payment of an ox for which the holders of four *mansa ledilia* could club together.[90] Obligations

85 Franz Staab, "Der Grundbesitz der Abtei Fulda bis zur Mitte des 9. Jahrhunderts und seine Stifter," in *Hrabanus Maurus und seine Schule. Festschrift der Rabanus Maurus-Schule 1980*, ed. Winfried Böhme (Fulda: Rabanus-Maurus-Schule, 1980): 48–63.

86 Ulrich Weidinger, *Untersuchungen zur Wirtschaftsstruktur des Klosters Fulda in der Karolingerzeit* (Stuttgart: Anton Hiersemann, 1991): 116–28.

87 Konrad Lübeck, "Vom Reichskriegsdienste des Klosters Fulda," *Fuldaer Geschichtsblätter* 28 (1936): 1–13, and 29 (1937): 55–64.

88 Staab, "Der Grundbesitz der Abtei Fulda" (n. 85).

89 Ingo Schwab, ed., *Das Prümer Urbar* (Düsseldorf: Droste, 1983). The fundamental study is Ludolf Kuchenbuch, *Bäuerliche Gesellschaft und Klosterherrschaft im 9. Jahrhundert. Studien zur Sozialstruktur der Familia der Abtei Prüm* (Wiesbaden: Franz Steiner, 1978).

90 *[104] De Gembrigke. Sunt in Gembriche mansa ledilia .XXIII. Solvit unusquisque ualem valente solidos .V.; de lino libram .I., pullos .II., ova .XX.; axiles .C., ligna carrda(as) .V., faculas .V., palos .III. Inter quatuor lediles bovem hostilicium .I., parafredum, ubicumque precipitur illi; angarium ad monasterium, id est modios VIII. Ad Sanctum Goarem .II., corvadas .III; unum diem ad fimum ducendum; ad fenum et ad messem in ebdomada dies .II., cum duobus mancipiis; glaves .III. circa dominicatam curtem, alias . III. circa broil .V. perticas habens longitudinis et ipsa pertica debet .XV. pedes habere in longitudinis; brazare et quoquere debent; tres .XV. noctes in anno; scindalas .L., substratoria ligna carrad(am) .I. ad dominicatum scuram; iugera .II., iornales precatorios duos. Qui dimidium servitium faciunt, sunt .VI. Solvit unusquisque de lino libram semis, aut camsilem semis facit; puillum .I., ova .X., axiles .L., scibda-*

to perform *angaria*[91] and *paraveredus* (with, again, four *mansi* jointly providing one horse),[92] to provide wood and to bake, lead us straight back to the catalogue of *munera publica* (public duties) given in late fourth-century imperial laws.[93] The ninth-century version had no individual duties, so to speak, but rather *munera* that were attached to individual pieces of property.[94] This, of course, had also applied to the *terrae laeticae*.[95] As Franz Staab convincingly argued, many of the so-called Lazenhufen or *mansi lediles* were located along old Roman roads.[96] These *mansi* were apparently created out of former imperial and fiscal properties, which the Frankish kings continued to use in this function by assigning them to *liti*; moreover, as Staab also showed, the Frankish rulers also introduced these *mansi* into regions which had never belonged to the Roman Empire.[97]

The entry in the polyptych also shows that the holders of *mansi serviles* were far worse off than holders of a *mansus ledilis*: Those in possession of a *mansus servilis* did not have to perform military service or make a substitute payment, because they were not considered free; for the same reason, they had to work three days a week on their ecclesiastical lord's manor.[98] The *liti*, by contrast, had better conditions that seem to reflect their 'free' or 'freedmen' status. Although a labor service of two days a week was sometimes imposed on their *mansi*,[99] their obligations and services were fixed in considerable detail, since the *mansa ledilia* had become part of the complex ecclesiastical organization, which was centered on the manor and the *mansi*. For this reason the holders of *mansi lediles* also had to contribute to the functioning of the

las .XXV., palos .IIII., glaves .III., corvadas .III., angariam ad monasterium modios .IIII., ad Sanctum Goarem .II., parafredum dant. Inter illos .VIII. bovem hostilicium .I.; iugera .II., iornales precatorios .II.; ad messem et ad fenum duos dies in ebdomada cum duobus mancipiis; brazant et coquunt; ligna stratoria carrad(as) .II. ad dominicatam scuram. [. . .] Sunt ibi mansa servilia .II. Faciunt omni ebdomada dies .III.; pullum .I., ova .X., iugera .II., iornalem .I., angariam ad Sanctum Goarem modios .II, ad monasterium modios .IIII.,; ad messem et ad fenum .III. dies cum uxore sua et ad linum colligendum et parandum. (in Schwab, ed., *Das Prümer Urbar* [n. 89]: 245–46).

91 See Michael Windhausen, "Angaria und scara im Prümer Urbar. Transport- und Botendienste in einer frühmittelalterlichen Grundherrschaft im Kontext römischer Verkehrswege," *Beiträge zur Geschichte des Bitburger Landes* 16 (2006): 4–30.

92 On *paraveredus* see Esders, "'Öffentliche' Abgaben und Leistungen" (n. 82): 191–205. On Lorsch see Staab, *Untersuchungen zur Gesellschaft am Mittelrhein* (n. 79): 43–45.

93 Esders, "'Öffentliche' Abgaben und Leistungen" (n. 82): 192–93 (with references).

94 Hermann Horstkotte, "Systematische Aspekte der *munera publica* in der römischen Kaiserzeit," *Zeitschrift für Papyrologie und Epigraphik* 111 (1996): 233–55.

95 Szidat, "*Terrae laeticae*" (n. 21).

96 Staab, *Untersuchungen zur Gesellschaft am Mittelrhein* (n. 79): 32–88.

97 Staab, *Untersuchungen zur Gesellschaft am Mittelrhein* (n. 79): 87. On 'public' functions performed by *liti* that were related to itinerant kingship see Staab, ibid.: 44–47.

98 Staab, *Untersuchungen zur Gesellschaft am Mittelrhein* (n. 79): 55.

99 Cf. Volker Henn, "Zur Bedeutung von 'Mansus' im Prümer Urbar," in *Verführung zur Geschichte. Festschrift zum 500. Jahrestag der Eröffnung der Universität Trier, 1473–1973*, ed. Georg Dröge et al. (Trier: NCO-Verlag, 1973): 42–43 in 35–45.

manor by providing labor services to a certain extent. Although they were needed to supply the monastery with its necessities and also to do some work on the estate, the revenue of the *mansa ledilia* continued to serve political functions, such as providing military service, 'public' transportation, or accommodation expenses for the king when he was traveling.[100]

4 Conclusion: The Legal Status of *laeti* and *liti* and its Transformation

To trace the fate of a social group over such a large temporal and geographical distance is a methodological challenge. The prime aim of this contribution therefore was to address some problems that appear inevitable when one is tracking a historical phenomenon over a period that saw many changes and thus shows a striking imbalance in the extant sources. Some preliminary generalizations along with a few final conclusions may help us to refine the questions set out at the beginning.

The legal status of *laeti* and *liti* is, of course, of crucial importance. To what extent was *laetus* (in late antiquity) and *litus* (in the early Middle Ages) a personal status? What were the implications of *laeti* and *liti* possessing fiscal lands? With regard to their personal status, it seems clear that both *laeti* and *liti* enjoyed a status that can be characterized as 'free,' so that in their legal capacity they were far better off than slaves and most likely also than *coloni*, perhaps more similar to freedmen. It is therefore not helpful to describe their status as 'half-free.'[101] *Laeti* and *liti* were always considered to be 'free' in the sense that they could and were expected to perform military service. Since regulations on marriage figure prominently in some of the legal sources discussed, we can also assume that the status of being a *laetus* or *litus* was passed down the generations by birth, in particular if both parents belonged to this social group. The wergild tariffs also suggest that we should regard *litus* as a personal legal status that depended on membership in a specific group.

A second defining element was possession of a piece of property that ultimately derived from the fisc and was given to a *laetus* / *litus* to oblige him to perform military service. This land could be handed down from a *laetus* to his son if the latter was able and willing to assume his father's duties. It seems that this piece of fiscal property was precisely sized so as to allow the *laetus* both to perform public service and feed his family. Despite many differences, it is clear from both late antique and early medieval sources that rulers and lords used fiscal property to create a kind of a 'military

100 On the transformation of such services into cash payments see Rudolf Kötzschke, "Zur Geschichte der Heeressteuern in karolingischer Zeit," *Historische Vierteljahrschrift* 2 (1899): 231–43.

101 See the critique by Von Olberg, "Halbfreie" (n. 65).

household' for a *laetus* or *litus* and his family. This brings us to the larger, much debated, question of what the late Roman precursors of the early medieval *colonica*, *mansus* or 'Hufe' may have been. Was there anything like this in the late Roman period? Could it be, for instance, that the late Roman *iugum* is in any way linked with this development?[102] Might the *fundus cum instrumento* have served as a model?[103] Or was the *villa* the most relevant entity in this context?[104] It seems reasonable to assume that such functional units based on fiscal property could have marked the beginning of a phenomenon that emerges in more detail in the early medieval sources. But this remains a hypothesis. Moreover, the facts that *mansi lediles* are also attested in Saxony,[105] and that the Saxon laws refer to *liti* as a third category of people (in addition to free and unfree),[106] seem to suggest instead that the Franks newly introduced it into the law after their conquest of Saxony – and not that they encountered it there as an old Saxon institution.[107] At any rate, the large number of *liti* in the early medieval sources suggests that the Frankish rulers created many new households from the eighth century onward by parcelling fiscal property into *mansi lediles*. Moreover, it seems that many additional *mansi* were created after the transfer of fiscal possessions to churches and monasteries,[108] and that large numbers of new *liti* may have come about through manumission.[109] Several early medieval sources refer to a payment called *litimonium* or *lidimonium*. It is not quite clear whether the *litimonium* had to be

102 Esders, "'Öffentliche' Abgaben und Leistungen" (n. 82): 206–34.

103 On this question see Hans Oppikofer, *Das Unternehmensrecht in geschichtlicher, vergleichender und rechtspolitischer Betrachtung* (Tübingen: Mohr Siebeck, 1927): 32–44 and 62, with the critique by Artur Steinwenter, *Fundus cum instrumento*, *Eine agrar- und rechtsgeschichtliche Studie* (Vienna: Holder/Pichler/Tempsky, 1942): 39, 54, 65–66, 86 and 102.

104 Élisabeth Magnou-Nortier, ed., *Aux sources de la gestion publique, t. 1: Enquête lexicographique sur fundus, villa, domus, mansus* (Lille: Presses universitaires de Lille, 1993); for the role of the fisc in the Carolingian period see Niall Ó Súilleabháin, "Landholding in the Loire Valley and the Late Carolingian Economy (c.840–c.1000)," *Early Medieval Europe* 31 (2023): 274–96.

105 Kötzschke, "Zur Geschichte der Heeressteuern" (n. 100).

106 Götz Landwehr, "Die Liten in den altsächsischen Rechtsquellen. Ein Diskussionsbeitrag zur Textgeschichte der *Lex Saxonum*," in *Studien zu den germanischen Volksrechten. Gedächtnisschrift für Wilhelm Ebel*, ed. Götz Landwehr (Frankfurt am Main: Peter Lang, 1982): 117–42.

107 Martin Lintzel takes the latter view (*liti* as an old Saxon institution), but he also assumes a Frankish intervention in the definition of a *litus*'s wergild see Martin Lintzel, "Zur altsächsischen Rechtsgeschichte," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 52 (1932): 294–321.

108 As has also been observed for the *mansi serviles* see Adriaan Verhulst, *The Carolingian Economy* (Cambridge: Cambridge University Press, 2002): 46.

109 See Kuchenbuch, *Bäuerliche Gesellschaft* (n. 89): 264: "So hat man Grund, auch die weite Verbreitung des *mansus ledilis* in der Prümer Grundherrschaft und im Rheinland derartigen Wirkungen und Folgen der Freilassung zuzuschreiben, obwohl direkte Nachrichten vielfach, für Prüm aber völlig fehlen. Zugleich darf man aber daneben andere Phänomene wie die spätrömische Ansiedlung germanischer Liten und das Konnubium zwischen Freien und Unfreien nicht vergessen." See also ibid.: 381–82 with some critical remarks on the hypothesis put forward by Staab.

paid for a land holding or for the status of a *litus* under the protection of a monastery, but the latter seems far more likely.[110]

The availability of large portions of fiscal property allowed late antique and early medieval rulers to have new groups perform public duties. However, the effect of these possessions on the status of *laeti* is difficult to trace. Even if we accept the use of fiscal property as a continuous element in the method by which late antique and early medieval rulers integrated groups of 'others' into society by requiring them to perform specific public duties, it seems evident that the status of *laeti* or *liti* changed over the course of time. We can observe the *liti* becoming 'mediatized' as early as around 500, when the Lex Salica mentions *liti* who had *domini*[111] (or later *seniores*[112]), and we can also trace the category of *alieni liti*, i.e. *liti* who were apparently not regarded as *sui iuris*. Their *domini* or *seniores* may have been royal *fideles* who had been given the *terrae laeticae* as a benefice, and later also ecclesiastical lords who acquired *mansi lediles* by royal donation. They may sometimes have been held liable for misdeeds committed by their *liti*. But the process by which the status of dependency changed remains difficult to trace. Apparently *laeti* – like *coloni* – could be considered to some extent as belonging to the land they possessed, despite their legally 'free' status, but we cannot easily discern the precise nature of their intermediate status.

In my view it would go too far to infer from the polyptychs that the designation of *mansus ledilis* for a piece of land no longer meant a *mansus* possessed by a *litus*, but had become merely an abstract category for a certain type of land and the obligations associated with it.[113] It is true that there was social mobility among the holders

110 Boos, *Die Liten und Aldionen nach den Volksrechten* (n. 52): 11, regarded the *litimonium* as a payment for property. However, the polyptych of the monastery of Saint-Germain-des-Prés (ca. 827), which mentions *liti*, *lidae* and *mansi lediles* on various occasions, lists seven female *lide* for a place called *Nuviliacus* (possibly Neuilly-sur-Eure) who were obliged to pay an annual amount of four *denarii* as *litimonium*: *Iste sunt iede. Berthildis. Leutberga. Gotberga. Celsa. Faregildis. Sigalsis. Bertenildis. Iste solvunt denarios .IIII^or^. de litimonio* (Dieter Hägermann, ed., *Das Polyptychon von Saint-Germain-des-Prés. Studienausgabe* [Cologne: Böhlau, 1993]: 97). The *Formulae Avernae* 3 (Karl Zeumer, ed., *Formulae Merovingici et Karolini aevi* [Hannover: Hahn, 1886]: 30) list the *lidimonium* among payments and obligations of freedmen. The topic requires further investigation (cf. Beyreuther, *Die frühmittelalterlichen Liten* [n. 52]: 44). This and the amount of four *solidi* [comparable to that of *liberti* and *censuales*]) suggest that the payment was an indicator of personal legal status rather than for property.

111 See above, n. 69.

112 Lex Francorum Chamavorum 44: *Si quis de lido suo pro aliqua causa in ratione fuerit inventus, super noctes 14 ipsum lidum ad placitum adducat, si senior suus in ipso comitatu est. Si in alio comitatu est, ipse lidus suum seniorem ad placitum adducat super 25 noctes. Si in tertio comitatu est, super 42 noctes. Si in alio ducatu est, super noctes 84 cum suo seniore veniat ad ipsum placitum* (Rudolph Sohm, ed., *Lex Ribuaria et Lex Francorum Chamavorum* [Hannover: Hahn, 1883]: 122).

113 Konrad Elmshäuser and Andreas Hedwig, *Studien zum Polyptychon von St. Germain-des-Prés* (Cologne: Böhlau, 1993): 478–80 argued more generally that the legal status of the holder of a *mansus* lost its relevance, while only the quantity of obligations attributed to a *mansus* mattered. While there is

of *mansi*, and that not every *mansus ingenuilis* was held by a free person, nor every *mansus servilis* by a slave. Nevertheless, the overall impression is that many, if not most, holders of *mansi lediles* were indeed considered *liti* and had to meet the obligations imposed on this group. The strict category of *liti* as a group distinct from both free and unfree people which we encounter in Frankish and Saxon laws also supports this assumption.

This calls, finally and once more, for a nuanced treatment of the question of continuities. It is likely that numerous possessions located along Roman roads, which had formerly been in the hands of late antique *laeti*, contined to be used,[114] many probably by early medieval *liti*. Even so, we need to be cautious and not to generalize from this. As we saw, *liti* and *mansa ledilia* are attested in many regions that had never belonged to the Roman Empire, where they were apparently newly introduced by post-Roman rulers. It therefore seems more relevant here to state that both late Roman emperors and Frankish kings used fiscal property to integrate various groups of persons into society by requiring them to perform specific public duties. We can also assume that many slaves were manumitted into the status of *liti* and subsequently given land to meet the obligations typically required of this group. The origin of this practice seems to have been military service in the Roman era, whereas in the early medieval period the holders of *mansi lediles* appear to have had a number of different, precisely defined functions and obligations. Nevertheless, in early medieval sources, including those from Frisia and Saxony, *liti* were, in principle, treated as being obliged to perform military service. In addition, we can see how the *liti*'s obligations became more precisely defined and adjusted to the demand of ecclesiastical landowners. There is even documentary evidence for donors who gave to monasteries their *liti* (*liti mei*) together with the land the latter held in possession.[115]

The legal status of early medieval *liti* needs also to be seen against the background of an increasing differentiation of legally defined groups in the post-Roman societies of the former Roman provinces of Gaul and Germania. This led to the emergence of a great variety of social groups, which is reflected in the law codes, polyptychs and charters, and is especially visible in the basic threefold distinction of free (*liberi*, *ingenui*), *liti* and unfree (*servi*, *mancipia*) that pervades so many normative texts from the early medieval period onward. This says much about social dynamics in the Frankish kingdoms, about the 're-ordering' of its increasingly heterogenous society and, of course, about the growing relevance of the *liti* as a social group. It seems that the special legal category of *liti*, defined initially in the late Roman period

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no reason to reject this tendency in individual cases, it would go too far to see this as general development that impacted all *mansi* and rendered the legal status of their holders irrelevant.

114 See also Stefan Esders, "The 'Staffelsee Inventory'. Carolingian Manorial Economy, Mobility of Peasants, and 'Pockets of Functional Continuity' in the Transition from Antiquity to the Middle Ages," *Journal of European Economic History* 49 (2020): 206–50.

115 Beyreuther, *Die frühmittelalterlichen Liten* (n. 52): 48–49.

through their manumitted status and their possession of specific lands, was introduced into Frankish and Saxon law in the post-Roman period. However, it was in this period of profound change for military and social organization that many groups of *liti* were mediatized by lay and ecclesiastical lords, who continued to rely on the *liti*'s military obligations when necessary.

A final glimpse into the mid-eleventh century might confirm what has been said above, but can also point to future developments. It is provided by a charter from Osnabrück cathedral in Westphalia, in which a freedman called Werinbreht donated himself and his property to the bishop of Osnabrück to become his *litus*. Werinbreht swore fidelity to the bishop 'as a proper *litus* is deservedly obliged to do' (*sicut proprius liddo merito debuit*).[116] Now that he had become a *litus*, the precise nature of his obligations needed to be clarified. In the Carolingian period and after, *liti* were in principle required to perform military service,[117] so Werinbreht's charter explicitly stated that he, despite now having become a *litus*, was to be free from all military obligations now and in future. We might say that his fidelity had thus become 'demilitarized' in a way.

116 *Deinceps vero post breve tempus propter amorem ac dilectionem eiusdem episcopi se ipsum cum omni bono suo, quod tunc habuit et post haec adepturus erat, ad eandem tradidit ecclesiam, et cum sacramento, sicut proprius liddo merito debuit, eidem ecclesiae et episcopo fidelitatem fecit* (Friedrich Philippi, ed., *Osnabrücker Urkundenbuch 1 [772–1200]* [Osnabrück: Selbstverlag des Vereins für Geschichte und Landeskunde von Osnabrück, 1892]: no. 139, 120 [1037–1052]; see also ibid.: no. 138).

117 See Kötzschke, "Zur Geschichte der Heeressteuern" (n. 100): 241–43; Beyreuther, *Die frühmittelalterlichen Liten* (n. 52): 28 – Saxon sources contain a reference to a *iuramentum in manu liti sui* see Lex Saxonum 8 (Claudius von Schwerin, ed., *Leges Saxonum und Lex Thuringorum* [Hannover: Hahn, 1918]: 19) which may have had military implications, too; see Landwehr, "Die Liten in den altsächsischen Rechtsquellen" (n. 106): 120.

Dominik Leyendecker

The Punishment of *servi* in Merovingian and Carolingian Legal Texts

1 Introduction

Early medieval legal systems in post-Roman Europe[1] were usually built on compensatory payments. These payments applied even to severe offenses such as homicide and rape.[2] The sum that an offender had to pay in order to compensate for killing or injuring another person – known as wergild – was determined by the legal status of the person harmed and the severity of the crime committed. For example, in the Lex Salica, which was codified around the year 500,[3] the wergild of a free Frank is set at two hundred *solidi*[4] and that of a Roman at one hundred *solidi*,[5] while the killing of a *servus* or *ancilla* requires the payment of thirty *solidi* as compensation.[6] The wergild sys-

1 On the kingdoms in the post-Roman world, see the various contributions in Hans-Werner Goetz et al., eds., *Regna and Gentes. The Relationship between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World*, vol. 13, Transformation of the Roman World (Leiden: Brill, 2003). The question concerning those kingdoms being of "Germanic" origin is discussed in Guy Halsall, "Two Worlds Become One: A 'Counter-Intuitive' View of the Roman Empire and 'Germanic' Migration," *German History* 4, no. 32 (2014): 515–32. See also Matthias Friedrich and James M. Harland, "Introduction: The 'Germanic' and its Discontents," in *Interrogating the 'Germanic'. A Category and its Use in Late Antiquity and the Early Middle Ages*, Ergänzungsbände zum Reallexikon der Germanischen Altertumskunde 123, ed. Matthias Friedrich and James M. Harland (Berlin: De Gruyter, 2021): 1–18.

2 An overview on wergild is provided in Stefan Esders, "Wergild, Compensation and Penance: Wergild and the Monetary Logic of Early Medieval Conflict Resolution," in *Wergild, Compensation and Penance. The Monetary Logic of Early Medieval Conflict Resolution*, ed. Lukas Bothe et al., Medieval Law and its Practice 31 (Leiden: Brill, 2021): 1–37.

3 A detailed account of the dating of the Lex Salica is found in Karl Ubl, *Sinnstiftungen eines Rechtsbuchs – Die Lex Salica im Frankenreich*, Quellen und Forschungen zum Recht im Mittelalter 9 (Ostfildern: Jan Thorbecke, 2017): 54–66.

4 See Karl August Eckhardt, ed., *Pactus Legis Salicae* 41.1, *leges nationum Gemanicarum*, MGH LL nat. Germ. 4,1 (Hannover: Harassowitz Verlag, 1962): 154: *Si quis <uero> ingenuum Francum aut barbarum, qui lege Salica uiuit, occiderit, cui fuerit adprobatum, mallobergo leodi sunt, VIIIM denarios qui faciunt solidos CC culpabilis iudicetur*. The wergild could be increased under certain circumstances. For example, if the victim was *in truste dominica* or a free woman, the compensatory payment amounted to six hundred *solidi* (Lex Sal. 41.5, 156). On wergild tariffs and (legal) status in various legal systems, see Lisi Oliver, *The Body Legal in Barbarian Law* (Toronto: University of Toronto Press, 2011): 203–26.

5 See Lex Sal. 41.9, 157 (n. 4). For a *Romanus homo, conuiua regis*, the wergild was tripled (Lex Sal. 41.8, 157). A *Romanus tributarius* required a wergild of 62 ½ *solidi* (Lex Sal. 41.10, 157).

6 Lex Sal. 35.9, 132 (n. 4): *Si quis uassum ad ministerium, quod est horogauo, puellam ad ministerium aut fabrum ferrarium uel aurificem aut porcarium <uel uinitorem aut stratorem> furauerit aut occiderit, cui fuerit adprobatum, mallobergo t(e)xaga aut amb(ah)t(o)nia sunt, MCC denarios qui faciunt sol-*

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tems and tariffs of the Franks, Lombards and Saxons, among others, have been studied extensively by recent scholarship.[7] Another aspect of this compensatory logic found in Frankish legal sources has, however, received far less scholarly attention: It is not only the legal status of the victim which has implications on how a given crime is compensated – the legal status of the perpetrator is relevant as well. According to Lex Salica, title 11.1, the theft of an object with a value of two *denarii* is compensated with a payment of six hundred *denarii* or fifteen *solidi*.[8] By contrast, title 12.1 of the Lex Salica deals with the theft of an object of the same value (two *denarii*) by a *servus*. In this case, the crime is compensated with one hundred twenty lashes, the penalty therefore being corporal punishment rather than monetary compensation.[9] The Lex Salica also provides an alternative to corporal punishment in cases involving unfree perpetrators: The aforementioned punishment of one hundred twenty lashes can be replaced by the payment of one hundred twenty *denarii* or three *solidi*. The fine charged for the same offense therefore is significantly lower in case of an unfree perpetrator.

In addition to the different nature of punishment depending on the convict's legal status, it has been frequently observed that Merovingian legal texts include an option for *servi* to avoid corporal punishment by paying one *denarius* per lash (one hundred twenty lashes commonly require the payment of one hundred twenty *denarii*).[10] Beyond this, however, recent scholarship has largely ignored the provisions of Frankish Law for crimes committed by *servi*.[11] Paul Leseur's *Des conséquences du délit de l'e-*

idos XXX culpabilis iudicetur. Inter fre(d)o et faido sunt MDCCC denarii qui faciunt solidos XLV >excepto capitale et dilatura>. In summa sunt simul solidi LXXXV. The title requires the payment of forty-five *solidi* as a *fredus* in addition to the initial payment. Jan F. Niermeyer and Co van de Kieft, *Mediae Latinatis Lexicon Minus* (Leiden: Brill, 2002): 593–94 define the *fredus* as a "*fine* to be paid to the public authority in addition to the payment of an indemnity to the injured party, at first as a reward for the action taken by public authority in behalf of restorement of the peace, later as a punishment for infringement of the law." A *fredus* is not mentioned in Lex Sal. 41.

7 See, for example, the various articles in Bothe et al., eds., *Wergild, Compensation and Penance* (n. 2).

8 Lex Sal. 11.1, 55 (n. 4): *Si quis <uero> ingenuus deforis casa quod ualet duo denarii, furauerit <cui fuerit adprobatum>, mallobergo leodardi sunt, DC denarios qui faciunt solidos XV culpabilis iudicetur except capitale et dilatura.*

9 Lex Sal. 12.1, 58 (n. 4): *Si quis seruus <de>foris casa, quod ualet duo denarii, furauerit et ei fuerit adprobatum, mallobergo falcono sunt, except capitale et dilatura <aut> CXX flagellus <extentus> accipiat aut CXX denarios qui faciunt solidos III <pro dorsum suum> reddat.*

10 See, for example, Heinrich Brunner and Claudius von Schwerin, *Deutsche Rechtsgeschichte*, vol. 2 (Berlin: Duncker & Humblot, 1928): 787; Katherine Fischer-Drew, *The Laws of the Salian Franks* (Philadelphia: University of Pennsylvania Press, 1991): 77; Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford: Oxford University Press, 2012): 31–32; Maximilian McComb, *Strategies of Correction. Corporal punishment in the Carolingian Empire, 742–900* (New York: Cornell University, 2018): 166.

11 In addition to the studies cited in n. 10, some studies briefly mention the general differentiation between punishment for the free and the unfree. See, for example, Paul Fouracre, "'Placita' and the Settlement of Disputes in Later Merovingian Francia," in *Settlement of Disputes in Early Medieval Eu-*

sclave dans les Leges Barbarorum et dans les Capitulaires,[12] first published in 1888, still represents the fullest discussion of the topic. The most recent study to address the punishment of *servi*, at least in some detail, is Hermann Nehlsen's *Sklavenrecht zwischen Antike und Mittelalter* from 1972.[13] Nehlsen, however, only covered Frankish Law from the Merovingian period, and his study did not account for potential changes in legal texts that might have emerged under the Carolingians. Concerning this, Maximilian McComb recently claimed that the Carolingian strategies of punishment had largely been based on the norms of the Lex Salica.[14] However, a specific difference has already been identified between Merovingian and Carolingian legal texts: As briefly noted by Heinrich 10, capitularies from the reign of Louis the Pious require the payment of one *solidus* per lash, rather than one *denarius*, if a *servus* is found guilty of a crime and wants to avoid corporal punishment.[15]

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rope, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 1986): 37–38; Paul Fouracre "Attitudes towards Violence in Seventh- and Eighth-Century Francia," in *Violence and Society in the Early Medieval West*, ed. Guy Halsall (Rochester: Boydell Press, 1998): 72.

12 Paul Leseur, *Des conséquences du délit de l'esclave dans les Leges Barbarorum et dans les Capitulaires* (Paris: Hachette Livre, 1889).

13 Hermann Nehlsen, *Sklavenrecht zwischen Spätantike und Mittelalter. Germanisches und römisches Recht in den germanischen Rechtsaufzeichnungen*, Göttinger Studien zur Rechtsgeschichte 7 (Göttingen: Musterschmidt, 1972).

14 McComb, *Strategies of Correction* (n. 10): 163–65. This was already noted by Edwin Mayer-Homberg, *Die fränkischen Volksrechte im Mittelalter – Eine rechtsgeschichtliche Untersuchung in drei Bänden*, vol. 1, *Die fränkischen Volksrechte und das Reichsrecht* (Weimar: Böhlau, 1912): 72–99.

15 Brunner, *Deutsche Rechtsgeschichte 2* (n. 10): 787. See also McComb, *Strategies of Correction* (n. 10): 167. While Brunner failed to provide sources to support his claim, McComb referred to c. 5 of the so-called *Concilium Francofurtense*. The chapter that McComb quoted (id. 166) from the MGH Concilia edition (Albert Werminghoff, ed., *MGH Conc. 2,1* [Hannover: Hahnsche Buchhandlung, 1906]: 166) does not, however, include the said ratio. In Alfred Boretius' edition of the Capitulary (Alfred Boretius, ed., MGH Capit. 1 [Hannover: Harassovitz Verlag, 1883]: 73–78, 74), which does not vary significantly from Werminghoff's later edition, the chapter reads: *De denariis autem certissime sciatis nostrum edictum, quod in omni loco, in omni civitate et in omni empturio similiter vadant isti novi denarii et accipiantur ab omnibus. Si autem nominis nostri nomisma habent et mero sunt argento, pleniter pensantes, si quis contradicit eos in ullo loco in aliquo negotio emptionis vel venditionis: si ingenuus est homo, quindecim solidos conponat ad opus regis; si servilis conditionis, si suum est illud negotium proprium, perdat illud negotium aut flagelletur nudus ad palam coram populo; si autem ex iussione sui domini fecerit, tunc ille dominus solidos quindecim componat, si ei adprobatum fuerit*. On the capitulary issued by Charlemagne in 794, see Hubert Mordek, "Zur Bedeutung des Frankfurter Kapitulars Karls des Großen," in *794 – Karl der Große in Frankfurt am Main. Ein König bei der Arbeit. Ausstellung zum 1200-Jahre-Jubiläum der Stadt Frankfurt am Main*, ed. Johannes Fried (Sigmaringen: Thorbecke, 1994): 46–50. It seems likely that McComb, *Strategies of Correction* (n. 10): 406 accidentally quoted the Capitulary of Francfurt rather than c. 18 of the *Capitula legibus addenda* issued by Louis the Pious. The latter chapter also discusses the punishment of people who refuse to accept "good coins" and in fact mentions the ratio of sixty *solidi* or sixty lashes. See *Capitula legibus addenda* c. 18, MGH Capit. 1, 285: *De his, qui bonos denarius accipere nolunt. Quicumque liber homo denarium merum et bene pensantem recipere noluerit, bannum nostrum, id est sexaginta solidos, conponat. Si vero servi ecclesiastici aut comitum*

The question of continuities and discontinuities between the Merovingian and Carolingian legislative approaches to the punishment of the unfree has so far not been discussed in detail.[16] Therefore, it appears necessary to analyze the hypothesis of a Carolingian continuation of Merovingian strategies in regard to penal law and how far this extends to such cases in which *servi* are involved. In this paper, I will first attempt to illustrate how normative texts from Merovingian Francia discuss the punishment of *servi*. After that, I will present the situation as found in Carolingian material in order to identify potential changes between the materials from the sixth and the ninth centuries.

It needs to be emphasized that the provisions found in the Lex Salica do not provide us with information on the scope of the practical implementation of its titles. Hence, we do not know to what extent customary practices are reflected in the punishments defined in it. As recently noted by Alice Rio, neither the Lex Salica nor the Carolingian capitularies deal with crimes committed (and sanctioned) within a household.[17] How a *servus* was punished for stealing from his own *dominus* is therefore not discussed in the source material analyzed in this paper.[18]

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aut vassallorum nostrorum hoc facere praesumpserint, sexaginta ictibus vapulent aut, si magister eorum vel advocatus, qui liber est, eos vel comiti vel misso nostro iussus praesentare noluerit, praedictum bannum sexaginta solidorum conponat. On the *Capitula legibus addenda*, see Britta Mischke, "Kapitularienrecht und Urkundenpraxis unter Ludwig dem Frommen am Beispiel von Restitutionen aus Fiskalgut," in *Zwischen Tradition und Innovation. Die Urkunden Kaiser Ludwigs des Frommen (814–840) (Abhandlungen der Nordrhein-Westfälischen Akademie der Wissenschaften und der Künste 128)*, ed. Theo Kölzer (Paderborn: Brill Schöningh, 2014): 101–17; Ubl, *Sinnstiftungen* (n. 3): 195–200. The provision is indirectly preserved in c. 8 of the *Capitulare missorum Wormatiense* (MGH Capit. 2, ed. Alfred Boretius and Victor Krause, Hannover 1897, 15–16 in 14–17) from 829, which mentions equal punishment. The transmission is "indirect" as the chapter from 829 directly refers to c. 4, 30 from the capitulary collection of *Ansegius: Die Kapitulariensammlung des Ansegis. Collectio capitularium Ansegisi* (MGH Capitularia regum Francorum NS 1), ed. Gerhard Schmitz (Hannover, 1996): 641, which represents c. 18 of the *Capitula legibus addenda*. On the capitulary collection of Ansegius, see, for example, Takuro Tsuda, "Was hat Ansegis gesammelt? Über die zeitgenössische Wahrnehmung der 'Kapitularien' in der Karolingerzeit," *Concilium medii aevi* 16 (2013): 209–31; Stuart Airlie, "'For it is Written in the Law'. Ansegis and the Writing of Carolingian Royal Authority," in *Early Medieval Studies in Memory of Patrick Wormald*, ed. Stephen Baxter et al. (Farnham: Routledge, 2009): 219–36. On the *Capitulare missorum Wormatiense*, see Veronika Lukas, "Die Wormser Kapitularien von 829," Studien und Texte zu Benedictus Levita, 23.03.2005, http://www.benedictus.mgh.de/studien/studien.htm [accessed 03.11.2022].

16 The aforementioned study by McComb, *Strategies of Correction* (n. 10): 163–67 offers the most detailed account on the matter. Aside from the different rate of one lash per *solidus* rather than per *denarius*, as noted by Brunner, *Deutsche Rechtsgeschichte 2* (n. 10), McComb does not address aspects of continuity/discontinuity in detail.

17 Alice Rio, "Corporal Punishment at Work in the Early Middle Ages: The Frankish Kingdoms (Sixth through Tenth Centuries)," *International Review of Social History* 68, no. 31 (2023): 87–90.

18 The synods held in Merovingian Francia frequently discussed *servi* fleeing and seeking asylum in the church in order to escape punishment by their owners. See, for example, *Concilium Aurelianense*

2 Merowingian Foundations: The Punishment of *servi* in the Lex Salica

As stated above, the tendency in recent scholarship has been to emphasize two aspects of penal law for the unfree, as found in Merovingian sources: The first is the fact that punishment depended on status, with the free paying a fine and the unfree being subjected to corporal punishment. The second concerns the option to redeem a *servus* from corporal punishment through the payment of a fine, at a rate of one *denarius* per lash.[19]

Concerning the first of those aspects, the Merovingian source material is consistent. Whenever the punishment of a *servus* is explicitly mentioned, it differs from that of a free perpetrator. Moreover, corporal punishment is always mentioned as an option, even though the character of the corporal punishment varies.

The second aspect – involving a possibility to avoid physical punishment through the payment of a fine calculated at a rate of one *denarius* per lash – is less straightforward than what the brief assessments in many recent studies would imply: In the earliest known version of the Lex Salica[20] – commonly referred to as version A – only titles 12.1,[21] 25.6–7[22] and 40.1–4 and 11[23] include provisions for the punishment of *servi* by means of lashes. In addition to these, titles 35.1 and 8 require the *dominus* of a *servus* who has killed someone to hand the perpetrator over to the damaged party;[24] titles 12.2,[25] 25.5[26] and 40.4[27] require an unfree perpetrator to be castrated[28] (or pay a fine); in title 40.5, a *servus* who has committed a crime that is compensated with two

541 can. 3, MGH Conc. 1, ed. Friedrich Maassen (Hannover 1893, 3–4); *Concilium Aurelianense* 549 can. 22, MGH Conc. 1, 107–8. On church asylum, see Brigitte Kasten, "Kirchliche Zufluchtsorte im Frühmittelalter," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 138 (2021): 29–100.

19 See n. 10 and 11.

20 On the problem of dating of the Lex Salica, see again Ubl, *Sinnstiftungen* (n. 3): 54–66.

21 Lex Sal. 12.1, 58 (n. 4).

22 Lex Sal. 25.6–7, 95–96 (n. 4).

23 Lex Sal. 40.1–4, 145–47; Lex Sal. 40.11, 153 (n. 4).

24 When the victim is a free person, the *servus* is handed over, representing half of the wergild necessary, while the owner of the killer is liable for the payment of the other half (Lex Sal. 35.8, 131 [n. 4]). In the case of an unfree victim, the killer is divided between his owner and the owner of his victim (Lex Sal. 35.1, 128–29). Fischer-Drew, *The Laws* (n. 10): 97 interprets this as a division of the labor performed by the killer.

25 Lex Sal. 12.2, 58 (n. 4).

26 Lex Sal. 25.5, 94–95 (n. 4).

27 Lex Sal. 40.4, 146–47 (n. 4).

28 Nehlsen, *Sklavenrecht* (n. 13): 323–24, with n. 321 pointed out that castration as a punishment for non-sexual crimes is not found in any of the other Leges.

hundred *solidi* (when the victim is a free person) is sentenced to capital punishment.[29] Furthermore, in a chapter found in two manuscripts of version A, which is believed to be Merovingian,[30] a *servus* who either beats or unveils a free woman is to lose his hand or pay five *solidi* (a free perpetrator in this case would have to pay fifteen *solidi*).[31] Now, how can the rather diverse situations found in the source material be condensed into a supposedly simple rate of one denarius per lash? It seems necessary to take a closer look at the mentioned provisions, beginning with those titles that contain one subtitle where the *servus* is sentenced to lashes, and another where he is sentenced to castration.[32]

Lex Salica, title 12.1 discusses the punishment of a slave who is convicted of stealing an object worth two *denarii*. The title in Karl August Eckhardt's MGH edition reads: *Si quis seruus <de>foris casa, quod ualet duo denarii, furauerit et ei fuerit adprobatum, mallobergo falcono sunt, excepto capitale et dilatura <aut> CXX flagellus <extentus> accipiat aut CXX denarios qui faciunt solidos III <pro dorsum suum> reddat.*[33] Title 12.2, however, presents a more severe case of theft, where an object with a value of forty *denarii* is stolen. It reads: *Si uero quod ualet XL denarii, furauerit, aut castretur aut CCXL denarios qui faciunt solidos VI reddat. Dominus uero serui <eius>, qui furtum fecit, capitale <et dilaturam> in locum restituat*.[34] The correspondence between lashes and compensatory payment is only mentioned in the first of the two prescriptions. A similar situation is found in titles 25.5–6: Title 25.5 presents the more severe crime – the rape of an *ancilla* by a *servus*, resulting in the death of the *ancilla* – which is punished with castration, as in 12.2, or with the payment of two hundred forty *denarii*.[35] Title 25.6 decrees that the rape of an *ancilla* by a *servus*, when it does not result in the death of the *ancilla*, is to be punished with either one hundred twenty or three hundred lashes (depending on the manuscript),[36] or with a compensatory payment of one

29 Lex Sal. 40.5, 148–49 (n. 4). The option to avoid capital punishment by paying a fine of fifteen *solidi*, which is included in Eckhardt's edition, is only found in the Carolingian Lex Salica versions, while no manuscript from either version A or C includes that option.

30 Karl A. Eckhardt, *Pactus Legis Salicae. 1.1 Einführung und 80 Titel-Text* (Göttingen: Musterschmidt, 1954): 160–61; Nehlsen, *Sklavenrecht* (n. 13): 325.

31 Lex Sal. 104.1 and 3, 260 (n. 4). The title is included in the manuscripts called A1 and A2 in Eckhardt's edition. Furthermore, it is found in the manuscript that Eckhardt called K17. On manuscripts A1 and A2, see n. 44 and 45. On Leiden, Bibliotheek der Rijksuniversiteit, Voss. Lat. Q. 119 (K17), see Hubert Mordek, *Bibliotheca capitularium regum Francorum manuscripta. Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse*, MGH Hilfsmittel 15 (Munich: MGH, 1995): 210–17. Mordek dated the manuscript to the late ninth (foll. 1–119) and early tenth centuries (foll. 120–41).

32 The titles in question are Lex Sal. 12.1–2; 25.5–6 and 40.1–4+11 (n. 4).

33 Lex Sal. 12.1–2, 58 (n. 4).

34 Ibid.

35 Lex Sal. 25.5, 94–95 (n. 4).

36 The matter is discussed in detail below.

hundred twenty *denarii*.[37] Titles 12.1–2 and 25.5–6 of the Lex Salica therefore apply the same rate, which makes it reasonable to assume that the offense covered in title 25.7 – the marriage between a *servus* and an *ancilla aliena* without the consent of the *dominus* of the latter – is also punished with either one hundred twenty lashes or one hundred twenty *denarii*. The fact that we have to make such an assumption can be ascribed to Eckhardt's edition of the title, which reads: *Si seruus ancillam alienam extra uoluntate domini sui <sibi> in coniugium sociaverit, mallobergo anthamo, <aut uapul(e)t(ur) aut> CXX denarios qui faciunt solidos III domino ancillae co(g)atur*.[38] A closer look at the individual manuscripts of version A, however, shows that only one of the four – Wolfenbüttel Herzog August Bibliothek, Cod. Guelf. 97 Weiss.[39] – vaguely includes the option of corporal punishment, while the remaining three only mention the compensatory payment of one hundred twenty *denarii*. It is thus rather plausible that the use of corporal punishment is implied, and that it is supposed to be equal to that prescribed in the preceding title, 25.6.[40]

Disregarding the discrepancies in the manuscripts with respect to title 25.6, the ratio of one *denarius* per lash is used for the lesser crime (compensated with one hundred twenty *denarii*), and the more severe offenses (compensated with two hundred forty *denarii*) are punishable by castration rather than two hundred forty lashes. The fact that the ratio of one denarius per lash still somewhat applies in those cases is illustrated by title 40.11, which reads: *Si uero ancilla in tale crimine inuenitur, unde seruus castrare debuerat, aut CCXL denarios qui faciunt solidos VI <culpabilis iudicetur>, si conuenerit <ut> pro ipsa dominus <hoc> reddat, aut CCXL ictos accipiat flagellorum*.[41] Therefore, castration is in fact considered to be equivalent to two hundred forty lashes.

In comparison with the analysis above, where titles 12 and 25 have been shown to include a distinction between lesser and more severe crimes that is reflected in their respective punishments, title 40 in Eckhardt's edition varies in its prescription: The lesser crime – one where a freeman has to pay six hundred *denarii* or fifteen *solidi* as compensation – corresponds to a punishment of one hundred twenty lashes or the payment of one hundred twenty *denarii* / three *solidi*. This title only differs from the others in its separation of the two alternatives – compensation or lashes – into two

37 Lex Sal. 25.6, 95 (n. 4).

38 Lex Sal. 25.7, 96 (n. 4).

39 On the manuscript, see Mordek, *Bibliotheca* (n. 31): 958–60. Mordek dated the manuscript to the second half of the eighth century. The manuscript is labeled as A2 in Eckhardt's edition (XIII–XIV) (n. 30). A digital copy of the manuscript is available at: http://diglib.hab.de/mss/97-weiss/start.htm [accessed 03.11.2022].

40 The possibility that physical punishment was only supposed to be enforced for certain types of violent crimes, namely the ones made explicit in the respective chapters, cannot be ruled out. This does, however, appear to be unlikely.

41 Lex Sal. 40.11, 153 (n. 4).

chapters. This, however, may be attributed to a (questionable) editorial decision[42] made by Eckhardt. While the scribe of the Wolfenbüttel manuscript (A2) may have considered the two paragraphs to be separate subtitles,[43] there is no such indication in Paris, BNF Lat. 4404 (A1)[44] and 9653 (A4)[45] and München, BSB Lat. 4115 (A3).[46] Hence, I believe that Eckhardt's titles 40.1–2 should be considered as one coherent subtitle, which would make the structure of the provision resemble that of 12.1 and 25.5.[47]

The more severe case (*maior culpa*) discussed in Lex Salica 40.3 – one where a freeman has to pay thirty-five *solidi* in compensation – initially only required a payment of one hundred twenty *denarii*.[48] Here, one would have expected a harsher penalty – castration or additional lashes (most likely two hundred forty). And while A2

42 Eckhardt's edition of the Lex Salica (n. 4) has received plenty of criticism since its publication. The points of criticism were summarized by Wilfried Hartmann, "Brauchen wir neue Editionen der Leges?" in *Mittelalterliche Texte. Überlieferung – Befunde – Deutungen*, Schriften der MGH 42, ed. Rudolf Schieffer (Hannover: Hahnsche Buchhandlung, 1996): 233–36. Hartmann (ibid.: 243) concluded that a new edition of the Lex Salica (among other Leges) was necessary. To date, Eckhardt's edition remains the most recent edition of the Lex Salica.

43 In the Wolfenbüttel manuscript (fol. 18v), Eckhardt's title 40.2 begins with a rubricated letter, indicating a new subtitle. The scribe, however, did not systematically use rubricated letters to indicate new subtitles. The remaining subtitles of title 40 (foll. 19r–20r) are not separated by such visual markers.

44 On the manuscript, see Mordek, *Bibliotheca* (n. 31): 456–63. According to Mordek, the manuscript was written at the beginning of the ninth century, probably in Tours. Eckhardt (*Pactus legis Salicae 1,1*, 134 [n. 30]), who labeled the manuscript as A1, assumed a common exemplar for A1 and A2 concerning the Lex Salica and the *Pactus pro tenore pacis*. A digital copy of the manuscript is available at: https://gallica.bnf.fr/ark:/12148/btv1b8426042t [accessed 03.11.2022].

45 On the manuscript, see Mordek, *Bibliotheca* (n. 31): 560–62. Mordek dated the manuscript to the mid-ninth century. A digital copy of the manuscript is available at: https://gallica.bnf.fr/ark:/12148/btv1b10545842k [accessed 03.11.2022].

46 On the manuscript, see Mordek, *Bibliotheca* (n. 31): 305–7. Mordek dated the manuscript to the eighth or ninth century. A digital copy of the manuscript is available at: https://daten.digitale-sammlungen.de/0006/bsb00060127/images/index.html?fip=193.174.98.30&id=00060127&seite=1 [accessed 03.11.2022]. In the Munich manuscript (A3) (fol. 53r), a semicolon was in fact used between what Eckhardt considered to be Lex Sal. 40.1 and 40.2 (n. 4). This, however, can also be found between sentences that Eckhardt did not consider to be individual subtitles – for example, in front of the last sentence that Eckhardt considered to be a part of title 40.3 (fol. 53v). The most convincing argument against Eckhardt's decision to consider 40.1 and 40.2 as separate subtitles can be found in MS Paris, BNF Lat. 4404 (A1): Most of the subtitles of title 40 (fol. 187v–188r) in this manuscript begin with a capital letter, but not 40.2: what is presumed to be a new subtitle that begins with a lowercase letter.

47 This is relevant since the claim that title 40 could be a later addition to the Lex Salica, as made by Franz Beyerle ("Über Normtypen und Erweiterungen der Lex Salica," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 44 [1924]: 233–34) and later by Nehlsen, *Sklavenrecht* (n. 13): 328, was in part based on the differences between those titles. The debate was summarized by Nehlsen (ibid.: 324–41), although his conclusions are not always convincing.

48 Lex Sal. 40.3, 146 (n. 4).

does not contain 40.3 altogether, there is mention of an initial punishment for the *maior culpa* in A1, which can be found in what Eckhardt considered to be the following subtitle (40.4).[49] In this regard, A3 reads: [. . .] *similiter seruus CXXI colopos accipiat,*[50] whereas A4 states: [. . .] *similiter seruus CCXX colobos CCCC.*[51] It is therefore safe to state that neither A3 nor A4 contains a completely accurate text for title 40.3. We also have to assume that the one hundred twenty-one lashes mentioned in A3 are in fact a scribal error (from one hundred twenty in the exemplar?). The *CCCC* in A4, on the other hand, may in fact have read as *accipiat* originally. But why is the punishment for *servi* the same in 40.1–2 and 40.3, whereas a free person has to pay fifteen *solidi* in the first case and thirty-five *solidi* in the latter? The answer can be found in Eckhardt's 40.4: If the *servus* confesses to the crime he was accused of during the execution of the initial one hundred twenty lashes, he is to be castrated (or receive additional lashes totaling to two hundred forty).[52] This can be avoided through a payment of two hundred forty *denarii* / six *solidi*.[53] Again, one has to wonder why Eckhardt decided to separate 40.3 and 4, which are clearly connected in their content. As with 40.1–2, the manuscripts give no indication of such a division of the subtitles.[54] While the description of the legal proceedings found in 40.4 is far more detailed than what is depicted in titles 12.1–2 and 25.5–6, their similarities in structure – a division between lesser and more severe crimes, compensated with physical punishment or a compensatory payment of three *solidi* in the former and six in the latter – are evident.

I will now turn to a peculiarity mentioned above concerning title 25.6 and the number of lashes mentioned under that title in the different manuscripts. Three of the four known manuscripts (A1–3) state that the rape of an *ancilla* by a *servus* corresponds to the payment of one hundred twenty *denarii* or three hundred lashes.[55] A4, on the other hand, applies the rate used in the other relevant titles: one hundred twenty lashes or one hundred twenty *denarii*.[56] Nehlsen believed that A1–3 correspond to an earlier version of the Lex Salica, while A4 and other manuscripts from more recent Lex Salica versions, including the still-Merovingian version C,[57] represent

49 Lex Sal. 40.4, 146 (n. 4).

50 See fol. 53v of A3.

51 See fol. 27v of A4.

52 See Lex Sal. 40.11, 153 (n. 4).

53 If the *servus* does not confess, he may only be lashed further, especially if the accuser hands over a pledge (*pignus*) to the owner of the accused *servus*. See Lex Sal. 40.4, 146–47 (n. 4).

54 For A1, see fol. 187vab; for A3, see fol. 53r–v; for A4, see fol. 27v. A2 varies significantly from the other manuscripts but also does not give any indication as to why 40.3–4 should be regarded as separate subtitles. For A2, see fol. 18v–19r.

55 See fol. 184v for A1, fol. 11v for A2, and fol. 49v for A3.

56 See fol. 25v for A4.

57 Out of the three manuscripts attributed to group C, only Paris, BNF Lat. 4403b (C5) mentions a physical punishment (of one hundred twenty lashes), while Paris, BNF Lat. 18237 (C6) and its six-

a later stage since they all prescribe one hundred twenty rather than three hundred lashes.[58] One has to question, however, if this assumption is warranted.

Nehlsen attempted to support his claim by providing two examples from texts considered to be Merovingian capitularies: the *Pactus pro tenore pacis* and the *Childeberti I. regis praeceptum*.[59] The former was most likely created between 511 and 558.[60] One of its chapters – c. 6 in Boretius' edition[61] and title 82.2 in Eckhardt's Lex Salica edition[62] – again deals with a *servus* convicted of theft. The chapter establishes the punishment for the theft of an object with a value less than a *tremissis*: *Si seruus minus tremisse inuolauerit et mala sorte priserit, dominus serui III solidos soluat et seruus ille CCC ictus accipiat flagellorum*.[63] The chapter therefore does provide us with an example where three hundred lashes are prescribed. The fact that the text orders this punishment to be carried out in addition to the payment of three *solidi* can be explained via an early corruption of the text, wherein *aut* was misread as *et*.[64] Assuming the occurrence of such a minor misreading despite the consistency in the manuscript tradition seems reasonable since the earliest known manuscripts of the *Pactus* – the Wolfenbüttel (A2) and Munich (A3) manuscripts – originate from the eighth century. One merely has to assume that the misreading of *aut* as *et* happened at a relatively early stage in the transmission of the *Pactus pro tenore pacis*. Otherwise, the title would provide a different example of a case where compensatory payment and corporal punishment were not alternatives but rather complementary aspects of the punishment. Nevertheless, the possibility of a misreading does not constitute proof – especially in the absence of comparable material. In contrast, the latter text, *Childeberti I. regis praeceptum*,[65] only partially survived in the manuscript Paris, BNF, Lat 12097,[66] and it states that a *servus* who dishonors church holidays is to

teenth-century copy (C6a) only mention the compensatory payment of three *solidi*. See Lex Sal. 40.3, 95 (n. 4).

58 Nehlsen, *Sklavenrecht* (n. 13): 302–3.

59 Ibid.: 327 and passim.

60 On the *Pactus pro tenore pacis*, see Anika Auer, "Pactus pro tenore pacis," in *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 4, ed. Albrecht Cordes et al. (Berlin: Erich Schmidt Verlag, 2017): 305–7, https://www.hrgdigital.de/id/pactus_pro_tenore_pacis/stichwort.html [accessed 03.11.2022].

61 *Pactus Childeberti I. et Cholatrii II.* c. 6, MGH Capit. 1, 5.

62 Lex Sal. 82.2, 251 (n. 4).

63 This is a quote from Eckhardt's edition, which varies from Boretius' edition in such a way that Boretius did not use roman numerals, but rather spelled out those numbers (e.g., *tres solidos; trecentos ictos*). Furthermore, Boretius did not include *flagellorum* in his edition.

64 This has already been suggested by Franz Beyerle, "Normtypen und Erweiterungen der Lex Salica" (n. 47): 232 n. 1; Mayer-Homberg, *Die fränkischen Volksrechte* (n. 14): 84 n. 10. Nehlsen, *Sklavenrecht* (n. 13): 317 follows their line of thought.

65 *Childeberti I. regis praeceptum*, MGH Capit. 1, 3.

66 On the manuscript, see Mordek, *Bibliotheca* (n. 31): 607–9. The different layers have been dated very differently (from the first half of the sixth to the first half of the eighth century). The folia relevant here are found in a layer dated to the sixth or seventh century by Mordek.

be punished with one hundred lashes ([. . .] *si serviles persona est, centum ictus flagellorum ut suscipiat iubemus . . .*).[67] As the following folio of the manuscript is missing, we do not know how an *ingenuus* is supposed to be punished; the folio ends with [. . .] *si vero ingenuus aut honoratior fortasse persona est*.[68] The provision does, however, vary from the *Pactus pro tenore pacis* and the Lex Salica titles in so far as it includes not only the free and the unfree, but also a group of more honorable *personae*. Furthermore, the character of the crime – misbehaving on church holidays – varies from those found in the Lex Salica and in the *Pactus pro tenore pacis*.

Nevertheless, Nehlsen concluded that before the seventh century, corporal punishment by lashes was prescribed in multiples of one hundred,[69] and that title 25.6 as found in manuscripts A1–A3 still reflects this situation. In light of the very limited evidence from the sixth and early seventh centuries, the assumption that corporal punishment for *servi* was universally given in multiples of one hundred is speculative – especially if one considers the (likely) corruption of the respective passages in the *Pactus pro tenore pacis* and the *Praeceptum Childeberti*. And to claim that this is reflected in manuscripts, which are notoriously unreliable concerning numbers,[70] is questionable at best. The skepticism about Nehlsen's assumption is heightened by the possibility that *CCC*, as presented in title 25.6 of A1–A3, could very well just be a misreading of *CXX*.[71] Furthermore, while A3 only provides the sum that is needed to avoid corporal punishment in *solidi* (three), A1 and A2 additionally mention the equivalent of one hundred twenty *denarii*.[72] If, as Nehlsen claimed, the three hundred lashes here are remnants of an older version, why is it that the payment in *denarii* was amended in the subtitle, while the number of lashes was not? Considering the inaccuracy of all Lex Salica version A manuscripts concerning numbers and values, the suggestion that *CCC* is a misreading of *CXX* seems to be more acceptable, whereas Nehlsen's theory of title 25.6 representing an earlier evolutionary stage lacks supporting evidence. We therefore have to assume another erroneous decision made by

67 *Childeberti I. regis praeceptum*, MGH Capit. 1, 3.

68 Fol. 62v of the manuscript.

69 Nehlsen, *Sklavenrecht* (n. 13): 327.

70 Despite the limited number of titles relevant to this paper, examples of obviously wrong values can be found in the aforementioned titles in all of the four manuscripts. Instead of the expected 240 lashes in Lex Sal. 40.11 (n. 4), A1 mentions 144 (CXLIIII), A2 mentions 300 (CCC), and A3 and A4 mention 242 (CCXLII). Additionally, A3 mentions 121 (CXXI) rather than 120 lashes in Lex Sal. 40.3. Upon consideration of all titles of the Lex Salica, all four manuscripts each contain more than twenty obvious mistakes.

71 This could of course also be assumed for the three hundred lashes stated in the *Pactus pro tenore pacis*. If we accept a misreading of *aut* as *et*, which happened at an early stage in the transmission of the text, why should the same not be assumed for a misreading of *CCC* as *CXX*? Yet again, this remains speculative due to the lack of evidence. It is definitely possible as well that the original text of the Pactus states 300 (*CCC*) lashes.

72 See n. 55 for the respective folia.

Eckhardt in regard to LS 25.6, for which A4 provides the better version of the text (with the intended number of one hundred twenty lashes) and not A1–3.

As implied earlier, there are more aspects to the punishment of crimes committed by *servi* in Merovingian law that need to be discussed, at least briefly. Given the two options for punishment – payment or lashes – that have already been mentioned, one has to wonder who had the power to determine which option was to be executed. The damaged party? The offender or his *dominus*? A representative of state authority? Furthermore, the modalities of the corporal punishment remain unclear. Who was supposed to carry out the beatings and with what? Why is the compensatory payment lower if the perpetrator is unfree? The Lex Salica rarely provides conclusive information, leaving most of those questions subject to speculation. According to title 40.6, beatings are to be carried out with rods (*virgas*) as thick as the little finger (*ad magnitudinem minores digiti*), with the convict stretched out on a rack (*scamnum*).[73] It seems reasonable to assume that the modalities set out in 40.6 also reflect how the punishment was supposed to be carried out in general. That same title also provides an indication as to who was in charge of carrying out the beatings: The *dominus* of the criminal *servus* can be ruled out as he is merely ordered to present the convict for punishment;[74] the accuser (or damaged party) is, however, responsible for providing the rods for the punishment,[75] making him a likely candidate for its infliction. Moreover, titles 40.1–2 mention that it is the perpetrator's *dominus* who may opt to pay a compensation in order to spare his *servus* from corporal punishment,[76] while others (12.1–2 and 25.5–6) seem to imply that it is the *servus* who may redeem himself from corporal punishment.[77] Although it is obvious why the *servus* would be interested in paying a fine rather than being beaten if given the opportunity,[78] there are at least

73 Lex Sal. 40.6, 148–49 (n. 4).

74 [. . .] *dominus uero serui ipsius, si praesens est, ab eo qui repitit admonere debet, ut seruum suum <iustis> debeat suppliciis dare,* [. . .]

75 [. . .] *ubi qui repetit et uirgas paratas habere debet* [. . .]

76 Lex Sal. 40.1–2, 145–46 (n. 4).

77 On the matter, see Nehlsen, *Sklavenrecht* (n. 13): 324 and passim, who believed that it is the *dominus* who gets to decide on whether or not he wants to prevent his *servus* from being beaten.

78 Nehlsen, *Sklavenrecht* (n. 13): 270, assumed that the *servi* in Merovingian Francia did not have the legal capacity to own property ("Vermögensfähigkeit") as there was no indication of that fact in the Lex Salica. The absence of evidence, however, does not necessarily constitute proof in this case. Canon 7 of the synod of Agde (506) (*Concilium Agathense* can. 7, in Concilia Galliae a. 314 – a. 506. CCSL 148, ed. Charles Munier, *Concilia Galliae, 314–506* [Turnhout: Brepols, 1963]: 195–96) mentions the capital given to *servi* upon manumission, however, and so it is possible that the manumission is what makes it possible for the former slave to own property. In the *Decretum Vermeriense* c. 7 (MGH Capit. 1, 40) from the time of Pippin the Short, a *servus* is mentioned as the owner of an *ancilla*. Hence, it was possible for *servi* to own property in the mid-eighth century at the very latest. We may assume that this was already possible at some point during the Merovingian era. On wealth and social mobility in Merovingian Gaul, see Allen Jones, *Social Mobility in Late Antique Gaul: Strategies and Opportunities for the Non-Elite* (Cambridge: Cambridge University Press, 2009): 157–78.

two potential motives for a *dominus* to opt for payment rather than having his *servus* beaten: Firstly, one could assume the existence of an emotional bond between the *dominus* and the guilty *servus*; secondly, one has to assume that one hundred twenty (or more) lashes with a rod would have resulted in lasting damage (or even death), leading to the temporary (or, indeed, permanent) loss of workforce on the part of the *dominus*. As for the calculation of the reduced tariffs, the Merovingian sources do not appear to follow a consistent logic. To provide an example: While in most cases a fine of fifteen *solidi* for the free corresponds with a fine of three *solidi* for the unfree, the aforementioned Merovingian capitulary, 104.1–3 in Eckhardt's version, prescribes fifteen *solidi* for the free and five for the unfree.[79]

Concerning the punishment of crimes committed by *servi* as discussed in Merovingian legal texts, the following key elements have been noted: 1. The Lex Salica only covers crimes that affect parties outside of the household to which the unfree perpetrator belongs. 2. Different from the punishment of the free, the unfree are punished by being lashed, castrated or even executed, depending on the severity of the crime. 3. The alternative to avoid corporal punishment by ways of paying a (reduced) fine was calculated at a rate of 1 *denarius* per lash at some point.

3 Carolingian Adaptions: The Punishment of *servi* in the Capitularies of Charlemagne and Louis the Pious

The revisions made to the Lex Salica under Pippin the Short and Charlemagne include the same ratio of one *denarius* per lash at a conversion rate of forty *denarii* per *solidus*,[80] which can also be found in the Merovingian version A manuscript. At first glance, this may be surprising since the ratio of 1:40 applied to the gold and silver coins – the former being unminted[81] – was no longer applicable by the mid-eighth or early ninth century, at which time one *solidus* was equal to twelve *denarii*.[82] However, if one considers the findings of Karl Ubl, who argued that the revisors of the Carolingian versions of the Lex Salica had not been interested in making significant changes

79 Lex Sal. 104.1+3, 260 (n. 4).

80 See, for example, Lex Sal. 40.1–2, 145–47 (n. 4) in the K-version of the Lex Salica.

81 On the matter, see Patrick Breternitz, "Wann reformierte Pippin der Jüngere das fränkische Münzwesen?" *Francia* 43 (2016): 325 with n. 1.

82 Ibid. On the ratio, see also *Capitula legibus additum* c. 9, MGH Capit. 1, 114: *Omnia debita quae ad partem regis solver debent, solidis duodecim denariorum solvant, excepto freda quae in lege Saliga scripta est; illa eodem solido quo caeterae compositiones solvi debent componatur.*

to its contents (while making attempts to improve the comprehensibility of the text),[83] then the adoption of this anachronistic conversion rate merely serves as another example of this effort to keep revisions to a minimum.[84] In contrast to the approach found in the Lex Salica with regard to the punishment of *servi*, the Lex Ribuaria holds liable the respective *dominus* of *servi* convicted of a crime.[85]

Carolingian legal sources tend to be much more in line with the Lex Salica than the Lex Ribuaria.[86] Two capitularies from the time of Charlemagne – both issued in Aachen in 809 – correspond to the principles of the Lex Salica. One of the chapters in question reads: *De latrone forbannito: ut liber homo qui eum suscepit XV solidos conponat, et servus CXX percussionibus vapuletur*;[87] the second relevant chapter decrees: *De meziban, ut unusquisque comis alio mandet ut nullus eum recipere audeat; si liber eum susceperit, solidos XV conponat; si servus, CXX ictus accipiat et insuper dimidium caput tundatur*.[88] The fact that the capitularies mentioned here directly correspond to the ratio of the Lex Salica is by no means obvious, which is what led McComb to describe it as "unusual"[89] as the fifteen *solidi* for the free initially appear to be unrelated to the one hundred twenty lashes for the unfree. As discussed above, the provisions of the Lex Salica that prescribe the payment of fifteen *solidi* for the free require the payment of only three *solidi* (or one hundred twenty *denarii*) in the case of an unfree offender. Therefore, the one hundred twenty lashes mentioned in the chapters from 809 do in fact match the fine of fifteen *solidi*. The chapters from 809 only differ from the provisions found in the Lex Salica in so far as they do not mention the alternative (reduced) compensatory payment for the unfree.

83 See Ubl, *Sinnstiftungen* (n. 3): for Pippin, see 155–60; for Charlemagne, see 171–80, especially 180. On additions to the Lex Salica under Charlemagne, see ibid.: 183–91.

84 Yet again, I would like to emphasize that this differentiation based on legal status, as found in normative sources, does not necessarily mean that such a differentiation reflects the actual punishment practices in the eighth or ninth century. As Alice Rio pointed out, vulnerability to corporal punishment may have depended less on legal status rather than on bargaining position. On the matter, see Alice Rio, "Freedom and Unfreedom in Early Medieval Francia: The Evidence of the Legal Formulae," *Past and Present* 193, no. 4 (2006): 33. See also McComb, *Strategies of Correction* (n. 10): 167, who followed Rio's line of thought.

85 An exception is found in *Lex Rib.* 61.17 (MGH LL nat. Germ. 3,2, Franz Beyerle and Rudolf Buchner, eds., *Lex Ribuaria* [Hannover 1954]: 113). Beyerle (ibid.: 163) assumed that this particular chapter was a later insertion to the Lex Salica.

86 This was already noted by Mayer-Homberg, *Die fränkischen Volksrechte* (n. 14): 95–99. His subsequent conclusion, that the Carolingians must have been Salians, may be disregarded in light of more recent scholarship. See, for example, Matthias Springer, "Riparii – Ribuarier – Rheinfranken nebst einigen Bemerkungen zum Geographen von Ravenna," in *Die Franken und die Alemannen bis zur "Schlacht bei Zülpich" (496/97)*, ed. Dieter Geuenich (Berlin: De Gruyter, 1998): 260.

87 *Capitulare Aquisgranense* c. 3, MGH Capit. 1, 148.

88 *Capitulare missorum Aquisgranense primum* c. 11, MGH Capit. 1, 151.

89 McComb, *Strategies of Correction* (n. 10): 166.

The capitularies from 809 do, however, form an exception among the Carolingian capitularies. A chapter from the *Capitulare Mantuanum* (c. 4), issued by Charlemagne for Italy in 781, decrees that someone who attempts to reopen an already-settled lawsuit is to be punished with a fine of either fifteen *solidi* or fifteen lashes. In 803, the chapter was in essence extended to all of Francia as part of the *Capitulare legibus additum* (c. 10).[90] Neither of the two chapters specifies which punishment applies to whom and under what circumstances. While it is likely that the fine was intended for a free offender and the lashes were meant to be imposed on the unfree, this assumption remains uncertain and may be challenged by two arguments. Firstly, the provisions in all other comparable cases explicitly mention legal status.[91] Secondly, the unfree were excluded from access to the legal system and hence could not have filed a lawsuit to begin with. This exclusion, however, was voided if an individual claimed that he (or she) was free and had been held in servitude unjustly.[92] It is possible that the fifteen lashes stated in both of the aforementioned chapters were meant for individuals who had failed to prove their freedom before a court and had attempted to re-open their case. Another reading of the chapters could be that fifteen lashes are due in the case of insolvency on the part of the plaintiff. While insolvent culprits could be incarcerated under Pippin,[93] Charlemagne's capitularies usually demand that in such cases, the culprit is to pledge temporary servitude to his creditor – be that a private individual or a representative of the state.[94] However, under Lothar I, corporal punishment by means of beatings was introduced, at least in the parts of Italy under Frankish rule. It was intended for insolvent but free offenders and can be

90 *Capitulare legibus additum* c. 10, MGH Capit. 1, 114: *Si quis causam iudicatam repetere in mallo praesumpserit ibique testibus convictus fuerit, aut quindecim solidos componat, aut quindecim ictus ab scabinis qui causam prius iudicaverunt accipiat.* Interestingly, the *Capitulare legibus additum* adds that the same *scabini*, who were responsible for the case in the first instance, are to be responsible for the rejection (and punishment) of the case upon its resumption. On the *scabini*, see Alice Hicklin, "The *scabini* in Historiographical Perspective," *History Compass* 18, no. 10 (2020): 1–11; Gianmarco De Angelis, "Scabini e altri ufficiali pubblici minori in Lombardia in età carolingia e postcarolingia. Profili, mobilità, culture grafiche, partecipazione ai processi documentary," *Scrineum Rivista* 16 (2019): 57–114.

91 See, for example, the *Capitulare Aquisgranense* c. 3, MGH Capit. 1, 148 or *Capitulare missorum Aquisgranense alterum* c. 7, MGH Capit. 1, 152.

92 An example of a law-suit regarding legal status is discussed in Karl Ubl, "Maurinus gegen die Agenten des Fiskus. Die Lex Salica in einem Prozess um Freiheit aus der Zeit Ludwigs des Frommen," in *Vom Reichsbewusstsein zum Verfassungspatriotismus. Zusammengehörigkeit durch Rechtsregeln*, ed. Dieter Gosewinkel et al., Der Staat, Beiheft 27 (Berlin: Duncker & Humblot, 2021): 105–24.

93 See *Pippini regis Capitulare* c. 1, MGH Capit. 1, 31. On Pippin's royal capitulary, see Patrick Bretternitz, *Königtum und Recht nach dem Dynastiewechsel. Das Königskapitular Pippins des Jüngeren* (Ostfildern: Jan Thorbecke, 2020). On c. 1, see especially 45–64.

94 On self-sale, see Alice Rio, "Self-Sale and Voluntary Entry into Unfreedom, 300–1100," *Journal of Social History* 45 (2012): 661–85.

found in c. 11 of the so-called *Capitulare Olonnense Mundanum*.[95] The particularity of its content[96] makes it hard to imagine that Lothar (or his father Louis the Pious) had the intention of elevating that principle to universal validity. However, the same concept – beatings for the insolvent but free perpetrator – can be found in another chapter of an Italian capitulary issued by Lothar.[97] Assuming that the chapters in the *Capitulare Mantuanum* (c. 4) and the *Capitulare legibus additum* (c. 10), as in Lothar's provisions, were in fact concerned with the punishment of free but insolvent perpetrators, then this would constitute a significant turn in Frankish punishment practices: Under certain circumstances, free perpetrators could have been subjected to lashes that corresponded directly to the monetary fine.[98]

95 *Capitulare Olonnense mundanum* c. 11, MGH Capit. 1, 331: *De his, qui proprietates suas habent et spontaneae alicui delegant et postea fraudulenter ab alio aliquo ignoranti praetium easdem res venundantes accipiunt et his, cui easdem res prius tradite fuerant, cognito negotio annum integrum silens non contradixerit, sed propter inlusionem tacens sinit emptorem inludere: Si infra patria anni spatium, ut dictum est, fuerit prior traditio, nihil ei valeat. Ille vero, qui post primam traditionem res vendiderit, si vivens conprobatus fuerit hanc inlusionem fecisse, bannum dominicum persolvat, id est LX solidos. Si vero bannum, unde conponat, non habet, verberetur*. The capitulary in question was not issued by Louis the Pious himself, but rather by his son Lothar I, who was at this point (825) governing in Italy. On Lothar, see Maria Schäpers, *Lothar I. (795–855) und das Frankenreich*, Rheinisches Archiv 159 (Vienna: Böhlau, 2018). On the sons of Carolingian rulers as kings, see Brigitte Kasten, *Königssöhne und Königsherrschaft. Untersuchungen zur Teilhabe am Reich in der Merowinger- und Karolingerzeit*, Schriften der MGH 44 (Hannover: Hahnsche Buchhandlung, 1997). On the *Capitulare Olonnense mundanum*, see Schäpers, *Lothar I.* (n. 95): 138–44; Stefan Esders, "Die 'Capitula de expeditione Corsicana' Lothars I. vom Februar 825. Überlieferung, historischer Kontext, Textrekonstruktion und Rechtsinhalt," *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 98 (2018): 91–144. Another example of physical punishment against the free can be found in the aforementioned *Capitulare de disciplina palatii Aquisgranensis* (c. 3, MGH Capit. 1, 298). The chapter is somewhat reminiscent of the spectacular punishment found in the capitularies of Herstal (c. 23, MGH Capit. 1, 51) and Thionville (c. 10, MGH Capit.1, 124).

96 The chapter deals with very specific fraudulent land-sale practices. On the chapter, see Mathias Geiselhart, *Die Kapitulariengesetzgebung Lothars I. in Italien*, Freiburger Beiträge zur mittelalterlichen Geschichte 15 (Frankfurt am Main: Peter Lang, 2002): 170–71.

97 *Capitula Italica* c. 3, MGH Capit. 1, 335: *Volumus, ut, si quelibet persona in finibus regni nostri ignem per silvam convivare ausa fuerit, diligenter inquiratur. Et si servus comprobatus fuerit hoc fecisse, aut dominus eius eum ad flagellandum et capite tondendum tradat aut pro eo, quicquid damnitas fecit, emendare cogatur. Si quoque libera persona hoc fecisse probata fuerit, penitus emendare cogatur et insuper bannum nostrum componat. Et si non habuerit, unde componat, flagelletur. Quod si factum fuerit, per meliores loci illius inquiratur. Si in qualibet persona suspectio fuerit, si servus est, aut ad iuditium dominus eius mittat aut ipse pro eo sacramentum faciat. Quod si libera persona fuerit, proprio sacramento se idoneum reddat.* The attribution of the chapter to Lothar is not certain. We are most likely presented with a chapter from a capitulary issued by Lothar I in Italy between 823 and 840. On this, see the introduction to the capitulary of Britta Mischke in the upcoming new edition of the capitularies of Louis the Pious.

98 Brunner, *Deutsche Rechtsgeschichte 2* (n. 10) seemed to be unsure of how to interpret the situation described. First (ibid.: 787, n. 31), it was assumed that c. 10 of the *Capitulare legibus additum* (803) ex-

While we cannot determine with certainty as to who is being addressed in the two chapters, it is striking how a payment of fifteen *solidi* here equates to fifteen rather than one hundred twenty lashes: that is, one *solidus* is now equivalent to one lash. It seems as if the compilers of the two chapters were aware of an intended correspondence between fines and beatings. Compared to the aforementioned chapters from 809 (and their ratio of one hundred twenty lashes to fifteen *solidi*), the correspondence between the different punishment methods – albeit different from the Lex Salica – is much more obvious in the *Capitulare Mantuanum* and the *Capitulare legibus additum*. One could interpret this adjusted correspondence as an attempt to emphasize the continuity of Merovingian punishment ratio. But why did the compilers not use one hundred twenty lashes? The changed ratio could be explained by the absence of *denarii* in these texts: As was mentioned concerning the chapters from 809, the correspondence of fifteen *solidi* to one hundred twenty lashes is very difficult to identify as such. This is because none of the mentioned Carolingian capitularies include a reduced rate for the unfree, which was standard in the Merovingian sources.

The ratio of one lash per *solidus*, as found in the *Capitulare Mantuanum* and the *Capitulare legibus additum*, was later adopted in two chapters from a capitulary addition to the Lex Salica issued by Louis the Pious in 818/819. The chapters equated the prescribed payment of the *bannus* of sixty *solidi* for the free with sixty lashes for the unfree.[99] This observation led Heinrich Brunner to claim that under Louis the Pious, the ratio at which lashes could be replaced with a fine had been changed. This claim was, however, not elaborated on. Sources that could substantiate this claim are also not available. Even if the two chapters from the reign of Charlemagne (*Capitulare Mantuanum*, c. 4, and *Capitulare legibus additum*, c. 10), which employ the same ratio, drew a distinction between the fine as pertaining to the free and the beatings to the unfree, which as discussed is not necessarily true, Brunner's hypothesis would remain questionable. The majority of provisions from the reign of Louis the Pious (and the capitularies issued by his son Lothar I in Italy) that prescribe corporal punishment for the unfree made use of rather vague wording and did not specify the number of lashes that would have been required for the perpetrator.[100] Assuming the ubiquitous

clusively concerned the free. Later (ibid.: 809, n. 78), c. 11 of the *Capitulare Olonnense mundanum* was mentioned as the earliest example of corporal punishment against the (insolvent) unfree.

99 *Capitula legibus addenda* cc. 18–19, MGH Capit. 1, 285.

100 See *Capitula legibus addenda* cc. 16, MGH Capit. 1, 284; *Capitulare de disciplina palatii Aquisgranensis* c. 3, p. 298; *Capitula Italica* c. 3, MGH Capit. 1, 335 (on this chapter, see below, n. 97 and 105); *Capitulare pro lege habendum Wormatiense* c. 1, MGH Capit. 2, 18. This is also true for a number of Charlemagne's capitularies and c. 1 of Pippin's royal capitulary, which is the only relevant text from his reign. See *Pippini regis Capitulare* c. 1, MGH Capit. 1, 31. Another example can be found in a peculiar case in a chapter from a capitulary issued by Charlemagne in 802, where the *servus* has to pay a sum of ten *solidi* and is to be lashed, while a free person is to pay twenty *solidi* (*Capitulare missorum specialia* c. 13b, MGH Capit. 1, 100–101). On the chapter, see below, n. 114 and 117. Additional examples from the reign of Charlemagne are found in *Capitulare missorum in Theodonis villa datum secundum,*

and intentional introduction of an updated ratio of lashes to fines under Louis the Pious is therefore highly speculative. What can be stated with certainty, however, is the fact that whenever Louis the Pious (or his son Lothar I) imposed a specific number of lashes to be carried out as punishment, the ratio of one *solidus* per lash would have been applied and the Lex Salica ratio would not have been utilized. The ratio of fifteen to one hundred twenty, as known from the Lex Salica, was last used in the aforementioned capitulary from 809.[101] It then seems reasonable to believe that Louis the Pious' use of this new ratio of one *solidus* per lash was inspired by the aforementioned provision issued by his father.[102]

Another aspect that characterizes the provisions of the Lex Salica is the reduced fine for the unfree – for example, three rather than fifteen *solidi* – as seen in many of the titles discussed above. The absence of this reduced fine from the Aachen capitularies of 809 has already been noted. In fact, none of the capitularies specifying the number of lashes for an unfree perpetrator mention a reduced fine. Furthermore, while the Lex Salica frequently mentions the possibility for a *servus* or *ancilla* to avoid corporal punishment via their or their respective owner's payment of a reduced fine, in the Carolingian decrees, there is no allusion to an option given a dominus to prevent their *servi* from being beaten. The absence of any reference[103] to such an option, however, does not necessarily prove that it did not exist.[104] It is possible that the option of

generale c. 10, MGH Capit. 1, 124; *Capitulare missorum Aquisgranense alterum* c. 7, MGH Capit. 1, 152; *Capitula Karoli apud Ansegis servata*, cc. 1, 4 and 6, MGH Capit. 1, 160. This is also true for some Merovingian provisions. However, neither Lex Sal. 25.7 (96) nor the *Childeberti secundi Decretio* (c. 14, MGH Capit. 1, 17) specify the number of lashes.

101 See above, n. 87 and 88.

102 This assumption is supported by the fact that the earliest proof of this ratio under Louis the Pious can be found in the *Capitula legibus addenda* (c. 18–19, MGH Capit. 1, 285), which represents an intended addition to the Lex Salica, just as the *Capitulare legibus additum* (c. 10, MGH Capit. 1, 114) was added by his father and where the same ratio had already been applied.

103 It is possible that the option of paying a fine to avoid corporal punishment was the intention of Pippin's royal capitulary (c. 1, MGH Capit. 1, 31). This interpretation stems from the imprecise wording of the chapter: [. . .] *Et si fecerit, LX solidos domno regi componat, usque dum se ipse homo correxerit. Et si pecuniam non habet, si liber est, mittatur in carcere usque ad satisfactionem, Si servus aut libertus est, vapuletur plagis multis* [. . .] The inserted *si liber est* makes it theoretically possible that both a free and an unfree person had the option to pay sixty *solidi*, and if they could not, then the corresponding punishment would have been applied. This option is what may have led Karl Ubl, *Inzestverbot und Gesetzgebung. Die Konstruktion eines Verbrechens [300–1100]*, Millennium-Studien 20 [Berlin: De Gruyter 2008]: 263) to his interpretation of the sentence. He seemed to imply that the *servus* in question could pay the required sixty *solidi* if he had the capacity to do so. Breternitz, *Königtum und Recht* (n. 93): 51 did not consider such an option for the *servus*.

104 See Alice Rio, *Slavery after Rome. 500–1100* (Oxford: Oxford University Press, 2017): 9, who pointed out that early medieval norms usually presented elite perspectives rather than accurate reflections of universally followed legal practices. We can assume that in the context of private disputes, with the *servi* being the guilty party, compensatory payments were occasionally preferred to physical punishment by both parties.

avoiding corporal punishment by means of payment was considered to be common legal practice and therefore self-evident. Chapter 18 of the aforementioned *Capitula legibus addenda* from 818/819 appears relevant in this regard: The chapter deals with the refused acceptance of a "good coin" (*bonus denarius*). A free perpetrator is to pay sixty *solidi*, while *servi ecclesiastici aut comitum aut vassallorum nostrorum* are to receive sixty lashes.[105] This, however, does not mean that other *servi* are not to be lashed.[106] The chapter can be seen as an addition to or a clarification of c. 5 of the Capitulary of Frankfurt (794),[107] which deals with the same topic. The addition, however, is not concerned with the punishment of the unfree perpetrator,[108] but much rather with liability in cases where there has been a refusal to hand over the offender. Although the *dominus* would have been held liable if the case involved a privately owned *servus*, a case involving dependents of the church or representatives of the state would have required clarification. Consequently, Louis the Pious specified that the *magister* or *advocatus*, being responsible for the perpetrator, would have to be held accountable if the *servus* was not available for punishment. The case would therefore not explicitly warrant a *servus* or his owner the right to replace corporal punishment with payment. Instead, the reality of the perpetrator being unavailable would simply be accepted, and their owner (or whoever is responsible for the *servus*) would be threatened with liability. It seems possible that this approach was also applied to other cases of servant delinquencies. As has been noted, the Lex Ribuaria generally assumes liability on the part of the *dominus* for crimes committed by their *servi*.[109] However, the situation described in c. 18 of the *Capitula legibus addenda* is also in line with the provisions of the Lex Salica, according to which the owner of an accused *servus* who, after having been provided enough time, cannot present the *ser-*

105 Cf. n. 15. In this context, Leseur, *Conséquences des delits* (n. 12): 112–13 mentioned the *Capitula Italica* c. 3 (MGH Capit. 1, 335), where the *dominus* of a *servus* who laid a fire in the forest would either have to hand over the culprit to be lashed and have his head shorn (*ad flagellandum et capite tondendum*), or be liable for the compensation of the damages caused by his dependent. "Le procédé est curieaux," as stated in Leseur's comment (ibid.), since a free convict in this case would have to pay the *bannus* of sixty *solidi* in addition to the damages caused.

106 Equal treatment of *servi* regardless of them being owned by the fisc, the church, or private individuals is implied in c. 8 of the so-called *Capitularia Italica* (MGH Capit. 1, 206), albeit in an entirely different context. The same chapter differentiates between *servi* owned by Franks and Allamans on the one hand, and those owned by Lombards or Romans on the other. Equal treatment of *servi* regardless of their owner is also decreed in c. 15 of the *Pactus pro tenore pacis*. While Boretius' edition of the capitularies considers the last phrase (*De fiscalibus et omnium domibus [sic!] censuimus*) of the chapter as the initial sentence of c. 16, Eckhardt's interpretation of the sentence as being a part of the previous chapter is more convincing. This is also reflected in his edition (Lex Sal. 90.2, MGH LL nat. Germ. 4,1, 252).

107 Cf. n. 15.

108 The chapter does, however, specify the number of lashes due (sixty), which the Capitulary of Frankfurt does not.

109 See above, n. 85.

vus in question will be held liable *non qualem seruus sed qualem ingenuus, si hoc admisit, talem conpositionem repetenti restituat*.[110]

By assuming liability, albeit indirectly, the *dominus* could prevent his *servi* from being corporally punished. This, of course, would have resulted in the *dominus* having to pay the fine of a freeman, not a reduced rate. Chapter 18 of the *Capitula legibus addenda* appears to follow the same approach. In the absence of contradictory evidence, one would be tempted to assume that a reduced fine for the unfree was no longer applicable in the Carolingian Empire. However, with regard to the so-called *Capitula Remedii*, at least one ninth century source does mention a differentiation of fines that is dependent on legal status.[111] Interestingly, while the *Capitula* require a *servus* to pay a reduced fine in some cases, in other cases within the same text, it is the status of the victim that defines the required payment.[112] The first paragraph of c. 8 even explicitly mentions that *servi* and *liberi* are to be punished equally for raping a nun.[113] And while the local character of the *Capitula Remedii* needs to be emphasized, it seems as if a degree of uncertainty regarding how to financially punish the unfree existed in Carolingian Francia. In addition to the *Capitula Remedii*, a chapter of the *Capitularia missorum speciale* (802) decrees that *liberi* who live in coastal areas (*circa maritima loca habitant*) and fail to respond to a call for assistance are to pay twenty *solidi* as a fine – half *ad dominicum* and half *ad populum*.[114] A *litus* is to pay fifteen *solidi ad populum*, while the *fredus* is to be paid with corporal punishment.[115] *Servi* are required to pay ten *solidi* and are also beaten as payment for the *fredus*.[116]

110 Lex Sal. 40.9–10.

111 The most recent edition of the *Capitula Remedii* is Elisabeth Meyer-Marthaler, ed., "Die Gesetze des Bischofs Remedius von Chur," *Zeitschrift für schweizerische Kirchengeschichte – Revue d'histoire ecclésiastique suisse* 44 (1950): 89–107 and 161–76. On the Capitula Remedii, see Reinhold Kaiser, "Die 'Capitula Remedii': Veranlassung, Autorschaft und Geltungsgrund, Verbreitung und Wirkung," in *Schrift, Schriftgebrauch und Textsorten im frühmittelalterlichen Churrätien. Vorträge des internationalen Kolloquiums vom 18. bis 20. Mai 2006 im Rätischen Museum in Chur*, ed. Heidi Eisenhut et al. (Basel: Schwabe, 2008): 146–82; Harald Siems, "Recht in Rätien zur Zeit Karls des Großen. Ein Beitrag zu den Capitula Remedii," in *Wandel und Konstanz zwischen Bodensee und Lombardei zur Zeit Karls des Grossen. Kloster St. Johann in Müstair und Churrätien (Acta Müstair. Kloster St. Johann 3)*, ed. Hans R. Sennhauser (Zürich: VdF Hochschulverlag, 2013): 199–238. I would like to express my gratitude to Luise Sigron for informing me about the relevance of the *Capitula Remedii*.

112 Cf. *Capitula Remedii* c. 6, ed. Meyer-Marthaler (n. 111): 161. The exceptional character of the Capitula, when compared with other Carolingian prescriptions, is also noted by McComb, *Strategies of Correction* (n. 10): 78–85.

113 *Capitula Remedii*. c. 8, ed. Meyer-Marthaler (n. 111): 166.

114 *Capitulare missorum specialia* c. 13b, MGH Capit. 1, 100–101: *De liberis hominibus qui circa maritima loca habitant: si nuntius venerit, ut ad succurrendum debeant venire, et hoc neglexerint, unusquisque solidos viginti conponat, mediaetatem in dominico, mediaetatem ad populum . . .*

115 [. . .] *Si litus fuerit, solidos quindecim conponat ad populum et fredo dominico in dorso accipiat* [. . .].

116 [. . .] *Si servus fuerit, solidos X ad populum et fredo dorsum.*

Although the differentiation of the punishment according to legal status is apparent in the chapter, the interpretation of the fines is puzzling. For instance, the total sum is the highest for *liberi*, but when only the part paid *ad populum* is compared, the fine is identical for *servi* and *liberi* (ten *solidi*) but higher for *liti* (fifteen *solidi*). It seems reasonable to assume that the compilers of the chapter had the intention of stating a reduced fine for lower legal statuses but ultimately failed in their attempt.[117]

Of course, neither the *Capitula Remedii* nor c. 13b of the *Capitularia missorum speciale* establishes the continuation of the principles found in the Lex Salica related to reduced fines for unfree perpetrators. The absence of such an option may be interpreted as the result of a decline in the importance of legal status, which may have led to a situation where reduced compensation tariffs for the unfree were no longer justifiable. Without such reduced tariffs, the number of *servi* (or their owners) willing and able to pay fines equivalent to those of the free would most likely have been very low. One could assume that the complete lack of such an option in the Carolingian capitularies is a result of this. Nevertheless, while the details of the punishment principles of the Lex Salica may not have been reflected in normative sources from the Carolingian era, the general concepts appear to have survived in the minds of Carolingian legislators.

This general survival of punitive principles may be interpreted as an attempt on the part of the Carolingians to bolster stately authority in the Frankish realm by aiming for legislative continuity. As McComb emphasized, the legal framework established by the Carolingians mostly built on that of their predecessors – something that is strikingly obvious when considering the Carolingian "revisions" of the Lex Salica. Nevertheless, certain nuanced changes could be identified in the provisions concerning the punishment of the unfree. This is also true concerning the punishment of the free: State-authorized sanctions feature prominently in Carolingian legislation, particularly in capitularies, which, especially under Charlemagne and Louis the Pious, experienced a heavy increase in usage compared to the Merovingians. The king and his agents[118] (as representatives of the state) emerged as (more or less) active players that issued and enforced the law. In the aforementioned royal capitulary, most likely from

117 It seems as if we are yet again presented with a provision relevant only in certain regions. While the manuscript Leiden Voss. Lat. 4° presents the chapter as quoted, the provision is interrupted in Paris Lat. 4995. The manuscripts Vatican, Pal. Lat 582 and the related Paris Lat. 9654 do not have the chapter at all. This may well be attributed to the addressees of the manuscripts: While the Leiden manuscript was an exemplar for Aquitaine, the other versions of the Capitulary where addressed to non-coastal regions, hence rendering the chapter irrelevant for them. On the Capitulary, see Wilhelm A. Eckhardt, "Die Capitularia missorum specialia von 802," *Deutsches Archiv für die Erforschung des Mittelalters* 12 (1956): 498–516. On the addressees, see 507.

118 On delegation and the royal *missi*, see Jennifer R. Davis, "Inventing the Missi. Delegating Power in the Late Eighth and Early Ninth Centuries," in *The ʿAbbasid and Carolingian Empires. Comparative Studies in Civilizational Formation*, ed. Deborah G. Tor, Islamic History and Civilization 150 (Leiden: Brill, 2018): 13–51; Shigeto Kikuchi, *Herrschaft, Delegation und Kommunikation in der Karolingerzeit*,

754/755,[119] Pippin decreed that a free person who supports someone living in an incestuous relationship by hosting them is to pay the royal *bannus* of sixty *solidi*.[120] Should this person be insolvent, they are to be put *in carcere* until their debt is paid off.[121] The chapter thus introduces incarceration to Frankish written law. It is, however, somewhat unlikely that this constituted the actual installation of a formerly unknown punitive measure for Francia.[122]

Only under Charlemagne was non-lethal corporal punishment introduced as a method of punishment for the free.[123] This should, however, not be misinterpreted as a blurring of status boundaries concerning punitive matters. The vast majority of sanctions found in Charlemagne's capitularies are still divided into fines for the free and corporal punishment for the unfree. The rare examples where a free person is to be punished corporally can be described as exceptions. Furthermore, the form of corporal punishment in such cases is exceptional – one that is not equivalent to a certain number of lashes based on the crime. An example of such exceptional punishment can be found in c. 10 of the Capitulary of Thionville from 805. The chapter discusses

vol. 1, *Untersuchungen zu den Missi dominici (751–888)*, MGH Hilfsmittel 31 (Munich: Harrasowitz, 2021).

119 On the dating of the capitulary, see Breternitz, *Königtum und Recht* (n. 93): 45.

120 *Pippini regis Capitulare* c. 1, MGH Capit. 1, 31: *De incestis* [. . .] *et si emendare se noluerit, nullus eum recipiat nec cibum ei donet. Et si fecerit, LX solidos domno regi componat, usque dum se ipse homo correxerit* [. . .] The fact that supporters of incestuous individuals were the ones tasked to pay the *bannus* and not the incestuous individual him- or herself is illustrated in Ubl, *Inzestverbot und Gesetzgebung* (n. 103): 263 n. 222. Contra: Carlo de Clercq, *La législation religieuse franque. Etude sur les actes de conciles et les capitulaires, les statuts diocésains et les règles monastiques*, vol. 2, *De Louis le Pieux à la fin du IXe siècle (814–900)* (Antwerpen: Centre de recherches historiques, 1958): 132; Wilfried Hartmann, *Die Synoden der Karolingerzeit im Frankenreich und in Italien. Konziliengeschichte Reihe A: Darstellungen* (Paderborn: Ferdinand Schöningh, 1989): 68. The entire chapter is thoroughly analyzed in Breternitz, *Königtum und Recht* (n. 93): 45–64. Breternitz follows Ubl's interpretation of the payment of the *bannus*.

121 *Pippini regis Capitulare* c. 1, MGH Capit. 1, 31: [. . .] *Et si pecuniam non habet, si liber est, mittatur in carcere usque ad satisfactionem . . .*

122 The existence of prisons in the Lombard empire in the first half of the eighth century can be confirmed (see *Leges Liutprandi* c. 79, MGH LL 4, ed. Alfred Boretius [Hannover, 1868]: 442). It seems somewhat reasonable to assume at least the theoretical existence of prisons that were controlled by royalty and their agents – albeit far different from contemporary prisons of the twenty-first century – for Merovingian Francia. Imprisonment reappears in a capitulary issued by Charlemagne and in a capitulary issued by Louis the Pious in 814 dealing with public order at the royal palace of Aachen. For Charlemagne, see *Capitula per episcopos et comites nota facienda* c. 4, MGH Capit. 1, 141. The capitulary can only be found in MS Paris BNF Lat. 4995 and dated to 802–813 by Hubert Mordek, *Bibliotheca* (n. 31): 554. For Louis the Pious, see *Capitulare de disciplina palatii Aquisgranensis* c. 3, MGH Capit.1, 298. On incarceration, see Julia Hillner, *Prison, Punishment and Penance in Late Antiquity* (Cambridge: Cambridge University Press, 2015).

123 Capital punishment for the free was already prescribed in Merovingian Francia. See, for example, *Pactus pro tenore pacis* c. 10 (MGH Capit. 1, 6) or Lex Sal. 50.4 (MGH LL nat. Germ. 4,1, 195).

punishments for different degrees of conspiracy sealed with an oath. First, it mentions the use of capital punishment for who have done "something evil" (*aliquid malus*). The helpers of those conspirators, however, are to flog each other and cut off each other's noses. If the conspiracy is not acted on, helpers are to flog each other and cut off each other's hair. If the conspiracy is sealed with a handshake and no evil intentions can be proven, they are to pay a fine if free or be flogged if unfree.[124] While the last of those three stages clearly corresponds to established practices, the first two do not. In addition, the conspirators have to punish each other – they are not punished by any form of authority. Therefore, the decree constitutes a case that is entirely different from the sanctioning of floggings against unfree culprits.[125] Furthermore, the

124 *Capitulare missorum in Theodonis villa datum secundum, generale* c. 10, MGH Capit. 1, 124: *De conspirationibus vero, quicumque facere praesumpserit et sacramento quamcumque conspirationem firmaverint, ut triplici ratione iudicentur. Primo, ut ubicumque aliquod malum per hoc perpetratum fuerit, auctores facti interficiantur; adiutores vero eorum alter ab altero flagellentur et nares sibi invicem praecidant. Ubi vero nihil mali perpetratum est, similiter quidem inter se flagellentur et capillos sibi vicissim detundant. Si vero per dextras aliqua conspiratio firmata fuerit, si liberi sunt, aut iurent cum ideoneis iuratoribus hoc pro malo non fecisse, aut si facere non potureint, suam legem conponant; si vero servi fuerint, flagellentur.* On the chapter, see Otto Gerhard Oexle, "Gilden als soziale Gruppen in der Karolingerzeit," in *Das Handwerk in vor- und frühgeschichtlicher Zeit. 1. Historische und rechtshistorische Beiträge und Untersuchungen zur Frühgeschichte der Gilde*, ed. Herbert Jankuhn et al., Abhandlungen der Akademie der Wissenschaften in Göttingen. Philologisch-Historische Klasse 3.122 (Göttingen: Vandenhoeck & Ruprecht, 1981): 303–4; McComb, *Strategies of Correction* (n. 10): 195–96 and passim. On the manuscript tradition, see Michael Glatthaar, "Die drei Fassungen des Doppelkapitulars von Diedenhofen/Thionville (805/806)," *Deutsches Archiv für Erforschung des Mittelalters* 69, no. 2 (2013): 443–77.

125 This is also true for a comparable provision, issued by Louis the Pious, which includes the option of physical punishment for the free that is entirely different from the methods used for the punishment of the unfree. In the already-mentioned c. 3 of the *Capitulare de disciplina palatii Aquisgranensis*, a free person that hosts a thief, murderer, or adulterer first has to carry the criminal on his shoulders and take him around the palace, and then take him to prison. If a prostitute is found at someone's home, that person has to carry her to the market square, where she will be lashed. If he refuses, he himself is to be lashed at that same place. See *Capitulare de disciplina palatii Aquisgranensis* c. 3, MGH Capit. 1, 298: *Volumus atque iubemus, ut nullus de his, qui nobis in nostro palatio deserviunt, aliquem hominem propter furtum aut aliquem homicidium vel adulterium vel aliud aliquod crimen ab ipso perpetratum et propter hoc ad palatium nostrum venientem atque ibi latitare volentem recipere praesumat. Et si liber homo hanc constitutionem transgressus fuerit et talem hominem receperit, sciat se eundem hominem, qui apud eum inventus fuerit, in collo suo portare debere, primum circa palatium deinde ad cippum, in quem idem malefactor mittendus est. Si autem servus fuerit, qui hanc nostrum iussionem servare contempserit, similiter illum malumfactorem in collo suo usque ad cippum deportet, et ipse postea in marcatum adducatur et ibi secundum merita sua flagelletur. Similiter de gadalibus et meretricibus volumus, ut apud quemcumque inventae fuerint, ab eis portentur usque ad mercatum, ubi ipsae flagellandae sunt, vel, si noluerit, volumus, ut simul cum illa in eodem loco vapuletur.* The spectacular, personally humiliating element of the punishments mentioned above is obvious in the chapter.

mutilation of the nose and hair is highly reminiscent of spectacular[126] punishments known from Byzantium, which (temporarily) marked the culprit as such and functioned as public deterrents.[127] The cutting of hair as punishment and humiliation was of course not unprecedented among the "long-haired" Merovingians.[128] While the introduction of new forms of corporal (and spectacular) punishment for the free during the reign of Charlemagne is indisputable, the question of a potential end to the dichotomy of prescribing fines to the free and beatings to the unfree depends on the interpretation of the aforementioned chapters from the *Capitulare Mantuanum* (c. 4)[129] and the *Capitulare legibus additum* (c. 10).[130]

4 Concluding Remarks

To conclude: McComb's assessment, which claimed that the Carolingian approach to punishment and penal law was largely built on Merovingian principles,[131] mostly holds true concerning the punishment of *servi*. The dichotomy of compensatory payments for the free and corporal punishment for the unfree appears to have, in principle, outlasted the Merovingian dynasty as it survives in various Carolingian sources.

126 McComb, *Strategies of Correction* (n. 10): 9 convincingly linked Frankish spectacular punitive practices to Foucault's theory on "discipline and punishment." On the subject, see Michel Foucault, *Surveiller et punir, naissance de la prison* (Paris: Gallimard, 1975). Furthermore, on Carolingian punishment strategies as an attempt to morally improve society, see Paul Fouracre, "Carolingian Justice. The Rhetoric of Improvement and Contexts of Abuse," in *La giustizia nell'alto medioevo, secoli V–VIII*, Settimane di studio del Centro italiano di studi sull'alto medioevo 42 (Spoleto: Centro Italiano di Studi sull'Alto Medioevo, 1995): 771–803.

127 On mutilation as a penalty in Byzantium, see John Lascaratos and Panagiota Dalla-Vorgia, "The Penalty of Mutilation for Crimes in the Byzantine Era (324–1453 A.D.)," *International Journal of Risk and Safety in Medicine* 10, no. 1 (1997): 51–56. On the deterring effect of mutilation and mutilation as an act of communication, see McComb, *Strategies of Correction* (n. 10): 25–27, where McComb also provides more literature on the subject. The mutilation of the nose was already mentioned as punishment in the older Capitulary of Herstal from 779. See *Capitulare Haristallense* c. 23, MGH Capit. 1, 51.

128 See John M. Wallace-Hadrill, *The Long-Haired Kings. And Other Studies in Frankish History*, The Medieval World 16 (New York: Routledge, 2020 [1962]): 245–46.

129 *Capitulare Mantuanum* c. 4, MGH Capit. 1, 190–91: *Hoc omnibus notum sit, si quislibet post causam legibus finitam se proclamaverit, aut quindecim accipiat camactos aut solidos XV conponere cogatur.* The *Capitulare Mantuanum* is briefly mentioned in Jennifer R. Davis, *Charlemagne's Practice of Empire* (Cambridge: Cambridge University Press, 2015): 281–82 and 288; Francesco Manacorda, *Ricerche sugli inizii della dominazione dei Carolingi in Italia*, Studi storici 71–72 (Rome: Istituto Storico Italiano per il Medio Evo, 1968): 40 and 48; Hubert Mordek, "Die Anfänge der fränkischen Gesetzgebung für Italien," *Quellen und Forschungen aus italienischen Archiven und Bibliotheken 85* (2005): 31. The unusual term *camactos* ("beaten with a rod") was used exclusively in the *Capitulare Mantuanum*, according to Niermeyer and van de Kieft, *Mediae Latinatis Lexicon Minus* (n. 6): 154–55.

130 See above, n. 90.

131 McComb, *Strategies of Correction* (n. 10): 163.

Furthermore, the correspondence between compensatory payment and the number of lashes, which is commonly found in the Merovingian Lex Salica, can also be found in two of Charlemagne's capitularies.[132] However, most capitularies do not specify the number of lashes to be carried out but merely state that *servi* are to be beaten;[133] others employ a ratio of one *solidus* per lash rather than one *denarius.* Even the two capitularies that employ the ratio from the Merovingian Lex Salica do so covertly: They do not include a reduced rate for *servi* (three rather than fifteen *solidi*), therefore making the correspondence between lashes and payment very difficult to comprehend. A reduced rate for *servi*, which is commonly found in Merovingian sources, is in fact not found in any of the Carolingian provisions issued for the entire Frankish realm: Only the *Capitula Remedii* and a chapter of the so-called *Capitulare missorum speciale* (which is only contained in the version of the decree sent to Aquitaine) inconsistently prescribe a reduced payment that is dependent on legal status. Furthermore, not only do the capitularies disregard a reduced rate – the payment of which would have allowed *servi* (or their owners) to avoid corporal punishment – they do not include such an option at all. Indeed, it is reasonable to assume that if a *servus* was willing and able to financially compensate for a crime he committed, he would have been given the opportunity to do so, but it would not have been at a rate resembling the fine for the free. This, as has been mentioned, may be a result of the declining relevance of legal status. However, the general survival of the differentiation of punishment according to legal status does not represent the adoption of an anachronistic relic by the Carolingians to emphasize their legislative continuity. While the borders between legal statuses may have been blurred in Carolingian Francia, legal status was definitely not irrelevant.[134]

132 Cf. *Capitulare Aquisgranense* c. 3, MGH Capit. 1, 148; *Capitulare missorum Aquisgranense primum* c. 11, MGH Capit. 1, 151.

133 See, for example, *Pippini regis Capitulare* c. 1, MGH Capit. 1, 31; *Capitulare missorum in Theodonis villa datum secundum, generale* c. 10, MGH Capit. 1, 124; *Hlotarii capitulare papiense* c. 8, MGH Capit. 2, 61. Provisions that do not specify the number of lashes can also be found in Merovingian Francia; see *Childeberti secundi decretio* c. 14, MGH Capit. 1, 17.

134 As proven, for example, by the aforementioned trial on the legal status of Maurinus. Cf. Ubl, *Maurinus* (n. 92): 105–24.

III Case Studies

Julia Hillner and Harry Mawdsley

The Exiling of Women from Antiquity to the Early Middle Ages: Data, Patterns, and Research Avenues

This chapter presents and discusses a data collection concerning the exiling of women in late antiquity, here defined as the period from the fourth to the mid-seventh century. Although they make up a minority of the total cases of exile during these centuries, a substantial number of exiled women are documented in late antique sources. Their experiences have attracted little attention from scholars, as the wealth of recent studies on exile have tended to privilege the treatment of men, and especially bishops.[1] This paper is a first step in redressing that imbalance.

We will begin by explaining our definition of "exile", which has guided how we have selected our data. We will then describe the features and limits of the data collection itself, the sources it is drawn from, and the categories we have chosen to order the information. Here, we will highlight trends, patterns, and peculiarities, before briefly discussing, first, how these compare to what we know about women's exile in the earlier Roman empire and, second, how cases from the later Roman empire compare to those from the post-Roman world. Finally, we will point to a range of research avenues that are worth pursuing further based on this dataset. Most importantly, a suggestion from the data that deserves further scrutiny is that in late antiquity the motivations, conditions, and experiences for and of women's exile seem to have changed significantly in comparison to the earlier imperial period.

1 See for recent studies Daniel Washburn, *Banishment in the Later Roman Empire, 284–476 CE* (London: Routledge, 2013); Julia Hillner et al., eds., *Clerical Exile in Late Antiquity* (Frankfurt am Main: Peter Lang, 2016); Dirk Rohmann et al., eds., *Mobility and Exile at the End of Antiquity* (Frankfurt am Main: Peter Lang, 2018); Jennifer Barry, *Bishops in Flight: Exile and Displacement in Late Antiquity* (Berkeley: University of California Press, 2019); Julia Hillner, "Waves Across the Pond: Exiling Clerics in Late Antiquity," *Studies in Late Antiquity* 3 (2019): 331–36. See also the database: Julia Hillner, Dirk Rohmann and Harry Mawdsley, "Clerical Exile in Late Antiquity," 01.07.2018, www.clericalexile.org [accessed 24.10.2023], which collects around 500 cases of exile in late antiquity.

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1 Defining "Exile"

In its most basic sense, an "exile" is simply a person who has spent a prolonged period outside his or her homeland. The term is most often used to describe persons who are forced to leave their communities, rather than those who choose to settle in foreign lands, but even strictly voluntary forms of migration sometimes fall within the term's semantic range. In the Roman and post-Roman worlds, exile was a similarly capacious concept, denoting a "state of being" that could be applied to virtually any kind of migrant.[2]

To collect our dataset, however, we have concentrated on a particular type of exile: that which was intentionally inflicted by those in power. It is more aptly called banishment. This is not a form of movement for which there is an easy analogy in the modern Western world. While deportations happen today, these are usually reserved for so-called "illegal immigrants", who are sent back to their native countries. By contrast, in the Roman empire and the post-Roman kingdoms, banishment tended to happen within the boundaries of the polity, usually because the authorities wanted to retain control over those affected. Banishment thus acted as a form of incapacitation, which limited victims' activities and movements in a similar way to how the modern prison penalty functions today.[3] Indeed, as we shall see, the boundaries between banishment and imprisonment were frequently blurred during the period, as individuals could be sent to enclosed institutions, such as fortresses, monasteries, or domestic residences, and forced to remain there.[4]

Banishment was a common penalty in late antiquity. As such, it was generally enforced as a result of formal legal proceedings: an offender was accused of a crime, convicted by a tribunal, and sentenced to banishment as punishment. The punishment came in different forms, with Roman law recognising distinct penalties such as *exilium*, *relegatio*, *deportatio* and *aquae et ignis interdictio*.[5] Each of these incorporated technical differences concerning the conditions of the sentence. *Deportatio*, for example, was invariably severe since it was always permanent, compelled offenders to reside in particular locations, and resulted in the loss of their property and citizenship; by contrast, *relegatio* did not strip offenders of their civic status and otherwise provided greater scope for leniency, with judges determining its duration, spatial lim-

2 Washburn, *Banishment* (n. 1): 3. See also Laura M. Napran, "Introduction: Exile in Context," in *Exile in the Middle Ages. Selected Proceedings*, ed. Laura M. Napran and Elisabeth van Houts (Turnhout: Brepols, 2004): 1–9.

3 On "incapacitative sanctions", see Terance D. Miethe and Hong Lu, *Punishment: A Comparative Historical Perspective* (Cambridge: Cambridge University Press, 2005): 30–33.

4 Julia Hillner, *Prison, Punishment and Penance in Late Antiquity* (Cambridge: Cambridge University Press, 2015): 194–241.

5 Mary V. Braginton, "Exile under the Roman Emperors," *The Classical Journal* 39, no. 7 (1944): 391–407; Washburn, *Banishment* (n. 1): 16–40.

its, and whether or not it was combined with property confiscation. An awareness of these different penalties was retained in the post-Roman kingdoms, but there was also a degree of legal simplification, with legislators favouring the more flexible sanction of *exilium*, in which the terms of the sentence were decided on a case-by-case basis.[6]

Although legal texts give us much insight into how legislators envisaged the application of banishment, they are less forthcoming on the realities of the punishment. In order to explore "real-world" instances of exile, we must turn to other sources, especially narrative ones. Here, we are faced with the problem that ancient and late antique authors did not necessarily reproduce the exact legal details around cases of banishment. In our data collection we have, therefore, decided to include all incidents in which women were forcibly removed from particular areas or regions, even where we cannot establish if this happened as a result of a formal trial and conviction, or of "extra-judicial" coercion. By "extra-judicial" we mean forced movement not intended as punishment per se, but enacted by persons in power to achieve some strategic goal. Rulers, for example, might expel their aristocratic opponents from court to remove them from the political sphere, or send their disobedient relatives to crown properties to control their behaviour. While these cases were sometimes the result of trumped-up charges, rulers had other coercive means at their disposal, so we cannot assume that an individual's banishment necessarily resulted from a criminal conviction.

2 84 Exiled Women: Identities and Circumstances

Overall, we have identified 84 cases of exile that concern women (nos. refer to the Appendix). For our date range, we have followed the chronological framework of the *Prosopography of the Later Roman Empire* (PLRE), from the reign of Gallienus to that of Heraclius (260 to 641 CE), although our first cases of female exiles date only from the later tetrarchy, from 311 (nos. 1 and 2).[7] While for this chapter we have not systematically collected all known male exiles as well, and are especially missing complete information on the numbers of exiled lay men, by way of comparison we can point at some relevant figures from other collections: for example, of the 497 cases of exile recorded by the database *Clerical Exile in Late Antiquity*, 468 concern men and only 11

6 Harry Mawdsley, "Exile in the Post-Roman Successor States, 439–c.650" (PhD diss., University of Sheffield, 2019): 62–68.

7 Arnold Hugh Martin Jones, John Robert Martindale and John Morris, *The Prosopography of the Later Roman Empire*, vols. 1–3 (Cambridge: Cambridge University Press, 1971–1992), henceforth and in the Appendix PLRE. Not all our exile cases are in PLRE, however, and some women are only mentioned in the entries of their male relatives or contacts, a common problem in PLRE.

women (e.g. female ascetics). There are a further 18 cases of exile of whole groups in this database (e.g. the followers of a bishop), among whom may well have been women, as we know for certain in one case.[8] Similarly, of the 258 cases compiled by Harry Mawdsley in his dissertation on exile in the post-Roman kingdoms, 191 concern men compared with only 33 women, along with an additional 34 cases involving larger groups, some of which again may have included members of both sexes.[9] As these examples demonstrate, therefore, we only have a small number of female cases, compared to what we know of the number of men who were exiled or fled from arrest in late antiquity. Nonetheless, 84 is a large enough figure to draw some reasonably robust conclusions, including statistical ones.

For personal data, we have collected information on, where possible, exiled women's names, as well as their kinship relations and their "status". In terms of the latter, we have distinguished between: royal women, by which we mean relatives both of emperors and of rulers of post-Roman kingdoms (the so-called "barbarian" kings); senatorial women, by which we mean members of the late Roman aristocracy; elite women, by which we mean relatives of nobles in the post-Roman kingdoms; ascetic women, by which we mean those who took a monastic vow; ecclesiastic women, by which we mean deaconesses or female relatives of clerics; and freed women, or women who were unfree either under Roman slavery or under the more flexible category of "unfreedom" in the post-Roman world.[10]

We have also collected information pertaining to the circumstances of exile. In addition to the start date of exile, these data include geographical information on the territory within or from which a woman was exiled, distinguishing between the Roman empire and individual post-Roman kingdoms. Our collection also contains data on the authority responsible for the exile (for example, an emperor, a post-Roman ruler or a bishop),[11] as well as on the reason for the exile, and the conditions to which the respective woman was subjected. These conditions could vary considerably, and we have sought to contain this variety in the dataset. Recorded conditions include the expulsion or forced emigration of a woman from a given territory, or the banishment of a woman to the margins of a territory, such as the Great Oasis in Southern Egypt or the North African desert (we call this "frontier banishment"). Both forms do not seem to have imposed further limits on her mobility. Other conditions could involve banishment to a specific place, such as an island, the separation from a woman's kinship or service network, and property confiscation, to downright inca-

8 Hillner, Rohmann and Mawdsley, *Clerical Exile* (n. 1). The group of mixed gender were monks and nuns exiled from Syria in 525; see Pseudo-Dionysius of Tel-Mahre, *chronicon* 3.22.

9 See appendix 2 in Mawdsley, *Exile* (n. 6): 316–65.

10 On unfreedom, see Alice Rio, "Freedom and Unfreedom in Early Medieval Francia: The Evidence of the Legal Formulae," *Past & Present* 193 (2006): 7–40.

11 Due to limited space, the printed version of the dataset, which appears below in appendix 1, does not include this information.

pacitation through forced labour, house arrest or monastic confinement. We have also included cases here which did not start out as legal forms of banishment, but as attempts to avoid legal or coercive repercussions that effectively turned into banishment. There are a good number of cases in which women fled to churches or monasteries, after which they either remained there permanently or temporarily, or were further processed into exile from there.[12]

Aside from a couple of inscriptions, most of the sources underpinning this dataset are narrative or polemical sources: chronicles, histories, and ecclesiastical treatises. It is therefore important to point out that what we have assembled are not neutral, objective data on banishment, but data on how women's exile was reported. To some extent the patterns emerging provide a window into what late antique and early medieval authors found noteworthy and, crucially, data on how they wrote about women's banishment. They are not a comprehensive picture of the actual institution. This must be taken into account in their interpretation. For example, we must ask whether similarities in describing women's banishment by different authors points to patterns of actual reasons for and conditions of their treatment, or whether there are literary conventions, shared agendas, or inherited traditions at play in the representation of these events.

In terms of these patterns, we must first note the chronological distribution of the cases contained in the dataset. Although on average we could calculate that, during late antiquity, a woman may have been exiled somewhere at least every five years, the phenomenon, or the reporting about it, seems to have accelerated over the course of the period. While we can only count eight cases of exile for the fourth century, by the sixth century this number rises to 39. In terms of women's identity, over half of the cases of exile concern imperial or royal women, followed by another third that concern female members of the Roman senatorial or post-Roman elites. A tenth involves ecclesiastical or ascetic women, while the smallest group are unfree or freed women (see Graph 1).[13] The focus of our sources on women from the top of society is not surprising, given their elite perspectives. Similarly, the predominantly Christian nature of our sources – and their attention to doctrinal conflicts or debates about dogma – explains the appearance of women somehow associated with Christian communities. While the presence of unfree women (however small) in this dataset may

12 On church or monastic asylum becoming exile, see Margarita Vallejo Girvés, "Case Studies of Church Asylum and Exile in Late Antiquity," in *Mobility and Exile at the End of Antiquity*, ed. Dirk Rohmann et al. (Frankfurt am Main: Peter Lang, 2018): 113–39.

13 The numbers include some overlaps of identity markers, such as ecclesiastic senatorial women (e.g. deaconesses), which have been counted in both categories. Some attributions are not entirely certain.

be surprising, these cases are also all related to ecclesiastical matters, with one possible exception.[14]

This insight suggests that we may need to correlate the chronology and the identity of women, or the reporting on these, with the reasons for which they were exiled (Graph 2). In terms of such reasons, we can also note that aside from the more conventional exile for legal crimes (whether secular ones, such as adultery or treason, or "ecclesiastical" ones such as remarriage or illicit sexual relationships with clerics), we also see a large number of cases where the legal context is unclear.[15] It appears that, in late antiquity, wives often accompanied their husbands into banishment not because they had been complicit in their crime, but because they were encompassed by their husband's sentence. One such example can be seen in Visigothic Hispania, when King Reccared banished a group of Gothic notables from Mérida for conspiracy in 587.[16] After one of their number, a man named Vagrila, had escaped from custody and sought asylum in a local basilica, the enraged king decreed that the fugitive, along with his seemingly innocent wife (no. 69) and children and all their possessions should become the property of the church in perpetuity (although this sentence was quickly rescinded when the bishop freed the enslaved family in an ostentatious display of clemency).[17]

What is even more striking is that wives often seem to have been punished with banishment and also property confiscation for an offence that their husband had committed, after the husbands themselves had been executed. We see this especially in cases of treason or usurpation. For example, John Chrysostom described two such cases in an open letter to a young widow (nos. 4 and 6), written between 378 and 382 while he was still a priest at Antioch. Here, he mentioned the wife of the *secundicerius notariorum* Theodore, beheaded for treason in 371. Subsequently, the property of his wife was also confiscated and she was "banished from her freedom", enlisted among wool workers and "compelled to lead a life more pitiable than any bondmaid", which could mean that she was forced to reside among the servants at court.[18] John Chrysos-

14 The possible exception is Septimima (no. 70), a nurse in a Merovingian royal household convicted of treason in 589. Her precise status is not clear, but she may well have been unfree; on household slavery and servitude in the early Middle Ages, see Alice Rio, *Slavery after Rome, 500–1100* (Oxford: Oxford University Press, 2017): 135–74.

15 For exile as a statutory penalty for sexual crimes in late Roman law, see Antti Arjava, *Women and the Law in Late Antiquity* (Oxford: Oxford University Press, 1996): 193–202; for ecclesiastical crimes, see Julia Hillner, "Gregory the Great's Prisons: Monastic Confinement in Early Byzantine Italy," *Journal of Early Christian Studies* 19 (2011): 433–71. Some women were exiled for more than one reason (such as regime change and criminal activity); these reasons have been counted separately in Graph 2.

16 On this conspiracy, see Roger Collins, *Visigothic Spain 409–711* (Oxford: Blackwell, 2004): 68.

17 *V. Patr. Emer.* 5.10–11, CCSL 116: 81–92.

18 John Chrysostom, *Ad viduam juniorem*, 4: τῆς ἐλευθερίας αὐτῆς ἐκπεσοῦσα ταῖς ταμιακαῖς ἐρίθοις ἐγκατελέγετο, καὶ πάσης θεραπαινίδος οἰκτρότερον ζῆν ἠναγκάζετο βίον (trans. Nicene and Post-Nicene Fathers); on this letter and its description of violence against women, see Belinda Washington, "John Chrysostom's Letter to a Young Widow: Reflections on Imperial Women Roles at Regime

tom then went on to detail another case, that of Artemisia (perhaps the widow of the usurper Procopius of 365–6) who was equally stripped of her property, so that she had to roam around begging, a type of banishment that may be similar to the legal sentence of *interdictio aquae et ignis*, the exclusion from the basic necessities of life.[19] It should be noted that John was writing here to dissuade his widowed correspondent from remarrying. He therefore had a clear agenda to describe marriage in negative terms and to point out what terrible effects it could have on wives. Nonetheless, because he names actual names, we can be sure that his accounts were grounded in some real occurrences, while leaving it unclear whether these women had committed any crimes beyond having made questionable marital choices.

Finally, we must pay attention to the conditions of women's exile, as highlighted in Graph 3. In this graph, the shaded bars each depict a different way in which exiled women were treated, arranged to indicate a continuum from the least restrictive form (left) to the most restrictive (right). The darkest bar indicates cases in which women were not only banished to specific locations but were also held in some kind of imprisonment. At the other extreme, we have cases of flight, expulsion, and forced emigration. In terms of chronology, it should be noted that one of the most incapacitating forms of women's exile, monastic confinement, began to be inflicted upon women only from the late fifth century onwards, at least according to our sources. It seems to have started out as a measure by which women sought to escape from more humiliating treatment, but which then regularly resulted in a state of immobilisation. One of the first cases is that of Leontia, wife of the usurper Marcian, who in 479 fled to the monastery of the Akoimetoi on the outskirts of Constantinople, where the emperor, Zeno, could then conveniently "abandon her" (καταλιμπάνει; no. 20).[20] Around a decade later, at the opposite end of the Mediterranean, the Burgundian princess Chroma was exiled to a convent by her uncle, King Gundobad, after he had murdered her father and annexed his kingdom (no. 32). Thereafter, monastic confinement became a very common sanction for women in the Eastern Empire, where it was even enshrined in law.[21] It would also become common in the post-Roman kingdoms, although not until the second half of the sixth century perhaps because there were fewer female monastic houses there initially.[22]

Change," in *Empresses-In-Waiting. Female Power and Performance at the Late Roman Court*, ed. Christian Rollinger and Nadine Viermann (Liverpool: Liverpool University Press, 2024): 67–96. On Theodore, see also PLRE I (n. 7): Theodorus 13, p. 898.

19 Artemisia is no. 4 in the appendix. On *interdictio aquae et ignis*, see Braginton, "Exile" (n. 5): 391–407.

20 John of Antioch, frg. 234 (ed. Mariev).

21 Julia Hillner, "Monastic Imprisonment in Justinian's Novels," *Journal of Early Christian Studies* 15 (2007): 205–37.

22 On the development of monasteries in the West, see Marilyn Dunn, *The Emergence of Monasticism. From the Desert Fathers to the Early Middle Ages* (Oxford: Blackwell, 2003).

3 Comparison to Women's Exile in the Early Empire

The following discussion makes use of a second dataset on women's exile, as assembled by Frank Stini in the prosopographical appendix (*Alphabetischer Katalog*) to his study on exile in the early empire.[23] It is important to emphasise that these data have been collected from qualitatively different sources (especially early imperial historians), for a different research project using different methods, and with different questions in mind than our own. For this reason, we are not fully comparing like with like. Given that these data exist in published form, however, it is still worth at least tentatively indicating similarities and differences, even if what follows needs to be considered with caution.

A first point of convergence that we can note is the ratio of exiled men and women. Because Stini has collected evidence for both, we can stipulate that, for the early empire, 15% of all recorded exile cases concerned women (45/305). This is exactly the same as the ratio in Harry Mawdsley's catalogue on exiled individuals in the post-Roman world as mentioned above (15%, 33/224). It seems therefore that, at least numerically, the interest by authors in women's exile remained fairly constant over the longue durée. This will need verification, however, against Stini's methods of inclusion or exclusion of certain forms of banishment, especially with regard to arbitrary, rather than legal forms of banishment, and because we lack full data on the number of male exiles on the later Roman empire.[24]

We also note some striking differences between Stini's data and our own. The first concerns the identity of exiled women, which seems to diversify substantially in late antiquity. In the early empire, the vast majority of exiled women (60%) that appear in Stini's catalogue are aristocratic women, of either equestrian or more frequently senatorial status. Royal (imperial) women, the largest group in our dataset, only make up a third. An even smaller group – just four cases – are "foreign" women: the wives or daughters of defeated foreign rulers who had been brought to Rome and allowed to live there or somewhere in Italy in banishment from their homelands.

In late antiquity, as we have seen, royal women make up the largest group, and new types of exiled women emerged, of "ascetic" or "ecclesiastic" identities and also of much lower status. The group of exiled female aristocrats therefore substantially decreases. Rather than reflecting an actual decline in the use of exile against aristocratic women, this pattern is almost certainly due to historiographical changes, with authors now prioritising Christian affairs and the individuals caught up in them over

23 Frank Stini, *Plenum exiliis mare. Untersuchungen zum Exil in der römischen Kaiserzeit* (Stuttgart: Franz Steiner, 2011): 219–77. This catalogue contains men and women.

24 Stini's catalogue does contain types of banishment that happened outside due judicial process, like the banishment of relatives of defeated foreign leaders, which points at an equally capacious definition of exile as employed here. For example, he includes Thusnelda, wife of the Cherusci noble Arminius, who was interned in Ravenna in 15CE (Tac. Ann. 1.57–59).

politics involving lay elites, as already mentioned. Simply put, we lack the critical mass of Tacitus, Suetonius, Pliny, or Cassius Dio to fully capture the fate of senatorial women in late antiquity. It is also worth noting that the boundaries between imperial and aristocratic women were more fluid in the earlier empire, and so some female relatives of former emperors can be counted among the latter rather than the former.[25]

Another difference relates to the reasons for which women were exiled. Peculiar late antique crimes such as heresy, usually refusal to convert to the Christian orthodox position of the day, or ecclesiastical offences, are of course absent from Stini's catalogue.[26] Yet there are also some divergences that are less easy to explain. The vast majority of exiled women in the early empire were apparently charged with specific crimes under existing law. Next to accusations of treason, magic, incest, poisoning and so on, the most frequent accusation was of adultery, for which – as is well known – the *lex Iulia de adulteriis coercendis* of 18 BCE prescribed banishment, in the form of *relegatio in insulam*, that is to an island, with some property confiscation, but without loss of citizenship.[27] To be sure, in the early empire not every instance of exile was the result of judicial proceedings, especially in the case of imperial women, and often accusations were a smoke screen for other reasons to remove troublesome individuals.[28] For example, in 62 CE Claudia Octavia, the divorced wife of Nero, was banished for adultery to Pandateria, because Nero's new wife Sabina Poppaea resented her presence (Octavia was, indeed, killed shortly after).[29] Yet, "real" adultery processes and condemnations did happen. For example, according to Pliny, Gallitta, the wife of a military tribune was condemned to exile under the *Lex Iulia* for adultery with a *centurio*, after having been brought to court, the emperor's *iudicium*, by her rather unwilling husband.[30] Late Roman emperors continued to legislate on adultery, with eventually the penalty becoming a peculiar form of banishment, confinement in a monastery, as mentioned above. Of actual adultery cases resulting in banishment – in a monastery or not – we hear comparatively little, however. The majority of women's banishments in late antiquity were an outcome of what is better described as coercion than legal norms. In the early empire, the really clear occurrences of this type almost exclusively involved banishment as a result of war captivity, that is, the afore-

25 For example Iunia Calvina, a great great granddaughter of Augustus through her mother, banished in 49 CE for incest (Tacitus, *Ann.* 12.8.1).

26 On heresy as a crime, see Laurette Barnard, "The Criminalization of Heresy in the Later Roman Empire: A Sociopolitical Device?" *Journal of Legal History* 16 (1995): 121–46.

27 Jane F. Gardner, *Women in Roman Law and Society* (Bloomington: Indiana University Press, 1986): 121–27.

28 As Mary Boatwright, *Imperial Women of Rome. Power, Gender, Context* (Oxford: Oxford University Press, 2021): 69–78 notes, not all banishments of imperial women involved formal trials, but there was always a "judicial" context implied through the reference to existing "crimes".

29 Boatwright, *Imperial Women* (n. 28): 75.

30 Pliny, *ep.* 6.31.

mentioned wives and daughters of defeated foreign rulers. Such practices continued in the later empire; the Ostrogothic queen Matasuentha (no. 46) is one example.

An even trickier case are women who accompanied their banished husbands or were banished after their husbands' executions. In the early empire, the former did happen although not frequently. In the majority of such cases – as far as we can tell – the wife accompanied her husband voluntarily or because she was suspected or even condemned for having been complicit in his crime, usually conspiracy. For example, at the time of Nero and then Vespasian, Fannia, wife of the stoic philosopher and ardent republican P. Helvidius Priscus, accompanied her husband twice into exile, and was afterwards also banished herself by Domitian for publishing a vita of her husband. She was clearly seen as a troublemaker.[31] In late antiquity, by contrast, the number of female companions of exiled men increased substantially. In addition, the exile of apparently innocent women after the violent demise of their male relatives – due to failed conspiracies or regime change – does not seem to have occurred in the early empire.

Finally, we can note differences in the conditions of exile. To start with, we know much more about the locations of women's exile in the later Roman empire.[32] Late antique authors thus exhibited a greater interest in the conditions of banishment than their early imperial counterparts, again showing how changes in writing practices have a significant impact on what we can say about the "reality" of exile. Nonetheless, what we do know about exile destinations in the early empire is suggestive of real changes between the two periods. In the early imperial period, women – like men – were most frequently sent to specific locations, where they were expected to remain for the duration of their sentences, as opposed to being simply expelled or forced to relocate from an area. Mediterranean islands were the most common destinations for banished women, as they were for banished men. This is interesting, since some historians have argued that such islands were selected by the authorities as they were located far away from the Empire's political centre, but also from frontiers and thus its military forces.[33] But while these security concerns might make sense for banished men, they hardly apply to women, who were not likely to be expected to take up arms. Instead, as Stini himself argues, islands were chosen because they inflicted a greater sense of alienation upon offenders by emphasising the distance to their home communities (usually the city of Rome) and by denying them the comforts and enjoyments of urban life.[34] Consequently, the authorities' preference for island banishment suggests that the conditions of women's exile were shaped mainly by

31 Stini, *Plenum exiliis mare* (n. 23): 242.

32 In the case of Stini's catalogue we lack information about the locations of exiled women in just under half the cases; in our dataset, it is 20%.

33 Theodor Mommsen, *Römisches Strafrecht* (Leipzig: Duncker und Humblot, 1899): 973.

34 Stini, *Plenum exiliis mare* (n. 23): 171–88.

penal considerations. This is not surprising, given that women were generally being banished as result of formal legal processes.

In the later Empire, island banishment almost completely disappears; in fact, there is only a single documented example of a woman being exiled to an island during the period, and this is to Rhodes, a rather large territory (no. 84). If a woman was exiled to a specific location, it was usually a city or even more typically, a frontier location. This development was, however, also not specific to women. As Julia Hillner has shown elsewhere, the late antique shift from island to frontier banishment was probably driven by the increasing use of exile to punish religious dissidence, and in particular a desire to send those with unorthodox views to the margins of the empire away from an imagined centre.[35] Aside from frontier banishment, the comparison with Stini's catalogue suggests that another key development in late antiquity was that women's exile became, on the whole, more restrictive. This was particularly true in the case of imperial and royal women and the wives of failed usurpers, who were routinely banished to fortresses, palaces, or other domestic residences where they were forcibly detained. This development culminated in monastic confinement, which obviously did not exist in the early empire.

4 Comparing Women's Exile in the Late Roman and Post-Roman Worlds

Having reflected upon the differences between the early and late imperial periods, we will now consider how the collapse of the Empire may have impacted the exiling of women. There was no decline in the number of women banished in the successor states, with the ratio of documented cases remaining almost identical across the categories of Roman and post-Roman (see Graph 4). On the contrary, given that the Roman category includes examples from the Eastern Empire and thus covers the entire period of study, there was a considerable uptick in the frequency of cases in the post-Roman west. This was presumably a consequence of political fragmentation, which multiplied some of the contexts in which women might be exiled. The vast majority of cases, however, are associated with either the Merovingian or Vandal kingdoms (see Graph 4). To some degree, this disparity must reflect the vagaries of source preservation rather than actual differences in the application of the penalty. In Merovingian Gaul, for example, the survival of a substantial narrative text – Gregory of Tours' *Decem Libri Historiarum* – means that cases were more likely to be recorded here than in neighbouring kingdoms. Nonetheless, in Vandal Africa, it is possible that women were, in fact, banished in greater numbers than were their counterparts else-

35 Hillner, *Prison* (n. 4): 212–17.

where in the post-Roman west. Vandal kings were the only "barbarian" rulers to routinely employ the penalty against religious dissidents, as they looked to promote their favoured brand of Christianity at the expense of the Nicene church.[36] While these attempts to establish orthodoxy primarily affected men, especially Nicene clerics and court officials,[37] Vandal kings sometimes extended the scope of their measures to include women as well.[38] This context of religious persecution, absent from other kingdoms, helps explain the overrepresentation of Vandal cases in our dataset.

If we move beyond the overall figures of Roman and post-Roman cases and compare specific variables, some interesting patterns emerge. With regard to status, there was broad continuity in the frequency of cases involving imperial/royal (23:26) and senatorial/elite (11:11) women, which is not surprising given the continuing preoccupation of post-Roman sources with those at the top of society. Interestingly, the number of cases involving unfree/freed women quadrupled (1:4), but because of the tiny sample size it is difficult to know if this represents a real change in how exile was implemented. Perhaps more significant is the fact that there are no documented cases involving ecclesiastic or ascetic women in the post-Roman west, compared with 4 and 5 cases in the Roman Empire respectively. Given that the exiling of such women was typically associated with disputes over orthodoxy, the decline in these cases can perhaps again be linked to the general absence of religious conflict in most of the successor states.

This lack of interest in enforcing orthodoxy can similarly be detected in the changing reasons for exile (see Graph 5). While there is superficial parity in the number of Roman and post-Roman cases in which women were exiled for heresy, all the latter instances were linked to the Vandal kingdom. Elsewhere in the post-Roman west, women were apparently no longer banished for religious dissidence. As for the other reasons for exile, most exhibit continuity from the Roman to the post-Roman periods, with the number of cases remaining roughly the same. Indeed, the only really significant change is the increased prevalence of women exiled on account of regime change. In our categorisation of the data, we defined "exile due to regime change" as occurring when an imperial/royal woman was banished following the death or deposition of a monarch without her being convicted of criminal charges. Apparently unknown in the Principate, it is possible that its emergence in late antiquity may partly indicate changes in reporting strategies, insofar as the sources become less likely to record a case's legal aspects. Even if that is true, however, late antique rulers do appear to have been much more concerned about the potential threat posed by royal women than were their early imperial counterparts.

The exiling of such women following regime change is thus a distinctive feature of late antiquity, and more particularly of the post-Roman world. It is documented

36 Andrew H. Merrills and Richard Miles, *The Vandals* (Chichester: Wiley, 2010): 177–203.

37 Robin Whelan, *Being Christian in Vandal North Africa: The Politics of Orthodoxy* (Oakland: University of California Press, 2017): 143–64.

38 Examples in the appendix include nos. 17, 24, 25, and possibly 9.

most frequently in Merovingian Gaul, presumably because of that polity's frequent division into smaller *Teilreiche*, which increased the number of courts and hence the number of royal women who could be exiled. But crucially, the practice is reported at least once in (almost) every post-Roman kingdom, suggesting it was a cross-regional phenomenon of some significance. The most plausible explanation for its increased prominence is that royal women posed an even greater threat to rulers after the collapse of the Empire. This was partly due to these women's dynastic connections, which made them useful assets for men looking to stake a claim on the throne. While this was also true of royal women in the Roman Empire, the hereditary principle was, on the whole, stronger in the successor states, and so new kings had good reason to put superfluous royal women out of the reach of their rivals.[39] It is also the case that these women were more directly involved in high politics than their Roman counterparts precisely because of the breakdown of imperial structures. In the post-Roman kingdoms, bureaucracies and institutions were weaker, and politics more personal and centred upon the king's court. Given that the court also functioned as a domestic space, the lack of separation between the public and private spheres allowed royal women to carve out significant influence for themselves. They acted as power brokers between aristocratic factions and, as managers of the royal household, they often controlled the royal treasury.[40] Yet royal women were also uniquely vulnerable, since their standing had no secure basis beyond their relationship with the reigning monarch. Regime change therefore put them in a very precarious position. For a new king on the make, banishing his predecessor's wife and other female relatives was an attractive strategy, since it removed a potentially disloyal figure from court politics and may have facilitated the seizure of considerable quantities of liquid wealth.

We might expect any changes in the reasons for exile to have influenced its conditions, but this is difficult to establish on the basis of the surviving evidence (see Graph 6). This is because the number of unclear cases increases by fourfold in the post-Roman kingdoms, limiting our ability to draw robust conclusions from the data. Even so, there are some developments that warrant further discussion. The absence of religious conflict outside Vandal Africa, for example, seems to have led to a decline in frontier banishment in the post-Roman world; there are only two documented cases of this form of exile, both of which are associated with the "persecution" of Nicene Christians by Vandal kings. The apparent reduction in cases of monastic confinement is more misleading. With a single exception, the Roman cases date from the late 470s onwards, that is after the collapse of the Western Empire, and thus are contem-

39 On succession practices in the barbarian kingdoms, see Ian N. Wood, "Kings, Kingdom and Consent," in *Early Medieval Kingship*, ed. Ian N. Wood and Peter Sawyer (Leeds: University of Leeds Press, 1977): 6–29.

40 Janet L. Nelson, *Politics and Ritual in Early Medieval Europe* (London: Hambledon Press, 1986): 1–48; Pauline A. Stafford, *Queens, Concubines and Dowagers: The King's Wife in the Early Middle Ages* (London: Leicester University Press, 1983): passim.

porary with the successor states.[41] Indeed, as mentioned already, this type of exile emerged at roughly the same time at both ends of the Mediterranean but is not reported with any frequency in the post-Roman west until the later sixth century (when the sources become better and female monastic houses proliferated). The successor states did not, then, witness a decline in monastic confinement, but rather its emergence as a strategy of dealing with politically-dangerous women.

Finally, it is possible that exile became more restrictive in the post-Roman west, at least for certain kinds of women. If we concentrate on cases of imprisonment or those in which women were held in specific locations, the evidence in the successor states is inconsistent, with the former declining (9:6) and the latter increasing (7:11). A pattern can be discerned, however, if we concentrate specifically on royal women. In the Roman Empire, 41% of cases involving such women resulted in the victim being held in a specific location or imprisoned. By comparison, in the post-Roman west, the figure rises to 62%, or 70% if we discount cases in which the conditions of exile are unclear. This would support our earlier suggestion that royal women posed a greater threat than they had done before, with rulers intensifying the conditions of banishment in the hope that it would limit the woman's potential to cause trouble.

5 Avenues for Further Research

By way of concluding remarks, we would like to point at three questions emerging from the above discussion that, in our view, warrant further investigation.

Provided that we can trust our data to reveal real trends, we must ask, first, why there was an increase in incidents where women were exiled not via judicial procedure or for crimes that they had themselves committed, but as wives of men who had offended the authorities in some way. Perhaps late antique authors did not know or perhaps they were, unlike classical authors, uninterested in legal technicalities, leaving it open whether such wives had been complicit in usurpations or plots. But the frequency of such cases reported by late antique authors also suggests that at least some women were targeted simply qua being a wife, that is, that they were collateral damage of their husbands' actions. Perhaps – although this is a very cautious perhaps – wives were increasingly seen as liable for their husband's behaviour due to changing attitudes towards marriage. As Kate Cooper has shown, in late antiquity the marriage bond came to be seen as the strongest social relationship in a household, at the expense of a wife's relationship with her birth family. This was partly because of emerging Christian ideas around the indissolubility of marriage, partly due to a rising habit of elite men to seek out socially inferior brides, and partly due to, in the post-Roman kingdoms, inheritance practices around land which disadvantaged the prop-

41 The exception is Olympias (no. 10 in the appendix).

erty holding of women.[42] These features of marriage may have increased the dependency of wives on their husbands, which in turn meant they were less protected against the consequences of their husbands' behaviour.

Second, we should ask why the number of exiled royal women increased in late antiquity. On a very basic level, this may have been because there were more of them. From the tetrarchy onwards, late imperial rule was frequently collegial in nature, multiplying the number of women associated with the throne. This proliferation of royal women continued after the collapse of the Western Empire when new polities emerged that each had their own ruling dynasties. At the same time, these women seem to have acquired greater political importance. This was largely due to their ability to act as conduits of dynastic legitimacy, something already evident in the fourth century but which intensified thereafter, meaning that their status could be exploited by men who wished to obtain the throne.[43]

Royal women may therefore have posed a latent risk to late antique rulers, which encouraged them to exile superfluous female relatives as well as female members of previous regimes. The latter phenomenon – banishment due to regime change – was likewise a novel feature of late antiquity, and perhaps especially of the post-Roman world. In the early Empire, imperial women seem to have rarely been exiled after the deaths of emperors. In the later empire, we lack sufficient research on this phenomenon. It is true that we see few imperial women "properly" exiled, but we may have to expand our gaze towards phenomena such as forced celibacy, forced marriage, or simply disappearance of women to fully understand their fates after regime change.[44] We should also remember, as we discuss here, that female relatives of usurpers sometimes faced banishment (or worse) if their husbands failed to obtain the throne. Still, in the post-Roman west it was more common for new kings to exile the female members of the previous regime. The most plausible explanation is that these women posed an even greater threat to those in power than their imperial counterparts, but this requires further verification.

A final remaining question is why women's exile became more restrictive over time. The shift to more arbitrary forms of banishment as well as the increased political standing of royal women had a significant impact upon the conditions of exile. It meant that victims were subjected to tighter constraints as the authorities sought to

42 Kate Cooper, *The Fall of the Roman Household* (Cambridge: Cambridge University Press, 2007): 143–98. On women and landed property in the post-Roman world, see, for example, Marios Costambeys, "Kinship, Gender and Property in Lombard Italy," in *The Langobards before the Frankish Conquest: An Ethnographic Perspective*, ed. G. Ausenda et al. (Woodbridge: Boydell, 2009): 69–94.

43 The importance of women as conduits of dynastic legitimacy is already apparent during the Theodosian dynasty, see Anja Busch, *Die Frauen der theodosianischen Dynastie* (Stuttgart: Franz Steiner, 2015): 214–17.

44 See Julia Hillner, "Imperial Women after Curtains," in *Empresses-In-Waiting. Female Power and Performance at the Late Roman Court*, ed. Christian Rollinger and Nadine Viermann (Liverpool: Liverpool University Press, 2024): 261–72.

control their activities and in particular, to prevent their return to the political sphere. In other words, security concerns seem to have eclipsed the penal agendas that had previously dictated the terms of banishment. This may explain why women were increasingly exiled to fortresses or palaces, where the authorities could closely monitor them and limit their access to the outside world. It was for these reasons that late antique rulers also began to exile women to monasteries, a practice that emerged independently in both the eastern and western Mediterranean at the end of the fifth century. To borrow a term from biology, this seems to represent a clear example of "convergent evolution", with rulers – both Roman and "barbarian" – responding in similar ways to the same basic problem: how to deal with the female relatives of one's defeated or deceased rivals?[45] Banishing them to a monastery was a convenient solution. For one thing, it restricted access to the women to a similar degree as was the case for those exiled to other types of enclosed institutions. But monastic confinement had some additional advantages. If the woman was forced to take vows and join her host community, she was (at least in theory) prohibited from ever returning to secular life, marrying, or producing children. This made monastic confinement a peculiarly effective way of neutralising a woman's political agency, and enforcing her asymmetrical dependency on others.

Beyond these strategic advantages, however, banishing women to monasteries may have also satisfied other, more ideological concerns. Late antique rulers often represented exile as an act of *clementia* par excellence; by sparing the lives of their enemies, they demonstrated their moderation and self-restraint, qualities that were associated with good rulership in both the classical and Christian traditions.[46] Rulers could thus reap considerable propaganda benefits through the enforcement of exile, and this was particularly true in the case of monastic confinement. Not only did this sanction spare its victims from death, but it protected their eternal souls by placing them in centres of spiritual contemplation and subjecting them to a regimented programme of prayers and fasts. In the contemporary mindset, therefore, monastic confinement may have been a uniquely salutary form of exile. As such, it may have allowed rulers to dispose of troublesome people, while claiming – perhaps not entirely cynically – that they were looking after their best interests, if not in this world then at least in the next. In this way, a truly new type of banishment emerged at the end of antiquity, not only for women, but also for men.

45 See George R. McGhee, *Convergent Evolution: Limited Forms Most Beautiful* (Cambridge, MA: MIT Press, 2011).

46 Hillner, *Prison* (n. 4): 115–16, 320.

Appendix 1

Appendix 1: Prosopography of Exiled Women, 260–641 CE.

No.	Name	Date of exile	Status	Territory	Reason for exile	Conditions of exile (location if known)	Source for exile (abbreviations follow PLRE)
1	Valeria	311/2	Royalty	Roman	Regime change	Frontier banishment (Syria)	Lact. *Mort. Pers.* 39
2	Prisca	311/2	Royalty	Roman	Companion of exile	Frontier banishment (Syria)	Lact. *Mort. Pers.* 39
3	Anonymae 1	358	Ascetic	Roman	Crime: support of banished (Athanasius)	Frontier banishment (Great Oasis)	Athan. *Hist. Ar.* 72 Theod. *HE* 2.14
4	Artemisia	366?	Senatorial	Roman	Associated with wrongs of male relative	Expulsion/forced emigration	Joh. Chrys. *ad vid. iun.* 343C-D
5	Marina Severa	367–371	Royalty	Roman	Crime: fraud	Expulsion/forced emigration?	*Chron. Pasch.* s.a. 369 Joh. Mal. 13.31 Joh. Nikiu 82.10–14 Joh. Chrys. *ad vid. iun.* 4
6	Anonyma 1	371/2	Senatorial	Roman	Associated with wrongs of male relative	Forced labour/penal enslavement	John Chrys. *ad vid. iun.* 343B-C
7	Galla	390	Royalty	Roman	Regime change	Expulsion/forced emigration (from palace)	Marcell. com. s.a. 390

(continued)

Appendix 1 (continued)

No.	Name	Date of exile	Status	Territory	Reason for exile	Conditions of exile (location if known)	Source for exile (abbreviations follow PLRE)
8	Pentadia	396	Senatorial	Roman	Associated with wrongs of male relative	Fled, then church asylum	Soz. 8.7.2
9	Anonyma 2	400–600	Unclear	Vandal?	Crime: heresy?	Unclear	Handley, M. 425 = AE 1967, 00651 = AE 2007, +00127
10	Olympias	404	Ascetic, Senatorial	Roman	Crime: support of banished (John Chrysostom)	Monastic confinement (Nicomedia or Cyzikus)	*V.Olymp.* 10 (SC 13bis) Soz. 8.24
11	Nicarete	404	Senatorial, Ecclesiastic	Roman	Crime: support of banished (John Chrysostom)	Fled (from Constantinople)	Soz. 8.23.4–7
12	Galla Placidia	422	Royalty	Roman	Hostility of ruler	Expulsion/forced emigration (from palace in Ravenna)	Olymp. fr. 40 Philost. 12.13 Prosp. Tiro s.a. 423 *Chron. Gall. 452* no. 90
13	Anonyma 3	428–442	Royalty	Vandal	Crime: attempted murder	Expulsion/forced emigration (from Vandal kingdom)	Jord. *Get.* 184

14	Anonyma 4	439	Elite	Vandal	Companion of exile	Expulsion/forced emigration (from Vandal kingdom)	Theod. *Ep.* 29–36
15	Aelia Eudocia	443?	Royalty	Roman	Crime: adultery?	Expulsion/forced emigration (to Palestine)?	Joh. Mal. 14.8 Theoph. AM 5942
16	Honoria	449	Royalty	Roman	Crime: stuprum	Imprisoned (house arrest)	Jord. *Get.* 224 Jord. *Rom.* 328 Marcell. com. s.a. 434 Joh. Ant. fr. 224 (ed. Mariev)
17	Maxima	455–477	Unfree	Vandal	Crime: heresy?	Frontier banishment (kingdom of Capsa)	Vict. Vit. 1.30–35
18	Aelia Zenonis	476	Royalty	Roman	Associated with wrongs of male relative	Church asylum Imprisoned (fortress of Limnai in Cappadocia)	Joh. Mal. 15.5 Marcell. com. s.a. 476
19	Verina	478	Royalty	Roman	Crime: attempted murder	Imprisoned (fortress of Papyrius in Isauria) Monastic confinement (Tarsus)?	Joh. Ant. fr. 237 (ed. Mariev) Joh. Mal. 15.12 Joh. Nikiu 88.67 Theoph. AM 5972
20	Leontia	479	Royalty	Roman	Associated with wrongs of male relative	Fled Monastic confinement (monastery of the Akoimetoi) Imprisoned (fortress of Papyrius in Cappadocia)	Theoph. AM 5971–2 Joh. Ant. fr. 234 (ed. Mariev)
21	Anonyma 5	480/481 – 483	Royalty	Vandal	Companion of exile	Unclear	Vict. Vit. 2.12–14

(continued)

Appendix 1 (continued)

No.	Name	Date of exile	Status	Territory	Reason for exile	Conditions of exile (location if known)	Source for exile (abbreviations follow PLRE)
22	Anonyma 6	480/1 – 484	Royalty	Vandal	Associated with wrongs of male relative	Expulsion/forced emigration?	Vict. Vit. 2.12–14
23	Anonyma 7	480/1 – 484	Royalty	Vandal	Associated with wrongs of male relative	Expulsion/forced emigration?	Vict. Vit. 2.12–14
24	Dagila	484	Unfree?	Vandal	Crime: heresy?	Frontier banishment (North African desert)	Vict. Vit. 3.33
25	Anonyma 8	484	Unclear	Vandal	Crime: heresy?	Unclear	Vict. Vit. 3.50–51
26	Asteria	488	Senatorial?	Roman	Associated with wrongs of male relative	Church asylum (Tarsus)	Joh. Ant. fr. 237 (ed. Mariev)
27	Thecla	488	Senatorial?	Roman	Associated with wrongs of male relative	Church asylum (Tarsus)	Joh. Ant. fr. 237 (ed. Mariev)
28	Lallis	492	Royalty	Roman	Associated with wrongs of male relative	Fled Monastic confinement (Brochthi)	Joh. Ant. fr. 239 (ed. Mariev)

29	Longina	492	Royalty	Roman	Associated with wrongs of male relative	Fled Monastic confinement (Brochthi)	Joh. Ant. fr. 239 (ed. Mariev)
30	Valeria	492	Royalty	Roman	Associated with wrongs of male relative	Fled Monastic confinement (Brochthi)	Joh. Ant. fr. 239 (ed. Mariev)
31	Sunigilda	493	Royalty	Ostrogothic	Regime change	Imprisoned	Joh. Ant. fr. 238 (ed. Mariev)
32	Chroma	493	Royalty	Burgundian	Regime change	Monastic confinement	Greg. Tur. *HF* 2.28 *Lib. Hist. Franc.* 11
33	Clotild	493	Royalty	Burgundian	Regime change	Held at a specific place?	Greg. Tur. *HF* 2.28 *Lib. Hist. Franc.* 11 Fredegar. III.17
34	Susanna	519–534	Ascetic	Roman	Crime: heresy	Frontier banishment (desert beyond Alexandria)	Joh. Eph. *V.SS.Or.* 27
35	Anonymae 2	519–534	Ascetic	Roman	Companions of exile	Frontier banishment (desert beyond Alexandria)	Joh. Eph. *V.SS.Or.* 27
36	Nonna/ Marutha	521	Ecclesiastic	Roman	Companion of exile	Held at a specific place (Petra, then Alexandria)	Joh. Eph. *V.SS.Or.* 13 Zach. *HE* 8.5 Ps.-Dion. (of Tel-Mahrē) *Chron.* 3. p. 32
37	Shmuni	521	Ecclesiastic	Roman	Companion of exile	Held at a specific place (Petra, then Alexandria)	Joh. Eph. *V.SS.Or.* 13 Zach. *HE* 8.5 Ps.-Dion. (of Tel-Mahrē) *Chron.* 3. p. 32

(continued)

Appendix 1 (continued)

No.	Name	Date of exile	Status	Territory	Reason for exile	Conditions of exile (location if known)	Source for exile (abbreviations follow PLRE)
38	Amalafrida	523	Royalty	Vandal	Crime: treason	Imprisoned	Proc. *BV* 1.9.4 Vic. Tonn. a.523.1
39	Anonymae 3	525	Ascetic	Roman	Crime: heresy	Unclear	Ps.-Dion. (of Tel-Mahrē) *Chron.* 3. p. 22
40	Placidina	525–527	Elite	Merovingian	Associated with wrongs of male relative	Unclear	Greg. Tur. *HF* 3.12
41	Alcima	525–527	Senatorial	Merovingian	Associated with wrongs of male relative	Unclear	Greg. Tur. *HF* 3.12
42	Anonyma 9	530	Royalty	Vandal	Regime change	Imprisoned (Carthage)	Joh. Mal. 459
43	Radegund	532	Royalty	Merovingian	War captivity	Held at a specific place (kingdom of Clothar, later monastery in Poitiers)	Greg. Tur. *HF* 3.7 Ven. Fort. *V.S. Radeg.* 2
44	Iuliana	532?	Senatorial	Roman	Associated with wrongs of male relative	Unclear	Joh. Eph. *HE* 3.2.12

45	Amalasuntha	534	Royalty	Ostrogothic	Regime change	Imprisoned (fortress on an island in Lake Bolsena, Etruria)	Proc. *BG* 1.4.13–15 *Marcell. com. Addit.* a.534 Jord. *Get.* 306
46	Matasuentha	540	Royalty	Roman	War captivity	Held at a specific place (Constantinople)	Proc. *BG* 3.1.2 Jord. *Get.* 81
47	Praeiecta	545	Royalty	Roman	War captivity	Imprisoned (Carthage)	Proc. *BV* 2.26.18; 27.20; 27.22 Proc. *BG* 3.31.3
48	Anastasia	548	Senatorial	Roman	Hostility of ruler (Theodora)	Expulsion/forced emigration (from palace)?	*V. Dan. Scet.* 1A-C
49	Anonyma 10	551–582	Elite?	Merovingian	Crime: abduction	Church asylum Monastic confinement (Cossium/Vasatis)	Greg. Tur. *HF* 6.16
50	Caesaria	555	Elite	Merovingian	Companion of exile	Church asylum (Clermont then church of St Julian)	Greg. Tur. *HF* 4.13
51	Ultrogotha	558	Royalty	Merovingian	Regime change	Held at a specific place?	Greg. Tur. *HF* 4.20
52	Chrodoswintha	558	Royalty	Merovingian	Regime change	Held at a specific place?	Greg. Tur. *HF* 4.20
53	Chrodoberga	558	Royalty	Merovingian	Regime change	Held at a specific place?	Greg. Tur. *HF* 4.20
54	Micina	559	Unfree	Roman	Crime: ecclesiastical	Monastic confinement	Pelag. I *Ep.* 47
55	Theudechild	567	Royalty	Merovingian	Regime change	Monastic confinement (Arles)	Greg. Tur. *HF* 4.26
56	Antipatra	after 571	Senatorial	Roman	Crime: heresy	Monastic confinement	Joh. Eph. *HE* 3.2.12

(continued)

Appendix 1 (continued)

No.	Name	Date of exile	Status	Territory	Reason for exile	Conditions of exile (location if known)	Source for exile (abbreviations follow PLRE)
57	Iuliana (same as n. 44)	after 571	Senatorial	Roman	Crime: heresy	Monastic confinement (Chalcedon)	Joh. Eph. *HE* 3.2.12
58	Albsuinda	572	Royalty	Lombard Roman	Regime change	Held at a specific place (Ravenna, then Constantinople)	*Origo Gent. Lang.* 5 *Hist. Lang. cod. Goth.* 5 Paul. Diac. *Hist. Lang.* 2.29–30 Agnellus *Lib. Pont. Eccl. Rav.* 96
59	Brunhild	575	Royalty	Merovingian	Regime change	Held at a specific place (Rotomagus)	Greg. Tur. *HF* 5.1–2 Fredegar. 3.72 *Lib. Hist. Franc.* 33
60	Ingund	575	Royalty	Merovingian	Regime change	Held at a specific place (Latinon/civitas Meldorum)	Greg. Tur. *HF* 5.1
61	Chlodosind	575	Royalty	Merovingian	Regime change	Held at a specific place (Latinon/civitas Meldorum)	Greg. Tur. *HF* 5.1
62	Anonyma 11	580	Elite	Merovingian	Associated with wrongs of male relative	Held at a specific place (pagus near Turnacum)	Greg. Tur. *HF* 5.49

63	Anonyma 12	581	Elite	Merovingian	Companion of exile	Expulsion/forced emigration (to Avennio and Augustoritum/Lemoveca)	Greg. Tur. *HF* 6.1; 6.24; 7.10 Mar. Avent. a.581
64	Ingund (same as n. 60)	583	Royalty	Roman	War captivity	To be held at a specific place (Constantinople), died en route	Greg. Tur. *HF* 5.38; 6.40; 6.43; 8.28 Paul. Diac. *Hist. Lang.* 3.21
65	Rigunth	584	Royalty	Merovingian	Regime change	Held at a specific place (near Tolosa)?	Greg. Tur. *HF* 7.32
66	Anonyma 13	585	Elite	Merovingian	Companion of exile	Expulsion/forced emigration (to Kingdom of Childebert II and then the region beyond the Garonne)	Greg. Tur. *HF* 8.18
67	Anonyma 14	585–588	Freed	Merovingian	Crime: ecclesiastical	Expulsion/forced emigration (to residence of Queen Fredegund)	Greg. Tur. *HF* 7.44
68	Anonyma 15	587	Elite	Merovingian	Associated with wrongs of male relative	Unclear	Greg. Tur. *HF* 9.10
69	Anonyma 16	587	Elite	Visigothic	Companion of exile	Forced labour/penal enslavement (church of St Eulalia, Merida)	*V. Patr. Emer.* 5.10–11
70	Septimima	589	Unfree?	Merovingian	Crime: treason	Forced labour/penal enslavement (villa of Malenheim)	Greg. Tur. *HF* 9.38
71	Honorata	594 or before	Ecclesiastic?	Roman	Crime: ecclesiastical	Monastic confinement	Greg. *Ep.* 4.34

(continued)

Appendix 1 (continued)

No.	Name	Date of exile	Status	Territory	Reason for exile	Conditions of exile (location if known)	Source for exile (abbreviations follow PLRE)
72	Brunhild	599	Royalty	Merovingian	Hostility of ruler	Expulsion/forced emigration (to near Artiaca in kingdom of Theuderic)	Fredegar. 4.19
73	Anonyma 17	601	Royalty	Roman	War captivity	Held at a specific place (Ravenna)	Paul. Diac. *Hist. Lang.* 4.20
74	Constantina	602	Royalty	Roman	Regime change; crime: treason	Imprisoned (house arrest in Constantinople) Monastic confinement (St Mamas)	Theoph. Sim. 8.15.1 *Chron. Pasch.* s.a. 603 Joh. Nikiu 103.8 Theoph. AM 6095; 6098 Nic. Call. *HE* 18.41 Cedr. 1.711 *Patr. Const.* 3.185
75	Anastasia	602	Royalty	Roman	Companion of exile	Imprisoned (house arrest in Constantinople) Monastic confinement (St Mamas)	Theoph. Sim. 8.15.1 *Chron. Pasch.* s.a. 603 Joh. Nikiu 103.8 Theoph. AM 6095; 6098 Nic. Call. *HE* 18.41 Cedr. 1.711 *Patr. Const.* 3.185

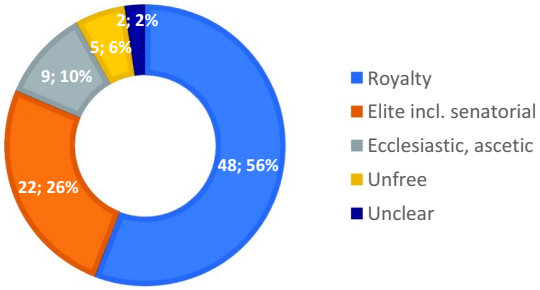
76	Theoctiste	602	Royalty	Roman	Companion of exile	Imprisoned (house arrest in Constantinople) Monastic confinement (St Mamas)	Theoph. Sim. 8.15.1 *Chron. Pasch.* s.a. 603 Joh. Nikiu 103.8 Theoph. AM 6095; 6098 Nic. Call. *HE* 18.41 Cedr. 1.711 *Patr. Const.* 3.185
77	Cleopatra	602	Royalty	Roman	Companion of exile	Imprisoned (house arrest in Constantinople) Monastic confinement (St Mamas)	Theoph. Sim. 8.15.1 *Chron. Pasch.* s.a. 603 Joh. Nikiu 103.8 Theoph. AM 6095; 6098 Nic. Call. *HE* 18.41 Cedr. 1.711 *Patr. Const.* 3.185
78	Ermenberga	607	Royalty	Merovingian	Hostility of ruler	Expulsion/forced emigration (to Visigothic kingdom)	Fredegar. 4.30
79	Berta	626	Elite	Merovingian	Crime: ecclesiastical	Fled (to Austrasia) Church asylum (St Epvre in Tullum)	Fredegar. 4.54
80	Gundeberga	628/629	Royalty	Lombard	Crime: treason, adultery	Imprisoned (fortress of Laumellum)	Fredegar. 4.51 Paul. Diac. *Hist. Lang.* 4.47
81	Anonyma 18	633	Royalty	Visigothic	Crime: treason?	Unclear	*Conc. Tol.* IV, cap. 75 (Vives Concilios: 221)

(continued)

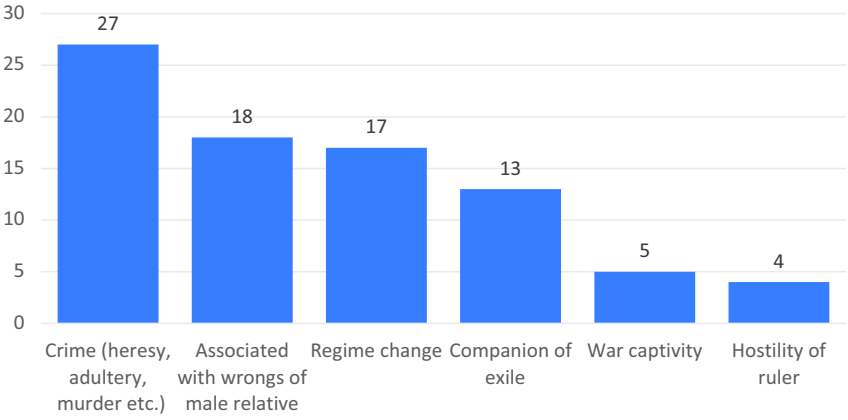
Appendix 1 (continued)

No.	Name	Date of exile	Status	Territory	Reason for exile	Conditions of exile (location if known)	Source for exile (abbreviations follow PLRE)
82	Anonyma 19	633	Royalty	Visigothic	Associated with wrongs of male relative	Unclear	*Conc. Tol.* IV, cap. 75 (Vives Concilios: 221)
83	Gundeberga (same as n. 80)	636	Royalty	Lombard	Regime change	Imprisoned (palace at Ticinum)	Fredegar. 4.70–71
84	Martina	641	Royalty	Roman	Crime: murder	Held at a specific place (island of Rhodes)	Theoph. AM 6133 Cedr. 1 753 Zon. 14.18 Sebeos 32, p. 193 Vardan p. 85 Bar Hebr., *Chron.* p. 86 *Hist. Nest.* 2.107 Joh. Nikiu 120.52

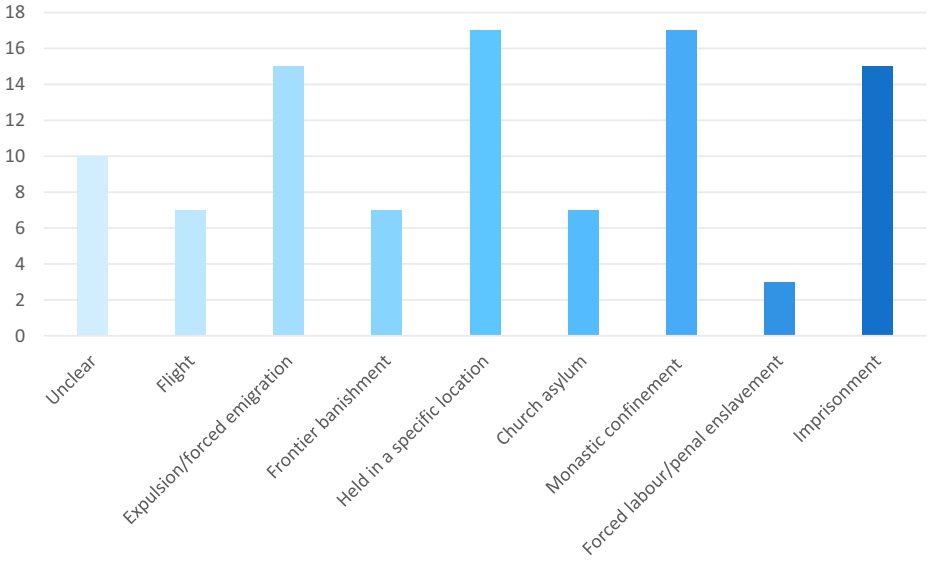
Appendix 2



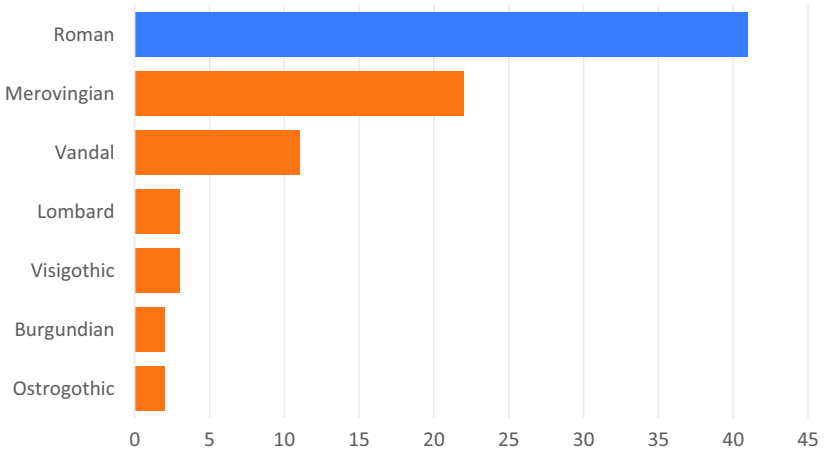
Graph 1: Identities of exiled women in late antiquity (numerical and percentage values).



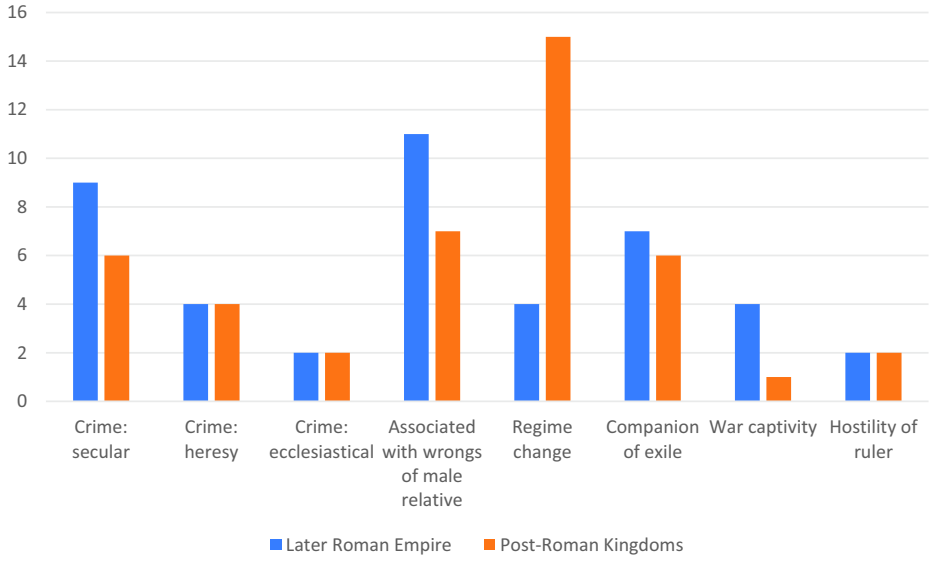
Graph 2: Reasons for women's exile in late antiquity.



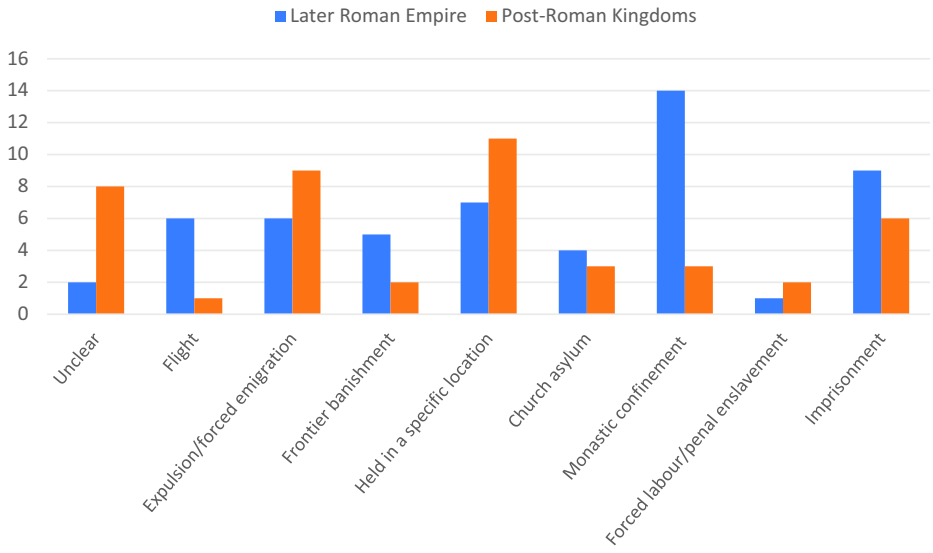
Graph 3: Conditions of women's exile in late antiquity.



Graph 4: Distribution of women's banishments according to territory in late antiquity.



Graph 5: Reasons for women's exile in the later Roman Empire and post-Roman kingdoms.



Graph 6: Conditions of women's exile in the later Roman Empire and post-Roman kingdoms.

Matthias Becher

Charlemagne and the *oppressio pauperum*

On Christmas Day in the year 800 in Rome, Charlemagne, king of the Franks and the Lombards, was declared emperor by the Romans and crowned by the Pope.[1] For contemporary annalists from the immediate vicinity of Charlemagne it was very important that he had adopted the *nomen* (name, title) of the emperor.[2] For them and probably for Charlemagne himself the new dignity posed new challenges. From their point of view a ruler had to fulfil the duties associated with his title, if he wished to hold this title (the *nomen*) properly. Otherwise he could be justifiably replaced by a new king or emperor. Modern scholars refer to this notion as nominalism or name-theory.[3] In this context the annals stressed the fact that Charlemagne ruled large sections of the erstwhile Roman Empire and therefore was the true successor of the ancient Caesars.[4] So, it was not enough to attain an office: It had to be filled with substance. Charlemagne had not merely to hold the title of emperor, he also had to rule like an emperor. In contemporary thinking, the emperor surpassed all Christian kings in prestige. As successor to the ancient Roman *imperatores*, he could even claim a position of ultimate

1 For Charlemagne in general see Rosamond McKitterick, *Charlemagne: The Formation of a European Identity* (Cambridge: Cambridge University Press, 2008); Johannes Fried, *Karl der Große: Gewalt und Glaube* (Munich: C.H. Beck, 2013); Stefan Weinfurter, *Karl der Große: Der heilige Barbar* (Munich: Piper, 2013); Matthias Becher, *Karl der Große*, 6th ed. (Munich: C.H. Beck, 2021), english Translation: *Charlemagne* (New Haven: Yale University Press, 2003); Janet L. Nelson, *King and Emperor: A New Life of Charlemagne* (London: Allen Lane, 2019).

2 Georg-Heinrich Pertz and Friedrich Kurze, eds., Annales regni Francorum et Annales qui dicuntur Einhardi, in *MGH SS rer. Germ.* 6 (Hannover: Hahn, 1895): s.a. 801, 112: *ablato patricii nomine imperator et augustus est appellatus*; Georg-Heinrich Pertz, ed., Annales Laureshamenses, in *MGH SS* 1 (Hannover: Hahn, 1826): s.a. 800, 38: *ideo iustum eis esse videbatur, ut ipse [Carolus rex] cum Dei adiutorio et universo christiano populo petente ipsum nomen [imperatoris] aberet*.

3 Cf. Heinrich Fichtenau, "Karl der Große und das Kaisertum," *Mitteilungen des Instituts für Österreichische Geschichtsforschung* 61 (1953): 259–61; Helmut Beumann, "Nomen imperatoris: Studien zur Kaiseridee Karls des Großen," in *Ideengeschichtliche Studien zu Einhard und anderen Geschichtsschreibern des früheren Mittelalters*, ed. Helmut Beumann (Darmstadt: Wissenschaftliche Buchgesellschaft, 1962): 80–114; Arno Borst, "Kaisertum und Nomentheorie im Jahre 800," in *Zum Kaisertum Karls des Großen*, ed. Gunther Wolf, Wege der Forschung 38 (Darmstadt: Wissenschaftliche Buchgesellschaft, 1972): 216–40; Thomas Ertl, "Byzantinischer Bilderstreit und fränkische Nomentheorie: Imperiales Handeln und dialektisches Denken im Vorfeld der Kaiserkrönung Karls des Großen," *Frühmittelalterliche Studien* 40 (2006): 13–42; Stefan Esders, "Übereinstimmung von Name und Sache: Der Kaisertitel Karls des Großen, die Lorscher Annalen und die römischen Grundlagen der fränkischen 'Nomen-Theorie'," in *Der Erste. Augustus und der Beginn einer neuen Epoche*, ed. Ernst Baltrusch and Christian Wendt (Darmstadt: Verlag Philipp von Zabern, 2016): 122–29.

4 Especially the Annales Laureshamenses (n. 2): s.a. 800: [. . .] *qui ipsam Romam tenebat, ubi semper Caesares sedere soliti erant, seu reliquas sedes quas ipse per Italiam seu Galliam nec non et Germaniam tenebat*.

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supremacy. He was regarded as the legislator par excellence; the emperors had also played a crucial role, especially within the church, from late antiquity onwards.[5] Since the time of Constantine the Great, ecumenical councils had taken place in the presence and with the decisive participation of the emperors, who saw themselves as rulers of the Christian world.

However, the conditions in Charlemagne's empire were very different from those faced by the ancient or even the Byzantine emperors. They had ruled their empires with the help of a comparatively intact and efficient administration; there had been trade and an advanced monetary system, and urban centres had been very important for the economy. The Frankish empire was quite different: north-western Europe had experienced an economic decline after the end of the Western Roman Empire. The ancient infrastructure had gradually disintegrated, the importance of urban centres declined, and the economy was dominated by agriculture and livestock farming.[6] The social structure reflected this.[7] However, the details are debated.

In the nineteenth century, scholars assumed that the majority of the population in the early Middle Ages was made up of free peasants, *liberi homines*.[8] They were regarded as the backbone of the Germanic peoples and thought to have played a central political role in the context of general assemblies. According to this view, the *liberi homines* were obliged to pay certain taxes and render certain services to the ruler alone – not to anyone else. Only over time, it was thought, did a dominant noble class emerge which gradually appropriated the land and the rights of free peasants and turned them into serfs. However, more recently researchers have suggested that early medieval societies were already dominated by noble landholders, while the free peasants only played a marginal role.[9] Now it is certainly correct to assume that the free

5 Cf. Hartmut Leppin et al., eds., *Kaisertum im ersten Jahrtausend: Wissenschaftlicher Begleitband zur Landesausstellung "Otto der Große und das Römische Reich: Kaisertum von der Antike zum Mittelalter"* (Regensburg: Schnell & Steiner, 2012).

6 Cf. Chris Wickham, "Rural Society in Carolingian Europe," in *The New Cambridge Medieval History: c. 700–c. 900*, vol. 2, ed. Rosamond McKitterick (Cambridge: Cambridge University Press, 1995): 510–37.

7 Cf. Régine Le Jan, *Famille et pouvoir dans le monde franc (VIIe–Xe siècle): Essai d'anthropologie sociale*, Histoire ancienne et médiévale 33 (Paris: Publications de la Sorbonne, 1995); Dominique Iogna-Prat et. al., eds., *Hiérarchie et stratification sociale dans l'Occident médiéval 400–1100*, Collection Haut Moyen Âge 6 (Turnhout: Brepols, 2008).

8 This view was best summarized by Heinrich Brunner, *Deutsche Rechtsgeschichte*, vol. 2, 2nd ed., ed. Claudius von Schwerin (Berlin: Duncker & Humblot, 1928): 269–328. For a fundamental critique of Brunner see Ernst-Wolfgang Böckenförde, *Die deutsche verfassungsgeschichtliche Forschung im 19. Jahrhundert: Zeitgebundene Fragestellungen und Leitbilder*, Schriften zur Verfassungsgeschichte 1 (Berlin: Duncker & Humblot, 1961): 198–202.

9 See for example the arguments exchanged between Heike Grahn-Hoek, *Die fränkische Oberschicht im 6. Jahrhundert: Studien zu ihrer rechtlichen und politischen Stellung*, Vorträge und Forschungen Sonderband 21 (Sigmaringen: Thorbecke, 1976) and Franz Irsigler, *Untersuchungen zur Geschichte des frühfränkischen Adels*, Rheinisches Archiv 70 (Bonn: Röhrscheid, 1969); see also Thomas Zotz, "Adel, Oberschicht, Freie: Zur Terminologie der frühmittelalterlichen Sozialgeschichte," *Zeitschrift für die Ge-*

peasants did not play as important a role politically as scholars used to think. But they were quite numerous and should therefore not be neglected. Charles West, for example, uses the term *liberi homines* and points out that this expression was a collective term for all those who were neither *servi* (roughly 'slaves') nor *coloni* (roughly 'serfs') nor *villani* (roughly 'villeins'), and whom the king regarded as direct subjects of his rule. He required them to pay taxes and render services, even when they had no special personal ties to him.[10] In any case, free peasants are mentioned again and again up to the Carolingian era and, significantly, at times when their freedom was in jeopardy and they were at risk of becoming dependent on a landholder.[11]

This was also due to the natural conditions with which agriculture had to cope at the time. The size of the harvest, and therefore the economic situation of each individual, depended heavily on the weather. Severe heat in summer, extreme cold in winter, storms or flooding could all lead to crop failure and famine.[12] During the reign of Charlemagne (768–814), rarely a year went by without a catastrophe of such magnitude that it was mentioned in the historiography of the time.[13] Their better overall situation meant that nobles were generally better able to cope with these crises. In addition, their estates were often spread throughout the empire,[14] so that they were less badly affected, as they seem to have been able to compensate for local crop failures with good harvests in other regions. They then sold the surplus to those in need at maximum prices. The *liberi homines*, by contrast, had to pay their regular dues to

schichte des Oberrheins 125 (1977): 3–20; Matthias Becher, "'Herrschaft' im Übergang von der Spätantike zum Frühmittelalter: Von Rom zu den Franken," in *Von der Spätantike zum frühen Mittelalter: Kontinuitäten und Brüche, Konzeptionen und Befunde*, Vorträge und Forschungen 70, ed. Theo Kölzer and Rudolf Schieffer (Ostfildern: Thorbecke, 2009): 175–87.

10 Charles West, "Lordship in Ninth-Century Francia: The Case of Bishop Hincmar of Laon and His Followers," *Past and Present* 226 (2015): 24–26.

11 Cf. Eckhard Müller-Mertens, *Karl der Große, Ludwig der Fromme und die Freien: Wer waren die liberi homines der karolingischen Kapitularien (742/43–832)? Ein Beitrag zur Sozialgeschichte der Karolinger und Sozialpolitik des Frankenreiches*, Forschungen zur mittelalterlichen Geschichte 10 (Berlin: Akademie-Verlag, 1963); Johannes Schmitt, *Untersuchungen zu den Liberi Homines der Karolingerzeit*, Europäische Hochschulschriften 3, 83 (Frankfurt am Main: Peter Lang, 1977).

12 Fritz Curschmann, *Hungersnöte im Mittelalter: Ein Beitrag zur deutschen Wirtschaftsgeschichte des 8. bis 13. Jahrhunderts*, Leipziger Studien aus dem Gebiet der Geschichte 6, 1 (Leipzig: B.G. Teubner, 1900); Gerhard Schmitz, "Hunger und Wucher: Zur konziliaren Wahrnehmung gesellschaftlicher Wirklichkeit im 9. Jahrhundert," *Deutsches Archiv für Erforschung des Mittelalters* 70, no. 1 (2014): 121–42; Thomas Wozniak, *Naturereignisse im frühen Mittelalter. Das Zeugnis der Geschichtsschreibung vom 6. bis 11. Jahrhundert*, Europa im Mittelalter. Abhandlungen und Beiträge zur historischen Komparatistik 31 (Berlin: De Gruyter, 2020).

13 For an overview see Curschmann, *Hungersnöte* (n. 12): 89–93.

14 This is true for many monasteries and lay nobles. A well-known example was Eberhard of Friuli, the son-in-law of Louis the Pious, cf. Luigi Provero and Cristina La Rocca, "The Dead and Their Gifts: The Will of Eberhard, Count of Friuli, and His Wife Gisela, Daughter of Louis the Pious (863–864)," in *Rituals of Power: From Late Antiquity to the Early Middle Ages*, ed. Frans Theuws and Janet L. Nelson, Transformation of the Roman World 8 (Leiden: Brill, 2000): 225–80.

the king and other lords even in the event of bad harvests, and their livelihoods were then threatened. The greatest danger was the loss of their property to a creditor to whom they were indebted due to a bad harvest. In 792/93, i.e. even before Charlemagne's coronation as emperor, he banned this practice during a great famine which killed many and allegedly even led to cannibalism,[15] by setting maximum prices for grain.[16] To give another example: In 802, he offered his help to all those who sought his protection because of a famine.[17]

This provision was often repeated in the period that followed, and this has something to do with the new emperor's self-conception, which lead to what François Louis Ganshof called the 'imperial government programme'.[18] Its successful implementation was only possible with the support of the economic, political and social elite of the empire. We must therefore also examine their position. To conclude, this paper will ask how the members of the elite exploited their position, for example in the context of compulsory military service.

1 The New Emperor's Self-Conception

Of course, Charlemagne's coronation as emperor had no direct impact on these problems. But the title of emperor, with all its echoes of the old Roman Empire and its Christian connotations, changed the way he governed his empire. Charlemagne had to and wanted to live up to this ideal if his imperial dignity office was not to be merely an empty title. To put it very simply, until then his rule over Franks and Lombards had been based on personal ties. Now he had to adapt his concept of rule to his newly acquired emperorship.

This new conception was difficult to create. *Charlemagne* remained in Rome another four months after his coronation, without any activities that we know of. He probably wanted to find a solution to this problem. It is striking that almost no diplomas have survived from this period or the months that followed, which can only be interpreted as an indication of the emperor's uncertainty about his new role.[19] After his departure from Rome he travelled to Ravenna, another ancient capital of the

15 Annales Laureshamenses (n. 2): s.a. 793, 35; Annales Mosellani, ed. Johann M. Lappenberg, in *MGH SS* 16 (Hannover: Hahn, 1859): s.a. 793, 498.

16 Concilia aevi Karolini I, ed. Albert Werminghoff, in *MGH Conc.* 2, 1 (Hannover: Hahn, 1906): no. 19, c. 4, 166.

17 Capitularia regum Francorum I, ed. Alfred Boretius, in *MGH Capit*. 1 (Hannover: Hahn, 1883): no. 33, c. 30, 96–97.

18 See below n. 37.

19 Peter Classen, *Karl der Große, das Papsttum und Byzanz: Die Begründung des karolingischen Kaisertums*, Beiträge zur Geschichte und Quellenkunde des Mittelalters 9 (Sigmaringen: Thorbecke, 1985): 71–74.

Roman emperors. There he found documents he could use as models:[20] A diploma issued in Bologna at the end of May 801 is the first to show the new ruler's title: *Karolus serenissimus augustus a Deo coronatus magnus, pacificus imperator, Romanum gubernans Imperium, qui et per misericordiam Dei rex Francorum atque Langobardorum* ('Charles, most serene Augustus crowned by God, the great, peaceful emperor ruling the Roman empire').[21] Charlemagne had found a title that showed respect to the most important peoples of his empire without neglecting the Roman and thus universal character of his new office. Significantly, Charlemagne had imperial coins minted from the year 801 onwards.[22] Probably starting from October 803, his diplomas were issued bearing the ancient imperial signature legimus, and sealed with gold bulls after the Byzantine model.[23] Unfortunately, there is only one extant specimen made of lead, the reverse of which shows a city gate of Rome with the significant inscription Renovatio Rom(ani) Imperii.[24]

Einhard, the emperor's biographer and confidant in his last years, therefore begins his remarks on *Charlemagne*'s internal politics with the words: *post susceptum imperiale nomen* ('after he had taken the imperial title').[25] This referred to Charlemagne's legislative activity, which he intensified considerably after his coronation as emperor, without disregarding his decrees from before 800. But now a new, imperial, self-conception appeared in the justification of the legislation. It had probably been Alcuin, the Anglo-Saxon scholar at the emperor's court, who introduced these ideas. In a letter of dedication of 802 he claims, 'His imperial dignity, ordained by God, can be seen to have been exalted for nothing else but to direct and benefit the people; therefore power and wisdom are given to those chosen by God: Power to subdue the proud and protect the humble from the wicked; wisdom to teach and govern his subjects in pious devotion.'[26]

20 Cf. Classen, *Karl* (n. 19): 73.

21 Die Urkunden Pippins, Karlmanns und Karls des Großen, ed. Engelbert Mühlbacher, in *MGH DD Karol.* 1 (Hannover: Hahn, 1906): no. 197 (29. Mai 801), 265–66.

22 Cf. Bernd Kluge, "Nomen imperatoris und Christiana Religio: Das Kaisertum Karls des Großen und Ludwigs des Frommen im Licht der numismatischen Quellen," in *799 – Kunst und Kultur der Karolingerzeit: Karl der Große und Papst Leo III. in Paderborn*, vol. 3, *Beiträge zum Katalog der Ausstellung Paderborn 1999*, ed. Christoph Stiegemann and Matthias Wemhoff (Mainz: Philipp von Zabern, 1999): 82–90.

23 Cf. Classen, *Karl* (n. 19): 81.

24 Percy E. Schramm, *Die deutschen Kaiser und Könige in Bildern ihrer Zeit 751–1152*, ed. Florentine Mütherich (Munich: Prestel, 1983): 38–39.

25 Einhard, Vita Karoli Magni, ed. Oswald Holder-Egger, in *MGH SS rer. Germ.* 25 (Hannover: Hahn, 1911): c. 29, 33; for Einhard see Steffen Patzold, *Ich und Karl der Große: Das Leben des Höflings Einhard* (Munich: Klett-Cotta, 2013).

26 Alkuin, Epistolae, ed. Ernst Dümmler, in *MGH Epp. sel.* 4 (Berlin: Weidmann, 1895): no. 257, 414: *Dum dignitas imperialis a Deo ordinata, ad nil aliud exaltata esse videtur, nisi populo praesse et prodesse: proinde datur a Deo electis potestas et sapientia: potestas, ut superbos opprimat, et defendat ab inprobis humiles; sapientia, ut regat et doceat pia sollicitudine subiectos*; cf. Monika Suchan, *Mahnen*

Charlemagne issued the so-called *Capitulare Italicum* ('Italian Decree') already in May 801, on his way back from Rome, in the old Lombard capital of Pavia. Two provisions in particular are noteworthy: First, he threatened all those who refused to perform military service with the full *heribannus*, i.e. a fine of sixty shillings (*solidi*), while all those who 'break the peace of the churches of God, of widows and orphans, and of the less powerful' had to pay the fine of the royal ban, also sixty shillings.[27] The emperor performed a balancing act here: on the one hand, his decree also penalized poorer people who presumably refused military service due to economic hardship, while on the other he created a provision to protect *pauperes* (the poor) and prosecute those who harassed them. By protecting churches and the poor, he sought to promote Christian moral concepts which had already been formulated in the Christian Late Roman Empire. But military order was just as important to Charlemagne: he subsequently threatened deserters with the death penalty, because he regarded the offence as lèse-majesté, again following the Late Roman conception of law.[28] Both provisions thus referred back to the Roman model, but at the same time also addressed the structural problems of the Carolingian Empire: the refusal of large sections of the population to perform military service, and efforts by the secular nobility in particular to increase their possessions at the expense of others. Both problems were interrelated, as will be discussed in what follows.

Next to historiography, such imperial decrees – or 'capitularies'– are probably our most important sources for the social history of the Carolingian period.[29] Large numbers have been transmitted from the Carolingian era. These decrees gained new

und Regieren: Die Metapher des Hirten im früheren Mittelalter, Millennium-Studien 56 (Berlin: De Gruyter, 2015): 187–88.

27 Capitularia regum Francorum I (n. 17): no 98, c. 2, 205: *De haribanno. Si quis liber, contemta iussione nostra, caeteris in exercitum pergentibus, domi residere praesumpserit, plenum haribannum secundum legem Francorum, id est solidos sexaginta, sciat se debere componere. Similiter et pro contemtu singulorum capitulorum quae per nostrae regiae auctoritatis bannum promulgavimus, id est qui pacem ecclesiarum Dei, viduarum, orfanorum et pupillorum ac minus potentium inruperit, sexaginta solidorum multam exsolvat*; for the origins of the *haribanus cf.* Matthew Innes, *State and Society in the Early Middle Ages: The Middle Rhine Valley, 400–1000* (Cambridge: Cambridge University Press, 2000): 155–56.

28 Capitularia regum Francorum I (n. 17): no 98, c. 3, 205: *De desertoribus. Si quis adeo contumax aut superbus extiterit, ut, dimisso exercitu absque iussione vel licentia regis domum revertatur, et quod nos teudisca lingua dicimus herisliz fecerit, ipse ut reus maiestatis vitae periculum incurrat et res eius in fisco nostro societur.*

29 Cf. François L. Ganshof, *Was waren die Kapitularien?* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1961); Arnold Bühler, "'Capitularia Relecta': Studien zur Überlieferung der Kapitularien Karls des Großen und Ludwigs des Frommen," *Archiv für Diplomatik* 32, no. 1 (1986): 305–501; Hubert Mordek, *Studien zur fränkischen Herrschergesetzgebung: Aufsätze über Kapitularien und Kapitaliensammlungen ausgewählt zum 60. Geburtstag* (Frankfurt am Main: Peter Lang, 2000); Steffen Patzold, *Wie regierte Karl der Große? Listen und Politik in der frühen Karolingerzeit* (Cologne: Greven, 2020).

attention only recently, and a new edition is currently in preparation.[30] For a long time researchers focused mainly on narrative sources to gain a better understanding of the importance of political rituals in the Middle Ages.[31] Meanwhile research into what we would now call 'governance' was neglected.[32] The capitularies, however, provide insights into the plans and intentions of rulers at that time. But they should not be taken literally. We do not know to what extent they were actually put into practice. We must also bear in mind that the decrees of the Carolingians can only be fully understood in the context of the Christian values that were expected of a good ruler. These were recorded in contemporary mirrors of princes.[33]

2 The So-Called 'Imperial Government Programme'

After his return to the Frankish Kingdom, Charlemagne followed up on the provisions of Pavia. In 802, he attempted to translate his newfound imperial status into practical 'politics'. The Annals of Lorsch describe his activities as follows:

> In this year the lord Caesar Charles stayed quietly at the palace of Aachen with the Franks; there was no campaign. But mindful in his mercy of the poor people who lived in his realm and who could not enjoy their rights to the full he was unwilling to send out his poorer vassals from within the palace to do justice, on account of bribery, and rather chose from within his realm archbishops and other bishops and abbots, together with dukes and counts, who no longer had need to receive gifts to the prejudice of the innocent. These he sent throughout his whole realm, that they might do justice to the churches, the widows and orphans, the poor and the whole people.[34]

30 Cf. Gerhard Schmitz, "Kapitularien," in *Handbuch zur deutschen Rechtsgeschichte*, vol. 2, 2nd ed. (Berlin: Erich Schmidt Verlag, 2011): col. 1604–12; Michael Glatthaar, "Subjektiver und indirekter Stil in den Kapitularien Karls des Großen: Ein Beitrag zur Frage ihrer Entstehung," *Deutsches Archiv für Erforschung des Mittelalters* 70, no. 1 (2014): 1–42; for the new edition in general see https://capitularia.uni-koeln.de [accessed 15.03.2022].

31 See for example Gerd Althoff, *Inszenierte Herrschaft: Geschichtsschreibung und politisches Handeln im Mittelalter* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2003); Gerd Althoff, *Die Macht der Rituale: Symbolik und Herrschaft im Mittelalter*, 2nd ed. (Darmstadt: Wissenschaftliche Buchgesellschaft, 2013).

32 But see now Stefan Esders and Gunnar Folke Schuppert, *Mittelalterliches Regieren in der Moderne oder Modernes Regieren im Mittelalter?*, Schriften zur Governance-Forschung 27 (Baden-Baden: Nomos, 2015).

33 Cf. Britta Mischke, "Kapitularienrecht und Urkundenpraxis unter Kaiser Ludwig dem Frommen (814–840)" (PhD diss., University of Bonn, 2012, https://bonndoc.ulb.uni-bonn.de/xmlui/bitstream/handle/20.500.11811/5579/3157.pdf?sequence=1 [accessed 19.12.2023]: 181–83.

34 Annales Laureshamenses (n. 2): s.a. 802, 38–39: *Eo anno demoravit domnus Caesar Carolus apud Aquis palatium quietus cum Francis sine hoste; sed recordatus misericordiae suae de pauperibus, qui in regno suo erant et iustitias suas pleniter abere non poterant, noluit de infra palatio pauperiores vassos suos transmittere ad iustitias faciendum propter munera, sed elegit in regno suo archiepiscopos et reli-*

These royal envoys – called *missi dominici* – usually appeared in pairs of a cleric and a layman, and travelled once a year through a district made up of several counties and bishoprics, 'in order to act everywhere in a controlling and arbitrating manner in favour of the king'.[35] But their authority depended heavily on their rank and prestige, and so even before 802 they, just like the counts they were to control, belonged to the highest nobility. They could therefore not be bribed because of material need. But friendships and kinship naturally led to conflicts of interest between the official mandate of a king's messenger and his very personal objectives. Moreover, even close confidants of Charlemagne, such as Bishop Theodulf of Orléans, frequently found themselves confronted with gifts in this function, and by no means all *missi dominici* declined them.[36]

Charlemagne turned his attention resolutely to the internal conditions of his empire. At that time, he developed a kind of 'programme of imperial government', according to the eminent Belgian historian François Louis Ganshof.[37] One should perhaps be careful in using such anachronistic expressions, which is why Rosamond McKitterick called it more modestly an 'administrative capitulary for 802'.[38] Moreover, the emperor's plans and intentions can only be deduced from the capitularies he is-

quos episcopos et abbates cum ducibus et comitibus, qui iam opus non abebant super innocentes munera accipere, et ipsos misit per universum regnum suum, ut ecclesiis, viduis et orfanis et pauperibus et cuncto populo iustitiam facerent; translation: Nelson, *King and Emperor* (n. 1): 397.

35 Rudolf Schieffer, *Die Karolinger*, 5th ed., Urban-Taschenbücher 411 (Stuttgart: Kohlhammer, 2014): 95: 'um überall kontrollierend und schlichtend zugunsten des Königs zu wirken'; for the missi in general cf. Victor Krause, "Geschichte des Instituts der missi dominici," *Mitteilungen des Instituts für österreichische Geschichtsforschung* 11, no. 1 (1890): 193–300; Karl F. Werner, "Missus – Marchio – Comes: Entre l'administration centrale et l'administration locale de l'Empire carolingien," in *Histoire comparée de l'administration (IV^e^–XVIII^e^ siècles)*, ed. Werner Paravicini and Karl F. Werner, Beihefte der Francia 9 (Zürich: Artemis, 1980): 191–239; Jürgen Hannig, "Pauperiores vassi de infra palatio? Zur Entstehung der karolingischen Königsbotenorganisation," *Mitteilungen des Instituts für österreichische Geschichtsforschung* 91 (1983): 309–74; Shigeto Kikuchi, *Herrschaft, Delegation und Kommunikation in der Karolingerzeit: Untersuchungen zu den Missi dominici (751–888)*, in *MGH Hilfsmittel* 31, 1–2 (Wiesbaden: Harrassowitz, 2021).

36 Cf. Małgorzata Chudzikowska-Woloszyn, "The Anti-Corruption Manifesto of Theodulf of Orleans: A Contribution to a Discission about Literature of the Carolingian Era," *Echa Przeszłości* 12, no. 1 (2011): 15–31; Enimie Rouquette, "'Ius' et 'Iustitia': fondements et pratiques de la justice dans les poèmes de Théodulf d'Orléans," in *L'amour de la justice: de la Septante à Thomas d'Aquin*, ed. Anne-Isabelle Bouton-Touboulic, Scripta antiqua 103 (Pessac: Ausonius, 2017): 261–76.

37 François L. Ganshof, "Le programme de gouvernment impérial de Charlemagne," in *"Renovatio imperii": Atti della giornata internazionale di studi per il millenario, Ravenna 4–5 novembre 1961*, ed. Società di studi romagnoli (Faenza: Fratelli Lega, 1963): 63–96 (repr. François L. Ganshof, *The Carolingians and the Frankish Monarchy: Studies in Carolingian History*, trans. Janet Sondheimer [Ithaca: Cornell University Press, 1971]: 55–85); Thomas M. Buck, "'Capitularia imperatoria': Zur Kaisergesetzgebung Karls des Großen von 802," *Historisches Jahrbuch* 122, no. 1 (2002): 3–26.

38 McKitterick, *Charlemagne* (n. 1): 258.

sued at that time.[39] But one thing is certainly true: the newly acquired title was not just a mere formality in his eyes: it also changed the quality of his position in the empire. This is best illustrated by the fact that in 802, Charlemagne decreed that the entire population of the empire was to swear a general oath of fidelity. Until then, and presumably since 789, the people had sworn an oath of allegiance to the king.[40] Now every man, *omnis homo*, was to swear by the *nomen Cesaris*, by the title of emperor.[41]

To this end, Charlemagne completely redefined the meaning of loyalty to the emperor by extending it to almost all areas of everyday life.[42] This included ideas which, to our understanding, are not necessarily associated with it, but which were central to Charlemagne's reform efforts. For him, obeying God's commandments as well as protecting churches, widows, orphans and pilgrims was also part of loyalty, because the emperor, after God and his saints, was to be the protector and defender of the vulnerable.[43] This was a reference to the idea, developed in late antiquity, that a ruler was responsible for protecting the weak.[44] The oath of allegiance also for the first time made concrete demands on people: Respect for imperial property,[45] the duty to perform military service,[46] the proper administration of justice,[47] or simply compli-

39 Especially from the so-called "Capitulare missorum generale," in *Capitularia regum Francorum I* (n. 17): no. 33, 91–99; for the manuscripts cf. Steffen Patzold, "Normen im Buch: Überlegungen zu Geltungsansprüchen so genannter 'Kapitularien'," *Frühmittelalterliche Studien* 41, no. 1 (2007): 331–50.

40 Cf. André Holenstein, *Die Huldigung der Untertanen. Rechtskultur und Herrschaftsordnung (800–1800)*, Quellen und Forschungen zur Agrargeschichte 36 (Stuttgart: Fischer, 1991): 110–12; Matthias Becher, *Eid und Herrschaft: Untersuchungen zum Herrscherethos Karls des Großen*, Vorträge und Forschungen Sonderband 39 (Sigmaringen: Thorbecke, 1993): 79–85; and see more generally: Matthias Becher, "Omnes iurent! Karl der Große und der allgemeine Treueid," in *Charlemagne: Les temps, les espaces, les hommes: Construction et déconstruction d'un règne*, ed. Rolf Grosse and Michel Sot, Collection Haut Moyen Âge 34 (Turnhout: Brepols, 2018): 183–92; Stefan Esders, "Rechtliche Grundlagen frühmittelalterlicher Staatlichkeit: Der allgemeine Treueid," in *Der frühmittelalterliche Staat – Europäische Perspektiven*, Forschungen zur Geschichte des Mittelalters 16, ed. Walter Pohl and Veronika Wieser (Vienna: Österreichische Akademie der Wissenschaften, 2009): 423–32.

41 "Capitulare generale," in *Capitularia regum Francorum I* (n. 17): no. 33, c. 2, 92: *De fidelitate promittenda domno imperatori. Precepitque, ut omni homo in toto regno suo, sive ecclesiasticus sive laicus, unusquisque secundum votum et propositum suum, qui antea fidelitate sibi regis nomine promisissent, nunc ipsum promissum nominis cesaris faciat; et hii qui adhuc ipsum promissum non perficerunt omnes usque ad duodecimo aetatis annum similiter facerent.*

42 Cf. especially Becher, *Eid* (n. 40): 201–12; Fried, *Karl der Große* (n. 1): 522–23.

43 Capitularia regum Francorum I (n. 17): no. 33, c. 3 and 5, 92–93.

44 See in general Hans H. Anton, *Fürstenspiegel und Herrscherethos in der Karolingerzeit*, Bonner Historische Forschungen 32 (Bonn: Röhrscheid, 1968); Karl Ubl, "Carolingian Mirrors for Princes: Texts, Contents, Impact," in *A Critical Companion to the "Mirrors of Princes" Literature*, ed. Noëlle-Laetitia Perret and Stéphane Péquignot, Reading Medieval Sources 7 (Leiden: Brill, 2022): 74–107.

45 Capitularia regum Francorum I (n. 17): no. 33, c. 4, 92.

46 Capitularia regum Francorum I (n. 17): no. 33, c. 7, 93.

47 Capitularia regum Francorum I (n. 17): no. 33, c. 9, 93:

ance with imperial orders or payment of dues owed.[48] Some of these demands were related to Charlemagne's self-conception as a Christian ruler; others show how weak his authority was in enforcing his will in everyday life against persistent, foot-dragging resistance from his own officials. The latter belonged to the group of large landholders against whom Charlemagne's appeals and measures were directed. They were usually addressed as *potentes* (roughly 'the powerful').

3 The Role of the *potentes*

In their capacity as royal officials, these *potentes* were entitled to demand taxes and services from the *liberi homines* on behalf of the ruler.[49] Abuse of these powers was apparently very common. The emperor therefore demanded that his counts and their *centenarii* (subordinate officials with quasi-police and judicial powers) should see to it that their subjects respected justice and the law and under no circumstances oppressed the poor – *pauperes nequaquam oppriment*.[50] From then on, this phrase, or its variant *ut liberi homines pauperes a nullo iniuste opprimantur*, occurred again and again in the capitularies of Charlemagne and his successors.[51] As the emperor evidently regarded the *oppressio pauperum* as a fundamental problem of his empire, we must ask from whom the oppression specifically originated, and what forms it took.

The room for manoeuvre just mentioned was apparently of central importance here, as a provision from 802 clearly demonstrates: It states that everyone must obey the army's summons and that no count may dare to exempt those liable for service from joining the army due to kinship or flattering gifts.[52] Anyone with the power to exempt certain persons from compulsory service and thereby gain advantages for himself also had the power to force others *into* military service in order to achieve certain goals. This is evidenced above all by the responses to a survey conducted by the emperor in 811 after participation in military service had declined: Poor people reported that they had been evicted from their properties by bishops, abbots and

48 Capitularia regum Francorum I (n. 17): no. 33, c. 8, 93.

49 Cf. Hans K. Schulze, *Die Grafschaftsverfassung der Karolingerzeit in den Gebieten östlich des Rheins*, Schriften zur Verfassungsgeschichte 19 (Berlin: Duncker & Humblot, 1973); Michael Borgolte, *Geschichte der Grafschaften Alemanniens in fränkischer Zeit*, Vorträge und Forschungen Sonderband 31 (Sigmaringen: Thorbecke, 1984); Stuart R. Airlie, "The Aristocracy in the Service of the State in the Carolingian Period," in *Staat im Frühen Mittelalter*, ed. Walter Pohl et. al., Forschungen zur Geschichte des Mittelalters 11 (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2006): 93–111.

50 Capitularia regum Francorum I (n. 17): no. 33, c. 25, 96.

51 Capitularia regum Francorum I (n. 17): no. 34, c. 12, 100; no. 35, c. 51, 104; no. 59, c. 9, 146; cf. Müller-Mertens, *Karl* (n. 11): 88.

52 Capitularia regum Francorum I (n. 17): no. 33, c. 7, 93: *Ut ostile bannum domni imperatori nemo pretermittere presumat, nullusque comis tam presumtiosum sit, ut nullum de his qui hostem facere debiti sunt exinde vel aliqua propinquitatis defensionem vel cuius muneris adolationem dimittere audeant.*

their *advocati* (roughly 'bailiffs'), and by counts and their *centenarii*.[53] Threats of repression were also reported if someone refused to give their property to a bishop, an abbot, an earl or a judge. These *potentes* would then look for opportunities to sentence such a recalcitrant person and repeatedly conscript him for military service until he was impoverished and had no choice but to hand over or sell his property. Others, who had already given up their properties, remained at home without suffering oppression by the powerful.[54] On the other hand, counts, but also bishops, abbots and abbesses, would make their *liberi homines* indispensable by giving them duties such as falconer or hunter, so that they had to stay at home.[55] According to other information, counts would take poorer men to war but send home those who had something to give.[56] So the emperor clearly saw the responsibility for the failure of military recruitment with his powerful officials: They used both their economic strength and their official power to appropriate the property of others and make them more dependent.

But the other side also had its say in this investigation. At the very beginning of the document, mention is made of people who disagreed with the assessment just outlined and who argued that the officials had no authority over their clerics or their *pagenses* (roughly 'dwellers in the countryside'), and that they were therefore not responsible for the abuses.[57] They put forward various arguments to this effect: Some seemed to think that not counts but only the *missi dominici* had the authority to demand troop recruitment. They also argued that there was a general lack of willingness to comply with the *bannus*.[58] Others claimed that they were in the service of Charle-

53 Capitularia regum Francorum I (n. 17): no. 73, c. 2, 165: *Quod pauperes se reclamant expoliatos esse de eorum proprietate; et hoc aequaliter clamant super episcopos et abbates et eorum advocatos et super comites et eorum centenarios*.

54 Capitularia regum Francorum I (n. 17): no. 73, c. 3, 165: *Dicunt etiam, quod quicumque proprium suum episcopo, abbati vel comiti aut iudici vel centenario dare noluerit, occasiones quaerunt super illum pauperem, quomodo eum condempnare possint et illum semper in hostem faciant ire, usque dum pauper factus volens nolens suum proprium tradat aut vendat; alii vero qui traditum habent absque ullius inquietudine domi resideant*.

55 Capitularia regum Francorum I (n. 17): no. 73, c. 4, 165: *Quod episcopi et abbates sive comites dimittunt eorum liberos homines ad casam in nomine ministerialium, similiter et abbatissae: hi sunt falconarii, venatores, telonearii, praepositi, decani et alii qui missos recipiunt et eorum sequentes*; cf. Stefan Esders, "Die *Capitula de expeditione Corsicana* Lothars I. vom Februar 825: Überlieferung, historischer Kontext, Textrekonstruktion und Rechtsinhalt," *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 98 (2018): 130.

56 Capitularia regum Francorum I (n. 17): no. 73, c. 5, 165: *Dicunt etiam alii, quod illos pauperiores constringant et in hostem ire faciant, et illos qui habent quod dare possint ad propria dimittunt*.

57 Capitularia regum Francorum I (n. 17): no. 73, c. 1, 164: *In primis discordantes sunt et dicunt, quod episcopi, abbates, et eorum advocati potestatem non habeant de eorum tonsis clericis et reliquis hominibus; similiter et comites de eorum pagensis non habeant potestatem.*

58 Capitularia regum Francorum I (n. 17): no. 73, c. 6, 165: *Dicunt ipsi comites, quod alii eorum pagenses non illis oboediant nec bannum domni imperatoris adimplere volunt, dicentes quod contra mis-*

magne's younger sons or other lords, and that they would go to war with them but not with the emperor's military contingent.[59] Or they claimed that they were under the command of another lord, one who they knew had stayed at home.[60]

These responses demonstrate above all the many overlaps of authority in the Carolingian realm, which the *liberi homines* could use to evade their obligations to a certain degree. Their scope for action, however, lay precisely in the fact that they were spared military service thanks to closer ties to a lord. In other words, both the *oppressio pauperum* and the ways in which the *pauperes liberi homines* evaded this *oppressio* resulted in an increasing dependency on a *senior*. At the same time, the emperor could no longer claim the privileges to which he was entitled, or simply no longer received them.

4 The Case of Compulsory Military Service

In this context, it is not surprising that in the capitularies he issued after 802, Charlemagne addressed himself in great detail to the problem of compulsory military service. In 807, he failed to raise an army in the area between the Seine and the Loire due to famine.[61] He therefore issued the so-called *Memoratorium de exercitu in Gallia occidentale praeparando* ('Memorandum on preparing an army in Western Gaul').[62] For the freemen, he stipulated that those who owned three to five *mansi* (a unit of land measurement) were to go to war like all *beneficiarii* (holders of a *beneficium*, land or favour conferred as remuneration). Owners of two *mansi* were to form pairs, with the more capable partner to join the army while the other was to equip him to do so. A similar rule applied to freemen who owned two and one *mansi* respectively. Owners of only one *mansus* were allowed to form groups of three, of whom the most dispensable man was to be equipped by the other two and join the army. Five owners

sos domni imperatoris pro heribanno debeant rationem reddere nam non contra comitem; etiam etsi comes suam domum illi in bannum miserit, nullam exinde habeat reverentiam, nisi intret in domum suam et faciat quaecumque ei libitum fuerit.

59 Capitularia regum Francorum I (n. 17): no. 73, c. 7, 165: *Sunt etiam alii qui dicunt se esse homines Pippini et Chluduici et tunc profitentur se ire ad servitium dominorum suorum, quando alii pagenses in exercitum pergere debent.*

60 Capitularia regum Francorum I (n. 17): no. 73, c. 8, 165: *Sunt iterum et alii qui remanent et dicunt, quod seniores eorum domi resideant et debeant cum eorum senioribus pergere, ubicumque iussio domni imperatoris fuerit. Alii vero sunt qui ideo se commendant ad aliquos seniores, quos sciunt in hostem non profecturos.*

61 Cf. Fried, *Karl der Große* (n. 1): 553–55.

62 Capitularia regum Francorum I (n. 17): no. 48, Praef., 134: *Memoratorium qualiter ordinavimus propter famis inopiam, ut de ultra Sequane omnes exercitare debeant*; Adriaan Verhulst, "Karolingische Agrarpolitik: Das Capitulare de villis und die Hungersnöte von 792/93 und 805/06," *Zeitschrift für Agrargeschichte und Agrarsoziologie* 13 (1965): 182–183, dates it to 805.

of half a *mansu*s were instructed to fit out the sixth to take part in a campaign. Finally, the same was decreed for freemen who owned neither slaves nor land but had a certain amount of money.[63] According to Ganshof the provisions on military service were based on an existing practice.[64] However, this does not reflect the spirit and, above all, the comprehensiveness of these regulations. In addition, these rules reveal the emperor's self-conception: He decided to conscript freemen, since he alone determined their obligation to serve.

But it seems that these regulations did not serve their primary purpose, because he returned to them in the following year, 808. Apparently, many of those obliged to serve had simply stayed at home or failed to provide for the 'partner' who had gone to war. He decreed that those people were to be sought out by the *missi* and sentenced to pay the *heribannus*.[65] But the emperor also apparently learnt a lesson from this failure and responded to the hardships and concerns of those affected. In any case he further reduced the burden on the individuals by increasing the minimum amount of land that required owners to serve in the army from three to four *mansi*: Anyone whose property (whether owned outright or held as a *beneficium* comprised at least four *mansi* had to enlist in the army and pay for his equipment. Owners of three *mansi* were to be supplied by those with only one; while men with two *mansi* had to pair together and owners of a single *mansus* were to form groups of four, to enable

63 Capitularia regum Francorum I (n. 17): no. 48, c. 1, 134: *In primis quicumque beneficia habere videntur, omnes in hostem veniant*. c. 2, 134–35: *Quicumque liber mansos quinque de proprietate habere videtur, similiter in hostem veniat; et qui quattuor mansos habet, similiter faciat; qui tres habere videtur, similiter agat. Ubicumque autem inventi fuerint duo, quorum unusquisque duos mansos habere videtur, unus alium praeparare faciat; et qui melius ex ipsis potuerit, in hostem veniat. Et ubi inventi fuerint duo, quorum unus habeat duos mansos, et alter habeat unum mansum, similiter se sociare faciant et unus alterum praeparet; et qui melius potuerit, in hostem veniat. Ubicumque autem tres fuerint inventi, quorum unusquisque mansum unum habeat, duo tercium praeparare faciant; ex quibus qui melius potest, in hostem veniat. Illi vero qui dimidum mansum habent, quinque sextum praeparare faciant. Et qui sic pauper inventus fuerit qui nec mancipia nec propriam possessionem terrarum habeat, tamen in praecio valente* [. . .] *solidos, quinque sextum praeparent; [et ubi duo, tercium de illis qui parvulas possessiones de terra habere videntur]. Et unicuique ex ipsis qui in hoste pergunt fiant coniectati solidi quinque a suprascriptis pauperioribus qui nullam possessionem habere videntur in terra. Et pro hac consideratione nullus suum seniorem dimittat*.

64 François L. Ganshof, *The Frankish Institutions under Charlemagne*, trans. Bryce and Mary Lyon (Providence: Brown University Press, 1968): 61.

65 Capitularia regum Francorum I (n. 17): no. 50, c. 2, 137: *Volumus atque iubemus, ut idem missi nostri diligenter inquirant, qui anno praeterito de hoste bannito remansissent super illam ordinationem: quam modo superius comprehenso de liberis et pauperioribus hominibus fieri iussimus; et quicumque fuerit inventus, qui nec parem suum ad hostem suum faciendum secundum nostrum iussionem adiuvit neque perrexit, haribannum nostrum pleniter rewadiet et de solvendo illo secundum legem fidem faciat*. In objecting to the connection of this decree with the *Memoratorium de exercitu in Gallia occidentale praeparando*, Christoph Haack, "Mobilisierung als Bedrohungskommunikation: Das 'Capitulare missorum de exercitu promovendo' (MGH Capit. no. 50) und die Funktion karolingischer Aufgebotslisten," *Frühmittelalterliche Studien* 54 (2020): 155–59, overlooks the second part of this provision.

one of them to go on campaign.[66] The reason for increasing the minimum amount of land was probably that three *mansi* had not been sufficient to support military service. Even so the *missi* were instructed to identify those who had refused to go to war in the previous year.[67]

Looking at the provisions that seem to reduce the service obligation of free men, Eckhard Müller-Mertens identified an increasing threat to the freedom and social status of the *liberi homines*.[68] For Timothy Reuter, on the other hand, these provisions indicate an intensification of the obligation to serve that was necessary to ensure *defensio patriae* (the defence of the homeland) – an intensification that became urgent at the beginning of the ninth century. While the nobility and their warrior followers had enthusiastically participated in the wars of conquest, that same nobility had no interest in defending the empire, as this offered little prospect of glory, honour and, above all, booty.[69] This was why the emperor now resorted to the *liberi homines*.[70] In this context, it is also interesting to ask whether the standard size of at least three to four *mansi* referred to simple warriors fighting on foot[71] or to light-armed horsemen.[72] There is no indication in either the *Memoratorium* of 805 or the *Capitulare de*

66 Capitularia regum Francorum I (n. 17): no. 50, c. 1, 137: *Ut omnis liber homo, qui quatuor mansos vestitos de proprio suo sive de alicuius beneficio habet, ipse se praeparet et per se in hostem pergat, sive cum seniore suo si senior eius perrexerit sive cum comito suo. Qui vero tres mansos de proprio habuerit, huic adiungatur qui unum mansum habeat et det illi adiutorium, ut ille pro ambobus possit. Qui autem duos habet de proprio tantum, iungatur illi alter qui similiter duos mansos habeat, et unus ex eis, altero illum adiuvante, pergat in hostem. Qui etiam tantum unum mansum de proprio habet, adiungantur ei tres qui similiter habeant et dent ei adiutorium, et ille pergat tantum; tres vero qui illi adiutorium dederunt domi remaneant.*

67 Capitularia regum Francorum I (n. 17): no. 50, c. 2, 137: *Volumus atque iubemus, ut idem missi nostri diligenter inquirant, qui anno praeterito de hoste bannito remansissent super illam ordinationem quam modo superius comprehenso de liberis et pauperioribus hominibus fieri iussimus.* The mentioning of the previous year could be a reference to the *Memoratorium*, which is why its dating to 805 by Verhulst, "Agrarpolitik" (n. 62): 182–83, is not correct.

68 Müller-Mertens, *Karl* (n. 11): 122–33.

69 Timothy Reuter, "Plunder and Tribute in the Carolingian Empire," *Transactions of the Royal Historical Society* 35 (1985): 75–94; for a different view on the *defensio patriae* cf. Walter Goffart, "'Defensio patriae' as a Carolingian Military Obligation," *Francia* 43 (2016): 21–40.

70 Cf. John France, "The Composition and Raising of the Armies of Charlemagne," *Journal of Medieval Military History* 1 (2002): 61–82; Innes, *State*: 143–56; Étienne Renard, "Une elite paysanne en crise? Le poids des charges militaires pour les petits alleutiers entre Loire et Rhin au IXe siècle," in *Les élites au haut Moyen Age: Crises et renouvellements*, ed. François Bougard, Laurent Feller and Régine Le Jan, Collection Haut Moyen Age 1 (Turnhout: Brepols, 2006): 315–36; Étienne Renard, "La politique militaire de Charlemagne et la paysannerie franque," *Francia* 36 (2009): 1–34.

71 Schmitt, *Untersuchungen* (n. 11): 187, uses this argument to dispute the relevance of the *liberi* for the Carolingians in comparison to the cavalry that was made up of royal vasalls.

72 Josef Fleckenstein, "Adel und Kriegertum und ihre Wandlung im Karolingerreich," in *Nascita dell'Europa ed Europa carolingia: Un ' equazien da verificare*, vol. 1, SSCI 27 (Spoleto: Presso la sede del Centro, 1981): 85–86.

exercitu promovendo. Johannes Schmitt pointed to the low relevance of infantry fighters in comparison to the heavy cavalry made up of royal vassals, and interpreted the Emperor's interest in the *liberi homines* as a consequence of Charlemagne's new, Christian-influenced self-conception as a ruler.[73] This certainly played a central role in his decisions, but Schmitt's explanation with regard to warfare is probably not correct, as recent scholarship takes a much more nuanced view.[74] For example, the importance of vassalage and thus of the vassals fighting on horseback was probably not as great as had once been assumed.

The interpretations of Müller-Mertens and Schmitt have their merits. However, both overestimate the 'charitable aspect' of Charlemagne's provisions. In 805, during an assembly at Thionville, he set the *heribannus* fine at half of a miscreant's property.[75] Müller-Mertens interpreted this as a reduction that had become necessary after an unsuccessful campaign against Bohemia.[76] But even the lower penalty threatened the livelihood of poorer freemen. The emperor's main concern was therefore not to reduce the burden on these classes, but to enforce his own claim to obedience. In 811, he added to this provision that anyone who failed to pay the fine was to lose his freedom.[77] Such drastic threats suggest royal measures against individual or collective disobedience, rather than the waiving of benefits to which he was entitled, regardless of whether one regards them as politically or ethically motivated. The provisions on the formation of military groups discussed above should also be interpreted in this sense. It is likely that Charlemagne did in fact provide relief for less wealthy free Franks, but he did so only to make it easier for them to meet his demands.

Nor did Müller-Mertens take into account the complicated situation of most *liberi homines*, who were tied not only to the king, but often to other lords as well. As men-

73 Schmitt, *Untersuchungen* (n. 11): 187–88.

74 Christoph Haack, *Die Krieger der Karolinger: Kriegsdienste als Prozesse gemeinschaftlicher Organisation um 800*, Ergänzungsbände zum Reallexikon der Germanischen Altertumskunde 115 (Berlin: De Gruyter, 2020).

75 Capitularia regum Francorum I (n. 17): no. 44, c. 19, 125: *De heribanno volumus, ut missi nostri hoc anno fideliter exactare debeant absque ullius personae gratia, blanditia seu terrore secundum iussionum nostram; id est ut de homine habente libras sex in auro, in argento, bruneis, aeramento, pannis integris, caballis, boves, vaccis vel alio peculio, et uxores vel infantes non fiant dispoliati pro hac re de eorum vestimentis, accipiant legittimum heribannum, id est libras tres. Qui vero non habuerint amplius in suprascripto praecio valente nisi libras tres, solidi triginta ab eo exigantur; qui autem non habuerit amplius nisi duas libras, solidi decem; si vero una habuerit, solidi quinque, ita ut iterum se valeat praeparare ad Dei servitium et nostram utilitatem*; for the Thionville capitularies cf. Michael Glatthaar, "Die drei Fassungen des Doppelkapitulars von Diedenhofen/Thionville (805/806): Entwurf – Erlass – Revision," *Deutsches Archiv für Erforschung des Mittelalters* 69 (2013): 443–78.

76 Müller-Mertens, *Karl* (n. 11): 126; cf. Annales regni Francorum: s.a. 805, 120.

77 Capitularia regum Francorum I (n. 17): no. 74, c. 1, p. 166: *Quicumque liber homo in hostem bannitus fuerit et venire contempserit, plenum heribannum, id est solidos sexaginta, persolvat, aut si non habuerit unde illam summam persolvat semetipsum pro wadio in servitium principis tradat, donec per tempora ipse bannus ab eo fiat persolutus; et tunc iterum ad statum libertatis suae revertatur*.

tioned above, these multiple obligations gave them certain chances to avoid military service, which was generally not in their interest anyway because of the economic burdens involved. But in most cases, the following mechanism may have been at work. Military service, like natural disasters, was a heavy economic burden on the individual *liber homo*, who usually had to bear most of the costs himself. This problem was exacerbated if a man was recruited by his count more often than was actually permissible. So, in the long run it may have been easier for the *liberi homines* to bow to pressure and join the count or another powerful person. In doing so, they also accepted the risk of becoming increasingly legally dependent, i.e. of sinking into bondage. The powerful, in turn, strove to consolidate their possessions, for these were not contiguous, but rather a patchwork of properties, rights and claims scattered across the realm. In order to close these gaps, it must have been very tempting to bring many *liberi homines* and their property into dependency by using varying degrees of pressure, open violence, and both legal or illegal means, but also by promising them greater economic security.

5 Conclusion

In view of this, it should come as no surprise that Charlemagne's reforms were not immediately implemented and had little success. The most important reason for this was certainly the fact that the emperor was dependent on the powerful, the *potentes*. Like all early medieval rulers, he had to buy their loyalty – with donations and other favours, and above all by assigning important tasks to them. With the general oath of allegiance, Charlemagne sought to transform this loyalty into a morally imperative, objective duty, but the nobility probably resisted by delaying actions. His ability to assert himself against his elites therefore stood on shaky ground. Thus, as early as 802, Alcuin judged his master's reform efforts as follows: 'I am certain of the good will of our lord and emperor, that in the kingdom entrusted to him by God he seeks to order all things according to the norm of rightness, but that he has more such collaborators as undermine justice than support it, more *praedatores* (robbers) of justice than *praedicatores* (preachers), more such who seek their own benefit than God's'.[78] Even after Charlemagne had been crowned emperor the internal order of the Frankish Empire remained largely characterized by a considerable discrepancy between aspiration and reality.

78 Alkuin, Epistolae (n. 26): no. 254, p. 411: *De bona siquidem voluntate domni imperatoris valde certus sum, quod omnia ad rectitudinis normam in regno sibi a Deo dato disponi desiderat, sed tantos non habet iustitiae adiutores, quantos etiam subversores, nec tantos praedicatores, quantos praedatores. Quia puriores sunt qui sua desiderant quam Dei.*

Even Einhard was very reserved about the emperor's endeavours for law and justice, which he discusses only very briefly.[79] To his credit, Charlemagne was not satisfied with the traditional state of his realm. According to his self-conception, he wanted to be a ruler like the emperors of antiquity or the Byzantine emperors of his time. Their word was law, at least in theory, and they did not have to put up with unruly magnates. It is therefore testimony to Charlemagne's great perseverance that he doggedly pursued this goal despite considerable difficulty and opposition.[80] In the years after 802, he repeatedly put forward his ideas in the form of capitularies. The constant repetitions do not so much prove his failure, as especially Ganshof has suggested.[81] Instead, they demonstrate above all the resilience of social circumstances to the emperor's interventions. In other words, an early medieval ruler could issue orders, but whether his elites actually followed them was purely a matter of negotiation.

79 Einhard, Vita Karoli (n. 25): c. 29, p. 33.

80 Cf. Detlev Zimpel, "Unliebsame Herrscher-Erlasse im Frankenreich," in *Scientia veritatis: Festschrift für Hubert Mordek zum 65. Geburtstag*, ed. Oliver Münsch (Ostfildern: Thorbecke, 2004): 127–36.

81 François L. Ganshof, "La fin du règne de Charlemagne: Une décomposition," *Zeitschrift für Schweizerische Geschichte* 28 (1948): 433–52; for a different opinion see for example Johannes Fried, "Elite und Ideologie oder die Nachfolgeordnung Karls des Großen vom Jahre 813," in *La Royauté et les Élites dans l'Europe Carolingienne (du début du IX^e^ aux environs de 920)*, ed. Régine Le Jan, Collection Histoire et littérature regionales 17 (Centre d'Histoire de l'Europe du Nord-Ouest: Université Charles-de-Gaulle, 1998): 75–77; Janet L. Nelson, "The Voice of Charlemagne," in *Belief and Culture in the Middle Ages: Studies Presented to Henry Mayr-Harting*, ed. Richard Gameson and Henrietta Leyser (Oxford: Oxford University Press, 2001): 76–88.

Brigitte Kasten

Precarial Contracts Between Members of Different Social Groups

Let me begin with some preliminary remarks, first of all about the *precaria*. This was a loan of land in the early Middle Ages, not dissimilar to a land lease, in which the lender gave a part of his property to a lessee. The *precaria* goes back to the late Roman *precarium*. A *precarium* was granted as a loan free of charge, revocable at any time. It seems mostly to have been used to lend movable goods such as books, horses, slaves and the like. The act of transfer was referred to as a benefaction, in Latin *beneficium*.[1]

The act of lending had already been extended to immovable property (to real estate in modern terms) in the western parts of late Roman Empire. Large landowners settled *coloni* on their estates in this way. The *precarium* became an instrument in relations of dependency in addition to or besides a patronage. The *coloni* were not necessarily destitute. Some had their own landholdings with full property rights, which they continued to cultivate as lessees under the protection of the lessor. In this way, they evaded taxation both on themselves and their former property. That loan of land was not free of charge. Initially, the term of five years was set.[2]

1 Hans von Voltelini, "Prekarie und Benefizium," *Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte* 16 (1922): 259–306, here 271–72; Ernst Levy, "Vom römischen Precarium zur germanischen Landleihe," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 66 (1948): 1–30; Claudio Sánchez-Albornoz, "El precarium en Occidente durante los primeros siglos medievales," in Claudio Sánchez-Albornoz, *Estudios sobre las instituciones medievales españolas* (México: Universidad Nacional Autónoma de México, 1965): 521–46; Barbara Berndt, *Das commodatum. Ein Rechtsinstitut im Wandel der Anschauungen – dargestellt anhand ausgewählter Einzelprobleme*, Europäische Hochschulschriften 2, 4138 (Frankfurt am Main: Lang, 2005): 55–459. For the continued existence of, and differentiation between, late antique mutual contracts such as *locatio conductum*, emphyteusis, or *libelli* in early and high medieval Italy, see Frank Theisen, *Studien zur Emphyteuse in ausgewählten italienischen Regionen des 12. Jahrhunderts: Verrechtlichung des Alltags?* (Frankfurt am Main: Vittorio Klostermann, 2003): "Neben der Emphyteuse gab es in der ausgehenden Antike und im Frühmittelalter weitere Pachtinstitute, die nicht mit ihr übereinstimmen" ("There were other, and different, late antique and early medieval types of lease institutions in addition to emphyteusis," 45); "Diese Unterscheidungen waren auch für die mittelalterlichen Juristen von Relevanz, als sie sich mit den für sie neuen Rechtsquellen wissenschaftlich auseinanderzusetzen begannen" ("These distinctions were also relevant to medieval jurists when they began to study legal sources that were new to them," 47).

2 For similarities between some late antique *coloni* and early medieval *precatores* (precarial lessees) see Oliver Schipp, *Der weströmische Kolonat von Konstantin bis zu den Karolingern (332 bis 861)* (Hamburg: Verlag Dr. Kovač, 2009): 455–57; Jens-Uwe Krause, *Spätantike Patronatsformen im Westen des Römischen Reiches* (Munich: C.H. Beck, 1987): 254–63; Theisen, *Studien zur Emphyteuse* (n. 1): 14–47.

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The lease period remained unchanged in early medieval *precaria*, as did the concept that the lessee was making a request and the lender granting them a favor. The noun *beneficium* is mentioned in the documents, as well as the verb *beneficiare*.[3]

That is why the Latin word *precaria* is often translated into English as "precarial grants".[4] However, the grant itself was only a small part of a precarial record. The document as a whole is always referred to as *precaria: precaria facta est*. For this reason I prefer to speak of precarial contracts and not of grants.

But there are more reasons to speak of a contract. The most important one is that the loan of land was recorded in legal documents. There are probably some 1500 extant records of precarical loans of land from the eighth and ninth centuries. Most are copies, but several hundred have survived as originals, especially in the archives of the abbey of St Gall, today located in Switzerland.[5] The necessity of putting such transactions in writing entailed a twofold certification. First, the *precaria*, the request by the lessee, was recorded in a charter. After that the lender`s *prestaria* (the loan of land) was issued in a separate charter. So, originally there were two charters. But in legal practice in different regions of the Frankish Empire, *precaria* and *prestaria* were often combined in a single document.[6] Later, once the chirograph had come into use in the early tenth century (the oldest surviving *chirographum* on the western European continent dates to 931), this type of divided charter was used to record precarial contracts.[7] Now, each party had an identically worded record.

Another reason to speak of a contract is the fact that most *precatores* or *precatrices* owned land. They gave a part of it as a gift to another landowner and received back exactly the same land as a lease. They were not poor people. Because of that, the precarial contracts contain quite a lot of individual arrangements. The word *beneficium* no longer referred to a favor that had been granted, because the loan was no longer free of charge. *Beneficium* had become a *terminus technicus* for a type of lease.

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3 Brigitte Kasten, "*Beneficium* zwischen Landleihe und Lehen – eine alte Frage, neu gestellt," in *Mönchtum – Kirche – Herrschaft 750–1000*, ed. Dieter R. Bauer et al. (Sigmaringen: Thorbecke, 1998): 243–60, here 253–54; Brigitte Kasten, "Das Lehnswesen – Fakt oder Fiktion?" in *Der frühmittelalterliche Staat – europäische Perspektiven*, ed. Walter Pohl and Veronika Wieser (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2009): 331–54, here 335–54; Paul Fouracre, "The Use of the Term beneficium in Frankish Sources. A Society Based on Favours?" in *The Language of Gift in the Early Middle Ages*, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 2010): 62–88.

4 See for example Susan Reynolds, *Fiefs and Vassals* (Oxford: Clarendon Press, 1994): 78; Eric J. Goldberg, *Struggle for Empire. Kingship and Conflict under Louis the German, 817–876* (Ithaca: Cornell University Press, 2006): 101.

5 Hans-Werner Goetz, "Die St. Galler Tauschurkunden (und der alemannische Raum)," in *Tauschgeschäfte und Tauschurkunde vom 8. bis zum 12. Jahrhundert – L'acte d'échange, du VIII^e^ au XII^e^ siècle*, ed. Irmgard Fees and Philippe Depreux (Cologne: Böhlau, 2013): 171–200, here 173–74.

6 For references see for example Kasten, "*Beneficium*" (n. 3): 247 with n. 21.

7 Katharina A. Groß, *Visualisierte Gegenseitigkeit. Prekarien und Teilurkunden in Lotharingien im 10. und 11. Jahrhundert (Trier, Metz, Toul, Verdun, Lüttich)* (Wiesbaden: Harrassowitz, 2014): 7.

The individual agreements related to the period of the contract, the rent, the dates on which the rent was due, and arrangements in the event that it could not be paid on time.[8]

The agreements also concerned the land given for usufruct as a whole. It did not have to be one's own land previously donated. It could be exchanged for land of equal value located elsewhere. The donated land could even be doubled in size and then both real estates returned for usufruct.[9]

We know that precarial contracts also existed between laymen, although no records have survived. The vast majority of extant *precariae* have been preserved in ecclesiastical and monastic cartularies.

My second preliminary remark relates to the topic of this conference. Since *precariae* were based on negotiations and contracts, the question arises whether they reflect relationships of dependency between the contracting parties at all. There is no agreement about this among scholars.

Stefano Pivano (1904), who studied agrarian contracts in early medieval Italy, would have answered the question in the affirmative. He thought that the *precator* or *precatrix* was in a situation of subordination to the lender. Arguing from a legal point of view, Pivano pointed to the absence of the *precator*'s *consensus* at the end of the contract. In addition, as he also observed, the two contractual documents must not be identically worded.[10]

Katharina Groß (2014) takes a completely different view in her investigation of the connection between precarial contracts and partial charters (*chirographum*) in tenth- and eleventh-century Lorraine. She titled her study "Visualized Reciprocity" which aptly expresses her view that this type of partial charter made it possible for socially unequal partners to negotiate on an equal legal footing and so to conclude a reciprocal arrangement. The partial charters made it possible to issue identically worded precarial contracts to both parties. Even if a *precator* was of a lower-rank, he was thus placed legally on an equal footing with the higher-ranking lessor.[11] The recording of precarial contracts in a type of partial charter became possible after *precaria* and *prestaria* were recorded in one document by legal practice during the nineth century.

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8 See for example Kasten, "*Beneficium*" (n. 3): 249–51; Brigitte Kasten, "Agrarische Innovationen durch Prekarien?" in *Tätigkeitsfelder und Erfahrungshorizonte des ländlichen Menschen in der frühmittelalterlichen Grundherrschaft (bis ca. 1000). Festschrift für Dieter Hägermann zum 65. Geburtstag*, ed. Brigitte Kasten (Stuttgart: Franz Steiner, 2006): 139–54, here 144–48; Kasten, "Lehnswesen" (n. 3): 342–43.

9 Concerning the legal typology, *precaria data*, *precaria oblata*, *precaria remuneratoria*, see Thomas Brückner, *Lehnsauftragung* (Frankfurt am Main: Vittorio Klostermann, 2011): 394–407.

10 See Laurent Feller's statement on Pivano's position: Laurent Feller, "Les institutions féodales en Italie centrale (IX^{e}–XI^{e} siècle). Developpements internes et apports extérieurs," in *Fiefs et féodalité dans l'Europe méridionale (Italie, France du Midi, Péninsule ibérique du X^{e} au XIII^{e} siècle)*, ed. Pierre Bonnassie (Toulouse: CNRS, 2002): 25–42, here 29–30.

11 Groß, *Visualisierte Gegenseitigkeit* (n. 7): 39–40, 304–9.

However, Groß goes even further. She argues that even if the wording in the two halves of the partial charter was not identical, the ritual of the legal act made legal equals out of socially unequal contracting parties.[12] The ritual provided for the cutting of the chirograph along a marked line between the two texts – the so-called *legenda* – whereupon each party received simultaneous one half. The ritual of recording was thus able to override dependencies between socially unequal parties.

Rather than reasoning on legal or textual grounds, Ian Wood (2013) attempted to reconstruct the entire historical context that led to the conclusion of a contract, highlighting the interdependencies in the granting of church land for usufruct to laypersons who had previously donated land to the ecclesiastical lessor. Churches or monasteries on the one hand and lay people on the other "had entered into a relationship which placed demands on both sides, drawing together spiritual and economic investment, which also had political ramifications. [. . .] The new holder of a church property was himself drawn into the patronage networks of a church and its patron saint."[13]

Katharina Groß and Ian Wood are largely in agreement, as is evident not least in their terminology. Groß's reciprocity corresponds to Wood's mutuality.

I agree with both. The majority of *precariae* involve the lessees receiving back their own former property, which they had previously donated to the – mostly monastic – lessors. This indicates that both sides must have hoped in approximately equal measure for mutual (or reciprocal) benefit. We will not find any asymmetrical dependencies between the contracting parties in these contracts. That is evident already in the social distribution of the *precatores* and *precatrices*, of whom Katharina Groß drew up a list for tenth- and eleventh-century Lorraine. Out of a total of 177 loans of land let by monasteries and episcopal churches, 60 percent went to persons from the nobility, 41 percent to secular nobles (counts, countesses, dukes, a dowager queen, *nobiles*) and 19 percent to ecclesiastical nobles (clerics, abbots, abbesses, nuns, priests, canons, monks, archdeacons). For the ninth century, the number of wealthy aristocratic landowners who were parties in precarial contracts is likely to have been even higher than 60 percent.[14]

So should we exclude this type of *precaria* from an analysis of dependencies? I do not think so: and this brings me more specifically to the topic of this conference. Because some of these *precariae* reveal unexpected social and economic dependencies that were the reasons why the contracts came about.

For example, in Alemannia there was a secular landowner named Wolfker, who in 863 entered into a precarial contract with the abbey of St Gall. This gave him the right of residence in the monastery with comfortable lodging, food and clothing. How-

12 Groß, *Visualisierte Gegenseitigkeit* (n. 7): 34–40, 167–71, 244, 275.

13 Ian Wood, "Entrusting Western Europe to the Church, 400–750," *Transactions of the Royal Historical Society* 23 (2013): 37–73, here 62.

14 Groß, *Visualisierte Gegenseitigkeit* (n. 7): 118–26.

ever, if he were to remain where he was and his son were to provide for him with appropriate care and devotion, the son was to be allowed to keep the holding on condition that he pays rent. If, however, the son did not take care of him, the land would return to the abbey upon Wolfker's death, in other words his donation would come into force with suspensory effect.[15]

In Wolfker, then, we see an aging man who worried about providing for his old age, even though he was not alone in the world. The relationship with his son need not have been bad, but he wanted to insure himself against dependency on his son. He presented him with a choice: Take care of me, or lose part of your inheritance. The hope of escaping the social and economic dependencies caused by old age and illness must have been a common motive for entering into *precariae*. Templates for such contracts were included in a collection of formularies at St Gall at the end of ninth century.[16]

Residence in an abbey was not a bad solution for wealthy laypeople, even for those not yet affected by old age. Thus, in 816, one Cozpert had the abbot of St Gall assure him that from now and throughout his life, he would receive an annual allowance of eight *solidi* in coin, cloth or cattle, and two serfs – one man and one woman – as well as a mounted servant and a good packhorse for when he travelled to the royal court or to Italy. If he ever were to take up residence in the monastery, he wanted to have his own heated chamber, a benefice worth twice that of a monk, and every year one set of woolen clothing and two of linen, six shoes, two gloves, a cap, bedding, and a new blanket every other year. For such luxury, Cozpert had to make a donation immediately, at least legally. But the monastery did not yet enter into the fully rights of property, that means it did not control the donated properties completely.[17]

Some people had it even better: around the year 900, the powerful nobleman Wolfinus, a member of the founding family of Rheinau abbey, while retaining the use during his lifetime of all property and good he had donated, wanted to live in the (apparently vacant) apartments of the abbot Bernhard of St Gall. He wanted to be supplied with the same food as a monk (i.e. a full member of the monastery) and be served by two serfs who were to be given food rations customary for domestic serfs.[18]

In this case, again, Wolfinus's motivation was not provision for his old age, but rather the wish to secure for himself a high standard of living in a place with good infrastructure and without any of the day-to-day concerns that came with running an

15 Hermann Wartmann, ed., *Urkundenbuch der Abtei Sanct Gallen*, vol. 2, *(840–920)* (Zürich: S. Höhr, 1866) (= UBSG II): No. 507 (863), 121; Gesine Jordan, "*Nichts als Nahrung und Kleidung*". *Laien und Kleriker als Wohngäste bei den Mönchen von St. Gallen und Redon (8. und 9. Jahrhundert)* (Berlin: De Gruyter, 2007): 106–7.

16 Jordan, *Laien und Kleriker* (n. 15): 81–82.

17 Hermann Wartmann, ed., *Urkundenbuch der Abtei Sanct Gallen*, vol. 1, *(700–800)* (Zürich: S. Höhr, 1863) (= UBSG I): No. 221 (816), 211–12; Jordan, *Laien und Kleriker* (n. 15): 133–41.

18 Jordan, *Laien und Kleriker* (n. 15): 144–48.

agricultural operation. We can only speculate why the monastery would agree to such unfavorable conditions. Perhaps it hoped for continued support in matters of ecclesiastical politics. The family of Wolfinus had been among the supporters of the monastic community for about 150 years, first against Carolingian interventions, and later against attempts by the bishop of Constance to subordinate the monastery to his jurisdiction. So, it may have been political considerations or political dependencies on the part of the monastic community. On the other hand, Wolfinus was prepared to hand over quite a lot to live such a comfortable life as a layman in the monastery. He donated extensive properties in three different locations. So, we cannot rule out the possibility that real estate speculations induced the monastery to enter into this precarial contract. Perhaps the value of the properties was sufficient to justify the legal transaction. The monastery's annual investments in Wolfinus would pay off, if they could be recovered after his death through the income from his estates.

When women desired places of residence, they did not lodge in the abbey of St Gall, but in the nearby *cella Ratpoti*. However, there seem to have been more women who wanted to remain in their usual living environment but maintain or improve their material standard of living. We know of four women landowners who contracted annual deliveries from the monastery, especially various sorts of grains, high-quality piglets, and robes whose market value was given in *solidi*. Since the grain needed to be stored and processed, the women still had to have a manorial estate ('Grundherrschaft') and servants. So, they were certainly not poor in an existential sense.[19] But the specter of poverty (for example through a bad harvest) may have hovered in the background and caused them to convert part of their own property into leased holdings. In this way, they reduced their dependence on agricultural yields that could be achieved locally. The monastery, with its scattered land, was much better able to compensate for localized crop failures. One of the women, who was sister to one of the monks, negotiated for the monastery's manor (*mansus indominicatus*) to supply her with sheep, goats, pigs and two cattle in addition to twice-yearly supplies of grain and one fattening pig at Christmas. Her dependence may have consisted in not having reliable servants to raise livestock. Also, the yield of her meadows may have been insufficient or too uneven to sustain livestock. But even if that were the case, she managed to afford for herself a certain level of comfort by means of land transaction. The *precatrix* secured an apartment and provisions in the monastery for a day and a night, whenever she wanted to go there to pray – an early medieval bed & breakfast, or even full board.[20]

None of these women were destitute. However, they were most likely single and therefore had to make provisions for themselves. They wanted to maintain their stan-

19 Jordan, *Laien und Kleriker* (n. 15): 113–22, especially 118–19 for UBSG II (n. 15), No. 506 (865), 120 and further on 121. For *pauperitas* see Jordan: 23–24, who rejected the blanket assertion of earlier scholarship that monasteries provided for impoverished lay guests in their old age.

20 UBSG II (n. 15), Appendix No. 11, 389–90. See Jordan, *Laien und Kleriker* (n. 15): 119.

dard of living and remain in their familiar surroundings. None wanted to live an ascetic life or place herself under spiritual supervision. None wished to become a nun or be dependent on the goodwill of relatives, neighbors or servants. They achieved this by entering into an economic relationship with a large monastery. The facts that the monastery profited more in the long run, and that the inheritance share of any relatives was reduced, were of secondary importance. What mattered was the here and now.

The situation of some women in Lorraine in the tenth and eleventh centuries was similar. In 32 charters, that is 18 percent of all loan contracts, women were the sole lessees. None was a member of a religious group. All were widows. Sometimes they were supported by sons, who were also among the usufructuaries of the donated properties. The widows owned property inherited from their parents, property that they had themselves acquired, and their widow's share. In four cases, women used a part of their widow's share to enter into an economic relationship with an abbey. In some cases, husbands had provided for their wives during their lifetimes by appointing the wife as usufructurary in a precarial contract, rather than themselves. The widows then often negotiated additional provisions for themselves from the abbeys. In one case a count's widow received a regular allowance of wine. The mother of a knight killed in battle renegotiated the *precaria*, after her son's death, stipulating that she receive supplies of grain, wine, and money for clothes. However, an economic relationship with an abbey did not always protect women from impoverishment.[21]

Precariae from the Ottonian and Salian periods show a greater social and economic disparity between the contracting parties than those from the Carolingian period. 40 percent of contracts were concluded between monasteries and lower social groups. Of these, 7 percent were *ministeriales* active as local officials such as stewards, bailiffs, seneschals, and servants; 5 percent were *milites*, and 3 percent were vassals or *fideles*. Only free peasants were more numerous at 24 percent. Even two unfree persons appear as contractors; they make up 1 percent. These findings therefore offer a good opportunity to reconstruct social and economic dependencies, but also to identify mutual benefits.[22]

However, I prefer to conclude by talking about political dependencies that led to great imbalances of power between the contracting parties. A different type of *precariae* was used for this purpose, namely those that did not follow upon a donation of land. The best known are the *precariae verbo regis*, which were practiced by members of the Carolingian dynasty and other high-ranking nobles from the middle of the

21 Groß, *Visualisierte Gegenseitigkeit* (n. 7): 125–26.

22 See for example Groß, *Visualisierte Gegenseitigkeit* (n. 7): 276–81 (the case of Bertha, widow of count Volcmar (996), and abbot Volcmar of S. Maximin in 996); 281–86 (the case of *miles* Odelric of Pagny and bishop Berthold of Toul in 1019).

eighth century onwards.[23] These are the early medieval equivalent of forced loans demanded by the state. The king acted as *precator* who asked monastic communities and episcopal churches for land holdings for his men, i.e. for counts, *fideles*, vassals and other *homines*. Declining such a request was not an option, nor could the churches and monastic communities draw up written contracts. They were unable to contract the loan of land under the usual conditions, i.e. with a fixed term and rent. The holders of church properties had neither a social nor an economic or a service relationship with the lessor.

The forced loans were justified by the extraordinary services rendered by the king and his men for public safety, especially for military protection of the realm and the churches against enemy invasions and raids, such as those of the Arabs. After these emergencies had been overcome in the ninth century, some churches who believed that they could bring proof of ownership instituted lawsuits for the restitution of their properties.[24] In the meantime, however, the descendants of the initial lessees had been in possession of these ecclesiastical lands for three or four generations and continued to serve the Carolingian kings. Returning the holdings into full church ownership was no longer possible without creating fresh conflicts and political instability. The lessors had to be content with receiving a doubled rent, the *nona et decima*.[25]

We know that in the Visigothic kingdom, which suffered numerous revolts, *precariae* appear to have been a widely used means of protecting assets from confiscation by a new monarch in uncertain times. King Chindasvinth, who seized power in 642, in his so-called law on treason of 642/3 declared it fraudulent if persons branded by him as traitors donated assets or property to a church, a wife, or to children, friends or other persons in order to keep them in their possession by means of reclaiming them as precarial grants (*iure precario*). He ordered all documents referring to such transactions to be destroyed or invalidated, and the assets and properties to be transferred to his treasury (*fiscus*).[26]

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23 See for example Émile Lesne, *Histoire de la propriété ecclésiastique en France*, vol. 2,1 (Lille: René Girard, 1922): 1–31, 40–48, 270–92; Heinrich Mitteis, *Lehnrecht und Staatsgewalt* (Weimar: J.B. Metzler'sche Verlagsbuchhandlung; Carl Ernst Poeschel Verlag, 1933): 107–24.

24 See for example Hubert Mordek, "Ein exemplarischer Rechtsstreit. Hinkmar von Reims und das Landgut Neuilly-Saint-Front," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 83 (1997): 86–112; Kasten, "Lehnswesen" (n. 3): 339–42.

25 Gregor Patt, *Studien zu den Salzehnten im Mittelalter*, MGH-Schriften 67 (Wiesbaden: Harrassowitz, 2004): For a summary see vol. 1, 326–31.

26 Stefan Esders, "*Regem iura faciunt, non persona.* Der westgotische Treueid im Kräftefeld personaler und transpersonaler Konzepte der Legitimität politischer Herrschaft," in *Die Macht des Herrschers. Personale und transpersonale Aspekte*, ed. Mechthild Albert et al. (Göttingen: Vandenhoek & Ruprecht, 2019): 69–153, here 98–101, and see 99 for a translation of the relevant passage from the *Lex Visigothorum* II, 1, 8. King Reccared's charter of December 13, 586, for the monastery at Asán may have been based on such a case: Céline Martin and Juan José Larrea, eds., *Nouvelles chartes visigothiques du monastère pyrénéen Asán* (Bordeaux: Ausonius, 2021): No. 6, 243–44: Two bishops, Bagauda

In the search for records that reflect an unequal power relationship between the two contracting partners, the political turmoil of the eleventh-century Investiture Controversy can be a source of inspiration. Between 1060 and 1075, abbot Grimold of Saint-Vanne in Lorraine issued a precarial contract to a certain Leudo. Leudo was a *fidelis* of the bishop of Verdun. The abbot recorded that he had been forced against his will to lease monastic property. His relationship with the bishop of Verdun, who was his superior, was poor. The two were political enemies: The abbot was loyal to the pope, the bishop to the emperor.[27]

In conclusion, most of our extant *precariae*, that have survived in records, were concluded between persons who belonged to the same social class. These contracts were therefore primarily aimed at reciprocal transactions with real estate for mutual benefit. Nevertheless, they reveal economic and social dependencies, although not between the two contracting parties.

In principle, however, *precariae* were suitable for establishing a contractual relationship between persons of different social groups. They were not based on a legal asymmetry between the contracting parties, but rather on a social and not infrequently a political one. In such a power imbalance, profits were unequally distributed. This is probably one reason why there are few recorded asymmetrical *precariae* from the eighth and ninth centuries. It is not until the eleventh century that such records of contracts between unequal partners are preserved in significant numbers. The fact that persons belonging to inferior social groups could legally become equal contracting partners of large landowners is evidence for upward social mobility.

and Licinianus, had donated properties to the monastery, which had been confiscated. Reccared now returned the fiscal properties through the power of his present authority. I am grateful to Noel Lenski and Stefan Esders for this information.

27 Groß, *Visualisierte Gegenseitigkeit* (n. 7): 111–12.

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Source	Abbr.	Edition
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Leges Liutprandi regis		Pertz, Georg, ed. *MGH LL* 4.96-182 (1868) = Monumenta Germaniae Historica.
Leges novellae → novellae leges		
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Lex Alamannorum		Eckhardt, Karl A., ed. *MGH LL nat. Germ.* 5.1.35-157 (1966) = Monumenta Germaniae Historica.
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Source	Abbr.	Edition
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- Bava Metzi'a	m. B. Metz.	
- Bava Qamma	m. B. Qam.	
- Bikkurim	m. Bik.	
- Gittin	m. Git.	
- Horayot	m. Hor.	
- Ketubbot	m. Ketub.	
- Qiddushin	m. Qidd.	
- Sanhedrin	m. Sanh.	
- Yevamot	m. Yevam.	
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C. Suetonius Tranquillus, divus Claudius	Suet. Claud.	Ihm, Maximilian, ed. *Suetoni Tranquilli, C., opera: Vol I. De vita Caesarum libri XIII* (Leipzig: Vieweg+Teubner, 1907).
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- Qiddushin	t. Qidd.	
- Yevamot	t. Yebam.	
Venantius Fortunatus, carmina	Venant. Fort. carm.	Leo, Friedrich, ed. *MGH Auct. ant.* 4.1 and 4.2 (1881) = Monumenta Germaniae Historica.
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- Qiddushin	y. Qidd.	
- Sanhedrin	y. Sanh.	
- Yevamot	y. Yebam.	