

Variorum Collected Studies

THE MEROVINGIANS

KINGSHIP, INSTITUTIONS, LAW, AND HISTORY

Alexander Callander Murray



The Merovingians

The studies collected here cover a period of about 33 years, from 1986 to 2019, and represent a sustained effort to understand the institutions of the Merovingian kingdom and its history. There has long been a predisposition to cast the Merovingian period in the dark colours of barbarism or to treat it with reference to personal relationships and archaic institutions. The present volume, instead, recognizes the Merovingian world not as an archaic, primitive intrusion on the Mediterranean civilization of the Roman Empire but simply as a participant in the wider commonwealth that existed before and remained after the dissolution of the western imperial system; in so doing, it serves to refute the scholarly tendency to primitivize Merovingian governance, its underlying institutions, and the broader culture upon which these rested.

The collection is divided into four parts. Part I considers the question of whether Merovingian kingship should be viewed as a species of archaic, 'sacral' kingship. Part II, on institutions, has chapters that deal with various offices (the *grafio* and *centenarius*), public institutions (especially immunity and public security), and the broader makeup of the Merovingian state system. Part III, on charters, procedure, and law, has chapters on the profile of the charter evidence as now presented in the new MGH edition of the Merovingian diplomas and one on particular procedures before the royal tribunal, mistakenly referred to in scholarship as 'fictitious' trials; a final chapter provides a reflection on, and basic guide to, the law in general of the successor kingdoms, with an eye to the evidence of Merovingian Gaul. Part IV, a slight change of pace, deals with historiography, both the modern variety (Reinhard Wenskus) and the Merovingian (Gregory of Tours). All chapters deal extensively with the historiography of their subjects.

This book will appeal to scholars and students alike interested in Early Medieval European history, Merovingian history, Early Medieval law and society, Early Medieval historiography, and the influence of Merovingian law and governance on later centuries.

Alexander Callander Murray is Professor of History Emeritus, University of Toronto, Canada. He is the author of *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Early Middle Ages* (1983); editor of *After Rome's Fall: Narrators and Sources of Early Medieval History, Essays Presented to Walter Goffart* (1998) and *A Companion to Gregory of Tours* (2016); and editor/translator of *From Roman to Merovingian Gaul: A Reader* (2000) and *Gregory of Tours: The Merovingians* (2006).

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The Merovingians

Kingship, Institutions, Law, and History

Alexander Callander Murray

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P R E F A C E

There has long been a predisposition to cast the Merovingian period in dark colours of barbarism, or (a variant thereof) to characterize it through personal relationships and archaic institutions. The articles collected in this volume, instead, tend to recognize the Merovingian world not as an archaic primitive intrusion on the Mediterranean civilization of the Roman Empire but simply as a participant in the wider commonwealth that remained after the dissolution of the western imperial system. In the process of arguing particular features of Merovingian institutional history, they serve to refute, for a variety of reasons, the scholarly tendency to primitivize Merovingian governance, its underlying institutions, and the broader culture upon which these rested.

The articles and chapters reprinted here cover a period of about 33 years, from 1986 to 2019, and represent a sustained effort to understand the institutions of the Merovingian kingdom and its history. The preparation of them here has sometimes been a cause of reflection on the course of the field over this period, and of modest remorse, for the at times mordant tone prompted by argument and debate, though more often for the occasional sequential repetition that the serial production of scholarship engenders. It has also evoked gratitude for the opportunity that university teaching has provided me to pursue a little understood subject over such an extended time and even brought back remembrance of the pleasure and satisfaction that exploring the age through its sources so often provided.

I came out of the undergraduate programme in Modern History at the University of Toronto in 1969 with a number of interests: early medieval law, constitutional history (as it was then called), anthropology, and Anglo-Saxon language and history. The last were the sources of my earliest publications, in 1970 and 1982, on *Beowulf*.¹ The other interests were soon focussed through my Ph. D. dissertation on the Merovingian Franks of Gaul. I was fortunate, after a slight detour, to land back in Toronto, with Walter Goffart as my Ph. D supervisor. (Although we had occasion to talk when I was an undergraduate, circumstances conspired to prevent me actually taking a course from him.) Walter, one of the pioneers in

1 Not reprinted here. See bibliography at end of volume for a list of all publications to date.

directing the attention of current scholars to the late antique background of early medieval history, was becoming, and remains now, a formidable force in what has increasingly come to be viewed as a new field spanning the late Roman Empire and the successor kingdoms in the Western provinces. My dissertation, titled *Studies in Germanic Kinship Structure and Society in Late Antiquity and the Early Middle Ages* (1976), had two main aspects to it. First, it provided a detailed critique of social evolutionary models that had put the clan at the centre of the institutional development of the Germanic peoples as a whole. (I used Anthropology here to provide analytical models of kinship *in situ*, not to provide *historical* models of development.) Second, it sought to create a detailed, particular reconstruction of kinship structure in one group (i.e. the Franks), as opposed to assuming a common synthetic Germanic profile across numerous peoples and the sources commonly deemed to document them. There were methodological assumptions as well: reliance upon the testimony of the sources themselves rather than preconceived notions of Germanic modes of social and political organization; and recognition of the late antique context of the evidence and the societies that produced it. The book version of all this (1983) concluded in its very last line, “For the moment at least this [the late antique evidence] is our primary hope for distinguishing the diverse elements and transformations of the *regna barbarorum*.”²

To readers who may be inclined to conclude, *de bono* or *de malo*, that the 33 years of publications presented here are in some respects just a continuation of my thesis and pick up where it left off, let me at least assure them they will but rarely hear about kinship in them (indeed I have never written another piece dedicated to the subject). As is the nature of long-term enterprises, the scope of the articles that follow goes well beyond the focus of the thesis that stands at their head and even beyond what would normally be thought of as institutional history. I hope too that readers will notice that the two articles (three, if an appendix is counted) dedicated to historiography are not alone in dealing with this subject. All the articles, no matter their ostensible subjects, regard historiography as an integral part of the story they seek to tell. Nevertheless, despite the fair diversity of the pieces overall, the focus on the Merovingian Franks is still obvious. So are some of the methodological implications outlined above – privileging source testimony over totalizing theories, including assumptions about supposedly Germanic modes of political or social thinking; and exploration of the richness of late antique, and eastern, sources for illuminating and contextualizing Gallic conditions under the Merovingian kings. As provisional as the book statement of 1983 was intended to be, it turned out there was never a chance that a paltry three decades or so would exhaust its implications for exploring the period.

2 *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Early Middle Ages*, Studies and Texts no. 65 (Toronto: Pontifical Institute of Mediaeval Studies, 1983) 224.

PREFACE

The articles and chapters are printed here, with very few cosmetic changes, pretty much as they were originally published. Formatting of notes has hewn close to the original (the lack of uniformity should hardly be confusing). Original footnote numbering has been retained, although the original pagination has not. New material – mainly cross-references and basic guidance to the volume – has been added to this iteration in square brackets. I trust that readers will readily distinguish these from the inevitable brackets that occasionally make their way within parentheses and even, though rarely, within regular text and quotations.

Given the thematic ordering of the pieces, it was obviously not possible to lay out the pieces chronologically, whatever value there may be in that for readers. I start the volume (Part I) with a recurrent, sometimes subterranean, problem regarding the character of Merovingian kingship that seemed advisable to broach early; variants on its themes echo, no matter their dates of composition, in many of the following pieces on administration and law (Parts II and III). I have reserved for the last part on historiography (Part IV) two pieces of more general interest: one on Gregory of Tours and his *Histories*, the inescapable source for the sixth-century kingdom; and the other a contextualization and critique of the views of the modern Germanist Reinhard Wenskus and his influence on current scholars dealing with the passage from the empire to the successor kingdoms.

Maps and genealogies were not original to the pieces included here, bar one. Their presence has been incorporated here at the end of the volume in the hope they may spare puzzled or curious readers the full burden of familiarizing themselves with the main participants – topographical, administrative, and human – often alluded to in what follows. Appropriate warnings in particular instances accompany their inclusion.

Alexander Callander Murray
Orton, Ontario
June 2021

COMMON ABBREVIATIONS

Individual articles should generally provide full references along with abbreviations. The list below provides a single reference point for common abbreviations found in the text.

Reference to common classical works, if not otherwise indicated, can be consulted in the Loeb Classical Library (LCL) series.

<i>a., s.a.</i>	<i>anno/annis, sub anno</i>
Ammianus	Ammianus Marcellinus, <i>Res Gestae</i> , ed. J.C. Rolfe, LCL, 1982
<i>Carm.</i>	<i>Carmen/Carmina</i>
CCSL	Corpus Christianorum Series Latina
CJ	<i>Codex Iustinianus</i> , ed. Paul Krüger, 1915
ChLA	<i>Chartae Latinae Antiquiores: Facsimile-Edition of the Latin Charters Prior to the Ninth Century</i> , publ. by Hartmut Atsma and Jean Vezin, vol. XIII (1981); vol. XIV (1982)
CT	<i>Codex Theodosianus</i> , ed. Theodore Mommsen, 1905
DM	To 2005 = <i>Diplomata Regum Francorum e Stirpe Merovingica</i> , ed. K.F. Pertz, MGH Diplomata (in folio), 1872 After 2005 = <i>Die Urkunden der Merowinger</i> , ed. Theo Kölzer, MGH, <i>Diplomata Regum Francorum e stirpe Merovingica</i> , 2001
DK	<i>Die Urkunden der Karolinger</i> , ed. A. Dopsch et al., MGH DD Karolinerum 1, 1906
<i>ep./epist.</i>	<i>epistola/epistolae</i>
F	<i>Formulae</i> = MGH LL <i>Formulae Merovingici et Karolini aevi</i>
<i>And.</i>	<i>Formulae Andecavenses</i>
<i>Marc.</i> , etc.	<i>Marculfi formulae</i> , etc.
Fredegar	<i>Chronicarum Fredegarii libri IV</i> , ed. B. Krusch, MGH SRM 2, 1888
<i>Hist.</i>	<i>Historiae</i> = Gregory of Tours, <i>Libri historiarum X</i> , ed. B. Krusch & W. Levison, MGH SRM 1.1, 2nd ed., 1937–51

COMMON ABBREVIATIONS

Jones, <i>LRE</i>	A. H. M. Jones, <i>The Later Roman Empire 284–602</i> (Oxford 1964)
LCL	Loeb Classical Library
<i>LHF</i>	<i>Liber historiae Francorum</i> , ed. B. Krusch, MGH SRM 2, 1888
<i>LRib.</i>	<i>Lex Ribvaria</i> , ed. F. Beyerle & R. Buchner, MGH LL NG 3.2, 1954
<i>LS</i>	<i>Lex Salica = Pactus legis Salicae</i> , ed. K.A. Eckhart, MGH LL NG 4.1, 1962
MGH	Monumenta Germaniae Historica
AA	Auctores antiquissimi
Capit.	Capitularia regum Francorum
Concil.	Concilia aevi Merovingicarum
DD	Diplomata
Formulae	MGH LL Formulae Merowingici et Karolini aevi
LL	Leges
NG	LL Nationum Germanicarum
SS	Scriptores
SRG	Scriptores rerum Germanicarum
SRL	Scriptores rerum Langobardicarum et Italicarum
SRM	Scriptores rerum Merovingicarum
PL	Patrologia Latina = Patrologia cursus completus series latina
<i>RE</i>	<i>Paulys Realencyclopädie der classischen Altertumswissenschaft</i>
<i>RGA</i>	<i>Reallexikon der germanischen Altertumskunde</i>
<i>TTH</i>	Translated Texts for Historians (Liverpool)
<i>ZSS</i>	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte</i>
GA	Germanistische Abteilung
RA	Romanistische Abteilung



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Part I

WERE THE MEROVINGIANS
SACRAL KINGS?



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POST VOCANTUR
MEROHINGII

Fredegar, Merovech, and ‘sacral kingship’

From: *After Rome’s Fall: Narrators and Sources of Early Medieval History, Essays Presented to Walter Goffart*, ed. Alexander Callander Murray (Toronto: University of Toronto Press, 1998)

Lord! said my mother, what is all this story about?
– A Cock and a Bull, said Yorick.

Tristram Shandy, IX, ch. 33

To judge from surveys of Frankish history, modern scholarship has embraced the idea that the Merovingian kings believed themselves to be descended from the gods, specifically a divine sea creature.¹ As scholarly notions go, this idea is not a trifle; nor is it new, having been around since the mid-nineteenth century. In its modern form, it tends to be associated with a particular understanding of the Frankish state; religion, in this view, is the true foundation of primitive social and political organization, and divine descent, as an essential component

I am very grateful to Edward James, Roger Collins, and the dedicatee of this volume for advice on a variety of points. A version of the piece was presented to the conference ‘Culture and the Creation of Identity in the Early Medieval West,’ Centre for Medieval Studies, University of Toronto, 2 November 1996.

1 Herwig Wolfram, *Das Reich und die Germanen: zwischen Antike und Mittelalter* (Berlin, 1990), 298 f.; Eugen Ewig, *Die Merowinger und das Frankenreich* (Stuttgart, 1988), 77 f.; Hans K. Schulze, *Vom Reich der Franken zum Land der Deutschen: Merowinger und Karolinger* (Berlin, 1987), 76–80; E. Zöllner, *Geschichte der Franken bis zum Mitte des sechsten Jahrhunderts* (Munich, 1970), 5, 178. As the following notes will show, the idea has particularly strong roots in German scholarship. In English-language scholarship, see Patrick J. Geary, *Before France and Germany: The Creation and Transformation of the Merovingian World* (New York and Oxford, 1988), 85, 89, and cf. 94 (‘almost magical force of Merovingian blood’); and Ian Wood, *The Merovingian Kingdoms, 450–751* (London and New York, 1994), 37 f., 40, 44; cf. his ‘Gregory of Tours and Clovis,’ *Revue Belge de philologie et d’histoire* 63 (1985): 267 n. Wood’s views may better be associated with older approaches rather than the recent perspective of German scholarship. The latter seems influential in a survey of a different kind: Michael Richter, *The Formation of the Medieval West: Studies in the Oral Culture of the Barbarians* (New York, 1994), 20. Edward James, *The Franks* (Oxford, 1988), 163, on the other hand, explicitly rejects Germanic myth as the origin of the Merovech tale.

in the 'charisma' of Merovingian kings, shows that Frankish kingship rested to a significant degree upon the 'sacral' roots of an archaic type of Germanic kingship.²

Primitive religious beliefs are commonly thought to be expressed through myth. The divine descent of the Merovingian kings, too, is said to be accompanied by a myth, propagated by the royal house itself; the myth is supposed to appear in the *Chronicle* of Fredegar, written about 660, where it is associated with the conception and birth of Merovech, a mid-fifth-century king and founder of the Merovingian house.³ In epitomizing Gregory of Tours' account of the reign of Chlodio, Fredegar adds a story about a strange encounter on the seashore between Chlodio's wife and a creature from the sea.

Fetur, super litore maris aestatis tempore Chlodeo cum uxore resedens, meridiaie uxor ad mare labandum vadens, bistea Neptuni quinotauri [= Minotauri] similis eam adpetisset. Cumque in continuo aut a bistea aut a viro fuisset concepta, peperit filium nomen Meroveum, per co regis Francorum post vocantur Merohingii.⁴

It is said that, when Chlodio was staying with his wife on the seashore in the summer, his wife went to the sea around noon to bathe and a beast of Neptune resembling the *quinotaur* [= Minotaur] sought her out. Right away she was made pregnant by either the beast or her husband, and afterwards gave birth to a son called Merovech, after whom the kings of the Franks were later called Merovingians.

The modern account of Merovech's conception as an expression of Germanic myth begins with Karl Hauck.⁵ Hauck was the creator of an exegetical framework designed to detect and explain fragments of Germanic myth and religious practice embedded in the sources of antiquity and the early Middle Ages. Hauck's conceptual models depended heavily on products of the comparative study of religion; he expanded the scope for applying this material by using terminology that he

2 For the intellectual foundations of sacral kingship theory, see Eve Picard, *Germanisches Sakralkönigtum: Quellenkritische Studien zur Germania des Tacitus und zur altnordischen Überlieferung* (Heidelberg, 1991). For comments and literature on some of the broader problems, of which sacral kingship is only a part, see Walter Goffart, 'Two Notes on Germanic Antiquity Today,' *Traditio* 50 (1995): 9–30.

3 Since Walter Goffart, 'The Fredegar Problem Reconsidered,' *Speculum* 38 (1963): 206–41 (repr. in his *Rome's Fall and After* [London, 1989], 319–54), and A. Erikson, 'The Problem of Authorship in the Chronicle of Fredegar,' *Eranos* 63 (1965): 47–76, theories of multiple authorship of the *Chronicle* have largely been abandoned. See also Andreas Kusternig, trans., 'Die vier Bücher der Chroniken des sogenannten Fredegar,' in *Quellen zur Geschichte des 7. und 8. Jahrhunderts*, ed. Herwig Wolfram (Darmstadt, 1982), 9–13; and now Roger Collins, *Fredegar, Authors of the Middle Ages* 13 (Aldershot, Hants., and Brookfield, Vermont, 1997).

4 *Fred. Chron.* III 9.

5 'Lebensnormen und Kultmythen in germanischen Stammes- und Herrschergenealogien,' *Saeculum* 6 (1955): 186–223.

derived from the Latin sources by wrenching terms from their original contexts; redefining them; and generalizing them into genres, types, and models of mythic discourse and cultic practice. In Hauck's scheme, the circumstances surrounding Merovech's birth constitute an *origo*, an old cult myth of the Franks explaining the origin of the people and their royal house. The *origo* describes the begetting of the royal lineage by the chief god of the Franks through the *primus rex*, their first king. The god in question, Hauck believes, was the OHG Frö, the equivalent of Freyr of Scandinavian sources, a representative of the Vanic powers of fertility; the myth alludes to a process of temporary divinization by which Chlodio became the god, who took the form of a divine sea creature, half man and half bull. This theriomorphic divinization is demonstrated by the fact that Merovech's conception is said to be effected 'aut a bista aut a viro,' a phrase Hauck reads to mean 'by both the beast and the husband.' The *origo* myth, Hauck argues, is also linked to *usus*, cult practice, repeatable acts celebrated as part of the state cult of the Franks. Here he discovered one of the cherished motifs of comparative religion, the holy marriage between representatives of divine powers. Details of the cult can also be detected in the bathing, which represents the purificatory preparation of the bride; in the season, the time of a midsummer festival; and in the location, the beach as the meeting zone of the elements. In Hauck's reconstruction, the myth and the cult practice associated with it represent the beginnings of the lineage (*primus rex*) and the people it leads. To meet the objection that such *primordia* should lie in the dim past and can hardly be applied to a fifth-century king such as Chlodio, Hauck argues that primordial myths could be transferred to heroes of more recent vintage, who were glorified as representatives of the original divine ancestor (*Stammvater*); Fredegar's text, in calling the dynasty *Merovingii*, presupposes such an ancestor with the name *Mero*. Despite its association with Chlodio, the Merovingian *origo* is, in Hauck's view, one of the true old cult myths of the pre-Christian state religion of the Germanic peoples.

Hauck's reading can be traced in many recent accounts of the Fredegar passage.⁶ It is now generally claimed, for example, that the eponymous hero of the Merovingian dynasty was not Merovech, the historical king, but a mythical Mero;

6 O. Höfler, 'Abstammungstraditionen,' § 15, RGA 1: 26 f.; R. Wenskus, 'Bemerkungen zum Thun-
ginus der Lex Salica,' in *Festschrift Ernst Percy Schramm zu seinem siebenzigsten Geburtstag*, ed. P. Clasen
and P. Scheibert (Wiesbaden, 1964), 1: 234–6; and 'Chlodio,' RGA 4: 477; H.H. Anton, svv.
'Merowech' and 'Merowinger,' *Lexikon des Mittelalters*, vol. 6 (Munich, 1993), 542 f.; H. Moisl,
'Anglo-Saxon Royal Genealogies and Germanic Oral Tradition,' *Journal of Medieval History* 7 (1981):
223–6; and cf. his 'Kingship and Orally Transmitted *Stammestradition* among the Lombards and
Franks,' in *Die Bayern und ihre Nachbarn*, ed. Herwig Wolfram and Andreas Schwarz (Vienna,
1985), 111–19; Georg Scheibelreiter, 'Vom Mythos zur Geschichte: Überlegungen zu den Formen
der Bewahrung von Vergangenheit im Frühmittelalter,' *Historiographie im frühen Mittelalter*, ed. A.
Scharer and G. Scheibelreiter, Veröffentlichungen des Instituts für Österreichische Geschichtsforschung
32 (Vienna and Munich, 1994), 33–6. Shorn of details, Hauck seems influential in J. M.
Wallace-Hadrill, *Early Germanic Kingship in England and on the Continent* (Oxford, 1971), 16–20; cf.
his earlier *The Long-Haired Kings and Other Studies in Frankish History* (London, 1962), 84, 220.

Merovech appears in Fredegar's version as a result of contamination. The divine progenitor of the Merovingians is supposed to be Frō, in the form of a bull deity. Even the legendary and real sexual practices of the Merovingians are interpreted as an extension of their role as agents of Vanic fertility. The Merovingians of historical times are said to have continued to hedge their kingship with ideology, symbols, and ritual derived from pagan times, prime exhibits from the early Middle Ages of an ancient form of sacral kingship.

Those who champion these ideas also claim to find support for them outside Fredegar. In particular, two interesting, but rather minor, objects in the archaeological record of the Franks have taken on a disproportionate role in substantiating the association of the Merovingians with a bull deity.⁷

The first of these is a small bull head found among the grave goods of Clovis' father, Childeric, discovered in Tournai in 1653, subsequently stolen, and for the most part lost in 1831.⁸ Moderns have been rather quick to impute symbolic significance to the various objects in the grave, though with varying perceptions. Almost immediately the large number of insect-shaped fittings, the so-called *apes*, bees, were interpreted as marks of rulership, and their imputed connection to the later lilies of France became a minor point of dispute in the Bourbon-Habsburg rivalry of the period. Napoleon, too, passed over the significance of the bull's head, but had the cloak he wore at his imperial coronation decorated with 'bees' like those found in the grave, believing them to be an ancient symbol of French royalty.⁹ Modern scholars, looking for the religious foundation of Germanic kingship, have taken a different tack: not only do they detect the god Frō behind the bull head, but they also claim to find Wodan in the spear included among the grave furnishings.¹⁰ However, only those disposed to find a bull god in the past of the Merovingians will find the significance of the bull head in Childeric's grave impressive, for bull figures, with or without religious associations, are a common-enough motif in ancient art. Chiflet, who described the find in 1655, called the

7 On representations of bulls in the Merovingian period, Edouard Salin commented: 'il semble bien que cette figuration animale, fort en honneur auprès de civilisations antérieures, n'ait pas été pratiquement retenue par la civilisation mérovingienne.' He gives two examples with confidence, both fifth century – the bull head from Childeric's grave and another from a Gallo-Roman fibula: *La civilisation mérovingienne*, part 4 (Paris, 1959), 166–9.

8 We depend on J.-J. Chiflet's *Anastasis Childerici I. Francorum regis, sive thesaurus sepulchralis Tornacis Nerviorum effusus et commentario illustratus* (Anvers, 1655) not only for the circumstances of the find, but also for illustrations of some of the furnishings, including the bull head. His illustrations can be found in the citations that follow but have also been reproduced innumerable times in other modern works. The furnishings are discussed in detail by K. Böhner, 'Childerich von Tournai,' sec. III, RGA 4: 441 f., 457; and Michel Kazanski and Patrick Périn, 'Le mobilier funéraire de la tombe de Childeric I^{er}: État de la question et perspectives,' *Revue archéologique de Picardie* 3/4 (1988): 13–38. For the results of the most recent excavation in the area of the original find, and especially the horse interments near Childeric's burial, see Raymond Brulet et al., *Les fouilles du quartier Saint-Brice à Tournai*, Collection d'archéologie Joseph Mertens 3 (Louvain-la-Neuve, 1990–1), 2 vols.

9 K. Böhner, 'Childerich von Tournai,' 441 f., 457.

10 And in the characteristic long hair of Merovingian kings, Ewig, *Die Merowinger*, 78, is an example.

bull head the *idolum regis*, and Hauck and others have been quick to seize on this term.¹¹ But it is a small item, belonging, along with the ‘bees,’ to the harness of the king’s horse, the bull head ornamenting the animal’s brow.¹² Though well made, like everything else in the grave, the bull head may not be of Frankish manufacture, and forms only a minor part of impressive furnishings that have broad geographical associations. Harness with bull-head and insect-shaped ornaments seems to have had a long history in the lower Danube and Black Sea region, and fittings of this kind have associations in much earlier Greek art.¹³ The bull head of Childeric’s grave tells us about art and fashion, not religion.

The significance of the second piece is even less impressive. Two bull heads have been detected on a belt buckle found in a well-furnished female grave uncovered at St Denis in 1959. Because a ring found on the body is inscribed with the name Arnegund, the woman has commonly been identified as Aregund, Childeric’s mother, and her death placed at around 570 on the basis of the skeletal remains; serious questions nevertheless remain unanswered about the attribution and date of the furnishings.¹⁴ The report describing the restoration of the objects detected within the pattern of the cast frames of the buckle plates two ‘strongly stylized’ bull heads, sympathetically facing each other, one on each plate.¹⁵ Linearly arranged niello points decorate the frame, and the identification of a bull image within the frames seems to owe much to interpreting two of these niello inserts on one of the plates as the eyes of the animal; the other plate, at least in

11 ‘Lebensnormen und Kultmythen,’ 198; Ewig, *Die Merowinger*, 78. Hauck, nevertheless, accepts that the bull head belongs to the horse harness (199 n.). Modern notions of the proper location for religious significance seem to determine the common view that the bull head was the personal amulet of the king and stems from Abbé Cochet in 1859, despite the clear evidence that it was ‘e capistro’ and ‘ex equi regii fronte’; cf. J. Werner in Brulet, *Les fouilles*, 2: 15.

12 The identification of the insect-shaped fittings as bees has been conventional since Chiflet, though they are sometimes identified as cicadas, probably on the basis of Eastern examples. Inasmuch as the specimens from Childeric’s grave resemble any insects in particular, the resemblance is to flies. Perhaps such an identification is never made because the thought of the king’s horse (or, as some would have it, the king himself) covered in flies is not quite the image we think appropriate.

13 K. Böhner, ‘Childeric von Tournai,’ 457.

14 James, *Franks*, 155–7; the most recent consideration of the question by Patrick Périn (‘Pour une révision de la datation de la tombe d’Arégonde, épouse de Clotaire I, découverte en 1959 dans la basilique de Saint-Denis,’ *Archéologie médiévale* 21 [1991]: 21–50) retains identification of the body as ‘Aregund’ on the basis of the ring. As the grave furnishings suggest a seventh-century date, however, he places her death at the earliest possible point consonant with the furnishings – in the last decade of the sixth century, when the queen would have been in her seventies or eighties – and suggests that a re-examination of the bones is needed.

15 A. France-Lanord and M. Fleury, ‘Das Grab der Arnegundis,’ *Germania* 40 (1962): 357, which includes photographs. A good colour photograph can also be found in Jean Hubert et al., *Europe of the Invasions* (New York, 1969), 234. Those who like ‘Where’s Waldo’ may prefer to find the bulls themselves, but, if in need of guidance, look to the spandrels between the half-circles of the fields formed like kite-shaped shields. Only the spandrels on the ends of the belt plates farthest from the buckle clasp are thought to contain bull heads, and only one of these is suggestive. Their mates in the spandrels next to the clasp are clearly not intended to be bull heads.

the condition we possess it, lacks the two corresponding inserts, and indeed any clear shape that suggests a bull head at all. In fact, the bull heads – if such they are – are less ‘strongly stylized’ than weakly suggested. For the frames of the buckle plates do contain genuine highly stylized animal figures – snake- or dragon-like animal heads, confidently presented to the viewer, unmistakable in their form, with clearly delineated eyes and features. The ‘bull heads,’ on the other hand, are small, flat featureless planes with indefinite outlines, intended to help tie together the abstract framework of the buckle plates. It seems to me unlikely they were meant to be construed as bulls at all.

The effort to place a bull divinity at the centre of Germanic paganism extends well beyond the Frankish material. Cattle in general, and bulls in particular, were certainly objects of sacrifice among the Germanic peoples, but the hypothesis that the bull was an important subject of cult – that taumorphic divinities were prominent among the denizens of Germanic paganism – has yet to be demonstrated. Jacob Grimm, who may have been the first to interpret the conceiving of Merovech as a reflection of Germanic myth, thought, like modern scholars, that he saw the Vanic powers of Freyr behind Fredegar’s sea beast, but his understanding of Germanic philology, history, and folklore led him to suppose the beast must have taken the form of a sea pig, because of the important role of the boar in the cult of the Vanir.¹⁶ More recent scholarship has enrolled philology and the archaeological record from the Bronze Age to the early Middle Ages to demonstrate Germanic bull cults analogous to those of the Near East. Even with so wide a net, the catch should not be seen as encouraging. A charitable interpretation of the claims made for philology suggests that they are unlikely to prove convincing on the subject; and, as for archaeology, the standard interpretation of so many bull objects as products of foreign importation, especially from the Celtic world, seems in itself to defeat the argument of a highly developed autochthonous bull cult.¹⁷ The Celtic cast to much of this evidence points to a curious lapse on the part of those who see the effect of myth and religion on Fredegar. For, as a product of Gaul, with a Gallic setting, the story – if it is myth – is arguably a reflection of the

16 *Teutonic Mythology*, trans. (from the 4th ed.) by James Steven Stallybrass (New York, 1966), 1: 391.

This interpretation, Grimm believes, explains the Byzantine reference to the ‘crested’ Merovingians: Theophanes (d. ca. 818), claims the Merovingians were called *kristatai*, ‘which means “those with hair down their backs,” for they had hair growing along their backs like swine’ (s.a. 6216 [723–4], trans. Harry Turtledove, *The Chronicle of Theophanes* [Philadelphia, 1982]). The comment is commonly understood to be related to the long hair of the Merovingians as a mark of kingship. William A. Chaney finds theriomorphic divinization here, taking Theophanes’ reference as a ‘reminiscence of the primitive ritual battle in which the king slew his predecessor, impersonating the god during the struggle in the guise of the deity’s sacred animal’ – in this case, the boar (*The Cult of Kingship in Anglo-Saxon England* [Berkeley–Los Angeles, 1970], 126).

17 Gert Esterle, *Die Bovidien in der Germania*, Wiener Arbeiten zur germanischen Altertumskunde und Philologie 2 (Vienna, 1974), is a very interesting compendium of these efforts. My conclusions are not the ones the author draws.

Gallic milieu in which the evidence for divine bulls, not just the occasional bull image, is not hard to come by.¹⁸

Perhaps those sticking to Germanic tracks in tracing the mythic origins of Fredegar's tale feel justified in doing so because of their reliance on two other texts that are supposed to demonstrate the notion of sacral kingship among the Franks; if it could be demonstrated that the Merovingians and their followers believed in a divine or supernatural origin for the royal house, would this not justify us in supposing a Germanic, pagan mythic background to Fredegar's account of Merovech's conception? It would help, but reliance on these two texts is misplaced. Like the Fredegar text itself, neither is an unequivocal statement of divine descent or sacral ideology, nor is there anything particularly puzzling about their meaning or context.

In his letter to Clovis on the occasion of his baptism, Avitus refers to the king as 'de toto priscae originis stemmate sola nobilitate contentus.' This phrase has commonly been interpreted to mean that Clovis was now satisfied to derive only noble birth from his ancestors and had, therefore, given up any claim to divine descent with his conversion to Christianity.¹⁹ Avitus' letter is renowned for its obscurities, but at least as far as it concerns our problem the meaning seems sufficiently clear, when the context of the phrase is looked at as a whole.

In this same issue [of conversion], a great many people – if by the exhortation of priests or at the prompting of associates they are moved to seek out the sanity of believing – are accustomed to adduce [as an impediment] the customs [they inherit with] birth and ancestral practices; thus harmfully preferring reverence to salvation, they reveal that they do not know how to choose anything, while preserving, as prisoners of unbelief, useless veneration for their parents. Let harmful shame give up this pretext after the miracle of such a deed. From the entire garland of ancient descent, you are content simply with nobility and have tried to draw from yourself whatever can adorn in its entirety the summit of nobility of your own descendents. You have authored of good deeds [in your descent]; you have wished to be the author of better ones. You answer

18 This is also the context for the brazen bull of the Cimbri (Plutarch, *Marius* XXIII), no matter what one makes of the ethnicity of the Cimbri themselves. For the most recent discussion of the Cimbri, assuming a Danish origin, see Dieter Timpe, 'Kimbertradition und Kimbernmythos,' in *Germani in Italia*, ed. Barbara and Piergiuseppe Scardigli (Rome, 1994), 23–60, esp. 50 f. for 'Celtic' characteristics; these are also stressed by, among others, Jan De Vries, 'Kimbern und Teutonen: ein Kapitel aus den Beziehungen zwischen Kelten und Germanen,' *Zur germanischen Stammeskunde: Aufsätze zum neuen Forschungsstand*, ed. Ernst Schwarz, Wege der Forschung 249 (Darmstadt, 1972), 104–22.

19 W. Junghans, *Histoire critique des règnes de Childeric et de Clovis*, trans. Gabriel Monod, Bibliothèque de l'École des Hautes Études 37 (Paris, 1879; first published, Göttingen, 1856), 63 n. 123, seems to have been the first to make this point.

to your ancestors by reigning in the world; for the sake of posterity, you make provision to reign in heaven.²⁰

The theme of the passage is a cliché of conversion: the duty due to one's ancestors versus the rejection of tradition required by genuine Christian conversion. This is not an issue unique to Clovis, according to Avitus, who begins by classing the dilemma as a problem faced by many converts ('Solent plerique . . . consuetudinem generis et ritum paternae observantiae obponere'). The traditions that hold back converts are *consuetudo generis*, *ritus paternae observantiae*, and *parentibus reverentia*. These broadly imply the pious obligation to follow the religion of one's ancestors, the faith of one's fathers, but also, more specifically, the religious duty to venerate one's ancestors. Clovis as a genuine convert, says Avitus, has recognized the need to reject traditional religious obligations of his past. Thus from the various elements constituting ancestral observance ('de toto . . . stemmate'), he retains only nobility.²¹ Clovis knows, according to Avitus, that by his conversion his own great deeds as a Christian king will discharge the obligation to achieve worldly renown owed his noble ancestors, while the same accomplishments will adorn the Christian lineage that will now stem from him, bringing to it the promise of salvation.

Avitus' terms have nothing to do with divine descent.²² Clovis' dilemma is a general phenomenon, and his rejection of the past follows the pattern of all genuine conversion. It may be even more surprising to note, as well, that the terms Avitus uses to describe the past really have nothing much to do with Germanic paganism at all. The language alludes to the hindrance caused by the moral imperatives of Roman paganism, resting originally on a foundation of public and domestic cult;

20 Epist. 46, *Opera quae supersunt*, ed. R. Peiper, MGH AA 6/2: 'Solent plerique in hac eadem causa, si pro expetenda sanitate credendi aut sacerdotum hortatu aut quorumcumque sodalium ad suggestionem moveantur, consuetudinem generis et ritum paternae observationis obponere; ita salutius nocenter verecundiam praeferentes, dum parentibus in incredulitatis custodia futilem reverentiam servant, confitentur, se quodammodo nescire, quid eligant. Discedat igitur ab hac excusatione post talis facti miraculum noxius pudor. Vos de toto priscae originis stemmate sola nobilitate contentus, quicquid omne potest fastigium generositatis ornare prosapiae vestrae a vobis voluistis exurgere. Habetis bonorum auctores, voluistis esse meliorum. Respondetis proavis, quod regnatis in saeculo; instituistis posteris, ut regnetis in caelo.' I have removed the editor's comma after 'ornare'; even if 'prosapiae vestrae' are datives, the meaning of the sentence is not substantially changed. The *miraculum* referred to is the conversion itself.

21 *Stemma* means garland, and, in particular, a garland hung on an ancestral image, hence genealogy, pedigree, nobility (Lewis and Short, s.v.). There seems to be a play on words with 'fastigium generositatis ornare prosapiae vestrae.'

22 Cf. the doubts by Marc Reydellet, *La royauté dans la littérature latine de Sidoine Apollinaire à Isidore de Séville*, Bibliothèque des Écoles Françaises d'Athènes et de Rome 243. (Rome, 1981), 106–7. Nikolaus Staubach, 'Germanisches Königtum und lateinisches Literatur vom fünften bis zum siebten Jahrhundert,' *Frühmittelalterliche Studien* 17 (1983): 29–31, draws a comparison with the language in Leo the Great's Christmas sermon, but his interpretation owes more to the terminological invention of Karl Hauck than to the Latin of Avitus. His reading of Avitus and Leo through Tacitus and Hauck seems rather odd.

the image evoked is that of the ancestral portraits of the senatorial nobility, hung with garlands.²³ The point of the cliché depends on the duty that ancient religion laid upon its adherents, especially the aristocracy, to venerate their ancestors and to continue the practices of traditional religion. The relevance such a sentiment had for Clovis' particular situation may be doubted. Avitus has used the motif to depict the passage of a great aristocrat from paganism to Christianity; he was not clothing some special knowledge about Clovis in antique garb.

The second text is Einhard's famous description of the last Merovingians, eclipsed by the mayors of the palace and travelling about placidly by ox-drawn wagon in their empty role as kings:

The wealth and power of the kingdom was held by the palace prefects, called mayors of the palace, to whom ultimate authority belonged. Nothing was left to the king but to sit on the throne, with his flowing hair and long beard, and pretend to rule, satisfied only with the royal name: he would receive ambassadors who came from all over and, when they departed, provide them as if on his own authority with replies that he had been directed or even commanded to give. And except for the empty title of king and the precarious living-allowance that the prefect of the palace at his discretion provided for him, he possessed nothing of his own but one estate – and even that produced a very small income. He obtained lodging there along with a small number of servants to tend to his needs and to provide him with service. Wherever he had to travel, he went by wagon, drawn by yoked oxen and driven by a teamster in country fashion. In this way he used to go to the palace, or to the public assembly of his people that convened every year for the sake of the well-being of the kingdom, and in this way he used to return home. The prefect of the palace took care of the administration of the kingdom and provided for the execution and planning of everything that had to be done inside the palace or out.²⁴

23 The *imagines* of ancestors were still a common sight in the late fifth century, to judge from Sidonius Apollinaris' letter to Eutropius ('qui cotidie trabeatis proavorum imaginibus ingeritur'), usually dated to around 467: Ep. 1.6, ed. W.B. Anderson, *Poems and Letters*, Loeb Classical Library (Cambridge, Mass., 1936) 1: 362.

24 'Nam et opes et potentia regni penes palatii praefectos, qui majores domus dicebantur, et ad quos summa imperii pertinebat, tenebantur. Neque regi aliud relinquebatur, quam ut regio tantum nomine contentus crine profuso, barba summissa, solio resideret ac speciem dominantis effingeret, legatos undecumque venientes audiret eisque abeuntibus responsa, quae erat edoctus vel etiam jussus, ex sua velut potestate redderet; cum praeter inutile regis nomen et praecarium vitae stipendium, quod ei praefectus aulae prout videbatur exhibebat, nihil aliud proprii possideret quam unam et eam praeparvi redditus villam, in qua domum et ex qua famulos sibi necessaria ministrantes atque obsequium exhibentes paucae numerositatis habebat. Quocumque eundum erat, carpento ibat, quod bubus junctis et bubulco rustico more agente trahebatur. Sic ad palatium, sic ad publicum populi sui conventum, qui annuatim ob regni utilitatem celebrabatur, ire, sic domum redire solebat. Ad regni administrationem et omnia quae vel domi vel foris agenda ac disponenda erant praefectus aulae procurabat.' *Vita Karoli Magni* I, ed. O. Holder-Egger, MGH SRG, 1911.

One would have thought that Henri Pirenne's discussion almost seventy years ago would have laid to rest this relic of nineteenth-century *Germanistik*.²⁵ But we are still solemnly assured that the ox cart of the Merovingians was no simple mode of transport, but a *Kultwagen*, re-enacting a ritual reminiscent of the yearly circuit of Nerthus, 'terra mater,' as described by Tacitus, and linked to fertility cults of the Vanir.²⁶ A few obvious observations show just how distant such an interpretation lies from the sense of Einhard's words.

Einhard does not tell us that the ox cart was traditional to the Merovingians, as is frequently alleged, but restricts his remarks to the last representatives of the house. In all of the sources of Merovingian history prior to Einhard, there is no reference to kings being conveyed in this manner. Nor does Einhard include the ox cart among the marks of Merovingian kingship – these he identifies with the Merovingian name, long hair, beard, and public role. He introduces travel by wagon to exemplify the reduced circumstances of the last Merovingians and their ludicrous position in the state; far from having ritual or kingly significance, travel by ox cart is associated with rusticity and poverty. The penury of the late Merovingians is, of course, completely relative, and Einhard's account, obviously tendentious, is unlikely to be free of exaggeration or misrepresentation. But it is difficult to see what purpose would be served in disguising pagan associations, and difficult to imagine who indeed in the ninth century would be in a position to recognize such a peculiar form of irony.²⁷

Wallace-Hadrill saw in Einhard's description a connection with late imperial governors doing their rounds using *angariae*, the heavy ox wagons of the imperial slow post, the *cursus clabularis*.²⁸ It is true that such wagons were used by the imperial post for conveying not only all kinds of freight, but occasionally personnel.²⁹ The problem with the evidence of the Roman post is that it does not

25 'Le Char à boeufs des derniers Mérovingiens: note sur un passage d'Einhard,' *Mélanges Paul Thomas* (Bruges, 1930), 555–60: 'La méprise est comparable à celle que commettra peut-être un érudit de l'avenir si, étudiant une caricature de Louis-Philippe, il s'avise de connaître le sceptre des Capétiens dans le parapluie du roi.'

26 Ewig, *Die Merowinger*, 78. Translations of Einhard rarely fail to make the connection with paganism.

27 'Einhard ironisiert offenbar ein Ritual, das zum heidnischen Königsmythos gehörte' (Ewig, *Die Merowinger*, 78). Many commentators seem to imagine that Einhard was unaware of the ritual significance of the ox transport; this hardly saves the situation and is an acknowledgment that there is no direct evidence of paganism in the passage at all.

28 J.M. Wallace-Hadrill, 'Gregory of Tours and Bede: Their Views on the Personal Qualities of Kings,' *Early Medieval History* (Oxford, 1975), 98. Despite adopting notions of sacral kingship in *Early Germanic Kingship in England and on the Continent* (Oxford, 1971), Wallace-Hadrill treated the principal sources for it with circumspection.

29 The best example is *Novella Majoriani* 7.1.13, a. 458 (in *Codex Theodosianus*, ed. Th. Mommsen = CT) where Majorian tried to limit governors to requisitioning only one heavy ox-wagon for themselves and one for their *officia*, along with four riding horses, as they moved from one *civitas* to another. Cf. also Ammianus Marcellinus 20. 4. 11 (heavy wagons put at the disposal of *familiae* of soldiers being reassigned); CT 8. 5. 11 (military units allotted two wagons for the sick); CT 8. 5. 66 (wagons

establish that high-ranking officials normally rode in ox carts, though it does show that such wagons accompanied their peregrinations, no doubt conveying baggage, and possibly providing comfort and shelter. The suggestion, nevertheless, does have the merit of stressing the point that ox-drawn vehicles *were* standard modes of transport – Einhard does not limit their use by the Merovingians to state occasions, as is often implied.³⁰ Despite his tone, ox wagons were not really a mode of transport to be despised; they moved at the rate an army could march, were no doubt the most spacious and comfortable vehicle available, and were particularly useful where the roads were bad.³¹

And, of course, references to ox-drawn vehicles in the *cursus publicus* are only a faint reflection of their widespread use in society as a whole. A good Merovingian example of the ox cart's role as a general mode of travel for the well-to-do is recorded in a famous sixth- or seventh-century donation in which a certain Erminthruide bequeathed 'the wagon in which I customarily ride, with oxen (*boves*) and furnishings (*lectaria*), along with all its harness (*stratura*).'³² Moderns might be less inclined to allege archaic, religious significance to explain their own puzzlement with Einhard's description, if, along with evidence like this, they remembered that even in quite recent times continents have been traversed expeditiously by the steady pull of ox teams. Still, despite its relative comfort and utility, the ox cart could hardly project the vigour or splendour expected of a Carolingian king. Though we have not yet reached the absurdity of *Le chevalier à la charette*, Einhard has seized on the ox cart as a symbol of ignoble weakness demonstrating his contention that the Merovingians had ended up as do-nothing kings turned minor gentry, peacefully navigating the tracks of country life.

II

Neither Avitus nor Einhard gives us grounds for believing in sacral kingship among the Merovingians; nor does either source substantiate the existence of alleged bull deities among the Franks. Interpretations of Merovech's conception cannot begin with dubious theories about archaic kingship or Germanic paganism. If notions of divine descent and bull cults are to be considered pertinent, they have to be sustained by the context of the story itself and, most importantly, must be shown to be the best categories available for interpreting the peculiarities of the tale. Closer examination shows there are other categories that better account for the distinctive

accompanying *duces* and their *officia*). See A.H.M. Jones, *The Later Roman Empire* (Oxford, 1964), 2: 830–4 and nn.

30 'Quocumque eundum erat, carpento ibat.'

31 K.D. White, *Greek and Roman Technology* (London, 1984), 127–40.

32 *Chartae Latinae Antiquiores XIV: France*, ed. Hartmut Atsma and Jean Vezin (Dietikon-Zurich, 1982), no. 592: 'basilicae s(an)c(t)i Sinfuriani . . . carruca in qua sedere consueui, cum boues et lectaria, cum omni stratura sua, pro deuocione mea . . . dari praecipio . . .' A second cart with oxen and harness goes to another church. Cf. also the death of Deuteria's daughter in Gregory, *Hist.* III 26.

features of Fredegar's portrayal of the encounter on the beach between Chlodio's wife and the beast from the sea.

The description of the conceiving of Merovech in Fredegar's *Chronicle* occurs in Book III, a condensation of Gregory of Tours' *Histories* into which Fredegar has inserted material of his own, much of it concerning the Trojan origin of the Franks. The passage in the *Histories* relevant to Fredegar's Merovech interpolation concerns Chlodio, the first king of the Franks, about whom Gregory knows very little; it ends with Gregory's comments regarding the uncertain relationship between Chlodio and Merovech. Then, calling attention to the paganism of the Franks at the time, Gregory enters into a long-winded refutation of pagan belief. In the corresponding passage, Fredegar follows Gregory's account of Chlodio, interpolating his own material on the connections among the early kings of the Franks; he retains Gregory's allusion to the paganism of the Franks, but leaves out the refutation of paganism and inserts his story of Merovech's birth.³³ In a process that often seems to reverse the relation of the epitomizer to his subject, many interpreters have been quick to suggest that Gregory must have known the Merovech story, suppressed it, and replaced it with a sermon on the falseness of paganism.³⁴ This view may be correct; it cannot be demonstrated or refuted. It is worth stressing that reading Gregory in this way does not require that the Merovech tale be associated with Germanic, pagan myth. As will be discussed below, Fredegar's story may be related to the revival of the name under Chilperic and succeeding kings. Gregory was a contemporary of this revival, and his comments on Merovech can better be read as commentary on current speculation about the founder of the dynasty than as a critique of oral tradition. Moreover, the distinction between Roman and Germanic paganism, though important to moderns, is not one he would have recognized as significant at all; if antique rhetorical motifs with pagan associations accompanied the revival of the name, he is not likely to have been pleased and would have regarded them as no less pagan and no less

33 In the phrase Gregory uses to introduce the his homily, 'haec generatio fanaticis semper cultibus visa est obsequium praebuisse (*Hist.* II 10), *generatio* is best taken to mean the Franks. The phrase is rendered in Fredegar's epitome as 'haec generacio fanaticis usibus culta est.' Ignoring Gregory's model, Wolfram (n. 1 above, Engl. trans., 209) translates Fredegar as follows: 'This race [the Merovingians] was celebrated in pagan feasts.' This translation will not withstand examination. Fredegar's words, as the assignment of fonts in Krusch's edition has long made clear, are an epitome of Gregory's not an independent interpolation. The *Mittelateinisches Wörterbuch* glosses *cultus* in the Fredegarian passage with *deditus-ergeben*, giving the verb an active meaning. In a Fredegarian context, there is no peculiarity here. A reversal of standard active and passive usage happens to be one of the occasional quirks of Fredegar's style. For example, immediately following 'culta est' with an active sense ('were devoted to'), Fredegar uses the passive form of the verb *concipio* ('fuisset concepta,' above at n. 4) to mean the king's wife 'conceived,' though standard usage would require an active form of the verb here as well. In this case, Wolfram translates the passive form in the active voice. Incidentally, had Fredegar taken *generatio* to mean family, the family in question would have been the *genus Priami*. [Fuller discussion below in ch. 2.]

34 Godefroid Kurth, *Histoire poétique des Mérovingiens* (Paris, 1893), 151–3; most recently Wood, *Frankish Kingdoms*, 37.

objectionable than any tale that might have descended from the salty shores of the Rhine mouth. In any case, there are no clear signs that Gregory was suppressing an indecent tale of sexual misadventure: his refutation of paganism cannot be tied to specific items of Frankish belief that he might have decided to challenge by means of a homily rather than include in his narrative; nor is there a clear connection in the refutation to material Fredegar associates with Merovech's birth. Gregory's refutation is composed of commonplaces from the Bible and general Christian critiques of paganism. We should proceed on the assumption that Fredegar is the epitomizer, adding fresh information, not restoring some original narrative that Gregory has deceptively distorted.

Nevertheless, the positioning of Fredegar's story next to Gregory's comment on the paganism of the period could be considered suggestive, and as such is the only real evidence that Fredegar thought he might be dealing in pagan myth. It is hardly conclusive. If Fredegar did associate the story with paganism, it is more likely to be the paganism of Greek and Roman history, fitting not only the internal references of his story, but also the Trojan origin of the Franks and their leading dynasty, descended, in Fredegar's view, from Priam. But whether Fredegar expected his story to be associated with paganism is, given his way of working, questionable. In Gregory's *Histories*, the reference to paganism is found following his discussion of the times of Chlodio and Merovech, and introduces a homily against paganism. In condensing his model, Fredegar may simply have included the reference, relevant enough to an early history of Franks, while rejecting the homily, which was not. Having finished excerpting Gregory's section on Chlodio and Merovech, he then added his own story about Merovech's birth, without intending this to be read as a gloss on Frankish paganism. No doubt, if he had included Gregory's reference to paganism in the times of Chlodio and Merovech only after his addition of Merovech's conception, moderns, given their interests, would still be inclined to read the two together. In condensing Gregory's text just as it lay to hand – which is Fredegar's method – the juxtaposition of Gregory's comment on paganism and the interpolation on the birth of Merovech was unavoidable.

Fredegar introduces his story about the conceiving of Merovech with the expression *fertur*, 'it is said.' This has often been taken as an unequivocal sign of a source in Germanic, oral tradition, and an argument for its subject-matter being pagan and mythical. This view of *fertur*, unfortunately, fails to take into consideration Fredegar's use of the expression. He uses it some thirteen other times.³⁵ Eight of the thirteen times are in Book IV, in reference to relatively recent events of Frankish, Gothic, or Byzantine provenance.³⁶ Of the five other references from the earlier books, one is to a geographical feature, that is, a current reference, though the setting is fifth century;³⁷ one pertains to the early Lombards in a context that many believe derives from ancient Lombard legend, though extracted by Fredegar

35 Analogous expressions, *ferunt*, *traditur* and the like, are not used.

36 Bk IV 38, 66, 67, 81, 82 (2X), 85, 87.

37 Bk II 60.

from a written source;³⁸ and one other concerns a reported vision drawn from the dialogues of Gregory the Great.³⁹ The two remaining instances concern the Trojan legend of Frankish origins, and pertain to Francio, Aeneas, and Frigas, ancestors of the Franks and Romans.⁴⁰ None of the usages conforms to the modern understanding of Frankish or Germanic oral tradition. *Fertur* cannot be tied exclusively to oral or written sources, and the common presumption that the phrase tags Germanic oral tradition is clearly wrong.

Fredegar tells us that from Merovech – Meroveus is simply the Latin contraction of the name – the Frankish kings derive their dynastic name of Merovingians (*Merohingii*). Godefroid Kurth some time ago clearly confronted the implications of Merovingian genealogy for theories of divine descent. Kurth held to the view that belief in the divine descent of kings was characteristic of primitive peoples, and that the Merovech story attested to such a belief among the Franks, but he also recognized the historical character of Merovech, the father of Childeric, and the shallow depth of the Merovingian genealogy above Clovis. He proposed, simply enough, that Merovingian kingship was of relatively recent vintage; the tale told by Fredegar was a late mythological tradition, fixed at an early stage in its development by the victory of Christianity.⁴¹

One of the peculiar features of recent arguments for divine descent is to spot in the Merovech story an unattested, mythical ancestor of the Merovingians, called Mero. This notion is not new, but goes back to the mid-nineteenth century and the views of Karl Müllenhoff, who hoped thereby to connect the dynastic name of the Merovingians with the Merwe, a river at the mouth of the Rhine.⁴² As the survival of this view cannot have anything to do with the merits of his argument, which has long been shown to be inadequate,⁴³ it is instructive to clarify the function the invention of Mero serves in modern sacral theory. Recent scholarship would find views like those of Kurth insufficient for establishing Frankish kingship as an archaic model of early rulership; the Merovingians, if they are to be portrayed as sacral kings, must trace their dynastic roots into the distant past of Frankish political and religious history. The complete lack of evidence for such an interpretation is an inconvenience that the putative Mero is designed to overcome. The antiquity of the Merovingian house, for example, cannot otherwise be demonstrated from

38 Bk III 65.

39 Bk II 59.

40 Bk II 5, 8; Hauck used *fertur*, his mark of Germanic oral tradition, to exclude any connection with Trojan tales (supposedly learned) and written sources ('Lebensnormen und Kultmythen,' 22). An express appeal to oral tradition is one of his four criteria for detecting Germanic myth, in the case of Merovech's birth hinging completely on *fertur*. According to Moisl, 'Kingship,' oral *Stammestradi-tion* is 'certified' by *fertur*.

41 Kurth, *Histoire poétique*, 147–59.

42 Karl Müllenhof, 'Die Merovingische Stammesage,' *Zeitschrift für deutsches Alterthum* 6 (1848): 431.

43 On the linguistic side, see below, n. 81. The derivation from the Merwe had already been suggested by Leo, but Müllenhoff provided linguistic arguments. The claim that, if Merovingian was derived from Merovech, we should expect *Merevechingi* was dealt with by Kurth in *Histoire poétique*, 155.

the names of Frankish leaders of the late Empire, despite the inclination to make the evidence carry burdens it cannot possibly bear.⁴⁴ Even Hauck's far-fetched theory of the (recurrent) *primus rex* and theriomorphic divination pertains to Chlodio, not Merovech, and reduces Merovech to an historical and mythological irrelevancy.⁴⁵ Whence came the Merovingian name and its distant, archaic sacral associations, then, if there was only Merovech and no Mero?

There is no Mero, of course, nor is there the slightest reason to suppose contamination in Fredegar's reference to Merovech and the descent of the Frankish kings. Gregory of Tours is the first source to mention Merovech.⁴⁶ He identifies him as a king and as the father of Childeric, but is uncertain of his relation to Chlodio; Clovis' victories seem to him, nevertheless, to confirm the lineage's connection to the first family of the Franks from which they chose their kings – an argument that clearly shows Gregory was not loath to connect Merovech to Chlodio, and would have done so if any evidence of kinship had been available. Gregory does not apply the term 'Merovingian' to the Frankish kings. It may seem surprising that the *gens Merovingorum* appears rather late in Frankish sources and is a rare occurrence, but there are few occasions in the sources we have that might call for a reference to the family name of the Frankish kings. Rarity does not call into question the term Merovingian or the descent of the Frankish kings from Merovech; it does make it difficult to determine when the dynastic name was adopted. Though Gregory does not use it, he was surely aware of the term, because he derives the descent of the present royal family from Merovech and is uncertain of the nature of the connections beyond him. The currency of the term is also suggested by the circumstance that, about the same time Gregory was writing, the name Merovech had been revived as a king's name in a fashion that speaks for its connection with the dynastic name of the royal house.⁴⁷

The first source we have that uses the term 'Merovingian' is not Fredegar, but Jonas of Bobbio, writing about 640: he uses it in the singular (*Mervengus*) and in a context that shows it was a term commonly understood for Frankish kings.⁴⁸ Next Fredegar uses it (*Merohingii*) around 660, and only once, in the story under consideration. Thereafter, we have to wait for eighth-century sources, especially the *Liber historiae Francorum*, where we are again told that the Frankish kings are called Merovingians (*Merovingi*), after Merovech.⁴⁹ Typically enough for the

44 Eugen Ewig, 'Die Namegebung bei den ältesten Frankenkönigen und im merovingischen Königshaus,' *Francia* 18. 1 (1991): 21–69. Germanic name-giving practices do not permit the reconstruction of lineage structures.

45 See above, at nn. 5–6.

46 *Hist.* II 9.

47 See below, p. 25.

48 *Vita Columbani*, I 28, ed. Bruno Krusch, MGH SRG: 'Quod et regi et omnibus circumadstantibus ridiculum excitat, aientes, se numquam audisse, Mervengum, in regno sublimatum, voluntarium clericum fuisse.'

49 *Liber Historiae Francorum* 5, ed. Bruno Krusch, MGH SRM 2 (1888): 'Ab ipso Merovecho rege utile reges Francorum Merovingi sunt appellati.'

period, the orthography of the name is erratic, but then it is equally erratic for the name Merovech itself, Fredegar alone, with the help of sundry scribes, giving us the variants Meroveus, Meroheus, Meroeus, Maeroeus, Maeroveus, and Merveus.⁵⁰ There is no reason to reject the testimony of the sources since they are consistent with a patronymic form derived from Merovechus/Meroveus. The Merovingians derived their name from Merovech, a historical king of the mid-fifth century, not a distant, mythical ancestor.

The most striking feature of Fredegar's account is his description of the encounter of Chlodio's wife with a sea beast and the conception of Merovech by either the beast or Chlodio. Fredegar connects the beast to Neptune and compares it with the Minotaur, *quinotaur* universally being taken to be an error on the part of a copyist or Fredegar. As we have seen, the Minotaur reference (along with the bull in Childeric's grave) has frequently led modern commentators to imagine a figure half man and half bull, representing a bull divinity, though no such creature from Frankish, or even Germanic, paganism appears to have any bearing on the story. As Neptune and the Minotaur are derived from classical traditions, Latin literature and Latin learning are areas that at least promise some help in defining Fredegar's frame of reference.

Latin literature had absorbed from Greek a series of tales, conceptualized as myths in modern scholarship, concerning the Cretan king Minos and his difficult relations with the god Neptune.⁵¹ In the common version of the story, Minos, himself the product of a union between Jupiter in the form of a bull and Europa in the form of a cow, prays to Neptune for a bull to sacrifice and is rewarded with a dazzlingly white bull that appears from the sea. But Minos fails to sacrifice the bull, offending Neptune, who causes Minos' wife, Pasiphaë, to fall in love with the bull. She has Daedalus construct a hollow form in the shape of a cow, inserts herself into it, and successfully mates with the bull. The union results in the birth of the Minotaur, Minos' bull, half man and half beast, which the king shuts up in the labyrinth. The story became a commonplace of Latin culture: Virgil alludes to it several times; Ovid treats it, along with other stories of river gods capable of metamorphosing into bulls; and Apuleius explores its pornographic possibilities in a contemporary setting.⁵² These literary appearances were just signs of a much wider popular currency for the story: minotaurs were among the images decorating the standards of Republican legions, and Nero had the mating of Pasiphaë and Neptune's bull re-enacted in the amphitheatre.⁵³ Characters in the story were

50 Fred. *Chron.* III 9, 11, 60, 74, 78.

51 For the early sources: Timothy Gantz, *Early Greek Myth: A Guide to Literary and Artistic Sources* (Baltimore and London, 1993), 259–70; for the late antique and early medieval tradition, see nn. 56–63, below.

52 Virgil, *Aeneid*, esp. VI 24–6; Ovid, *Metamorphoses* VIII (Minos); VIII 1090, IX (Achelous, the river god); Apuleius, *Metamorphoses* X 19–35.

53 Pliny, *Natural History* X 5 (16) (Minotaur standards). Suetonius, *Nero* XII; though the re-enactment was part of a *munus gladiatorium*, Suetonius introduces the section with the comment 'neminem occidit, ne noxiorum quidem.' There was a temple of Pasiphaë in Sparta.

also appropriated for genealogical speculation: Galba, when he became emperor, claimed descent from Jupiter on the paternal side and Pasiphaë on the maternal.⁵⁴ It is difficult to say if the popularity of the story ever really faded. Among historians, Orosius in the early fifth century accepted the Minotaur as a real character in the history of early Greece.⁵⁵ In the late fifth century, Sidonius Apollinaris regarded minotaurs as a type of beast that symbolized voraciousness, and the tale was obviously still current in the early sixth century, when Ennodius of Pavia, inspired by images on the tableware of an acquaintance, took up the subject in his epigrams.⁵⁶ In the early Middle Ages, its elements in one form or another continued to be an adjunct to the study of the literary and pseudo-historical monuments of antiquity. Their association with Virgil's *Aeneid*, if nothing else, guaranteed their survival, as did their inclusion in the mythographic tradition, which also dealt with the Trojan War and its aftermath.⁵⁷ The story of the Minotaur was, as a consequence, a small part of pseudo-historical material that someone interested in the Trojan background to European history was likely to meet with in some form. Latin literary tradition is, therefore, suggestive for understanding Fredegar's story, but the fit is rather imperfect: Neptune's bull is the bull that came from the sea, as presumably does Fredegar's beast; but, according to its name, the Minotaur is Minos' bull, the product of the union between the queen and the bull of Neptune, and it is kept in the labyrinth. Fredegar, it seems clear, is not recounting the Minotaur story as such – we can never be sure exactly how he understood it – but only drawing upon some of its elements by way of comparison: the association with Neptune and the resemblance to a bull-like creature.

Latin learning of the age casts a slightly different light on the Merovech story.⁵⁸ Two aspects seem particularly important. The first is the interest in strange beasts and monstrous births, natural phenomena often interpreted as portentous indicators of the future. A section on portents in the *Etymologiae* of Isidore of Seville (d. 636), for instance, considers the Minotaur twice: the first instance includes it among the serious categories of portentous creations as a special type with human and animal parts,⁵⁹ the second instance appears to be an attempt to rationalize the

54 Suetonius, *Galba* II. Minos is identified only as Pasiphaë's husband, not as progenitor. Who, then, was thought to be her mate?

55 *Historiae adversum paganos*, I 13.

56 Sidonius: Ep. 5.7.4, *Poems and Letters*, trans. W.B. Anderson, Loeb Classical Library (Cambridge, Mass.) 2: 190. Ennodius: *Magni Felicis Ennodi Opera*, nos. 133, 136, ed. Fridericus Vogel, MGH AA 7 (1885); the subject appears again (no. 232) alongside other epigrams (nos. 232, 232a) concerned with the sexual exploits of Jove pictured, once more, on dishes.

57 *Servii grammatici qui feruntur in Virgilio carmina commentarii*, VI 14, 24–6, ed. G Thilo and H. Hagen (Hildesheim, 1961), vol. 2. Hyginus, *Fabulae*, xl, xli, xlii, i.a., ed. H.I. Rose, 2d ed. (Leiden, 1963). Mythographus Vaticanus, I 43, 47, 120, 121, 126, and III 11.7; and compare I 94, 148: *Scriptores rerum mythicarum latini tres Romae nuper reperti*, Georg Heinrich Bode (Hildesheim, 1968; reprint of 1834 ed.).

58 Of the works cited below, only those of Isidore and Aldhelm can be dated with any precision.

59 *Etymologiae* XI iii 9, *Isidori Hispalensis episcopi etymologiarum sive originum libri XX*, ed. W.M. Lindsay (Oxford, 1911), 1: 'Alia [portenta], quae in parte transfigurantur, sicut qui leonis habent

Minotaur story itself, on the basis of a false etymology from *homo* and *taurus*.⁶⁰ The Minotaur appears as a real creature not only in Orosius, but also in the *Enigmata* of Aldhelm (d. 709), a collection of riddles about the natural world.⁶¹ The author of the *Liber monstrorum*, celebrated because he depicts the bones of Higlacus (the Hygelac of *Beowulf*) attracting tourists on an island at the mouth of the Rhine, includes among his human monsters the Minotaur, though with a certain hostility towards the veracity of the Greek tales with which it was associated.⁶² In the fabulous account of Aethicus Ister, minotaurs were depicted as a race of creatures, independent of the accidents of birth or Greek fables; near the Caspian gates, in a region associated with the exploits of Alexander, the author claims, young minotaurs were to be found that could be trained to war.⁶³

Although Fredegar made use of Isidore and Orosius, there is no question of any of the works mentioned above being linked directly to his account of Merovech's birth.⁶⁴ Yet they do tell us something about the Minotaur in the imagination of the early Middle Ages. The Minotaur remained an exotic beast through its connection with the world of the Greek gods, though these could be interpreted through Euhemerism, a process that brought them and their associations within the realm of historical speculation. In addition, the Minotaur could be conceptualized as a type of creature and an element in the category of the monstrous and portentous creations of nature. The Minotaur, or rather, we should say, creatures of that ilk, were potentially imaginable attendants on past events.

A second aspect of Latin learning fundamental to the Merovech story is etymology. Sometimes a playful or scurrilous source of amusement, etymology was also a serious category of explanation, with roots in biblical, classical, and patristic tradition.⁶⁵ The character of individuals, peoples or, indeed, almost any subject, could be explained through the name (*causa nominis*); for matters dealing with *origines*, *causa nominis* was an interpretative tool of the first order. *Origo* in fact

vultum vel canis, vel taurinum caput aut corpus, ut ex Pasiphaë memorant genitum Minotaurum; quod Graeci *heteromorphitan* vocant.'

60 *Ibid.*, 38: 'Minotaurum nomen sumpsisse ex tauro et homine, qualem bestiam fabulose in Labyrintho inclusam fuisse.' Only the inclusion of the creature in the labyrinth is being doubted here.

61 Orosius, as in n. 54. Aldhelm, *Engimata* XVIII, dependent, at least in part, on Isidore. *Aldhelmi Opera*, ed. R. Ehwald, MGH AA XV; English translation: Aldhelm, *The Poetic Works*, trans. Michael Lapidge and James L. Rosier (Cambridge, 1985), 75.

62 Bk. I 2 (Higlacus); I 50 (Minotaurus): *Liber Monstrorum: Introduzione, edizione, versione e commento*, ed. Franco Porsia (Bari, 1976). An English translation can now be found in Andy Orchard, *Pride and Prodigies: Studies in the Monsters of the Beowulf-Manuscript* (Cambridge, 1995).

63 *Cosmographia* VII 68: *Die Kosmographie des Aethicus*, ed. Otto Prinz (Munich, 1993).

64 There is a faint echo in an addition to Servius' commentary on the *Aeneid* VI 14 ('vaccam ligneam . . . quam maxime taurus adpetebat'), but not enough to preclude coincidence.

65 Ernst Robert Curtius, *European Literature and the Latin Middle Ages*, trans. Willard R. Trask (New York, 1953), Appendix XIV, 495–500. Separating the playful and the serious is difficult: Matthew 16:18 is good case in point. See also Isidore's own description of etymology, *Etymologiae* I xxix: 'Omnis enim rei inspectio etymologia cognita planior est.'

came to mean not only 'origin' in its usual senses of beginning, birth or descent, but also 'etymology' itself.

The most influential early medieval proponent of etymology as a road to understanding was Isidore of Seville in his *Etymologiae*. By no means all Isidore's etymologies are negligible, but the desire to provide a *causa nominis* at any cost is particularly noticeable in his treatment of the names of peoples in Book IX, which also conveys something of the method of seventh-century etymological explanation.⁶⁶ Some names are derived rather unexcitingly from topographical features, especially rivers. Many are derived from royal or princely founders, occasionally recognized as the offspring of gods.⁶⁷ The method here typically proceeds in a direction completely opposite to that of the explanation, the founder's name in reality being fashioned in retrospect from the name of the people; for example, Isidore tells us that the Franks were named after a *dux* of theirs, obviously the Francio of Fredegar's *Chronicle*.⁶⁸ Many other explanations attempt to link names to cultural characteristics. Some people suspect, we are told, that the Britons are called that in Latin because they are stupid (*bruti*); the Gepids (*Gipedes*) derive their name from their preference for foot combat (*pedestre proelium*), the Sarmatians (*Sarmatae*) from their enthusiasm for war (*studium armorum*).⁶⁹ Physical characteristics are invoked as well: the *Germani* are so called because of their hugeness – in the size of their bodies and in the numbers making up the various peoples (*inmania corpora inmanesque nationes*); the Gauls get their name from the whiteness of their bodies, for milk, in Greek, is called *gála*.⁷⁰ Isidore recognizes the role of languages other than Latin and Greek, though he was rarely in a position to make use of them.⁷¹ In his etymology of the Britons, for instance, he seems to recognize the existence of a non-Latin derivation, and he mistakenly believes that the name of the Scotti in their own language is derived from the practice of tattooing;⁷² one of his etymologies for the name Franks may be based on a Frankish word.⁷³

66 For a French translation and commentary, *Étymologies: Livre IX*, ed. Marc Reydellet (Paris, 1984).

67 E.g. the Dorians, from Dorus son of Neptune and Ellepsis: *Etymologiae* IX ii 80, but cf. Reydellet, *Étymologies*, 83.

68 'Franci a quodam proprio duce vocari putantur.' *Etymologiae* IX ii 101.

69 *Ibid.*, 102, 92, 93.

70 *Ibid.*, 97, 104.

71 Except for Hebrew in biblically based etymologies; cf. *ibid.*, I xix: 'Multa [vocalia] etiam e diversarum gentium sermone vocantur. Unde et origo eorum vix cernitur. Sunt enim pleraque barbara nomina et incognita Latinis et Graecis.'

72 *Ibid.*, IX ii 103. There is a confusion here with the Picti, but whether as a result of a false etymology yet again is another story.

73 Or not. 'Alii [cf. n. 65] eos a feritate morum nuncupatos existimant' (*ibid.*, 101). *Feritas* is often taken in modern scholarship to be a Frankish word related to ON *frekkir*. Isidore's readership, at any rate, is likely to have been satisfied with the Latin etymology from *feritas*; it is no worse than many others. Cf. the derivation of the Thracians from *trux* (*ibid.*, 82). Isidore is not alone, incidentally, in giving more than one explanation. Readers could pick what pleased them: 'Hic quoque mensis habet dubias in nomine causas: quae placeant, positus omnibus, ipse leges' (Ovid, *Fasti* VI 1–2).

Ancient and early medieval etymological speculation, needless to say, was not based upon scientific linguistics. Casual and even remote resemblances between words and word elements were sufficient to establish explanatory connections. Derivations could come from Latin, Greek, and other languages, though sometimes without much discrimination. As far as the present subject is concerned, this kind of etymology is important because, when its presuppositions and methodology are taken into account, the prospect that the Merovech story was tied to contemporary etymological theory becomes an attractive possibility. The tale seems designed to clarify the derivation of the name Merovingian from Merovech ('per co regis Francorum post vocantur Merohingii'). Viewed in this light, the conceiving of Merovech would be an *origo* – not in Hauck's sense, as a type of authentic myth of primitive origins, but in the contemporary sense of a *causa nominis*, an explanatory tale cast in the mode of sixth- or seventh-century etymological speculation. How is the story related to the etymology of Merovech?

For some time modern philology has pursued the etymology of Merovech in its own way. Though it is armed with the achievements of scientific linguistics, its goals have often been very similar to those of its ancient and medieval predecessors: to explain origins by etymology, to find in the name a key to original circumstances and conditions. Thus, Müllenhoff some time ago proposed that behind Merovech stood a god, Merwe, the name for an arm of the sea at the mouth of the Scheldt. More recent philology, starting with a completely different etymology for Merovech, has been enlisted, not very successfully, to aid the current claims for bull-worshipping Franks.⁷⁴ These modern efforts have been hampered, however, by the nineteenth-century association of philology, mythology, and history of religion, and by the conviction that the correct etymology of Merovech, if only it could be determined, would unlock some of the religious secrets of Frankish paganism.

Earlier generations, untutored by modern philology and unfamiliar with the concerns of comparative religion, saw more clearly the role of unscientific, contemporary etymology in the story of Merovech's conception. Johannes Georg von Eckhart, in the early eighteenth century, for example, proposed simply that the story derived from Meroveus' name. *Mer* signified *mare*, sea; *veus*, the equivalent of a German *veh* or *vieh*, meant beast (*bestia*). The elements of the name Meroveus together were thus the equivalents of *animal marinum* or *bestia Neptuni*.⁷⁵

74 Franz Rolf Schröder, 'Merowech,' *Beiträge zur Geschichte der deutschen Sprache und Literatur* 96 (1974): 241–5, deriving the first element, Mero, from a word meaning 'ruminant.' In Gregory's story of Ragnachar and Farro (*Hist.* II 42), Wenskus ('Bemerkungen zum Thunginus,' 236) claims to find the meaning 'bull' in the latter's name, and confirmation of sexual rituals connected with Frankish kingship. The story actually depends on a pun between Farro and *fara*, Ragnachar's retinue: A.C. Murray, *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Early Middle Ages* (Toronto, 1983), 93–4.

75 *Commentarii de rebus Franciae Orientalis* (Würzburg, 1729), I: 29; quoted in Kurth, *Histoire poétique*, 153 n, and cf. p. 9. His interpretation of the story as an allegory, with Meroveus as Chlodio's stepson by a previous marriage, is not likely to find a sympathetic modern reading.

Such an interpretation still needed to be seriously addressed by nineteenth-century scholarship. Waitz considered an etymologizing explanation a possibility.⁷⁶ Müllenhoff argued, to the contrary, that the Frankish word for 'sea' was *mari*, and that a vowel change of the 'a' to 'e' was improbable in the fifth and sixth centuries.⁷⁷ But this kind of argument is to miss the point that the only linguistic criterion for association was similitude.⁷⁸ The first element of Merovech could readily be interpreted as Frankish for 'sea' by Frankish, Latin, Burgundian, or even Gothic speakers; sound and appearance were close enough to satisfy the not very exacting standards of sixth- or seventh-century etymologizers. We have already seen the variations that orthography could produce.⁷⁹ The same considerations apply to the second element, *vechus/veus*, which readily suggests common Germanic words for cattle (from a Germanic **fehu*). Kurth acknowledged, but rejected, an etymologizing interpretation because, he argued, fifth-century Franks would not have had a scholar capable of undertaking the task.⁸⁰ Again, this poorly represents the implications of an etymologizing interpretation. An etymological fable built upon Merovech's name would hardly have been a product of the fifth century in the first place; the sixth and seventh, on the other hand, would have been rife with scholars, and possibly wags, of varying ethnicities, happy to apply the etymological arts to a distant, poorly attested, king of the Franks.

The possibility of an etymologizing tale was increasingly passed over as scholarship vainly pursued its goal of determining the true etymology and its connection to primitive myth.⁸¹ While nineteenth-century scholarship grudgingly acknowledged a contemporary etymologizing interpretation, we should recognize that the rejection of it was largely due to commitment in the scholarly discourse of the day to thoroughly different modes of explanation, focused on mythology and the oral transmission of primitive religious notions.⁸² These modes are still very

76 Georg Waitz, *Deutsche Verfassungsgeschichte* (Kiel, 1847), 2: 37. Scheibelreiter (as in n. 6) accepts the likelihood that the '(Burgondo-) Roman' Fredegar saw the etymology 'sea' in Merovech's name, but in doing so confounded genuine Frankish tradition.

77 'Die Merovingische Stammesage,' 431. Müllenhoffs argument is made again by Otto Höfler (as in n. 6). But cf. Ewig's argument ('Die Namengbung,' 29) that the name of Maroveus, bishop of Poitiers, is actually the royal name Meroveus, and presupposes kinship with the royal house. One awaits explanation for the wool-worker's daughter Merofled.

78 See Isidore on the Goths: 'Goti a Magog filio Iafeth nominati putantur de similitudine ultimae silibae' (*Etymologiae* IX ii 89). Similitude served etymologizers well for the next millennium.

79 Above, at n. 50.

80 *Histoire poétique*, 154: the next argument, one suspects, is the real reason for his rejection: 'et la légende a un caractère trop archaïque pour cela.'

81 The failure is clear from the handbooks and the reviews of literature: M. Schönfeld, *Wörterbuch der Altgermanischen Personen- und Völkernamen nach der Überlieferung des klassischen Altertums*, 2d ed. (Heidelberg, 1965; first published 1911), s. vv. Chlodavichus, Merobaudes, Meroveus; Franz Jostes, *Sonnenwende: Forschungen zur germanischen Religions- und Sagen Geschichte* (Munster, 1926), 1: 199–200; Franz Rolf Schröder, 'Merowech,' 242 f.

82 Not endorsed everywhere, of course; see, for example, Henry Bosley Woolf, *The Old Germanic Principles of Name-Giving* (Baltimore, 1939), 179–80, who in passing explains the story of Merovech's birth as 'the result, doubtless, of an attempt to explain the meaning of the name.'

much in evidence in recent scholarship, where, adapted to current theories about the social and political constructs of Germanic society, they have acquired a new lease on life.

Etymologizing is common in Fredegar's *Chronicle*. We are told, for example, that the Franks were called after Francio, the Turks after Torquatus or Turcoth, the Latins after Latinus, and that Friga ruled over Phrygia.⁸³ Etymologizing can also involve brief narrative explanations. Following Orosius, Fredegar derives the name of the Burgundians, for example, from their establishment of fortresses (*burgi*) on the Rhine.⁸⁴ The town of Daras is built on the spot where the Emperor Justinian supposedly told the Persian emperor, 'You shall give back' the towns and provinces of the Roman Empire.⁸⁵ The account of the relation between the Avar and Slav battlelines is based on a false explanation of the term *befulci*.⁸⁶ The early Franks are said to have built a city named after Troy (Xanten, that is, Colonia Traiana?);⁸⁷ indeed, the legend of the Trojan origin of the Franks probably depended on a series of false linguistic associations. A good example of etymologizing word play is a fable of the stag and lion: the emperor Leo is represented by, naturally, the lion.⁸⁸ To this list should be added Fredegar's account of the conception of Merovech and the derivation of the Merovingian name.

III

The argument presented here is that Merovech's name would have easily lent itself to being interpreted as *Neptuni bestia*, Neptune's beast, or, more specifically, Neptune's bull. The story connected with the name was thus intended to answer the common query *cur et unde*: How did this name first arise?⁸⁹ If a typical line

83 Fred. *Chron.* II 5; II 6; III 2; II 9.

84 *Ibid.*, II 46.

85 *Ibid.*, II 62, and see notes by Krusch in his edition of Fredegar; Kusternig, 'Fredegar' (as in note 3); and comments by Wallace-Hadrill, *Long-Haired Kings*, 91.

86 Fred. *Chron.* IV 48, and see the notes by Krusch, Kusternig, and Wallace-Hadrill. Krusch suggested *vexilla for vestila* in the phrase 'vestila priliae facientes.' *Tela* seems to me more likely; cf. 'telam priliae . . . preparatam' (IV 64) and 'tela priliae construens' (IV 90).

87 Fred. *Chron.* III 2.

88 *Ibid.*, II 57.

89 A good example appears in Suetonius' report of etymological speculation surrounding the name Galba: 'Qui primus Sulpiciorum cognomen Galbae tulit cur aut unde traxerit, ambigitur. Quidam putant, quod oppidum Hispaniae frustra diu oppugnatum inlitis demum galbano facibus succenderit; alii, quod in diuturna valitudine galbeo, id est remediis lana involutis, assidue uteretur; nonnulli, quod praepinguis fuerit visus, quem galbam Galli vocent; vel contra, quod tam exilis, quam sunt animalia quae in aesculis nascuntur appellanturque galbae.' (It is uncertain why the first of the Sulpicii who bore the surname Galba assumed the name, and whence it was derived. Some think that it was because after having for a long time unsuccessfully besieged a town in Spain, he at last set fire to it by torches smeared with *galbanum*; others because during a long illness he made constant use of *galbeum*, that is to say remedies wrapped in wool; still others, because he was a very fat man, such as the Gauls term *galba*, or because he was, on the contrary, as slender as the

of reasoning was followed closely connected with explaining the name elements (*causa nominis*), the name Merovech would have suggested that the first king bearing it must have been the product of a brutish coupling of his mother with a bull of Neptune. The best-known creatures of this kind were the beasts associated with Neptune in stories concerning Pasiphaë and the Minotaur, which has accordingly been invoked by way of analogy. We ourselves also need to ask *cur et unde* with respect to the etymology itself and the character of the tale accompanying it. The following discussion considers whether it is possible to locate the circumstances behind the etymological invention. If the investigation reveals a veritable *embarras de richesse*, and thus a definite context remains elusive, the effort to find it shows how readily an etymologizing explanation fits the content of the tale and conditions of the sixth- and seventh-century Merovingian kingdom.

The frequency of the name Merovech in the Merovingian house could suggest a context for the origin of the story. Scholars have long noted that the name was revived for the first time under Chilperic and enjoyed a short-lived popularity as a king's name until the early seventh century. To his children by Audovera, Chilperic gave names meant to recall the founders of the dynasty: Merovech and Clovis, to two of his sons; and Basina, the name of Childeric's queen, to a daughter. The Merovech in question never outlived his father, being killed in 577 after an ill-considered marriage to Sigibert's widow, Brunhild.⁹⁰ Clothar II, another son of Chilperic, and his successor, used 'Merovech' again for his own first-born son, who died in some way as a result of his defeat and subsequent captivity at the hands of Theuderic II in 604.⁹¹ A short time later, the Austrasian and Burgundian houses adopted the name: first, Theuderic II in 607 named his fourth-born son Merovech, and arranged for the child to have Clothar II as his godfather;⁹² and Theudebert II had a son Merovech who was still a child in 613.⁹³ Both Merovechs fell victim to the troubles of that year: according to Fredegar, Theudebert's son was picked up by the foot and his head smashed against a rock at the command of his victorious uncle; Theuderic's son had his life spared by his godfather, Clothar II, after the latter's victory, and was removed from political life, though he lived for many years after.⁹⁴ The name was never used again in the Merovingian house. If the revival of the name Merovech by Chilperic after four generations suggests an occasion for the etymologizing story, still more fundamental – no matter when the tale might have arisen – is the question of the purpose of the story. This inquiry takes us in two main directions.

insects called *galbae*, which breed in oak trees): *Galba* III, trans. J.C. Rolfe, Loeb Classical Library (Cambridge, Mass., and London, 1914).

90 Gregory, *Hist.* IV 28; V 2, 18.

91 Fred. *Chron.* IV 25, 26.

92 An arrangement surely meant to offset the death of Clothar's Merovech.

93 Fred. *Chron.* IV 29, 38.

94 *Ibid.*, IV 38, 40, 42.

In the first, the story might be understood to be favourable to the Merovingians and a product of the court or its supporters. Eugen Ewig has argued that in Chilperic's name-giving there is an initiative on the king's part to emphasize the mythic implications of the dynasty's origins, such implications being, in Ewig's view, the pagan, Germanic, and sacral traditions associated with the Merovingian house.⁹⁵ Chilperic is the best candidate for the type of ruler who may have been inclined to associate remarkable circumstances with the foundation of his dynasty, but the character of his antiquarianism points to the contemporary world of Latin letters grounded in ecclesiastical and secular models of antiquity. Poet, reformer of the alphabet, composer of hymns, and dabbler in theological questions, Chilperic is the one Merovingian with a claim to learning; his efforts to refurbish the amphitheatres in Paris and Soissons in order to provide their citizens with shows (*spectaculum*) is a testament to the depth of his desire to imitate the ancient secular traditions of Roman rulership.⁹⁶ The 'mythic' and 'sacral' elements we know to have been available to him or any other Merovingian ruler of Gaul in the sixth century were not Germanic, but antique, and pagan only in the unreal and conventionalized form of late Roman rhetoric. Viewed from this perspective, the type of antiquarian associations that could be expected can be seen in the panegyric for the emperor Anthemius delivered by Sidonius Apollinaris in 468, a year before he became bishop of Clermont. Sidonius, whose name evoked respect in the sixth century, develops the antique theme of the sympathetic fecundity of nature that accompanies the hero's birth (in this instance, Anthemius), but also the miraculous intervention of the gods; in the latter case, Sidonius not surprisingly reserves his more remarkable illustrations for long-dead heroes. Thus, he invokes the cases of Alexander the Great and Augustus, the mother of each of whom was considered to have conceived by a serpent god, representing Apollo and Jove, respectively.⁹⁷ As Merovech's name suggests a related, remote fiction, Fredegar's story could originally have been presented in a similar setting, and found a sympathetic Merovingian audience pleased to hear that the founding of its own house was comparable to the allegedly wondrous conceptions of the great historical figures Alexander and Augustus.⁹⁸

Especially if the Merovech story is a relatively late invention, then a slightly different perspective on this imaginary setting is possible. By Fredegar's time at least, the Macedonians, Romans, and Franks were all deemed to be descendants of the Trojans.⁹⁹ To someone learned in the rhetorical and pseudo-historical tradition of antiquity, a pleasing fiction, according to which the founder of the Merovingian

95 Ewig, 'Die Namengebung bei den ältesten Frankenkönigen,' 33, 43.

96 Gregory, *Hist.* V 17, V 44, VI 46, and James, *Franks*, 165–8.

97 *Carmina* 2. 94–133, ed. W.B. Anderson, 1: 15–19, esp. 'venisse beatos / sic loquitur natura deos . . . / magnus Alexander nec non Augustus habentur / concepti serpente deo Phoebumque Iovemque / divisere sibi . . .' The stories are told more fully in Plutarch, *Alexander* 2, 3, and Suetonius, *Augustus* 94.

98 Cf. Fred. *Chron.* II 4, 8, 27, 28, 33.

99 *Ibid.*, II 4, 6, 8.

house was conceived by a creature of Neptune, might be thought to complete a series of triads: the three great peoples of Trojan descent (Macedonians, Romans, and Franks); the wondrous conception of three distant heroes (Alexander, Augustus, and Merovech); and their descent from the three principal gods of antiquity (Apollo, Jove, and Neptune). Such a simulated antique fantasy might have been a pleasing diversion, but to maintain that one like it was ever created and left its mark on Fredegar's *Chronicle* exceeds the evidence available to us.

In more general terms, the antique portrayal of the births of Alexander and Augustus has a bearing on the ambiguous description of Merovech's conception. In Fredegar's story the king is said to have been conceived 'aut a bestia aut a viro.' Hauck saw temporary divinization in this phrase, interpreting it in a possible, if unusual, manner ('by both the beast and the husband'). The standard meaning ('by either the beast or the husband') has, with somewhat more reason, suggested to others the effect of a bowdlerizing Christian interpretation of a real animistic Germanic myth in which, originally, only a divine beast was believed to have engendered the king. It might have been noticed above that, in Sidonius' reference to the births of Alexander and Augustus, the soon-to-be bishop chooses his words with care: their conceptions, he says, are regarded as supernatural, but he does not affirm that they were. We should avoid the temptation simply to see Christian sensibilities at work here: neither Fredegar nor Sidonius was altering traditional material owing to his Christian beliefs. Ancient historiography shows the same reticence. Though the births of Alexander and Augustus are surrounded with portents and omens, conception is not presented unequivocally as divine. Plutarch on Alexander and Suetonius on Augustus present the supernatural origins of their subjects as versions for readers to consider; while detailing the mysterious and intimate relations between the mothers and creatures sacred to the gods, as recounted by other sources, they avoid committing themselves to the view that such relations demonstrate sexual intercourse and divine impregnation, though readers were free to draw more definite conclusions.¹⁰⁰ Ambiguity is a motif in the conception stories of classical heroes. The account of Merovech's conception follows the same pattern even in its very restricted compass, presenting the possibility that either the beast or Chlodio engendered the king. The motif, it seems likely, was present in Fredegar's source.

The model of the antique hero presents its subject in a laudatory fashion. Another line of inquiry takes a different direction, starting from the premise that Fredegar's story is unfavourable to the Merovingians.¹⁰¹ Byzantine parallels are helpful in showing how hatred generated by contemporary political life could be expressed in defamatory tales that might seem suggestive for understanding the treatment of Merovech as founder of the Merovingian house. In the *Secret*

100 Plutarch, *Alexander* II, III and Suetonius, *Augustus* XCIV.

101 Cf. Kusternig, 'Fredegar,' 12, 89, who regards the Merovech and Basina stories (III 12, and below, at nn. 108–111) as anti-Merovingian; he seems hesitant to reject fully the interpretation of the former as myth.

History, a catalogue of seething invective against Justinian and Theodora (among others), Procopius attributes the emperor's conception – by the admission of Justinian's own mother – to intercourse with a demon. Anxious to prove that Justinian himself, as a consequence, was a demon, he alleges eyewitness accounts of the emperor's appearance undergoing grotesque, supernatural changes late at night in the palace. Theodora, too, Procopius tells us, was a consort of demons even before her union with Justinian; former lovers were sure they had been driven from her presence by a demon desiring to spend the night with her.¹⁰² A society that readily saw the divine at work in the fortunate outcome of human affairs was also inclined to perceive the demonic behind life's reverses and failures. In the *Secret History*, the natural marriage of the demonic and the pornographic, prevalent in contemporary thought, found a congenial home in invective. Though it would hardly be surprising if those suffering at the hands of the Merovingians or critical of their rule were tempted to find in the name of the dynasty's founder demonstration of the fiendish, unnatural origins of the regime, Fredegar's account, as brief as it is, on balance weighs against reading its elements as pornographic and demonic. The ambivalent treatment of the impregnation of Merovech's mother, as discussed above, points rather to a heroic model for the tale.¹⁰³ Invective, as Procopius' unconstrained remarks show, does not equivocate.

The insertion of the story in Fredegar's *Chronicle* itself also requires another approach to interpreting the story's contents: does the point of view of Fredegar's work as a whole imply a purpose for the interpolation? We have to consider the possibility of two contexts for the Merovech story, each one distinct from the other: the original context for which the tale was first invented, and a later adaptation of the tale by Fredegar and his use of it in the *Chronicle*. Since the recognition of the *Chronicle* as the work of one author, conventionally called Fredegar, we are in a better position to consider the second context, but our understanding of Fredegar as an author is still undeveloped. In particular, his approach to sources and his method of condensing, paraphrasing, and interpolating in the first three books are in need of more consideration from the perspective of the work as a whole than they have received to date. What are offered here are brief and tentative observations.

To begin with, the elements of the Merovech story, it should be observed, echo other interests of Fredegar. For instance, references to animals abound in the *Chronicle*, almost always used as fables, prodigies, and didactic analogies.¹⁰⁴ The

102 *SH* 12; and see Averil Cameron, *Procopius and the Sixth Century* (Berkeley and Los Angeles, 1985), 49–66.

103 Anti-Merovingians familiar with Fredegar's story might have found confirmation of their views in Aulus Gellius' comment: 'poetae . . . ferocissimos et inmanes et alienos ab omni humanitate, tamquam e mari genitos, Neptuni filios dixerunt.' The comparison is with the *praestantissimi virtute filii Iovis*. *NA* XV xxi.

104 Fred. *Chron.* II 57 (horses in the false dream of Lilia; fable of the lion and the stag); II 60 (wild-animal guide and the invasion of Africa); II 62 (eagle and Justinian); III 12 (various *bestiae* in Childeric's visions); IV 38 (fable of the wolf and its cubs); IV 68 (Wends as the dogs of God).

portentous character of some of these references is part of a broader category of Fredegarian interests concerned with monitory and prophetic signs. He employs the standard litany of these topoi, derived from classical and biblical traditions and part of the intellectual climate of the day: dreams, prophecies – Sybilline, supposedly, and contemporary – and portents drawn from the celestial, natural, and animal worlds.¹⁰⁵ It is worth considering, therefore, whether the Minotaur-like sea beast in the Merovech story was supposed to be seen as part of this category of interpretation.¹⁰⁶ Isidore had classified creatures resembling the Minotaur among portents established for future significations, just like the dreams and oracles by which God forewarned individuals and peoples of future misfortune (*clades*).¹⁰⁷

The *Neptuni bestia* of the Merovech story also recalls the most famous oracular presentation of Fredegar's *Chronicle*: the visions (*visiones*) of Merovech's son, Childeric.¹⁰⁸ On his wedding night, Childeric is instructed by his bride, Basina, to go outside the palace and report to her what he sees. He does so three times, and each time sees beasts in the likeness of various kinds of animals. The first time, the creatures appear as lions, unicorns, and leopards; the second time, they appear in the likeness of bears and wolves; the third time, they appear as dogs and lesser creatures, dragging one another down and tumbling about.¹⁰⁹ Basina explains the significance of each vision by relating it to the history of the Merovingian house: the lion stands for the son soon to be born (Clovis), the unicorns and leopards for his sons; the bears and wolves represent the kings that come after; the dogs stand for those who will rule when the kingdom falls apart; and the lesser creatures, the people at the time who will rend one another without the fear of princes. It has long been recognized that this story rests on knowledge of the four beasts (*bestiae*) in the Book of Daniel (c. 7) – the lioness, bear, leopard, and the final *bestia terribilis* with ten horns – representing the four *regna*, the great empires of antiquity. In Fredegar, the elements of Daniel's *visio* are handled very freely, however, and harmonized with the particular conditions of the Merovingian kingdom.¹¹⁰ The freedom with which the biblical material is recycled – it serves less as a model than as a stimulus for a good, and pointed, story – should warn us against assuming that the original perspective of a source was transferred when its elements were

105 Dreams (II 57, III 12); prophecies and signs (II 56, 60, 62; III 58, 59, 71; IV 11, 13, 15, 18, 20, 32, 36, 56, 65).

106 That the animal (*fera*) that Fredegar very self-consciously has accompany the Vandal crossing to Africa (*Chron.* II 60) was supposed to be a sea beast is doubtful.

107 *Etymologiae* XI iii 4: 'Quaedam autem portentorum creationes in significationibus futuris constituta videntur. Vult enim deus interdum ventura significare per aliqua nascentium noxia, sicut et per somnos et per oracula, qua praemoneat et significet quibusdam vel gentibus hominibus futuram cladem.'

108 Fred. *Chron.* III 12.

109 The concept here seems to be related to the 'bestias . . . nocturnas, et non tam bestias quam dira prodigia, quod nequequam in luce sed in umbris cernuntur nocturnis,' of the *Liber Monstrorum*, II 20, though the fit is not quite perfect.

110 See Krusch's note to Fred. *Chron.* III 12.

adapted to new conditions or inserted in the *Chronicle*. Moreover, how much, if any, of the story should be attributed to Fredegar himself is a question, for the sequence of generations, as usually interpreted, seems to point to a period of composition early in the seventh century or before. Yet, Childeric's visions give us reason to wonder if Fredegar should be regarded as a particular friend of the Merovingians.¹¹¹

The relation of Childeric's dream to the Book of Daniel draws us back again to the etymological interpretation of the name Merovech. Daniel's vision brings the beasts from the sea: 'Et quattuor bestiae grandes ascendebant de mari.' Fredegar elsewhere displays interest in the prophecies of Daniel.¹¹² It is therefore difficult to imagine that the author who inserted both the visions of Childeric and the Merovech story in his *Chronicle* almost side by side did so without noticing reminiscence of Daniel's beasts, but, if so, how he understood the conjunction is quite another question. Did Fredegar harbour the notion that the Merovingian dynasty may have had its origins in an unwholesome event of portentous significance, denoting the temporary success of dynasties? There must surely have been those in Gaul who viewed the Merovingians by the mid-seventh century as a dismal interlude in the long history of the Franks going back to the days of Priam. Or did the sea beast of the Merovingians simply signify the new kingdom arising in Gaul under the hegemony of the Franks and their royal family? By identifying the fourth *regnum* of Daniel as Rome, Orosius, an author known to Fredegar, had already altered the original assignment of the kingdoms and rendered innocuous the apocalyptic significance.¹¹³ A *bestia Neptuni* may have seemed a suitable sign marking the rise of the kingdom of the Franks, like that of the Macedonians and the Romans, the creation of Trojan exiles.

To sum up: Sacral kingship among the Franks is a hypothetical construct of modern historiography founded on the exegesis of nineteenth-century *Germanistik* as adapted to recent theories about the nature of early Germanic society. No source gives unequivocal testimony to the existence of such an institution. The centre-piece of the evidence, the story of Merovech's conception in the seventh-century *Chronicle* of Fredegar, has commonly been interpreted as an archaic myth underpinning the sacral ideology of Merovingian kingship. The common assumption that only archaic myth could produce the peculiar features of the Merovech story is clearly mistaken, if the historical setting and the literary and intellectual context of the tale are examined. The story is better understood as an etymologizing fable conforming to sixth- and seventh-century interest in *origines*. By the mid-sixth century, the figure of the ancestral Merovech, about whom nothing very definite was known, was distant enough to lend his name to speculation on the origins of the royal house. Etymological examination, a primary tool in

111 Cf. n. 108, above.

112 Chron. II 27: the context is the capture of Jerusalem (Dan. 9).

113 *Hist.* II 1. On Orosius' treatment of the *regna*, see edition by Marie-Pierre Arnaud-Lindet (Paris, 1990), xlv–lxvi.

investigating the origins of the past, readily suggested a derivation from terms meaning 'sea' and 'beast,' or, more specifically, 'bull,' giving the meaning *Neptuni bestia*. To match this etymology, a tale in which a sea creature might have copulated with Merovech's mother seemed an appropriate explanation for the name; events of this kind had analogues in pseudo-historical tales of Alexander and Augustus, and especially in stories associated with Minos and the bull of Neptune.

It is hard to determine with precision the circumstances in which such a tale may have arisen. The revival of the name Merovech in the half-century or so after Chilperic reintroduced it into the dynasty is a likely moment for an etymologizing account of origins to be devised, but other contexts, about which we are uninformed, could have occasioned the tale. The brevity of the passage in the *Chronicle* makes it difficult to establish with certainty the original perspective of the story on the basis simply of the contents before us, which can be construed *in bono* or *in malo*, as favourable or unfavourable to the Merovingians. The ambivalent treatment of the queen's impregnation, however, speaks in favour of the former perspective, and points to the tale being modelled on the ambiguous tales told about the conception of antique heroes. Such a reading fits the tale having its origins among those close to the court and being intended to model the origins of the Merovingian house upon ancient heroes, especially those of the Macedonians and the Romans, who by the mid-seventh century at least were understood to be related to the Franks through common Trojan origins. It is also conceivable that the tale was developed by someone with a neutral outlook on Merovingian politics, but curious about the reappearance of the name Merovech as a principal name of the Frankish house in the late sixth and early seventh centuries.

The inclusion of the tale in Fredegar's *Chronicle* presents a slightly different set of problems. The tale certainly fits Fredegar's interest in animal tales and portentous events. It is unlikely this conjunction makes Fredegar the author, but it does help explain his selection of an existing story, and possibly his adaptation of it to his own understanding of Frankish history. He may also have been attracted by the resemblance between the beast from the sea and the beasts in the Book of Daniel, which helped inspire the neighbouring tale of the visions of Childeric, Merovech's son. Difficulty arises in determining the meaning he attributed to these correspondences. Whether Fredegar's reflections on the course of Merovingian politics prompted him to consider the origin of the present dynasty with a certain degree of dismay or whether he simply saw the *bestia Neptuni* as marking the debut of Frankish hegemony, the Book of Daniel was surely no source of rigorous, and learned, apocalyptic, but inspiration for entertaining and prophetic tales.

GREGORY OF TOURS
(*HIST.* II 10) AND FREDEGAR
(*CHRON.* III 9) ON THE
PAGANISM OF THE FRANKS:
THE RELATION OF THE TEXTS
AND WHAT THEY SAY

From: *La rigueur et la passion. Mélanges Pascale Bourgain*, ed. Cédric Giraud and Dominique Poirel (Turnhout: Brepols, 2016)

As I considered my topic for the Festschrift of an esteemed French-language scholar, I could not help but think of a piece by Henri Pirenne, proffered in a similar context some eighty-five years ago. In 1930 Pirenne contributed a small item to the *Mélanges Paul Thomas*, dedicated to a prolific Belgian scholar of Latin and Latin texts.¹ The article was probably barely noticed by its principal audience, classicists, but its existence as a trenchant lampoon of misguided scholarly fashion has survived among medievalists, though perhaps not enough of them.² Pirenne's piece, entitled "Le Char à boeufs des derniers Mérovingiens: note sur un passage d'Eginhard", challenged the common notion that the ox cart of the last Merovingians, on which they made limited peregrinations about their kingdom, was a cult wagon, reflecting the pagan, sacral origins of the dynasty. Its pithy conclusion, one might think, should have dashed this theory to bits: "La méprise est comparable à celle que commettra peut-être un érudit de l'avenir si, en étudiant une caricature de Louis-Phillipe, il s'avise de connaître le sceptre des Capétiens dans le parapluie du roi".³ Had the implication of Pirenne's judgment been taken

1 *Mélanges Paul Thomas. Recueil de mémoires concernant la philologie classique, dédié à Paul Thomas*, Bruges, 1930, pp. 555–560.

2 The review in the *Classical Review* 47/02, 1933, p. 84, judged that, of the 78 contributions, 9 were on medieval subjects, and mentioned only one of these, by E. Faral on Saint Amphibalus.

3 Pp. 559–60. Cf. the present-day historian Regine Le Jan on Einhard's account, which she thinks shows circuits of earlier Merovingian sacral kings bringing production and fecundity to the land: "Les déplacements royaux dans des chariots tirés par des boeufs étaient assurément archaïques au VIII^e siècle, comme le sont les cortèges de carrosses royaux dans les rues de Londres au XXI^e siècle, mais ils exprimaient la même majesté royale, le même rapport à l'espace domestiqué, et ils renvoyaient à une symbolique liée à la fécondité" ("La sacralité de la royauté mérovingienne", *Annales*).

seriously there should have been no need for my small piece here, and indeed a much longer article upon which it rests, but it was not. As it turned out, 1930 was not the most auspicious time for Pirenne to make his point. The ideas of kingship that he referred to had been around for some time in a mainly benign, even quaint, form. But the time in which he wrote was the beginning of a period when German political and academic culture became besotted by the irrational relation between allegedly charismatic rulers and their subjects and set about establishing it as an eternal model of political society. Even the incineration of such a regime did not destroy the conceit, which spilled out into post-war years and continues, it seems, to shape the view of present day scholars.

Pirenne, of course, only dealt with part of the ‘evidence’ for pagan sacral kingship among the Merovingian Franks. The material has naturally since this time been thoroughly reviewed, most thoroughly by me in 1998.⁴ This evidence includes the item that became in recent times the centrepiece of the claim that the Merovingian kings claimed acknowledgement of their supernatural descent: namely an interpolated tale in Fredegar’s epitome of Gregory of Tours that allegedly entertained the notion that the birth of Merovech, Clovis’ grandfather and the eponym of the Merovingian house, was possibly the result of the coupling of his mother with a sea beast.⁵ I restored to this tale the interpretation – current before the 19th-century Germanist penchant for comparative religion and mythology – that the story was a brief etymological fable, common in the Latin tradition and derived from a not very rigorous interpretation of the name Mero-vech as ‘sea-beast’, not from an actual archaic Germanic myth about the intermingling of gods and humans. Seen in this way, the story of Merovech’s conception really is an *origo*, not in the invented sense of modern German scholarship as a term for authentic, primitive myth, but in the ancient sense of a *causa nominis*, an entertaining speculation

Histoire, Social Sciences, 2003/6 t. 58, pp. 1217–1241, at p. 1223). This inadvertently catches Pirenne’s point but of course is entirely missing his sarcasm.

4 Alexander Callander Murray, “*Post vocantur Merohingii*: Fredegar, Merovech and ‘Sacral Kingship’”, in *After Rome’s Fall: Narrators and Sources of Early Medieval History, Essays Presented to Walter Goffart*, ed. Alexander Callander Murray, Toronto, 1998, pp. 121–152; [above ch. 1]. The broader historiographical context is sketched out in Alexander Callander Murray, “Reinhard Wenskus on ‘Ethnogenesis’, Ethnicity, and the Origin of the Franks”, in *On Barbarian Identity: Critical Approaches to Ethnicity in the Early Middle Ages* ed. Andrew Gillett, Turnhout, 2002, pp. 39–68; [below ch. 11].

5 “Fertur, super litore maris aestatis tempore Chlodio cum uxore resedens, meridiae uxor ad mare labandum vadens, bistera Neptuni quinotauri [=Minotauri] similis eam adpetisset. Cumque in continuo aut a bistera aut a viro fuisset concepta, peperit filium nomen Meroveum, per co regis Francorum post vocantur Merohingi”. Fredegar, *Chron.* III 9, ed. Bruno Krusch, MGH SRM 2, Hanover, 1888. “It is said that when Chlodio was staying with his wife on the seashore in the summer, his wife went to the sea around noon to bathe and a beast of Neptune resembling a *quinotaur* [= Minotaur] assaulted her. Right away she conceived by either the beast or her husband and afterwards gave birth to a son called Merovech, after whom the kings of the Franks were later called Merovingians”. *Fertur* is not a signifier of Germanic oral tradition; see the examples in Murray (as in previous note), pp. 134–35; [above ch. 1, pp. 15–16].

explaining the elements of a name.⁶ It is a brief narrative derived from the elements of the name and invented to explain them. The accuracy of the etymology is irrelevant.⁷ Ancient and early medieval etymology was just based on a not very exacting general similitude of appearance or sound, and its suggestiveness of an interesting tale. It was widely used as a tool of historical research.⁸

Nevertheless, ‘sacral kingship’ still remains a strong article of faith among its adherents.⁹ But much less is made of the evidence, which may only now garner cursory mention, and very rarely recognition that there are detailed criticisms that nullify its probative value and readily provide it with sufficient explanation and context that require no elaboration about a mythical past. Instead focus has increasingly shifted to models, thought to be universal, drawn from African kingship or from the once influential writings of the Scottish anthropologist, Sir James Frazer – though no one has yet managed to explain why modern, though allegedly ‘primitive’, African kingship or the interesting ruminations of a 19th-century scholar on the passage from primitive magic to religion as a common stage of human development should have any particular relevance to sixth-century Gaul.¹⁰

I might have been inclined to let the subject simmer like this in its own pot of evidence-free theory, but textual misconceptions about the relationship of the Fredegarian passage to its Gregorian model are still brought forward, and exaggerated claims continue to be made about the meaning of Fredegar’s rendition of

6 The German meaning of *origo* rejected here is that of Karl Hauck, “Lebensnormen und Kultmythen in germanischen Stammes- und Herrschergenealogien”, *Saeculum* 6, 1955, pp. 186–223. A slightly different but overlapping conception is imagined by Herwig Wolfram (see below, n. 11, pp. 204–205, and Goffart, below in n. 12). The great contemporary exponent of etymology was of course Isidore of Seville, *Etymologiae*; see esp. Bk IX. Bk I 29: “Omnis enim rei inspectio etymologia cognita planior est”.

7 Nineteenth-century Germanists seriously believed that, in their own failing search for the right etymology, their disproving the etymology of Merovech as ‘sea-beast’ would somehow disqualify it as a product of sixth- or seventh-century learning. See Murray (as in n. 4), pp. 142–44 [above ch. 1, pp. 22–23].

8 See Murray (as in n. 4), pp. 140–43; [above ch. 1, pp. 20–22]. The view of Diesenberger/Reimitz (as in n. 12 below), p. 245, that there is a lack of comparable stories for the brief Merovech tale is a tendentious misjudgment.

9 The disarray of Wolfram’s Vienna school in the face of diverse, longstanding criticisms can be detected in the multi-authored article “Sakralkönigtum” in the *Reallexikon der Germanischen Altertumskunde*, vol. 26, pp. 179–320, but the assumption of the creature’s existence and relevance to historical times remains the standard against which evidence and criticism is weighed. Resort to the tactics of ‘recluser pour mieux sauter’ and ‘disclaim and retain’ continue. The phrases are from Walter Goffart, “Does the Distant Past Impinge on the Invasion Age Germans”, in *On Barbarian Identity* (as in n. 4), pp. 21–38, at pp. 31–32.

10 See the reliance on African kingship and disregard of evidence in the exposition by Le Jan (as in n. 3). African kingship is invoked more generally in the collection edited by Franz-Reiner Erkens, *Das frühmittelalterliche Königtum. Ideelle und religiöse Grundlagen*, *Reallexikon der Germanischen Altertumskunde*, Erg.bd., 49, Berlin/New York, 2005.

Gregory's text.¹¹ A subsequent article from the Vienna circle has asserted that I dealt with the issues around the epitomising process too cursorily in my survey of the sources; I must confess the reading of the two small passages in question seemed to me obvious, requiring only a brief notice.¹² I am grateful to the editors of the present *Festschrift* for giving me a chance to return to this subject and to establish once and for all, I hope, the meaning of the Fredegarian text and its relationship to its Gregorian model.

This is the context of my remarks.

In *Hist.* II 9, a chapter entitled "What historians say about the Franks", Gregory dealt with the early history of the Franks.¹³ His futile search for their first king leads him to quote extensively two fourth- and fifth-century historians, about whom we would otherwise know nothing, Sulpicius Alexander and Renatus Profuturus Frigeridus. He finished the chapter by mentioning a current view that the Franks came originally from Pannonia, and notes how they set up *reges criniti*, long-haired kings, over themselves "from their first, and as I would say, more noble family" ("de prima et ut ita dicam nobiliore suorum familia"); the last assertion he believes is proven by the later victories of Clovis. He ended the chapter with a sketch of a fifth-century historical Frankish king called Chlodio, about

11 Hans Hubert Anton belittles scepticism about a royal sacral bull cult among the Franks as "hyper-positivism" ("Königsvorstellungen bei Iren und Franken im Vergleich", in Erkens, *Das frühmittelalterliche Königtum*, as in n. 10 above, p. 309). He then characterizes my alternative contextualization of the Merovech story as a "ganzes Syndrom gelehrter Herleitung". In this situation, I take it, being 'learned' is not a compliment. The standpoint reflects Herwig Wolfram's earlier claim that scepticism about Vienna's extravagant, home-grown method "is after all nothing new, but rather an echo from the dark ages of nineteenth-century positivism" (*Roman Empire and its Germanic Peoples*, trans. Thomas Dunlap, Berkeley, 1997, p. 15). The Vienna 'talking point' that my interpretation of Merovech's birth involves "Ironisierung" of the passage, is a distortion and intentional diversion from the main argument; in addition to Anton, as above, see Diesenberger/Reimitz in the next note, p. 244. The implication in recent literature that an attempt might be afoot to shift the goalposts on what constitutes Germanic paganism (a ploy, it seems, to expand the catchment area for sources for sacral kinship), using Reinhard Wenskus' last ruminations ("Religion abâtardie: Materien zum Synkretismus in der vorchristlichen politischen Theologie der Franken", in *Iconologia Sacra: Mythos, Bildkunst und Dichtung in der Religions- und Sozialgeschichte. Festschrift für Karl Hauck*, ed. Hagen Keller and Nikolaus Staubach, *Arbeiten zur Frühmittelalterlicherforschung* 23, Berlin/New York, 1994, pp. 179–248), will, if necessary, receive a response.

12 Maximilian Diesenberger and Helmut Reimitz, "Zwischen Vergangenheit und Zukunft: Momente des Königtums in merowingischen Historiographie," in Erkens (as in n. 10), pp. 214–69. As the title suggests, this volume is a concentrated effort to maintain the concept of sacral kingship. Thus, one of the oddities of the Diesenberger/Reimitz piece is that it fails to discover sacrality in either Gregory or Fredegar, yet retains the dubious translation of Kusternig/Wolfram (see further below) and Wolfram's mistaken notion that there was an *origo* genre that allegedly retailed legendary and mythic discourse of ancient times. There is no such thing as an *origo* genre. See Walter Goffart, *Narrators of Barbarian History (A.D. 550–800): Jordanes, Gregory of Tours, Bede and Paul the Deacon*, Princeton, 1988, pb. reprint with retrospective, Notre Dame, pp. xiii f., 3, 36 f. On what the real word *origo* as a term of art in this context does mean, see above, pp. 33–34.

13 "Quid de Francis idemque [= historiograffi] dicant". *Gregorii episcopi Turonensis Historiarum libri X*, ed. B. Krusch and L. Levison, MGH SRM. 1.1, Hanover, 1951, rpt 1993.

whom we do know a little outside of Gregory, and the extension of his realm to the Somme.¹⁴ He notes sceptically that some say Merovech was his descendant. Neither here nor anywhere else does he use the term Merovingian, though there is no reason to believe the term was anything but well acclimatised in his day.

Gregory begins the next chapter (II 10) by noting that the Franks of this period were pagan.¹⁵ He then launches into a long homily against pagans, drawing his language and examples from the Old Testament. Needless to say there is no intimation about Frankish kings in the text.¹⁶

Fredegar's version of all this (III 2–9) is considerably shorter, despite his interpolations. He retains Gregory's opening phrase ("De Francorum vero regibus"), but immediately adds his own interpolation, citing Jerome and Virgil, on the Trojan origin of the Franks. He has no doubt about who their first king was – Priam. He reintroduces a theme he had already established (II 4–6, 8–9) of the bifurcating group of refugees from Troy founding the Phrygians, Romans, Macedonians, Franks and Turks. He then returns to Gregory's narrative based on Sulpicius Alexander and Rhenatus Profuturus Frigeridus and eventually reaches Gregory's own narrative, including the account of Chlodio, which he follows quite closely. After noting the paganism of these times, he then introduces his famous interpolation of Chlodio's wife bathing in the sea and being assaulted by a sea beast. Thereafter she gave birth to a son called Merovech, though the narrative is ambivalent whether this was by the sea beast or Chlodio. From Merovech, we are told, the Frankish kings take the name Merovingians – surely the point of the story.¹⁷

I have nothing new here to say about the sea-beast story, having dealt with it previously *in extenso*.¹⁸ The aspect of the text I want to discuss is Gregory's brief remark about the paganism of the Franks of the time and its relation to a similar passage in Fredegar that seems to follow its Gregorian model quite closely. Krusch

14 Sidonius Apollinaris mentions him in a fight around *vicus Helena* (Hélesmes?) involving the future emperor Majorian ca. 447/8. From the panegyric to Majorian, *Poems and Letters*, ed. and trans. W.B. Anderson, *Car.* 5. 212, vol. 1, Cambridge, Mass., 1936, p. 78.

15 "Sed haec generatio fanaticis semper cultibus visa est obsequium praebuisse nec prorsus agnovere Deum, sibi que silvarum atque aquarum, avium bestiarumque et aliorum quoque elementorum finxere formas, ipsasque ut Deum colere eis que sacrificium delibare consueti". *Hist.* 2.10. See n. 21 below for translation. The title of the chapter is: "Quid de simulacris gentium prophetae Domini scribant".

16 Gregory has Chlotild, while opposing the paganism of her husband, drawing her examples from classical antiquity (*Hist.* II 29). The obdurate persistence in identifying these passages with a putative Frankish paganism continues: Hans Hubert Anton, "Königsvorstellungen bei Iren und Franken im Vergleich", in Erkens, *Das frühmittelalterliche Königtum* (as in n. 10, above), pp. 270–330, at p. 309.

17 For text and translation, see above, n. 5. The beast is called a quinotaur, a term behind which everyone is agreed lies the classical Minotaur. Fredegar is hardly the inventor of the story. The ambiguity about Merovech's father is a classical theme about the birth of great men (cf. Alexander and Augustus), still attested in Sidonius Apollinaris (*Car.* 2. 94–133, ed. Anderson, vol. 1, pp. 15–19). On the context of the story's origin, see Murray (as in n. 4, above).

18 Murray (as in n. 4).

printed the Fredegarian passage in a smaller font, indicating its dependence on Gregory. It is not a stand-alone interpolation. But in an article of 2006 by Maximilian Diesenberger and Helmut Reimitz, which I referred to above, I was faulted for having failed to properly take into consideration the extent to which Fredegar changes Gregory's text.¹⁹ Their point is made in support of a translation of Fredegar by Andreas Kusternig and Herwig Wolfram, which has the Fredegar text completely invert its model.²⁰

Here is the issue.

Gregory introduces his homily against paganism, in direct connection with his previous discussion of the Franks of Chlodio's time, with the following sentence. I give the whole sentence; the relevant part, in italics, occupies only the first part.

Sed haec generatio fanaticis semper cultibus visa est obsequium praebuisse nec prursus agnovere Deum, sibi que silvarum atque aquarum, avium bestiarumque et aliorum quoque elementorum finxere formas, ipsasque ut Deum colere eis que sacrificium delibare consueti. (*Hist.* II.10).²¹

Fredegar only uses this first part of Gregory's sentence in his epitome.

Haec generatio fanaticis usibus culta est (Fredegar III 9)

The meaning of the Gregorian passage, just to take its first part, is fairly straightforward: "The Franks of this period always paid service to pagan practices". I shall argue at greater length that the Fredegarian epitome means essentially the same thing, namely, "The Franks of this period were devoted to pagan practices".

There is, as noted, another translation of the Fredegarian passage proposed by adherents of Merovingian sacral kinship. Andreas Kusternig, Fredegar's German translator, and Herwig Wolfram, the godfather of the present generation's mythomania, suggest: "This race [the Merovingians] were celebrated in pagan feasts".²²

19 See above at n. 12: Diesenberger/Reimitz, p. 244, n. 141.

20 See n. 22, below.

21 "The [Frankish] people of this time always followed pagan practices and did not at all know God. They made images for themselves of woods and waters, of birds and animals, and other elements, and were accustomed to venerate them as God and offer sacrifice to them".

22 The translation comes from Wolfram's English edition of his oddly titled book, *The Roman Empire and its Germanic People* (as in n. 12, above), p. 209. One should not be surprised, I suppose, that he spots the *hieros gamos* here. Kusternig's translation of the Latin text runs: "Dieses Geschlecht wurde in heidnischen Festen gefeiert". Kusternig's editorial decision is also to add a colon here in his translation, leading immediately, as if in illustration of the Gregory-derived text, to the sea-beast story: Andreas Kusternig, *Quellen zur Geschichte der 7. und 8. Jahrhunderts, Die vier Bücher der Chroniken des sogenannten Fredegar*, *Ausgewählte Quellen zur deutschen Geschichte des Mittelalters*, 4/a, Darmstadt, 1982. The general editor of Kusternig's section is Herwig Wolfram.

Is here, at last, a text that actually attests to the religious veneration of Merovingian kings, even if deep in the 5th century?

The crux is threefold: 1) the meaning of *generatio*, 2) the extent to which Fredegar actually inverted text he took from Gregory, and 3) the meaning of *culta est* in Fredegar's text.

1) There can be really no doubt about the meaning of *generatio* in Gregory's text – it is the Franks of the time of Chlodio, not their kings.²³ Translators seem to have failed to see it means anything else. And at the end of his homily, Gregory explicitly refers to his subject as the *generatio Francorum* (*Hist* 2.10). Whether Fredegar followed him on this meaning – and that he did so should be the default assumption – depends on the next two issues.

2) Kusternig felt compelled to claim in his introduction that Fredegar sometimes gave a new sense to Gregory's words. He cites, not *Hist.* II 10 = *Fred.* III 9, as quoted here and as one might expect if he were confident in his interpretation, but instead *Hist.* V 16 = *Fred.* III 77.²⁴ I will leave it to readers to check the texts to satisfy themselves. In this instance Fredegar is merely concise and accurately so. I see no basic change in meaning, nor indeed, can I think why there should be one. Diesenberger/Reimitz attempt to make the same point, claiming Fredegar III 2 for a model of what he did pointedly in III 9 and noting later that Gregory's words were really "twisted in his mouth" by Fredegar.²⁵ III 2 (allegedly the beginning of a non-existent *origo*) uses four words from Gregory: "De Francorum vero regibus". What follows is simply Fredegar's interpolation, in his own words or that of some unknown source, on the Trojan origin of the Franks and the descent of their kings from Priam. All this shows is the expected, namely that Fredegar changed the meaning of Gregory's narrative by means of readily identifiable interpolations; there is no clever inverted riff on his language. If there is a point to the claim of Kusternig, and Diesenberger/Reimitz, it needs to be better made. I do not dismiss out of hand that Fredegar misunderstood or mangled Gregory's words, but I have yet to see proof that there was a conscious attempt on his part to invert the meaning of Gregory's language. Fredegar had no need to go to the trouble of subtly 'twisting' Gregory's words in his mouth. He just took what he wanted, abridged it, cast off the rest, and changed the burden of Gregory's meaning readily enough with elisions and bold interpolations, without resorting to such a subterfuge.

3) This brings us to the heart of the matter, which is the meaning of *culta est*. The translation of Kusternig/Wolfram is fair enough, if one reads it according to classical conventions. Why Kusternig, knowing what he did, would have been inclined in this instance to do such a thing, is anyone's guess. This translation also requires taking the meaning *generatio* as referring to the Merovingians. There is as of yet no 'Merovingians' in Fredegar's text (Merovech is yet to appear!). Just as in

23 This is even admitted by Diesenberger/Reimitz (as in n. 12), p. 244.

24 Kusternig (as in n. 22), p. 33, citing *amicicium . . . inientis* (III 77).

25 Diesenberger/Reimitz (as in n. 12, above), pp. 244–245.

Gregory, however, there are *reges criniti*. These, according to Fredegar's interpolation, were the descendants of the Trojan Priam. I will leave it for readers to surmise how a tale of Trojan émigrés could be conjoined with a putative archaic Germanic myth of Frankish kingship.

There is still *culta est*. In classical Latin this is a passive form of *colo*: 'were venerated'. If this is the meaning it makes no sense, in our terms or that of the seventh century, to say (following Gregory's *generatio [Francorum]*) 'the Franks at that time were venerated'. But what about the *reges criniti*? – could they not, indeed should they not, be venerated, as modern theorists devoutly believe? In fact, the language does not really support anyone being 'venerated'. The *Mittelateinisches Wörterbuch* glosses *cultus* in the Fredegarian passage with *deditus-ergeben*, 'devoted to'. There is more to the story; this is not a stab in the dark. Kusternig himself has noted the propensity in Fredegar to the "frequent confusion of active and passive [voice]". He cites IV 66: "150,000 pugnatorum [Heraclius] aemittitur".²⁶ And he notes the formation of a kind of middle voice (in the Latin passive form) for previously active forms with *se*.²⁷ Why the III 9 *culta est* was not recognised by Kusternig as part of a wider phenomenon in Fredegar's Latin is anybody's guess. And Fredegar is not the only author of the age to occasionally deploy such usages.²⁸

If a mere historian is permitted to express an inexpert opinion, I would venture this explanation. *Culta est* is a passive form with an active or middle meaning. In documenting this phenomenon Kusternig cited, as just noted, an example from Fredegar's Bk 4 (c. 66). He might instead have cited *culta est*, or he might have cited the form a few lines later of *concipio*. When Chlodio's wife 'conceived' Merovech by the beast or by her husband, Fredegar uses what we would think of as the passive form: "Cumque [uxor] . . . fuisset concepta, peperit filium" (III 9).²⁹ Likewise *colo*, in one of its classical meanings, has the sense of 'practise, devote oneself to'. *Culta est* is a passive/middle form, where its subject (the Franks) act on or for itself, or for its own profit. In any case "Haec generatio fanaticis usibus culta est", like its Gregorian model, simply refers to the Franks of the fifth century as pagans.

The precipitous interpretation of Fredegar III 9 by Wolfram and his depleted legions has all the appearance of a 'quick fix'. The sources presented by sacral-kingship advocates have never been clear and have never been without other contexts that situate the texts (and even artefacts) more than adequately and have nothing to do with sacral kingship at all.³⁰ Exponents of sacral kingship have

26 *Aemittitur = emittitur*. Kusternig (as in n. 22) p. 27.

27 And conversely previous deponents used with active forms.

28 See, for example, Michael Herren, *The Cosmography of Aethicus Ister: Edition, Translation, and Commentary*, Turnhout, 2011, Introduction, pp. xcii–xciii; and Pauline Taylor, *The Latinity of the Liber Historiae Francorum: A Phonological, Morphological and Syntactical Study*, New York, 1924, pp. 53–59, esp. 57–58.

29 See n. 5, above for complete text and translation.

30 On the artefacts, see Murray (as in n. 4), pp. 124–27; [above ch. 1, pp. 6–8].

never been advocates of Occam's razor. Instead they have built castles in the air, towering over mundane texts – slivers of texts, to be more exact – constantly adding layers ('layered' is a favoured concept for establishing the credentials of a sacral kingship text). But with the Kusternig/Wolfram translation of Fredegar III 9, here was what might appear to be a foundational text, with the Merovingian kings being venerated by the Franks in religious rites; by implication they must have traced their descent from the gods. No elaborate interpretation was needed. Who could now deny the interpretation of the other texts? Alas, Fredegar III 9 does not say that at all. Reduced to a much more mundane reality, it is rather an interesting example of Fredegar's Latin and the evolution of language in seventh-century Gaul.

Part II

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THE POSITION OF THE *GRAFIO* IN THE CONSTITUTIONAL HISTORY OF MEROVINGIAN GAUL

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Merovingian sources from the sixth to the eighth centuries mention royal officials called *comites* and *grafiones*, who exercise important administrative, judicial, and military functions within the Frankish kingdom. Though scholarship may have sometimes exaggerated the pivotal role within the Frankish constitution of these counts – to use a comprehensive term for the *comes* and *grafio* – and is presently debating the nature of comital authority, the office of count in the administration of the Merovingian kings, and in the constitutional framework of the Carolingian empire and its successor states, remains fundamental to our understanding of the course of medieval constitutional history.¹ Unfortunately the use of two different terms for the holders of the Merovingian comital office has complicated our understanding of the early development of this institution. The reason for this discrepancy, at least in part, lies in the geographical and linguistic differences of Merovingian Gaul. In the Frankish

1 For criticism that the modern concern for the counts has been at the expense of our understanding of other Merovingian officials, see Archibald R. Lewis, "The Dukes of the *Regnum Francorum*, A.D. 550–751," *Speculum* 51 (1976), 381–410. The significance of the count depends also upon how recent constitutional theories on the nature of noble lordship and royal power are evaluated: see n. 5 below. Recent arguments about the count and county have mainly been the preserve of German scholarship and concern Germanic areas. For literature and the *status questionis*, particularly with reference to the Merovingian period, see D. Willoweit, "Graf, Grafenschaft," in *Handwörterbuch zur deutschen Rechtsgeschichte*, 1, ed. Adalbert Erler et al. (Berlin, 1971), cols. 1775–85; Karl Kroeschell, *Deutsche Rechtsgeschichte*, 1 (Reinbek, 1972), pp. 85–88, 94–99; H. K. Schulze, *Die Grafchaftsverfassung der Karolingerzeit in den Gebieten östlich des Rheins*, Schriften zur Verfassungsgeschichte 19 (Berlin, 1973); Theodore Schieffer, *Handbuch der europäischen Geschichte*, 1 (Stuttgart, 1976), pp. 564–68. The argument by Rolf Sprandel, "Dux und Comes in der Merowingerzeit," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 74 (1957), 41–84, that there was a break in the development of the office in the seventh century has rightly not been well received: see esp. Dietrich Claude, "Untersuchungen zum frühfränkischen Comitatus," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 81 (1964), 1–79. See further Sprandel, "Bemerkungen zum frühfränkischen Comitatus," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 82 (1965), 288–91; and Claude, "Zu Fragen frühfränkischer Verfassungsgeschichte," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 83 (1966), 273–80.

north and east, there was a tendency to use the Germanic term *grafio*; in the Gallo-Roman south and west, the Latin title *comes* was apparently used exclusively.

Whether there are other reasons for the dual terminology remains the subject of dispute. Although there has been widespread agreement that under the Carolingians the term *grafio* was assimilated to *comes* and that in the early eighth century, at the latest, the titles *grafio* and *comes* could be used synonymously, scholars have traditionally been divided about the earlier status of the *grafio* and about his significance for constitutional history. To Fustel de Coulanges, for example, *comes* and *grafio* were always synonyms. The office of the Frankish count, he believed, was based upon the late Roman *comes civitatis*, who in the last days of Roman administration in the West exercised military, administrative, and judicial functions in Gallic cities; *grafio*, a Germanic word with the same history as the Latin *comes*, was simply a Frankish translation of the Roman term.² The institution of the medieval *comitatus* was thus a last-minute, pregnant creation of the late Roman state.

Many have followed Fustel in his view that the *grafio* and *comes* were largely the same officials, even those who believe that the office was a Frankish creation of the new Merovingian kingdom.³ German scholarship, on the other hand, has generally taken a much different view. To Brunner and von Schwerin, whose *Deutsche Rechtsgeschichte* is probably the best representative of the older school of legal and constitutional history, *grafio* and *comes* were originally distinct. They recognized the Roman foundations of the *comes* of Gregory of Tours's history, but regarded the *grafio* as a Germanic commander with originally distinct, and lesser, powers whose competence, particularly in judicial matters, was increased as a result of the influence of Roman institutions. Thus they distinguished between an old Frankish count, as represented by the *grafio* of *Lex Salica*, and a new Frankish count who bore the Roman title *comes*. This distinction permitted them to come to the conclusion, by any standard rather surprising, that the office of the Frankish *comes* was of Germanic origin; by this means they were able to maintain the Germanic lineage of later territorial lordship derived from the comital absorption of royal rights.⁴

Much of this interpretation has remained appealing to recent historians of Merovingian institutions even though the larger framework of the older constitutional history has been displaced by the influence of a new historical school which has dominated German scholarship since the war. The traditional view of the democratic foundations of early Germanic society has been replaced by theories of noble lordship, the constitutional significance of the office of count has been diminished somewhat by notions of the nobility's independent rights of

2 N.-D. Fustel de Coulanges, *La monarchie franque*, 2nd ed., *Histoire des institutions politiques de l'ancienne France* (Paris, 1905), pp. 203–16.

3 For example Emile Chénon, *Histoire générale du droit français public et privé des origines à 1815*, 1 (Paris, 1926), pp. 210–13. Cf. E. Glasson, *Histoire du droit et des institutions de la France*, 2 (Paris, 1888), p. 338; Jean Brissaud, *A History of French Public Law*, trans. J. W. Garner (Boston, 1915), pp. 88, 90–92; F. L. Ganshof, *Frankish Institutions under Charlemagne*, trans. Bryce and Mary Lyon (New York, 1968), p. 27.

4 Heinrich Brunner and Cl. Frhr. von Schwerin, *Deutsche Rechtsgeschichte*, 2, 2nd ed., *Systematisches Handbuch der deutschen Rechtswissenschaft*, 2/1 (Leipzig, 1928), pp. 217–23.

lordship, and an emphasis on the influence of the late empire on the institutional framework of the Frankish kingdom has become an accepted feature of modern research; but the old view of the *grafio* has been retained and reasserted.⁵ In the influential view of Dietrich Claude, the late Roman *comes civitatis* is the likely, though not provable, institutional basis of the Frankish *comes*; in the north and east of the kingdom in the sixth century, however, there was the *grafio*, whom he takes to be a different official of Germanic origin, ranking far below the southern *comes* and deriving his constitutional position from pre-conquest Frankish institutions. Claude claims, furthermore, that only in the course of the seventh century was the position of the *grafio* gradually assimilated to that of the *comes* so that by the end of the century *comes* and *grafio* were equivalent terms.⁶

There are a number of reasons why this view – which can be called the rising *grafio* theory – fits the new history as well as the old. The new research is in its own way as interested in Germanic continuity as the old, but it is a different kind of continuity, more narrowly restricted to Germanic areas, stressing the power of the nobility and emphasizing the existence in the Roman south of a social and political organization different from that in the Germanic north and east. If the Merovingian kingdom embodied distinct Gallo-Roman and Germanic patterns of royal power and administration, these might seem to be reflected in the Roman *comes civitatis* and the Germanic *grafio*.

The contradictory theories about the *grafio*, representing him either as a functionary with a position equivalent to the originally Roman office of *comes* or as an officeholder of Germanic origin who achieved parity with the *comes* only very late in the Merovingian period, are of long standing in the literature, and one would not go far wrong in concluding that they reflect the old Romanist and Germanist

5 The roots of this new history go back to the thirties and the work of historians of the high Middle Ages, but the seminal works for the Carolingian period and before are Heinrich Dannenbauer, "Adel, Burg und Herrschaft bei den Germanen," *Historisches Jahrbuch* 61 (1941), rep. and expanded in *Herrschaft und Staat im Mittelalter, Wege der Forschung* 2 (Darmstadt, 1956), pp. 60–134, and "Hundertschaft, Centena und Huntari," *Historisches Jahrbuch* 62–69 (1949), 155–219; Theodor Mayer, articles in part reprinted in his *Mittelalterliche Studien* (Lindau, 1959); Walter Schlesinger, "Herrschaft und Gefolgschaft in der germanisch-deutschen Verfassungsgeschichte," *Historische Zeitschrift* 176 (1953), 255–75, trans. in part as "Lord and Follower in Germanic Institutional History," in *Lordship and Community in Medieval Europe*, ed. F. L. Cheyette (New York, 1968), pp. 64–99. The literature is extensive, but for a summary and bibliography see Karl Kroeschell, *Deutsche Rechtsgeschichte*, 1:104–6; for criticism, H. K. Schultze, "Rodungsfreiheit und Königsfreiheit," *Historische Zeitschrift* 219 (1974), 529–50. A summary with regard to the "king's free" is given by Anne K. G. Kristensen, "Danelaw Institutions and Danish Society in the Viking Age," *Medieval Scandinavia* 8 (1975), 33–42.

6 Claude, "Untersuchungen zum frühfränkischen Comitatus," pp. 4–45, 78. Claude has rightly maintained *grafio* as a regional term ("Zu Fragen frühfränkischer Verfassungsgeschichte," pp. 278–79) against Sprandel ("Bemerkungen zum frühfränkischen Comitatus," p. 289), who claimed *grafiones* would have been found wherever there were Franks. The evidence, though limited, consistently points to *grafio* as a northern and eastern term. *Lex Salica* (n. 8 below), the prosopographical research (see Horst Ebling, *Prosopographie der Amtsträger des Merowingerreiches von Chlothar II [613] bis Karl Martell [741]*, Beihefte der Francia 2 [Munich, 1974], p. 17), and the other sources (pp. 57–59, below) indicate Neustria; *Lex Ribvaria* (below, n. 12, and pp. 55–56) indicates the Cologne area.

interpretations of continuity in early medieval institutions. The problem, however, goes beyond national biases and extends to the sources themselves. For, as regards the *grafio*, these are few, chronologically scattered, in some cases difficult to interpret, and seemingly contradictory. This troubled circumstance has always lent great weight to the larger constitutional framework when interpretation of the *grafio* was attempted. When a recent scholar maintains that research now leaves no doubt that the *comes* and *grafio* were distinct offices in the sixth and seventh centuries, he is simply showing that the old rising *grafio* theory has been successfully integrated into the new premises of German constitutional history.⁷ Behind such confident statements as to the relationship between the *comes* and the *grafio* there still lies a series of difficult sources needing elucidation.

II

The starting point is the early sixth-century collection of Frankish law called *Lex Salica*.⁸ There is no *comes* in *Lex Salica* but there is a *grafio*. It has often been noted that in Gregory of Tours the principal royal official is the *comes* and in *Lex Salica* it is the *grafio*, a circumstance seen by some as testimony to the essential equivalence of the terms and by others as a consequence of the parochialism of Gregory, who failed to call attention to the basically different conditions between the Gallo-Roman south and the Frankish north. It is true that Gregory wrote very little about the north; of the forty-odd counts in his works, he mentions only two, possibly four, who exercised their offices north of the Seine close to areas for which *grafiones* are attested in the seventh century.⁹ Yet he was not alone in failing to mention *grafiones*; other sources for the ranks of Frankish officeholding, such as

7 Eugen Ewig in *Handbuch der europäischen Geschichte*, ed. Theodor Schieder, 1:445. And see also Willoweit, "Graf, Grafschaft," col. 1777; Schulze, *Die Grafschaftsverfassung*, p. 35; and Ebling, *Prosopographie der Amtsträger*, p. 24.

8 *Pactus legis Salicae* (henceforth LS), ed. K. A. Eckhardt, MGH LL 4/1; quotations follow in the main Eckhardt's reconstructed text. The usual attribution of the code to Clovis and the years 507–11 is not demonstrable, though a relatively early date in the sixth century seems assured. For a brief discussion of the history of the code and the various redactions, see Alexander Callander Murray, *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Ear- & Middle Ages*, Studies and Texts 65 (Toronto, 1983), pp. 119–33.

9 *Gregorii Turonensis opera*, ed. Bruno Krusch and Wilhelm Levison, MGH SRM 1, 2 vols. Gregory mentions *comites* for Rouen and Meaux (*Historiae* 6.31, 8.18) and, in less than clear contexts, *iudices* for Paris (7.15) and Saint-Quentin (*Gloria martyrum* 72); all these towns lay north of the Seine and were Gallo-Roman *ciuitates*. Paris and Meaux probably lay slightly to the south of the *grafio* region. We know that in the seventh century Paris had a *comes*, and Fredegar, again a southern source, reports a *comes* for Meaux (Ebling, *Prosopographie*, pp. 97–98, 153–54). Around 659 in the Rouen area, Waratto, later mayor of Neustria and Burgundy, seems to have served with the title *grafio*, but we cannot be sure the city was part of his office (Ebling, pp. 234–35). The count of Saint-Quentin in the late seventh or early eighth century was called both *comes* and *grafio* (Ebling, p. 157, and below, pp. 57–58), but no certain connection can be made between these titles and the problematical *iudex* of Gregory. For discussion and prosopography of Gregory's counts, see Margarete Weidemann, *Kulturgeschichte der Merowingerzeit nach den Werken Gregors von Tours*, 1 (Mainz, 1982), pp. 63–88.

the poetry of Gregory's contemporary Fortunatus, the Merovingian *formulae*, and a curious little treatise on offices, likewise know *comites* but not *grafiones*, though these works arguably have southern or antique perspectives.¹⁰ Unfortunately no conclusive argument about the status of the northern *grafio* can be drawn from the silence of the sources, although it helps in some cases to confirm the regional distribution of the term. Our understanding of the *grafio*'s original position depends upon how we interpret *Lex Salica*. To supporters of the rising *grafio* theory the office of *grafio* in *Lex Salica* was not only distinct from that of the southern *comes* but was also of much lower rank and of Germanic origin. It is important to note that the notion of the relatively low rank of the early *grafio* must stand or fall with *Lex Salica*, for, as will be seen, the later evidence for the distinctness of the offices, however interpreted, classes the *grafiones*, like the *comites*, as *viri illustres* among the great officers of state.

At the outset a word of caution about the evidence of *Lex Salica* is in order. It is worth remembering that the various officials alluded to in the law are peripheral to the concerns of the collection. For *Lex Salica* is a compendium of rules, compensations, and, from time to time, procedures; it only occasionally casts light on the role of administrative and judicial officials and never attempts a comprehensive description of their powers and jurisdiction. Nevertheless a number of attributes of the *grafio* can be inferred from the provisions which mention him. When these are compared with the known functions of the count, they suggest that the *grafio* differed little, if at all, from the *comes*.

Like the *comes*, the *grafio* of *Lex Salica* was a royal official who ruled over the *pagus*, the usual Merovingian term for the administrative area later called the 'county' (*comitatus*), which was the basic administrative unit of the kingdom.¹¹ This coincidence, which in itself suggests the essential equivalence of the offices, can be supplemented with other characteristics common to the *grafio* and the *comes*. The *grafio* was apparently directly under the king, for in the *wergeld* list of royal officials (LS 54) he clearly has no superior; the *comes*, too, was regularly subject immediately to the king, although dukes could be given authority over a number of counts, and in the seventh century the appointment of the count

10 *Venanti Honori Clementiniani Fortunati presbyteri Italici opera poetica*, ed. Friedrich Leo, MGH AA 4/2; Fortunatus was for a time poet at the courts of Sigibert I of Austrasia and Chilperic I of Neustria. In his works the litany of Merovingian officeholding appears, including the great posts of *dux*, *rector*, *maior domus*, *domesticus*, *comes*, and *referendarius* and lesser positions such as those of *tribunus* and *defensor*. *Formulae Merovingici et Karolini aevi*, ed. Karl Zeumer, MGH Form; only the silence of Marculf, whose collection stems from Paris or Meaux, might be significant. For the treatise on offices, with literature: H. Schlosser, "Ämtertraktat," in *Handwörterbuch zur deutschen Rechtsgeschichte*, 1:154–55.

11 LS 50, "De fides factas": "§ 3. Si quis fidem factam ad placitum legitimum noluerit soluere, tunc ille cui fides facta est ambulet ad grafionem loci illius in cuius pago manet. . . ." Cf. also *comes loci*: Gregory of Tours, *Historiae* 7.29, 7.31.

may at times have fallen out of the hands of the monarchy.¹² Like the *comes*, the *grafio* or his deputies perform the executive functions of distraining debtors and recalcitrants who ignored legitimate summonses.¹³ And finally, the *grafio* of *Lex Salica* collects the *fredus*, the portion of compensation going to the crown, the exaction of which was one of the chief financial functions of the *comes*.¹⁴ When one considers that all these characteristics of the *grafio* clearly match those of the *comes*, it comes as little surprise to find the redactors of the early seventh-century *Lex Ribvaria*, which in part is simply a *Lex Salica revisa*, translating *grafio* by the term *comes*.¹⁵

If modern scholars have not always followed the Ribvarian redactors in the acceptance of parity between the *grafio* of *Lex Salica* and the *comes*, part of the reason lies in a widely accepted framework of Frankish constitutional history according to which the Merovingian kings acquired extensive power only by virtue of their conquest of Gaul and their assumption of Roman notions of administration. If *Lex Salica*, intended for the Frankish population, reflects conditions prior to the extension of royal power over popular or local institutions, then the *grafio*, whose origin is thought to go back to earlier Frankish constitutional practices, might have had far more limited powers and a lower rank, even as the principal representative of royal power, than did the southern *comes* as he appears in the pages of Gregory of Tours. The basis for such a view is the belief that the *grafio* of *Lex Salica* had no judicial competence; he was not yet a *iudex*. If this perception were true, we would, it seems, at least be dealing with a valid distinction between the functions of the late Roman and sixth-century *comes* and the early *grafio*. What would still be questionable, however, is the inference that the office of *grafio* must necessarily be of considerably lower rank than that of the *comes*. Whatever his powers precisely were, the *grafio* was not a lowly court servant (*Gerichtsknecht*);¹⁶ like the *comes*, he was still the king's man in the *pagus* who looked after royal interests and whose appointment and status were determined by the crown.

But does *Lex Salica*, in fact, clearly indicate that the *grafio* lacked judicial powers? It seems to me it does not. To traditional historiography, the *grafio* was not a *iudex*, because in its view the presidency of the court (*mallus*) was held by the *thunginus* or *centenarius*, a representative of popular institutions; there was no room originally for any complementary royal jurisdiction for the *grafio*. This

12 For evidence of so-called mediatization of the count, see Claude, "Untersuchungen zum frühfränkischen Comitatus," pp. 26–29. The threefold wergeld of LS 54 can be found in later laws also applied to the *comes*, though it is characteristic of other royal officials in Frankish law: cf. *Lex Ribvaria* (henceforth LRib) 54.1, ed. Franz Beverle and Rudolf Buchner, MGH LL 3/2; *Lex Francorum Chamaavorum* 7, ed. Rudolf Sohm, MGH LL (folio series) 5.

13 LS 50, 51, 56. The *grafio* also expels the unwelcome settler in LS 45, "De migrantibus."

14 LS 53.2, 4, 6 (C redaction), 8.

15 See below, p. 55.

16 The term is used by Schultze, *Grafenschaftsverfassung*, p. 36, but is common in the older literature: see also E. Frh. v. Guttenberg, "Iudex h. e. comes aut grafio," in *Festschrift E. Stengel* (Munster, 1952), p. 95; but cf. Willoweit, "Graf, Grafenschaft," col. 1777.

interpretation, drawn in part from *Lex Salica* and in part from the theory of the democratic and popular origins of Germanic institutions, has remained largely unexamined.¹⁷ Some general considerations, however, suggest that it may require considerable modification. First is the fact that on subjects of judicial competence and procedure, as in many other areas, *Lex Salica* draws only a partial picture, and one which seemingly can be filled out in a number of ways. The traditional interpretation of the judicial role of the *thunginus* goes well beyond the limited evidence offered by *Lex Salica*. Second, the constitutional framework of early Frankish society which traditional historiography constructed around the central position of the *thunginus/centenarius*, and which influenced its view of judicial administration, has now at last been laid aside by modern scholarship. This revision has plain implications for our understanding of the relationship between the *thunginus*, *centenarius*, and *grafio*. Finally, modern scholarship has also largely abandoned the notion of a single local judicial authority in the Merovingian kingdom. Judges at various levels and with varying kinds of competence operated in Merovingian society, and one would be rash to assume that this multiplicity was a sixth-century innovation in Frankish law.¹⁸ Each of these considerations suggests that there may be reasons to attribute judicial functions to the *grafio*. Whether there are good reasons to do so depends upon our interpretation of *Lex Salica* and related sixth-century documents.

The usual sixth-century term for a judge was *iudex* or *iudex fiscalis*, the last term explicitly indicating a royal official. The term *iudex* is not applied to any of the officials in *Lex Salica*, and we are consequently left to infer their judicial role from the context of the few provisions in which they appear. Language which ostensibly indicates the act of judging (*legem dicere*, *iudicare*) is reserved to the *rachineburgii*. As judicial assessors and repositories of customary law, they were probably required to be present for most court proceedings; as witnesses and property assessors, they were selected by the *grafio* and accompanied him when he distrained a debtor; but they do not preside over the court and are not judges in either the modern or the sixth-century sense of the word.¹⁹ This function has usually been attributed to the *thunginus* or *centenarius*. The language of *Lex Salica* certainly suggests reasons for the attribution; for example, certain procedures are said to take place *in mallo ante thunginum aut centenarium*. But the central, and exclusive, judicial position assigned to the *thunginus/centenarius* also springs from the belief of traditional historiography that this official was the head of the primitive Germanic hundred

17 Brunner and von Schwerin, *Deutsche Rechtsgeschichte*, 2:202–5, 222. Heinrich Geffken, *Lex Salica zum akademischen Gebrauche* (Leipzig, 1898), pp. 168–69.

18 The point is made by Claude, "Untersuchungen zum frühfränkischen Comitatus," pp. 38–45, against E. Frh. v. Guttenberg, "Iudex h. e. comes aut grafio," pp. 93–129. See the discussion by Fustel de Coulanges, *Monarchie franque*, pp. 229 ff., who shows the term *iudex* to have a particular application to the count, but also to be a general term for state functionaries of various kinds.

19 LS 50.3, 56.1–3 and 6a, 57. And cf. *Edictum Chilperici* (= LS 113, 115, but see edition by J. H. Hessels, *Lex Salica: The Ten Texts with Glosses and the Lex Emendata* [London, 1880], tit. 78.7, 9).

(*centena*). Thought to be a popular official (he is not included among the list of royal officials with the threefold *wergeld*), the *centenarius* is supposed to have led the hundred and presided over its court until his presidency was replaced by that of the *grafio*, the representative of royal power. The notion of the hundred as the basic administrative unit of early Germanic polity, however, has been completely rejected. The *centenarius* of Frankish sources, it is generally agreed, has his roots in the system of ranks of the late empire, as do the *dux*, *comes*, *tribunus*, and *vicarius*.²⁰ Although aspects of the office are not completely clear, the *centenarius* is now recognized to be a royal official with judicial powers, and a subordinate of the count. This would seem to solve immediately the problem of the judicial capacity of the *grafio*: the *centenarius* is simply the judicial agent of the *grafio* and presides over certain kinds of cases in the *mallus* which do not require the participation of his superior. As will be seen, such a conclusion is perfectly consistent with the provisions of *Lex Salica* in which the *thunginus/centenarius* appears, and it corresponds to what we know of procedure in later sources.

This conclusion, however, acquires much of its force from the equation of the *thunginus* with the *centenarius*. Most older scholarship tended to accept the equation because it supported the notion of the Germanic judicial hundred (*centena*), led by the chief of the hundred (*centenarius*), and simplified the interpretation of Frankish judicial institutions. Some scholars have always argued for the separation of the two terms, and recent scholarship tends to assume for its own reasons that the *thunginus* and *centenarius* are distinct officials.²¹ It is possible that a better understanding of the *centenarius* as he appears in imperial and in later Frankish sources might lend some assistance to the problem, but it seems to me far more likely that the dilemma will never be solved, particularly since the *thunginus* is attested only in *Lex Salica*. If the *thunginus* is simply a Germanic term for the *centenarius*, we are dealing with a subordinate judicial official; if the terms refer to two different officials, then the *thunginus* becomes a more shadowy figure, and his relationship to the *centenarius* and *grafio* is a critical problem for evaluating his position.²²

20 For discussion based on the older literature, see Brunner and von Schwerin, *Deutsche Rechtsgeschichte* 2:203–5, 234–41, and Geffken, *Lex Salica*, pp. 168–69, 262–63. In Germany the major dent in the traditional teaching was made by Dannenbauer, “Hundertschaft, Centena und Huntari,” which also surveys older views. A review of the newer literature is given by H. J. Krug, “Untersuchungen zum Amt des centenarius-Schultheiss,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 87 (1970), 1–31; 88 (1971), 29–109. The new view tends to be tied up with the dubious notion of the “king’s free”: see n. 5 above. Linking the *centenarius* with the systems of ranks of the late empire, of course, is an old Romanist interpretation: e.g., Fustel de Coulanges, *Monarchie franque*, p. 224.

21 For the older literature see Geffken, *Lex Salica*, pp. 168–69, and Brunner and von Schwerin, *Deutsche Rechtsgeschichte*, 2:201–5; von Schwerin’s second edition accepts the identity of the two officials; the first edition argued their separation.

22 Linguistics offers no solution here: cf. E. Karg-Gasterstadt, “Thungin,” *Beiträge zur Geschichte der deutschen Sprache* 72 (1950), 314–19.

The modern argument for the separation of the two officials has been stated by Theodor Mayer. In his view the *thunginus* and *centenarius* were not contemporaries, as the traditional scholarship which distinguished between them tended to assume, but separate officials from different periods of Frankish history; the *thunginus* was the original president of the *mallus*, and the phrase *aut centenarius* was added after he had been pushed from his position by the royal *iudex*. The mark of the phrase's interpolation, according to Mayer, is the inconsistency with which it has been paired with *thunginus*: sometimes *thunginus aut centenarius*, sometimes only *thunginus*, appears in the Salic text.²³ The significance of this circumstance is clearly debatable,²⁴ but the possibility that *centenarius* is an interpolation in the original text of *Lex Salica* is worth taking into consideration. And if the *thunginus* and *centenarius* were distinct officials, who was the *thunginus*? A recent answer, which has received support, is that he was a *Gau* king, one of the petty rulers of the Franks prior to their unification under Clovis.²⁵ Clovis, one might think, is an unlikely candidate for permitting such a survival. In any case, the supposition that the *thunginus* was a king lacks evidence and plausibility; there is a *rex* in *Lex Salica* and he is clearly not the *thunginus*. However, this recent promotion, which is in conformity with the spirit of the new constitutional history, and the old view of the *thunginus* as leader of the primitive Germanic hundred are both testimony not to the evidence but rather to the room for speculation allowed by the rather indistinct outline of the official as he appears in *Lex Salica*. If we look at the provisions which refer to the *thunginus* and consider his relationship to the *centenarius*, we shall see that the notion that originally he alone had jurisdiction in the *mallus* goes well beyond the evidence of *Lex Salica*.

The *thunginus* appears in four titles of *Lex Salica*. (1) LS 44, "De reipus," regulates the procedure to be followed on the remarriage of a widow and stipulates the kinsmen to whom the suitor is to make a payment, called *reipus*. Before the suitor receives the widow he is to appear before the *thunginus* or *centenarius* so that this official can assemble the *mallus*, or court. The court attests that payment is made by an appropriate suitor to the correct *reipus* recipient and presumably ensures that the intended remarriage is publicized.²⁶ (2) LS 46, "De acfatmire," fixes the procedure to be followed when a testator institutes an heir to part or all of his

23 "Staat und Hundertschaft in fränkische Zeit," in *Mittelalterliche Studien*, pp. 112–20; and see Gefken, *Lex Salica*, pp. 168–69, esp. 228. The old argument for separate, but contemporary, officials assigned the *centenarius* to extraordinary sessions of the *mallus* (*gebotene Dinge*) and the *thunginus* to extraordinary, and regular sessions (*echte Dinge*).

24 Cf. remarks by Brunner and von Schwerin, *Deutsche Rechtsgeschichte*, 2:204.

25 R. Wenskus, "Bemerkungen zum thunginus in der Lex Salica," in *Festschrift P. E. Schramm* (Wiesbaden, 1964), pp. 217–36. Cf. Krug, "Untersuchungen zum Amt des centenarius-Schultheiss," p. 12; Ewig, *Handbuch*, p. 425; Schultze, *Grafschaftsverfassung*, p. 36. The shift to the present view was already anticipated to some degree in Mayer, "Staat und Hundertschaft," p. 115.

26 "§ 1. Sicut adsolet homo moriens et uiduam dimiserit, qui eam uoluerit accipere, antequam eam accipiat ante *thunginum aut centenarium*, hoc est ut *thunginus aut centenarius* mallum indicant, et in ipso mallo scutum habere debet et tres homines tres causas demandare debent."

property. The first part of the procedure takes place in a *mallus* called by the *thunginus* or *centenarius*; the second part, in the house of the testator; the third, before the king or in the *legitimus mallus publicus*, apparently, according to a gloss, before the *thunginus*. The corresponding provision in *Lex Ribvaria* (c. 50) provides for a less formal procedure which takes place in the royal court and employs witnesses and written documents.²⁷ (3) LS 50, “De fides factas,” outlines the procedure for collecting a debt incurred by the formal promise, *fides facta*. Most of the procedure is extrajudicial and, properly attested by witnesses, leads to the *grafio*s being summoned to exercise distraint on the debtor. Within forty nights of incurring the obligation, the creditor is to make his first demand for repayment. If payment is not made, he may summon the debtor to court and ask the *thunginus* to repeat a formula, the precise meaning of which is not clear, against the debtor. After three more demands he may approach the *grafio*, who is then obligated to distraint the debtor.²⁸ (4) LS 60, “De eum qui se de parentilla tollere uult,” provides for a formal procedure by which an individual, who is probably threatened by feud, can sever particular kinship ties which are the cause of his problems. The abjurer is to go before the *thunginus* (or the *centenarius* according to the C redaction) in the court and there break four alder rods over his head, throw them to the four corners of the court, and declare his withdrawal from the obligations of kinship and the affairs of his kinsmen.²⁹

This is the evidence for the *thunginus*, and it is evidence which best fits a secondary official with a restricted role in judicial affairs. Nowhere is the *thunginus* said to judge or adjudicate legal disputes. He clearly does not have coercive power, for this is the preserve of the *grafio*; nor does he command its exercise, for the *grafio* must distraint the debtor in *Lex Salica* 50 because of the creditor’s successful completion of a series of extrajudicial and judicial procedures. Two principal duties of the *thunginus* appear in the provisions of *Lex Salica*: first, in specific instances he announces extraordinary sessions of the *mallus* convoked to meet particular requests; second, he presides over certain solemn acts which require the attestation of the court. It is a striking feature that none of the procedures in which the *thunginus* participates are legal disputes requiring adjudication. His role is limited to matters requiring the publicity of a judicial forum and attestation by

27 “§ 1. Hoc conuenit observare ut *thunginus aut centenarius* mallum indicant et scutum in ipso mallo habere debent et tres homines tres causas demandare debent. . . . § 4. . . . debent tres testes iurati dicere quod ibi fuissent in mallo quem *thunginus aut centenarius* indixerunt. . . . § 6. Ista omnia illi alii tres testes iurati dicere debent et hoc quod in mallo ante regem uel (in) legitimo mallo publico ille qui accepit in lesum furtunam ipsa(m) aut ante regem aut in mallo publico legitimo, hoc est in mallobergo anththeoda aut *thungino*, furtunam illam quos heredes appellauit publice coram omnibus festucam in lesum iactasset. . . .” Cf. LRib 50.

28 “§ 2. Si adhuc noluerit componere, debet eum ad mallum manire et sic nestigan thigius mallare debet: ‘Rogo te *thungine*, ut nestigan thigius gasachio meo illo qui mihi fidem fecit et debitum debet.’ . . . Tunc *thunginus* dicere debet: ‘Nestigan thigio ego illum in hoc (teneo), quod lex Salica habet. . . .’”

29 “De eum qui se de parentilla tollere uult. § 1. In mallo ante *thunginum* [C: aut *centenarium*] ambulare debet. . . .”

the court that formal procedures have been properly accomplished. The judicial dimensions of the *thunginus* as he appears in *Lex Salica* hardly make of him the sole and exclusive judge of traditional historiography and still less the *Gau* king of more recent explanations. An apt contemporary analogy for the legal sphere within which he appears to act would be the very restricted competence of the late Roman and early Frankish municipal *curia*, which dealt with minor judicial matters, attested and registered testaments, adoptions, and business transactions, and acted as a forum to publicize acts with legal consequences. Its jurisdiction, like that of the *thunginus*, eventually gave way before officials of the comital court.³⁰

The conclusion that the judicial dimensions of the *thunginus* are perfectly consistent with a secondary judicial official of restricted competence is reinforced when we look at the relationship between the *thunginus* and *centenarius*. According to traditional and recent historiography, the *thunginus* was driven from his position as president of the *mallus* by the *grafio*, whose newly acquired judicial competence was a sign of his rising status and of the extension of royal power over nonroyal institutions. As we have already seen, this conclusion is not at all warranted if *thunginus* and *centenarius* are taken to be variant names for the same official; the *centenarius* of *Lex Salica* would then be simply a secondary royal official subordinate to the *grafio*, just as the *centenarii* of later sources are deputies of the count. It is also apparent, especially in light of the judicial competence of the *thunginus* outlined above, that the traditional notion of the *grafio*'s lack of judicial capacity gets no help from the supposition that the *thunginus* and *centenarius* were different officials from different periods in the development of Frankish judicial institutions. For if later redactors added the phrase *aut centenarius* to the provisions mentioning the *thunginus*, they obviously believed that the role of the *thunginus* had been supplanted not by the *grafio* but by his deputy, the *centenarius*, and that one secondary official was replaced by another. If indeed the *grafio* had assumed the place of the *thunginus*, we might reasonably expect the interpolation *aut grafio* instead. No matter how we understand the phrase *thunginus aut centenarius*, it seems to testify to a restricted judicial competence, which is confirmed by the context of the provisions in which the *thunginus* and the *centenarius* appear.

The *thunginus*, therefore, ought not to be conceived as the sole and exclusive judge in the *mallus*. The text of *Lex Salica* leaves plenty of room for the *grafio* to have a judicial role, especially in serious penal cases requiring adjudication leading to afflictive penalties, compensation, and fines. Modern scholarship is largely in agreement about stressing the importance of the military and security functions of the early counts. These functions undoubtedly bore heavily upon the nature of the jurisdiction they exercised; though counts might have had a wide judicial discretion, they were not appointed with the widespread suppression of minor jurisdictions in mind but to secure their districts and repress disorder. "Et tam severus atque districtus

30 Cf. Eugen Ewig, "Die Stellung Ribuariens in der Verfassungsgeschichte des Merowingerreichs," in his *Spätantikes und fränkisches Gallien: Gesammelte Schriften*, 1 (Zurich, 1976), pp. 453–55; and Brunner and von Schwerin, *Deutsche Rechtsgeschichte*, 2:263–69, esp. 268.

fruit in malefactoribus ut vix ullus reorum possit evadere” is the way Gregory of Tours chose to describe his great-grandfather, also called Gregory, in the latter’s long tenure as *comes* of Autun; to Venantius Fortunatus the elder Gregory had been an *arbiter ferox*.³¹ As far as the *grafio* is concerned, it seems likely that his judicial role in serious disputes and criminal offenses is implicit in his right to collect the *fredus*, the third portion of compensations, which went to the fisc. In the nearly contemporary *Pactus pro tenore pacis* (AD 511–58) the *fredus* paid by a brigand caught by the security forces was reserved to the “iudex in cuius provintia est latro.”³² The *Pactus* was intended to regulate relations between the subjects of Clothar I and Childebert I and ensure the suppression of rustlers; the border between the two kingdoms lay well within *grafio* country, and obviously the term *iudex* is applied to the count, whether *comes* or *grafio*. The old notion of a single judge in the legal world of *Lex Salica* is best rejected. We should not think of the *mallus* as the preserve of one judge, whether *thunginus/centenarius* or *comes/grafio*. The *mallus* was the court staffed by a number of officials, and its presidency might vary depending on the nature of the session, the legal business before it, and the availability or inclination of the primary officials of the king; “ad mallo ante centenariorum vel comite seu ante duci, patricio vel rege” is the way this idea is expressed in the early seventh-century *Lex Ribvaria*.³³ We should also assume that the judicial scope of officials might vary in different parts of the kingdom, without effect upon their status. Ideally counts were not to impose the law but to abide by it; in the appointment formula preserved by Marculf, counts are to govern according to the laws and customs of the inhabitants of the *pagus*, whether Franks, Romans, Burgundians, or others.³⁴

III

This picture of the essential equivalence of the *grafio* and *comes* is confirmed by a significant body of sixth- and early seventh-century material. Two provisions added to the text of *Lex Salica* of acknowledged early, if uncertain, date mention a *iudex*, a term glossed in the text of the law as “hoc est comis aut grafio.” In one case the judge hears a request that a widow be placed under the protection of the king (“in verbum regis”); in the other the *iudex* conducts an inquest to find the party responsible for a homicide victim found between two *villae*.³⁵ The originality and

31 Gregory, *Liber vitae patrum* 7.1, MGH SRM 1/2:687. Fortunatus, *Carmina* 4.2, MGH AA 4/1: “arbiter ante ferox, dehinc pius ipse sacerdos quos domuit iudex fovit amore patris.” The elder Gregory’s tenure of office would have been under the Burgundian regime.

32 *Capitularia regum Francorum*, ed. Alfred Boretius, MGH Capit 1, c. 16, p. 9; cf. LS 90–92.

33 LRib 51 and cf. *Lex Burgundionum* 1.5, n. 43 below.

34 “Ideo tibi accionem comitiae . . . ad agendum regendumque commissemus ita ut . . . omnis populus ibidem commanentes, tam Franci, Romani, Burgundionis vel reliquas nationis, sub tuo regimine et gubernatione degant et moderentur et eos recto tramite secundum lege et consuetudine eorum regas”: Marculf 1.8, *Formulae Merovingici et Karolinus aevi*, p. 47.

35 LS 100: “De muliere uidua qui se ad alium maritum dare uoluerit. . . . Et si isti [prescribed recipients of a payment called *achasius*] non fuerint, tunc in mallo iudici, hoc est comite aut grafione,

the sense of the gloss have been questioned,³⁶ but there are no internal or external reasons to reject the text as we have it. Both cases involve the financial rights of the fisc: in one, a customary payment, called *achasius*, paid on the remarriage of a widow; in the other, the crown's right to the *fredus*. The cases clearly fall under royal jurisdiction, and the *iudex* with competence would normally be the head of the *pagus*, the *comes* or *grafio*, or his deputies.

That the *comes* and *grafio* were equivalent terms is recognized by the *Lex Ribvaria*, which in part is a revised form of *Lex Salica* and in part a codification of younger law. Although it may contain Carolingian interpolations, the law is now recognized to have been codified in the reign of Dagobert (623–39), possibly on the occasion of the creation of the Austrasian subkingdom of Sigibert III (633–34).³⁷ Two levels of the compilation can be distinguished: titles 68 to 91 are thought to stem from the reign of Dagobert and to show awareness of the distinctiveness of the Ribvarian province; titles 1–67, based closely on *Lex Salica*, are thought to date from that of Clothar II (584–629). In the titles from the reign of Clothar a clear set of equivalences is laid down between the *grafio* of *Lex Salica* and the *iudex* and *comes* of other Merovingian sources. In *Lex Ribvaria* 52, which is a version of a Salic provision (LS 51) that deals with the illegal involvement of the *grafio* in distraint, the *grafio* of *Lex Salica* is replaced with the term *iudex fiscalis*.³⁸ Likewise, *Lex Ribvaria* 54 – the equivalent of the Salic provision recording a threefold wergeld for the *grafio* (LS 54) – uses the term *iudex fiscalis quem comitem vocant* in place of *grafio*.³⁹ *Lex Ribvaria* 36, outlining the procedure by which the *comes* or *iudex fiscalis* can be invoked to distraint a defendant ignoring legitimate summonses, has no direct parallel in *Lex Salica*; however, an analogous provision appears in the *Edictum Chilperici*, where the place of the Ribvarian *comes* and *iudex* is taken by the *grafio*.⁴⁰ Finally, *Lex Ribvaria* 51, on the production of witnesses

roget de eam in uerbum regis mittat. Et achasium quem parentibus mortui mariti dare debuerant parti fisci adquirat.”

LS 102: “De hominem inter duas uillas occisum. Sicut adsolet homo iuxta uilla aut inter duas villas proximas sibi uicinas fuerit interfectus, ut homicida illa non appareat, sic debet iudex, hoc est comis aut grafio, ad loco accedere et ibi cornu sonare debet.” An inquest follows.

36 Claude, “Untersuchungen zum frühfränkischen Comitatus,” pp. 38–45.

37 For *Lex Ribvaria*, see n. 12 above. For the date, see Ruth Schmidt-Wiegand, “Lex Ribvaria,” in *Handwörterbuch zur deutschen Rechtsgeschichte*, cols. 1923–27; and Ewig, “Die Stellung Ribuariens in der Verfassungsgeschichte des Merowingerreichs,” pp. 462–71.

38 LRib 52: “Si quis iudicem fiscalem ad res alienas iniuste tollendas . . . invitare presumpserit.” = LS 51: “Si quis grafionem iniuste ad res alienas tollendas inuitat.”

39 LRib 54: “Si quis iudicem fiscalem, quem comitem vocant, interfecerit, ter ducenos solidos multetur.” = LS 54: “Si quis grafionem occiderit . . . solidos DC culpabilis iudicetur.”

40 LRib 36: “Quod si ad septimo mallo non venerit, tunc ille qui eum mannit ante comitem cum 7 rachinburgiis in haraho iurare debet . . . ; et sic iudex fiscalis ad domum illius accedere debet.” Cf. *Edictum Chilperici* (LS 113 = Hessels 78.7): “tunc in proximo mallo ante rachinburgiis sedentes et dicentes quod ipsi illum ante audierit(n)t, sic inuitetur graphio. . . . Et grafio cum VII rachinburgiis . . . a(d) casa(m) illius ambulent”; LS 50, “De fides factas”: “Tunc grafio collegat secum septem rachinburgiis idoneos et sic cum eos ad casa illius qui [fidem] fecit ambulet”; and LS 56.6a.

before the court, adds to its Salic model (LS 49) a typical list of judges who might preside over a *mallus*; in the place where we would expect the *grafio* of *Lex Salica* the Ribvarian compilation employs the term *comes*.⁴¹

It seems likely that these provisions of *Lex Ribvaria* reflect the terminology of the southern and western portions of Clothar's kingdom, in which the head of the *pagus* was called *comes*, and the redactors of the Ribvarian codification adopted them without change. The distinctively Ribvarian section of the codification (titles 68 to 91) provides confirmation of this supposition. *Lex Ribvaria* 87 is a version of a law found in the earlier section of the codification (LRib 52) and *Lex Salica* (LS 51) dealing with the illegitimate invocation of the public authority to distrain a debtor. While, as we have seen, *Lex Ribvaria* 52 employed the general term *iudex fiscalis* instead of *grafio*, *Lex Ribvaria* 87 has retained the title *grafio* characteristic of northern speech and of *Lex Salica*.⁴² *Lex Ribvaria* shows that *comes* and *grafio* were essentially equivalent terms but also titles with regional application; as in the *Pactus pro tenore pacis*, both titles might also be conveniently subsumed in the general descriptive appellation *iudex*, or *iudex fiscalis*, which referred to the head of the *pagus* or his deputies.

One other provision of *Lex Ribvaria* is important for indicating the relationship of the *comes* to the *grafio* in the early seventh century and their position in the administrative hierarchy. *Lex Ribvaria* 91 is directed at various high royal officials who are to compensate with their lives if in their capacity as judges (*in iudicio residens*) they are subject to bribery. This law was patterned on a provision of the *Lex Burgundionum*.⁴³ The Ribvarian redactors have followed the list of royal judges which is given in the Burgundian law but have altered the order and some of the terminology. The Ribvarian equivalents to the "Burgundian and Roman counts of the cities or pagi" ("Burgundiones quoque et Romani civitatum aut pagorum comites") of *Lex Burgundionum* are clearly the *grafio* and *comes*, though the Ribvarian list places the *comes* before the *grafio*. As will be seen, this order in *Lex Ribvaria* follows that of later Merovingian address formulas and no doubt corresponded to early seventh-century chancery practice as well. But what is worth noting is that the *grafio* was seen as comparable to the Burgundian *comes* and that the terms *comes* and *grafio* were thought to imply some kind of ethnic distinction, though in a Merovingian context it would be one based upon region rather than, as in the Burgundian case, upon the nationality of the officeholder. *Lex Ribvaria* 91, then, is a rather imperfect adaptation, but it points once again to the similar positions of the Merovingian *comes* and *grafio*.

41 See at n. 33 above.

42 LRib 87: "Si quis *grafionem* ad res alienas iniuste tollendas invitaverit." See n. 38 above.

43 LRib 91: "Hoc . . . iubemus ut nullus optimatis, major domus, domesticus, *comes*, *grafio*, cancellarius vel quibuslibet sublimitas in provintia Ribvaria in iudicio resedens munera ad iudicio pervertendo non recipiat." = *Lex Burgundionum* 1.5: "Sciunt itaque optimates, consiliiarii, domestici et maiores domus nostrae, cancellarii etiam, *Burgundiones quoque et Romani civitatum aut pagorum comites*, vel iudices deputati, omnes et militantes" (ed. L. R. von Salis, MGH LL 2/1).

Other sources from the seventh and eighth centuries also confirm either the high rank of the *grafio* or his equivalence with the *comes*. The possibly Burgundian chronicle of “Fredegar,” dating from around 660, says that in 613 Clothar II had Meroeus, the son of King Theuderic, put for safekeeping into the hands of the Neustrian *grafio* Ingobod; the nature of the office is not stated, but we may safely assume that Ingobod himself was a trusted figure in Clothar’s court.⁴⁴ The same chronicle for the year 631 tells us that Dagobert was accompanied by a select military force from Neustria and Burgundy “cum ducibus et grafionibus”; since we might have expected to hear of dukes and *comites* accompanying the king, *grafio* here seems simply to be a northern term for count.⁴⁵ A donation to Saint-Denis by Clovis II in 640 is addressed to a *dux*, possibly Wandelbert, and the *grafio* Ebrulf.⁴⁶ In similar donations, the position in the address formula corresponding to Ebrulfs is occupied by the title *comes*, or *domesticus*.⁴⁷ Ebrulf, like the *grafio* of *Lex Salica* and the *comes*, appears to be the administrator of a *pagus*, which in this case lay within a larger ducal jurisdiction and contained the donated property.⁴⁸ Some late sources, however, are more explicit about the equivalence of the *comes* and *grafio*. In the late seventh- or early eighth-century life of St. Eligius, Garifredus is called

44 “Sigybertus et Corbus filius TheudERICI iusso Chlothariae interfecti sunt. Meroeus secrecius iusso Chlothariae in Neprico perducetur . . . Ingobode grafione commendatur, ubi plures post annos uixit”: *The Fourth Book of the Chronicle of Fredegar*, ed. and trans. J. M. Wallace-Hadrill (London, 1960), p. 35.

45 “[Dagobertus] . . . scaram de electis uiris fortis de Neuster et Burgundia cum ducebus et grafionibus secum habens”: *ibid.*, p. 62. That there was a Neustrian context for the *grafiones* is suggested by n. 44 above and other passages referring specifically to Burgundy: e.g., “Dagobertus de universum regnum Burgundiae exercitum promouere iobet, statuens eis capud exercitus nomeni Chadoindum referendarium. . . . Quod cum decem docis [=duces] . . . , exceptis comitebus plurimis qui docem super se non habebant, in Wasconia cum exercito perrixissent” (a. 635, *ibid.*, p. 65). In Fredegar, Burgundian *duces* quite overshadow *comites*, who are rarely mentioned: see esp. a. 643, *ibid.*, pp. 75–76.

46 *Chartae Latinae antiquiores*, 13: *France*, 1, ed. A. Bruckner and R. Marichal (Zurich, 1981), no. 556 (henceforth ChLA). The address has usually been reconstructed “*uiris inlustribus Wandelberto duci et Ebrulfo grafioni*”: see Ph. Lauer and Ch. Samaran, *Les diplômes originaux des Mérovingiens* (Paris, 1908), no. 7; and K. A. F. Pertz, *Diplomata regum Francorum e stirpe Merowingica* (henceforth DM), no. 18, MGH DD 1. ChLA fails to distinguish the honorific *uiris inlustribus* and recognizes only the initial Uu of the duke’s name. *Inlustris Angantrudis*, Ebrulfs daughter and widow of the count of Paris, was involved in a suit with Saint-Denis in 692 over property in Chamblouis: Lauer and Samaran, no. 20 = DM 64.

47 *Duci et comiti*: DM, no. 30, a. 673 (Alsace); DM, no. 62, a. 692 (Ardennes). For *duci et domestico* see ChLA, no. 551, a. 632–33 (= Lauer and Samaran, *Diplômes*, no. 3 = DM 14), where the *dux* is certainly Wandelbert; and DM, no. 29, a. 667 (Ardennes).

48 The *pagus* is Chamblouis. Ebling (*Prosopographie*, p. 231) regards the duke, whom he takes to be Wandelbert, as “*dux des pagus Chambly*,” but his *ducatus* is not identified and its precise limits are not known. In ChLA where Wandelbert definitely appears in the address the property in question is in the *pagus* of Paris. Ebling’s association of Ebrulfs role with that of a *domesticus* could as easily be made with that of a *comes* (see previous note).

both *comes Vermandensis* (Saint-Quentin) and *vir inlustris, grafio*.⁴⁹ Though *comes* is no stranger to the formulary of Marculf, the term *grafio* appears for the first time in the Frankish formulas only in the mid-eighth-century *Formulae Bignonianae*, where it is simply used as an alternative for *comes*.⁵⁰ Finally, Paul the Deacon in his *History of the Lombards*, written in the last years of the eighth century, mentions a late seventh-century Lombard defeat of a *comes* of the Bavarians “quem illi gravionem dicunt,” thereby recognizing that *grafio* was simply a Germanic equivalent of the Latin *comes*.⁵¹

Although the texts mentioning the *grafio* are sparse, the evidence considered to this point is extensive enough, and has sufficient context, to lend itself with little difficulty to the interpretation that the *grafio* and *comes* were essentially the same official. Proponents of the rising *grafio* theory, however, though basing their view of his originally low status on *Lex Salica*, have also pointed to a small, late body of evidence which they interpret as showing the *grafio* to be an official distinct from the count and of lesser rank. It remains to be seen whether this evidence requires any alteration of the conclusion developed thus far.

According to a recent interpretation, the location formula, *in pago illo, in grafia illa*, appearing twice in the Sens formulary of the late eighth century, shows that the *grafio* in certain areas was a subordinate to the *comes*, rather like the *tribunus*, for *grafia* must be a subdivision of the *pagus*.⁵² While it is true that the territorial jurisdiction of a count was regularly called a *pagus*, the term was also applied to regions and administrative districts more extensive than the “county.” The long-standing interpretation of *grafia* in the Sens formulary is that the term equals *comitatus*.⁵³ *In pago, in comitatu*, a formula which shows the county as a subdivision of the *pagus*, is a parallel easily found, as are references to *pagi* with more than one

49 MGH SRM 4, c. 50, ed. Bruno Krusch, p. 728: “comes Vermandensis Garifredus”; c. 55, p. 730: “vir inlustris Garefridus grafio.” Ebling, *Prosopographie*, p. 157.

50 “Cum resedisset inluster vir ille comes in illo mallo publico . . . Sed postea apud ipso garafione vel apud ipsos bonos hominibus qui in ipsum mallum resedebant . . .”: no. 9, *Formulae*, p. 231.

51 *Historia Langobardorum* 5.36, ed. G. Waitz, MGH SRL, p. 156.

52 “Dono . . . hoc est res meas in pago illo, in loco nominante cui vocabulum est illo et illo, in pago illo, in grafia illa, super fluvium illum . . .”: no. 31, *Formulae*, p. 199; “Repetebat ei eo quod illa terra quem apud homine illo concambiavit, qui est in pago illo, in grafia illa, in loco qui vocatur ille, post se malo ordine retineret iniuste”: *recentiores* no. 7, *ibid.*, p. 214. Date of older collection: 768–75; younger, reign of Louis the Pious. No. 31 is obviously composed of more than one location formula, and one might question the relation of *in grafia illa* to the second *in pago illo*; in the younger collection, no. 7, however, the *grafia* is clearly located within the *pagus*.

For the notion of *grafiones* under counts, see Claude, “Untersuchungen zum frühfränkischen Comitatus,” pp. 37–38, which probably lies behind the account in Edward James, *The Origins of France: From Clovis to the Capetians*, New Studies in Medieval History (London, 1982), p. 58; and cf. Lucien Musset, *The Germanic Invasions*, trans. Edward James (University Park, Pa., 1975), p. 214. The only real evidence for a junior *grafio* is the problematical *obgrafio* of LS 54.2 (A 1), who is, however, under the *grafio* proper.

53 E.g., *Formulae*, p. 756; Brunner and von Schwerin, *Deutsche Rechtsgeschichte*, 2: 196; Ewig: “Die Formel ist m.E. ebenso zu interpretieren wie die bekannte Doppelformel in *pago in comitatu*” (“Ribuarier in der Verfassungsgeschichte,” p. 456, n. 28).

count, circumstances which should preclude hasty acceptance of inferior *grafiones* without positive evidence of their existence.⁵⁴

The evidence traditionally cited for the *grafio* as an official distinct from the *comes* and lower in rank comes from the late Merovingian and early Carolingian royal charters. In a *placitum* of Clovis II given at Valenciennes in 693 there is a list of assessors, including nine *comites*, eight *grafiones*, and four *domestici*.⁵⁵ As the assessors are given by name, the terms *comes* and *grafio* are obviously considered to be distinct. But it is widely recognized that this distinction can be explained on the basis of linguistic and regional usage and need not presuppose a difference in rank and function, especially at so late a date.⁵⁶ Valenciennes is located in an area where we would expect regional counts to bear the title *grafio*. It is worth remembering that *Lex Ribvaria* equated the office of *comes* and *grafio* and at the same time, in its list of the great officers of state, recognized the terms as distinct.⁵⁷

The final evidence rests on a small number of Carolingian address formulas. These formulas correspond to a general type of address listing offices of many kinds without specific names of officials being attached to them. Pepin in 751 and Charlemagne in 782 issued confirmation charters which included reference to *grafiones*, placing them not after *comites* but after *domestici*, a pattern which was repeated in the late eighth and early ninth centuries.⁵⁸ In a number of respects the sequence *comitibus*, *domesticis*, *grafionibus* is an anomaly. Merovingian chancery practice, as in the *Lex Ribvaria* and the Valenciennes charter, placed the term *grafiones* directly after *comites*.⁵⁹ By the time of the Carolingians, the term *grafio* had been assimilated to that of *comes*, so its immediate relevance also seems negligible. It has been supposed that this pattern goes back to Merovingian formulas of a much earlier period, in which the *grafio* had not yet attained comital status,⁶⁰ a supposition which still cannot avoid the suggestion that the Carolingian redactors were blithely unconcerned with the niceties of contemporary rank and nomenclature and perhaps inexpert on the significance of those of bygone centuries. The problematical significance of the *grafio* in these Carolingian addresses increases even more if we consider the inclusion of the *domesticus* in the sequence of officials. The *domesticus* was a major early Merovingian official probably responsible

54 For the *pagus* divided into counties: Ganshof, *Frankish Institutions under Charlemagne*, p. 27, with examples. In *pago*, in *comitatu*, in *Formulae*, pp. 338, 458, and cf. Fredegar a. 610 (p. 29): "Abbele-nus et Herpinus comitis [= comites] cum ceteris de ipso pago [Aventicense Ultraiorano] comitibus cum exercito pergunt obviam Alamannis."

55 Lauer and Samaran, *Diplômes*, no. 23 = DM 66. In order, twelve *episcopi* are listed, twelve *obtimates*, nine *comites*, eight *grafiones*, four *domestici*, four *referendarii*, two *seniscalci*, and the *comes palatii*.

56 Cf. Claude, "Untersuchungen zum frühfränkischen Comitatus," pp. 35–36.

57 See nn. 38–43, above.

58 Pepin: DM, no. 23, a. 751; pattern for MGH DD Karol 1, no. 101, a. 775, ed. E. Muhlbacher. Charlemagne: DM, no. 141, a. 782; pattern for MGH DD Karol 1, no. 195, a. 796; *Formulae imperiales* 29b, *Formulae*, p. 307.

59 See nn. 43 and 55, above.

60 Claude, "Untersuchungen zum frühfränkischen Comitatus," pp. 33–34.

for the administration of the royal estates. But as the resources of the Merovingian kings diminished and as administration of the royal estates was subsumed under that of the count, the importance of the *domesticus* as a distinct official declined, with the consequence that the office hardly survived independently into the Carolingian period at all.⁶¹ By the time of these Carolingian address formulas, therefore, not just *grafio* but also *domesticus* were terms which had been assimilated to that of *comes*; to Carolingian redactors their significance in relation to one another could have been of little consequence as long as they followed the principal term *comes*. However one views these addresses, it seems clear they are of little value for establishing the pattern of contemporary officeholding or for fixing the position and function of the sixth- and seventh-century *grafio*. Confused anachronisms in Carolingian chancery practice are a poor measure of the foundations of the Merovingian constitution.⁶²

IV

The argument for a distinction between the *comes* and the *grafio* has often been a reflection of the larger framework of Merovingian constitutional history. Though many of the premises of the older constitutional school have withered, the new history has also found the distinction convenient and indeed has raised it once again to the level of dogma in order to document regional differences in the exercise of royal power in the Merovingian kingdom. But the rise of the *grafio*, which allegedly took place over a period of two hundred years, is not a doctrine which bears close examination. There is no evidence of the *grafio*'s supposedly lowly origins, whether one attributes judicial functions to him in *Lex Salica* or not. In *Lex Salica* he clearly fulfills the role of count and in all the other sources he is of comital status or classed among the great men of the kingdom. Two distinct terms, *comes* and *grafio*, may dispose us to think of two distinct offices, but this usage is readily explicable by the bilingual nature of the Merovingian kingdom; *comes* and *grafio* were simply regional titles for the administrator of the *pagus*. Such an equivalence is what comparison between *Lex Salica* and southern sources such as Gregory of Tours suggests, as does the frequency of the term *comes* in our sources and the rarity of the term *grafio*; it is also amply confirmed by the early seventh-century redactors of *Lex Ribvaria*, who recognized the equivalence of the titles *comes* and *grafio* and used them interchangeably or conjointly. All this is not to say that counts, and the regions over which they ruled, were everywhere the same; but regional constitutional patterns in the Merovingian kingdom cannot be

61 See Armand Carlot, *Étude sur le domesticus franc*, Bibliothèque de la Faculté de philosophie et lettres 13 (Paris, 1903), esp. pp. 23–32. Cf. Fortunatus, *Carmina* 7.16, *De Condane domestico*, and “De Condane domestico comite” of the eighth-century cod. Petropolitanus F. XIV.

62 Cf. M. Prou on the early Carolingian use of the term *vir inluster*: preface to Lauer and Samaran, *Diplômes*, p. v.; the various arguments on the problem are outlined by Georges Tessier, *La diplomatie royale française* (Paris, 1962), pp. 21–26.

established on the basis of the *comes/grafio* distinction. *Comites* and *grafiones* were essentially the same officials.

There are still ambiguities about the *grafio*, however. The history and significance of the name are unclear, and the etymologies which have been suggested really reflect interpretations of his supposed original functions and rank rather than any clear linguistic track.⁶³ Whether the term was used prior to the establishment of the Merovingian kingdom in Gaul, and if so, in what context, remains unknown and is probably unknowable. What is clear is only that the Merovingian *grafio* was the counterpart of the *comes*, whose office replaced the faltering provincial administration in the last days of the Western empire.

63 Cf. Brunner and von Schwerin, *Deutsche Rechtsgeschichte*, 2:218.

FROM ROMAN TO FRANKISH GAUL

Centenarii and *centenae* in the administration of the Merovingian kingdom

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Merovingian and Carolingian sources refer to a subordinate official, called a *centenarius*, and his jurisdiction, called a *centena*. In the Carolingian period, the *centenarius* was selected by the count (*comes*) to exercise administrative, police, and judicial functions within the *centena* or hundred, a subdivision of the county (*pagus* or *comitatus*). Other terms for the count's deputies and their jurisdictions are also attested; in the south *vicarii* administered districts called *vicariae*, and in the far west the subdivision of the county bore the name *condita*, a word probably of Celtic origin. For most of the kingdom, however, the principal officials of the count were called *centenarii* and their jurisdictions, *centenae*. In the Merovingian period also, the *centenarius* acted as a subordinate of the count, and like his Carolingian namesake exercised judicial and police duties; the term *centena* is attested in sixth-century Merovingian sources but probably acquired clear territorial significance only in the late Merovingian or early Carolingian periods.¹

Though a minor official in the administrative hierarchy, the *centenarius* has always played a large role in constitutional histories of the Merovingian and Carolingian kingdoms, and even more than his superior, the count, has been treated as the focal point for understanding the fundamental nature of the Frankish state. To the historiography of the nineteenth and much of the present century, for instance, the *centena* or hundred was a primitive, pan-Germanic institution, first and very imperfectly attested in the *centeni comites* and *pedites* of Tacitus' *Germania*.² The

1 The literature is vast and controversial: see nn. 2–5, 7–10, below. Recent standard accounts proceeding from a Carolingian perspective and available in English are F. L. Ganshof, *Frankish Institutions under Charlemagne*, trans. Bryce and Mary Lyon (New York 1970) 32–33, and Edouard Perroy, 'Carolingian Administration,' in *Early Medieval Society*, ed. Sylvia L. Thrupp (New York 1967) 142–43; both ignore the claims of modern German scholarship. A sound earlier and more detailed account of Carolingian institutions is Helen M. Cam, *Local Government in Francia and England* (Cambridge 1912) 26–31.

2 The most comprehensive review of the older literature is Heinrich Dannenbauer, 'Hundertschaft, Centena und Huntari' (see n. 5 below) 155–61. Cf. G. Gudian, 'Centena,' *Handwörterbuch zur deutschen Rechtsgeschichte* 1, eds. Adalbert Erler et al. (Berlin 1971) cols. 603–606.

hundred was thought to have been introduced into Gaul by the Franks either as a territorial unit or as a warrior association that gradually acquired territorial status. A basic political and judicial unit of the Germanic peoples, the hundred supposedly reflected the popular or democratic underpinnings of the Germanic state; the *centenarius*, therefore, far from being in origin a subordinate royal official, was at first a popular official elected by the hundred as its leader and as president of the hundred court or *mallus*. This stage in the development of the *centenarius* and the *centena* was believed to be still perceptible in sixth-century sources, especially *Lex Salica*, and also, to a lesser extent, in the capitularies of the Merovingian kings. But the same sources, it was thought, also showed the Merovingian monarchy increasing its power by reducing the *centenarius* to a subordinate official of the count, the major representative of royal power in the community. Accordingly the *centenarius* and *centena* surfaced in a new guise in the proliferating sources of the Carolingian period: the *centenarius* as a minor royal official, the *centena* as a sub-district of public administration. As understood by traditional historiography, the passage of the *centenarius* and *centena* from popular, Germanic origins to subordinate, though still public, institutions of monarchy constituted more than a minor chapter in the institutional history of the Frankish kingdom: it encapsulated a very common view of the origin and growth of the state in Northwestern Europe.

Variations on the Germanist view outlined above remained the standard teaching on the *centenarius* to at least the end of World War II at which time a new school of constitutional history quite rapidly laid the tenets of the old theory to rest.³ Even at a much earlier date, however, there were important dissenting voices, though these never received much support. The Romanist point of view, for example, expressed in this case rather succinctly by Fustel de Coulanges and with his customary disregard of the scholarly fashions prevailing in his

In Tacitus the *centeni comites* were a group of legal assessors attending the *principes*: 'eliguntur in isdem conciliis et principes qui iura per pagos vicosque reddunt; centeni singulis ex plebe comites consilium simul et auctoritas adsunt' (*De Origine et situ Germanorum*, ed. J. G. C. Anderson [Oxford 1938] c. 12). The *centeni pedites* were select infantry assisting the cavalry: 'in universum aestimanti plus penes peditem roboris; eoque mixti proeliantur, apta et congruente ad equestrem pugnam velocitate peditem quos ex omni iuventute delectos ante aciem locant. Definitur et numerus: centeni ex singulis pagis sunt, idque ipsum inter suos vocantur et quod primo numerus fuit iam nomen et honor est' (*ibid.* c. 6). Anderson (pp. lviii–lxi) discusses the role of these passages in traditional interpretations of the hundred; and cf. Dannenbauer, 'Hundertschaft' 162. The *centeni comites* still have an important place in modern attempts to explain the police institutions of the Merovingian kingdom; see below, p. 77. For a recent interpretation of the *centeni comites* and *pedites* as equivalent to the retinue (*comitatus*) of the *Germania* c. 13, see Anne K. G. Kristensen, *Tacitus' germanische Gefolgschaft* (Copenhagen 1983); and cf. my review in *Scandinavian Studies* 57 no. 2 (1985) 194–95.

3 The old views still appear in Marc Bloch, *Feudal Society*, trans. A. L. Manyon (London 1961; orig. French ed. 1939–40) 363; G. O. Sayles, *The Medieval Foundations of England* (New York 1961; 1st ed. 1948) 183; and even more recently, John Morris, *The Age of Arthur: A History of the British Isles from 350–650* (New York 1973) 491–95.

day, argued a very different interpretation.⁴ The *centenarius*, he believed, was not originally a popular Germanic official, but was from the beginning a minor royal functionary whose title, like that of his superior the count (*comes*), went back to the late Roman system of ranks and offices. Probably first appointed in a rather haphazard fashion by the count, he gradually became a regular feature of Frankish administration. As for the *centena*, it was not originally a territorial unit, according to Fustel, but became the term for the subdivision of the county only in the course of the late Merovingian and early Carolingian periods.

In retrospect much of Fustel's interpretation seems fundamentally sound. But it was the ideas of a new school of German social and constitutional history, rather than Fustel's Romanist point of view, that was destined to displace the theory of the Germanic and popular origins of the *centenarius* and *centena*. Proceeding from a fundamental reinterpretation of the nature of early Germanic society, this school, with roots in the scholarship of the 1930s, came to dominate German postwar historiography and successfully set itself against many of the basic assumptions of the older school of legal and constitutional historians.⁵ The idea at the heart of the older teaching that early Germanic society rested on democratic or popular foundations was replaced by the theories of noble lordship and the king's freemen. The so-called popular institutions of the early Germans, the new scholarship claimed, simply reflected the displaced wishful thinking of the nineteenth-century bourgeoisie. Rather, noble lordship, originating in domestic authority over the household, defined the nature of the early Germanic constitution and existed independently of royal and so-called popular institutions. The non-noble element of society was consigned to domestic and servile appendages of the monarchy and nobility. In the new literature, the class of common freemen,

4 N.-D. Fustel de Coulanges, *La Monarchie franque*, 2nd ed. (Histoire des Institutions Politique de l'Ancienne France; Paris 1905) 224–29.

5 The fundamental works for the early Middle Ages are Heinrich Dannenbauer, 'Adel, Burg und Herrschaft bei den Germanen,' *Historisches Jahrbuch* 61 (1941), repr. and expanded in *Herrschaft und Staat im Mittelalter* (Wege der Forschung 2; Darmstadt 1956) 60–134; 'Hundertschaft, Centena und Huntari,' *Historisches Jahrbuch* 62–69 (1949) 155–219; and 'Die Freien im karolingischen Heer,' in *Verfassungs- und Landesgeschichte. Festschrift Theodor Mayer* (Lindau 1954) 1.49–65. Also Theodor Mayer, articles in part repr. in his *Mittelalterliche Studien* (Lindau 1959); and Walter Schlesinger, *Die Entstehung der Landesherrschaft* (1941; but cf. preface to repr., Darmstadt 1964) and 'Herrschaft und Gefolgschaft in der germanisch-deutschen Verfassungsgeschichte,' *Historische Zeitschrift* 176 (1953) 225–75, trans. in part as 'Lord and Follower in Germanic Institutional History,' in *Lordship and Community in Medieval Europe*, ed. F. L. Cheyette (New York 1968) 64–99. The literature is briefly surveyed by Karl Kroeschell, *Deutsche Rechtsgeschichte* (Reinbek 1972) 1.104–106. For a significant critique, see H. K. Schultze, 'Rodungsfreiheit und Königsfreiheit,' *Historische Zeitschrift* 219 (1974) 529–50 and *Die Grafschaftsverfassung der Karolingerzeit in den Gebieten östlich des Rheins* (Schriften zur Verfassungsgeschichte 19; Berlin 1973); see also, among other works, Johannes Schmitt, *Untersuchungen zu den Liberi Homines der Karolingerzeit* (Frankfurt 1977). The most recent discussion seems to be Reinhard Schneider, *Das Frankenreich* (Oldenburg Grundriss der Geschichte 5; Munich 1982) 126–33. An English-language summary of the new history is given by Anne K. G. Kristensen, 'Danelaw Institutions and Danish Society in the Viking Age,' *Mediaeval Scandinavia* 8 (1975) 33–42.

the mainstay of the older teaching, virtually ceased to exist, replaced by the king's freemen, whose freedom must be conditional and derivative because it sprang only from military service and settlement on crown land. What the old literature had seen as public law and public administration was now seen largely as the private law arrangements of the monarchy for its dependents.⁶ Though the concept of public administration might be applicable to Romanized areas of Gaul, lordship in its noble or royal form was thought to be far more relevant to the Frankicized areas of the north and east, and of course to the thoroughly Germanic regions on the right bank of the Rhine. As will be seen, although this school integrated into its interpretation of Merovingian institutions a number of ideas long ago espoused by Romanists, its principal interest was still, like the old teaching it replaced, Germanic continuity and the fundamental character of the Germanic constitution – issues which were now focused on the power of the nobility and the nature of freedom. Indeed in the concept of noble lordship over land and people the new history believed it had found the principal constant of the ancient, medieval, and early modern German constitution.

Important steps in the development of this view were the dismantling of the old interpretation of the *centenarius* and *centena*, and the reinterpretation of the Merovingian and Carolingian sources in conformity with the premises of the new understanding of Germanic society. The principal architects of this process, and of much else in the new history, were Heinrich Dannenbauer and Theodor Mayer.⁷ According to Dannenbauer, although the *centena* in the west of the Carolingian Empire was a division of public administration, it was something quite different in origin, namely a unit of crown property or a settlement of peasant military colonists – the so-called king's free – on fiscal land under the command of a fiscal official called a *centenarius*. The model for this type of settlement, he believed, was the late Roman settlement of *laeti*, barbarian communities planted by the state as sources of military recruitment, and the *limitanei*, half-peasant frontier troops organized in a similar fashion in *corpora* on fiscal land. The state property of both these groups fell to the Frankish kings who also, in his view, used the Roman model of military colonization as a pattern for the settlement of their own troops in Gaul. The *centena*, first a form of organization on crown property inspired by late Roman precedent, was then employed as a means of internal colonization, with king's free (*liberi, franci homines*) settled under *centenarii* on new land (*Rodung*). Eventually it was also widely used outside Gaul, especially in the Carolingian period, as a tool in the conquest of areas across the Rhine. Dannenbauer's interpretation not only coincided with increasingly prevalent views about the domestic nature of royal power and the foundation of freedom in Germanic regions, but

6 This perception affected interpretations not just of the *centenarius* and *centena* but also of the count and county: see Schultze, *Grafschaftsverfassung*, esp. 1–32.

7 Heinrich Dannenbauer, 'Hundertschaft, Centena und Huntari' (above n. 5); Theodor Mayer, 'Staat und Hundertschaft in fränkischer Zeit,' in his *Mittelalterliche Studien* 98–138.

also seemed to solve the vexed and dim question of the principles of the Frankish settlement of Gaul.

Mayer's role was essentially to attempt to refine the basic interpretation of Dannenbauer. For example, Dannenbauer had distinguished between the Latin term *centena* and the Germanic term *huntari*, the latter being in his view an old-style lordship of the nobility; to Mayer the *huntari* was simply a translation of the Latin term and a sign of Frankish influence. Dannenbauer had referred to the *centena* as a unit of royal seigneurial lordship (*Grundherrschaft*), but Mayer attempted to distinguish between crown property in the broad sense and royal seigneurial estates, because only the former, he believed, led to freedom for the settlers. The assumption of a dual administration of fiscal property, derived at first from the dubious notion *Rodung macht frei*, turned out to be a necessary distinction, since it was soon recognized that for much of the Merovingian period administration of crown property was the jurisdiction of a powerful official called the *domesticus*, whereas the *centenarius* appeared as a subordinate of the count.⁸ Of significance for the present discussion is also Mayer's argument that the Merovingian *centenarius*, like his Roman predecessor, was originally not a judge, but only gradually entered legal administration through his involvement in police duties.

Many aspects of this new interpretation of the *centenarius/centena* have become widely accepted, usually in conjunction with other premises of the new history, but sometimes by themselves.⁹ In German historiography the *centena* as a fiscal institution, the king's free, the distinction between the constitutional forms of Roman and Germanic areas of the Merovingian kingdom, and the influence of Roman institutions on Frankish administration have all become accepted features of modern attempts to describe the Merovingian kingdom, though in some cases not without contention. The degree to which these notions are valid constitutes

8 Eugen Ewig, 'Das Fortleben romischer Institutionen in Gallien und Germanien,' *X. Congresso Internazionale di Scienze Storiche, Relazioni 6* (Florence 1955); repr. in *Spätantikes und fränkisches Gallien. Gesammelte Schriften* (Munich 1976) 1.412–13. The basic work on the *domesticus* is still Armand Carlot, *Étude sur le domesticus franc* (Bibliothèque de la Faculté de Philosophie et Lettres 13; Paris 1903). His conclusions are largely sound but a re-examination of the *domesticus*' late Roman precedents is needed, as is consideration of the Merovingian evidence in light of recent constitutional theories, distinguishing genuine and spurious charters.

9 E.g., Karl Bosl, 'Hundertschaft,' *Sachwörterbuch zur deutschen Geschichte*, eds. Helmuth Rosslar and Gunther Franz (Munich 1958) 443–44; Eugen Ewig in *Handbuch der europäischen Geschichte*, ed. Theodor Schieffer (Stuttgart 1976) 1.421, 426. Reinhard Schneider, *Das Frankenreich* 45–46; and see Krug (n. 10 below). Cf. also Franz Beyerle, 'Das legislative Werk Chilperichs I,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abt.* 78 (1961) 30–31; this has come to be cited as proof of Neustrian military colonization, but all it offers are questionable interpretations of laws from *Lex Saliica*. In English, the new teaching on the *centena* appears in J. M. Wallace-Hadrill, *The Long-Haired Kings* (London 1962) 193 n. 1 and B. Bachrach, *Merovingian Military Organization* (Minneapolis 1972) 32–33; some reservation seems to be expressed in the glossary of *The Settlement of Disputes in Early Medieval Europe*, eds. Wendy Davies and Paul Fouracre (Cambridge 1986), where the *centena* is described as 'possibly derived from the organization of the Roman fisc.' French scholarship, like most English, seems to ignore the question (cf. n. 1 above).

in part the subject of the following pages. So too does the context of the *centenarius*' activities as they appear in Merovingian sources. The breakdown of the traditional teaching meant that the judicial and police activities of the centenarius had to be reinterpreted, with the result that accounts critical of Dannenbauer's theory of the fiscal character of the centenarius, as well as those sympathetic to it, have nevertheless attempted to re-evaluate the judicial and security activities of the centenarius from premises removed in varying degrees from the old teaching. The results have often been contradictory, but still display a tendency to interpret these activities in Germanist terms despite general acceptance of the Roman derivation of the office. Even this acceptance, however, appears to be by no means complete, and doubts have been raised about the Roman origin of the centenarius combined, surprisingly, with acceptance of the far more tenuous notion of the office's fiscal character.¹⁰

The neglect of the Roman sources by modern scholarship in part explains this state of affairs and is closely tied to a fundamental approach of the new history. Dannenbauer and Mayer united a Roman institution with the Germanic order as they conceived it. In chronological terms they began with late Roman and sixth-century Neustrian conditions; methodologically, they actually proceeded from the contentious interpretations of later, peripheral sources and their own conception of a fixed order in Germanic society. The apparent inadequacy of the late Roman record is also partly responsible for the ambivalence towards the Roman background of the *centenarius*; even Fustel's invocation of the Latin origin of the *centenarius* seems uncharacteristically meagre. Yet, as the following discussion seeks to show, the Roman context for the *centenarius* in fact still has more to tell us about his Merovingian namesake and the role of the *centenarius* and *centena* in the administrative system of the Frankish kings.

II

Centenarius, with the meaning 'pertaining to one hundred,' is a word of potentially limitless application in the Latin vocabulary. As a technical term of rank and office, however, it is found in a number of contexts, not all of which would seem to have immediate relevance to the Frankish official of the same name. *Centenarius* and its higher ranking counterpart, *ducenarius*, were for instance salary grades among equestrian offices, the *centenarius* being a 'hundred-man' in the sense that he collected a salary of one hundred thousand sesterces, and the *ducenarius*, a 'two-hundred man' receiving a two hundred thousand sesterce salary. Both terms also indicated ranks in the equestrian order, whether or not these were accompanied by tenure of real offices. As equestrian ranks they are frequently found attached to fiscal and financial officers and continued to be used in this manner at

10 H. J. Krug, 'Untersuchungen zum Amt des "centenarius"-Schultheiss,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Germanistische Abt. 87 (1970) 10, accepting fiscalty; and cf. Schultze, *Grafschaftsverfassung* 326, denying it.

a late date in at least the central bureau of the treasury.¹¹ Such officials, however, have never formed the basis of the modern theory of the fiscality of the Frankish *centenarius*, and indeed a much better source for the origin of the Frankish office can be found in a new system of sub-tribunate military ranks increasingly prevalent from the third century onwards.

In the early and high Empire the military command in the infantry below the rank of the senatorial and equestrian offices lay in the hands of the centurions (*centuriones*), whom we could call the sub-officers or chief NCOs of the Roman army; not counting supernumeraries, about sixty centurions served in the legion, and some six or ten in the lesser units, depending on their size.¹² The centurionate was by no means undifferentiated internally. Rank and salary distinguished the two legionary *primipili* from the rest of their fellows as they did the centurions of the first cohort, called *primi ordines*, from the centurions of cohorts two to ten; and status and conditions of service also varied among the centurionates of the different classes of regiment: praetorian guards, legions, auxiliaries and ethnic units (*numeri*).¹³ In the third century a new set of ranks appeared and spread as a result of the third- and fourth-century military reforms that reached a culmination of sorts in the reorganization of Constantine.¹⁴ The new system of

11 A. H. M. Jones, *The Later Roman Empire 284–602* (Oxford 1964) 8, 530, 584. On the *procuratores* of the early Empire see A. von Domazewski, *Die Rangordnung des römischen Heeres*, 2nd ed. by Brian Dobson (Cologne 1967) pp. xxxvi–lv: 141–71. Those interested in the military *centenarius* have not been well served by the term's appearance in this great handbook only in a financial context. But cf. Pauly-Wissowa, *RE* 3.2 s.v.

12 The literature on the centurionate of the Principate is large and on some issues contentious: see Dobson-Domazewski, *Die Rangordnung des römischen Heeres* 80–112. On the army of the Principate in general see G. R. Watson, *The Roman Soldier* (London 1969) and Graham Webster, *The Roman Imperial Army* (London 1969).

Classification of the centurionate in modern terms is a case of neither fish nor fowl, since the usual English-language twofold category of non-commissioned and commissioned officers inadequately expresses the distinctiveness of the centurion's position. Jones (*LRE* 634) groups it with the NCO ranks, a practice I have followed, but other scholars prefer to emphasize its officer character. The centurion's military importance does transcend the modern understanding of the NCO, and the centurionate might be filled by equestrians through direct commission. On the other hand, it largely remained a plebeian post, filled mainly from the ranks, usually, though not always, marking the end of a successful career and not a stepping stone to command. In the high Empire it still needs to be distinguished from the commissioned ranks of the senatorial and equestrian cursus, and in the late Empire from the products of the imperial staff (*protectores*) and the unit and regimental commands of tribunes and prefects. On the *protectores*, see Jones, *LRE* 53–54, 129–30, 636–40; R. I. Frank, *Scholae Palatinae: The Palace Guards of the Later Roman Empire*, Papers and Monographs of the American Academy in Rome 23 (Rome 1969); and E.-C. Babut, 'Recherches sur la Garde Imperiale et sur le corps d'officiers de l'armée Romaine au iv et v siècles,' *Revue historique* 114 (1913) 225–60; 116 (1914) 225–93. Babut's view that the old centurions were all promoted to the protectorate in the late Empire is mistaken.

13 *Numerus* could be applied to various kinds of unit though it has become a scholarly term for small ethnic or barbarian regiments of the Principate: see M. Speidel, *Roman Army Studies* (Amsterdam 1984) 117–31.

14 The standard works on the late army are R. Grosse, *Römische Militärgeschichte von Gallienus bis zum Beginn der byzantinischen Themenverfassung* (Berlin 1920); J. Maspero, *Organisation militaire de*

NCO grades took hold particularly in units of the field army and palatine regiments, the *vexillationes*, *auxilia*, and *scholae*, which displaced the old legions in prestige. Unfortunately our knowledge of these ranks is very defective, owing in large part to the scarcity of inscriptions from the period, and hardly comparable to the extensively documented centurionate of earlier times. Epigraphic and literary sources, however, do give us enough information to suggest the connections between the old-style centurionate, the new system of ranks, and the *centenarius* of Frankish sources.

The order of the new system is given by Jerome, who mentions each step in the imaginary demotion of a soldier from tribune to recruit, and is confirmed by literary, legal, and epigraphic sources.¹⁵ The NCO ranks from highest to lowest were *primicerius*, *senator*, *ducenarius*, *centenarius*, *biarchus*, and *circitor*. The two bottom ranks entailed supervisory and administrative duties, not command, and corresponded to the sub-centurionate *principales* or NCOs of earlier times. Little can be said with certainty about the functions of the first two except that the *primicerius*, as his name indicates, was the senior NCO in his unit (his position points to analogy with the *primus pilus* of the old centurionate); the term *senator* is puzzling and combined with the ranks of *ducenarius* and *centenarius* might seem to suggest a sequence of military equivalents to the senatorial and equestrian grades of civil society. Whatever were the functions of the *senator* (and one might guess the term implied staff duties or a privileged degree of seniority), it is clear that the *ducenarii* and *centenarii* took their names, not from civilian ranks, but from the nominal size of the companies they commanded, and therefore were ‘two-hundred men’ and ‘one-hundred men’ in a sense very different from the salary grades of equestrian offices.

Fortunately we are better informed about the functions of the *ducenarius* and *centenarius* and their relation to the old system of ranks because of the military treatise of Vegetius, probably written in the second quarter of the fifth century.¹⁶ In Book Two he describes the organization of what he calls the *antiqua legio*, but in the process refers explicitly to the terminology and practices of his own time. We know that since the first century the complement of the first cohort of the legion had been approximately twice the size of cohorts two to ten and constituted, in Vegetius’ words, a *cohors miliaria* as opposed to the *cohortes quinquentariae* of the

l’Égypte byzantine (Paris 1921); D. van Berchem, *L’armée de Diocétien et la réforme constantinienne* (Paris 1952); Jones, *LRE* 607–86; and D. Hoffmann, *Das spätromische Bewegungsheer und die Notitia Dignitatum*, *Epigraphische Studien* 7.1 & 2 (1969). See also works by Babut and Frank (n. 12).

15 Jerome, *Contra Joannem Hierosolymitanum* 19, PL 23.386–87. The other evidence for the various ranks is considered by Grosse, *Römische Militärgeschichte* 112–24, and Jones *LRE* 1263.

16 Flavius Vegetius Renatus, *Epitoma rei militaris*, ed. C. Lang (1885; repr. Stuttgart 1967). The precise date is controversial, the *termini* being 383–450. The case for the reign of Valentinian III, first made by O. Seeck, ‘Die Zeit des Vegetius,’ *Hermes* 2 (1876) 61–83, has recently fallen on hard times; but now see Walter Goffart, ‘The Date and Purpose of Vegetius’ *De re militari*,’ *Traditio* 33 (1977) 65–100, which is also a striking antidote to the modern tendency to disparage the work as inane antiquarianism.

rest of the legion; as a consequence of this doubling of the first cohort, the commands of its centurions, the *primi ordines*, were augmented. In Vegetius' legion, one of these centurions, called the *primus hastatus*, commanded two centuries numbering two hundred men; 'now,' comments Vegetius, 'he is called *ducenarius*.' The other centurions who led single centuries, he further adds, 'are now called *centenarii*.'¹⁷

Ducenarius, therefore, was simply a high-ranking centurion leading a double century, as his name implies. As an early fourth-century inscription from Arabia shows, the *ducenarius* could also have the rank of *primicerius*, if he was the senior sub-officer in his unit.¹⁸ The ranks from *centenarius* to *primicerius* thus corresponded to grades within the old centurionate, with *centenarius* being the new name for the ordinary centurion who normally led a single century.

Vegetius also implies that by his day the name *centenarius* had replaced the old title of *centurio*. Epigraphic evidence does show the new units of the late third, fourth, and fifth centuries, especially elite and field-army regiments, employing the new system of ranks.¹⁹ In some cases the old term *centurio* may have been driven out; in the Antonine Itinerary, for instance, the place name *Ad Centuriones* is replaced in the Peutinger table by the name *Ad Centenarium*.²⁰ Those frontier troops without strong connections to the regimental traditions of the Principate no doubt also employed the new system. The typical frontier fortress, *burgus*, was sometimes called a *centenarium*, a term which might indicate command of it was in the hands of a *centenarius*, though other reasons for the name are possible.²¹ The old term *centurio*, nevertheless, seems to have survived in units with histories going back to the Principate, though increasingly these were in the minority and of second-class frontier status.²² The result was a dual terminology: *centenarius*, the more recent term, existed side by side with *centurio*, which was retained out of traditionalism or antiquarianism. This dualism persisted into the successor kingdoms of the west, where the terms *centenarius* and *centurio* are attested for the standard sub-officer in the military and administrative hierarchy.²³

17 'Item primus hastatus duas centurias, id est CC homines, ducebat in acie secunda, quem nunc ducenarium uocant. . . . Erant etiam centuriones qui singulas centurias curabant; qui nunc centenarii nominantur' (2.7). And cf. 2.13: 'centuriones . . . qui nunc centenarii uocantur.'

18 M. Speidel, *Roman Army Studies* 716.

19 Jones, *LRE* 634, 1263–64.

20 *RE* 3.2, s.v. 'ad Centuriones.' Cf. Grosse, *Militärsgeschichte* 117.

21 On the *centenaria*, see van Berchem, *L'Armée de Dioclétien et la réforme constantinienne* 46–48. In what sense do these forts consist of, or pertain to, 'one-hundred'? A *ballista centenaria* throwing shot of a hundred weight (Lewis and Short, s.v. *centenarius*, with other examples) should remind us of the possibly wide application of the term.

22 Jones, *LRE* 674–75.

23 For *centurio* see *Lex Alamannorum* 27.4 (and cf. *centenarius* in c. 36), in *Leges Alamannorum*, ed. K. Lehmann, 2nd ed. K. A. Eckhardt, MGH LL 5/1; *Lex Baiuvariorum* 2.5, ed. Ernst von Schwind, MGH LL 5/2. And in the Merovingian kingdom, the so-called treatise on offices: *centurio* 'sub qui C' or 'qui super centum est' (Franz Beyerle, 'Das frühmittelalterliche Schulheft vom Ämterwesen,')

This terminology was Latin. The Greek East had its own equivalents of some antiquity to be added to the vocabulary of the centurionate: *κένταρχος*, and especially *ἐκατόνταρχος*, both meaning, like *centurio/κεντυρίων* and *centenarius/κενηνάριος*, 'leaders of one hundred,' and occasionally *ταξίαρχος*. *Ἐκατόνταρχος*, a word with a very long history in Greek military terminology, was used throughout the imperial and well into the Byzantine periods for centurion, and *ἐκατονταρχία* regularly appears in the Greek tacticians as an equivalent of *centuria*.²⁴

Centenarius therefore is not simply a poorly attested military term of the late Empire but part of a wider vocabulary for the ordinary sub-officer of the Roman Empire, the leader of the nominal one-hundred-man unit, or century.²⁵ As we shall see, recognizing this context considerably enlarges the scope for investigating the foundations of the Frankish *centenarius*; we need not rely solely on the small number of Roman epigraphic remains and literary texts that mention the term *centenarius* but can extend our inquiry to the functions officers of this rank performed in the military, administrative, security, and judicial system of the Roman Empire.

The commander of the century, whether called *centurio*, *centenarius*, or *ἐκατόνταρχος*, also occupied a definite position in a hierarchy of ranks. This hierarchy, despite the jettisoning of much of the antiquated terminology and distinctions of the Principate, can seem complex. Nevertheless a sketch of its main elements may help establish the Roman origin of the Frankish *centenarius* and assist our understanding of his position in the Merovingian military and administrative system. For the Frankish term *centenarius* did not result from an isolated reception, but was part of a general adaptation of late Roman ranks and offices as a system – a perspective frequently overlooked in modern debates over the origin of individual Merovingian offices.

In the late Empire the generic term for general, *dux*, was applied to all regional army commanders; those with an especially elevated rank also bore the title 'military count' (*comes rei militaris*).²⁶ Membership in the order of counts (*comitiva*), which came in three grades, was originally a personal distinction granted by

Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abt. 69 [19521 6]; for literature, H. Schlosser, 'Ämtertraktat,' *Handwörterbuch zur deutschen Rechtsgeschichte* 1.154–55.

24 See Hugh J. Mason, *Greek Terms for Roman Institutions* (American Studies in Papyrology 13; Toronto 1974) s. vv. And cf. H. G. Liddel and R. Scott, *A Greek-English Lexicon* (9th ed.; Oxford 1940) s.vv.; Ferdinand Lot, *L'Art militaire et les armées au moyen âge* (Paris 1946) 45.

25 The one hundred is notional because centuries rarely, if ever, amounted to one hundred men; even in the Principate sixty- to eighty-odd appears to be standard. Troops of cavalry, in which the new ranking system was widespread, were even smaller. Jerome's imaginary unit (n. 15, above) is of cavalry.

26 For the ranks discussed here, see Grosse, *Militärsgeschichte* 107–91; Jones, *LRE* 608–10, 633–46. The great central military office of *magister militum* makes no appearance in the Frankish kingdom; the term in the Angers *formulae*, if accurate, refers to a municipal officer, possibly the commander of militia or of the *iuvenes* (*Formulae Merovingici et Karolini aevi*, ed. K. Zeumer, MGH LL, *Formulae*, p. 4). The place of *magister* in the Frankish hierarchy seems to be taken by *patricius*, an honorific created by Constantine and eventually applied in the West to the supreme commander; see Jones, *LRE* 106, 176, 262 and cf. below, n. 83.

imperial codicil; eventually it came to be associated with certain offices and ranks. The *comites rei militaris*, who were counts of the first grade, outranked *duces* – counts of the second grade in command of border troops; these *duces* in turn might command lesser counts. Unit or regimental commanders were called *tribuni* or *prefecti* though the term *praepositi*, which strictly speaking indicated a function not a rank, was sometimes used as a comprehensive designation. Imperially commissioned junior officers, called *protectores* or *protectores domestici* in the fourth century and just *domestici* in the fifth, filled out the complement of the officer ranks. Vegetius gives a thumbnail sketch of this hierarchy when he recommends that the general (*dux*) of an army know by name if possible every *comes*, *tribunus*, and *domesticus* under his command.²⁷ Below these officer grades were the standard NCOs in the ranks given above by Jerome, including the hundred-man-unit leaders variously called *centuriones*, *centenarii*, and *ἑκατόνταρχοι*.

Merovingian office holding as a whole combined, as is to be expected, a variety of former Roman military and civil titles, which can often be further distinguished on the basis of their application to the municipal, regional and central administration. These offices were clearly ranked in the sixth-century Merovingian kingdom, and formed a kind of *cursus honorum*, or at least a system of graduated promotion.²⁸ The strong resemblance between Roman and Merovingian ranks is qualified principally by the greater simplicity of the Frankish system, and partly by the Merovingian unification in its regional administration of military and civil functions. The Merovingians were not wholly responsible for combining civil and military functions because the celebrated late imperial division between civil and military office often broke down in the stresses of the Empire's final days and had at the best of times served chiefly to keep civilian noses out of military business and not vice versa. Moreover the early Byzantine state, though maintaining the civil/military distinction, also shows a tendency to territorialize military command and merge military and civil powers.²⁹ The military offices of the Frankish kingdom, which in most cases included civil jurisdiction, formed the following hierarchy: *dux*, *comes*, *tribunus*, *centenarius* – a pattern clearly modeled on the ranks of the late Roman army. The resemblance is not superficial and extends beyond title and rank to the substance of the commands.

The Merovingian *dux*, like his Roman predecessor, held a regional command originally concerned with frontier districts. His duties as an administrator coincided with those of his subordinate, the count (*comes*), but were exercised on a

27 Vegetius 3.10. For *protectores* see n. 12, above.

28 Merovingian officeholding has frequently been surveyed in the older literature, sometimes with quite divergent conclusions: cf., e.g., Fustel de Coulanges, *La Monarchie franque* 183–242, and Heinrich Brunner and Cl. Frhr. von Schwerin, *Deutsche Rechtsgeschichte* (2nd ed.; Systematisches Handbuch der deutschen Rechtswissenschaft 2.1; Leipzig, 1928) 2.201–69 (henceforth DRG). More recently see Ewig, 'Das Fortleben römischer Institutionen,' 409–13, who generally stresses Roman continuity; and see below, n. 30.

29 Grosse, *Militärsgeschichte* 153–61, and see below, p. 86f.

larger scale; a *dux* had several counts under his jurisdiction.³⁰ Some areas of ducal administration seem to have been relatively stable, but Gaul as a whole seems never to have been consistently subdivided into duchies.

The Merovingian *comes* was patterned not on the great military count (*comes rei militaris*) of the Roman system, but on lesser commanders called *comites civitatum*, who appear in the last decades of the Western Empire exercising military and civil functions in the Gallic cities and their territories (*civitates*). His Merovingian counterpart, invested with the same title, functions, and jurisdiction, commanded the forces of his *civitas* when the army was assembled. In southern sources the count was assisted by a lieutenant, called a *vicarius*. Although vicars and *centenarii* in the Carolingian period appear to be indistinguishable from one another, the positions were originally distinct.

The rank of tribune is clearly attested in the Merovingian kingdom though not well enough to convey precisely its role in the military and civil hierarchy. Certain features of the title, however, are clear. Holders of the rank exercised military command and probably civil functions as well; tribunes ranked below counts and above *centenarii*, who might be their subordinates. The title with some frequency is linked to a city (*tribunus civitatis*), a practice with late Roman precedents and paralleled in early Byzantine nomenclature.³¹ It is quite likely that the term was borne by local military and civil officials ranking below counts and also by military commanders of the royal retinue.

The latter context probably explains an interesting grave inscription from Trier, dating from the sixth or early seventh century. The memorial, set up by the deceased's wife, who describes herself as *nobilis*, commemorates a certain Hlodericus who had assumed 'command of a *numerus* with the title of *vicarius*.'³² The Romanized context of the inscription has been denied principally on the grounds that the use of the term *vicarius* does not conform to Roman practice.³³ In fact the terminology is completely Roman and corresponds exactly to late imperial and Byzantine usage. *Numerus* was the old standard word for a military unit of any type and was widely used for the new-style smaller regiments of the late Empire;

30 Continuity in the Merovingian ducal and comital offices has recently been the subject of debate: see Rolf Sprandel, 'Dux und Comes in der Merowingerzeit,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abt.* 74 (1957) 41–84; 'Bemerkungen zum frühfränkischen Comitatus,' *ibid.* 82 (1965) 288–91; and Dietrich Claude, 'Untersuchungen zum frühfränkischen Comitatus,' *ibid.* 81 (1964) 1–79; 'Zu Fragen frühfränkischer Verfassungsgeschichte,' *ibid.* 83 (1966) 273–80. Aspects of the problem of the count are dealt with in my 'The Position of the *Grafio* in the Constitutional History of Merovingian Gaul,' *Speculum* 64/4 (1986) 787–805; [above, ch. 3].

31 The Merovingian sources are discussed by Fustel, *Monarchie franque* 222–24 and Brunner-v. Schwerin, DRG 2.241–44, with much the same results. For the association of tribunes with cities in the East, see Grosse, *Militärsgeschichte* 148.

32 'Hic requies data Hloderici membra sepulchrum /qui capus [= caput] in numero vicarii nomine sum[pt]is. /Fuit in pupulo gratus et in suo genere pr[i]mus. / Cui uxor nobilis pro amore tetolum fie[re] iussit.' *Corpus Inscriptionum Latinarum* XIII, 1/2 (Berlin 1904) no. 3683, p. 596. On the date, see Eugen Ewig, *Trier im Merowingerreich* (Trier 1954) 80 n. 103.

33 Krug, 'Untersuchungen zum Amt des "centenarius"-Schultheiss,' 6–7.

Byzantine practice contemporary with the inscription used the Greek equivalent *ἀριθμός*. And the term *vicarius*, far from being peculiar to the Frankish inscription, links it to the same context. *Vicarius* was not a fixed rank but a term meaning 'deputy,' 'lieutenant'; the term therefore appeared at several levels in the Roman hierarchy with the rank of the *vicarius* depending on that of his superior; military vicars, that is, substitutes for unit commanders, are frequently attested in fifth- and sixth-century Roman sources, and were probably of growing importance in the command structure.³⁴ This circumstance not only explains the use of the rank of vicar in the Frankish inscription but also the slight circumlocution: 'caput in nomero vicarii nomine.' As a lieutenant-commander Hlodericus was in charge of the unit (*caput in numero*) without the rank of the usual commanding officer. And what would have been the rank of his commander? *Tribuni* and *prefecti*, but especially the former, led the *numeri* of late Roman and Byzantine armies. Hlodericus probably was the resident commander of his unit while his superior, a *tribunus*, attended to loftier matters. In the east, at a date probably not too far removed from that of the inscription, a law of Justinian seems to recognize that tribunes are likely to be absentees.³⁵

Below the tribune in the Merovingian hierarchy was the *centenarius*, a position which corresponded to the major NCO ranks of the Roman system. The simplification of the Roman system appears most severe in the sub-tribunate ranks, for only the leader of the nominally one-hundred-man unit was retained. Although the functions of the *centenarius* will be considered more fully below, it might be noted here that the most poorly attested of his duties are the purely military ones. Yet they certainly existed. In the *vita Corbiniani*, *centenarii* appear as subordinates of a *tribunus*; and the well-attested security functions of *centenarii* in the sixth century also document the military character of their office. Parallel officials with minor military commands appear in neighbouring states: a *centenarius* in the seventh-century *Leges Visigothorum*; and a *centurio*, who commands a division of the comital levy, in the Frankish-influenced *Lex Baiuvariorum* of the early eighth century.³⁶ The lack in the Bavarian law of an office equivalent to tribune probably reflects common Frankish practice. The small scale of local Frankish military forces would often have had little need for high-ranking tribunician commands below the count. The *comes* and his sub-officers, the *centenarii*, would have been sufficient – a circumstance which accounts for the scarcity of evidence on tribunes and for the frequent ranking in later sources of *centenarii* directly after *comites* and

34 On military vicars see Jones, *LRE* 675, 1279, with sources; Vegetius, 3.4, 3.6 (but cf. 2.4, 2.7, 3.7); and Mauritiu, *Strategikon* ed. H. Mihaescu (Bucharest 1970) 12.8.8.

35 *Novellae* 117.11, eds. R. Schoell and G. Kroll (Berlin 1895); and Jones, *LRE* 675, 1279. Ewig, *Trier* 80, sees the vicar of the Frankish inscription as a deputy count; this is possible.

36 *Vita Corbiniani* 1.10, eds. Bruno Krusch and Wilhelm Levison, MGH SRM 6; the tribune and *centenarii* command a troop charged with executing a brigand. Cf. Brunner-v. Schwerin, DRG 2.242–43. For security functions, see below, pp. 76–91. *Lex Visigothorum* 9.2, ed. K. Zeumer, MGH LL 1; *Lex Baiuvariorum* 2.5.

their deputies. Whether the subordinate of a *comes* or *tribunus*, the *centenarius* was the standard sub-officer of the Merovingian administrative and military system, and it is highly improbable that he, unlike his superiors who were royal appointees, was ever directly commissioned by the king.

The term *centenarius* was not an isolated borrowing from the late Empire. The Merovingian hierarchy of *dux*, *comes*, *tribunus*, and *centenarius* was a system of ranks and offices adopted as a whole from the Roman military by the Franks and adapted to the conditions of the Merovingian kingdom in Gaul. This circumstance, and the wide distribution of the *centenarius* in the Roman military system, underscores the difficulty of isolating a particular channel for the adaptation of the *centenarius* by the Franks. The Gallic *laeti* regiments, which appear under prefects in the *Notitia Dignitatum* (an early fifth-century register of the Empire's military forces) no doubt had *centenarii* as NCOs, as did various units of the *limitanei*; but so too did the field-army and palatine troops.³⁷ The conclusion seems unavoidable, as well, that the Roman *comites civitatum*, the model for the Frankish counts, would, like their Merovingian successors, have had *centenarii* as sub-officers. Nothing about the rank suggests a fiscal context or a necessary connection to military settlement; but if Frankish settlement took place in the way the new scholarship suggests, it would not be surprising to find Merovingian *centenarii* as officials on crown property. There need not have been any particular channel through which the *centenarius* entered the Frankish military and administrative system. He was part of a well-established order adopted wholesale by the Franks.

When was that order adopted? One answer might be the late fifth and early sixth century as the Merovingian kings established their hegemony over Gaul. The appeal of the Roman hierarchy would have been overwhelming, one supposes, and the system of ranks would already be in place in the surviving military and political structures of the northern provinces. Well suited to the Roman character of the new administration and recognizable to the Gallic provincials, such a system would also parallel the prevalent forms of the Empire as well as the highly Romanized Visigothic, Burgundian, and Ostrogothic states, confirming the legitimacy of the new regime. By the late sixth century the adaptation would have been complete, giving us the thoroughly Romanized regime which appears in the works of Gregory of Tours and Fortunatus.³⁸

37 *Notitia Dignitatum*, ed. O. Seeck (Berlin 1876) 216–19.

38 Gregory of Tours, *Opera*, eds. Bruno Krusch et al., MGH SRM 1, 2 vols. (Hanover 1937–51, 1885); for references to the officials, see Margarete Weidemann, *Kulturgeschichte der Merowingerzeit nach den Werken Gregors von Tours 1* (Mainz 1982) 24–106. Fortunatus, *Opera poetica*, ed. Friedrich Leo, MGH AA 4/2 (Munich 1881). Fortunatus was for a time at the courts of Sigibert I of Austrasia and Charibert I and Chilperic I of Neustria. He mentions the great posts of *dux*, *rector*, *maior domus*, *domesticus*, *comes*, *referendarius*, and lesser positions such as those of *tribunus* and *defensor*, all of which have Roman military and civil antecedents. For Fortunatus' life, see Brian Brennan, 'The Career of Venantius Fortunatus,' *Traditio* 41 (1985) 49–78. The Roman-based system of the treatise on offices is very difficult to date: see n. 23.

Another answer which must be considered is that significant elements of the Roman system were already part of Frankish military organization prior to the conquest. Dannenbauer, for instance, argued this view with regard to the *centenarius*, pointing to the well-known contacts between the Roman military and the Franks since the fourth century. The general proposition of a substantial pre-conquest Romanization is not improbable, and depends in part upon evaluation of the passages mentioning officials in *Lex Salica* – the only basis for arguing the existence of a specifically Frankish regime in the early years of the Merovingian kingdom.³⁹

The widespread supposition that the Frankish conquest was brought about by means of retinues has been raised as a general objection to the idea of early Romanization, as if retinues excluded rank and command structure.⁴⁰ However one conceives of the retinue in a Frankish context, there need not be any contradiction with an organization based on established military lines. The late Roman military itself was permeated with terms suggesting the retinue writ large: for example, *comites* (as officers and regiments of cavalry), *comitatenses* (the field army), *palatini* (troops in attendance on the Emperor), *domestici* and *protectores* (imperial staff officers). Retinues were compatible with the command structures of the day.

The descent of the Frankish office of *centenarius* from the military hierarchy of the late Empire is not really an open question; the links are clear and unequivocal. But solving the problem of the origin of the *centenarius* does not fully explain his constitutional position. In particular his association in early Merovingian sources with local peacekeeping associations, his role as a judge in the early sixth-century collection of Frankish law called *Lex Salica*, the development of the *centena* as a territorial unit and its alleged connection to fiscal organization are aspects of the office needing elucidation. On all of these questions the late Roman sources still have a lot to tell us.

III

In the *Pactus pro tenore pacis* (a. 511–558) of the Merovingian kings Childebert I and Clothar I, the *centenarius* is directed to lead a posse (called a *centena* or *trustis*) in the pursuit of thieves whose activities have gone unchecked owing to the collusion of previously stationed night watches. The *centena*, which appears to have a territorial dimension, is to be held financially responsible for stolen goods and its members subjected to a fine if they fail to act when summoned. Similar rules in the Austrasian *Decretio Childeberti II* (a. 596) seem to recognize

39 For some of the problems with *grafio* and *thunginus* of *Lex Salica*, see my 'Position of the *Grafio*,' 787–805; [above ch. 3]. The other distinctive officials mentioned in *Lex Salica* are *sagibarones*; they invite comparison with the *pueri regis* 'qui multam per pagos exigunt' of *Lex Burgundionum* 49.4, 76, ed. L. R. von Salis, MGH LL 2/1; see Brunner-v. Schwerin, DRG 2.207.

40 Krug, 'Untersuchungen zum Amt des *centenarius*,' 5.

that security arrangements like those of the *centenae* also exist on the estates of the king's *fideles*.⁴¹

These capitularies have given rise to a number of interpretations. The traditional teaching saw them as marking the introduction into the recently conquered Gallic provinces of the primitive Germanic hundred, either as a territorial unit or as a group. To Dannenbauer and Mayer, who convinced recent scholarship of the Roman origin of the *centenarius*, the Merovingian provisions proved their contention that the hundred had a fiscal character. But acknowledgment of the *centenarius*' Roman background has not displaced Germanist interpretations of the institutional framework of Merovingian security measures. For instance, soon after Dannenbauer's rejection of the old hundred theory became known, Franz Steinbach both accepted the Roman origin of the term *centenarius* and argued that the police troop itself was derived from the so-called Tacitean judicial hundred.⁴²

More recently Steinbach's view has been vigorously developed by Heike Grahn-Hoek. Agreeing with the Roman derivation of the *centenarius*, she recognizes that a connection with the *centeni comites* of Tacitus can no longer be argued on the basis of the similarity of name; the term *trustis*, on the other hand, since it is Franko-Latin, must refer to a Germanic institution, which is to be equated with the judicial hundred-troop of Tacitus. The *trustes*, she believes, were originally the princely troops of the Merovingian *subreguli*, whose role was transferred to the new monarchy established by Clovis; the capitularies reveal this *Grosskönigtum* appointing its own *centenarii* and *iudices* over the retinues of the old petty kings of the Franks.⁴³ This interpretation strikes one of the common chords of Merovingian history – the assimilation by the new monarchy of old Germanic institutions, a theme adaptable to changing trends in historiography. To the traditional teaching, the old institutions were popular; to the new, they are the dispersed relics of nobility.

Not all interpretations of the Merovingian capitularies emphasize the persistence of ancient Germanic institutions. Wallace-Hadrill, for instance, unites Dannenbauer's interpretation of the fiscal character of the *centenae* with the earlier interpretation of Julius Goebel who stressed the novelty of the provisions of the *Pactus pro tenore pacis*. The provisions constitute 'brave first strokes,' according to Wallace-Hadrill; 'a venturesome step in the direction of state control over one troublous problem of wrongdoing,' according to Goebel. Both believe that a new public duty, based on territorial liability and ultimately on the application of the

41 Texts below, nn. 56, 61.

42 Franz Steinbach, 'Hundertschar, Centena und Zentgericht,' *Rheinische Vierteljahrsblätter* 15/16 (1950/1951) 121–38; repr. in *Collectanea Franz Steinbach* (Bonn 1967) 707–21.

43 Heike Grahn-Hoek, *Die fränkische Oberschicht im 6. Jahrhundert: Studien zu ihrer rechtlichen und politischen Stellung* (Vorträge und Forschungen / Konstanzer Arbeitskreis für mittelalterliche Geschichte, Sonderbd. 21; Sigmaringen 1976) 276–99. She thinks the *centenarius* replaced the *thunginus* of *Lex Salica* as the leader of the *trustis*. This view owes a lot to the dubious interpretation of the *thunginus* as a king by R. Wenskus, 'Bemerkungen zum thunginus in der Lex Salica,' in *Festschrift P. E. Schramm* (Wiesbaden 1964) 217–36; on which see my 'Position of the Grafio,' 795; [above ch. 3, p. 51].

Roman notion of the infamy of the wrongdoer, was imposed by the *Pactus*, thereby upsetting previous standards of kinship liability and compensation theory. The result, according to Goebel, was almost tantamount to a revolution in criminal law practice.⁴⁴

The interpretations outlined above appear to be incompatible with one another. For example, a *trustis* recruited in a fiscal *centena* from settlers whose free status was ambiguous would have, one might think, a character quite different from that of a *trustis* composed of the retinue of a defunct king. It comes as little surprise then to find proponents of the latter view denying the fiscal character of the *centena*. Likewise the claim for the survival of ancient Germanic judicial associations is ill suited to the alleged revolutionary character of the *Pactus*. As contradictory as these contexts may seem to be, there is nevertheless a common point of departure. Apart from accepting the Roman origin of the *centenarius* or invoking the Roman-law notion of infamy, most scholars still view the capitularies as modifications of Germanic practice: Germanic law and institutions are their starting point.

Yet neither innovation nor hypothetical ancient Germanic institutions are needed to explain the provisions of the *Pactus pro tenore pacis*. Childebert's kingdom, embracing parts of the old province of *Lugdunensis*, and Clothar's, composed largely of *Belgica secunda*, were no strangers to Roman institutions. The frontier between the two realms ran roughly midway between Paris and Soissons; once part of the Gallo-Roman state of Aegidius and Syagrius until its conquest by Clovis, this area never lost its Romance character, no matter the degree of Frankish settlement. The persistence here of provincial institutions under the Merovingian kings should be expected. And indeed the continuity of police measures for the suppression of theft seems certain when the role of the *centenarius* and the local associations over which he presided are compared with late Roman provincial practices.

Until fairly recent times most societies have done without permanent and extensive police forces for the prevention and prosecution of criminal acts, relying instead upon private initiative supplemented by local association and military intervention when needed. The Roman Empire was no different. Despite developing elements of a so-called bureaucratic and repressive model of criminal justice, the late Roman Empire remained wedded, wherever possible, to traditional notions of private prosecution and pecuniary sanctions; in matters of policing, it did not anticipate the modern state, but systematized the measures of Antiquity.⁴⁵

44 J. M. Wallace-Hadrill, *The Long-Haired Kings* 192–93. Julius Goebel, *Felony and Misdemeanor: A Study in the History of English Criminal Procedure* (New York 1937) 66–73. These views presuppose that feud, compensation, and kin groups were the starting point of primitive Germanic criminal law.

45 For the contrast between the so-called Germanic restitutive model based on compensation and the Roman, afflictive, state law model in European history, see the otherwise excellent Bruce Lenman and Geoffrey Parker, 'The State, the Community and the Criminal Law in Early Modern Europe,' in *Crime and the Law*, ed. V. A. C. Gattrell (London 1980) 11–48; and cf. in the same volume, Christina Lerner, 'Crimen Exceptum? The Crime of Witchcraft in Europe,' 68. In view of the secondary

The police and security forces of the late Roman Empire operated rather haphazardly at three levels. Municipal or local associations under varying degrees of compulsion bore the burden of public policing, but might be stiffened by the imperial administration, as the need arose, through the intervention of the military or the direction of provincial officials. In addition, policing of the great estates is clearly attested, and not simply in frontier zones or areas subject to large-scale brigandage. These municipal, central, and domainal security forces were long-standing components in Antiquity's efforts to contain crime, and each has a bearing on the interpretation of police measures in sixth-century Merovingian document.⁴⁶

Municipal or local peacekeeping, like other public functions performed by the townsmen and country dwellers of the Empire, was a compulsory state service, a liturgy. The liturgists, enrolled under oath with specific duties according to a system of rotation, served without pay and could be made liable in their persons or property for the efficiency of their service.⁴⁷ The burden may have increased in the late Empire; the names for security officials of one kind or another seem to proliferate in third- and fourth-century sources, and modern authorities have claimed to find a rising incidence of brigandage in the third century and consequently increasing emphasis on the liturgical nature of peacekeeping.⁴⁸

The evidence for these duties comes almost exclusively from the East, principally Egypt and Asia Minor. Modern scholarship agrees, however, that this circumstance reflects the distribution of the sources, not a fundamental distinction in conditions between the eastern and western portions of the Empire. Peacekeeping associations of volunteers and liturgists could be found throughout the Empire, probably recruited in a variety of ways.⁴⁹ A number of terms for local constables

literature, their conclusion is not surprising, but the distinction is false. Compensation is as Roman as it is Germanic; see Ernst Levy, *Weströmisches Vulgarrecht: Das Obligationenrecht* (Forschungen zum römischen Recht 7; Weimar 1956) 301–50.

46 For Roman police measures in general see Ramsay MacMullen, *Soldier and Civilian in the Later Roman Empire* (Cambridge, Mass. 1963) 50–65 and 132–40, and *Enemies of the Roman Order* (Cambridge, Mass. 1966) 255–68; Theodor Mommsen, *Römisches Strafrecht* (Leipzig 1899) 305–22; Otto Hirschfeld, *Kleine Schriften* (Berlin 1913) 576–623; and n. 53, below. And see Jones, *LRE* 725–26, 1298; and for *stationarii*, 521 and 1219.

47 In general, see M. Rostovtzeff, *The Social and Economic History of the Roman Empire* (2nd ed.; Oxford 1957) 1.380–91. The old standard work for Egypt, where the evidence is richest, is F. Oertel, *Die Liturgie: Studien zur Ptolemäischen und Kaiserlichen Verwaltung Ägyptens* (Leipzig 1917), but now also see Naphtali Lewis, *The Compulsory Public Services of Roman Egypt* (Papyrologica Florentina 11; Florence 1982). Classification and origins are briefly discussed by J. David Thomas, 'Compulsory Public Services in Roman Egypt,' *Das römisch-byzantinische Ägypten* (Aegyptica Treverensia 2, eds. G. Grimm, H. Heinen, and E. Winter; Mainz 1983) 35–39.

48 MacMullen, *Soldier and Civilian* 51; L. Robert, *Études anatoliennes: Recherches sur les inscriptions grecques de l'Asie Mineure* (Amsterdam 1970) 96; M. Rostovtzeff, *The Social and Economic History of the Roman Empire* 2.739.

49 MacMullen, *Soldier and Civilian* 134; Jones, *LRE* 725. Western conditions are discussed by MacMullen 134–38 and an attempt made to link some rather difficult epigraphic evidence to peacekeeping; the main candidates for police recruitment are the guilds and especially the *iuvenes*. But again the best example of the latter is in the East: see Robert, *Études* 106–108.

are attested in the Eastern sources, usually compounds with the Gk. φύλαξ (pl. φύλακες), guard or watch.⁵⁰ Among the most common are the νυκτοφύλακες, night watches, a term which reflects the common working hours of most urban and rural thieves, especially rustlers, and of the local forces set out to catch them. Such groups of locally recruited police had commanders, still liturgists but drawn from a higher social stratum than the ordinary men of the watch. These commanders, existing at various levels in the local administrative hierarchy, were called by a number of titles; the most common term probably was irenarch, literally ‘peace officer.’

It should come as no surprise to find that associations under local peace officers were inefficient or oppressive, although, after all is said and done, still necessary. A constitution of 409 in the *Codex Theodosianus* pretends to do away with the very name of irenarchs, ‘this breed so pernicious to the state’; because irenarchs do not permit ‘harmonious concord and peace to exist in country districts,’ the Praetorian Prefect is to transfer the protection of the peace to wealthier men. The very wealthy in fact had their own means for protecting themselves and were not subject to local recruitment; consequently irenarchs continue to appear in the laws after this date, and the version of the same constitution in the *Codex Justinianus* suggests simply that the provincial governors should more closely oversee their selection, and in particular, strive to enroll candidates whose financial resources would guarantee the performance of their duties.⁵¹

50 In addition to works in n. 46 above, see the inventory in Naphtali Lewis, *The Compulsory Public Services of Roman Egypt*, s.v. φυλακία / φύλαξ, with cross references to numerous compounds; see also αρχέφοδος, εἰρήνη / εἰρηνάρχης / εἰρηναρχος, ληστοπιαστής, νυκτοστράτεγος, ριπάριος; and Oertel, *Die Liturgie* 263–86. For Antioch, see J. H. W. G. Liebeschuetz, *Antioch: City and Imperial Administration in the Later Roman Empire* (Oxford 1972) 124–25; for Asia Minor, Robert, *Études* 96–110, 323, 339–40; and see n. 53 below.

51 *Codex Theodosianus* (henceforth CT) 12.14.1, a. 409, ed. Theodor Mommsen (Berlin 1905): ‘Irenarcharum vocabula, quae adsimulata provincialium tutela quietis ac pacis per singula territoria haud sinunt stare concordiam, radicitus amputanda sunt. Cesset igitur genus perniciosum rei publicae; cesset rescriptorum irenarchas circiter inconvulsa simplicitas, et celsitudinis tuae sedes provinciarum defendenda suscipiat pacis huiusmodi, locupletioribus commissura, praesidia.’ = *Codex Justinianus* 10.77, ed. Paul Krueger (Berlin 1915): ‘Irenarchae, qui ad provinciarum tutelam quietis ac pacis per singula territoria faciunt stare concordiam, a decurionibus iudicio praesidium provinciarum idonei nominentur.’ Irenarchs are mentioned in CT 11.24.6.7, a. 415; 10.1.17, a. 420; 8.7.21, a. 426. CT 12.14.1 did not intend to privatize peacekeeping, as has been claimed (C. Lecrivain, ‘Études sur le Bas-Empire,’ *Mélanges d’archéologie et d’histoire de l’École française de Rome* 10 [1890] 269–70, and cf. MacMullen, *Soldier and Civilian* 133, 138), but to recruit wealthier liturgists under imperial supervision. Abuses by local police are noted by Robert, *Études* 104; the son of a village irenarch is named in one of the petitions of complaint in the Abinnaeus archive (no. 48), below n. 65.

Minor police officials like irenarchs might exercise rudimentary judicial functions. This no doubt accounts for mention in West Roman sources of an *assertor pacis* – a rough linguistic equivalent of the eastern irenarch – among the *mediocres iudices* of the Visigothic kingdom (*interpretatio* to CT 2.1.8; in the mid-seventh-century *Lex Visigothorum* 2.1.15, the post is a royal appointment).

As local peacekeeping was not a profession but a liturgy, the State in this instance did not provide security but organized it with, it hoped, as little cost as possible to itself. Liturgists and well-meaning or self-interested volunteers were not enough, however, and the central authorities had to involve themselves directly in regional policing by the stationing of military detachments or instituting supervision by military officers drawn from the local forces or the provincial *officium*, the governor's staff. Apart from deploying troops, these officers might also receive petitions on minor judicial matters, superintend the deployment of civilian police, and investigate their conduct. Important military and civilian officials could always intervene, but normally the military officers serving as police were of fairly low rank – NCOs up to and including members of the centurionate; in our sources, which again are largely Egyptian papyri, by far the most common officers are 'commanders of one-hundred,' *ἐκατόνταρχοί*.⁵² Policing and supervision of local communities in fact appears to be one of the principal duties of the peacetime centurionate.

The deployment of liturgists and the military in districts of public administration should not obscure the role, less well attested than the measures of municipal and provincial authorities, of police forces on the great estates. Large domains needed protection, and we would have to assume the existence of watches even if the sources did not testify to their existence under the names of *saltuarii* in the West and *ὄρεοφύλακες*, in the East.⁵³ One of the most interesting testaments to the nature of these arrangements comes from Egypt where a contract of the Byzantine period between a watch commander (*πρωτοφύλαξ*) and Flavius Apion has been preserved; in it the commander promises to pay his employer a twenty-four *solidi* penalty if he abuses his position by committing theft or concealing thieves. The existence of a prison might complete the great estate's security arrangements.⁵⁴

This brief outline of Roman security is a good starting point for considering policing in the Frankish kingdom, for sixth-century Gallic sources, in particular the previously mentioned *Pactus pro tenore pacis* of Childebert I and Clothar I, reveal measures comparable to those of the Roman provinces. The *Pactus* as we now have it is composed of three distinct but related parts: a series of laws about theft issued by Childebert I, similar provisions issued by Clothar I, and a third set of regulations that appear to constitute a joint declaration.⁵⁵ The

52 MacMullen, *Soldier and Civilian* 52–54; Mommsen, *Strafrecht* 312.

53 M. Rostovtzeff, 'Die Domänenpolizei in dem römischen Kaiserreiche,' *Philologus* 64 (1905) 297–307.

54 Germaine Rouillard, *L'Administration civile de l'Égypte byzantine* (2nd ed.; Paris 1928) 167, 190.

55 The text, which is in some disarray, can best be seen in J. H. Hessel, *Lex Salica: The Ten Texts with Glosses and the Lex Emendata* (London 1880) 415–19. There are critical editions by A. Boretius, *Capitularia regum Francorum*, MGH Capitularia 1.3–7; and K. A. Eckhardt, *Pactus Legis Salicae II.2: Kapitulationen und 70 Titel-Text* (Germanenrechte, n.f.; Göttingen 1956) 394–408 (henceforth GR). The GR text, without apparatus, appears in Eckhardt's *Pactus Legis Salicae*, MGH LL 4/1.250–52. MS numeration and paragraphing can be ignored. The text as found in n. 56 below is based on Boretius and Eckhardt and corresponds to Boretius cc. 9, 16–18, and Eckhardt cc. 84, 91–93.

last shows that the principal purpose of the agreement between the kings was to ease tensions on the frontier by permitting posses to pass from one kingdom to the other in the pursuit of thieves (*fures, latrones*) and by compelling cooperation between the security forces on both sides of the common border. The provisions issued by each king overlap to a considerable extent, with some notable exceptions; in particular the police regulations appear only in the Clothar section and the joint statement. Whether the document was ever issued precisely in the form we have it is open to doubt, and it may very well descend from a private compilation. The absence from Childebert's section of the police provisions may mean that his southern kingdom was the source of the detailed regulations issued by Clothar, but, in light of the condition of the text as we have it and its obscure history, the wisest course is to draw no conclusions *ex silentio*. The joint statement simply shows that similar security arrangements were present on both sides of the border. The following clauses from the section attributed to Clothar and from the joint statement relate to the disposition of local police associations:

[*Decree of King Clothar*] Whereas the stationed night watches do not catch thieves, because in many places they conduct their watch in collusion with those whose crimes they overlook, it is decreed that *centenae* shall be appointed.

Let him who has lost any property receive its value (*capitale*) in the *centena* [of the *centenarius*] where the property was lost. And let the brigand be pursued, and let him be arrested even if he appears in the *centena* of another; and if anyone summoned to this pursuit is negligent, let him be condemned to pay five *solidi*. However [if pursuit extends outside the *centena* where the property was originally lost], let him who lost the property receive its value without question from that *centena* [into which the brigand fled] – that is, from the second or third.

If the trail of the brigand is confirmed, however, he must be punished either now or in the future. And if he who lost property catches the brigand by himself, let him receive the entire compensation. But if the brigand is found by the posse (*trustis*), let it acquire one-half the compensation and exact the value of the stolen property from him. . . .

[*Joint Statement*] For the preservation of the peace we order that *centenarii*, through whose faith and attention the aforesaid peace may be observed, are to be detached and placed in the posse (*trustis*).

And since, by God's grace, brotherly love maintains an unbroken bond between us, let the *centenarii* have permission to pursue brigands and follow the tracks they leave within our adjoining provinces; and, as was said, let the suit against the thief remain the responsibility of the posse (*trustis*) that fails, so that – provided it searches diligently for the brigand – it may hasten immediately to restore to him who lost it the value of the stolen property.

If the posse (*trustis*) manages to catch the brigand, let it claim one-half the compensation and let the damages accruing from the brigand's removal of the property (*dilatatura*), if any are due, be paid from his property to him who suffered loss. And if, in pursuit, he who lost property has taken the brigand, he shall claim for himself full compensation and, along with it, damages (*solutio*) or whatever expenses (*dispendium*) there are; let the fine (*fredus*), however, be reserved for the judge of the brigand's province.

If anyone summoned to follow a brigand's trail chooses not to come, let him be condemned by the judge to pay five *solidi*.

And what we have established in the name of God for the maintenance of peace, we wish to preserve forever. Thus any judge who presumes to violate this decree should be aware he does so at the risk of his life.⁵⁶

In the section of the *Pactus* ascribed to Clothar, the collusion of the previously posted night watches (*vigilia nocturna*) with the thieves they are meant to suppress has spurred the king to decree the establishment of *centenae*: 'centenas fierent.' This phrase, rather opaque if complete, is explained in the joint statement where, in a comparable instruction, picked *centenarii* are placed in command of the *trustis*.⁵⁷

The members of the *trustis* are clearly a posse since they may not already be on duty like the night watches but are summoned and fined if they fail to respond.⁵⁸

56 '[Decree of King Clothar.] Decretum est ut qui ad vigilias constitutas nocturnas fures non caperent eo quod per diversa intercedente concludio, scelera sua praetermissa, custodias exercerent, centenas fierent. In cuius centena aliquid perierit, capitale qui eum perdidit recipiat. Et latro insequatur uel, si in alterius centena appareat, deduxerit et ad hoc admonitus, si neglexerit, quinos solidos condemnetur. Capitale, tamen, qui perdidit a centena illa accipiat absque dubio, hoc est de secunda vel tertia. Si vestigius conprobatur latronis tamen praesentia aut longe multandus. Et si persequens latronem suum comprehenderit, integram sibi compositionem recipiat. Quod si per truste inuenitur, medietatem compositionis trustis adquirat et capitalem exigat ad latronem. . . .

[Joint Statement] Pro tenore pacis iubemus ut in truste electi centenarii ponantur per quorum fidem atque sollicitudinem pax praedicta obseruetur.

Et quia, propiciante Deo, inter nos germanitatis caritas indisruptum uinculum custoditur, centenarii inter communes prouintias licentiam habeant latrones persequere uel uestigia adsignata minare, et in truste qua defecerit, sicut dictum est, causa remaneat, ita ut continuo capitalem ei, qui perdidit, reformare festinet, ita tamen ut latronem perquirat.

Quem si in truste peruenerit, medietatem sibi uindicet, uel dilatata, si fuerit, de facultate latronis ei qui damnum pertulit sarciat. Nam si persequens latronem coeperit, integram sibi compositionem simul et solutionem, uel quicquid dispendii fuerit, reuocabit; fredus, tamen, iudici in cuius prouintia est latro reseruetur.

Si quis ad uestigium uel latronem persequendum admonitus uenire noluerit, v solidos iudice condemnetur.

Et quae in Dei nomine pro pacis tenore constituimus, in perpetuum uolumus custodire, hoc statuente, ut si quis ex iudicibus hunc decretum uiolare praesumpserit, uitae periculum se subiicere cognoscat.' For *dispendium* = *dilatatura* cf. Brunner-v. Schwerin, DRG 2.809–12.

57 'Decretum est . . . centenas fierent' = 'iubemus ut in truste electi centenarii ponantur.'

58 'Et ad hoc admonitus, si neglexerit, quinos solidos condemnetur' = 'Si quis ad uestigium uel latronem persequendum admonitus uenire noluerit, v solidos iudice condemnetur.' And cf. *Decretio Childeberti II* 3 § 2 (below n. 61).

Like the English term *posse*, *trustis* appears to have a broad and narrow meaning, referring to both those subject to a summons for *posse* duty and the pursuing band itself. Since *centena* and *trustis* are used as synonyms, it is evident that the *centena* is in part the *trustis* led by a *centenarius*; it is a *centenarius*' command.⁵⁹ This command also has a territorial dimension because property can be lost in a *centena* and a thief can move from one *centena* to another; but the command is mobile when the members of the *trustis* are summoned and pursue the thief and drive him into the jurisdiction (*centena*) of another *centenarius*.

Certain financial liabilities apply to members of the *centena* or *trustis*, for they must restore to the victim of theft the value of the property stolen in their territory. The object of all this attention we must assume to be largely cattle; and established procedures for proving theft of this kind to local authorities are clearly taken for granted.⁶⁰ If the thief can be shown to have passed into other *centenae*, then the last *centena* known to have received him is liable for the value of the theft if it cannot produce the culprit. Posses under the command of *centenarii* may, by the terms of the agreement between the kings, pass from one kingdom to the other, transferring the liability for the value of the stolen property to the next *centena* receiving the thief. Along with the risk of financial penalties, the *centenae* are also furnished with a positive incentive. A *trustis* that in response to a complaint succeeds in tracking down the thief is entitled to one-half the penal compensation for theft.

In 596 the *Decretio* of the Austrasian king, Childebert II, laid down regulations very similar to those of the *Pactus pro tenore pacis*:

3 § 2: If anyone refuses to assist a *centenarius*, or any judge, in the pursuit of a malefactor, he must be condemned to a penalty of 60 *solidi*. . . .

§ 4. Similarly, it is agreed that, if theft occurs, let the *centena* restore the value at once, and let the *centenarius* along with the *centena* lay claim to the action for theft and let it redound to their benefit.

§ 5. Likewise, it is agreed that if a *centena*, hot on a trail, follows it into another *centena* or among our *fideles*, and [the second *centena*] cannot at all drive the thief out into another *centena*, either let it return the convicted brigand or else let it immediately restore the value of the stolen property and exonerate itself from [the suspicion of complicity in] this matter with the oath of twelve persons.⁶¹

59 Cf.: 'Capitale . . . a centena illa accipiat' and 'in trustee . . . causa remaneat, ita ut continuo capitale ei qui perdidit reformare festinet.' Cf. also n. 57, and 'centenarii . . . licentiam habere latrones persequere . . . et in trustee . . . causa remaneat.'

60 Cf. 'Si vestigiis conprobatur' and 'vestigia adsignata.'

61 Cf. There are editions of the *Decretio* by Boretius, *Capitularia*, pp. 15–17 and Eckhardt in the GR series, pp. 440–49 = MGH, pp. 267–9 (see n. 55, above), and *Lex Salica*, MGH LL 4/2.174–89. The following is based on the GR text:

'3 § 2: Si quis centenarium aut cuilibet iudice noluerit ad malefactorem persequendo adiuuare, LX solidos omnis modis condempnetur. . . .

§ 4. Similiter conuenit, ut si furtus fuerit, capitale de praesenti centena restituat, et causa centenarii(s) cum centena requirat, eorum usibus proficiscat.

In Childebert's decree the penalty for failure to assist the *centenarius* or any judge has been raised to sixty *solidi*, the fine for disobeying the comital ban. The successful *centena*, including its *centenarius*, is entitled to the whole penal compensation, not the one-half assigned to the *trustis* in the *Pactus pro tenore pacis*. Apart from these stiffer penalties and increased incentives, however, the framework of the security system of the *Decretio Childeberti II* on the whole conforms to that of the *Pactus*. Regular supervision by *centenarii* seems to be taken for granted in the *Decretio* to such an extent that the term *centena* has apparently rendered the need for *trustis* superfluous. *Centenae* restoring the value of stolen property, rather than producing the thief, are also explicitly required to purge themselves of complicity by oath. Some such condition is probably implied in the stipulation of the *Pactus* that restoration of the value of the theft is acceptable provided a proper search for the thief has also been made; in any case, as we shall see, this procedure is unlikely to be a sixth-century Merovingian innovation. Finally, the *Decretio* takes into account that the king's *fideles* have great estates and assumes that they have security arrangements of their own which work in conjunction with those of the *centenae* of the public administration.

The measures revealed by the *Pactus pro tenore pacis* and the *Decretio Childeberti II* coincide to a remarkable degree with the lineaments of Roman security as discussed above: (1) local associations of liturgists with the principal responsibility of peacekeeping; (2) supervision by military officers, especially those of centurion rank; (3) separate arrangements on the great estates. Each of these features, clearly reflected in the Merovingian sources, is a convenient guidepost for exploring further the connections between Frankish and late imperial institutions as well as for considering more fully the terminology of the Merovingian provisions.

(1) In the *Pactus pro tenore pacis* the local forces are the night watches stationed at strategic locations, probably the roads, and the *trustis*. The term *vigilia nocturna* is the linguistic equivalent of *νυκτοφύλακες*, the night watches of Eastern sources. The meaning of *trustis* will be discussed below, but it is obviously of broader application, referring to those stationed at their posts, like the night watches, and others who can be summoned to join a posse, and who are fined if recalcitrant. Many of the details of Roman security measures are obscure to us, but clearly the duty to pursue thieves when summoned rested upon a broader class than those actually on duty. By virtue of his coercive power, the Roman magistrate could always compel assistance from the population if the need arose. Thus, in Ostrogothic Italy, at a date very close to that of the *Pactus pro tenore pacis*, Cassiodorus

§ 5. Pari conditione conuenit, ut si centena, posita in uestigio, in alia centena aut quos fidelium nostrorum ipsum uestigium miserit, et eum in alia centena minime expellere potuerit, aut conuinctum reddat latronem aut capitale de praesenti restituat et XII personas se ex hoc sacramentis exuat innocentem.'

Se in § 5 is from MS A 17. The variant of 'centena . . . miserit' § 5 in the E redaction ('si una centena in alia centena uestigium secuta fuerit et inuenerit uel in quibuscumque fidelium nostrorum terminos uestigium miserit') is not of independent value but is an attempt to resolve the present text.

instructed the governor of Bruttium to raise a posse of landowners (*possessores*) and chief tenants (*conductores*) to protect the fair at Squillace; a general obligation on local landholders to serve when summoned is presupposed.⁶² Egyptian sources of an earlier period also shows us a class of liturgists called *ληστοπιασταί*, robber-hunters (Gk. *ληστής* = *latro*), who could be summoned to assist the local police and punished if they failed to do so.⁶³

The liturgical character of police duty is also apparent in the Merovingian regulations. The financial responsibility of liturgists for their failures explains the Merovingian insistence that the *centena* or *trustis* be responsible for the value of stolen property, just as it explains the property requirements of Roman compulsory service and the efforts to enroll wealthier irenarchs; the Frankish regulations also sound the well-worn theme of local failure and corruption to justify the application of harder measures. The discretion of authorities no doubt always played a role in attributing culpability to those subject to public burdens. In the Merovingian instance, abuses to the peace engendered by the presence of a readily accessible frontier,⁶⁴ the need to maintain good relations on the border between the two kingdoms, and the known failure and collusion of the watches have likely all contributed to a stringent application of the principle of financial responsibility, though it is still contingent upon the victim's ability to demonstrate a clear trail to be followed. The responsibility of liturgists could also be personal since the *centena* failing to produce the thief must clear itself by oath from the suspicion of collusion.

Very similar procedures are attested once again in Egyptian documents. The Abinnaeus archive, the mid-fourth-century papers of a unit commander stationed in the Fayyum, contains two petitions illustrating assumptions about the nature of local obligations similar to those pertaining to the Gallic *centenae*. The wording of the petitions is standardized, an indication we are dealing with relatively common workaday procedures. Both petitioners complain of theft and ask the military commander to apprehend the local village officials and compel them to produce the guilty parties. Among these officials were the local police – one petition explicitly mentions the irenarch. Both petitions also request that the *dux*, the military commander of the region, be informed of their requests.⁶⁵ These documents show that not only the local constabulary but village notables could be held liable for thefts committed in their locality; their conduct could be investigated by the military, which had a supervisory role over the community and, we must

62 *Variae* 8.33, ed. Theodor Mommsen, MGH AA 12.

63 Rostovtzeff, *Social and Economic History* 488, 745; Hirschfeld, *Kleine Schriften* 614; Oertel, *Liturgie* 270.

64 Goebel's argument (*Felony and Misdemeanor* 67 n. 5) that *pax* in the *Pactus* means international, not domestic peace, derives from his apparent need to deny the old Germanist 'peace theory.' The term in fact is part of the Roman vocabulary of public order (cf., e.g., in n. 51 above, *tutela quietis ac pacis*, and the etymology of irenarch).

65 *The Abinnaeus Archive: Papers of a Roman Officer in the Reign of Constantius II*, eds. H. I. Bell, V. Martin, E. G. Turner, D. van Berchem (Oxford 1962) nos. 45, 47.

suppose, penalties could be imposed if the village representatives failed to satisfy the authorities as to their conduct. It is likely that oaths played a large role in such proceedings: for instance, we know from roughly the same period of a village police chief (called an ἀρχέφοδος) having to swear to municipal irenarchs that 'four men of another village whom the administration were looking for were not hiding in his village.'⁶⁶

The inquest procedure presumed in the Abinnaeus documents and in the Merovingian regulations of the *Pactus* and *Decretio* to settle matters of culpability is reflected elsewhere in early Frankish law. According to a law appended to *Lex Salica*, when a body is found between two *villae*, the local count is to summon the residents and compel them to clear themselves by oath of culpability or knowledge of the deed; the purpose of the procedure is to determine which *villa* is liable and to force the residents, as in the Abinnaeus documents, to produce the culprit if they are aware of his identity.⁶⁷ Again the Frankish state is seen employing the ancient combination of community responsibility and central supervision.

In the *Pactus pro tenore pacis* the term for the liturgists bound to police duties is *trustis*, a word of Frankish origin. Merovingian sources use the term in two distinct contexts. In the *Pactus* and in an addition to *Lex Salica*, *trustis* refers to those bound to pursue thieves and the pursuing band itself. In the modified form, *trustis dominica*, it is applied to the central forces and officials of the king.⁶⁸ The latter usage and the Germanic derivation of the term have sometimes suggested the general translation 'retinue,' a word that may be appropriate if understood in a broad sense rather than as a catch-word for primitive Germanic military institutions.⁶⁹ But the significance of a Frankish word in this context is problematic. The use of local terminology for common institutions is widespread, for instance, in Eastern sources where terms of Greek and Latin origin, but similar meaning, jostle one another with great frequency and in themselves may tell us little about the origin of particular institutions. The term *trustis* has in fact strong etymological associations with Latin terms used in Merovingian sources and with the conceptual framework of late Antiquity.

The Latin equivalents of *trustis* are *solacium* or *auxilium*, concepts which fit easily with its original meaning of something firm, trusty, strengthening, or comforting.⁷⁰

66 Rostovtzeff, *Social and Economic History* 488, 745.

67 *Pactus legis Salicae*, MGH LL 4/1 (henceforth LS) c. 102.

68 *Trustis*: 'Si quis trustee dum uestigio minant detenere aut battere praesumpserit . . .' (LS 94). *Trustis dominica*: LS 41.5, 42.1 & 2, 63.1 & 2; *trustis regis*: *Lex Ribvaria* 11.1, eds. Franz Beyerle and Rudolf Buchner, MGH LL 3/2.

69 Cf. Eckhardt's 'Glossar' s.v. 'Gefolgschaft'; and Brunner-v. Schwerin, *DRG* 2.134–36, who accept a connection with *protectores*, an institution believed by them to be influenced by the Germanic *comitatus*; and cf. Niermeyer s.v. 3.

70 On *trustis* the old work by Maximin Deloche, *La Trustis et l'antrusion royal sous les deux premières races* (Paris 1873), still has value and surveys early scholarship. Modern scholars are agreed the word is a Latinized Frankish term, in OHG *trost*, meaning *auxilium*, *solatium*. Fritz Kern, 'Notes on the Frankish Words in *Lex Salica*,' in Hessels, *Lex Salica*, § 215 cols. 527–28; Uwe Eckhart,

All these terms had obvious applications to bands of armed men of various descriptions, and more broadly to those in service, whether strictly military or not.⁷¹ The closest approximation of *solacium* to *trustis* in the sense in which it appears in the *Pactus pro tenore pacis* occurs in the royal capitularies. In the *Decretio* of Childebert II abductors are to be pursued as enemies of God; the judge in whose *pagus* the abduction took place – namely, the count – is to summon armed support (*solacium*) and kill the abductor. *Solacium* here is merely the *trustis* under another name, called upon to vary its standard prey and instructed to forgo the usual procedural limits to its activities.⁷² In the *Edict of Paris* a. 614 officials of bishops and of the powerful (*potentes*) are forbidden to summon armed support (*solacia*) in order to distrain property.⁷³ In this context the *solacium* would be the security force of the episcopal immunist and great secular lord – a troop of liturgists obligated to serve their lord, and counterpart to the *centena* of the royal administration.

An interesting parallel to the Merovingian use of *trustis/solacium* appears in Egyptian sources of the late Empire, where the Greek term *Βοήθεια* has a very similar meaning and application. As noted, *trustis dominica* was the term for the royal retinue, the central military and civil officials of the Merovingian kingdom; *trustis*, unmodified, was used to describe the regional constabulary and liturgists liable to police duties. *Βοήθεια* has the same basic meaning as *trustis*: help, assistance, in Latin *auxilium*, *adjutorium*, or *solacium*; and like *trustis* it is applied to the central military and local police forces. The *πολιτική βοήθεια*, the ‘civil auxiliary,’ was a contingent of regional police, liturgists liable for public service who, if need be, could be commanded by central officials; *στρατιωτική βοήθεια* was the term applied to a force of the imperial army.⁷⁴

The significance of this coincidence of linguistic usage between Gaul and Egypt is difficult to evaluate. The likely explanation seems to be that the provinces of the eastern and western portions of the Empire shared fundamental notions about the character of central and local power. Underneath the coincidence appears to be the Latin conception of *auxilium*, adapted to the regional speech and institutions of the provinces. Like *auxilium*, the term *trustis* can mean assistance offered and

Untersuchungen zu Form und Funktion der Treueidleistung im merowingischen Frankenreich (Marburg 1976) 36. The late gloss *adjutorium* for *trustis* in *Lex Ribvaria* (MGH LL [folio series] 5.277) is correct. A rather one-sided account of the word is given by D. H. Green, *The Carolingian Lord* (Cambridge 1965) 126–40, 191–96.

71 Gregory of Tours describes the troops leading Merovech into exile at the command of his father as a small *solacium* (*Historiae* 5.14); and Gundovald's troops investing Comminges as a large *solacium* (*Historiae* 7.34): neither context fits the meaning ‘retinue’ in the institutional sense of modern historiography or the local police troops of the *Pactus pro tenore pacis*.

72 II § 2 (GR ed.): ‘. . . ille iudex collectum solacium ipsum raptorem occidat.’ On *solacium* = *trustis* see also Boretius, *Capitularia* p. 16 n. 8. *Centena* is used in another set of provisions issued the same year by Childebert for the troop under the command of the *centenarius* (n. 61, above).

73 ‘Agentes igitur episcoporum aut potentum per potestatem nullius res, collecta solacia, nec auferant nec cuiuscumque contemptum per se facere praesumant.’ Boretius, *Capitularia*, c. 20, p. 23; cf. p. 16 n. 8.

74 Rouillard, *L'Administration civile de l'Égypte byzantine* 52, 164 n. 10, 165 nn. 3, 6.

assistance owed. The word can signify an armed troop and the abstract notion of service. As Kern noted, it is a bond as well as a band.⁷⁵ Combining such notions, the term *trustis* was well suited to the liturgical nature of local peacekeeping associations whose members were bound by oath to perform state service.

(2) The command of these associations by the *centenarius* is another feature of the Merovingian regulations closely paralleling imperial practices, particularly the use of military officers – among whom commanders of one hundred are prominent – for purposes of internal security and supervision of local communities. The edicts of the Frankish kings in this respect clearly introduce no novelty. The *Pactus* attempts to regularize the appointment of *centenarii* as the best means of guaranteeing the agreement between the kings; political requirements have contributed to stricter provisions for domestic order. The *centenarii* in question are *electi*, ‘chosen, select,’ a term I would interpret as meaning ‘detached from their regular posts.’ These posts are most likely part of the comital command. In the *Decretio* the regular employment of *centenarii* in police duties is taken for granted, though other judges might also lead posses, and the monetary penalty for failure to lend assistance is raised to the amount exacted for breaking the comital ban.

The name for the command of the *centenarius* is *centena*. Such a command when exercised over local police associations obviously has a territorial dimension to it, but the word itself does not mean at this stage a territorial unit, neither a primitive judicial division as the old scholarship tended to believe nor a crown settlement as recent interpretations maintain. In the *Pactus* the establishment of *centenae* is equivalent to the appointment of *centenarii*; and the mobile troop, *trustis*, can be called a *centena* when under the *centenarius*. The range of meanings here seems clearly to require that the concepts ‘command,’ ‘office,’ even ‘jurisdiction’ of a *centenarius* should be fundamental. The same meaning appears in the Roman sources. *Centena* is the name for the office or rank of the equestrian *centenarius*, and had the same significance in the armed forces; as noted in Lewis and Short, *centena* is the linguistic equivalent of *centurionatus*, the office of a centurion.⁷⁶

In the eighth century *centena* appears for the first time as a division of the county, a usage which is probably of relatively recent vintage. The better-documented term *comitatus*, we know, experienced a similar evolution as the one suggested here for *centena*, and indeed, the two terms should be regarded as undergoing parallel developments. In sixth-century sources *comitatus* does not yet mean the territorial division under a count, the ‘county,’ the usual meaning it has from the Carolingian period onwards, but rather the office or command of a count, and the rights and powers, the jurisdiction, of that office; the usual terms for the district under the count is *ciuitas* or *pagus*. Like *centena*, only in the eighth century does the term

75 Kern, ‘Notes on the Frankish Words in Lex Salica,’ col. 528.

76 CT 8.4.3; 10.20.1; 12.1.5: *perfectissimatus vel ducenae vel centenae vel egregiatus dignitas*. The sequence of military ranks was used in the *agentes in rebus*, where *centena* means office or rank: ‘ad ducenam etiam et centenam et biarchiam nemo suffragio sed per laborem unusquisque perveniat’ (CT 1.9.1 a. 359 = CJ 1.29.1).

comitatus take on a distinctly territorial meaning, and become the standard designation of the county.⁷⁷ With both *centena* and *comitatus* we see an evolution from the abstract, malleable concept of office, command, and jurisdiction, to the stricter notion of the territorial unit in which those powers are exercised. Early *centenarii* no doubt exercised their police commands over territorial districts of some sort, probably various kinds of long-standing divisions of the *civitas* or *pagus*, but so far as we can tell the term *centena*, the hundred, as a territorial designation emerged only in the eighth century.

(3) The final parallel between the imperial security arrangements and those of sixth-century Merovingian Gaul concerns police forces on great estates. These institutions tend to be poorly attested in Antiquity, and the same condition prevails in the Merovingian period, but their presence in both is undoubted. Their existence is taken for granted in the *Pactus* and mentioned explicitly in the *Decretio Childeberti II* and the early seventh-century *Edict of Paris* where the term *solacium*, a Latin equivalent of *trustis*, appears to describe the constabulary of episcopal immunitists and *potentes*. What is worth noting about the Merovingian references, especially in light of modern theories about the independent nature of Germanic lordship, is that, as in Antiquity, although these arrangements may fall outside public administration, they do not fall outside public law. The *solacia* are regulated by the *Edict of Paris*; and the police arrangements of the *fideles* in the *Decretio Childeberti II* are subject to the same regulations as the *centenae* under royal *centenarii*. It is possible to doubt the degree of practical control exercised by the public authority over domainal police at any time; but the Merovingian sources attest no new principle defining the theoretical position of the great estates within the public framework of the Frankish state in Gaul.

The explanation for the remarkable congruence between late Roman and sixth-century Frankish security measures seems obvious. The Merovingian kings exploited the traditional institutions of the Roman provinces over which they now ruled, and attempted to exercise their authority in a manner similar to that of the central authorities of the old regime – doubtless with no more, but possibly with no less success than their predecessors. Thievery, rustling, and robbery were among the staple activities of early European society. These problems were not new in the sixth century, nor were the means of suppression – liturgies, local responsibility, and central supervision. A Roman provincial origin of such measures removes the need for elaborate theories on the introduction of hypothetical Germanic institutions and princely retinues or for the supposition that the Merovingians created a revolution in procedures against thieves. However, because of the limited character of the Roman and Merovingian evidence for security, one is naturally tempted to speculate that the fundamental pattern of policing as laid down in Antiquity may have been affected by the introduction of

⁷⁷ The meanings of *comitatus* with examples are outlined by Niermeyer, s.v.; for discussion see Fustel, *La Monarchie* 200–201.

distinctively Frankish components or by the addition of novel but minor alterations. The tendency to treat Roman models of Merovingian institutions in terms of development and Frankish modification is often justifiable, but whether necessary in this instance is unclear. Apart from the increasing institutionalization of the *centenarius* as a security official under the Merovingians, what we know of imperial practices is sufficient in itself to account for Gallic police measures under the early Frankish kings. Merovingian security seems to fall easily within the compass of Roman provincial practice.

One other interpretation of the *centenae* in the *Pactus pro tenore pacis* and *Decretio Childeberti II* remains to be considered – the common notion of modern historiography that the *centenae* were from the beginning units, not of public administration, but of royal lordship. This view springs more from a general theory of the domestic nature of royal authority than a rigorous examination of the Merovingian evidence, and rests to a considerable extent on the questionable interpretation of much later evidence. Yet it is important for this theory that the earliest Frankish *centena* should be a fiscal *centena*, because the *centenae* of the Merovingian period are the critical link between the allegedly fiscal character of the hundred in Carolingian times and the supposed origin of the institution in late Roman military settlements. The case for the fiscal character of the Merovingian *centenae* was made by Dannenbauer, but the argument he proposed, despite wide acceptance, proves on examination to be based upon a distorted interpretation of a corrupt passage in the *Pactus pro tenore pacis* and, very likely, upon a faulty reconstruction of the original text.

In the surviving manuscripts of the *Pactus*, the text between the provisions of Clothar and the joint declaration of the two kings is considerably disturbed. The two final clauses of Clothar concern fugitive *servi* and their right to church sanctuary, and are immediately followed by the statement of the two kings, repeating in slightly different language the police regulations which survive in Clothar's section of the text. The archetype of the surviving manuscripts clearly introduced the joint declaration with the sentence, *De fiscalibus ut omnium domin(or)um (or domibus) censuimus*. But the position of this statement has long been recognized as problematic. Its natural connection seems to be with the previous regulations (to which it is directly subjoined) on sanctuary and fugitive slaves: the provisions of the regulations on fugitives are to apply not only to the slaves of private owners but also to *fiscalini*. Boretius, who seems at first to have regarded its association with the joint statement as nonsensical, nevertheless eventually let the connection stand in his edition of the capitularies in the MGH, an edition which remained standard until very recently. The new editions of K. A. Eckhardt, rightly in my view, print the sentence as part of the laws on fugitive slaves.⁷⁸

78 It would be translated: 'We have decreed this with regard to fiscal slaves (or estates) as well as those of all private lords.' The statement is a complete sentence and is not grammatically connected to the passage of the joint statement beginning 'Pro tenore pacis iubemus' (see n. 56 above). Boretius, *Capitularia* p. 7 reads *domibus*; Eckhardt, GR p. 404 (with apparatus) = MGH p. 252 reads

De fiscalibus ut omnium dominorum/domibus censuimus constitutes the basis for arguing that the *centena* was a fiscal institution limited to the domestic sphere of crown property, and that the *centenarius* was a fiscal official.⁷⁹ That the contentious passage in fact belongs with preceding regulations on *servi* – and therefore has nothing to do with *centenae*, *centenarii*, and the *trustis* – seems to me the most convincing resolution of the problems with the text as we have it.

On any reading of the passage, however, it still seems difficult to draw the conclusion that *centenae* were settlements on crown land. Whether attached to the provision on sanctuary for fugitive slaves or the joint declaration, the statement *De fiscalibus . . . censuimus* applies to *both* the fiscal *and* private sphere. The power of fiscal officials to subvert the law is an old story and is the likely context (be it *servi* or *centenae*) for the Merovingian rule; kings, like emperors, might have to include explicitly the fisc in regulations designed with general application to their subjects.⁸⁰ While in Roman practice the fisc stood apart from the obligations of local communities, it was still supposed to be subject ultimately to general law and public officials. When Cassiodorus instructed posses to be raised for the protection of the fair at Squillace, he stipulated the inclusion of fiscal tenants as well as private landholders.⁸¹

Dannenbauer of course had to recognize that the *Pactus pro tenore pacis* referred to more than fiscal property. He resolved the obvious problems presented by the text by claiming that reference to the fisc proved that the *centena* was in origin an institution on crown property; the non-fiscal sphere envisaged by the text he limited to the great seigneurial estates to which *centena*-style organization was now extended. Areas of public administration were not included in the regulation. Could the crown, he asks, have obligated the inhabitants of public districts to the burdens of night watch? The answer envisaged by the question is that only seigneurial lordship, whether royal or private, could maintain such a regulation. The answer suggested by the late Roman evidence is, as we have just seen, quite

dominorum. On Boretius' earlier view, see Eckhardt, GR p. 404 and Hessels, *Lex Salica* p. 418. For discussion of the textual problems and arguments rejecting its association with the joint statement, see Grahn-Hoek, *Die fränkische Oberschicht im 6. Jahrhundert* 289–91.

79 Dannenbauer did not follow Boretius' edition; without comment about the variety of text forms, he gave the following version: 'De fiscalibus vel omnium domos censuimus pro tenore pacis (ut in trustee electi centenarii ponantur' and quoted the rubric 'ut fiscales in trustem eant.' Both text and rubric come from Hessels, cod. 3 (= Eckhardt A 3; Boretius, cod. 4) and belong clearly to a late reworking undertaken to rationalize the disturbed transition between the clauses on fugitive slaves and the joint statement; *ut* is supplied by Dannenbauer from other MSS. Eckhardt prints the peculiarities of cod. 3 as secondary additions in the GR edition and as apparatus in the MGH; Boretius, even though he accepted the connection between the *De fiscalibus* text and the joint statement, rightly consigned cod. 3 to the apparatus.

80 CT 2.1.11 = LRV 2.1.11; *interpretatio*: 'Si quis in domibus dominicis criminosus potuerit inveniri, provinciae iudex praesentiam non expectet actoris sed mox reum comprehensum, ne aliquo coludio eflugiat, subdi iubeat publicae disciplinae'; and CT 1.11.2.

81 For the immunity of fiscal officials from municipal liturgies: CT 10.4.2 = LRV 10.3.2. For Cassiodorus, above, at n. 62.

different: enforced security associations and night watches were a standard component in the public life of the provinces; their continuation under the administration of the Merovingian kings is the obvious explanation for the rules of the *Pactus pro tenore pacis*. Indeed it is difficult to understand what circumstance could prevent areas of public administration as a whole from being included in the regulations if there was to be hope of an effective agreement between the kings. Moreover, if the kings could draw great estates into a security system that penalized defaulting associations, then surely compliance could be imposed on the smaller lords and landholders. The non-fiscal component of *De fiscalibus . . . censuimus* cannot simply be the estates of the magnates. Dannenbauer's other claim that the phrase shows an extension of the *centena* organization outside its originally fiscal context is likewise not confirmed by a reading of the text. Just because officials such as *centenarii* were given security functions in public districts and fiscal estates, it does not follow that their office was limited originally to crown property. The *Pactus pro tenore pacis* is thus a poor basis for arguing the fiscal character of the Frankish *centena*; and so is the *Decretio Childeberti II*, which recognizes only *centenae* under public officials and the security arrangements on the great estates of the king's *fideles*. So too are all the West Frankish sources. Even Dannenbauer recognized that the districts called *centenae* as they begin to appear in the West Frankish evidence from the late Merovingian period onwards are part of the public administration. In the late eighth-century *Formulae Salicae Merkelianae*, for example, *centenae* appear frequently as subdivisions of the *pagus*: property in these *centenae* is sold, donated, exchanged, and granted as *precaria* without reference to any restrictions that might indicate its fiscal character.⁸² To Dannenbauer, these West Frankish *centenae* were aberrations. Yet there is nothing aberrant about them at all: the earliest evidence for the Frankish *centena*, the *Pactus pro tenore pacis*, is itself a West Frankish source and shows the *centenarius* and his charge, the *centena*, to be institutions of the public administration not restricted to fiscal properties, as does the next earliest, the Austrasian *Decretio Childeberti II*. When *centena* appears in eighth-century sources as a term for a subdivision of the county, it is still applied to districts of public administration. The notion of the fiscal character of the early Frankish *centena* clearly comes from a theory about the nature of lordship and freedom among the Germanic peoples, not the evidence of Frankish Gaul.

IV

In addition to his role in peace keeping, the Frankish *centenarius* acted as a judge, *iudex*, a function he exercised on behalf of his superior, the count. In the late Merovingian and Carolingian periods his jurisdiction consisted of the *centena*, the subdivision of the county. His judicial competence, if not the territory to which

82 *Formulae Merovingici et Karolini aevi* 241–55.

it applied, is attested early in Frankish sources: in the early seventh-century *Lex Ribvaria*, the *centenarius* is the most junior of the judges to be found in the Frankish court (*mallus*), ranked below the *comes* and the great officers of state; and in the late sixth-century *Decretio Childeberti II* the *centenarius* seems to be classed as a *iudex*, a term frequently applied to the count and his deputies. The *centenarius* also has a judicial role in the early sixth-century *Lex Salica*, which shows him convoking extraordinary sessions of the *mallus* and presiding over certain kinds of judicial proceedings.⁸³ On the face of it, the evidence taken as a whole would seem to suggest that the *centenarius* in the Merovingian kingdom was from the beginning a subordinate of the count with a minor judicial role. In *Lex Salica*, however, the precise role of the *centenarius*' office is very indistinct and has always been the subject of dispute. The ambiguous evidence of the code has permitted scholars to come to quite different conclusions about the original character of the *centenarius*' office based upon their views of the development of the Merovingian state.

The old teaching, which viewed the *centenarius* in the beginning as a popularly elected leader of the hundred, not a royal official, accepted his judicial duties as original to the office; his subordination to the count, it was believed, occurred only in the course of the sixth century as a consequence of the growth of royal power. Modern scholarship, on the other hand, has now accepted the royal character of the office, since it is rooted in the Roman system of military ranks, but significant voices reject the long-standing view that judicial functions were original. Theodor Mayer has argued that in the beginning the *centenarius* had no judicial powers; he gradually acquired them as a result of his involvement in the pursuit of thieves as established by the *Pactus pro tenore pacis*: the police powers of the *centenarius* under the Merovingians begat judicial powers only under the Carolingians.⁸⁴

Mayer's argument for the development of the office of *centenarius* has two significant components. He claimed first that references in *Lex Salica* to the *centenarius*' presiding over the *mallus* did not form part of the original early sixth-century redaction but were late revisions, undertaken only when the *centenarius* had acquired judicial powers in the mid-eighth century. Second, the Frankish *centenarius* stemmed from the Roman commander of the same name, who, though involved in police duties, was not a judge; the judicial duties of the Frankish official were additions to his original role as commander of military settlers on crown property.⁸⁵

83 *Lex Ribvaria* 50.1: 'Si quis testis ad mallo ante *centenario* vel comite seu ante duce, patricio vel regi necesse habuerit ut donent testimonium. . . .' For the *Decretio Childeberti* see n. 61: there the ambiguity of *aut* also permits an interpretation separating *centenarii* from *iudices*. For the *Lex Salica* texts, see below n. 87. The *centena* as a judicial unit and the *centenarius* as a judge also appear in *Lex Alamannorum* 36, dated 722–730.

84 See n. 7; also Bosl, 'Hundertschaft' 443.

85 Much of Mayer's argument is based on the silence of Merovingian texts, a hazardous expedient given the paucity and distribution of charter and formulae evidence. References to *centenarii* in *Lex Ribvaria* and *Lex Alamannorum* are also explained as Carolingian interpolations. Early *centenae*, he suggests, refer to police, not judicial districts.

Some aspects of Mayer's argument regarding the text of *Lex Salica* are easily disposed of. There are no signs of so late a systematic revision of the Merovingian text classes as he imagines, and as a result his supposition has received no support among *Lex Salica* scholars.⁸⁶ The conclusion does not necessarily follow, however, that the earliest redaction must therefore reproduce unaltered the original text as it was drawn up in the early sixth century. Additions and emendations may conceivably have entered the text at an early stage and been passed on to the surviving Merovingian and Carolingian text classes. And so Mayer's argument, in a considerably modified form, may still have validity, if there are textual grounds for supposing *centenarius* an interpolation.

The grounds are far from conclusive. In the text as we have it, the term *centenarius* is normally paired in judicial contexts with the term *thunginus*; sometimes, however, only *thunginus* is used.⁸⁷ Mayer argued that *thunginus*, a title attested only in *Lex Salica*, was the term for an earlier judicial official distinct from the *centenarius* and that the latter's name was interpolated in the text, not always consistently, at a later date. The relationship between the terms *thunginus* and *centenarius* addressed by Mayer's interpretation is one of the puzzles that have long bedeviled *Lex Salica* scholarship, and no sure solution is ever likely to be found. Mayer's suggestion, with a radically modified chronology, is nevertheless a possibility – but it needs support from outside *Lex Salica* before it can be seriously maintained.

There is in fact no such support; the suggestion that early Frankish *centenarii* were not judges because this function was unknown to their Roman counterparts cannot bear scrutiny of the Roman evidence. Though the sparse Roman testimony on *centenarii*, under that precise name, fails to show judicial activities, there is still considerable evidence in Roman sources for the judicial activity of commanders of one hundred – *centuriones* and *ἑκατόνταρχοι*.

Roman sources show two principal contexts for judicial activity on the part of commanders of one hundred.⁸⁸ First, centurions might act as *iudices dati*, that is judges delegated for specific cases by high authorities with the appropriate jurisdiction. Although the character of cases submitted to military officers depended upon the competence and discretion of the superior judge, not the military status of the delegate, it nevertheless seems likely that centurions figured as *iudices dati* most frequently in cases in which the litigants were soldiers or soldiers and civilians.⁸⁹ Second, Egyptian papyri show military officers, and especially

86 For a survey of the text classes, with literature, see Ruth Schmidt-Wiegand, 'Lex Salica,' *Handwörterbuch zur deutschen Rechtsgeschichte* 2 cols. 1949–62.

87 LS 44, 46, 54 (only *thunginus*), 60 (*centenarius* only in C redaction).

88 Mommsen, *Strafrecht* 313–15; MacMullen, *Soldier and Civilian* 54, 59, 62; and esp. J. B. Campbell, *The Emperor and the Roman Army* 31 B.C. – A.D. 235 (Oxford 1984) 256–57, 262–63, 431–35.

89 Juvenal (16.7–34) gives an imaginary example in which a centurion, appointed iudex, hears a case brought by a civilian against a soldier in the military camp with other soldiers as his *consilium*. A real example from a first-century Egyptian papyrus in which a centurion is appointed to adjudicate the disputed inheritance of a deceased soldier is printed in *Fontes Iuris Romani Antejustiniani*, ed. V. Ariangio-Ruiz (Florence 1943) 3.190–91. Cf. Campbell, *The Emperor and the Roman Army* 256, 431.

commanders of one hundred, exercising a widespread jurisdiction over the civilian population, mainly with respect to minor criminal and civil matters. It is worth pointing out again that we owe our knowledge of this activity to the peculiar richness of Egyptian sources, which document everyday life, and that there is no reason to think such jurisdictions limited to Egypt. The role of the commanders of one hundred closely resembles that of petty judges in the provinces, including a class of delegated judges called *iudices pedanei*, who appear in late Roman constitutions as representatives of governors and other high officials; *iudices pedanei* were appointed to deal with minor matters (*negotia humiliora*) not requiring the attention of the provincial governor. Despite the resemblance, however, modern scholarship tends to view the jurisdiction of army officers over civilians as *de facto* and, though widespread, technically in violation of imperial statute.⁹⁰

The jurisdiction of commanders of one hundred, therefore, as befitted their rank, was a minor one. As officially delegated overseers of military cases or as judges in the countryside, they operated, like municipal magistrates and petty judges, at a low level of judicial competence and would have been concerned largely with soldiers and civilians of relatively humble status.

One other judicial context, if not judicial role, of officials with centurionate rank deserves to be noted. At the head of the judicial side of the *officium* of high civil and military officers was a *princeps*, who traditionally bore the rank of centurion; likewise, the new system of ranks when applied to military *officia* in Justinian's time employed officials ranked as *ducenarii* and *centenarii* under the chief of the bureau (*primicerius*).⁹¹ Such officials did not of course exercise a real jurisdiction but they controlled access to their superior as *iudex* and were responsible for the administration of his court.

This Roman evidence has some bearing on the rather imperfect outline of the *centenarius* in *Lex Salica*. It will not in itself solve the problems of the text, but at least it shows that the judicial role of the *centenarius* in early Frankish law is not incongruous. By the early sixth century there were long-standing precedents for the involvement of sub-officers in the judicial affairs of soldiers and civilians alike; even without *Lex Salica* the Roman sources would suggest that the *centenarius* exercised from the beginning minor judicial functions under the count. The judicial competence of the *centenarius* was not in itself a development of the Frankish kingdom but was implicit in the nature of the office. Despite the possibility of later interpolation, references to the judicial functions of *centenarii* in *Lex Salica*

90 For *iudices pedanei* see CT 1.16.8; 11.31.3; 13.4.4 (a grant of immunity from petty judges), CJ 3.3; and cf. CT 2.1.8 with *mediocres iudices* in the *interpretatio*, and 1.29.2. The possibility that military jurisdictions over civilians were delegated seems to be excluded by the strictures of the edict of the Prefect Stavian A.D. 367–370: *Oxyrynchus Papyri*, ed. A. S. Hunt (London 1911) 8 no. 1101; also translated in A. C. Johnson et al., *Ancient Roman Statutes* (Austin 1961) 250.

91 For ranks in various *officia* see the appropriate entries in the *Notitia Dignitatum* (above, n. 37); *centuriones* as apparitors are mentioned in CT 1.16.7, a. 331. For the new ranks in Justinian's African offices, see CJ 1.27.2.20–34, a. 534. And cf. Jones, *LRE* 563–601, who stresses that, despite the terminology, apparitors were civil servants, not soldiers.

are therefore best regarded as part of the original, early sixth-century redaction. The *centenarius* was the judicial subordinate of the count from the beginning of the Merovingian kingdom in Gaul.

This conclusion still leaves unresolved the problem of the relation of the *centenarius* to the *thunginus*, a title with which that of the *centenarius* is frequently paired. If the terms are not complementary Frankish and Latin designations of the same official, but, as some believe, the titles of separate officials, the *thunginus* is probably best interpreted as a 'civil' counterpart to the military *centenarius*, exercising a minor jurisdiction perhaps like that of the municipal *curia* of the Gallic provincials: the functions of the *thunginus*' jurisdiction in *Lex Salica* and those of municipal magistrates of the Frankish period closely resemble one another.⁹² A number of public petty judges – municipal, imperial, and military – operated in late Roman society and a similar situation prevailed in Frankish Gaul. Indeed, use of the *centenarius*' jurisdiction may often have been at the discretion of the petitioners, which would also account for its insertion in the text of *Lex Salica*. The availability and standing of *centenarii* could have encouraged the growth of the minor jurisdictions of the comital court.

Problems also remain as to the exact extent of the *centenarius*' jurisdiction in *Lex Salica*. That the judicial competence of the commander of one hundred was minor, as in the Empire, seems clear, but a more precise definition founders on the inadequate evidence of the Salic law. Elsewhere I have argued on the basis of the internal evidence of *Lex Salica* that the judicial scope of the *thunginus/centenarius* as he appears in the text was not that of the principal judge of Frankish law, as the old scholarship believed, but was rather consistent with a secondary judicial official with a restricted competence.⁹³ In general terms, such judicial limitation corresponds to the minor nature of Roman centurionate jurisdiction; yet the specific relation to imperial practice is difficult to establish. In *Lex Salica* the *centenarius* never appears as a judge in disputes; rather he presides over procedures requiring publicity and the attestation of a judicial forum. Two possible explanations for this circumstance suggest themselves. Since so few texts mention judicial activity, it might seem that the severely limited nature of the *centenarius*' jurisdiction is simply apparent; for instance, if he is mentioned in the text as an alternative forum to the *thunginus*, the implied limitations may pertain principally to the latter. I would suggest, however, that the *centenarius* did not originally have a coercive jurisdiction. Support for this contention comes from the *Pactus pro tenore pacis* and the *Decretio Childeberti II*, where the *iudex* with power to impose penalties seems to be distinct from the *centenarius*.⁹⁴ The limited nature of the *centenarius*' jurisdiction in the sixth-century law texts was probably dependent on the peculiar status of the ethnic Franks in the early Merovingian kingdom and their right to bring important matters before the count or the king. In effect, like the privileged classes of the

92 Murray, 'Position of the *Grafio*' 796–97; [above pp. 52–53].

93 *Ibid.* 792–98; [above pp. 48–54].

94 Cf. pp. 81–84, above.

late Empire, they had immunity from the adjudications of petty judges, though the courts of such officials served to publicize and initiate judicial acts. Powers similar to those of minor Roman military judges may have been exercised over non-Franks and inferior members of society, but in general the Frankish *centenarius* did not at first possess a coercive jurisdiction.

V

The *centenarius* has played a central role in modern discussions of the Merovingian constitution in part because his role touched upon so many areas of the administration of the kingdom. The military, administrative, judicial, and security spheres all seem to have fallen within his competence; to many scholars the *centenarius* and *centena* have seemed to be the keys which would unlock the fundamental character of the Merovingian state. One cannot help but believe, as well, that the sometimes indistinct outline of the *centenarius*' role in sixth-century sources has also helped establish his importance; the sixth-century legal sources do not always yield their meaning easily, and time and the vicissitudes of transmission have often obscured and corrupted what chance has preserved. Such a circumstance has allowed fundamental suppositions about the nature of the Frankish state to govern detailed explanations of the development of the centenariate in the administration of the Merovingian kings; in turn, interpretations of the *centenarius* have acquired a value for proving the essential character of that constitution far exceeding the warrant of the source material and the restricted nature of his office in the structure of the Frankish state.

The constitutional frameworks of the old and of the newer history may each seem to proceed from fundamentally different perspectives on the Frankish state. But the discussion has been guided by a common characteristic; they both start from the notion of a distinctive Germanic order. Traditional scholarship saw the *centenarius* springing directly from the egalitarian institutional structure of the early Germanic state; recent history, which emphasizes the dispersed despotisms of kings and nobles, regards his office as an adaptation of a Roman institution to the domestic character of Germanic lordship. Yet for one who approaches Merovingian sources without espousing either of these constructs, it is very difficult to recognize easily in the Frankish *centenarius* of the sixth century the primitive popular official of traditional historiography, or the royal official commanding the king's freemen settled on crown land, as maintained by the newer history. The discussion in the preceding pages has been guided by the premise that our understanding of the sixth-century *centenarius*, and the institutional structure in which he operated, ought to begin with the world in which his office arose. Although Merovingian legal sources rarely speak unequivocally, they show clearly enough that the Frankish *centenarius* owes more to the military and administrative life of the Roman provinces taken over by the Merovingian kings than he does to an unattested primitive Germanic order.

Centenarius was in origin a rank in the late Roman army and part of the diversified nomenclature for the commander of one hundred or century. The rank was

taken up by the Frankish kings as part of an adaptation of the offices of the Roman army and was employed in the combined military and civil administration of the new kingdom. The Roman model served not only for the title and position of the *centenarius* in the Merovingian hierarchy but also, as was true of the other major offices of the Frankish system, for the functions carried out on behalf of the new state. As part of a wholesale reception of Roman ranks, *centenarii* may have originally been found in various roles in the central and regional administration of Merovingian Gaul. What our sources attest is chiefly their position as local subordinates of the count with supervisory, security, and judicial functions similar to those of their imperial antecedents.

Like the Roman commanders of one hundred, Frankish *centenarii* were directed to oversee local police associations, and by the end of the sixth century the duty appears to have crystallized into a permanent duty for comital subordinates with centenariate rank. The security system itself was also clearly derived from the provincial system of the late Empire. Scholarship has treated the local police troops of the Merovingian kingdom as Germanic institutions or as innovations; in fact, they thoroughly resemble associations of liturgists of the Roman period, bound by oath to compulsory service and subject to financial penalties if negligent. The varied role of Roman commanders of one hundred as judges helps confirm in addition that judicial duties were original to the Frankish *centenarius*, although the precise character of his judicial office in the early sixth century is difficult to delineate. Judicial powers appear to have been at first non-coercive, and it is possible that an enhanced role in the judicial administration was encouraged by petitioners seeking the authority and standing of a comital subordinate and royal official.

Like *centenarius*, the term *centena* is also rooted in Antiquity. The equivalent of *centurionatus*, it was the name of a *centenarius*' command, a meaning it still possessed in sixth-century sources. As such *centena* could be applied to the local police troop when led by the *centenarius* and to the corresponding territorial jurisdiction, based probably on long-standing divisions of the *pagus* or *civitas*. By the eighth century, as a consequence of an evolution parallel to that of the term *comitatus*, it appeared as a specialized designation for the judicial and administrative subdivision of the county under the authority of the *centenarius*. From this point on the 'hundred' entered the European vocabulary as a common name for the small territorial subdivisions of medieval states.

Seen in this light, the *centenarius* and the *centena* do not provide us with access to a primitive Frankish constitution or a Germanic order, however conceived. They do afford a better understanding of the sub-Roman nature of the Merovingian state and permit us to see something of the fascinating passage from Roman to Frankish Gaul.

IMMUNITY, NOBILITY AND THE *EDICT OF PARIS* *

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Immunity (*immunitas*, *emunitas*) was an institution of Roman and Frankish public law that conferred exemption from various kinds of state obligations.¹ In Roman law, immunity might be granted to an individual, group or community by the public authority, whether the Roman state itself or one of its constituent self-regulating bodies.² It was not an institution with a fixed content; terms varied

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- 1 *Emunitas* is the usual Merovingian form. The standard work dealing with Merovingian immunity is Maurice Kroell, *L'immunité franque* (Paris, 1910), though it needs considerable supplementation. Of the previous generation of scholars, Heinrich Brunner, *Deutsche Rechtsgeschichte 2*: 382–404, cited here in the 2nd ed., co-authored by Claudius Frhr. von Schwerin, *Systematisches Handbuch der deutschen Rechtswissenschaft 2/1* (Leipzig, 1928), and henceforth abbreviated *DRG*, is still important. The perspective of Fustel de Coulanges, *Les origines du système féodal*, *Histoire des institutions politiques de l'ancienne France*, 4th ed. (Paris, 1914), pp. 336–425, is of interest, especially in light of recent theories. A worthwhile discussion in English from a Carolingian perspective appears in Helen M. Cam, *Local Government in Francia and England* (Cambridge, 1912), pp. 100–128. The account by Julius Goebel, Jr., *Felony and Misdemeanor: A Study in the History of Criminal Law* (1937; rpt. University of Pennsylvania Press, 1976), pp. 135–149, should be read with caution. Kroell should also not be read without Léon Levillain, "Note sur l'immunité mérovingienne," *Nouvelle revue historique de droit français et étranger*, 4th ser. 6 (1927), 38–67. François Louis Ganshof, "L'immunité dans la monarchie franque," *Recueils de la Société Jean Bodin 1/2* (1958), 171–91, and Dietmar Willoweit, "Immunität," *Handwörterbuch zur deutschen Rechtsgeschichte*, 2, ed. Adalbert Edler et al. (Berlin, 1978), cols. 312–330, give quite different views of the *status questionis*. See also works in nn. 4, 5, 32, below. Essential for understanding the fiscal context of immunities is Walter Goffart, "Old and New in Merovingian Taxation," *Past and Present* no. 96 (August 1982), 3–21. Cf. Reinhold Kaiser, "Steuer und Zoll in der Merowingerzeit," *Francia 7* (1978), 1–18. A very different view of Merovingian finance is supposed by Elisabeth Magnou-Nortier, "Étude sur le privilège d'immunité du I^{er} au IX^e siècle," *Revue Mabillon* 284–297/298 (1981–84), 465–512 and by Jean Durliat, *Les finances publiques de Diocletien aux Carolingiens* (284–889), *Beihefte der Francia 21* (Sigmaringen, 1990).
- 2 General characterizations are given by the *Oxford Classical Dictionary* (Oxford, 1970), p. 542; Adolf Berger, *Encyclopedic Dictionary of Roman Law*, *Transactions of the American Philosophical Society*, N.S. 43/2 (Philadelphia, 1953), p. 492, with literature; and *Paulys Realencyclopädie der classischen Altertumswissenschaft*, 9/1, ed. Georg Wissowa and Wilhelm Kroll (Stuttgart, 1914), s.v. Relevant

according to the discretion and powers of the grantor, and the system of obligations from which relief was sought. Exemption might be for a limited duration and was always liable to be revoked, especially by imperial authorities, a circumstance that makes it difficult to evaluate the role and extent of immunities in the late Empire. Immunities conferred by the emperors are mentioned quite frequently in the legal sources of the fourth and fifth centuries in reference to exemptions from taxation and other public burdens.³ These imperial grants are generally regarded as the forerunners of Merovingian concessions.⁴

The benefit of immunity for the recipient of the grant might be more than a simple, negative exemption. Revenues formerly enjoyed by the public authority were transferred to the immunist, a feature of Merovingian grants that has sometimes mistakenly been thought to be a Frankish innovation.⁵ In fact, in the late Empire landlords often transmitted to the central government the taxes due from their tenants; exemptions acquired by a landlord were for his benefit, not that of his peasant farmers, who would continue to shoulder their customary obligations. Seen in this light, immunity was an instrument for the delegation of public revenues, and a convenient alternative to assigning funds directly to servants of the state or those deserving imperial or royal largesse.⁶

Such a perspective also suggests that though immunity was a privilege, it was still supposed to accord with the public welfare. On this question the sources, both Roman and Frankish, are quite explicit: they justify immunities on the grounds of the past or future service of the recipients. The exemption often appears to offset socially valuable services performed by the immunist, or to support such

texts can be found in *Digesta* [henceforth abbreviated D] 50.6 (and cf. 50.5), ed. Theodore Mommsen and Paul Krueger, *Corpus iuris civilis*, 1 (Berlin, 1872 and later); English translation: *The Digest of Justinian*, ed. Alan Watson (Philadelphia, 1985). See also next note.

3 Title 11. 12, “De immunitate concessa,” of the *Codex Theodosianus* [henceforth abbreviated CT], ed. Theodor Mommsen and Paul Krueger (Berlin, 1905) can serve as an example. Synonyms, such as *privilegia*, multiply the examples; cf. CT 11.16, “De extraordinariis sive sordidis muneribus.”

4 Roman origin at least for the form of immunity is usually conceded even by those who argue its Germanic content: for example, see Mitteis, below, n. 32. But compare the views of P. W. A. Immink, *At the Roots of Medieval Society*, 1: *The Western Empire* (Oslo, 1958), p. 52, who denies the survival of fiscal immunities into the Merovingian kingdom, and William Carroll Bark, *Origins of the Medieval World* (Stanford, 1958), p. 120, who believes the immunity was a German innovation. They are probably misled by views on the origins of judicial exemption.

5 Karl Bosl, “Immunität,” in *Sachwörterbuch zur deutschen Geschichte*, ed. Hellmut Rössler and Günther Franz (Munich, 1958), p. 447. Willoweit, “Immunität,” col. 314.

6 See *Chartae Latinae Antiquiores* [henceforth ChLA], ed. Hartmut Atsma and Jean Vezin (Zurich, 1981), 14: *France II*, no. 577 = MGH *Diplomata regum Francorum e stirpe Merowingica* [henceforth DM], ed. Karl A. F. Pertz 67, a. 694 or 695, in which Saint-Denis gives up direct public subsidies in return for a villa “sub emunitatis nomine.” Immunity also shows similarities to other indirect subsidies, such as exemptions from tolls: see ChLA 13: *France I*, no. 568 = DM 51, a. 680–688; ChLA 14: no. 574 = DM 61, a. 691; ChLA 14, no. 589 = DM 82, a. 716 (combining direct and indirect subsidies); *Marculfi formulae*, Supp. 1.3, in MGH *Formulae*, ed. Karl. Zeumer; and cf. ChLA 14, no. 586 = DM 77, a. 709–10 (right to collect tolls).

activity.⁷ Those who have studied the Merovingian immunity have rarely followed the sources' lead on this point, in part because views on what might be considered utilitarian in these matters have changed considerably since the original grants were made, and in part because immunities are often prime exhibits in polemical indictments of Merovingian fiscal and administrative capacity. Almost all surviving specimens of Merovingian immunity charters are grants to ecclesiastical establishments. These generally refer to the spiritual benefits accruing to the king and the kingdom in return for the grant, and they require that the financial benefits of the grant be applied directly to the upkeep of the cult.⁸ Sanctioning immunities on these grounds goes back to the very beginning of the Merovingian kingdom and has its roots in late Antiquity. The Council of Orleans, which first mentions royal immunities in 511, does so because of the assembled bishops' concern that not all churches that had received grants were applying the benefits to religious work, such as the restoration of churches, alms for clerics and the poor and the redemption of captives.⁹

It is also clear that the nature of Merovingian exemption, viewed over the course of the Merovingian period, varied just like that of its Roman antecedent. Sixth-century sources attest to grants of immunity from taxes (*tributum*) and *functio*, a broader term that might include not only taxes but other public charges.¹⁰ Scholarly attention, however, has been directed primarily to immunity as it appears in

7 D 50.6.3, 6, 8, 9–12, on exemptions of the *collegia*. Imperial constitutions regarding palatine officials: CT 11.16.16 = *Codex Justinianus* [henceforth, *CJ*], ed. Paul Krueger, *Corpus iuris civilis*, 2 (Berlin, 1877 and later), 10.48.13, a. 385, “contemplatione dignitatis adque militiae”; CT 11.16.18, a. 390, “meritorum privilegia vel dignitatum, laborum contemplatione”; and CT 11.18.1, a. 409 or 412, among others; these terms bear comparison with those of Merovingian lay grants: “pro contemplatione servitii,” “pro fidei suae respectu, eius meritis compellentibus” (*Marculfi formulae* 1. 14, 17). Palatine service was a *munus fidelis* (CT 6.35.5, a. 328) and therefore entitled officials to be *immunes* from other types of *munera*. CT 15.2.1 = *CJ* 11.43.1, a. 330: exemptions for those keeping the aqueducts clear; CT, *Nov. Valent.* 5.1.4: exemptions for land obligated to the maintenance of aqueducts or supplying sand, lime or public transport; and cf. CT 11.16.13 = *CJ* 10.48.10, a. 382 or 383 on emphyteutic leaseholders.

8 *Marculfi formulae* 1.2 is representative: “et quicquid fiscus noster forsitan de eorum hominebus, aut ingenuis aut servientis, in eorum agros conmanentis vel undique poterat sperare . . . in luminariibus . . . vel stipendia servorum dei . . . debeant cuncta proficere.” The terms of the lay grants are considered below, p. 116.

9 *Concilium Aurelianense*, a. 511, c. 5, in MGH Conc 1:4, ed. Friedrich Maassen. Constantine regarded the worship performed by clerics as a service to the state deserving of exemptions. See Eusebius, *Ecclesiastical History* 10. 7, ed. J. E. L. Oulton and H. J. Lawlor (Cambridge, Mass., 1973), 2: 464–65; and cf. CT 16. 2. 1–7 et seq. Ecclesiastical service was a form of state service, according to a law of Constantius (CT 16.2.16), “[nos] scientes magis religionibus quam officiis et labore corporis vel sudore nostram rem publicam contineri.”

10 *Concilium Aurelianense*, a. 511, c. 5, as in previous note. Gregory of Tours, *Libri historiarum X*, 3.25, 9.30, 10.7, MGH SSrerMerov 1/1, ed. Bruno Krusch and Wilhelm Levison, on which see Goffart, “Old and New,” p. 13. *Chlotarii II Praeceptio* c. 11, in MGH Capit 1: 19, ed. Alfred Boretius. Cf. also Flodoard's *Historia Remensis Ecclesiae* 2.1, ed. J. Heller and Georg Waitz, in MGH SS 13: lib. 2.1, which seems to be based on a record of early concessions to the church of Reims.

seventh-century diplomas. This evidence, appearing in late Merovingian charters and *formulae* collections, concerns a type of royal grant in which exemption from taxes and public burdens of late Roman stamp appear to be of peripheral concern; instead, the terms of the privilege focus upon the judicial activities of counts and their subordinates, who are prohibited from entering the domains of the grantees to perform judicial functions or to collect fines and fees.¹¹ The exclusion of royal officials (*iudices*) is expressed by the phrase *absque introitu iudicum*, or something similar; the grant is said to be made *in integra* (or *sub omni*) *emunitate*.¹² Concessions of this type have commonly been viewed as the characteristically Frankish form of immunity, and a species quite apart from its Roman predecessor.¹³

The prohibition against the entry of royal officials in particular, so the argument goes, should be regarded as the essential feature of the Frankish immunity.¹⁴ But attempts to apply modern legal distinctions here are not particularly helpful. It is important to note that the so-called *introitus* prohibition was not peculiar to immunities containing judicial exemptions. In the *Praeceptio* of Clothar II, for example, it accompanies a grant of exemption from fees charged for the use of crown land.¹⁵

The great attention lavished on explicating Merovingian immunity in terms of the diplomas is an approach that unfortunately tends to suggest a rather uniform institution.¹⁶ The late date of the diploma evidence is also rarely fully appreciated. The earliest original charter dates from 688.¹⁷ For a long time a privilege of Dagobert I for Rebais, dated to 635, was generally acknowledged to be the earliest record of a charter with immunity clauses, but its genuineness now appears to be in doubt.¹⁸ Without the evidence of Dagobert's privilege for Rebais, it becomes

11 Goffart, "Old and New," p. 5.

12 For example *Marculfi formulae* 1.14: "decernemus . . . ut ipsa villa illa antedictus vir ille . . . in integra emunitate, absque ullius introitu iudicum de quaslibet causas freta exigendum, perpetu-aliter habeat concessa."

13 Though not necessarily Germanic for that fact. Fustel de Coulanges, *Origines du système féodal*, p. 422; echoed by Kroell, *L'immunité*, pp. 67–71, among others. The perspective of the diplomas would seem to account for the statement by Rolf Sprandel, "Struktur und Geschichte des merovingischen Adels," *Historische Zeitschrift* 193 (1961), 52, that the earliest Frankish evidence for the immunity is the *Edict of Paris*.

14 The *Schwerpunkt*, in Brunner's phrase (DRG 2:391, though cf. p. 395, n. 62). See also Ganshof, "L'immunité", p. 180; and more recently, Jacques Foviaux, *De l'empire romain à la féodalité* (Paris 1982), p. 398: "L'immunité franque . . . ne désigna plus, comme jadis, les exemptions des contributions fiscales, mais, concrètement, selon les nouvelles mentalités, l'interdiction de toute immixtion des *judices*." Brunner's view was vigorously rejected by Levillain, "Note sur l'immunité," pp. 61–63.

15 *Clotharii II Praeceptio*, a. 584–628, c. 11, MGH Capit 1:19: "Agraria, pascuaria vel decimas porcorum ecclesiae pro fidei nostrae devotione concedemus, ita ut actor aut decimatur in rebus ecclesiae nullus accedat."

16 For example, see Ganshof, "L'immunité," esp. pp. 187–88.

17 *ChLA* 13, no. 570 = *DM*, no. 57.

18 *DM*, no. 15. Here judicial exemption is bundled with other, largely ecclesiastical privileges: for this form cf. *Marculfi formulae* 1.2. The challenge to the genuineness of Dagobert's privilege was made by Franz Beyerle, "Das Formelbuch des westfränkischen Mönchs Markulf und Dagoberts Urkunde

difficult to demonstrate the existence of fully fledged judicial exemptions until after mid century.

References in the literature to *the* Frankish immunity usually refer to the type found in late royal grants. Even though scholars sometimes suppose that immunities in this form go back deep into the sixth century, it has long been recognized that the terms of the grants took time to develop.¹⁹ The shift in emphasis from concessions of a fiscal character to exemptions from the judicial and administrative activities of royal officials constitutes an evolution and, many would say, a mutation in Merovingian practice.

To sketch out immunity in this way, as an institution of public law, is only the starting point, however, for understanding its place in the history of the Frankish kingdom. To go below legal form to underlying social and political conditions has always been the challenge for historians of Merovingian institutions, though the imperfect nature of the evidence often makes it an enterprise fraught with hazards and contention. In the case of immunity, the effort has seemed pressing because of the intersection with fundamental features of the early medieval state, including forms of judicial autonomy associated with secular and ecclesiastical lordships. Though there is widespread acceptance that not just the term immunity, but the concept of exemption itself, go back to the Empire, there is no general agreement about the content and meaning of immunity within the context of Merovingian constitutional history, nor about the stages in its development and their relation to the political and social evolution of Gaul in the early Middle Ages. Problems of this kind need to be tested from time to time if we hope to place the Merovingian immunity within the broader currents of Frankish and European history. Progress depends in part on clarifying the shifting emphasis from fiscal to judicial exemption and on determining a suitable context for the introduction of judicial exemption into Frankish law.

für Rebais a. 635," *Deutsches Archiv für Erforschung des Mittelalters* 9 (1951), 43–58. His arguments, though of mixed quality and not decisive, seem to have been convincing: cf. Wilhelm Schwarz, "Jurisdicio und Conditio: Eine Untersuchung zu den Privilegia libertatis der Klöster," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Kan. Abt. 45 (1959), 75; Eugen Ewig, "Das Privileg für Rebais und die Freiheitsbriefe des 7. Jahrhunderts," in *Spätantikes und fränkisches Gallien: Gesammelte Schriften (1952–1973)*, 2, ed. Hartmut Atsma (Munich, 1979), p. 463, n. 36. J. M. Wallace-Hadrill's contention (*The Long-Haired Kings and Other Studies* [London, 1962], p. 226, n. 2) that Beyerle's view can be accepted "without casting doubt on the fact that a grant of this kind was made" is too cavalier for our purposes.

19 On the basis of the *Edict of Paris* and DM 63, Brunner (*DRG*, 2:390) and Kroell (*L'immunité*, pp. 57–58) date the appearance of the judicial exemptions of the charters – what Brunner calls the expanded immunity and Kroell the administrative immunity – to the last two decades of the sixth century; according to Kroell (pp. 59–71), the charter formulae took longer to crystallize, until the mid seventh century. Much earlier dates for the judicial exemption of the charters are also accepted; a date before 558 is supposed by J. M. Wallace-Hadrill, *The Frankish Church* (Oxford, 1983), p. 101, who attributes the *Chlotharii Praeceptio* to Clothar I and understands its reference to *immunitas* (c. 11, MGH Capit 1: 19) to include judicial exemptions. On DM 63, see Appendix 2.

At the center of the present discussion is the so-called *Edict of Paris*, issued by Clothar II in 614 after his victory over Brunhild and her supporters. The *Edict*, which comes at the tail end of the surviving record of Merovingian legislation, is important because it contains the only reference in the decrees of the Merovingian kings to the judicial side of immunity. The *Edict* permits us to get some idea of judicial exemption in the early seventh century, before we have to rely on charters that are later in date and plagued with problems of authenticity. I shall begin by analyzing some common misconceptions about the character of judicial exemption and by challenging the influential view that the *Edict* helps demonstrate the Germanic origin of judicial immunity. Thereafter, I shall suggest a context for the introduction of judicial exemptions into Frankish law and consider their likely content in the early seventh century.

II

The relationship of immunity to the exercise of jurisdiction has long been a crux in the study of public order in the Frankish kingdom. In the nineteenth century the problem revolved around the question whether the count remained the ordinary judge of the inhabitants of the immunity or whether the immunist and his agents exercised some form of jurisdiction within the territory covered by the grant. The problem arose because, though immunity in later sources was clearly associated with the right of domainal justice, no Merovingian immunity charter refers to jurisdiction being conveyed to the immunist by the grant or mentions judicial powers being exercised by the immunist or his agents. Instead the immunist is granted the profits of justice and public judges are prohibited from entering the immunity to hear cases, make distraint or exact fines.²⁰ It seemed possible to argue from the strict terms of the charters that the recipient of the grant became only the coercive agent of the count within the immunity, the collector and beneficiary of judicial exactions, without thereby exercising judicial powers over the inhabitants of the immunity, who remained subject to the comital court.²¹

This view could not completely survive the publication and interpretation of the so-called *Edict of Paris*, which, despite the damaged state of the text, testified to the appointment of judges by the ecclesiastical and lay magnates.²² By the beginning of the twentieth century scholarly consensus accepted that the immunity area might constitute a judicial enclave within the county, though the immunity grant of the royal charters did not in itself first create the jurisdiction. Rather, it was believed that immunity was superimposed upon, and confirmed, preexistent

20 Again cf. *Marculfi formulae* 1.2: "Illud nobis pro integra mercede nostra placuit addendo ut . . . nulla iudiciaria potestas . . . ad causas audiendo aut aliquid exactandum ibidem non presumat ingredi; sed sub omni emunitate hoc ipse monasterius vel congregatio sua, sibimet omnes fretos concessus, debeant possidere."

21 The older literature is considered by Kroell, *L'immunité*, pp. 128–32.

22 C. 19, MGH Capit 1:23.

domainal jurisdictions. Though not strictly speaking a jurisdictional grant but a jurisdictional exemption, immunity nevertheless protected and extended the existing judicial powers of the immunist.

Recognizing domainal jurisdictions anterior to the immunity grant solved the dilemma of the immunity area as a judicial enclave and the grant's apparently negative content with regard to jurisdiction. It still left some problems unsolved and in itself raised new difficulties, in particular the extent and the source of the anterior jurisdictions. The tendency to view them as minor – thereby leaving comital jurisdiction for major cases – probably remained the standard view, but on the question of the origins of the jurisdictions themselves opinion was divergent, if muted. In the work of Heinrich Brunner and Claudius Frhr. von Schwerin the jurisdictions were treated mainly under the rubric of *Grundherrlichkeit* and interpreted as a consequence of the extension of the domestic authority of the Germanic house-lord,²³ an idea that has remained very potent in German scholarship.²⁴ This “organic” jurisdiction was distinguished from the “inorganic” jurisdiction of the Roman world, the latter source being briefly acknowledged with the notion that the magnates of Gaul acquired the posts of late imperial minor judges, the *defensores* and *assertores pacis*.²⁵ Maurice Kroell, on the other hand, though allowing for the probable influence of Germanic practices, emphasized the late Roman background of inorganic jurisdiction. He understood this to be derived from the derogation of public authority and – stressing Brunner's view – the powers conferred on landlords by virtue of commissions as minor judges.²⁶

The source of the anterior jurisdictions took on special significance as increasing emphasis was placed on the aristocratic character of Frankish society in postwar scholarship. Notions of “noble immunity,” or the “autogenous immunity of the nobility,” were used to characterize the jurisdictional powers over tenants and dependents supposedly inherent in the Germanic aristocracy and independent of the sanction of monarchy.²⁷ The choice of terms here is unfortunate. The term immunity was already doing double duty in the literature, meaning the institution of exemption as well as the territory enjoying the exemption.²⁸ To refer the term now to autogenous jurisdictions and rights served the purpose of implying a Germanic content to the Roman concept, but only by distorting the Merovingian term and by confounding

23 DRG, 2:368–82. On the subject of the anterior jurisdictions, this is the section Ganshof, “L'immunité,” p. 185, n. 41, recommends to the reader.

24 The notion is central to the views of Schlesinger (n. 29, below) on the nature of lordship; and see Schulze (n. 31, below), for example, who continues to use it to explain the jurisdictions of immunities (p. 338).

25 DRG, 2:380–82.

26 *L'immunité*, p. 132.

27 Theodor Mayer, *Fürsten und Staat: Studien zur Verfassungsgeschichte des deutschen Mittelalters* (Weimar, 1950), p. 278, with literature; and the works cited below, n. 32. The notion of autogenous immunity was first applied to the high middle ages: see Schulze, p. 338, as in n. 31.

28 The latter meaning seems to have appeared first in the Carolingian capitularies: *Capitulare Haristalense* a. 779, c. 9, in MGH Capit 1:48; *Capitulare de latronibus* a. 804–13, c. 5, MGH Capit 1:180.

the interpretation of the sources. Immunity in a Merovingian context was an institution of public law, and it meant not jurisdiction, but exemption. As such it required the existence and sanction, however formally, of public authority. One can speak conceivably of autogenous jurisdictions and autogenous rights, but not autogenous exemptions. Immunity by its nature is a right derived from a superior authority.

The autogenous rights of the nobility as a framework for interpreting Germanic and Frankish society have nowhere been so coherently and effectively developed as in post-war German scholarship, where a long line of social and institutional historians has systematically revised the beliefs of nineteenth-century legal history. Rejecting the theory of the popular or democratic foundation of Germanic institutions, Heinrich Dannenbauer and others emphasized instead noble lordship over land and people as the basis of Germanic social and political development.²⁹ An important target of revision in this regard was the problem of the origins of the Frankish nobility, one of the enigmas of Merovingian social history. Historians argued for the continuity of an ancient nobility of blood into the Merovingian kingdom; this nobility, representing the Germanic order based on aristocratic power independent of the monarchy, was believed to have triumphed over the Merovingian kings in the sixth and seventh centuries.³⁰

These views were often accompanied by a distinctive interpretation of the nature of political authority. Lordship and the exercise of political power, whether by the nobility or by the king, the argument ran, was in origin domestic power that had been gradually extended beyond the province of the household. Some argued that what modern scholars had interpreted as public authority was better understood as the domestic power of the king over his dependents. Existing side by side with the independent lordships of the nobility, royal administration was never able to function by means of an uninterrupted system of public administrative districts, but only as islands of royal power.³¹ And even royal offices were not necessarily a mark of true public authority, but increasingly became the preserve of the nobility; local office in particular represented not royal but aristocratic power. Under the rubric of autogenous immunity, the domainal jurisdictions that older scholarship had recognized as preexisting the exemptions from comital judicial activities were readily integrated into this framework as evidence for the independent and

29 The formative works were Heinrich Dannenbauer, "Adel, Burg und Herrschaft bei den Germanen," *Historisches Jahrbuch* 61 (1941), rpt. and expanded in *Herrschaft und Staat im Mittelalter, Wege der Forschung* 2 (Darmstadt, 1956), pp. 60–134, and "Hundertschaft, Centena und Huntari," *Historisches Jahrbuch* 62–69 (1949), 155–219; and Walter Schlesinger, "Herrschaft und Gefolgschaft in der germanisch-deutschen Verfassungsgeschichte," *Historische Zeitschrift* 176 (1953), 255–75, trans. as "Lord and Follower in Germanic Institutional History," in *Lordship and Community in Medieval Europe*, ed. Frederic L. Cheyette (New York, 1968), pp. 64–99.

30 For a detailed argument, see Franz Irsigler, *Untersuchungen zur Geschichte des frühfränkischen Adels*, Veröffentlichungen des Instituts für geschichtliche Landeskunde der Rheinlande an der Universität Bonn 70 (Bonn, 1969).

31 For a history and critique of this view, see H. K. Schultze, *Die Grafschaftsverfassung der Karolingerzeit in den Gebieten östlich des Rheins*, Schriften zur Verfassungsgeschichte 19 (Berlin, 1973).

sovereign rights of the ancient nobility. Immunity came to be regarded as an institution of Roman public law adapted to the Germanic order.

The most influential statement of this view was that of Heinrich Mitteis. Little of what Mitteis said was new in detail, nor was his account a model of clarity or consistency, but he managed to anticipate and encapsulate a viewpoint that has become an important current in German historiography.³² He recognized that the concept of immunity had its origins in Roman public law but at the same time he proceeded from the premise that the foundation of the Frankish state was Germanic and that it was the Germanic conditions of the new state that radically distinguished the Frankish immunity from its Roman counterpart and gave it its fundamental character and meaning. The emphasis that scholarship had placed on the financial benefits of immunity was, he believed, exaggerated, for neither these, nor even the jurisdictional implications of the grant, constituted its full significance. This could only be understood from a political perspective: immunity was part of a constitutional struggle between the monarchy and the ancient tribal aristocracy that eventually redefined the Merovingian state along the lines of the Germanic order from which it had sprung.

The textual basis for this argument was the *Edict of Paris* of 614. Mitteis drew on the old, and still popular, view that the *Edict* constituted a victory for the nobility and was the price Clothar II had to pay for aristocratic support in the civil war recently concluded with the regime of Brunhild.³³ The price extracted from the king was high. In his view, the king gave up his right to freely appoint and remove counts, whereby the control of local office passed to a noble class independent of the king. The result was the restoration of the ancient Germanic order of the *principes* of Tacitus. In an attempt to lessen the impact of this blow against its power, the monarchy, according to Mitteis, used the *Edict* in turn to recognize the existing autogenous immunities. By acknowledging the right on the part of spiritual and secular magnates to be free from comital power, now that it had fallen from the hands of the king, the monarchy hoped, in an anticipation of the Ottonian system, to create districts directly subject to the king. Ultimately a failure, this policy of the Merovingians served chiefly to make licit the revival of the hereditary and autogenous judicial sovereignty (*Gerichtshoheit*) of the Germanic nobility, which from the beginning tended towards high jurisdiction.

32 Heinrich Mitteis, *Der Staat des hohen Mittelalters*, 2nd ed. (Weimar, 1948), pp. 50–55. See also Karl Bosl, *Frühformen der Gesellschaft im europäischen Mittelalter* (Munich, 1964), pp. 54, 69, 248; and “Immunität,” pp. 447–48. Irsigler, *Untersuchungen*, pp. 169–73. Willoweit, “Immunität,” cols. 314–318, on the characterization of the new research. Cf. also the views of Immink, *Roots of Medieval Society*, pp. 49–61.

33 On the *Edict* as the so-called Magna Charta of the Frankish nobility, see the literature in Ferdinand Lot, *The End of the Ancient World and the Beginning of the Middle Ages* (New York, 1961), p. 359, and Gernot Koche, *Das Pariser Edikt von 614 und die merowingische Rechtspflege aus der Sicht der deutschen Rechtsgeschichte* (Graz, 1976). Lot regarded Clothar as the “prisoner” of the aristocracy (p. 332). The phrase “Magna Charta of the Frankish nobility” is used (ostensibly with reservation) by Mitteis, and by Bosl and Irsigler (see n. 32). That the *Edict* constituted a victory for the nobility has recently been restated by Karl Ferdinand Werner, *Les Origines (avant l’an mil)*. *Histoire de France* 1 (Paris, 1984), p. 32.

In Mitteis's interpretation immunity acquired a dual significance. It could now be understood as a tool of royal policy, designed to limit the powers of nominally royal office holders, who in fact served aristocratic interests hostile to the monarchy. At the same time, since that policy failed to create a local counterforce to regional noble interests, immunity could also be interpreted as evidence for autogenous powers, though the immunity grant itself was merely incidental to the exercise of these powers. As a response to an already existing situation, the immunity's content was also readily seen as fundamentally Germanic; indeed the ecclesiastical immunity could be regarded as being patterned in fact after the autogenous immunity of the aristocracy.³⁴ The notion of autogenous immunity permitted an explanation for the lack of surviving lay charters. The nobility, unlike the church, did not need a charter to exercise its inherent rights.³⁵

Although Mitteis's interpretation was built on a particular view of Germanic society and the projection of the so-called Ottonian system back to the Merovingian period, at important points it did come into conjunction with the sources. The contention that the ancient tribal nobility of the Franks managed to wrest office away from the monarchy in the reign of Clothar was based upon arguments from the general historical circumstances and from chapter 12 of the *Edict of Paris*. The historical argument need not detain us. Clothar may have been obligated to the nobility for support against Brunhild and her grandchildren, but in 614, when the edict was issued, we might better suppose that as the ruler of the united kingdom he was operating from a position of renewed strength;³⁶ we need good reasons to think that at that point he was prepared to give away the shop either out of gratitude or constraint. The question is whether chapter 12 of the *Edict* suggests in fact that he did.

The chapter falls into two parts: one that requires that judges (*iudices*) be drawn from the region in which they will serve; and another that explains this rule, by referring to the judge's property as a bond for his good behavior.

Let no judge be appointed from outside the region or province. Thus if he commits any wrong with respect to litigation before him, he will have to make good from his own property, in accordance with the law, that which he wrongfully took away.³⁷

34 Bosl, "Immunität," p. 447. Those holding the notion that the jurisdiction of the immunity was based on autogenous powers could also hardly accept the older literature's view that the immunist's jurisdiction was minor; autogenous powers must by their nature have been unlimited, sovereign in some sense. Willoweit, "Immunität," col. 315, and cf. Mitteis, *Staat*, p. 51.

35 Bosl, "Immunität," p. 447. The older literature has always been divided on the question of the extent of lay immunities. Some, rightly attributing no significance to the lack of surviving lay charters, have supposed that lay grants were common; others have regarded immunity as largely an ecclesiastical institution. Cf. Brunner, *DRG*, 2:388–89, and Ganshof, "L'immunité," p. 190.

36 Cf. the arguments of Kocher, *Pariser Edikt*, p. 8.

37 "Et nullus iudex de aliis provinciis aut regionibus in alia loca ordinetur; ut si aliquid mali de quibuslibet condicionibus perpetraverit, de suis propriis rebus exinde quod male abstulerit iuxta legis ordine debeat

The first part of the law lends some support to Mitteis's view, for it seems to require that counts – typically, though not exclusively, called *iudices* in Frankish sources – be drawn from the local landowners, from a class that might fairly be called the nobility. But it is best not to exaggerate the significance of this rule. It does not remove the king's right to appoint and remove his officials at will nor, necessarily, signal the dissociation of palace service from the comital office, as Mitteis believed. Kings still made the appointment. Palace officials, drawn from various regions and parts of the kingdom, could still be installed as counts in the region of their origin.

The second part of the chapter also suggests reasons for the rule far removed from the supposed constitutional struggle between the monarchy and a resurgent tribal nobility. The connection of local appointment with property liability caused Mitteis trouble; without explaining what the connection might be, he sought to remove the difficulty by suggesting that the justification served chiefly to conceal the true situation. Though the effort has rarely been made, clarifying the link between local appointment and property liability would seem to be a necessary part of reconstructing the context of the chapter as a whole.³⁸

Visigothic models have been drawn upon to support the interpretation of the *iudex* as a *rachinburg*, that is a court assessor or judgment-finder, whose property will guarantee proper judgment.³⁹ A better parallel, and one that reinforces the standard interpretation of *iudex* as a general term for royal functionaries, particularly the count, can be found in the legislation of Justinian for Italy. In the *Pragmatic Sanction* of 554 Justinian provided for the nomination of provincial governors, *iudices*, from the provinces in which they were to serve.⁴⁰ They were to be chosen by the bishops and secular magnates and their property was to guarantee their behaviour.

We order that provincial judges, solvent and wealthy men who are to be chosen by the bishops and chief men of each of the regions, are to be appointed without venal suffrage from the same provinces they are to administer. . . . Thus if the judges are found to have inflicted some injury on taxpayers . . . they may make satisfaction from their own property.⁴¹

restaurare." MGH Capit 1:22. Italics here, and in all following citations from the *Edict*, are uncertain readings supplied by the MGH edition. On *de quibuslibet condicionibus*, see below, Appendix 1.

38 As recently by Edward James, *The Origins of France: From Clovis to the Capetians* (London, 1982), pp. 59 and 140, who rightly rejects Mitteis's interpretation on the grounds that the law was a provision facilitating the seizure of amends from a corrupt judge.

39 Kocher, *Pariser Edikt*, pp. 11–14.

40 The relevance of the *Constitutio Pragmatica* for Frankish sources was noted by Ferdinand Lot, "La nomination du comte à l'époque mérovingienne," *Revue historique de droit français et étranger* (1924), rpt. *Recueil des travaux historiques*, 2 (Geneva, 1970), pp. 217–27, in an effort to prove the genuineness of DM spuria 81, a charter granting the privilege to the bishop of Le Mans of nominating the count. But the direct connection to Clothar's *Edict* passed him by.

41 "Provinciarum etiam iudices ab episcopis et primatibus uniuscuiusque regionis idoneos eligendos et sufficientes ad locorum administrationem ex ipsis videlicet iubemus fieri provinciis quas

A similar law, with general application, was issued by Justin in 569, encouraging regional bishops and magnates to submit nominations for provincial governorships.⁴²

Not only do both Justinian's constitution and Clothar's edict require provincial *iudices* to be drawn from the regions in which they will serve but both indicate that the ownership of property within the province will somehow moderate the conduct of the *iudex*. Local ownership, it seems, will facilitate compensation in the event a *iudex* is convicted of malfeasance, by making his property available for collection or distraint by successful complainants.

Clothar's regulation clearly reads like an *interpretatio* or *epitome* of Justinian's constitution,⁴³ but it is difficult to say how far we should be guided by the circumstances of the Justinianic legislation. The provision for the selection or nomination of the *iudex* by bishops and magnates had precedents in the sixth-century Merovingian kingdom as a special privilege and appears again as a privilege in the Carolingian period; likewise the appointment of the count by the bishop appears to be an exception in the late Merovingian kingdom.⁴⁴ On the other hand, probably by this time, Clothar, once again using Justinianic models, had granted the bishop supervisory powers over the count's judicial decisions.⁴⁵ It is likely that

administraturi sunt sine suffragio, solitis etiam codicillis per competentem iudicem eis praestandis, ita videlicet ut si aliquam collatoribus laesionem intulisse inveniantur aut supra statuta tributa aliquid exigisse, vel in coemptionibus mensuris enormibus aliisque praeiudiciis vel gravaminibus aut iniquis solidorum ponderibus possessores damnificasse, ex suis satisfaciant facultatibus." The conclusion concerns misconduct during the previous regime: "Quod etiam si quis de administratoribus aut actionariis de praeteritorum nefandorum tyrannorum tempore fecisse invenitur, ex suis facultatibus ei a quo abstulit restituere iubemus, cum nos indemnitatem subiectorum undique volumus procurari." *Novellae*, ed. Rudolf Schoell and Wilhelm Kroll, *Corpus iuris civilis*, 3 (Berlin, 1895 and later), Appendix 7, pp. 800–1. For a translation, see below, Appendix 1.

42 *Nov.* 149, *ibid.*, p. 724 (Latin translation): "Ne qui igitur peregrini provincias ingressi eas iniuria afficiant nobisque per crebras interpellationes adversus illos factas molestia afferatur, exhortamur singularum provinciarum sanctissimos episcopos eosque qui inter possessores et incolas principatum tenent ut per communem supplicationem ad potentiam nostram deferant eos quos idoneos esse ad administrationem provinciae suae existiment." (So that foreigners will not enter provinces and afflict them and so that we shall not be annoyed by frequent complaints about what they have done, we encourage the most holy bishops of the various provinces and the leaders among the landholders and inhabitants that together they inform us of those they deem financially suitable for administering their province.)

43 See below, Appendix 1.

44 See the texts cited by Lot, "La nomination du comte," pp. 213–27.

45 *Clotharii II Praeceptio* c. 6, in MGH Capit 1: 19: "Si iudex alicquem contra legem iniuste damnaverit, in nostri absentia ab episcopis castigetur, ut quod perpere iudicavit versatim melius discussione habeta emendare procuret. Cf. Justinian's *Nov.* 86, a. 539, esp. c. 4 (*Authenticum* version): "Si tamen contigerit quendam nostrorum subiectorum ab ipso clarissimo provinciae iudice laedi, iubemus eum adire sanctissimum illius civitatis episcopum, et ipsum iudicare inter clarissimum provinciae iudicem et eum qui putatur laedi ab eo. Et si quidem contigerit iudicem legitime aut iuste adiudicari a sanctissimo episcopo, satisfacere eum omnibus modis ei qui interpellavit adversus eum." For the supervisory role of bishops under Justinian see in general Hamilcar S. Alivisatos, *Die kirchliche Gesetzgebung des Kaisers Justinian I.* (Berlin, 1913), pp. 111–21.

Clothar's rule in the *Edict* presupposes some kind of local voice in the selection process, especially that of the bishop, but its exact form remains unclear.

Undoubtedly Justinian and Clothar were responding to regional interests in their legislation. If we are to believe Justin, his general version of Justinian's law was occasioned by the emperor's annoyance at the frequent complaints leveled against his governors by his subjects. Such complaints, he hopes, will be forestalled by local nomination of suitable judges.⁴⁶ Gregory of Tours recounts a similar response on the part of Chilperic, who on hearing of the maladministration of Leudast at Tours permitted the church and people of Tours to nominate their own count as his replacement.⁴⁷ Though the weary irritation of monarchs obviously is not sufficient explanation, the position of the eastern emperors at least should caution us from seeing the concession as a mark of weakness in the face of a triumphant nobility; and the provenance of the concession should warn against regarding it as a Germanic rejection of Roman notions of officeholding.⁴⁸

It seems likely that the character of local government in the sixth century facilitated Clothar's decision to follow Justinian's lead in considering local interests in the appointment of his officials. In Gaul, the rise of the count in the fifth and sixth century had helped to suffocate the institutions of local government outside of ecclesiastical circles. Encouraging a degree of responsibility on the part of the provincials and offering them a remedy against maladministration merely had the effect of returning to the communities of Gaul a small part of the powers that had been eroding since the late Empire; such measures could hardly have seemed like a step toward the dissolution of royal power. In Justinianic Italy the concession of local nomination must have been all the easier because of the governorship's declining importance in the face of the military offices. This circumstance too has parallels in Gaul, where the comital office was now sinking before the power of bishops and dukes to a level where it might assume some of the character of local government.⁴⁹ Clothar's moderate concession in fact is as much a sign of the secondary importance of the office of count as it is of the influence of regional interests. In 614, Clothar could afford to accommodate those who helped bring him to power by agreeing to draw his counts from the provinces in which they were to serve.

Mitteis's assessment of the *Edict of Paris* as a watershed in the struggle between the monarchy and tribal nobility also rested upon a distinctive interpretation of

46 Above, n. 42.

47 *Historiae* 5. 47.

48 Bosl, *Frühformen*, p. 69, and cf. p. 248.

49 On Italy see, T. S. Brown, *Gentlemen and Officers: Imperial Administration and Aristocratic Power in Byzantine Italy A.D. 554–800* (Rome, 1984). On dukes in Gaul, see Archibald R. Lewis, "The Dukes of the Regnum Francorum, A.D. 550–751," *Speculum* 51 (1976), 381–410. On bishops, see Friedrich Prinz, ed., *Herrschaft und Kirche: Beiträge zur Entstehung und Wirkungsweise episkopaler und monastischer Organisationsformen*, Monographien zur Geschichte des Mittelalters 33 (Stuttgart, 1988); and Jean Durliat, "Les attributions civiles des évêques mérovingiens: l'exemple de Didier, évêque de Cahors (630–655)," *Annales du Midi* 91 (1979), 237–54.

chapter 14, which he believed constituted the first recognition of autogenous immunities on the part of the monarchy; such recognition was designed as a political counterstroke to offset what he believed to be noble control of the comital office. That immunity might serve as a tool of political management is in itself not implausible, but any attraction one might feel for Mitteis's reading of the *Edict* dissipates as soon as the wording of the text is considered.

The chapter concerns property disputes arising from the previous civil war, a problem not without precedents in earlier Merovingian legislation.⁵⁰ Its introduction, which is fragmentary, deals with procedure prior to final judgment by the public courts.⁵¹ But the status of the church and its dependents, it seems, required special arrangements.

Let the public judges employ legal remedies to defend the property of churches, of priests, and of the poor, who cannot defend themselves, until such time as judgment is rendered, but without violation of the immunity that earlier kings conferred on the church, on the powerful, or on whomever, for keeping the peace and imposing public order (*pro pace atque disciplina facienda*).⁵²

Prior to judgment, the public judges were to take an active role in preserving the rights of the church and the poor, though without undermining previously granted royal immunities.

The first point to note is that the immunities in question are anything but existing autogenous noble rights. They are grants of exemptions by kings to their subjects, specifically the church and secular magnates (*potentes*). The precise nature of the exemptions must be considered later, but the context of the chapter's provisions requires that they concern activities of the public judges, the counts and their subordinates. The reference to immunity in chapter 14 was simply a reminder to public officials that, though they might have to enter the domains of the churches and magnates as defenders of the church and poor, the present order of the king did not entitle them to override previously granted exemptions.

And insofar as these grants might conceivably have coincided with supposedly autogenous rights, they were not instituted by Clothar but by his predecessors. This brings us to a second point equally destructive to Mitteis's interpretation. The reference to immunity is anything but a counterblow of the monarchy by Clothar,

50 Cf. *Pactum Gunthramni et Childeberti II*, a. 587, in MGH Capit 1: 14; cf. also c. 17 of the *Edict of Paris*, *ibid.* p. 23.

51 “[Lacuna of 1 1/2 lines] usque *transitum bonae memoriae domnorum parentum nostrorum Gunthramni Chilperici Sigiberthi regum* [lacuna] *si quis vero* [lacuna] *die ingredi ille qui ingredere voluerit ubi domus possedit / accedit*, pontificium habeat usque audientiam defensare.” *Ibid.* p. 22.

52 “*Ecclesiarum res sacerdotum et pauperum, qui se defensare non possunt, a iudicibus publicis usque audientiam per iustitiam defensentur, salve emunitate praecedentium domnorum, quod ecclesiae aut potentum vel cuicumque visi sunt indulsisse pro pace atque disciplina facienda.*” *Ibid.* p. 22.

or even the institution of any new policy at all. It is essentially an incidental addition to the chapter in the form of an exception (*salva emunitate*) by which the king, as he did elsewhere, preserved the integrity of his predecessors' grants.⁵³ This singular reference in the edicts of the Merovingian kings to judicial exemption may be precious to modern historians, and at the time it was no doubt reassuring to the concerns of the immunists, but it still must have been a minor issue in the legislative policy of Clothar II.

The triumph of the ancient tribal nobility and the revival of its autogenous, sovereign rights through immunity find no support in the *Edict of Paris*. Chapter 12, modeled on Byzantine legislation, was a modest concession to regional landholders, not the return to a supposed archaic, Germanic order; chapter 14 referred to exemptions granted by previous kings, not to existing noble jurisdictions recognized as part of an abortive policy of using immunity as a device of political control.

III

The context proposed by Mitteis clearly does not fit the *Edict* very well. Do Merovingian sources suggest any other context that might illuminate the *emunitas* of chapter 14? The cryptic nature of the reference may not at first encourage optimism, but circumstances that would have prompted earlier kings to make judicial concessions can be demonstrated with a good degree of probability and a rough profile of the type of grants sketched out. We might start by noting the language describing the *emunitas*: "pro pace atque disciplina facienda." Derived from the Roman legal vocabulary of public order, it suggests specialized exemptions concerning policing and security.⁵⁴ Such language in the context of immunity can readily be explained if exemptions were granted to churches and magnates to compensate their efforts in promoting peace and public order. We have some knowledge of the security measures operating in the Merovingian kingdom thanks to the capitularies of the Frankish kings designed to combat brigandage. The capitularies provide us with information about local police associations and royal efforts to regulate them. They also suggest circumstances in which exemptions might have been granted to churches and magnates.

53 *Praeceptio* 12, *Edict of Paris* 16, MGH Capit 1: 19, 23.

54 For *pax*, see for example CT 12.1.14; it is also part of the title of those charged with maintaining public order: *assertores pacis* and the Gk. *irenarch*. For *disciplina*, see for example D 50.4.18.7, where it is associated with the role of *irenarchs*, and CT 2.1.8 (Int.), with *mediocres iudices*, specifically *assertores pacis*; see also CT 1.16.4, 2.1.1, and 2.1.11 (Int.) where it has a penal character. *Disciplina* also appears in the edicts of the Merovingian kings: the *Edict of Guntram* (MGH Capit 1:12), "universos excedentes pro disciplinae tenore servando correctionis fraena constringant"; and again the *Edict of Paris* (c. 11), "Ut pax et disciplina in regno nostro sit . . . perpetua et ut revellus vel insullentia malorum hominum severissime reprimatur," which is not itself a law but appears to be a rubric introducing a number of laws concerned with public order, including c. 14. See also J. F. Niermeyer, *Mediae Latinitatis Lexicon Minus* (Leiden, 1984), s.v.

Merovingian Gaul inherited its model of policing from the late Empire.⁵⁵ Roman peacekeeping was a compulsory state service, a *munus* or liturgy, imposed upon communities of town and country dwellers. The Gallic system, like others found throughout the provinces in the imperial period, rested upon local associations of liturgists, bound by oath to hunt down thieves and subject to financial penalties if negligent. In the *Pactus pro tenore pacis* (a. 511–58), Clothar I and Childebert I stipulated that local police associations should be directly commanded by *centenarii*, sub-officers of the count. The associations, originally called *trustes* and then *centenae* when placed under *centenarii*, were responsible for raising posses to pursue thieves and for delivering or driving out thieves who might be chased into their districts. By placing the associations under *centenarii*, Clothar and Childebert brought them directly under the control of military and civil officials of the central government.

These circumstances must have constituted both a threat and an opportunity to the ecclesiastical and secular magnates. In the Roman period great estates, which were provided with their own security forces, lay outside the reach and competence of local police, but were still subject to representatives of the central government.⁵⁶ Under the Merovingians, with the appointment of comital officials as supervisors and commanders of local police forces, the estates of magnates would have found their autonomy compromised, their dependents subject to regulation by *centenarii* or their boundaries prone to the incursions of local forces under royal officials. At the same time, kings must have recognized that the effectiveness of the *centena* system depended on the cooperation of great lords and were probably inclined to offer incentives for their participation. This setting would explain the character of the immunity alluded to by Clothar II in the *Edict*. The church and the magnates agreed to provide efficient peacekeeping in their domains and to cooperate with local forces. In return they sought exemptions that conferred financial benefits on immunists and gave them some degree of protection from the entry of comital officials and posses. Judicial exemptions, by this hypothesis, were introduced into Merovingian immunity with the *emunitas pro pace atque disciplina facienda*, and were occasioned by the police measures and *centena* organization of the *Pactus pro tenore pacis*. In origin judicial immunity was closely connected to the current system of public burdens, from which churches and secular magnates sought relief by virtue of their service to the state.

An important implication of the argument just outlined concerns the relationship of judicial exemption, as it appears in the *Edict*, to that of the later evidence in royal diplomas. If the judicial side of immunity entered Merovingian public law in conjunction with royal efforts to improve local security, we should not, however, equate the exemptions *pro pace atque disciplina facienda* with the broad compass of

55 For the following on policing and the *Pactus pro tenore pacis*, see Alexander Callander Murray, "From Roman to Frankish Gaul: 'Centenarii' and 'Centenae' in the Administration of the Merovingian Kingdom," *Traditio* 44 (1988), 59–100, esp. 75–90; [above ch. 4, esp. 76–91].

56 Well illustrated in *CJ* 9. 39. 2, a. 451. For policing on great estates, see previous note.

judicial exemption as found in surviving immunity charters. On a priori grounds one might doubt that judicial concessions would begin with the same fullness they display half a century or more later. Indeed, the terms used to characterize immunity in the *Edict* itself refer to a specialized exemption, a police commission granted in return for the establishment of peace and public order. Exemptions were to offset contributions by the magnates and the church to the monarchy's efforts to regulate policing and to suppress theft. Immunity in some form from comital control and local posses was no doubt fundamental to the exemption, but the regulations on policing show that there was lots of scope for financial benefits to fall to an immunist. Thieves were subject to various financial penalties. Fines were levied on negligent posses and associations. Delinquent members of associations were penalized for failure to join a posse. Kings, if they wished, could make not only hunting down and delivering fugitives profitable but also organizing efficient police associations and supervising their activities. Matters such as these are the likely subject of the sixth-century grant.

The grants that survive in the charter record, with their full array of judicial exemptions, must as a consequence have been introduced after 614, the date of the *Edict*.⁵⁷ Extensive judicial grants, therefore, may be an innovation of Clothar II himself, who seems to have been the first king to recognize the absolute character of tax exemptions and who may then have proceeded to grant general privileges of judicial exemption; they could date from the reign of Dagobert I, from whose time a genuine charter may be recorded, or even later.⁵⁸ The conditions occasioning the concessions appearing in the charters seem to have changed considerably from those of the limited judicial exemptions of the sixth century. The ecclesiastical grants are made in hope of spiritual benefits for the king and kingdom or to ensure his longevity, “pro aeterna salutae vel felicitate patriae seu regis constantiam”; the profits conferred are to be used to defray the cost of lighting and other expenses of the monks or clergy.⁵⁹ The specimen charters for laymen in the formulary of Marculf show grants being made in consideration of past or future service, “pro fidaei suae respectu,” “pro contemplatione servitii,” with no conditions placed on the disposal of the benefits.⁶⁰ These charters are general, and generous, concessions, *beneficia*,⁶¹ meant to support the lofty spiritual work of the church and reward the fidelity of royal officials.

It is important, again, to think in terms of context. Though the stages in the evolution of immunity may be obscure, and the reasons for the process controversial,

57 DM 63 has been taken to indicate an earlier date in the reign of Guntram (above, n. 19), but see Appendix 2.

58 On absolute tax exemption, that is exemption for future as well as present properties, see Goffart, “Old and New,” pp. 17–18, on the *Clotharii II Praeceptio* c. 11. On the supposed earliest immunity charter, DM 15, see above, n. 18.

59 *Marculfi formulae* 1.2.

60 *Marculfi formulae* 1.14, 17.

61 *Marculfi formulae* 1.3.

the provisions of the charters seem to be best explained by the changing financial resources of the Frankish monarchy. As kings in the seventh century came to depend less and less on the shrinking sources of direct taxation for their revenues and more upon the judicial activities of their officials, the font of royal generosity, and the target of the potential immunist's aspirations, shifted increasingly towards alleviation from the attention of public officials.⁶²

It is not possible to conclude a discussion of immunity and the *Edict of Paris* without touching on the question of the relationship of immunity to the exercise of domainal jurisdiction. A problem of central importance to our evaluation of the character of the early medieval state, it needs separate treatment, but some of the implications of the present argument can be sketched out.⁶³

Scholars largely accept that the immunity grant of the royal charters did not in itself create jurisdiction but was superimposed upon preexistent domainal institutions. A Germanic origin has usually been assumed, originating in the so-called organic jurisdiction of the Germanic house-lord or, according to more recent scholarship, in autogenous rights of the nobility. Notice has been taken of a possible Roman background by supposing that the great landholders of Gaul acquired the posts of late imperial minor judges.⁶⁴ Neither of these hypotheses is necessary or helpful. There is abundant evidence that in the Roman period the landlords of great estates, or their appointed representatives, exercised powers of jurisdiction – coercion, adjudication and arbitration. Great estates were in fact independent of municipal government and subject finally only to the supervision of officials of the central government. Administrative regulations attempting to define the autonomy of great estates and their relations with officials of the central government appear in late imperial constitutions, in Merovingian legislation and the captularies of Charlemagne. Merovingian judicial immunity was superimposed on domainal jurisdictions with origins in the late Empire.

IV

Immunity is one of the important pieces that make up the puzzle of the Merovingian state, in part because its relationship to jurisdiction brings us up against central problems in reconstructing the character of public order in the Frankish kingdom. Our understanding of that relationship depends in no small measure

62 Goffart, "Old and New," pp. 4–6. Kroell, *L'immunité*, pp. 68–70. Cf. the views of Durliat on the undiminished survival of Roman taxation, and tax paying among the elites. Immunity did not normally bear upon regular taxation, he argues, because immunists took over the job of collecting tax and conveying it to the government; immunity conveyed exemption from royal officials (*Finances publiques*, p. 255).

63 These are more fully developed in "Jurisdiction and Public Order in the *Edict of Paris*," in preparation.

64 See above, p. 106. The *Edict of Paris* shows that magnates received commissions for peacekeeping at some point in the sixth century, but these were profitable exemptions for their domains, not minor territorial offices tied to the *civitas* or *pagus*.

upon our interpretation of the *Edict of Paris*, issued in 614, at what happens to be the end of the surviving record of Merovingian legislation.

Neither the *Edict* nor any other evidence from the sixth or seventh century supports the notion that judicial exemptions were a reversion to archaic Germanic political forms founded on the sovereign rights of the nobility; immunity, whether applied to taxes or the profits of justice, was not a Roman institution adapted to the Germanic order, as some scholars have supposed. As an institution, immunity had always been tied to the current system of public charges and obligations; it had also long been used as compensation for those performing socially valuable services, and as a means of delegating revenues to the worthy or privileged. So it remained in the sixth and seventh centuries.

The judicial side of Merovingian immunity arose in the course of the sixth century, at first within a stricter compass than appears in the seventh-century diplomas. Judicial exemptions seem to have developed in response to the establishment of *centena* organization. The spiritual and lay owners of great estates were granted specialized exemptions, which encouraged their participation in peacekeeping, and which in turn offered their estates protection from the incursions of royal officials, who now took the lead in regulating and commanding local associations of police. Only these limited exemptions seem to have existed in 614, when Clothar alluded to them in chapter 14 of his *Edict*. The extensive exemptions that appear in surviving charters, construed by much of modern scholarship as *the* Frankish immunity, were instituted at a later date. Unlike sixth-century judicial exemptions, they were not granted for the specific objective of peacekeeping but in return for spiritual benefits, in the case of ecclesiastical grants and in consideration of service and loyalty, always expressed in general terms, in the case of secular grants.

Sixth-century judicial exemptions appear to have been first issued as part of a program devised to bring some order to the Gallic countryside by suppressing brigandage, a problem that was not new with the Merovingians nor, indeed, one likely to be solved by them. The exemptions were designed to reward the magnates for their participation and, in return for their cooperation, to guarantee the traditional integrity of great estates with respect to incursions of local forces. These early exemptions were thus part of an attempt to regulate the position of great estates within the system of public judicial administration.

A different context seems to lie behind the judicial exemptions recorded in surviving seventh-century charters. These exemptions are cast in the form of a grant in return for service or spiritual benefits, but the general nature of their terms shows them no longer to be tied to a program of judicial administration. They are privileges designed primarily to support worthy ecclesiastical corporations and enrich loyal public servants. These grants depend heavily on the fruits of justice, not because they are modeled after the judicial and political rights of an archaic form of lordship, but because judicial fines and the fees for the execution of judicial procedures now constituted a principal means for the indirect delegation of public revenue to recipients of royal largesse.

Judicial exemptions conformed easily with existing patterns of judicial administration, privilege and domainal autonomy. The autonomy of great estates, which underpins judicial immunity, forms a track easily traced back to the late Empire. Great domains had always existed as administrative and judicial enclaves, tied very imperfectly to the institutions of local government. In the sixth century, when their independence was threatened by the imposition of comital control over local policing, the monarchy responded to the concerns of the magnates with judicial exemptions. In the seventh century, the traditional segregation of the domains from local government presented the monarchy with a handy means of endowing churches and royal servants with the lucrative perquisites of judicial administration. Merovingian immunity was an ancient institution that the monarchy of sixth- and seventh-century Gaul continued to use as a method of indirectly subsidizing those whom it considered to be essential and deserving servants of the state.

APPENDIX 1

It was suggested above that c. 12 of the *Edict of Paris* is an epitome of Justinian's *Pragmatic Sanction*. To facilitate comparison, the two texts are offered here side by side and a translation is given of the *Pragmatic Sanction*. Verbal parallels have been marked out in boldface. Italics are used to indicate where the contents of both texts are the same.

Provinciarum etiam *iudices* ab episcopis et primatibus uniuscuiusque *regionis* idoneos eligendos et sufficientes *ad locorum* administrationem ex ipsis videlicet iubemus fieri *provinciis* quas administraturi sunt, sine suffragio, solitis etiam codicillis per competentem iudicem eis praestandis ita videlicet, *ut si* aliquam collatoribus laesionem intulisse inveniantur aut supra statuta tributa aliquid exigisse, vel in coemptionibus mensuris enormibus aliisque praeiudiciis vel gravaminibus aut iniquis solidorum ponderibus possessores damnificasse, ex *suīs* satisfaciant facultatibus.

Quod etiam si quis de administratoribus aut actionariis de praeteritorum nefandorum tyrannorum tempore fecisse invenitur, ex *suīs* facultatibus ei a quo *abstulit* restituere iubemus, cum nos indemnitate subiectorum undique volumus procurari.

Et nullus *iudex* de aliis *provinciis* aut *regionibus* in alia *loca* ordinetur

ut si aliquid mali de quibuslibet condicionibus perpetraverit,

de *suīs* propriis rebus exinde

quod male *abstulerit* iuxta legis ordine *debeat* restaurare

(We order that provincial judges, solvent and wealthy men who are to be chosen by the bishops and chief men of each of the regions, are to be appointed without venal suffrage from the same provinces they are to administer; and that the usual letters of appointment are to be furnished to them by the appropriate official. Thus if they are found to have inflicted some injury on taxpayers – for example to have exacted more than the established amount of tax or, in making purchases, to have injured landowners and put them at a disadvantage by the use of irregular measures and other means to afflict them or by the payment of improperly weighed solidi – they may make satisfaction from their own property. And even if a high ranking official or functionary is found

to have done this in the time of the former, evil tyrants, we order that he make restitution from his own property to him from whom he took property, since we wish that our subjects everywhere get compensation.)

Though the parallels between the texts should largely speak for themselves, one significant example that might be pointed out is the use of similar constructions to join the prescription of the law with the consequences that are to result from its application. The *Pragmatic Sanction* employs the phrase “ut si aliquam laesionem intulisse inveniantur” and then proceeds to itemize the possible offences that the judge might commit. In Clothar’s edict this phrase is rendered as “ut si aliquid mali de quibuslibet condicionibus perpetraverit.” Both texts use *ut* followed by a conditional clause with *si*; “aliquid mali” is obviously equivalent to “aliquam laesionem,” and *perpetrare* a more direct rendering of the circumlocution *intulisse invenire*. Any doubts that the Frankish text is an epitome of the *Pragmatic Sanction* should dissolve when the phrase “de quibuslibet condicionibus” is considered. *Condiciones* is a technical term of Frankish law meaning “legal claims” or “legal matters that could occasion a suit”; it is frequently used in the phrase *de condicionibus* (Niermeyer, s.v. no. 5 and 6). This simple but comprehensive phrase is used in the *Edict* to replace the ungainly list of possible offences employed in the Justinianic text by way of illustration.

APPENDIX 2

Heinrich Brunner and Maurice Kroell both believed that the judicial exemptions of the seventh-century charters already existed in the late sixth century and were introduced into Frankish public law at least by the time of Guntram, around the 580s (above, n. 19). The basis of this view is DM 63, a confirmation of judicial immunity granted by Clovis III to the monastery of Anisola (St. Calais) in 692 that refers to an original grant made by Guntram over a century before. The charter is not original but a copy that formed part of a now lost Anisola cartulary.

The Anisola charters have been studied by Julien Havet, *Oeuvres 1: Questions mérovingiennes* (Paris, 1896), pp. 91–190. Havet argued persuasively that the Anisola cartulary was drawn up by Abbot Rainaud, probably in the early 850s, to counter the claims of the bishop of Le Mans to the temporalities of the abbey. Of the seven Merovingian charters, all containing immunities, Havet showed that the four earliest were Carolingian forgeries. The remaining three, which form a series beginning with DM 63, he regarded as Merovingian. One conclusion of Havet's that might at first blush seem to cast doubt on the DM 63 series was that in the period of the dispute immediately prior to 850 the monastery apparently had no knowledge of any earlier Merovingian exemptions at all; by 855 all seven charters were therefore, in one sense or another, the product of recent research. In Havet's view, the three genuine charters must have been recently searched for and found.

The use of non-original diplomas is a difficult and contentious problem in studying the grants of the Merovingian kings. Because most copies are forgeries, and the genuineness of many others is in doubt, some scholars, like Levillain and Ganshof (above, n. 1), have wisely attempted to draw conclusions about immunity only from originals and the *formulae*. Nevertheless, in a diplomatic sense, the DM 63 series is Merovingian. However suspicious might be the circumstances of its insertion in the Anisola cartulary, DM 63 cannot be simply dismissed as a Carolingian forgery. There are reasons to be wary, however, about its contents and the claims made in it about the character of the monastery's early privileges.

The relevant section of the charter referring to the circumstances surrounding the grant of judicial exemptions runs as follows.

Ideoque venerabilis vir Ibbolenus abba de monasterio Anisola . . . per missos suos clementiae regni nostri detulit in notitiam eo quod consobrinus noster Guntramnus quondam rex ad ipsum monasterium sub omni immunitate per suam auctoritatem concessisset, et hoc postea avi nostri Chlotharius et Dagobertus seu et Chlodoveus necnon item Chlotharius quondam reges, vel dominus et genitor noster Teodericus quondam rex, per eorum auctoritates ipsorum manus roboratas ipsi monasterio hoc confirmassent unde et ipsas praeceptiones se ex hoc prae manibus habere affirmant et hoc circa ipsum monasterium nullo inquietante adserunt conservari; sed pro totius rei munimine postulat ut hoc nostra auctoritas in ipso monasterio plenius debeat observari; quod nos praestitisse et generaliter confirmasse vestra non dubitet magnitudo. Quapropter per presentem praeceptum jubemus ut sicut per auctoritates supra scriptorum principum legunter et usque nunc fuit observatum, neque vos neque juniores vestri neque successores vestri in curtis ipsius monasterii . . . penitus ingredi non presumatis. . . .

(Havet, *Oeuvres*, pp. 162–63)

This grant to Ibbolenus is one of a series of three confirmations made to the abbot by Clovis III (a. 692), Chilbert III (695–711) and Dagobert III (712–715).⁶⁵ The wording of the three is virtually identical, except for the fact that the two last update the list of confirmations. The form of the charters is distinct from that of other surviving monastic grants and indeed of other grants made by the kings in question.⁶⁶ These circumstances would not in themselves signify any peculiarity were they not accompanied by an almost complete uniformity of expression among the charters themselves, issued seemingly over twenty-odd years. They can hardly be the product of the chanceries of Clovis, Chilbert and Dagobert. If the charters are genuine, the best explanation for their form is that all three were drawn up by the monastery of Anisola and submitted to the chancery to receive the proper marks of validation at the time of the requests for confirmation.

It seems to be the intention of DM 63 to claim that the judicial exemptions that the monastery enjoyed in 692 went back to the grant of Guntram. But a number of considerations suggest we should avoid drawing the conclusion that the terms of the charter reproduce the conditions of Guntram's grant made over a century before.

⁶⁵ Only the first and last can be found in DM (nos. 63 and 80). That of Chilbert III is printed by Havet, *Questions*, pp. 163–64.

⁶⁶ Chilbert III: *ChLA* no. 579, a. 696; no. 583, a. 694–711. And cf. no. 577, a. 694.

Between the grant of Guntram and that of Clovis III were the confirmations of five kings. That such a grant had never been supplemented by the intervening five confirmations over a period of one hundred years hardly seems likely. It is worth noting, too, that the existence of these charters from Guntram to Theoderic is affirmed by Ibbolenus in a memorandum to the king, but their genuineness is not established nor their contents examined and vouched for by the chancery. It is the responsibility of the official on the spot to undertake this task if an occasion arises to do so. What was important to local royal officials was the charters of recent monarchs and the prevailing privileges of the monastery, not the terms of a century-year-old grant. The exact terms of Guntram's grant are really irrelevant to Ibbolenus's claim, and indeed to the chancery or the local officials who might conceivably be required to examine the privileges of the monastery. Kings in fact were not particularly concerned with historical exactness when referring to ancient privileges. Thus immunity confirmations of Louis the Pious are happy to suggest that his own bundling of protection and immunity extends back to the Merovingian period, though we know that at that time these were distinct privileges. To Walter Goffart this Carolingian practice suggested grounds for discounting the claims of DM 63 with respect to the early grant of Guntram.⁶⁷

From the wording of the charter it is also possible to question whether Ibbolenus still claims to possess Guntram's privilege. He affirms the king granted a charter, but the phrase referring to charters with royal signatures ("per eorum auctoritates ipsorum manus roboratas") strictly applies only to the kings from Clothar onwards. A charter of Clothar, for example, confirming an earlier grant by Guntram, would be sufficient grounds for Ibbolenus to claim that the monastery's privileges went back to an original grant by Guntram.

DM 63 and related charters are not a safe guide to the contents of immunity grants in the late sixth century. The contents of royal concessions in the time of Guntram should not be inferred from late Anisola confirmations. With confirmations and new grants by succeeding kings, the original, outdated terms of Guntram's concession would as a matter of course have been assimilated to the terms and conditions of more contemporary privileges.

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67 Goffart, "Old and New," p. 18, n. 62.

MEROVINGIAN IMMUNITY REVISITED

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I first wrote at length about Merovingian immunity in 1994 in an article titled 'Immunity, Nobility, and the *Edict of Paris*'.¹ Its aim, apart from providing a succinct statement about the historiography of the institution, was twofold: to eliminate persistent and still influential distortions of the character and content of immunity and its stages of development, and to provide context for the appearance of a specific species of the institution, namely judicial immunity. The first mention of immunity of this kind occurs in the so-called *Edict of Paris* of 614, probably the last record of royal legislation to have survived from the Merovingian kingdom.² The perspective of the article was resolutely focussed on the period of the Merovingian kings and the evidence of that period, but in view of the role immunity occupied in European historiography, especially that concerned with the rise of independent lordships, the article obviously had implications for general interpretations of the institution's role in later centuries.

At the time it seemed to me as if historical interests, especially those of the world of English-language scholarship, were distracted by other concerns and that immunity, despite the long history of controversy behind it, would probably remain for some time one of those technical, unfashionable, though important subjects, that seemed increasingly outside the main tracks of contemporary historical discourse. I was quite wrong. Others had also noted the importance of the subject. In 1995 a group of English scholars, generally known as the Bucknell group, brought out a volume entitled *Property and Power in the Early Middle Ages*. Although the nine contributors involved in this joint effort did not all deal with immunity, a significant number did, and immunity was represented as one of the principal themes of the collection. One of the contributions, that of Paul Fouracre,

1 It appeared in *Speculum* 69/1 (January, 1994): 18–39 (henceforth, abbreviated 'Immunity'). I had previously brushed upon the institution in passing in 'From Roman to Frankish Gaul: *Centenarii* and *Centenae* in the Administration of the Merovingian Kingdom', *Traditio: Studies in Ancient and Medieval History, Thought and Religion* 44 (1988), 59–100. [See above chs. 4 & 5.]

2 *Chlotharii II Edictum*, c. 14, ed. A. Boretius, *Capitularia regum Francorum*, MGH LL Capitularia (Hanover: Hahn, 1896). This text will henceforth simply be referred to as the *Edict of Paris*. Merovingian kings continued to issue edicts in the seventh century but this legislation has not survived.

concerned specifically with immunity under the Merovingian kings, was regarded as a touchstone for the subject by the Introduction and the Conclusion of the volume.³ Not too long afterward, there appeared *Negotiating Space: Power, Restraint, and Immunity in Early Medieval Europe*, by Barbara Rosenwein, which dealt with a variety of exemptions from Antiquity to the Middle Ages, and even including recent times, but with a conceptual focus (as the subtitle indicates) on immunity.⁴ Moreover, I soon realized that my historiographical perspective had been somewhat shortsighted. Also in 1995 the German scholar Carlrichard Brühl, while at work on a new edition of the charters of the Merovingian kings, published an article on immunity, drawing at the time upon an unrivalled knowledge of the seventh-century charter evidence of what was commonly, but mistakenly called *the* Frankish immunity, and building upon the iconoclastic interpretation of fiscal conditions under the Merovingian kings by the French scholars Élisabeth Magnou-Nortier and Jean Durliat.⁵ Though I had acknowledged the contentious views of Durliat and Magnou-Nortier in my study, I had not really argued the validity of their interpretation of Frankish fiscality and was unaware of Brühl's efforts to integrate their ideas into a detailed study of Merovingian royal charters. Finally, in 2001, Theo Kölzer brought out the long awaited new edition of the Merovingian royal charters, or diplomas, containing the texts of the earliest attested grants of immunity by the Frankish kings. These texts had always been known to scholars and figured prominently in most modern discussions of the subject, but considerable doubt had persisted about the value of non-original, mainly cartulary copies, of grants allegedly made by Merovingian kings.⁶ While the new edition promised to clarify the problem of genuine versus forged or compromised grants, at the same

3 *Property and Power in the Early Middle Ages*, eds. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 1995). The Introduction is by Chris Wickham and Timothy Reuter, and the Conclusion by Wendy Davies and Paul Fouracre. The chapters dealing directly with immunity are: (for Merovingian Francia) Paul Fouracre, 'Eternal Light and Earthly Needs: Practical Aspects of the Development of Frankish Immunities', 53–81; (for England) Patrick Wormald, 'Lordship and Justice in the Early English Kingdom: Oswaldslo Revisited', 137–164; (for Wales) Wendy Davies, 'Adding Insult to Injury: Power, Property and Immunities in Early Medieval Wales', 137–64; and (for the high Byzantine period) Rosemary Morris, 'Monastic Exemptions in Tenth- and Eleventh-Century Byzantium', 200–220. I reviewed *Property and Power* in the *EHR* 112, no. 449 (1997), 1235–6.

4 Ithaca: Cornell University Press, 1999.

5 Carlrichard Brühl, 'Die merowingische Immunität', in *Chiesa e mondo feudale nei secoli X-XII, Atti della dodicesima Settimana internazionale di studio, Mendolo, 24–28 agosto 1992*, Miscellanea del Centro di Studi medievali 14 (Milan: Vita e pensiero, 1995), 25–44; rpt. idem, *Aus Mittelalter und Diplomatik: Gesammelte Aufsätze*, 3 vols. (Hildesheim: Weidmann, 1989–97), vol. 3, 148–66. Brühl's article was intended as a preliminary study to a new edition of the Merovingian diplomas by the MGH (see below, next note). Élisabeth Magnou-Nortier, 'Études sur le privilège d'immunité du IV^e–IX^e siècle', *Revue Mabillon* 60 (1981–84): 465–512; Jean Durliat, *Les finances publiques de Diocletian aux Carolingiens (284–889)*, Beihefte der Francia 21 (Sigmaringen: Jan Thorbecke, 1992).

6 *Die Urkunden der Merowinger*, MGH Diplomata regum Francorum e stirpe Merovingica, ed. Theo Kölzer, after the preparatory work of Carlrichard Brühl [†], with the assistance of Martina Hartmann and Andrea Stieldorf, 2 vols. (Hannover: Hahn, 2001). Henceforth abbreviated DM.

time, rather than following Brühl, it introduced a distinctive interpretation of the relationship between attested grants and their distant, long lost, predecessors.⁷

This period of about a decade and a half between my first foray on the subject and the present historiographical context for the institution of immunity is not long by the moderate rate of research activity in Merovingian history. However, the context has turned out to be far more complicated than I envisaged it in 1994. Whether the recent complexity and pace of development corresponds to an advance in our understanding of the institution or to an updated reiteration of fallacies, some of them common and long-standing, is in part a subject of the present article. By no means do I wish to suggest that all of what has recently been written on the subject of immunity is misguided. Some of the recent research has admirable features – the disinclination to assign to immunity a major role in the dissolution of public power (Fouracre, Rosenwein), the recognition of the changing shape of exemption (Rosenwein), the concern to make precise the chronology of the terms of immunity grants as they appear in the seventh-century record (Brühl). But old misconceptions persist, new ones have been introduced, and the Merovingian (and Roman) evidence still tends to be deployed like a pawn in a bigger game that is only tangentially connected to the times of the Merovingian kings.

I have cast the present discussion of immunity as a series of questions, some general, for those seeking an introduction to the subject, and some focussed on what seem to me outstanding problems of understanding immunity in the Merovingian kingdom. The aim is clarity and brevity, and therefore some difficult issues have been avoided that would have required extensive discussion. The sequence of questions is not exactly a FAQ, if only because immunity is hardly the first subject with which new students of the Merovingians will become engaged. The questions are those that I think general readers of early medieval and Frankish history might gradually ask themselves as they become familiar with the institutional structures of the Merovingian kingdom and the role of these institutions in the foundations of French and, more generally, European society in the Middle Ages. My answers may be succinct, but there is no pretence of finality in giving them. Immunity will obviously continue to exercise historians of the Merovingian kingdom. Even in the personal context of a work like this, the answers should be understood as part of a work in progress that introduces to the reader not only old answers, sharpened by the current context of the debate, but also, however briefly, new ones, as well as a text that has yet to be integrated into the discourse on Merovingian immunities. The comments denote not final, heavy statements on a truly complicated and humbling subject, but merely notice that I have returned to the lists.

7 The views on Kölzer and Brühl on immunity need to be distinguished. In general, see my review, 'The New MGH Edition of the Charters of the Merovingian Kings', in *Journal of Medieval Latin* 15 (2005): 246–278; [below ch. 8].

What was immunity? A short version

In the Merovingian context, immunity was an institution of public law that, like its Roman predecessor, conferred on a beneficiary exemption from state obligations of various kinds. The Latin term for it was *emunitas*, a Merovingian variant of the standard form *immunitas* common in Roman sources; the Roman form was restored to common usage in the Carolingian period and after. The term in either form simply means exemption and does not in itself imply a fixed content, which feature is one of the keys to understanding the evolution of the institution. The nature of exemption and the nature of public obligations are intimately connected. Exemption at any time is usually tied to the system of burdens from which it was designed to give relief. Exemption by its nature is also a benefit granted by a superior authority, however unwillingly.⁸ By the late Empire immunities were the preserve of the imperial state, though at an earlier date they had also been issued by cities – still the state, but the small-scale variety of the *civitates* that made up much of the Roman empire. In the Merovingian period, as far as we can tell, they were the prerogative of the Frankish monarchy.

What kinds of Merovingian immunities were there?

Historians have long recognized that the content of immunities changed in the course of the Merovingian period. Traditionally they have distinguished two types.

- (1) Fiscal immunities, namely tax exemptions and relief from certain kinds of public burdens. These have rightly always seemed closely related to, indeed to be continuations of, their late Roman counterparts. They appear at the very dawn of the Merovingian regime in the canons of Orleans (a. 511); and legal and narrative sources continue to refer to them down through the sixth century and beyond.⁹
- (2) Judicial immunities, namely the prohibition of the entry of judges, *iudices*, mainly the count and his subordinates, into the territory of the beneficiary to hear cases, distrain inhabitants, and collect legal fines and fees. Immunity grants themselves refer to this bundled interdict as the prohibition of *introitus iudicum* (entry of judges/royal officials). Immunities of this sort appear in the charter grants of Merovingian kings possibly from the middle of the seventh century on.¹⁰ Judicial immunities have often been seen as *the* Frankish immunity

8 This point is worth noting because of the penchant in post-war German scholarship for talking about autogenous immunities, when all that was meant were alleged rights. See Murray, 'Immunity', 24–31; [above 107–14]. It does not justify, however, the exaggerated implication for royal power suggested by recent accounts. See below at n. 43.

9 *Concilium Aurelianense*, a. 511, c. 5, in MGH *Concilia* 1:4, ed. Friedrich Maassen (Hannover: Hahn, 1893). For a late sixth-, early seventh-century legislative source, see n. 20.

10 For the acceptance of earlier dates, see references in Murray, 'Immunity', 21 n. 18; [above ch. 5]. For the approach of the new MGH edition of the diplomas, see below, p. 134. The earliest original is dated 690 (DM 131).

and as a kind of mutation justifying a search for their source well outside the clear track that leads back to the fiscal exemptions of the late Empire and their early Merovingian counterparts. Their association with jurisdiction, that is the power of legal administration, has generally been seen as completely novel and has elevated their significance in the general literature because of the possible connection to the so-called independent lordships or private jurisdictions that characterized the dissolution of the late Carolingian state. We shall return shortly to the subject of immunity and jurisdiction.

In the meantime, a simple point about the relation of the two types of grants needs stressing. The differentiation of fiscal from judicial immunities is convenient because some terminological distinction is required for discussing immunity in the diverse contexts of taxation and service, on one hand, and jurisdiction, on the other. I will employ the distinction here. What can become lost in this terminology, however, is the simple fact that both types of exemption are still fundamentally fiscal. As far as exemption from taxes and other obligations is concerned, the fisc loses revenues or services it was normally entitled to collect or the fines it expected for non-compliance. In the case of judicial immunities, once again the fisc gave up the revenues it normally collected from those appearing before the public courts. In one case levies from the collection of taxes and the imposition of services were foregone, in the other the payments from the administration of justice. Both concerned renders due the public authority through the fisc; both were fiscal.

Were there other kinds of exemption in the Merovingian kingdom and are these related to immunity?

Churches were among the principal beneficiaries of royal grants of immunity. But there are other types of exemption that they enjoyed as well. Exemptions from tolls existed, as did the direct assignment of public revenues to ecclesiastical usage. Both direct subsidy and indirect subsidy (like immunity and toll exemptions) were meant to redirect public revenues to the beneficiary.¹¹

Monasteries, which were frequent beneficiaries of royal immunities in the late Merovingian period at least, enjoyed another form of exemption. These exemptions were issued by bishops (possibly at the obligatory urging of kings) and popes, freeing monasteries from episcopal interventions of various types. Scholars generally refer to them as episcopal privileges or (to use the language of the grants themselves) monastic liberties. They form a separate, and contested, subject of their own. There also existed other rights associated with churches and monasteries that have recently been brought into play in the question of the origins of

11 The connection between the two is illustrated by the example of St-Denis giving up direct subsidies in return for a villa with immunity (DM 142). Some at least of the direct revenues were soon back in St-Denis' hands (DM 170).

Frankish immunities, especially because of their incidental resemblance to the *introitus* prohibition of seventh-century grants: asylum, an ancient, relatively well defined, if abused institution, derived from late Roman law, and related claims about the sacrosanct character of the area around the altar, a notion likewise with antique precedents.¹²

It would not be necessary to tarry with these exemptions in a brief survey like this one had the concept of sacrality not recently been introduced into the question of the origin of immunity, confounding the various types and sources of exemption in the Merovingian kingdom. The circumstance that particular churches enjoyed the full panoply of state and ecclesiastical privileges is hardly surprising. That later ages conflated secular and ecclesiastical exemption, especially after immunity was taken up and deployed as a term of papal privilege, is no guide to the early institution's history. Immunity, even in its judicial guise in the seventh-century charters, was essentially a fiscal, secular instrument, not a religious one – which is why scholars have heretofore kept immunity and episcopal privilege separate and failed to detect an association between immunity and the altar. Although immunity sometimes had aims which attempted to draw on the religious power of ecclesiastical institutions, its focus remained the resources of the state as they related to the landed endowment of individuals (including laymen) and ecclesiastical corporations, not a particular locus of sacred space. Perhaps this point will be clearer if we move on to another, basic, question.

Were there moral, religious, or ideological underpinnings to immunity?

Exemption by its nature means that its beneficiaries will be relieved of burdens that others are expected to shoulder. Exemption is justified sometimes on the basis of raw privilege, but when issued in the name of a community, such as the state, the grounds giving it validity are usually that the beneficiary in some capacity or another is already contributing to the general well-being. Immunity is represented as an offset for other valuable service that the beneficiary, or immunist, performs: it is not just an exemption but a recognition of the immunist's contribution to the health of the body issuing the exemption. This was true of immunity in the late Roman empire and the Merovingian kingdom, and is still true in modern states,

12 'During the late antique period, ideas about asylum, new sensitivities to the sacrosanctity of the altar, and increasing emphasis on the inviolability of monastic enclosures were even more important than Roman immunities for the development of the medieval type', Rosenwein, *Negotiating Space*, 25. Teleology, especially about Cluny's privileges distorts this analysis (cf. p. 1 and ch. 8), as does an analogy with taboo. Cf. Rosamund McKitterick's derivative characterization of immunity as 'a secular manipulation of the boundaries of sacred space', which says, alternatively, nothing or far too much, depending how one reads it (*The Early Middle Ages*, *The Short Oxford History of Europe* [Oxford: Oxford University Press, 2001], 49).

which issue exemptions on a massive scale in order, so it is said, to encourage activity beneficial to the economic and social order or to compensate those already carrying out such desirable activities.¹³ Exemptions, in sum, are supposed to be just. Whether that is really true is beside the point; that is how exemptions were represented and how they still are.

Immunity as an offset appears in the very earliest Merovingian reference to the institution in the Council of Orleans in 511. It mentions immunities attached to lands granted to clerics by Clovis: the clerics were expected to use the benefits for religious work, namely the restoration of churches, alms for the poor, and the redemption of captives.¹⁴ The approach of Clovis to exemption for clerics was hardly new. Constantine had already regarded the religious worship performed by clerics as a service to the state deserving of exemptions. His son Constantius II was quite explicit that ecclesiastical service was a form of state service. The same theme is found in the seventh-century charters that grant immunities to churches of various kinds on the supposition that the revenues will be directed to the upkeep of the liturgical duties of the church, thereby contributing to the well-being of the kingdom and its ruler, and not incidentally showing the king's piety and devotion to God.¹⁵ Immunity itself owed nothing to asylum, the sanctity of the altar, or to some special right of monks to be unpestered by bishops. It employed fiscal means to encourage religious works, and in the seventh-century, to judge by surviving charters, to finance the liturgical activities of clerics praying solemnly for the health of the kingdom and its king. Whether Constantine would have approved is difficult to say, but he would have recognized the principle involved and acknowledged that support of the church through fiscal means was one bulwark amongst many against the Divinity's displeasure. As difficult as it might be for moderns to understand, immunity, at least to those making grants, was a recognition of state service.

Did the seventh century mark the beginning of Frankish immunity?

To those who have read thus far without knowledge of the literature, this question might seem strange. I seem to have indicated clearly enough a negative answer. But the historiography of the question, past and present, requires that the question be raised again. When I wrote in 1994 it was not uncommon for

13 Roman and Merovingian examples can be found in Murray, 'Immunity', 19; [above 101f.].

14 See n. 9.

15 On Constantine: Eusebius, *Ecclesiastical History* 10.7, ed. J. E. L. Oulton and H. J. Lawlor (Cambridge, Mass.: Harvard University Press, 1973) 2: 464–65; and *Codex Theodosianus*, ed. Theodor Mommsen and Paul Meyer (Berlin, 1905); trans. Clyde Pharr (Princeton: Princeton University Press, 1952): 16.2.1–7. On Constantius: *Codex Theodosianus* 16.2.16. On Merovingian texts, Murray, 'Immunity', 19–20; [above 101f.]. On particulars about lighting for liturgical purposes and its costs, Fouracre, 'Eternal Light', 68–78. Fouracre's repeated assertion that most previous scholars have regarded lighting clauses as 'formulaic' is unsupported by references to the alleged malefactors.

scholars to assume that the question I have just posed should be answered positively. Perspectives in the literature sometimes seemed averse to, if not incapable of, passing over the seventh-century charters with their emphasis on judicial exemptions to look at the previous history of Merovingian and Roman examples of the institution. Scholars searching for the roots of later independent jurisdictions were disinclined to look any further than the seventh-century exemptions. Scholars (sometimes the same ones) searching vainly for the putative Germanic roots of the Merovingian order were happy to dismiss the fiscal immunities of the early Frankish kingdom and latch on to the judicial exemptions as some kind of bridge to cross from later conditions in the High Middle Ages to Merovingian, and beyond that, by imaginative extension, to primitive conditions of the so-called Migration Period and Iron Age. Seventh-century Merovingian kings were commonly regarded as employing a Roman form (immunity) to recognize ancient Germanic ideas of independent lordship (sometimes represented as 'autogenous immunity'). In post-war German scholarship, 'Roman form with Germanic content' became a popular formula for interpreting Merovingian institutions.¹⁶

Disinclination to confront the Roman and early Merovingian evidence has not disappeared. *Property and Power* still declares 'though the word *immunitas* . . . was used in late Roman government, the immunity was a phenomenon first seen in the Frankish kingdom'.¹⁷ Paul Fouracre's chapter on early Frankish immunities tells us he will begin 'with their origins in seventh-century Francia'.¹⁸ I do not quote these assertions to explain them, because I cannot. Earlier immunities are recognized elsewhere in the volume, which is conceived as a joint enterprise, and indeed grudgingly acknowledged in Fouracre's chapter. Are these assertions, then, vestigial remains of the traditional pre-occupations with judicial exemptions and later independent lordships? Or are they merely that resilient *idée fixe* of English scholarship, namely the reflexive reaffirmation of discontinuity?

Until the authors involved provide their own explanation, let me conclude the answer to the main question with some simple statements. Frankish immunity was not merely the judicial exemptions of the rather late charter record. Fiscal exemptions are attested from the beginning of the kingdom. These too are Frankish immunities, because they were issued by Frankish kings. The moral justification for immunities under the emperors and the Frankish kings – the conceptual framework in which the exemptions operated, in effect – remain in broad strokes the same, as does the general concept of immunity itself, which was always represented as an essentially fiscal exemption even in its judicial variant.

16 See Murray, 'New Edition', 250, n. 15; [below ch. 8].

17 Wickham/Reuter, 'Introduction', 12.

18 'Eternal Light', 53.

When was the *introitus* prohibition introduced into Frankish immunities, and what were the mechanisms of exemption in fiscal and judicial immunity?

The *introitus* prohibition against the entry of royal officials as it appears in the late charter record is generally recognized as the mechanism of judicial exemption. The immunist enjoyed the benefit of the fees and renders which public agents were forbidden to collect on the immunist's property. This key feature of the exemption is often regarded as a distinct characteristic of judicial exemptions and an invention of the late Frankish state. It may in fact be a Frankish creation, though we barely understand the mechanisms of Roman exemption at all. Given the forms of imperial rescripts (decisions of the emperor, both general and specific), from which the Merovingian royal charter is descended, there is no reason to exclude the possibility that imperial exemptions to individuals might (like Merovingian diplomas) be conveyed through an order issued to a local official directing collectors under his authority not to approach the beneficiary. It is difficult to imagine how else individual exemption was conveyed. Whatever the Roman mechanisms were, the *introitus* prohibition was certainly developed before its appearance in the charter record of judicial immunity.¹⁹ It was used as a means of conveying exemptions from the claims of the fisc. Evidence for this is found in the so-called *Praeceptio* of Chlothar II (584–629) in which churches were exempted from a variety of public charges; the mechanism by which the benefit was conveyed was a prohibition against the entry of the relevant collectors onto church property. The edict describes the grant without calling it an immunity, though it may have been so designated, issued generally through an edict, and not by individual directive.²⁰ It shows that the *introitus* prohibition was not simply a device of judicial immunity but was used as well in conventional fiscal exemptions. Given the state of the evidence, it is impossible to say how far back into the sixth century the *introitus* prohibition went, but it is unlikely to have been a novelty when Chlothar II mentioned it in his legislation.

When were the fully fledged judicial exemption formulae

19 Murray, 'Immunity', 21; [above 103].

20 *Praeceptio Chlotharii*, c. 11, Stephan Esders, *Römische Rechtstradition und merowingisches Königtum: Zum Rechtscharakter politischer Herrschaft in Burgund im 6. und 7. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 1997), 83, 220–43 (for cc. 11 and 12). [Note the previous edition of Boretius, MGH LL Capitularia, treated these two distinct items as one, c. 11.] The companion piece, c. 12, refers to an *immunitas*, certainly of the fiscal variety, issued by previous kings to select churches. The *agraria* and *pascuaria* of c. 11, whose collection is being prohibited, I took to be fees for the use of crown land ('Immunity', 21; [above 103]). Esders understands them as remnants of the *annona*, as does Shoichi Sato, 'L'agrarium: la charge paysanne avant le régime domanial, VI^e–VIII siècles', *Journal of Medieval History* 24/2 (June 1998): 103–125. The question needs revisiting.

of the charters introduced into Frankish law?

A great deal of the controversy and confusion about Merovingian immunity arises because of the peculiar profile of the legal evidence for the period. For much of the sixth and the early seventh century we have a not insignificant amount of royal and ecclesiastical legislation, which can be supplemented by narrative sources, especially the grand history of sixth-century events by Gregory of Tours.²¹ There are no charters or royal diplomas to speak of, that is, specimens of individual, particular privileges issued by Merovingian kings. Just as the legislative record dries up, the charter record begins in the mid seventh century. No inherent significance can be attached to this pattern other than the contingencies of survival. We know individual charters were issued in the sixth century, though we do not know what form privileges took; we know from narrative sources that edicts were issued in the seventh century, though these have not survived. As a result the disjunction in the evidence produces different kinds of information for the early and the late Merovingian period. The potential for jumping to conclusions about the character of the two periods is obvious.

The great repository of evidence for judicial exemption is the later charter record. This has its own problems, especially that of distinguishing genuine cartulary copies from forged and compromised examples. This problem requires extensive treatment, especially now that the new MGH edition of the diplomas has appeared, but it cannot be undertaken here. The new edition's treatment of the relevant charters has been further complicated by its faulty assumption that the most recent terms of a confirmation can be assumed to reflect the conditions of the original grant, made perhaps generations before. It will have to be sufficient for the moment to note merely that recent accounts of immunity agree that it is difficult to document the existence of the fully fledged judicial exemptions of the charters before the middle of the seventh century. There is no shortage of candidates for the introduction of the charter formulae of exemption: Chlothar II (584–629), late in his reign; Dagobert I (629–639); and the regime of Chlothar III under the regency of his mother Balthild (657–ca. 665). Balthild's ecclesiastical program, whether or not it created the fully developed judicial exemption, was surely instrumental in extending its benefits.²²

When were judicial exemptions introduced into Frankish law?

The full, generous judicial exemptions of the charters hardly look as if they were the first outings of petitioners seeking release from the profitable and potentially intrusive judicial activities of royal officials. It would not be unreasonable to

21 The work is cited below in n. 33.

22 *Vita Sanctae Balthildis*, c. 9, ed. Bruno Krusch, in *Vita Sanctorum*, MGH SRM 2 (Hannover: Hahn, 1888). Translation in Alexander Callander Murray, *From Roman to Merovingian Gaul: A Reader* (Peterborough, Ontario: Broadview Press, 2000), 503.

suppose that before judicial exemption dominated the content of immunity, it had a measured history. The legislation of Chlothar II provides some of that history and shows the juxtaposition, by about the early seventh-century, of quite separate fiscal and specialized judicial exemptions. We have already noted his so-called *Praeceptio*, which provides particular fiscal exemptions to churches. A companion regulation notes the existence of earlier immunities going back to the time of his grandfather Chlothar I (511–561), who granted immunity to select churches and clerics.²³ The contexts of the two regulations are resolutely fiscal. In his *Edict of Paris* a. 614, however, in a law dealing with suits and the judicial activities of judges (c. 14), he refers in passing to the need to preserve the exemptions enjoyed by ‘the church, magnates (*potentes*), or whomever, for establishing peace and preserving public order (*pro pace et disciplina facienda*)’. The context for peace-keeping immunities of the kind intimated here seems to be provided by the edicts of the sixth-century kings, who show a concerted effort to suppress theft and brigandage and to organize police associations among landholders on public lands and the estates of the church and magnates. It hardly stretches the imagination to suppose that the participation of churches and magnates occurred on condition that they enjoy offsets for their contributions to public well-being. Such rewards could be readily conveyed through exemptions from the attention of public judges and their posses and the consequent transfer of the administrative and judicial profits of peace-keeping into the hands of the immunist. I have elsewhere argued this at length and am loath to return to it here, but in passing I will make two points.²⁴ The Merovingian kings regarded public order as one of the duties that guaranteed God’s favour. As in the case of prayer, undertaken by the publicly supported churches and monasteries, or the socially valuable services expected of churches and clerics, maintaining law and order was something worth subsidizing through exemption. Chlothar’s *Praeceptio* recognized fiscal immunities; in the judicial sphere, his edict issued at Paris took it as sufficient to mention only specialized peacekeeping judicial exemptions.²⁵ The generous judicial exemptions of the charter record would thus seem to be a subsequent development.

Were the beneficiaries of judicial immunity tax exempt?

Immunity is commonly thought to convey exemption from taxes. The terms of the judicial exemptions, however, hardly bear that supposition out; scholars have long noted the lack of concrete mention of taxation in them and instead their

23 See n. 20.

24 The argument is in Murray, ‘Immunity’, which in turn is dependent on Murray, ‘From Roman to Frankish Gaul’; [above chs. 5 & 4].

25 For the *Praeceptio*, see n. 20.

emphasis on avoiding judicial fines and fees and the burdensome duties of hosting royal officials on their judicial circuits. Why is taxation not of concern to the grantor?

There are two principal answers. The traditional view has tended to regard the alienation of taxation as a victory already largely won by the churches and magnates at the time of the grants. Taxation was no longer the chief concern of immunists, who now turned their sights on the monarchy's profitable enterprise of extracting revenues from its subjects as a consequence of the administration of justice and sought to share the proceeds. It was recognized that, in the west of the kingdom, taxes continued to be collected in areas subject to immunities, but that this situation was a regional exception. Elsewhere taxation was a minor concern overshadowed in the minds of kings and beneficiaries by the profits of justice.²⁶

Another view had also been voiced some time ago, but in its present form is linked to Jean Durliat's views of the undiminished continuation of Roman fiscality through the early Middle Ages.²⁷ Élisabeth Magnou-Nortier, and now Carrichard Brühl, propose that taxes were never given away. Instead, immunists, churches in particular, acted as the collectors of tax, taking fees for their efforts but largely passing the proceeds on to the monarchy even while enjoying the new benefits of judicial exemption.²⁸

The problem of Merovingian taxation is not going to be settled here. But there is a text that deserves airing and which by implication seems to support the common view that state control of taxation was a tale of diminishment.²⁹ In 599 Gregory the Great wrote to Theudebert II and Theuderic II, rulers respectively of the Austrasian and Burgundian kingdoms. Gregory was concerned about simony, the purchase of episcopal offices, a practice which he believed the kings tolerated and from which they benefitted. There is a tone of feigned wonderment in the letter, and tortuous circumlocution is used to avoid directly accusing the kings of involvement.

Audivimus autem quia ecclesiarum praedia tributa non praebeant et magna super hoc admiratione suspendimur, si ab eis illicita quaerantur accipi, quibus etiam licita relaxantur.³⁰

26 Chris Wickham, *Framing of the Early Middle Ages: Europe and the Mediterranean 400–800* (Oxford, 2005), 105–15, is the most recent exposition.

27 Its essential features are anticipated by N. D. Fustel de Coulanges, 'Étude sur l'immunité mérovingienne', *Revue historique* 22 (1883): 249–90 and 23 (1883): 1–27; reprinted separately, and in *Les Origines du system féodal*, Histoire des Institutions Politiques de l'Ancienne France (Paris: Hachette, 1914).

28 Brühl ('Immunität', 160) imagines the conveyance of collection fees as being part of the content of the charters, Magnou-Nortier ('Étude', 477) as having occurred prior to the issuing of the new type of judicial exemption. Brühl, nevertheless, distances himself from the full implication of Durliat's thesis (as in n. 5).

29 Noted in Murray, 'New Edition', 271–73; [below ch. 8 at nn. 89–92].

30 *S. Gregorii Magni Registrum epistularum libri VII–XIV*, ed. Dag Norberg, Corpus Christianorum Series Latina 140a (Turnhout: Brepols, 1982), IX 216, 778.

We have heard that the properties of the churches do not pay taxes, and we marvel greatly at this circumstance if there is a desire to receive illicit gains [that is simony] from those [that is bishops] to whom licit gains [that is taxes] are transferred.³¹

The text highlights in a rhetorical fashion an alleged paradox whereby kings have relinquished legal rights but at the same time lay claim to illegal ones: how can rulers who forgo the taxes owed to them from ecclesiastical property extract illegal fees for appointing bishops? Gregory obviously believed that the Gallic church already enjoyed significant exemptions from direct taxation by the turn of the seventh century, or at least he thought the situation could be plausibly so represented. The letter substantiates the supposition that the fully fledged judicial immunity of the late seventh century did not convey tax exemptions because such exemptions were no longer the main objects of play. Residual payments of tribute may still have been due from ecclesiastical property, but churches had long since escaped the major burdens of direct taxation.

If Gregory the Great's characterization of the tax-free condition of much of the Austrasian and Burgundian church is correct, then it suggests another characteristic of exemption. As earlier noted, exemption tends to be tied to the current system of obligations, that is beneficiaries constantly claim relief from the prevailing burden (judicial by the time of the charters).³² But benefactors (kings in our case), may also gradually adjust their approach to the new arrangements in order to offset losses suffered in granting the exemption. Pressing their judicial rights might have been one way Merovingian kings responded to the loss of revenue. The financial profits available from episcopal appointment may have been another way. Having alienated a right (taxation in Gregory's account), but still controlling who shall be its beneficiary, kings may have increasingly recognized an alluring and not unjustified means of redressing the balance between benefactor and beneficiary by charging for the profitable disposal of the benefit (in the form of episcopal appointments). Gregory the Great's criticism reveals the process but hardly mark its beginning.³³ The Carolingian bundling of immunity with protection was probably a notable effort to reverse the balance with respect to monasteries.

31 I have rendered the passive 'si . . . accipi' phrase in the active voice.

32 See above, p. 128.

33 Chilperic's complaint, as recounted in the obituary by Gregory of Tours, seems to capture a heartfelt, exaggerated, but not illegitimate reaction to it: "Look! our fisc has been left poor", he often used to say, "and our wealth has been transferred to the churches. No one rules at all except the bishops; our office will perish and has been ceded to the bishops of the cities". *Histories* VI 46, ed. Bruno Krusch and Wilhelm Levison, MGH SRM 1/1, 2nd ed. (Hannover: Hahn, 1937–51); trans. Alexander Callander Murray, *Gregory of Tours: The Merovingians* (Peterborough, Ontario: Broadview Press, 2006).

Did judicial immunity convey jurisdiction to the immunist?

Judicial immunities, like their fiscal counterparts, were exemptions (above, p. 128). Essentially negative in form, the grant consisted of a command addressed to royal officials, prohibiting them from entering the immunist's property to exercise judicial functions and other rights inherent in their role as royal administrative officials and judges. The grants do not mention the conveyance of jurisdiction. A little reflection on fiscal exemption, however, reveals that the mechanisms of exemption may be negative but the result in fact is the conveyance of positive benefits upon the immunist. If the state forgoes taxes in favour of a person or corporation, for instance, those taxes are retained by the beneficiary. If a beneficiary is also responsible for, let us say, the conveyance of the tax owed by his tenants, the immunist doubly benefits from the exemption because his tenants continue to pay him their traditional renders.

With regard to judicial immunity grants, it was once a common view of scholars that, on a strict reading of the exemption formulae, one could imagine that the immunist was entitled to collect only the fees previously enjoyed by public officials in the exercise of their public duties and that, because no jurisdiction was created by the grants, the public tribunal remained in effect the forum for inhabitants of the immunity. The notion that only fees were conveyed does not conform to the language of the grants. They refer not to the conveyance of the remuneration due officials but rather, quite explicitly, to the sum of renders officials collected in the name of the fisc – namely the entire income due the public treasury: 'whatever the fisc could expect from there [namely the property of the immunist]' by way of judicial fines and fees levied on the inhabitants.³⁴ And while it is true that immunity did not create jurisdiction, the omission of jurisdiction as an element in the grant did not mean that the public courts remained the fora of first resort to the inhabitants of the immunity. Jurisdictions, dealing with non-criminal matters and located on the landed estates of the kind immunists possessed, had long existed alongside the system of public courts presided over by officials of the king.

Like taxation, these non-royal jurisdictions require a much more detailed treatment than can be offered here.³⁵ Chlothar II's *Edict of Paris* a. 614, however, can give a kind of snapshot of their role by around 600 or so. In it the monarchy attempted to regulate the appointment of the domainal judges of bishops and magnates (*potentes*) using similar principles to its own appointment of public judges (c. 19, cf. c. 12). The church's jurisdiction on non-criminal matters over clerics, dependents and freedmen was acknowledged (cc. 4, 5, 7), though this

34 The quotation is from the Formulae of Marculf, I 3, *Formulae Merowingici et Karolini Aevi*, ed. K. Zeumer, MGH LL Formulae (Hannover: Hahn, 1882–86). The proceeds of the grant were to be used for liturgical purposes, namely lighting. Any attempt to read fees for tax collection into formulae of this kind because they contain incidental, indefinite terms, such as *redibutiones*, founder on the same wording – the totality of the collection is conveyed to the immunist.

35 A more extensive treatment is in progress.

might involve mixed tribunals of public and ecclesiastical judges. The obligations of estate managers to turn over dependents to public judges in criminal cases are stressed in an assertion of an elementary right of the public courts (c. 15). The coercive powers of estate managers operating *posses* without the approval of judges (whether domainal or public is not specified) are to be curbed (c. 20).

This was the world into which judicial immunity was introduced. Churches and magnates appointed judges for their possessions and were expected to do so along the lines established by public law. It was also expected that procedure would be conducted according to established norms. The church exercised jurisdiction over various classes of people, which jurisdiction, depending on circumstance, might be exercised by ecclesiastically appointed judges or by mixed tribunals that included public officials. The right of public courts in criminal cases was recognized but needed reaffirmation in the face of (to go by the testimony of previous Roman sources) the passive indifference and active obstruction of domainal authorities.

Judicial exemption benefitted immunists in numerous ways. To be brief, the right to exclude the usual judicial and administrative activities of the count and his assistants, taken as a whole, in effect conferred the benefits of a not unlimited monopoly upon the immunist. In the Merovingian, as in the Roman, period the indefinite limits of jurisdictions overlapped and bisected one another. Activation of jurisdiction usually depended on the initiative of petitioners, who would seek out the authority whose forum was most likely to serve their interests. To would-be-petitioners the exclusive privilege of the immunist – with his own judges and police powers – to collect judicial fees and to exercise executive functions within the immunity area gave his court a significant advantage over the tribunal of the count, whose functionaries lost both the right and the incentive to operate within the immunity area. Immunity granted by the diplomas increased judicial business and its perquisites.

Who were the beneficiaries of immunities? Were immunities granted to laymen?

The simple answer is that, as far as we can tell from the sources, immunities (fiscal and judicial) were granted to episcopal churches, monasteries, clerics and laymen, namely, in the last case, important servants of the king (*potentes* is the general term for them). A case can be made (though this is not the place to do it) for the grants of fiscal immunities to cities.

No one will ever be able to tell the relative distribution of ecclesiastical versus lay grants. That might end the discussion if it were not for an awkward attempt in *Property and Power* to sweep away the evidence of lay immunities.³⁶ Since the

36 According to Fouracre, 'there is no specific evidence of grants of immunity to lay persons' ('Eternal Light', 62). 'Specific' is probably code for 'charter'; the single-minded focus on the judicial exemptions of the diplomas (all obviously to churches) appears to be based on a dense and naïve

treatment of the sources here is less than ideal, it might be worthwhile establishing that there really is a significant body of evidence for judicial immunity grants to lay magnates (I am leaving out of consideration purely fiscal exemptions). The list of lay exemptions given by Paul Fouracre in *Property and Power*, designed to be meagre and insignificant, is merely short and deficient.

We can start at the beginning of the record by noting the reference in the *Edict of Paris* to grants of immunity ‘pro pace et disciplina facienda’ made not only to bishops but also to ‘*potentes* and others’.³⁷ The same legislation’s recognition of domainal jurisdictions in the hands of *potentes* pretty much guarantees that these privileged and politically active servants of the king would expect to share in judicial exemptions designed to offset service to the monarchy and would be so rewarded.

If we turn to the exemptions of the type found in the later charters, the presence of lay beneficiaries among those enjoying royal favour are not hard to find. The Formulary of Marculf ca. 700, which provides specimen charters, goes some way to offset the ecclesiastical character of the historical record. (i) Formula I 14 reproduces the body of a grant with immunity designed for laymen. It takes into account the possibility that both property and immunity were previously held by another layman. The grant itself is preceded by two possible prologues designed for lay recipients. This text was apparently unnoticed by Fouracre. (ii) Formula I 17 is a complement to Formula I 14, confirming to a layman a previous grant with immunity. (iii) Formula II 1 is a private grant to a monastery of property with immunity. Immunity here is dismissed by Fouracre as some kind of otherwise unattested renunciation of dues by the donor, whereas in fact it accounts for the exemption from the claims of public officials explicitly mentioned in the grant.³⁸ This bundle of charter forms from Marculf makes up a succinct but complete package for the dispositions of lay immunities: royal grant, royal confirmation, and lay donation containing immunity.

The formulae, in my brief account, must for the time being speak for themselves. Fouracre nevertheless argues that there is some grand gap in the evidence between the *Edict of Paris* and the mention of lay immunity in Marculf’s Formulary. In fact, mention of lay exemptions alongside the ecclesiastical variety appears to keep pace with the evidence. No one can seriously suggest lay immunities should be mentioned among the modest ecclesiastical record of genuine diplomas from the mid seventh to the late seventh century. It is more striking that the Formulary

methodological premise privileging charter evidence. Cf. also p. 58 (‘nobody else had received [immunities]’ but churches by the end of the Carolingian period). The ‘Introduction’ by Wickham and Reuter, and citing Fouracre, tells us ‘it is important to note that the Frankish immunity was almost an ecclesiastical monopoly; grants to the laity are ill-attested, and where known, of small scale’ (13). The term *the* Frankish immunity betrays the same focus on the late Merovingian charter grants. No hint is given where we might find the conjured-up ‘small-scale’ lay immunities of the late Merovingian period. Grants to *potentes* are not likely to be small-scale.

³⁷ C. 14, as in n. 2.

³⁸ Translations of the formulae are given by Alice Rio, *The Formularies of Angers and Marculf: Two Merovingian Legal Handbooks* (Liverpool: Liverpool University Press, 2008).

of Marculf, the one late seventh-century record with any claim to reproducing a cross section of written instruments used in public institutions, comfortably nestles lay immunities alongside their ecclesiastical counterparts.

One other piece of evidence needs to be cited, once relatively well known, but as far as I can tell, unnoticed in recent works. Fouracre's final argument against the existence of lay immunities is that there should be at least one mention of immunity in the 'countless surviving documents' that record lay grants to churches.³⁹ In actual fact, the private documents from the period are anything but countless. The study of non-royal documents of the period is, with some exceptions, still in its infancy. It would be difficult to imagine even less than a handful of moderately genuine specimens that might conceivably be deemed likely to contain references to immunity.⁴⁰ Even in the grim conditions of surviving genuine private Merovingian legal instruments, there is in fact one moderately genuine specimen of a lay grant of property with immunity to a church dating to the late years of the seventh century. The document is the donation of property by Haregarius, his wife and daughter, to a monastery in Le Mans.⁴¹ Record of the document is contaminated by a later forger's hand that, at this stage of research in the well-studied dossier of Le Mans charters, is not difficult to isolate. The clause concerning immunity is not suspect.⁴²

Merovingian lay immunities are not really ill attested. To suggest otherwise is just special pleading. The meaning of grants to laymen, however, is not well understood, neither in the Merovingian kingdom nor in the long history of immunity in the early Middle Ages. It would be a step toward better understanding if we could at least accept that they existed and were by no means insignificant elements in the system of Merovingian exemption.

Were immunities instrumental in the dissolution of state power and the emergence of independent lordships and 'Feudalism'?

Although admittedly a fitting conclusion to this study, largely because of the perspective of the subject's historiography, this question in fact is too pointed for the

39 'Eternal Light', 63.

40 Merovingian private charters are collected not without omissions in J.M. Pardessus, *Diplomata, chartae, epistolae, leges et alia instrumenta ad res Gallo-Francicas spectantia*, 2 vols. (Paris: Typographeum reipublicae, 1843–49). It is premature to talk about numbers at all until the problem of forgery is clarified. Grants of individual properties of modest dimension to churches are not likely to produce references to immunity. Charters rarely give extensive accounts of a property's history.

41 Margarete Weidemann, *Geschichte des Bistums Le Mans von der Spätantike bis zur Karolingerzeit: Actus Pontificum Cenommanis in urbe degentium und Gesta Alderici* (Mainz: Verlag des Römisch-Germanischen Zentralmuseums, 2002), vol. 2, no. 14 provides the most recent edition and discussion. The pertinent formula resembles Marculf II 1, above at n. 38.

42 Were one to insist otherwise, the problem would only be kicked down to the mid ninth-century, when one would have to grapple with the problem of why a forger would find lay immunity a not implausible intrusion into a genuine text from the late Merovingian period.

period this article considers and it does not really find traction in its sources. The question is not unreasonable in a broad sense, but there is no pressing need I can detect to answer it immediately and certainly not on the back of the Merovingian evidence. The simple equation, immunity = private jurisdiction = the dissolution of the state, begs so many questions that it would seem advisable, however difficult this might be, to proceed without assuming such simplistic conjunctions to be true. The rhetoric conventionally thought suitable for a particular discourse like immunity is important – the ‘seventh-century origins of *the* immunity’ motif, for example, has been inveighed against here, as readers must surely have noticed. Recent literature has boldly attacked the convention that immunity was a seed-bed of dissolution that, once planted, was destined to lead to the disintegration of public power. Immunity – especially if one can remember that it is essentially a form of subsidy and that all it means is exemption, especially one granted to offset services performed by the beneficiary – is just one, of many, hallmarks of organized human existence and political organization. Indeed it is difficult to imagine an even moderately sophisticated political system without it. But that is hardly the whole story. We know that cultures have different standards as to what is socially beneficial (who of us now would think prayer was a state service?). We also know that systems are normally distorted by claims of authority, privilege and service being used to legitimize what otherwise seems self-interest and coercion. It is not likely that the Merovingian kingdom, its predecessor the Roman Empire, or its successor, the empire of the Carolingians, was well run even by low modern standards. This imperfect condition is the context for immunity. While there is no good reason to implicate Merovingian immunity in the first act of a plot that takes as its theme the downfall of public authority, it seems premature to insist that immunities were, on the contrary ‘a sign of public strength not public weakness’, as if being so made them good.⁴³ They *were* a sign of public authority, but the rest is all relative. The character of that authority, whether strong or weak, wise or foolish, depended on the context in which immunities were granted and confirmed, not the institution itself in its various forms. Immunity was neither a moral nor even a political category. It was merely an ancient institution, one in fact of a number, by which the Frankish kings, and their beneficiaries negotiated in a broad sense the rights, duties, and privileges of rule.

43 ‘Introduction’, *Property and Power*, 7.

THE MEROVINGIAN STATE AND ADMINISTRATION IN THE TIMES OF GREGORY OF TOURS *

From: *A Companion to Gregory of Tours*, ed. Alexander Callander Murray, Brill's Companions to the Christian Tradition 63 (Leiden: Brill 2016)

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1 Introduction

Merovingian governance (in an active sense) and the Merovingian state (in an institutional sense) have not fared well in the estimation of historians; the last term even excites the scare quotes 'state' when some writers deign to use it. The terminological problem is old and worth clarifying somewhere else, but does not warrant an argument here. Readers of the present piece can decide for themselves if what I describe constitutes a state or not – and if not they can make up a term of their own for what they find in the sources.

* This subject has largely been treated with uninterest by recent scholars, and even contempt. The subject, looked at more broadly than is the current fashion, is, however, longstanding and huge in scope, beginning in the early Modern Period and covering a literature stretching from the 16th century to the present time, with the older essential works composed to a large extent in French and German. The span precludes even rudimentary consideration here. So that the limited range of the subjects relevant to this presentation could be covered, I have had to rely on self-citation more than is ideal. The works recommended in the notes, nevertheless, should, if consulted, direct interested readers to the major treatments and ideas of the last century and a half. There exists no general, modern, analysis of Merovingian administration either in the age of Gregory or the one that follows. Cf. n. 28.

There are many reasons for the negative treatment. The general one is the grand narrative of traditional European scholarship that pictured varying degrees of primitivism and barbarism succeeding the forms and institutions of the fallen Roman empire – a view that has hardly lost its allure.¹ Particular approaches play variations on this theme. Nineteenth- and twentieth-century German historians, and it must be said many others, imagined the Middle Ages as erasing the institutions of Antiquity and slowly reconstructing the distinctive, and ultimately triumphant, forms of European civilization on the basis of Germanic roots. For them Merovingian history was also German history, and Frankish institutions the beginnings of German legal history.² Post-war historians have often espoused a more modest focus on the geography of modern Germany and German history more narrowly conceived. Nevertheless many retained the search for Germanic continuity (*Kontinuitätsfrage*), still the shibboleth of post-war historiography, and regarded the Merovingian state and its institutions (*Verfassung*) – almost necessarily to maintain the argument – as the link between German history and the Iron Age.³ The hand of Carolingianists, that relatively populous tribe, has lain heavily on Merovingian history too; its reach, rarely stretching beyond the 7th century, is usually extended in a search for suitably melodramatic foils with which to begin some Carolingian exposition. Finally, to cut short what could grow into a long list of misadventure, let me just comment that the current vogue for pre-state anthropological templates, pseudo-anthropological cultural history, or sociological- and post-Marxist-style modelling has rarely dispelled the old prejudices, just reconfigured and built upon them.

Not just historiographical trends have distorted our view of the Merovingian period. It must be said that Gregory of Tours, and especially his *Histories*, have played a big role in confirming traditional pictures – or at least so it has commonly been thought. One can read elsewhere in this volume [viz. *A Companion to Gregory of Tours*] how new readings of Gregory's purpose and narrative method hardly support the view of the bishop as the naive documentarian of a particularly depraved and rudimentary society, but scholars have traditionally thought he did. Even someone as well versed in the sources as the French scholar Ferdinand Lot seems to have laboured under the weight of the traditional wisdom.

- 1 My comment refers not just to History Television but also to views from the upper Thames, among many others. There are good review articles that capture the tenor of the hyperbolic claims in the flurry of recent works from the last decade: Andrew Gillett's review article in *The Medieval Review* 2007.10.12, <http://hdl.handle.net/2022/6332>; and Roger Collins, with an appropriate sense of the absurd and a largely different catchment of works, "Review Article: Making sense of the Early Middle Ages," *English Historical Review* 124/508 (2009): 641–665.
- 2 See the numerous examples of the genre *Deutsche Rechtsgeschichte*. The most famous (and still valuable) is that by Heinrich Brunner and Claus von Schwerin, 2 vols (Leipzig, 1906–28). Despite the title, it is largely concerned with Frankish law.
- 3 The more recent predilection for *Synthese*, a term that can hardly ever go completely wrong, is, alas, often intellectually a last ditch effort to save appearances for the old model of Germanic *Kontinuität*, even while the late Roman context has still barely been explored.

Lot was experienced enough not to imagine that the Merovingian state was founded on Germanic principles, but the breakdown of public institutions and the central importance of personal relations are still notable themes in his account. He adopts a polemical tone in characterizing the main players in the Merovingian system. The kings, he says, “performed no services, unless we call the pillaging expeditions services” and “were utterly incapable of organizing anything.” The personal qualities of the long succession of individual monarchs are reduced by Lot to a type: “the suspicious, cruel, capricious and selfish despot . . . [who] could not be loved.” Lot’s disparagement was evenhanded. The term ‘faithful’, used in the sources to characterize the aristocracy and its relationship to the king, he regards as an unintentional ‘antiphrasis’; to apply the word functionaries to their role as office-holders is to make use of too modern a term. Even the suffering subjects of this elite conjunction of personal interest and carefree excess do not get away unscathed: when they get weapons in their hands, they “raise their voice” only to “take up a threatening attitude.” Lot’s understanding of the Merovingian system as one “without any principles, in which the specialization of functions is rudimentary,” is a perspective that many observers of the Frankish state seem to share.⁴

Lot’s picture was not drawn from documentary sources, which do not lend themselves to this kind of characterization. Should there be doubts as to its origins, his idea that the dynasty could not be loved betrays it clearly. At the end of his obituary of the royal arch-villain Chilperic (*Hist.* 6.46), Gregory concludes with a summary statement about the king: “Chilperic never loved anyone sincerely and was loved by no one, with the result that when he breathed his last all his followers abandoned him.”⁵ What Gregory presented as a Christian judgment on an individual has become in Lot an historical judgment on an entire dynastic period of history, a single element in a complex narrative for the year 584 transformed into a (modern) moral generalization, purported to hold good for well over two centuries of Merovingian rule.⁶

4 Ferdinand Lot, *La Fin du monde antique et le début du moyen âge* (Paris, 1927); the English translation, *The End of the Ancient World and the Beginning of the Middle Ages*, appeared for the first time in 1931, and has been reprinted several times since; I cite the Harper edition, New York, 1961, 354–56. Textbooks are unfailingly perfunctory and dismissive. There are more comments on Lot in Alexander Callander Murray, “*Pax et disciplina*: Roman Public Law and the Frankish State,” in *Proceedings of the Tenth International Congress of Medieval Canon Law, Syracuse, New York, August 13–18, 1996*, (eds.) Kenneth Pennington, Stanley Chodorow and Keith H. Kendall (Vatican City, 2001), 269–85; rpt in *From Roman Provinces to Medieval Kingdoms*, (ed.) Thomas F.X. Noble, *Rewriting Histories Series* (New York, 2006) – henceforth, Murray, “*Pax*.”

5 Gregory’s obituary of Chilperic (*Hist.* 6.46) should be compared with that of his foil, the Emperor Tiberius (*Hist.* 6.30, s.a. 583, recte 582). Each characteristic of the emperor is an antithesis to that of Chilperic. Its summary: “Loving all, he in turn was loved by all.”

6 Lot’s comment may be intended as a riposte to the old patriotic view of French/Frankish kings as represented by the great scholar Ruinart (*PL* 71, § 15), for all his life a subject of Louis XIV, “non supercilio in populos, veluti orientales reges qui a popularibus suis adorari consueverunt . . . sed

The narrative of Gregory is part of the reason for accounts like that of Lot and countless others, but the bishop of Tours should not to be blamed for them. He wrote for contemporaries, broadly understood (including kings of the near future, more specifically). His message was sometimes hard, and some have argued short-sighted, but it was not a modern one, despite Lot's cavalier misuse of it; the moral failings he sought to excoriate can hardly serve as a political primer of the Merovingian kingdom for the edification of modern readers.

New readings of Gregory recognizing a purposeful narrative of his political world alter the significance of the account he gives.⁷ But by no means do they destroy the value of it; they merely change the way we approach his evidence. A recent, it seems to me feigned, concern that recognition of the artfulness of Gregory's narrative vitiates its historical value amounts to an overwrought rejection of a simple message and an ultimately failing effort to preserve early medieval sources as repositories of archaic data.⁸

Gregory's works, especially his *Histories*, retain their importance as sources for many aspects of 6th-century history. But they have to be read critically and in conjunction with other, sometimes reasonably extensive, sources of 6th-century, and more broadly Merovingian, political and legal institutions. The towering significance of Gregory's history remains, but it is not the only source for the face of the Merovingian state as depicted in its text.

2 The sources for the world of Gregory

What are the sources for the profane structures of Gregory's world and more generally for the Merovingian period as a whole? The distribution and content of sources relevant to our subject have a distinct profile.

From the 6th century there is, in addition to the works of Gregory and, it is well to remember, his friend Venantius Fortunatus, a significant body of legal material. Legislation in the form of directives in a more or less general form (that is, edicts or constitutions), some of which at least are the product of magnate assemblies under the direction of kings, exist for many of Gregory's kings. Clovis, Childebert

amore in populos, et mutuo popularium in regem amore, qui in Francorum cordibus a natura insitus videtur."

7 See [below ch. 12, at n. 16].

8 This is part of the strategic positioning of the Vienna school. (For my view of its program, see Alexander Callander Murray, "Reinhard Wenskus on 'Ethnogenesis,' Ethnicity, and the Origin of the Franks," in *On Barbarian Identity: Critical Approaches to Ethnicity in the Early Middle Ages*, (ed.) Andrew Gillett, *Studies in the Early Middle Ages* 4 [Turnhout, 2002], 39–68; [below ch. 11].) But real discomfort is shown by others: see Richard Gerberding's (not always accurate) review of Martin Heinzelmann's *Gregor von Tours "Zehn Bücher Geschichte": Historiographie und Gesellschaftskonzept im 6. Jahrhundert* (Darmstadt, 1994), in *Speculum* 71/4 (1996): 959–61; the solution to the problem he creates for himself, namely to rely on 7th- and 8th-century epitomes, could only appeal to a Carolingianist.

I, Chlothar I, Chilperic, Guntram, Childebert II, and Chlothar II, are all represented by examples of legislation, usually multiple.⁹

A rich ecclesiastical counterpart of royal legislation are the canons of the Merovingian councils intended to regulate the church and the Christian community; these councils usually met under the auspices of kings.¹⁰ Gregory, among other mentions of councils, highlights the disagreement between Childebert II (with Gregory as his spokesman) and Guntram of Burgundy on the advisability of inter-kingdom meetings of groups of bishops (*Hist.* 9.20). Correspondence, surprisingly abundant is gathered in Merovingian and modern collections and covers most of the 5th to 8th centuries, though in a sporadic fashion. This includes an important collection of diplomatic communications, *Epistolae Austrasicae*, brought together in the court of Childebert II.¹¹

There are also law codes for the 6th century. For the north-west of the kingdom, the code of the Salian Franks (*Lex Salica*) survives from the early part of the century and, for the middle Rhineland, perhaps the earlier stages of *Lex Ribvaria*, a kind of *Lex Salica revisa*, that was used by the Austrasian Franks and completed in the following century.¹² In the south, codes compiled prior to the Frankish conquest were still used: the so-called *Lex Burgundionum*, first issued, as Gregory seems to note (*Hist.* 2.33), by Gundobad, and the Breviary of Alaric, which was a version of the Theodosian Code issued by the Visigothic king prior to his defeat at Vouillé.¹³ This code was studied in Gregory's day, as he himself remarks in passing, and may have been an adjunct of literary culture.¹⁴ In interpreting the Roman-based law of the Frankish kingdom, however, it is important to recognize that it was also a living

9 The standard collection is *Capitularia regum Francorum*, (ed.) Alfred Boretius, MGH Capitularia 1 (Hanover, 1883). But see also n. 92 for the *Praeceptio Chlotharii*.

10 *Concilia aevi Merovingici*, (ed.) Friedrich Maassen, MGH LL 1, Concilia 1 (Hanover, 1883); cf. the edition of Charles de Clerq, CCSL 149 (Tournhout, 1963). A new fundamental survey of the subject in English now exists: Gregory I. Halfond, *The Archaeology of Frankish Church Councils, AD 511–768*, Medieval Law and its Practice 6 (Leiden, 2010). And see below at chaps. 7 and 12 [in *A Companion to Gregory of Tours*].

11 *Epistolae Merovingici et Karolini aevi*, MGH Epistolae 3 (Berlin, 1892), for most of them. Some individual letters come from other collections. For an overview of sources, and discussion of select themes, see Vida Alice Tyrrell, *Merovingian Letters and Letter Writers*, Ph. D. thesis, University of Toronto, 2012, esp. 10–24, 270–524 [and now a book under the same title (Turnhout, 2019)].

12 *Lex Salica: Pactus legis Salicae*, (ed.) Karl August Eckhardt, MGH LL NG 4.1, and idem *Lex Salica* MGH LL NG 4.2 (references in this paper are all found in 4.1, and abbreviated *Lex Salica*). *Lex Ribvaria*, (eds.) Franz Beyerle and Rudolf Buchner, MGH LL NG 3.2.

13 *Lex Burgundiorum* in *Leges Burgundionum*, (ed.) Ludwig von Salis, MGH LL NG 2.1; Breviary = *Lex Romana Visigothorum*, (ed.) G. Haenel (Berlin, 1849).

14 In the story of Andarchius, the slave of Felix of Marseilles, who outshone his master in literary studies, including the *legis Theodosianae libri* (*Hist.* 4.46). Due to the patronage of Duke Lupus, he gained a spot (*locus militandi*) in the administration of Sigibert. Roman law is likely the context for the legal learning of the Burgundian Patrician Celsus (*Hist.* 4.24). The code was still an object of study in the following century: *Vita Desiderii* 1, MGH SRM 4; *Vita Boniti* 2 MGH SRM 6. There is a common theme of royal service in all the references. For the explicit use of the Theodosian code in a pleading before a royal tribunal of Childeric II, see the *Vita Praejecti* 24, (ed.) Bruno Krusch, MGH SRM 5.

law, not simply a reflection of textbook guidelines and jurist constructs.¹⁵ And it could, to confound us all, differ only by a whisker from Frankish practice.¹⁶

There are distinctive problems with the interpretation of all of these sources, the discussion of which would take us too far afield. But I will make a few observations about *Lex Salica* in relation to Gregory, in part because this most celebrated of early law codes is the one most poorly understood and in part because significance is often drawn from the alleged disconnection between the world it reflects and the society Gregory seems to describe.¹⁷ For all its importance the code would be far more useful if we knew the precise date and circumstance of its composition. The code is early: the first decades of the 6th century for the earliest redaction is a harmless, unobjectionable conjecture. The common scholarly assumption that Clovis issued it is something else. There is no evidence he had a hand in its production and the code as we have it (in multiple redactions) does not come provided with the usual bureaucratic apparatus that would connect it to royal legislative activity, despite strained efforts to argue otherwise. Clovis is a possible candidate as its author (or instigator) but that is hardly grounds for the firm attributions that appear over and over again in modern scholarship. The code needs to be read *first* without assuming a particular political or institutional context for its compilation, and (though there is no space to argue this point at length) without supposing it encapsulated archaic ‘tribal’ or ‘Germanic’ custom.¹⁸ It is Frankish law in a narrow sense, and without prejudging the sources of that law; more importantly, it shows us Frankish procedure, elements of which are reflected throughout Gaul at various times – but that does not necessarily take us back very far. It is a code in name (as a collection of laws), but whether it ever functioned in Gregory’s period, or even the 7th century as a widespread, officially sanctioned source of law, is quite another question.¹⁹ The first clear reference to

15 See Murray, “Pax” (as in n. 5), 283 in a broader context.

16 For an example, Murray, *Germanic Kinship* (as in next note), 194, n. 4.

17 To get a sense of the complexity of *Lex Salica*, consult the editions by Eckhardt (see n. 11) or even J.H. Hessels, *Lex Salica: The Ten Texts with Glosses and the Lex Emendata* (London, 1880), and Alexander Callander Murray, *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Early Middle Ages* (Toronto, 1983), esp. 119–133. And see below, n. 19.

18 Murray, *Kinship*, 116–18; and in a broader context, P.S. Barnwell, “Emperors, Jurists and Kings: Law and Custom in the Late Roman and Early Medieval West,” *Past and Present* 168 (2000): 6–29. For selections in English, see Alexander Callander Murray, *From Roman to Merovingian Gaul: A Reader* (Peterborough, Ont., 1999), 533–556.

19 *Lex Salica* constitutes a complicated series of texts and manuscripts; the literature on it is extensive. Its problems do not really lend themselves to the quick fix. Ian Wood’s attempt in two paragraphs (*The Merovingian Kingdoms 450–751* [London, 1994] 113–14) to establish around 673 a new, official, recension by Bishop Leudegar not only of *Lex Salica* but also of the other codes of the Frankish kingdoms misreads the sources and does neither the texts nor the literature justice. King lists, of which there is no shortage, are not records of validations of codes by monarchs, as Wood interprets them; they are king lists. The manuscript that Wood fingers as preserving the Leudegarian recension is A2, which is not a separate recension at all but simply a distinctive manuscript of the earliest A recension. The testimony of the *Passio Leudegari II* (Wood’s principal evidence for a revision by

Lex Salica as a code, as opposed to *lex Salica* as identifiable practices, comes in late 8th-century formulae.²⁰

As to the disjunction with the world of Gregory, four points need to be taken into consideration. (1) The different terms used for officials in *Lex Salica* and the overwhelming majority of Merovingian Gallic sources, including Gregory (see below for the term equivalent to the Latin *comes*) clearly suggest a distinct linguistic community for the code (despite its Latinity) and the territory whose customs it reflects. (2) Gregory's eye fell on the Gallic regions unequally. The northern regions where we suppose the practices of *Lex Salica* might have prevailed hardly fell within his horizon of detailed narrative. Nevertheless, the influence of legal forms found in *Lex Salica* is demonstrable in Gregory's world, though (and even in *Lex Ribvaria*) hardly in the pristine form of the original collection. (3) *Lex Salica* seems to reflect the world of well-to-do, slave-holding, freemen farmers. Such groups are not foreign to the Roman world out of which Frankish Gaul emerged. It is an open question whether such groups were altogether alien to the experience of the bishop of Tours. For example groups of Saxons had been around since the 5th century and were still an identifiable group in his own day, though Gregory is unlikely to have experienced them *in situ*; so too were the Theifali settled in Poitou, an area to which Gregory was hardly a stranger.²¹ (4) Gregory's views were not only constrained geographically but also socially. Though non-elites, including modest freemen and even slaves are established parts of Gregory's landscape and are supporting actors especially, though not exclusively, in his hagiographical works, they rarely excite anything that could support a sociological treatment. The world of *Lex Salica*, or something like it in regions with which Gregory was familiar, is largely outside the purview of the kind of writing making up the *Histories* and the hagiography. Whether or not Gregory was the least bit aware of such a collection, *Lex Salica* in its earliest redaction may have already become an artefact

Leudegar is a later version (very possibly Carolingian) of an original *Passio Leudegari I* c.7. It is not an independent witness, says nothing about codes, and merely gives a tendentious reworking of *Passio I's* account of Childeric II sending out reforming edicts to the three kingdoms (Neustria, Austrasia, Burgundy) in an effort to confirm earlier principles of the relationship between the regions and the monarchy – the reference point at least notionally is again, not a code, but the Edict of Paris a. 614; the *Passio II* tries to tie authorship of these edicts to Leudegar. See MGH SRM 5 for both *passiones*; and for the historiography of the various versions and their interrelation, Paul Fouracre and Richard Gerberding, *Late Merovingian France: History and Historiography 640–720* (Manchester 1996), 194–96, 206–08; for the Edict of Paris, see Alexander Callander Murray, “Immunity, Nobility, and the Edict of Paris,” *Speculum* 69 (1994): 18–39 [above ch. 5].

20 Murray, *Kinship*, 131–32; and more broadly, Patrick Wormald, “*Lex scripta* and *verbum regis*: Legislation and Germanic Kingship, from Euric to Cnut,” in *Early Medieval Kingship*, (eds.) P. H. Sawyer and I. N. Wood (Leeds, 1977), 121–23.

21 Saxons: *Hist.* 2.18, 19; 5.26; 10.9. Theifali in Poitou: *Hist.* 4.18 (where they killed the duke set over them called Austrapius); Saint Senoch, *Hist.* 5.7.

of largely antiquarian interest by his day – and so eventually of national interest by the 8th century.²²

As just noted, however, elements of Frankish procedure (sometimes first attested in some form in *Lex Salica*) by necessity were not mere antiquarian survival. They were part of the fabric of the legal world that occasionally bubbles through Gregory's narrative. They should not be exaggerated, but they are there and worth noting because they are reflected in other sources with an otherwise clear Roman-law bias. The failed case against the murderers of Armentarius (*Hist.* 7.23), for example, reflects Frankish practices on establishing default.²³ The presence of Salic law procedural elements can sometimes be subtle. *Virtutes Martini* 4.11, about an event in 589, describes a process well documented in the subsequent charter record. A childless couple of Chartres, Blederic and his wife, made over to Saint Martin's church their property, retaining a life usufruct. This was done using the conventional written instruments of the time. The curious element in the story is the donor's insistence that the transfer be done in his house and that the representative of the church remain overnight, both of which look like a reflection of the Salic law conveyance of property in the case of childlessness.²⁴

The source profile as described to this point changes thoroughly in the course of the 7th century. This change is not irrelevant to the students of Gregory because it affects general interpretations of the Merovingians, especially those projected from the Carolingian period, and extends the repertoire of useful sources that have a bearing on the 6th century. In the early 7th century the legislative record of the Merovingian kings in our sources rapidly fades away; Chlothar II, Fredegund's son, is the last name to be attached to surviving legislation. New canon law legislation fades too. Secular codification continues but, apart from the completion of *Lex Ribvaria*, only for regions outside Gaul. Sadly there is no successor to Gregory – nor will there be for a very long time – who brings us a dense, personal narrative comparable to that of the bishop of Tours. The 7th century *stricto sensu* provides us with the interesting, if limited, work of the historiographer known as Fredegar, whose approximately contemporary account of events stops at a. 640, about two decades before he was writing. In the early 8th century, the author of the

22 The persistent assumption that the Merovingian redactions of our manuscripts must have been officially sanctioned (the assumption of Eckhardt's edition, see n. 12 above) continues to be held despite the lack of any textual evidence that such was the case.

23 The Franco-Latin technical term for failure to appear at a tribunal (not used by Gregory) is *solsatire/solsadire*: LS 73; in one form or another it is frequent in the formularies.

24 LS 46 *De acfatmire*, often interpreted as a form of adoption, though it is a conveyance and donation no matter what other requirements may need to be in place. A central element of the procedure, to be vouched for by witnesses, is the beneficiary's stay in the donor's house. The version in *Lex Ribvaria* (c. 50) supposes just written documents and witnesses (though it does not exclude the beneficiary's stay). According to Gregory, after the donation Saint Martin blessed the couple with children, a possibility their donation agreement should have anticipated, though Gregory assures us Blederic kept his original promise, providing other properties to his new children. [*De virtutibus sancti Martini episcopi*, MGH SRM 1.2, ed. Bruno Krusch (Hanover, 1885).]

Liber Historiae Francorum (LHF), the first real author of a “History of the Franks,” provides a brief, often shaky account of events from the mid 7th century to the ascendancy of Charles Martel, whose name provides the dynastic name Carolingian. The LHF’s treatment of historical romances about the characters of Gregory’s history are fascinating in their own right (and should be read by all students of Gregory) but are hardly guides to the events of the 5th or 6th century, merely their interpretation in the 8th. All in all, the narrative record is meagre. And though a handful of saints’ lives composed relatively close to the times of their subject can supplement this narrative with interesting insights about the functioning of political structures, and courts, there is simply no source comparable in scope and detail to the works of Gregory.

There are however new categories of sources that have survived from the 7th century and they are not irrelevant to interpreting the 6th. As the legislative record ends at the beginning of the 7th century, the royal charter record begins. Records of private charters, not unknown from the 6th century, remain scant, but the diplomas, the modern term for the charters of kings documenting grants of property and privileges, gradually become a substantial source for the functioning of the monarchy and its officials and, given the nature of the archives preserving the charters, its policies towards ecclesiastical establishments. The large number of post-Merovingian forged specimens among the corpus – over one half are spurious to a significant degree – detracts from the historical value of this apparent historical windfall and complicates mightily the interpretation of diploma contents. There are enough original survivals from the period, however, and reasonably genuine copies from later ages, to serve as an uneasy guide to pilot the brave or foolhardy through the waters of diploma study. The particular contents of these charters cannot be assumed to have been in vogue in the 6th century, an assumption that has frequently led astray interpretation of earlier royal institutions.²⁵

Finally there is one other body of sources, central to the kind of diplomatic study just referred to, as well as general issues of institutions, law, property, and society in the Merovingian period. These are the formularies, collections of legal formulae, often based on real models, to be used by notaries in the drawing up of legal documents of all description, private and public.²⁶ The most famous is the Formulary of Marculf, ca. 700; there are others from the late Merovingian (Angers and Clermont, all within Gregory’s horizon) and early Carolingian periods, including one from Tours. The legal world of the formularies is overwhelmingly

25 An evaluation of some of the issues of diploma study can be found in the review article of Alexander Callander Murray, “The New MGH Edition of the Charters of the Merovingian Kings,” in *Journal of Medieval Latin* 15 (2005): 246–278. [Below, ch. 8; see also “Immunity, Nobility, and the *Edict of Paris*,” Appendix 2, above ch. 5.]

26 These are recently the subject of a monograph and sound translations in English: Alice Rio, *Legal Practice and the Written Word in the Early Middle Ages: Frankish Formulae, c. 500–1000* (Cambridge, 2008); and *The Formularies of Angers and Marculf: Two Merovingian Legal Handbooks*, Translated Texts for Historians (Liverpool, 2008).

the Roman-law derived practices of the Gallic cities, though the influence of Frankish law, sometimes difficult to discern because it might only differ subtly from Roman norms, is not absent. Given their continuity (which does not exclude development and change) with early post-Roman conditions, these are serious sources for fleshing out the late 6th-century world of the bishop of Tours.

The grim list of 7th-century sources, especially the lack of major narratives, and the skewed picture it produces when set against the 6th century, accounts for much that is wrong with interpretation of the Merovingian preamble to the Carolingians. Efforts to account for the profile as the objective reflection of institutional shifts and political events within the kingdom, in my opinion, do not work.²⁷ The movement in the source base from legislation to charter is likely due to the mere serendipity of historical survival over a very long period of time, not the intrinsic character of the 6th and 7th centuries. We know that charters were granted under Gregory's monarchs, just as legislation was issued under their successors. The precise character of the contents is what often eludes us.

What remains to be done is to give readers of Gregory some idea of the institutional world in which he lived and of which, of course, he assumed his readers were well aware when he produced his narrative. What is presented here is not a constitutional or institutional history (*Verfassungsgeschichte* to the last generations of German historians, *Rechtsgeschichte* to their predecessors) including the legal and sociological dimension of private law, encompassing family, dependency and property. For obvious reasons, it cannot have this scope; whether or not such a beast can be created at this juncture in the historiography of the Merovingian kingdom is another question.²⁸ What is offered here is rather a simple sketch of the public face of the Merovingian state in which Gregory moved, with some modern reflections on the derivation of prevalent forms that should help contextualize his narrative.

3 Merovingian kingship

One should, I suppose, begin with Merovingian kingship itself. Even casual readers of Gregory will have noticed that the bishop regarded the origins of Frankish

27 Theo Kölzer, Introduction, *Die Urkunden der Merowinger*, MGH Diplomata regum Francorum e stirpe Merovingica, 2 vol. (2001), 1: xiii–xiv, and critique by Murray, “New MGH Edition of the Charters of the Merovingian Kings,” esp. 253–61. Kölzer's picture is accompanied by an overwrought assessment of the civil wars of Gregory's time. The countryside was always open to pillaging but too much has been made of the destructive consequences of the civil wars on the urban centres that may very well pale in particular instances before the internal mayhem of the Roman period; see Dey, “Art, Ceremony, and City Walls” (as in n. 66, below), 8 and n. 16. Gregory's perception of internal rampaging Frankish armies (*Hist.* 6.31) acting “sicut solet contra inimicos” echoes Cassius Dio's eyewitness account of Severus' treatment of Byzantium (75.14).

28 The closest thing, apart from the old, dated German and French handbooks, is Margarete Weidemann, *Kulturgeschichte der Merowingerzeit nach den Werken Gregors von Tours*, 2 vols, Römisch-Germanisches Zentralmuseum Monographien 3 (Mainz 1981–82), an invaluable synoptic arrangement of Gregory's work around the main topics of traditional constitutional history.

kingship with some uncertainty. In his search to document the earliest existence of Frankish kings he has left us valuable sources of which we would otherwise know nothing: the histories of Sulpicius Alexander and Rhenatus Profuturus Frigeridus (*Hist.* 2.9). But he was unaware of sources to which we are privy and which are our earliest references to the Franks; there, from the outset as it were, appear references to their kings. The earliest reference to the Franks in the *Panegyrici Latini* mention their kings as both allies and as enemies, already executed it so happens, and accompanied by large numbers of their followers wearing out the beasts in the arena at Trier.²⁹ These are the earliest references to the Frankish kings and the Franks themselves, and the dual role ascribed to the Franks in the panegyrics, as tendentious as they are, reflects their role in sources for the next two centuries. The use of 'Frankish' in this context, however, is not at all transparent. The term *Franci*, though hardly a novelty in the late 3rd-century sources where it first appears, is a new, generic designation for various ethnic groups along the lower Rhine. The term is Germanic, and historians in lock step tend to assume that it was the name of a confederation at some indeterminate point, but in fact there are various ways to account for the widespread use of a generic name in Roman sources (around the same time we find *Picti*, *Alamanni* and *Gothi*) and there is no way of knowing whether the currency of the term *Franci* was due to the peoples of the lower Rhine themselves or the Romans. The relation, if any, between these early kings and the late 5th- and 6th-century Merovingians is unknowable.

Merovingian kingship begins, following Gregory, with Merovechus/Meroveus, father of Childeric and grandfather of Clovis, a sequence that places the founder of the line in the mid 5th century.³⁰ The dynastic name 'Merovingian' flows naturally from Clovis' grandfather's name. It is worth noting that it was never used by Gregory, but it surely was current in his time and accounts for the popularity of what turned out to be the rather ill-fated, and repeated name of Merovech in the times of Chilperic and Chlothar II.³¹

Gregory's attempts to record the beginnings of Frankish and Merovingian kingship, though they seem sincere and focussed, have been found insufficient to succeeding narrators, both medieval and modern, who expect more from their Franks; so Gregory's account has been enlarged, sometimes entertainingly it must be admitted, but in the end without the substance that could serve for historical reconstruction. For example, in the succeeding century interest turned as much to the origin of the Franks as a people as to their kings. Gregory's meagre and halting account of early kings was straightened out and the Franks and their kings were provided with distant origins as Trojan exiles, fleeing the destruction of the city under their

29 In *Praise of Later Roman Emperors: The Panegyrici Latini*, trans. C.E.V. Nixon and Barbara Saylor Rodgers (Berkeley, 1994), nos. 6, 8, 10, 12. The relevant passages, with other early sources are collected in Murray, *From Roman to Merovingian Gaul*, 1–20.

30 In *Hist.* 2.9. Gregory explicitly does not trace Merovech's descent from Chlodio/Chlogio.

31 See Murray, "Post vocantur" as at n. 34, below, 25. Basina and Clovis are also names of Gregory's time evoking the early dynasty.

first king, Priam. The legend of Trojan origins, a Greek historiographical invention that had already serviced the self-esteem of a number of western peoples, hereafter became a standard component of Frankish history for almost the next millennium.

Modern efforts to expand Gregory's account are hardly less fanciful. Taking their cue from Remigius' famous address to Clovis as 'Sicamber', some scholars have sought to derive the Franks, or just the Merovingian dynasty, from the Sugambri, a 1st-century people annihilated by the Romans. Others have looked for more northern origins. Deploying asterisk philology, uncritical and selective handling of the sources, and an unwholesome sense of national identity, Reinhard Wenskus sought to provide the Merovingians with a more suitably Nordic origin, tracing the dynasty's genesis to the Chauci, a people noted in early imperial sources as inhabiting the North Sea coast. This argument was part of a broader strategy of establishing the Merovingians as representatives of an archaic type of Germanic pagan sacral kingship.³²

This discussion of early Frankish kingship may seem to have taken us far afield from understanding the realities of rule in the 6th century. But with sacral kingship, namely the notion that kings claimed divine descent, buttressing their legitimacy and role as intermediaries between their people and the gods, we come to a scholarly concept that deeply affects how we understand the character of Merovingian rule, the role of the kings as rulers, and the relation of Merovingian kingship to that of the succeeding Carolingians.³³

Sacral kingship is a scholarly construct.³⁴ It is not a product of the sources but of a conviction, innocent enough in some forms, less so in others, about the character of archaic society and the role of religion in shaping its political forms. Why such a putative archaic society should be a model for the Merovingian period is never adequately explained, other than by another assumption, namely that Merovingian kingship, and by implication the institutions connected with it, were 'Germanic'. Proponents of sacral kingship are not believers in Occam's razor. As the disjointed scraps of evidence offered up to demonstrate the truth of the theory have been refuted, and contextualized sufficiently to eliminate fanciful notions of sacrality or royal divine descent, its champions repeat what may become their battle cry: but there *must* be something else to the sources, meaning scraps of a primitive myth or pagan practices. Late Antiquity and the Merovingian period are the Valhalla of historical studies. Ideas are done in, but rise again another day. Sacral kingship is not likely to go away entirely, but it exists in a realm outside

32 Murray, "Reinhard Wenskus on 'Ethnogenesis', Ethnicity and the Origin of the Franks," 39–68; for the Sugambri, 61.

33 Supposing the movement from a pagan sacral kingship of the Merovingians to a Christian sacred kingship and *imperium* of the Carolingians (conveniently accompanied with anointing) is a thoroughly distorting template that still underlies some modern interpretations.

34 The Merovingian material is discussed in Alexander Callander Murray, "Post vocantur Merovingii: Fredegar, Merovech and 'Sacral Kingship'," in *After Rome's Fall: Narrators and Sources of Early Medieval History, Essays presented to Walter Goffart*, (ed.) Alexander Callander Murray (Toronto, 1998), 121–152; [above, ch. 1].

empirical history and, at least for the moment, hardly excites the affirmation of most scholars studying the period.³⁵

Sacral kingship is not a key to anything about the Merovingian kingdom, but rather a distraction to the rich testimony of its sources. There was nothing pagan about Merovingian kingship. It was deeply connected to the Christian church, imbued from the beginning – as attested in the very earliest of our sources – with the teachings of Christian rulership, and lectured on such, even excommunicated, when it failed to pass muster.³⁶ Though the language of Gregory and his contemporaries assumed and encouraged the Christian sensibilities of its kings, and reflect the common view that God was ultimately the dispenser of authority over His people, Merovingian kingship itself, nevertheless, like that of contemporary states, was essentially a secular institution. The institutions over which it presided were not unaffected by the Frankish forms and practices, especially in procedural matters, of the late imperial Frankish settlements of northern Gaul, as has already been noted. But the overwhelming conditions that shaped the Merovingian state were the late – sometimes very late – practices of the Roman Gallic provinces and cities at the time of their integration into the Merovingian state.

4 ‘Frankish’ versus ‘Germanic’ institutions

In speaking of a specific range of institutions, I say Frankish, not Germanic, pointedly. The former term is descriptive, does not pre-judge the ultimate source of the law, and refers to and limits its scope to historically known conditions, even if they are not at all well understood. The latter term in legal and institutional terms refers to an abstract, inferred, model of practices held to be in effect across a wide linguistic and cultural community at various indefinite points in time and space. The linguistic model of ‘Germanic’ rarely justifies the cultural presuppositions that

35 There is a recent tendency to abandon (that is, avoid) source criticism, and go for universal archaic models, apparently provided by African kingship. As an example see the fantastical world reconstructed by Régine Le Jan, “La sacralité de la royauté mérovingienne,” *Annales: Histoire, Sciences Sociales* (2003/6): 1217–1241, wherein, i.a., the assassination of Chilperic emerges as the sacrifice of a sacred king. Margaret Murray might approve.

36 A smattering of texts: the letter of Remigius to the young Clovis, *Epistolae Austrasicae* no. 2, (ed.) W. Gundlach MGH *Epistolae* 3.1, with Emendata by Bruno Krusch, 719–20, and cf. *ibid.* *Epistolae aevi Merovingici collectae* no. 15; excommunication of Charibert, *Hist.* 4.26; speech from and to Guntram *Hist.* 8.30. *Hist.* 10.16 provides the preamble to a judgment: “piis atque catholicis populo datis principibus quibus concessa est regio” – from Clovis onwards the Merovingians, no matter how badly they behaved, never failed this criterion. Chilperic’s notions, however one interprets them, never ventured off the paths provided by Christian thought. See more generally Yitzhak Hen, “The Christianisation of Kingship,” in *Der Dynastiewechsel von 751: Vorgeschichte, Legitimationsstrategien und Erinnerung*, (eds.) Jörg Jarnut and Mathias Becher (Münster, 2004), 163–177. The emphasis on the distinctive character of the 7th century here is, I think, a little exaggerated.

have long indiscriminately accompanied it.³⁷ In a Frankish context, the model as applied to institutions is of negligible value and often distorting.

The term Frankish has as a consequence to do multiple duties, serving as a general term for the kingdom of the Merovingians with all its diversity, for the ethnic Franks within the kingdom – a sociological concept, real enough but ever changing in its reality – and for the distinctive practices derived from legal forms of that community. This circumstance is at least in general terms less complicated than it sounds. The context of particular uses of the term is almost always obvious.

5 Administration

A conventional and useful way of looking at any administrative system is to distinguish between its central and regional forms – in Merovingian terms, the palace and the cities, or regional administration.³⁸ Three fundamental points should be kept in mind about the way Gregory chose his representation of them. First he took much for granted on the part of his reader and had no interest in describing structural features of Merovingian governance; we deduce what we can from incidental aspects of this narrative. Second, his narrative fell, it seems, unequally on the activities of the courts and the events of the cities, especially, but not only, Tours and Clermont. Gregory obviously knew the cities best but he was still an intimate of the courts of Chilperic and Childebert and had good knowledge of that of Guntram. This knowledge informs his judgment, but not always the narrative detail. And thirdly, his sensibility as a recorder of contemporary affairs, despite an interest in locality, responded most to the actions of important players. The thrust of his narrative had little time for allusions to low-level actors in the apparatus of the kings and their top officials. No attempt is made here to discuss every term of official position that appears in Merovingian sources, merely those offices that allow a sketch of the main administrative features of the kingdoms.

5.1 *The officials of the palace*

The palace is an obvious presence in Gregory's historical narrative, especially those parts dealing with the minority of Childebert II, when the king was under the

37 The model of course has also been accompanied by a racial component, a convention – and sometimes it is only that – apparently difficult to escape: a recent example is Peter Heather's notion that Zosimus' description of Radagaisus' force as a mixture of Celts and Germans shows that his army was "multi-racial" (*The Fall of the Roman Empire: A New History of Rome and the Barbarians* [Oxford, 2006], 194). There is probably a two-fold error here.

38 The distinction is the basis for Marculf organizing charters in his Formulary: "tam in palatio et in pago," MGH Formulae, (ed.) Karolus Zeumer, *praefatio* and contents of Books 1 and 2; henceforth *Formulae Marculfi* and see n. 26, above. The phrase is used in other formulae in the same way. A synonym of *pago* is *civitas* (see below, p. 162). Cf. the English phrase 'court and country.'

guardianship of magnates, and when factions competed for control of the king.³⁹ Though some figures are prominent in the political actions of those years (but not the guardians of Childebert II), the character of the Austrasian palace is barely hinted at; the same is true of the Chilperic years, a time, though, when a king, and queen, were the centre of royal actions. Gregory's narrative, of course, does mention many palace officials by name with an accompanying title of varying degrees of specificity. The problems of interpretation are formidable. The semantics of terminological usage have not yet been rigorously worked out and may always escape our understanding. Terms may embrace the designation of ranks or offices or both (this seems true where personal names are used) or may be descriptive terms, especially where groups of officials are referred to. The hierarchy of offices and ranks, and therefore their relative importance, and the career path of their holders are imperfectly known. Scholars have as a consequence inferred varied hierarchies and functional divisions among them.⁴⁰ To complicate matters, some ranks were almost certainly found in both the regional and central administration. Even high offices had a plurality of holders, confounding our understanding of the hierarchy and the relative status of general terms of office.⁴¹ And the palace administration of the kings was paralleled by that of the queen; the ranks in both tracks were hardly considered equivalencies, even if the king at the end of the day could wilfully dispose of all of them if he so wished.

Gregory used a limited number of general terms for the really important circle around the king who participated in decision making. Probably the most specific, to judge by its repeated usage and narrow semantic context is *proceres*, commonly found, as it happens, in an Austrasian context, and in the case of an embassy led by Egidius during Childebert's minority modified as *primi proceres*. *Proceres* is also the term used for officials involved along with bishops in negotiating the Treaty of Andelot between Austrasia and Burgundy.⁴² The term is commonly used to describe members of the tribunal in 7th-century judgments of the king's court;

39 Only one guardian (*nutritor/nutricius*) at a time is mentioned for Childebert – Gogo and his successor Wandelenus (*Hist.* 5.46; 6.1). The plural, *nutritores*, is used for guardians during the minorities of Chlodomer's sons and for Choathar II (*Hist.* 3.18; 8.9).

40 See, for example, Weidemann, *Kulturgeschichte* 1: 24, 90 with n. 180.

41 Administrative offices that are probably in context relatively modest are clearly referred to in the plural: *cancellarii* (*Virtutes Martini* 4.28), secretaries; *camerarii* (*Hist.* 4.26), financial officers; *thesaurarii* (*Hist.* 7.5), treasury officials. But the pattern is repeated further up the hierarchy: *domestici* (*Hist.* 9.36), *comites* within the palace (9.36). *Cubicularii*, chamberlains, closely connected with the royal person at least etymologically, almost certainly existed in multiple numbers (cf. *Hist.* 10.10), and multiple *referendarii* (heads of the *cancellarii*) clearly existed in the 7th century, as did *comites palatii*, who again in the seventh century had important judicial functions in proceedings before the king's court.

42 *Hist.* 4.5 for the group responsible for decisions during the minority of Theodebald; 5.16, for the group around Childebert at the meeting at Stonebridge; 6.3, for members of Egidius' embassy to Chilperic; 9.20, Treaty of Andelot. In similar, important decision-making contexts: *Hist.* 5.46; 8.21; 9.8. These instances account for all the uses of the term in Gregory. It is found in other sources.

optimates is a common synonym. In Gregory a synonym, though with a broader semantic field, is the comparative adjectival term, *seniores*, used in similar contexts.⁴³ The use of a comparative adjective in the same way is *maiores*, generally modified by the ablative *natu*.⁴⁴ Does *maiores natu* mean ‘greater by birth’ in the sense of nobles or does it have its conventional classical meaning ‘greater by age’, that is ‘older’ and in the plural ‘elders’, and therefore literally *seniores*, which of course could mean lords or nobles! Etymology as a starting point for these terms is but a poor guide to their meaning *in situ*. They referred to the great men – magnates is one English term for them – whether their position was ultimately based on birth and privilege (as surely was the case for most of them) or only royal service. A source, to be discussed below, seems to call the same group *potentes*, a term meaning ‘the powerful’; this word was used in the late empire, generally referring to officials, and continues to surface in Merovingian sources. In contexts where Gregory notes the role of the *proceres* (or similar terms) in important decision making, they are almost always accompanied by *episcopi*, bishops. Merovingian legislation shows the same conjunction.

Gregory gives only one brief general description of a court. In 589 important military residents of Soissons and Meaux asked Childebert II to send one of his sons to rule them directly. Childebert sent them Theudebert and appointed the officials that would make up his court: *comites*, *domestici*, *maiores*, and *nutricii*, as well as “everyone who was essential for providing royal service” (*Hist.* 9.36). The plural counts (*comites*) may be a general term for important office holders or may serve to cover the two offices (occupied in the singular or the plural) of the count of the palace (*comes palatii*) and count of the stable (*comes stabuli*). The *domestici* in the palace were responsible for running and provisioning the household. The *nutricii* were those responsible for the upbringing of the young king, who was only four years old at the time.⁴⁵

The following are the great offices of the palace, with the names of some holders prominent in Gregory’s narrative:

Cubicularius, chamberlain. Charegyselus, obviously an important figure in the court, was assassinated alongside Sigibert. Gregory accuses him of breaking wills (probably meaning those of ecclesiastics or donors to the church), but whether he did that as a consequence of the judicial powers of his office or in an advisory

43 *Hist.* 4.27 (context is vague, important, but social); 6.24, surely a direct synonym with *proceres*; 6.31 (analogous to 9.20); 6.31, mutiny against Egidius and those around him; 7.33, those of Childebert’s kingdom knowledgeable of the plot supporting Gundovald; 7.36, authors of a letter to Theodore giving him orders regarding Gundovald (synonym, *principes*). *Seniores*, as a comparative adjective, is also used widely as a term for leading municipal officials, and in the singular as a term for a leader of any enterprise.

44 *Hist.* 6.24 shows *maiores* (though without *natu*) as a synonym of *seniores* in the same sense as *proceres*. For the full phrase in a similar context: *Hist.* 7.32; and as the principle judicial consultants along with bishops: *Hist.* 8.30.

45 *Nutritores* is a synonym, and during minorities had a political (and by implication) legal significance; see above, at n. 39.

capacity to the king or as delegated judge, is not clear. The names of several other *cubicularii* are given, notably Eberulf, who sought the asylum of Saint Martin's on Chilperic's death and after spurning Fredegund, and Chundo, who was stoned to death by order of Guntram after a failed judicial duel in the Vosges.⁴⁶

Comes stabuli, count of the stable. A rogues gallery: Chuppa, serving Chilperic; Sunnegisil, implicated in a plot against Childebert, Brunhild, and Faileuba; and of course Leudast while in service to the Queen Marcovefa.⁴⁷

Comes palatii, count of the palace. All examples are Austrasians: Ciucilio, a supporter of Merovech, beheaded by Chilperic, and formerly in service to Sigibert (*Hist.* 5.18); Trudulf, killed in the battle of the Woëvre (*Hist.* 9.12), and Romulf, sent with a mayor of the palace to reassess the tax obligations of Poitiers (*Hist.* 9.30). There is no hint of the important judicial role that *comites palatii* played in the 7th century.⁴⁸

Domestici. A certain Flavianus appears three times, in one instance in a clear judicial context where he presided over a royal tribunal that freed Chuppa and Animodus, after receiving bribes, according to Gregory.⁴⁹ Whether this role reflected the job description of his post or delegation by the king is impossible to say. One might guess the latter and that Flavianus was one of those Gregory included among the *proceres*; other *domestici* need not have been so important.⁵⁰

Referendarii. They were in charge of the writing office and involved in the drawing up of charters and orders; Otto, the former *referendarius*, testified that his signature, which appeared on the charters produced by Egidius at his trial, was forged. *Cancellarii* presumably constituted the staffs of *referendarii*. The royal signet ring used for sealing documents might be in the keeping of a *referendarius*. Those identified as *referendarii* by name in Gregory constitute a lengthy list. A dozen are mentioned, two or three being in the service of queens.⁵¹ Their prominence in the narrative has probably less to do with the relative importance of the

46 *Hist.* 4.51, 7.21, 10.10; see also 7.13 (Ebero) and 7.18 (Faraulfus).

47 *Hist.* 5.39, 5.47, 9.38, 10.5, 10.38.

48 For an attempt to sort out the kinds of pleadings before the 7th-century royal tribunal, see, Alexander Callander Murray, "So-Called Fictitious Trials in the Merovingian *Placita*," in *Gallien in Spätantike und Frühmittelalter: Kulturgeschichte einer Region*, (eds.) Steffen Diefenbach and Gernot Müller (Berlin, 2013), 297–327 [below, ch. 9].

49 *Hist.* 9.9; 10.5; 10.15; and J.R. Martindale, *Prosopography of the Later Roman Empire*, vol. 3: Flavianus (Cambridge, 1992). The tribunal is said to be "in praesentia regis," but as is implied here, and shown in 7th-century judicial documents, the king need not be there, though he would receive a written report of the trial (in the 7th century at least vouched for by a *comes palatii*).

50 To complete the list: Leonardus former *domesticus* (*Hist.* 7.15), possibly attached to Fredegund but a receiver of a belt from Chilperic (cf. 161, below), and Gundulf, Gregory's great uncle, a former *domesticus* who had obviously gone up in the world by becoming a duke (*dux*) – but his may have been a regional office.

51 *Hist.* 10.19 (Otto); 5.3 (Siggo, keeper of Sigibert's ring); *referendarii* of queens: 5.42 (Ursicinus); 7.32 (Bobolenus); and possibly 5.28 (Marcus, nearly lynched in Limoges, which was in Fredegund's endowment). *Cancellarius*: *Virtutes Martini* 4.28.

office in the court, though by any measure considerable, than the potential of the position to be a stepping stone to the episcopate. The position of bishop seems to have been the second to last resting place of a good number of *referendarii*, despite their lay status. About five of Gregory's *referendarii* became bishops, which of course is why we hear about them at all. Another former *referendarius* is noted as having become a priest.⁵²

One other court official needs to be noted, not least because of his importance in the following century. Neither Gregory, nor any other 6th-century source, establishes clearly a single head of the court, apart from the king. But in the course of the 7th century this position was increasingly occupied by a singular mayor of the palace. The mayoralty eventually became the preserve of the Pippinid house and produced a new dynasty of kings called the Carolingians. But mayors are few and far between in 6th-century sources. Three are mentioned by name in Gregory, two of whom were the mayors of queens. The third, Badegislus, the first mayor of the palace for whom we have a name, was made bishop of Le Mans by Chlothar I – clearly a poor choice by Gregory's standards, and with a wife who was an even greater horror.⁵³

Contemporaries no doubt had a good idea of the subtle and not so subtle distinctions in status implicated in the system of palatial ranks and offices. But our own sense of the gradations, and even functions, is rudimentary. The references of Gregory that could be construed as marking a career path are either fairly obvious or else confounded by some of the cross-tracks referred to above between palace (the households of the king and the queen) and regional administration.⁵⁴ The one place where Gregory does pointedly give the outline of a career, that of Leudast (*Hist.* 5.48), is presented as a servile burlesque of honourable advancement (from *culina*, to *pistillum*, to *cophinus*) until it hits, relatively speaking, the minor (*custos equorum meliorum*) and then major leagues (*comes stabuli* of Queen Marcovefa). Leudast is said to have “canvassed for” – the verb is *ambio* – the latter position. The king's service was the big step when, on the queen's death, Leudast, by Gregory's account, bought his way into the *comitatus* of Tours, an important position in the

52 Bishops: *Hist.* 5.42 (Ursicinus) – he was elected, but it is questionable if he was ordained; 5.45 (Flavus); 8.39 (Licerius); 9.23 (Charimeris); 10.31 (Baudinus). Priest: *Hist.* 9.16 (Theuthar).

53 The earliest mention of the office in the pre-conquest Burgundian palace is in the plural (*maiores domus*): *Lex Burgundionum* Pr. Const. [5]; Extrav. 21.14 (MGH LL NG 3.2). Mayors of queens: Waddo (*Hist.* 6.45; 7.27, 28); Florentianus (*Hist.* 9.30); *Virtutes Martini* 4.6). Badegiselus (*Hist.* 6.9; 8.39).

54 Gregory's reference to Baudinus, bishop of Tours in 561, as a former *domesticus* (*Hist.* 4.31) and former *referendarius* (*Hist.* 10. 31) is probably no testament to a career path merely imperfect knowledge or memory on Gregory's part. A *referendarius* seems more likely than a *domesticus*, but one can never tell. The career of Waddo, prominent in the Gundovald revolt, is significant but rocky: from a regional administrator (count of Saintes), he became a mayor of the palace (*maior domus*) assigned the departing Queen Rigunth, which must surely have been a promotion, if such it really was, to hell.

The career path of Gregory's kinsman Gundulf from *domesticus* to *dux* (*Hist.* 6.11) is not obvious and is complicated by our not knowing if these were regional or palace offices.

regional administration. Gregory's version of Leudast's career is tendentious but not likely to be inaccurate insofar as the details given, though there may be much left out, including Leudast's abilities.

There is however one text from Gregory's time that does give us an insight into the hierarchy of the palace and the career path it offered, though it fails, alas, as a key to unravelling the mysteries of preference and advancement. Fortunatus wrote a poem praising a certain palace official called Conda, who had served in the palace under Theuderic I (a. 511–33), Theudebert (a. 533–48), Theudebald (a. 548–55), Chlothar I (a. 555–61), and Sigibert.⁵⁵ This resolutely Austrasian career it should be noted is punctuated by uninterrupted service to the unitary king Chlothar I. Fortunatus' characterization of its course should be a motto for bureaucrats everywhere: "Kings have come and gone but you have retained your offices."⁵⁶ Conda, whose ancestry was modest, entered the palace of Theuderic at a young age.⁵⁷ The beginning of his rise was the position of tribune (*tribunus*) under Theuderic. Theudebert awarded him the honour of the *comitiva* – an honour that was originally invented by Constantine and came in several grades; it was still attached to various offices under the Merovingians.⁵⁸ The king also awarded him *cingula*, belts (possibly baldrics), as marks of esteem – merit badges, as it were. It is not clear what kind of *comes* Conda was or what his duties were. Still under Theudebert, the office of *domesticus* was added to the positions he had already earned, and the palace applauded its "watchful manager" (*vigil dispositor*).⁵⁹ During the reign of Theudebald we are told Conda played a guiding role in the king's minority and in preparing legislation, and under Chlothar I, he retained his authority in the palace, doing all this, it seems, with the title of *domesticus*. As a final reward, Sigibert promoted him to sit among the "outstanding *potentes*" thus, advancing his rank to that of a companion, *conviva*, of the king.⁶⁰ By Fortunatus' writing then, Conda had obtained the office of *domesticus*, with the elevated rank of *conviva regis*. The latter term

55 *Opera poetica* 7.16, MGH AA 4, (ed.) Fridericus Leo. Fortunatus' opening lines (1–4) imply all Conda's career was served in the palace but, it must be admitted, his language is designed for effect not clarity.

56 "Mutati reges, vos non mutastis honores," 7.16, line 35.

57 His relatively humble position is implied by the conceit that he and his posterity will bring prestige to his ancestry, and line 15: "a parvo incipiens . . . in altum." Cf. the obituary of Aredius, *Hist.* 10.29: "non mediocribus regionis suae ortus parentibus, sed valde ingenuus . . . Theodoberto regi traditus aulicis palatinis adiungitur." On the court as a focus for the education of (mainly noble) youth, see Wood, "Administration" (as in n. 94), 74–76, 79–81.

58 *Comes palatii*, *comes stabuli*, *comes civitatis*. This undoubtedly does not exhaust the list of its use.

59 The honours of office were retained, never lost, but added to, like modern degrees. A comparison with modern high political office and military ranks is also à propos. Gregory seems rigorous in the use of the prefix *ex* or its like for former office holders.

60 "iussit [scil. Sigiberchtus] et egregios inter residere potentes / convivam reddens proficiente gradu," lines 41–42. The term *conviva regis* appears also in *Lex Salica* 41.8, a controversial passage on wergelds, and in *Lex Burgundionum* 38.2.

is never used by Gregory and was probably folded into his general descriptors like *proceres* or *seniores*.

Given the role of the palace in Gregory's narrative, this short and inconclusive sketch must suffice for a moment; a longer, semantically complicated historical exposition based on sources of disparate chronological provenance must await a different venue.⁶¹ The regional administration, on the other hand, is far more important to Gregory's narrative and thanks to it, and other 6th-century sources, is much better understood.

5.2 *Regional officials and their administration*

Consideration of regional administration must begin by noting the basic territorial element of Merovingian governance, the building block, as it were, of the kingdoms and their administration, both secular and ecclesiastical. This was the Roman-era *civitas*, or city, composed of a built-up urban area, the town or city in a narrow sense, and the territory, occasionally extensive, subject to its jurisdiction.⁶² By the late Roman period it had also become the focus of Christian communities and location of the bishop's seat; *civitates* were thus what the church ultimately decided to call dioceses, a word used by Gregory but without yet this specialized meaning.⁶³ Merovingian sources use a variety of terms for the city in this dual sense with slightly different semantic emphases but all capable of being synonyms: *civitas*, *urbs*, *municipium*, and, especially, *pagus*. The last term could also be used not only for the city broadly understood, but also for the territory over which it ruled, for a subdivision of the territory, and for higher level regions than the *civitates* (duchies, to speak a little anachronistically) – the context in the sources is almost always clear.⁶⁴ Despite overlapping secular and ecclesiastical terms, Gregory's narrative preference was for the secular *civitas* and its synonyms.

There were about a hundred and twenty *civitates* in Merovingian Gaul, the vast majority going back to Roman cities, a few to second-rank settlements called

61 For reasons of space I have passed over two questions that have an important profile in the literature. 1) The tiresome argument as to the Roman or Germanic origin of the household offices; on the current vogue for 'synthesis', see above n. 3. The argument for Germanic continuity has to be based on post-Merovingian offices and seems too little, too late; the practices and nomenclature in roughly contemporary states are more important. And, connected to the same question, 2) the claim that palace administration was the extension of the domestic household arrangements of the primitive (Germanic) 'household'. For refutation, see Karl Kroeschell, *Haus und Herrschaft im frühen deutschen Recht: Ein methodischer Versuch* (Göttingen, 1968).

62 See Map 1 [below p. 354] with Gallic *civitates* of the *Notitia Galliarum* arranged according to their episcopal configurations.

63 Gregory uses it to refer to the circumscription of a bishop ('diocese') or its ecclesiastical subdivisions ('parishes') as, apparently, the spirit moves him. *Parrochia* just happens to be a synonym meaning parish in Gregory, but it is clear from other sources that it too had not yet generally acquired this specialization.

64 Murray (as in n. 88), 802.

castra whose relative fortunes (economic or political) had improved. Gregory mentions by name ninety-three of them.⁶⁵ Most possessed impressive Roman-era fortifications, erected at great expense, particularly, it seems, following the troubles of the 3rd century but also for a good time after that. These walls, surely a not insignificant reason for the survival of the *civitas*, were kept up; a few that survived the 19th century can still be seen.⁶⁶ They were obviously of importance during the hostile deployments of the kings.⁶⁷

In the empire the *civitates* had been organized into provinces, the leading *civitas* of a province being called the *metropolis*, a Greek word originally, meaning ‘mother’ city. The Frankish kings made no use of the province as a unit of administration, with the exception of Provence, the province par excellence, acquired from the Goths in 536/7, and governed by an appointed *rector*, governor, or *patri-cius*. In place of the province, the Merovingians grouped *civitates* together when necessary under the command or office (*ducatus*) of a duke (*dux*). Still largely an ad hoc grouping in Gregory’s time, a few, like Champagne (*ducatus Campaniae*) centred on Rheims, were beginning to enter the language as permanent identifiable regions. If the province disappeared as an element of secular administration, it still lived on, with a few regional adjustments (Map 1), as a unit of ecclesiastical organization and authority, the metropolitan bishop of the chief city providing guidance to the suffragan bishops of the other *civitates* that made up his province. A point of minor political aggravation for kings, and others, was that the

65 Weidemann, *Kulturgeschichte* 2: 44. Simon T. Loseby, “Lost Cities: The End of the *civitas*-system in Frankish Gaul,” in *Gallien in Spätantike und Frühmittelalter: Kulturgeschichte einer Region*, (eds.) Steffen Diefenbach and Gernot Michael Müller, Millennium-Studien/Millennium Studies 43 (Berlin, 2013), 223–254, provides a sober and perceptive sketch of the evolution of the Gallic *civitas* from the time of Augustus; he ends with a bold effort to deal with the post-Gregorian 7th century. And see idem, “Decline and Change in the Cities of Late Antique Gaul,” in *Die Stadt in der Spätantike – Niedergang oder Wandel? Akten des internationalen Kolloquiums in München am 30. und 31. Mai 2003*, (eds.) Jens-Uwe Krause and Christian Witschel, *Historia Einzelschriften* 190 (Stuttgart, 2006). Unlike his titles, Loseby’s texts in detail are anything but gloomy.

66 Stephen Johnson, *Late Roman Fortifications* (Totowa, 1983), esp. 32–50, 82–117; Harald von Petrikovits, “Fortifications in the North-Western Roman Empire from the Third to the Fifth Centuries A.D.,” *Journal of Roman Studies* 61 (1971): 178–218; R.M. Butler, “Later Roman Town Walls in Gaul,” *Archaeological Journal* 116 (1959): 25–50. The origins of the Gallic walls are the subject of renewed interest. See Hendrik Dey, “Art, Ceremony, and City Walls: The Aesthetics of Imperial Resurgence in the Late Roman West,” *Journal of Late Antiquity* 3/1 (2010): 3–37; and Bernard S. Bachrach, “The Fortification of Gaul and the Economy of the Third and Fourth Centuries,” *Journal of Late Antiquity* 3/1 (2010): 38–64 and Loseby, as in previous note – all with literature.

67 I.a. see *Hist.* 4.30 (attack on Arles); 4.50 (Chilperic retreats to Tournai to await Sigibert’s onslaught); 6.41 (Chilperic retires to Cambrai to await attacks from Childebert and Guntram; orders his counts and dukes to repair the walls of their city fortifications and to take refuge in them). Bernard Bachrach draws out the tactical and strategic implications of the ubiquitous presence of fortifications in Merovingian warfare in “The Imperial Roots of Merovingian Military Organization,” in *Military Aspects of Scandinavian Society in a European Perspective, AD 1–1300*, (eds.) A.N. Jørgenson and B. L. Clausen (Copenhagen, 1997), 25–31.

ecclesiastical province did not necessarily coincide with the constituent kingdom as *civitates* were shuffled about at times of royal succession; suffragan bishops might reside under a king different from that of their metropolitan. The status and authority of metropolitans could suffer in these conditions.

The *civitates* were, to speak only slightly loosely, the currency of Merovingian politics. The various *regna* of the Merovingian kings were made of *civitates*. While over time important traditions of loyalty could be built up among these communities, not a few reveal mixed allegiances that might divide the citizenry when hostilities arose. Kings maintained agents in the *civitates* of their rivals.⁶⁸ The reliability of the *civitas*' leadership, secular and ecclesiastical, was central to royal stability when faced with the designs of competing Merovingian kinsmen, and so kings attempted to secure the allegiance of the *civitas* by binding the inhabitants with oaths of loyalty.⁶⁹ Divisions of the kingdom were made largely according to the *civitates*, and records of the revenues they produced were retained by the kingdoms, and their strategic importance well understood. *Civitates* were included among the endowments of queen consorts, and even queen daughters (though in the latter case without sign of a separate administration). The revenues, which were largely fixed,⁷⁰ could be divided if necessary and redirected through grants and exemptions (a potential revenue stream early tapped by the church);⁷¹ occasionally districts could be hived off to meet on-the-ground strategic and communication needs. The terms of the Treaty of Andelot of 587 (*Hist.* 9.20) illustrate most of the last few points.

There were other concentrated settlements within the *civitas* area: *castra*, *vici*, and *villae*. Translations here are not necessarily enlightening, without long discussion, as there is no universal agreement as to what even common English terms mean. The first was a fortified settlement, the second referred to either towns, small towns, or villages, with dependent territory. The villa (to anglicize without translating), and its occasional synonyms, including *domus* (lit. 'house' but in the sense of an economic enterprise of some kind) may have looked like moderate-size settlements, villages in appearance, but the term, which surely had a fiscal significance, also embraced settlements supporting different modes of ownership including those that we would consider estates.⁷² *Castra* could be substantial

68 In the times of Chlothar I, the abbot Domnolus in Paris hid spies sent by the king to gather intelligence on Childebert I (*Hist.* 6.9).

69 On such oaths, see Stefan Esders, below chapter 12.3.3g. [Viz. *A Companion to Gregory of Tours.*]

70 Hence outrage at Chilperic's new assessments tied to a tax increase (*Hist.* 5.28), and Maroveus of Poitiers' request that Childebert revise the assessment of his city to relieve those now poor or widowed (*Hist.* 9.30).

71 Is this the meaning of Chilperic's famous complaint, as recounted in Gregory's obituary of the king (*Hist.* 6.46)? See Alexander Callander Murray, "Merovingian Immunity Revisited," *History Compass* 8/8 (2010): 921 n. 33 [above ch. 6]. On exemptions, see below, at n. 103.

72 Murray, *Kinship Structure*, 74–78. That villas were fiscal units, or to put it in another slightly more comprehensible way, units of state obligations for which the inhabitants were jointly responsible, no matter the modalities of ownership operating within it, seems lost sight of in recent searches

places indeed, as suggested by the transformation of some late Roman *castra* into bishoprics/*civitates* and also by Gregory's famous description of Dijon (*Hist.* 3.19). His picture of the town, the residence of his renowned great grandfather, Gregory, Bishop of Langres, is not disinterested. Nevertheless, he thought it deserved to be a *civitas* and the site of a bishopric. Situated in a fertile plain and amid hills producing good wine, Dijon was, Gregory tells us, surrounded by water, which turned water mills, and defended by the stoutest walls; these were interrupted by four gateways and protected with thirty three towers. Its curtain wall, fifteen feet thick and made of squared stone in most of its lower courses and of smaller stones in the upper, reached the height of thirty feet. It became a bishopric in 1731.

The officials and their assistants who governed the *civitates* for the king are well known from 6th-century sources. The top rank was *dux* (duke), followed by *comes* (count), royal appointees who received commissions and who were classed among the kingdom's elite as *virii illustres*, a late Roman honorific for the top nobility and state officials;⁷³ then *tribunus*, who may also have been commissioned; and finally *centenarius*. There has been many a dispute as to the origin of the individual offices. It is safe to say that their Roman origins are now widely, if not universally, accepted.⁷⁴ Debates about individual offices however fail to recognize that not just this or that office was derived from late Roman terminology but that the system as a whole is derived from the late Roman army, though considerably simplified.⁷⁵ *Dux* was the generic name of imperial generals and borne as a particular title by regional commanders. *Comes*, though, in its highest order, a distinction that could be applied to important generals, came to be associated with the subordinates of the general, and especially commanders based in cities, *comites civitatum*. *Tribunus* was a standard name for unit commanders. Vegetius gives a thumbnail sketch of the hierarchy when he recommends that the general (*dux*) know by name, if

for 'villages' or 'estates'; see e.g. *Lex Burgundionum* 38.4, 5, regarding the provisioning of official travellers. The modern expectation that the term *villa* should embrace a single type of ownership is an unrealistic premise. Cf. the peregrinations of Wickham on the subject (*Framing the Early Middle Ages*, esp. 510–13), whose imaginative clarifications sometimes add their own layer of misunderstanding to the subject.

73 *Formulae Marculfi* 1.8 is the example of such a commission. The formula could be filled in as required for count, duke or patrician (on the last see below) and pertains to a regional command. The emphasis on judicial and police powers is notable, as is its recognition of diverse ethnic groups ("Franks, Romans, Burgundians or others"), and the special injunction to look out for widows and orphans. Gregory never uses the title 'illustrious' in the *Histories*, though it is widespread in other sources. His term *virii magnifici* may be intended as a synonym. For *illustres* in an imperial context, see A.H.M. Jones, *The Later Roman Empire 284–602* (Oxford, 1973), 528–30.

74 On the literature for the Franks, see Murray (as in n. 91) nn. 4, 19, 88, 91. Gideon Maier, *Amtsträger und Herrscher in der Romania Gothica. Vergleichende Untersuchungen zu den Institutionen der ostgermanischen Völkerwanderungsreich* (Stuttgart, 2005), is a counter-attack against the current trend, though only incidentally dealing with the Franks; see my review in *Speculum* 83/1 (2008): 215–16.

75 A more detailed version of the argument is given in Murray (as in n. 91), 65–74.

possible, every *comes* and *tribunus* under his command.⁷⁶ As for sub-officers, the common names for them were based on a new system of ranks developed from the 3rd century on. Its centrepiece, which probably became the generic term, was *centenarius*, a title that largely, though not completely, displaced the old term of centurion, which was still retained by regiments that went back to the Principate and which still makes the occasional appearance in early medieval sources.

How are we to interpret the modelling of Frankish regional ranks on the Roman military?⁷⁷ Three points readily suggest themselves. 1) The Franks at some point organized their forces roughly along the lines of the predominant military of the day, the Roman provincial army, whom they often served directly as individuals (sometimes at the highest level), for whom as groups they acted as contractors or allies, and whose position they took over in the late 5th century. 2) In the process of occupying the Gallic *civitates*, and integrating their citizens into the new regime, both civil and military, Frankish forces and their commanders were territorialized, in a way that was not foreign to the last stages of the western Empire or its Byzantine counterpart in the east. 3) Its commanders, in being dispersed, and ultimately just appointed, to the various *civitates*, took on both civil and military functions, again a feature with imperial and Byzantine parallels but thoroughly carried out in the Merovingian system. This last point brings us to the actual role of regional officials within the *civitates*.

Merovingian dukes like their Roman counterpart were generals, and, like their Roman counterparts who bore the title in a narrow sense, they were regional commanders. It is not possible to connect all the *duces*, named and unnamed, in Gregory's pages with specific regions, and it seems likely that some resided in the palace around the king, or elsewhere, awaiting assignment as regional commanders or as leaders of, or participants in, campaigns and expeditions, or to be called upon for their expertise.⁷⁸ The *ducatus* (the term refers to the office or command of a *dux*, not a particular territory, that is, duchy as will later be the case) was clearly at some level the pinnacle of service – in one place (*Hist.* 9.12) Gregory characterizes it, in a flowery phrase, as the preeminence of ducal command (*primatus ducatus*). Guntram Boso, already a *dux*, though an imperiled one, could fantasize that one day he would hold the “ducal command of the whole kingdom” (*ducatus totius regni*) once Merovech, Chilperic's son, became king (*Hist.* 5.4). The potential power of the title was not limited to specific regional offices.

76 *Epitoma rei militaris* 3.10, (ed.) C. Lang (1885; rpt. Stuttgart, 1967); he also adds, “and *domesticus*”; the Merovingian *domesticus*, a palace and fiscal official, is not his counterpart. *Domestici* in the Roman army were imperial staff officers.

77 *Comites* were also found in the palace administration, though their position with respect to regional counts is not clear. I would think there might be *duces* attached to the palace and *tribuni*, as well, commanding units of the king's retainers (*antrustiones*).

78 Cf. Gundulf (*Hist.* 6.11); and the 21 *duces* on the Lombard campaign (*Hist.* 10.3) – where did they all come from?

Those clearly holding regional office are prominent in the *Histories* but the exact number of regional commands existing in Gaul at one time during Gregory's episcopate is hard to pin down: about a dozen is a reasonable enough estimate. Regional dukes exercised authority over a number of *civitates*, and thus the counts ruling over them. The grouping of *civitates* under dukes could be flexible in number and configuration. Some like the Auvergne and Champagne regions seem more or less fixed at least as regards their core. Tours and Poitiers were assigned to a series of dukes: Gundovald from the late 560s to 573 under Sigibert; under Chilperic, Dracolen ca. 576–578, and Berulf from 578 to 584. Berulf's *ducatus* in 583 included, at least temporarily, Angers and Nantes. Childebert tried to impose Gararic in 584/85 in a command that was probably supposed to include Limoges. From 585 to 588, under Childebert, Ennodius commanded Tours and Poitiers. Agynus was probably duke in 588.

Though the *dux* was the military commander of the region to which he was assigned, he also exercised civil jurisdiction – essentially the same as that of his subordinate the count, namely policing and security, which are not only well attested in Gregory's pages regarding political matters but was surely central to the office even in mundane affairs; on the appointment of Nicetius as duke over Auvergne (including Rodez and Uzès), Gregory commented on how well he kept the peace (*Hist.* 8.18). A judicial function in criminal matters follows from his police functions, but though his office was no simple appeal court from that of the count, he probably exercised a far wider jurisdiction if he chose to make his court available to litigants.

The region of Provence was brought into the Merovingian kingdom only in 536/7, and constitutes a distinctive administrative arrangement (even if slightly so) for high-level regional commands; its ruler was very much a *dux*, even if the terminology was more varied. Under the Ostrogothic regime the governor was the *rector* or *prefectus*, with the honorary title *patricius*, a term not without military associations, as it had been granted by the emperors to the Master of the Soldiers and indeed, according to Gregory, to Clovis himself.⁷⁹ After the division of Provence in 561 between Austrasia and Burgundy two parallel sets of terminology are applied to the region by Gregory. Austrasian regional administrators holding the enclave of Marseilles generally bore the titles of *rectores/prefecti*: Jovinus; Albinus; Dynamius; and Nicetius, whom at one point Gregory calls *patricius*. Burgundian governors, controlling a much larger area, based on Arles, fairly consistently in Gregory's account, bear the title *patricius*: Agricola, going back at least to the unified kingdom of Chlothar I; Celsus; Amatus; Mummolus, also called *dux* by Gregory after his defection. After Mummolus, *dux* became Gregory's term for Burgundian holders of the office: Calomniosus and Leudeghysel. The division of Provence and, after the death of Sigibert, the city of Marseilles, accounts for much

⁷⁹ *Hist.* 2.38. Gregory well understood the different significance of late imperial titles, as he found them in his sources, and as they were used in contemporary practice.

of the complicated politics of the region in Gregory's narrative, often involving the bishop of Marseilles, Theodore.

Attempts to classify *duces* according to their ethnicity as (Gallo-) Romans or 'Germanen' – the criteria are mainly their names but also rather narrow assumptions about descent – are tempting but defy any statistical summary.⁸⁰ That the *ducatus* were held by both ethnic Gallo-Romans and Franks is hardly to be doubted. But by the mid 6th century, names did not necessarily follow defined ethnic tracks and intermarriage among the Gallic, Burgundian, and Frankish aristocracy, multiplied ethnic descent lines, thus confounding the modern reliance on simple ethnic indicators. Gundulf, the Austrasian duke with the thoroughly Germanic name, who, Gregory discovered, was his kinsman, and identifies as a descendant of the Roman senatorial class – at least in one line which would be sufficient for the point – should serve as a caution; however, his modern classification among the 'Romanen' seems precipitate, without us hearing on the subject from Gundulf himself.⁸¹ In the following century, the occasional classifications of high office holders by Fredegar as Franks, Burgundians, or Romans 'by birth' is based on cultural premises rather different than those applied by moderns to officials in the *Histories*.⁸²

A *civitas* might be grouped with others into a *ducatus* under a *dux*, but its immediate ruler, as a delegate of the king, was the *comes*, count: the term is commonly used in Gregory and elsewhere in association with the city over which he exercised jurisdiction. The count was responsible for royal administration in the *civitas*.⁸³ His associate in this enterprise was the bishop (who in one way or another was also a royal appointee). Relations were not always harmonious. Their respective roles might seem, on some theoretical plane, to be parallel, but in fact they constantly intersected. Both were implicated in the administration of justice and the collection of revenue. Both held courts (the count was generally accompanied on the tribunal by important citizens of the *civitas*) and even joint hearings when both their jurisdictions claimed an interest over the status of persons.⁸⁴ Even strictly afflictive criminal proceedings held by the count were subject to moralizing ecclesiastical intervention, though not necessarily of the official variety (a theme the *Histories* hardly avoids and a staple of saints' Lives). Add politics, ambition, human nature,

80 The caution here serves for *all* officials.

81 Weidemann, *Kulturgeschichte* 1: 30, classifies dukes as to whether their origin was Roman or Germanic, as if origin were singular. She has a small, undefined group, which includes Bobo (whose father was Mummolinus but whose brother was Bodygislus!). The undeniable ethnic identifier Gregory uses for Frankish dukes is 'Saxon', for Chulderic, clearly an outlier.

82 On Gregory's perception of ethnicity see: Walter Goffart, "Foreigners in the *Histories* of Gregory of Tours," *Florilegium* 4 (1982) 80–99; rpt. in his *Rome's Fall and After* (London, 1989), 80–99; and Edward James, "Gregory of Tours and the Franks," in *After Rome's Fall*, 51–66.

83 For the etymological fallacy that stresses the literal meaning of the word as 'companion' [of the king], see comments in Murray, "Pax," 276–277; and as applied to the *tribunus*, Murray, "Reinhard Wenskus," 48–49 [below ch. 11].

84 The count presided "cum senioribus vel laicis vel clericis" in *Hist.* 5.48; and cf. 6.18.

and the ornery clash of human perspectives, and relations could deteriorate. Gregory mentions his attempts to bind Count Leudast with oaths of loyalty. After Leudast's fall, Gregory also managed to extract from Chilperic the right of Tours to nominate his successor. Such a privilege was still an exception in Gregory's day but the theme of local nomination would appear again early in the following century.⁸⁵

The counts of Tours during Gregory's episcopate were the following. Leudast took office under Charibert (†567) and on his death gave his allegiance to Chilperic. In office for a short time in 573, the year Gregory became bishop, he came back again under Chilperic from 577 to 579. Eunomius followed from 579 to 584. In the brief period Guntram held the city in 584/85, Willichar was count. Under Childebert II, the count is generally supposed to have been Gregory's friend Galienus.⁸⁶

The count, as a delegate of royal authority involved in the collection of judicial fees (especially the *fredus*) and revenues and in the exercise of jurisdiction, is paralleled in the north of the kingdom by an official called a *grafio*.⁸⁷ This term, used in *Lex Salica* and a few other, mainly, legal sources that confirm its application to Germanic speaking regions, is essentially a northern, vernacular version of the *comes*, and is an indicator, not of a separate, ethnic-based system of administration in the Frankish north, but of the bilingual nature of the kingdom. The term is never used by Gregory and the few references we have to *grafiones* simply equate them with the *comites* of Gregory and many other Merovingian sources.⁸⁸

The count was hardly alone in his administration of the *civitas*. This is the level in the hierarchy at which Gregory almost, but not quite, abandons us, and incidentally confirms the role of comital officials in the collection of taxes. In two instances he mentions deputy counts, an office that would be standard under the Carolingians. A former *vicarius*, Injuriosus, was involved in the murder of the Jewish money-lender Armentarius to whom he obligated himself against monies raised in taxation, as did the count his superior.⁸⁹ Another *vicarius*, Animodus, appears, in Gregory's telling of it, to have been in collusion with Chuppa, Chilperic's

85 Murray, "Edict of Paris," 28–29; [above ch. 5].

86 Gregory identifies Galienus as a friend in *Hist.* 5.49; Galienus' countship comes from Fortunatus, *Carm.* 10.12; and also see *Virtutes Martini* 4.35 and *Hist.* 9.7. Cf. Weidemann, *Kulturgeschichte* 1: 78–80.

87 Gregory mentions the *fredus* in *Virtutes Martini* 4.26. It is a Franco-Latin term but it was not in his time peculiarly Frankish. To say "they call [the penalty due the fisc] the *fredus*" is simply Gregory's way of saying that it was the common term, and not in his usual word-hoard of late classical terms. It was collected everywhere.

88 Alexander Callander Murray, "The Position of the Grafio in the Constitutional History of Merovingian Gaul," *Speculum* 61/4 (1986): 787–805 [above ch. 3].

89 The count was Eunomius, involved in the loans, though not prosecuted. The date of these events is 584 when Eunomius and apparently Injuriosus had lost their offices, and possibly their ability to recoup the profits of their tenure against which the instruments had been issued. The passage is an important, though inexact, indication of potential profits to be made in administering tax collection. On deputy positions in the late Roman military hierarchy, see Murray, as at n. 91, 71–72.

former master of the stables, in frustrating mechanisms for hunting down cattle thieves in 590.

Tribuni are mentioned three times by Gregory. One is an historical reference (GM 40) to a tribune called Nunninus, from Clermont, on a return trip from Austrasia (*Francia*) where he had delivered taxes (*tributa*) to Queen Theudechild, probably daughter of Theuderic I. The second, contemporary reference confirms the tribunician role in taxation: a certain tribune Medardus, is alleged by Gregory to have been mixed up in the killing of Armentarius over the loans made against income from taxation (filling out the upper reaches of the comital hierarchy in this affair as involving the *comes*, his *vicarius*, and a *tribunus*). The final reference mentions a tribune as one of the victims of the sons of Waddo in Poitiers. Other sources show *tribuni* doing what we would expect: the *Vita Corbiniani* mentions a *tribunus*, and subordinate *centenarii*, tasked with the execution of a brigand.⁹⁰

The *centenarius*, the well attested subordinate of the count in 6th-century (and indeed subsequent) sources is not mentioned by Gregory at all. His command was called a *centena*, or hundred, which he exercised in sub-districts of the *pagus*. The position was hardly lofty but it was central to the administration of justice and the peace-keeping role of counts in the *pagus*. The *centenarius* may have been responsible, one assumes, for district units in the comital levy of the *civitas*. In 6th-century judicial documents, however he appears as a minor judge and, even more prominently, as the commander of police associations of landholders responsible for hunting down rustlers and their prey. An elaborate network of these associations, based ultimately on late imperial practice, was regulated by the 6th-century kings, who required them under penalty to produce thieves chased into their areas. Some such structure likely lies behind Gregory's account of the ill-fated raid of Chuppa, once *comes stabuli* of Chilperic, into the Tours' area in 590. The failure to produce Chuppa, whose identity was known and whose party was closely pursued and in part killed and captured, was attributed by Gregory to the collusion of a *vicarius* Animodus, who, only after royal intervention, was tried along with Chuppa at the royal court. The existence throughout the period of frontiers between not always friendly kings provided thieves with their best, and time-worn, opportunity for avoiding capture. The kings of the time thus laid down by treaty rules for the pursuit of thieves across frontiers under *centenarii* and the responsibilities of the associations on both sides of the border. The extension of such arrangements between Austrasia and the kingdom of Chlothar II is the context for Rauching's conspiracy with the *proceres* of the latter to overthrow Childebert II in 590. Rauching's dealings with them were carried out, Gregory tells us, under the pretext of negotiating security measures along the border aimed at the reduction of quarrels and plundering raids between the two kingdoms (*Hist.* 9.9).⁹¹

90 *Vita Corbiniani* 1.10, (ed.) Bruno Krusch, MGH SRM 6 (Hanover, 1913).

91 For the organization of *centenae* and their policing associations, see Alexander Callander Murray, "From Roman to Frankish Gaul: *Centenarii* and *Centenae* in the Administration of the Merovingian

One other important regional office should be mentioned, well attested in 7th-century sources, but only barely distinguishable in Gregory's time – a fiscal official called a *domesticus* responsible for the estates of the king in the *pagus*. There is only one brief reference to regional *domestici* in Gregory.⁹² His existence in the 6th century completes, nevertheless, a triad of distinct but overlapping authorities in the *pagus* or *civitas* – the bishop over the Christian community as a whole and various dependents recognized by law; the count as the overseer of the military and security affairs, as the judge ordinary over those who could claim the forum of the public courts, and as guardian of the public rights of the king; and the *domesticus* as the supervisor of the monarchy's fiscal estates and their people. The balance, and tension, between the three, one can guess, was no mere accident but designed into the system.

In Gregory's day, the names for the commands of the three main officials of regional administration – the *ducatus* of the duke, the *comitatus* of the count, and the *centena* of the *centenarius* – were not yet territorial terms: the *ducatus* was exercised over regional groupings of *civitates*; the *comitatus* over the *civitas* or *pagus*; and the *centena* over traditional subdivisions of the *pagus*. By the 8th century the terms were beginning to be applied to the territory itself – the duchy, the county, and the hundred – and as such had a long history in the regional administration of European states far beyond Gaul, where they began; indeed, they outlived the Middle Ages itself.

6 Kings and subjects

The relations of kings to their subjects (and indeed their officials) were mediated through modes of communication and practices derived largely from the provincial setting of the late Empire. Despite Lot's gloomy assessment of kings and their officials, the administrative system was intended not merely to hold on to territory, collect revenues and raise military levies. It had, as we have just seen, an important role in the maintenance of public order, the administration of justice, the harnessing of traditional state obligations, and the redistribution of public resources. In general the Merovingian state attempted to recoup its involvement in judicial affairs through the collection of fines and penalties, which the ruler and his principal regional representatives shared, and to direct part of its revenue into the hands of lay magnates and, especially, churches, the facilitation of whose

Kingdom," *Traditio: Studies in Ancient and Medieval History, Thought and Religion* 44 (1988): 59–100; [above, ch. 4].

92 In 591 Guntram, in preparation for the baptism of Chlothar, summoned "many [officials] from his kingdom, both *domestici* and *comites*, who were to make ready the royal expenditures that would be required" (*Hist.* 10.28). These would be regional officials of the *civitas* and the *fisc* (whose properties were dispersed across the countryside, and thus the *civitates*) charged with provisioning and hosting Guntram's party as it made its way between Chalon and the Paris region where the baptism was to take place.

mission was thought to be a pillar of the state's stability. Though the monarchy's involvement in judicial matters had an important financial side to it (the importance of which arguably increased as time went on) the motives for royal involvement were not merely fiscal. Peacekeeping and justice in royal ideology were tied, not disingenuously, to the retention of God's favour and were seen as the prerequisites of successful kingship.⁹³

The basic tool for the exercise of power over the king's subjects and for communicating with regional officials was the use of written instruments.⁹⁴ These in general terms assumed an epistolographic form – a letter, at least, in external appearance – and were derived ultimately from late imperial practice, especially the rescript.⁹⁵ They bore a number of names (*auctoritates*, *praecepta*, *praeceptiones*, *constitutiones*) and generally took the form of a directive, a command issued to the addressee, usually one or more regional officials or bishops. Directives served many purposes: issuing edicts (legislation) of general or specific application; appointing officials (commissions) and ordering the ordination of bishops; issuing commands of all kinds of an administrative or judicial nature; granting gifts and privileges; and responding to the petitions of subjects. The single record we have of many of them was probably one item in a bundle of communications sent out to interested recipients.⁹⁶ The earliest record we have of a Frankish king in action is a directive that Clovis sent to the bishops of Aquitaine during the

93 The requirement of justice could be seen in both religious and practical, almost contractual terms; compare the preambles to the Edict of Paris, where the provision of justice is tied to meriting God's favour; and the *Constitutio* (or *Praeceptio*) of Chlothar (II) where royal justice and the devotion of subjects are linked in a reciprocal relationship; and cf. *Hist.* 7.8. Religious perspectives are stressed by the *Childeberti I regis praeceptum* and in Guntram's speech to commanders of riotous, insubordinate forces (*Hist.* 8.30). Capitularia nos. 2, 5, 8, 9; the two latter are trans. in Murray, *Reader*, no. 72–73 (for the corrected translation of 72, c. 2, see Murray, "New MGH Edition of the Charters," 258, n. 37); for 5, see Jocelyn Hillgarth, *The Conversion of Western Europe 350–750* (Englewood Cliffs, N.J., 1969), 102–3; rev. 1986. No. 8 should be consulted in the edition of Stefan Esders, *Römische Rechts tradition und merowingisches Königtum: Zum Rechtscharakter politischer Herrschaft in Burgund im 6. und 7. Jahrhundert*, Veröffentlichungen des Max-Planck-Instituts für Geschichte 134 (Göttingen, 1997).

94 On literacy in general – traditionally underestimated, sometimes grossly – see Ian Wood, "Administration, Law and Culture in Merovingian Gaul," in *The Uses of Literacy in Early Medieval Europe*, (ed.) Rosamund McKitterick (Cambridge, 1990), 63–81.

95 The classic work, brilliant but flawed, is Peter Classen, "Kaiserrescript und Königsurkunde: Diplomatische Studien zum römisch-germanischen Kontinuitätsproblem," in *Archiv für Diplomatik* 1 (1955): 1–87; 2 (1956): 1–115; it was reprinted unchanged, but under the new title *Kaiserrescript und Königsurkunde: Diplomatische Studien zum Problem der Kontinuität zwischen Altertum und Mittelalter* (Thessalonika, 1977). For further comments, see Murray, "New MGH Edition of the Charters," esp. at n. 15 [below, ch. 8]; and Classen's own summation, "Fortleben und Wandel spätromischen Urkundenwesens im frühen Mittelalter," in *Recht und Schrift im Mittelalter*, (ed.) Peter Classen, *Vorträge und Forschungen* 23 (Sigmaringen, 1977), 13–54.

96 See a 7th-century charter (privilege) example, often thought to be issued uniquely but whose surviving form points to multiple copies, in Murray, "New MGH Edition of the Charters," 260–61 [below ch. 8].

Vouillé campaign informing them of his planned treatment of the church and its people and outlining the need for the response of the bishops to be honest when they petitioned for the release of prisoners improperly taken by his forces. The process appears largely to have worked through the interchange of properly sealed and validated letters, and it is clear that Clovis was hardly overseeing the correspondence personally.⁹⁷ Petitions of various kinds continued to be sent from the *civitates*, the best attested being a *consensus*, a petition by the community to the king to accept their choice of a nominee to the episcopacy.⁹⁸ Personal visits to court were of course used to solicit directives confirming or granting privileges or rights. Such directives were not necessarily sufficient in themselves to establish a right. They were meant to be examined at the local level by the count to determine that their claims corresponded to law – an old principle of Roman law. Gregory's story of Andarchius typically enough shows the system ultimately failing, but the principles stand out in it just the same – Andarchius' first petition, solicited fraudulently from the court, was turned back by the count after examination, but the second, after more subterfuge by Andarchius, succeeded until divine justice intervened (*Hist.* 4.45).

The use of written instruments of course also extended to the private affairs of the king's subjects and the administrative actions of regional officials. For example the various steps in judicial processes, whether before counts or ecclesiastical tribunals, appear accompanied by documentation in the formulae collections. Even in the case of *Lex Salica*, whose procedures appear to be overwhelmingly oral and performative, the king's official still issued a discharge notice or receipt (called a *securitas*) recording the payment of fees owed to the king (c. 54.4). And as a final testament to the pedestrian use of writing, it is worth noting the survival in the cities, of central Gaul at least, of public archives, where the transactions of citizens could be recorded and registered. The panels that controlled access to these archives are the best evidence we have, even if it is slight, of the survival of the Roman municipal institution of the *curia* across the 5th and 6th centuries.⁹⁹

The system of obligations by which kings drew on the financial and physical resources of their subjects can be summarized briefly in outline but discussed seriously only at considerable length. To simplify, we can distinguish two main categories of obligation, though they might overlap: those concerned with taxation, consisting mainly of financial payments, and those comprising liturgies, namely the duty to perform services of various kinds on behalf of the state.

97 *Capitularia*, no. 1; trans. in Murray, *Reader* no. 42.

98 The word in Gregory and elsewhere has of course more conventional meanings. Its technical meaning as a document is shown (several times) in *Hist.* 4.26 (note Gregory uses the word *consilium* in the same passage for 'consent' or 'permission'). Other examples: *Hist.* 6.15, 8.22, 9.23, 10.1 (re: Rome, but surely accurate in its fashion). An actual Frankish specimen exists in *Formulae Marculfi* 1.7. Rio's speculation (*Formularies*, 139) that the document's placement in the formulary suggests that the *consensus* was actually a *post hoc* affirmation of a royal decision is incorrect. Gregory shows clearly that it was an attempt to influence the royal decision before it was made.

99 Some of the issues are touched on by Murray, "New MGH Edition," 253–57 [below, ch. 8].

No one doubts, even if only on the basis of reading Gregory of Tours, that Roman taxation survived through the 6th century and was a major source of royal income. The main problem is the extent of this survival and the eventual fate of its component parts, namely whether they were retained for the most part by the king or redirected into the hands of the *Franci* during the establishment of the kingdom and thereafter into the hands of the churches, in both cases not without receiving services in return – military on one hand, and on the other, spiritual, social, and administrative. The traditional view (without particular details), and which I would still tend to support in its main outline, sees royal control of direct taxation gradually decreasing over the Merovingian period.¹⁰⁰ (An analogous problem is the monarchy's fiscal properties which often passed into the hands of officials and churches – but also passed back again in a fashion that is not really understood.)

Systems of obligations generally make provision for exemptions for those who claim they deserve relief because of their performance of other services beneficial to the public good – a claim often, then and now, conflated with privilege and influence. Financial exemption from taxation (*tributum*) in Roman and Merovingian public law was called immunity (*immunitas*, or to use the Merovingian Latin form *emunitas*), a phenomenon Gregory clearly alludes to though he never uses the technical term.¹⁰¹ For the Frankish kingdom, the earliest reference to it – involving clerics – comes from Clovis' reign.¹⁰² The development of a distinctively Frankish immunity involving the collection of judicial fees and fines (another great source of royal revenue) was probably being developed in Gregory's days but the charter evidence for this privilege in its developed stage comes only from well into the next century.¹⁰³

There were two main liturgical obligations on the inhabitants of the *civitates*, each not dissimilar to the other, and probably linked through the same officials overseeing both: peace-keeping duties and military service.¹⁰⁴ Regarding policing, landholders were grouped into associations which in the course of the 6th century

100 The great revisionist study is Jean Durliat, *Les finances publiques de Diocletien aux Carolingiens* (284–889), Beihefte der Francia 21 (Sigmaringen, 1990). This book deserves criticism but not neglect. It raises important questions about the terminology of the sources and our conceptualization of the countryside; cf. my review in *Speculum* 67/4 (1992): 959–962.

101 See, e.g. *Hist.* 3.25: tax exemption granted to the churches of Auvergne by Theudebert (probably an effort to compensate for his father's harrying of the region); and Gregory's historical argument for the exemption of Tours since the time of Chlothar (9.30). An *auctoritas*, that is an exemption or immunity charter, was elicited, apparently, only at the time of the dispute in 591.

102 *Concilium Aurelianense* 5, a. 511, MGH Concilia 1 (Hanover, 1883), (ed.) Friedrich Maasen. On the imperial background, Murray, "Edict of Paris," 18–20 [above ch. 5, 100–103].

103 Murray, "Edict of Paris" and now, "Merovingian Immunity Revisited" [above chs. 3 and 4].

104 A detailed discussion of the Frankish military is still not possible at this stage. The following discussion sticks to the obligations of the *civitates*. The composition of Frankish armies is a separate subject that deserves a dedicated discussion involving i.a. the meaning of *Franci*, *leudes*, *fideles*, and *antrustiones*. The last word is not used by Gregory; but on the meaning of the primary element, see Murray, "From Roman to Frankish Gaul," 86–8 [above ch. 4]; and also *Lex Salica*, MGH "Wortregister" s.v., and *Formulae Marculfi* 1.18.

were placed under the command of *centenarii*, as has already been mentioned. They were put under oath and expected to man watches and to come when summoned to join posses (*trustes*, then, when under *centenarii*, *centenae*) in pursuit of thieves, mainly rustlers. To encourage their enthusiasm, they were held financially responsible for thefts in their area, fined if they failed to join a posse, and in certain circumstances allowed to share in the penalties imposed on captured thieves. Almost all the elements of the Frankish system are anticipated in often longstanding practices in the Roman provinces.¹⁰⁵

The same cannot be said for the obligation to perform military service, at least in a formal sense.¹⁰⁶ The late Roman Gallic population and its aristocracy were anything but unwarlike, but landlords were responsible for producing recruits for an army that had been professionalized, not for serving in it themselves, though they were perfectly capable of outfitting themselves and their followers with horses and weapons. And though the *civitates* in the 5th century often proved capable of defending themselves in difficult times, the late Roman state never resorted to general levies of the population, though there were undoubtedly military-like obligations to man and repair the walls of the cities.¹⁰⁷ But in Gregory's Gaul, it seems, military service was a general obligation on the free population and performed not just by those identified as ethnic Franks, who enjoyed exemptions as compensation, but by the citizens of the *civitates*. Gregory in fact is a prime source for the participation of citizen levies in 6th-century Gallic wars.¹⁰⁸ The nature of the obligation, and especially its relation to property holding, is never described and so poorly understood, though in passing Gregory does suggest that the citizens of the *civitas*, in normal times performing security functions, were liable to two week stints, in some kind of rotation.¹⁰⁹

As a public service expected from the inhabitants of the *civitas*, it was inevitably subject to claims of exemption. Gregory asserts that the poor dependents of the cathedral and Saint Martin's basilica were exempted from military service, even though Chilperic's officials tried to fine them for failure to come

105 Murray, "From Roman to Frankish Gaul," 77–80 [above ch. 2].

106 A key to understanding the Merovingian system of military obligation may lie in clarifying the Carolingian one. For a first salvo on this approach, see Walter Goffart, "Frankish Military Duty and the Fate of Roman Taxation," *Early Medieval Europe* 16 (2008): 166–190, with literature.

107 Bachrach (as at n. 67), 26 sees this as contributing to the militarization of society. The Novel of Valentinian III for Rome (*CT NVal.* 5.2, a. 440) cited there presupposes that magistrates already possessed the powers to compel such service. The only evidence for the continuation of obligations of the menial (not military or peace-keeping) kind, comes it seems from the next century: *Vita Balthildis* 6, (ed.) Bruno Krusch, *MGH SRM* 2 (Hanover, 1888).

108 *Lex Salica* 63 triples the wergild (*leodis*) of those in the army for the duration of their service. While the A redaction appears to envisage only Franks, the C redaction seems to extend the rule to those serving generally.

109 *Hist.* 7.21: "impletisque quindecim diebus"; with forces from Orleans and Blois alternating their postings in two week intervals.

out on an expedition against the Bretons in 577.¹¹⁰ Eight years later, in 585, an establishment (*domus*) of Saint Martin's, located in Bourges, faced a similar fine after the campaign against Gundovald, when the agents of the count of Bourges insisted on penalties for the *homines* of Saint Martin and were, according to Gregory, rebuffed by a miracle.¹¹¹ The exemption claimed in both cases was apparently customary, and may have reflected a widespread understanding that the really poor should not be subject to the levy, undoubtedly an ecclesiastical point of view; there is no hint that a written exemption underlay the claims of the bishop of Tours. And Gregory is never really clear whether the claims of exemption were in the end successful in sparing Saint Martin's from penalties.

7 Conclusion

How to summarize such a vast subject after a breathless and selective digest of it! I hope readers will understand if in conclusion I mainly address what I take to be common prejudices about the world in which Gregory lived. If these are countered, then Gregory and the sources available to elucidate his society open themselves to further investigation. Christian Pfister in a summary which once served as an introduction to Merovingian institutions some time ago caught the imperative of the default position, even if his interpretations in detail hardly confirmed it: "The Merovingian period as a whole is without doubt a melancholy period. It marks in history what must be called an eclipse of civilization, and it deserves to be described as a barbaric era."¹¹² The human condition may be melancholy, but I find it hard to understand why the Merovingian period stands out in particular relief in that picture. As for Merovingian governance, and the institutions that supported it, they do not reflect a primitive order to be traced either to a barbarian world beyond the frontiers (or even further) or to the recurrence of archaic forms brought on by a chaotic post-Roman order reduced to personal relations, ritual, and incompetence. Lot's emphasis on the personal and the mindless greedy self-interest of the period, noted at the beginning of this chapter, was simply another variation on the apparently timeless evaluation of Pfister and countless scholars before him and was his way of countering the prevailing argument for Germanic institutions.¹¹³ Purveyors of updated, modern versions of this view seem not to acknowledge that all systems can be analyzed in terms of status and personal

110 *Hist.* 5.26: the exempted category is characterized as *pauperes et iuniores*, the latter term referring either to age or position.

111 *Hist.* 7.42. The story suggests that in the *comitatus* of Tours the right was acknowledged. Officials in Bourges were apparently more sceptical.

112 "Gaul under the Merovingian Franks: Institutions," *Cambridge Medieval History* (Cambridge, 1913), 2: 155. And cf. Ampère [cited below, ch. 12, n. 14].

113 Long an early stop on the subject for English readers, O.M. Dalton (Introduction to his translation of Gregory's *Histories* [Oxford 1927]) is a relentless exponent of a similar version, citing on and off Pfister.

ties and self-interest, not least of all modern ones – and who is so bold as to give anywhere a passing grade? In the Merovingian case, the form these hard views take is based on assumptions about an age, not the testimony of its sources. Moreover the harsh moralizing of Gregory of Tours on the faults of his contemporaries lends itself to being filtered through the haughty superiority that modern times reserves for its putative rough beginnings following the collapse of Roman power in the western provinces. In the same vein, there is a new methodological cliché in recent attempts to deal with Merovingian administration that takes a negative approach, pretending to be hard-nosed scholarship, saying ‘we don’t know this’ and ‘we don’t know that’, implying meanwhile that all therefore was chaotic, or the crazy modern horror of horrors, apparently, not ‘uniform’, and showing in the process uninterest – necessary for the thesis – in what we do know.¹¹⁴ It must be admitted there is much we do not fully grasp about the Merovingian system, but just because we do not understand the intricacies of bureaucratic advancement for instance, or how the close advisors of the king exercised their offices, does not mean the system was chaos, without order or specialization.¹¹⁵ Gregory’s narrative and the legal sources hardly bear this interpretation out, just as the legislation (barely touched on here) on security in the countryside contradicts Lot’s derisive comment that the only service the kings provided was pillaging expeditions for their followers.

The above pages provide reason to think that Merovingian governance fitted readily within a late antique context, deriving its forms from its immediate late Roman past, which on a provincial level long fostered mixed arrangements especially on the frontiers, and from the contemporary structures of a Mediterranean commonwealth that shared the same history. The modern conceit that it must have been weaker and less organized than its predecessor (and successor) is best left for the moment *in aeternum*. There is much we do not know about how the Merovingian kingdom functioned. But there is much we do know, and there is still much to learn.

114 Where the negative approach is applicable is in the trans-Rhenan regions where we cannot be sure systematic Gallic (and Roman-based) patterns were reproduced. This is a different subject that has to be approached in conjunction with the evidence of the Carolingian period. The method owes its genesis to the efforts of German post-war scholarship to maintain a much more limited *Kontinuitätsfrage*. Its subsequent adoption in the Anglophone world as a general model for Gaul seems historiographically naive.

115 In modern times, of course, in actual fact few if any, of the top political jobs in government require a specialist.



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Part III

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REVIEW ARTICLE

The new MGH edition of the charters of the Merovingian kings

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Theo Kölzer, ed., *Die Urkunden der Merowinger*, Monumenta Germaniae Historica, Diplomata regum Francorum e stirpe Merovingica, based on the preparatory work of Carlrichard Brühl [†], with the assistance of Martina Hartmann and Andrea Stieldorf, 2 vols. (Hanover: Hahnische Buchhandlung 2001). Pp xxxi + 8 pp. of plates.

Carlrichard Brühl, "Die merowingische Immunität," in *Chiesa e mondo feudale nei secoli X–XII, Atti della dodicesima Settimana internazionale di studio, Mendolo, 24–28 agosto 1992*, Miscellanea del Centro di Studi medievali 14 (Milan: Vita e Pensiero, 1995), pp. 25–44; rpt. idem, *Aus Mittelalter und Diplomatie: Gesammelte Aufsätze*, 3 vols. (Hildesheim: Weidmann, 1989–97), 1: 148–66; idem, *Studien zu den Merowingischen Königsurkunden*, ed. Theo Kölzer (Köln: Böhlau Verlag), 1998. Theo Kölzer, *Merowingerstudien I*, Monumenta Germaniae Historica, Studien und Texte 21 (Hanover: Hahnische Buchhandlung, 1998); idem, *Merowingerstudien II*, Monumenta Germaniae Historica, Studien und Texte 26 (Hanover: Hahnische Buchhandlung), 1999.

This new edition of the Merovingian diplomas (the modern term for the charters of kings) is intended to replace the edition of Karl August Friedrich Pertz, published in folio in 1872, the first volume of the Diplomata section of the Monumenta Germaniae Historica.¹ Pertz's edition was published a long time ago: the second German Reich had been proclaimed only the year before; Stanley had just met Livingstone; General Custer had yet to meet the Sioux. The utility of Pertz's *Diplomata* for a century and quarter is no testament to the quality of the edition. It was immediately criticized (not always rightly) and gradually superseded on particulars by a long line of studies and editions of individual charters that continues down to the present day.² The small group of surviving original diplomas, critical for our understanding of the period, were twice edited in facsimile – in 1908 by Philippe Lauer and Charles Samaran, and in 1981 by Hartmut Atsma and Jean Vezin in the

1 *Diplomata Regum Francorum e Stirpe Merovingica*, MGH Diplomata (in folio).

2 Brühl, *Studien*, pp. 19–24, touches on the chief figures. There is no reason to suppose that the re-editing of Merovingian charters has come to an end.

Chartae Latinae Antiquiores series.³ However, if one wished to consult many of the non-originals or to employ a single, accessible reference source for the corpus of royal charter materials, Pertz's edition has until now remained standard, the principal alternative being the 1844 edition of Pardessus, which was largely a re-edition of the 1791 edition of Brequigny.⁴ Since 1872, despite murmuring and reservations, the sigla DM has been an ubiquitous accessory to studies of Merovingian Gaul, marking scholarship's dependence on the work of Karl Friedrich Pertz. The editors of the new edition used Pertz's numbering as a reference point in their preparatory studies.⁵

The 1872 edition was not an auspicious debut for the Diplomata section of the MGH. The story of its production as told by Carlrichard Brühl is an unpleasant cautionary tale of misdirected affection, undue influence and finally personal tragedy.

Karl August Friedrich Pertz, born 1828, was the son of the famous Georg Heinrich Pertz who headed the MGH from 1824 to 1872. He was also, it seems, the apple of his father's eye. When the son was twenty-five and still finishing a 'mediocre' Berlin doctorate on Aethicus Ister, the elder Pertz decided to entrust him with editions of the Merovingian and Carolingian diplomas. In 1854 the young Pertz became a *Mitarbeiter* of the MGH and always enjoyed preferential treatment.⁶ As an editor he also drew on the assistance, not all of it acknowledged, of some of the luminaries of the MGH. The edition of the Merovingian diplomas came out in 1872 to scathing attacks. The charge was led by Karl-Friedrich Stumpf and

3 *Les diplômes originaux de Mérovingiens*, ed. Phillipe Lauer and Charles Samaran (Paris, 1908). *Chartae Latinae Antiquiores: Facsimile-Edition of the Latin Charters Prior to the Ninth Century*, gen. ed. A. Bruckner and R. Marichal, Part XIII: France I, Part XIV: France II, ed. H. Atsma and J. Vezin (Zurich, 1981 and 1982). The latter is reviewed at some length in David Ganz and Walter Goffart, "Charters Earlier than 800 from French Collections," in *Speculum* 65/4 (1990): 906–932 (henceforth abbreviated Ganz/Goffart).

4 Jean-Marie Pardessus, *Diplomata, chartae, epistolae, leges aliaeque instrumenta ad res gallo-francicas spectantia prius collectae a Louis-George Oudard Feudrix de Bréquigny et François Jean Gabriel La Porte Du Theil*, 2 vols. (Paris, 1843, 1849; reprint Aalen, 1969). Brühl rates Bréquigny highly, noting that Pardessus followed his judgement on the authenticity of individual charters (*Studien*, pp. 7, 10–11); on Pertz's use of Bréquigny, see *Studien*, p. 18.

5 Though not the DM abbreviation, preferring instead D. The new edition continues to use D to identify charters internally. Margarete Weidemann's recent edition of the *Actus pontificum* (see n. 43, below) now uses DM for the new MGH edition. In the present review, which refers only to Merovingian diplomas, D will identify the numbers of the new edition; those classed as *spuria* are marked with a †. Non-extant *deperdita* of volume two will be designated by their numbers or by the abbreviation Dep.

6 *Studien*, p. 12. "Rarely has a father so deceived himself about the capacity of his son" (*Studien*, p. 13). Brühl's main source is Harry Bresslau, *Geschichte der Monumenta Germaniae Historica = Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* 42 (1921). Judgment on the dissertation is Brühl's (the faculty rated it "accuratissimae doctrinae specimen"); so is the conviction that the elder Pertz intended his son to succeed him. Brühl's scornful judgement of the young Pertz's other editions ("failures") reflects, but sharpens, Bresslau's account.

Theodor von Sickel.⁷ The latter financed his own extensive review, allegedly to forestall the humiliation of a French assault. Humiliation did not require French participation, for the German scholarly community according to Brühl regarded the edition as a national disgrace.⁸ The edition of the Carolingian diplomas was delayed; and indeed we still await an edition of the charters of Louis the Pious. As unhappy as the project turned out to be for the MGH, it proved far worse for the Pertzes, father and son. The calamity added to the resentment harboured against Heinrich Pertz's leadership of the MGH; he gave up the position in 1872, dying in 1876. Karl Pertz was forced out of the MGH in 1875, when his work on the Carolingian charters was deemed unsatisfactory, and committed suicide in 1881 at the age of 52.⁹

The Pertz debacle appears to have weighed heavily on the minds of the editors of the new edition. Pertz's sins, many of them venial, are laid out in detail in the thousand odd pages of the new edition and its preparatory studies. Theo Kölzer even thanks the participating committees, French and German, for "the trust they have placed once again in German *Diplomatik* after Pertz's failed edition of 1872" – a sentiment that suggests more than just mannered politeness and is curiously expressed on behalf of a national discipline.¹⁰ As interesting as the tale of the first edition is, the constant attendance of Karl Pertz in the new enterprise can sometimes seem oppressive. It is not as if the 1872 edition is the only fiasco in the MGH's history. The events surrounding the first attempt to produce an edition of *Lex Salica* forty-five years later are almost as unedifying. The chief difference may be that this contentious edition was pulped on the eve of publication, while Pertz's went on to become a standard reference work.

The new MGH edition too has a story and comes at the end of what the editor calls a thorny path.¹¹ In a formal sense it began in 1983 when Carlrichard Brühl was entrusted with the project. In 1987, Theo Kölzer, Brühl's student, came on board as co-editor. Amidst other duties, preliminary work was undertaken, with Brühl concentrating on earlier editions and on the archives of Neustrian recipients, and Kölzer on the archives of Austrasian and Burgundian recipients

7 Stumpf, "Ueber die Merovinger Diplome," *Historische Zeitschrift* 29 (1873): 343–407; Theodor von Sickel, *Monumenta Germaniae Historica: Diplomatum imperii tomus I* (Berlin, 1873) – this has not been available to me.

8 One looks in vain for the younger Pertz in the long picture gallery of *Mitarbeiter* on the MGH website.

9 For Pertz's dismissal, and his disturbed last years: Bresslau, *Geschichte*, 586–87. Pertz's fate was in effect placed in the hands of Sickel who now headed the *Diplomata-Abteilung*. Another suicide of this period was Phillip Jaffé in 1870; Bresslau (p. 468) acknowledges some of the blame for it lay with the elder Pertz.

10 Foreword to vol. 1, p. vi. The understanding of French colleagues is especially noted for "allowing German medievalists again to go first in editing the charters of the kings 'de la première race'."

11 Foreword to vol. 1, p. vi.

and on establishing a working text. Brühl died prematurely in 1997, before the preparatory studies were published. His *Studien zu den Merowingischen Königsurkunden* appeared posthumously in 1998, edited by Kölzer; Brühl's study on the Merovingian immunity, originally planned as an appendix in *Studien*, appeared in 1992 and was posthumously reprinted in 1997 in Brühl's collected papers. Kölzer's own *Merowingerstudien* were published in two volumes in 1998 and 1999. By this time, Kölzer could count on the assistance of his own students, two of whom, Martina Hartmann and Andrea Stieldorf, worked on the compilation of *deperdita*, that is to say non-extant charters referred to in documentary and literary sources. The editing of the *deperdita* had been since 1983 in the hands of Hartmut Atsma, who withdrew himself and his research results from the project in 1996.¹² This episode may be one of the nettles complicating the journey.

A span of less than twenty years, after the wait of over a century, is perhaps not unduly protracted for realizing an edition with the scope and complexity of the present one. The result is two volumes. The first, the heart of the edition, is composed of the texts of 196 diplomas drawn from Merovingian originals and from copies made throughout the course of the Middle Ages. A brief introduction concisely describes the subject (transmission, inner and outer characteristics of the diploma, sealing); stakes out a position on some controversial diplomatic issues (among other matters, the *vir inluster* abbreviation in the protocol is endorsed as the *inscriptio* of the addressee; lay status of the chancery staff is defended, and the role of recipients in the drafting of documents minimized);¹³ and discusses the principles of the edition. The second volume covers references to 415 *deperdita* and includes the texts of 13 modern forgeries. About a third of it is taken up with indexes for both volumes: names, recipients, modern archives and a rather stingy word-list for volume one (and alas, no glossary).¹⁴ The volume ends with eight pages of black and white plates, chiefly of assorted *spuria*. On the last page, one encounters the worn visages of the Merovingian kings themselves, impressed on the surviving specimens of their seals.

The two volumes are beautifully produced and, as was not the case with the *Chartae Latinae Antiquiores*, many interested scholars may be able to afford to purchase them. In discussing the edition I shall proceed in three stages. The nature of the diploma as a document and the edition's attempt to situate the extant corpus of diploma texts within the history of the period will be considered first. Then, since the two classes of sources – diploma texts and references to *deperdita* – require discrete treatment, the approaches of each of the volumes to editing these

12 Ibid.; see also Foreword to vol. 2, p. 489.

13 Brühl has an appendix on the *intitulatio* of Merovingian kings (*Studien*, pp. 265–77). See Goffart's comments on the problem (Goffart/Ganz, pp. 914–916).

14 An extensive word-list of the diplomas exists but is based on the Pertz edition: Gerhard Köbler, *Wörterverzeichnis zu den Diplomata regum Francorum e stirpe Merowingica*, Arbeiten zur Rechts- und Sprachwissenschaft 17 (Giessen 1983).

source types will be discussed separately. The heart of the edition, and of the diplomatic study of the period, are the extant diplomas found in volume one.

I

The Merovingian diploma in a broad sense consists of two classes of royal documents. The first class is made up of directives (called *praecepta*, *auctoritates*, among other names), embracing orders of all sorts, both general and specific, including grants, privileges and exemptions. The directive was derived ultimately from the late Roman imperial rescript and like it was epistolary in form, addressed to officials even in the case of privileges benefitting individuals and communities.¹⁵ The second class is comprised of *placita*, a modern coinage for royal judicial decisions. Whether the *placita* were originally provided with general addresses, and therefore were also epistolary in form, is a contested point. Determining what is and what is not a diploma for editorial purposes is by necessity a slightly arbitrary process. The first volume of the new edition, much like that of Pertz, excludes letters in the narrow sense and also the surviving edicts of the Merovingian kings, edited in the old MGH *Capitularia* edition of Alfred Boretius, though some of these *stricto sensu* are in the form of royal directives.¹⁶ The broad range of directives on the other hand is reflected in the volume of *deperdita*.

The earliest surviving directive goes back to the reign of Clovis. His grant of protection to the Aquitanian churches and their dependents during (probably) the Vouillé campaign in 507 takes the usual form of a letter addressed to the bishops of the region.¹⁷ But once this edict, and those of Clovis's successors down

15 The Roman origin of the diploma was demonstrated in Peter Classen's remarkable dissertation of 1950, reworked under the title "Kaiserrescript und Königsurkunde: Diplomatische Studien zum römisch-germanischen Kontinuitätsproblem," in *Archiv für Diplomatik* 1 (1955): 1–87; 2 (1956): 1–115; it was reprinted unchanged, but under the new title *Kaiserrescript und Königsurkunde: Diplomatische Studien zum Problem der Kontinuität zwischen Altertum und Mittelalter* (Thessalonika, 1977). The larger framework of the study rests on the view that early medieval documents are the product of an encounter between the Roman and Germanic worlds that created a clash with Roman-state administration. This perspective (which was very much in tune with its place and time) regards Germanic content, including the supposed personal and symbolic character of Germanic legal thinking, as filling the Roman form of the diploma. It is not always consistent with Classen's thorough tracing of the rescript's evolution or the parallel developments he detects between the west and the east, and in the papacy. There is room for disagreement on particulars, chronology and emphasis.

Classen summarized his views of the diploma, amidst much else, in a fine article "Fortleben und Wandel spätromischen Urkundenwesens im frühen Mittelalter," in *Recht und Schrift im Mittelalter*, ed. Peter Classen, *Vorträge und Forschungen* 23 (Sigmaringen, 1977), pp. 13–54, esp. 47–50, and in a conclusion (pp. 50–52) began to modify his concept of a Germanic legal ideal type. He died in 1980.

16 *Capitularia regum Francorum*, ed. A. Boretius, MGH *Capitularia regum Francorum* 1 (1883), pp. 1–23. Of the nine specimens, only nos. 1, 2, 5, 7 (arguably), and 8 survive with address formulae. For the *Praeceptio Chlotharii II*, see Esder's edition in n. 37.

17 *Capitularia* no. 1, ed. A. Boretius, pp. 1–2. Translated in Alexander Callander Murray, *From Roman to Merovingian Gaul: A Reader* (Peterborough, 2000) no. 42, p. 267.

to Chlothar II (584–629), the last king for whom legislation survives, are handled separately as *capitularia*, the extant Merovingian directives reserved for the MGH Diplomata section assume on the whole a distinct and specialized character. They are essentially privileges – donations, confirmations and exemptions almost exclusively in favour of religious establishments – with a substantial smattering of judicial *placita*. My discussion uses the term ‘diploma’ in this restricted sense of the directives treated separately in the Diplomata section. Some diplomas survive as original documents in papyrus or vellum, some as copies, usually from the cartulary records of churches.

The chronological and geographical distribution of the diplomas is limited, a circumstance that bears heavily on attempts to weigh their importance for the general course of Merovingian history. No genuine diplomas in the narrow sense can be dated to the sixth century, though there are a little over 20 *spuria* purportedly issued by the early kings, and one copy of a donation confirmation from 596 and the reign of Theudebert II (D 25) that, following Havet, is now classified as interpolated and genuine at its core. The earliest original and genuine charters (D 22, 28) come from the reign of Chlothar II, whose regnal dates (585–628) fall in both the sixth and seventh century: one of the charters is of indeterminate date and the other dates from 625. Thereafter the number of genuine charters gradually grow. No matter how one calculates the distribution, it is apparent that no direct evidence for the diploma exists for about one half the history of the Merovingian kingdom, though we know grants, confirmations, exemptions and privileges were made by the early kings. Important, specialized forms of exemption such as immunity are even more restricted in their distribution and do not appear in arguably genuine form much before the mid-seventh century (D 80), and possibly later;¹⁸ the earliest original immunity dates from 690. Therefore, one of the curious aspects of Merovingian institutional history is that just as the extant legislative record of the early kings dries up in the reign of Chlothar II, the diploma record, with a very different focus, begins. This disparity owes more to the vicissitudes of survival than to any deep structural change in the character of government. Literary sources, for example, continue to mention the edicts of kings in the seventh century though none of this legislation has come down to us.

The geographical distribution of the diplomas is skewed as well. There is no genuine diploma (and relatively few spurious ones) from Gaul south of the Loire. The same is true for the trans-Rhenan region. Austrasia produces only a few including specimens of what the edition argues are *spuria* based on genuine

18 D 80 of Sigibert III is dated 643–647/8. Its term of choice, *emunitas nostra*, which is only found in *spuria*, is conceptually tied to *tuitio* and reflects Carolingian practice. Though the edition classes it as genuine, the text appears to be significantly compromised; for numerous other reservations, see Kölzer, *Merowingerstudien* 2:11–13, and the edition’s commentary. Brühl deployed the text and its Austrasian provenance – uncritically I think – in his argument for the introduction of a “new style” immunity of Austrasian origin in the mid seventh century; see below, p. 203. Cf. the treatment of D †50 (a. 636), below, pp. 197–98.

models (*Spuria nach echter Vorlage*). The bulk of genuine and spurious charters come from Neustria, in particular the archives of St-Denis and Le Mans.

The role of St-Denis in defining our understanding of the diplomas is almost overwhelming. About a third of all diplomas, genuine and spurious, come from the St-Denis archives. So do about two thirds of all diplomas classified as genuine. All thirty-eight originals, which comprise over sixty per cent of genuine diplomas, are from St-Denis. These originals, along with the formulary of Marculf, are the foundation for the art of Merovingian diplomatics and the determination of genuine Merovingian usage.¹⁹ Of the five surviving genuine diplomas in favour of lay persons, four were preserved in St-Denis.

Most striking of all is the preservation by St-Denis of papyrus originals. Thirteen of the thirty-eight originals are papyrus forming a sequence from about 625 to about 660; the remaining vellum originals cover the years 677 to 717. The change in writing material appears to have occurred in the intervening decade and a half. The discovery of the papyrus originals shows just how serendipitous the preservation of genuine records from the Merovingian period can be. Most of the papyri came down to modern times in a form quite unlike their appearance in the facsimiles of the *Chartae Latinae*. Eleven of the thirteen had been 'converted,' that is they were used as the basis for forgeries. Glued face down on vellum or papyrus, they provided eleventh-century forgers with a blank reverse surface with all the undeniable qualities of great age. This unseen treasure was not noticed until 1844 when the papyrus was carefully separated from its backing. The peculiar use to which most of the papyrus charters were put accounts for their survival but also their poor condition, which is not the consequence of some special fragility of the material itself.²⁰ As a consequence of the treatment they received, their historical value is far less than one might suppose. It is also worth noting that the recycling of the papyri does not imply disdain for the monastery's connection with its Merovingian past. Dagobert's solemn privilege of 654 (D 85) continued to be prized throughout the Middle Ages. The reused specimens on the other hand were rather ordinary confirmations and *placita* that had long lost their significance for St-Denis.²¹

It is an open question what kind of explanation beyond chance and the ravages of history accounts for the extraordinarily skewed chronological and geographical distribution of the diplomas.²² In the Introduction, Kölzer attempts

19 *Formulae Marculfi*, book I, in *Formulae Merovingici et Karolin Aevi*, ed K. Zeumer, MGH LL *Formulae* (1882–1886); and *Marculfi Formularum Libri Duo*, ed. and trans. A. Uddholm (Uppsala, 1962).

20 Brühl, *Studien*, p. 44.

21 Apart from D 85, only one other St-Denis papyrus diploma has survived conversion (D 32, a. 629). Brühl (*Studien*, p. 44) thinks its survival may be attributable to respect for the name of Dagobert, whose signature is clearly perceptible following its otherwise unremarkable contents.

22 The extant corpus is of course slanted in another way: all but five diplomas were issued to religious institutions. Without the St-Denis forger's penchant for old papyrus instruments we would only have two, one from St-Denis and one from another source (D 158); the latter was lost in the Revolution but the text survives in a partial facsimile and in an early printed copy. No elaborate explanation here seems necessary: diplomas to laypersons must have been legion, but transitory lay archives have simply not survived.

to provide one tied to the political history of the Merovingian kingdom.²³ The argument deserves scrutiny because it seeks not only to account for the diploma's distribution but also to provide the institutional setting for its role in the affairs of the kingdom. Kölzer's starting point is Peter Classen's famous characterization of the Merovingian diploma as the beginning of the stand-alone medieval royal charter, preserved by the recipient, independent of the late Roman bureaucratic system of examination and registration by local authorities. The distribution of the diplomas, according to Kölzer, reveals the staggered collapse of public administration in Gaul and provides for the first time a chronological and geographical framework of that process, which, he contends, proceeded as follows. North of the Loire the last remnants of Roman administrative structures must have succumbed during the civil wars among the sons of Chlothar I (†561). As the charter could no longer be embedded in a functioning administration, it now assumed its role as a permanent record of individual title preserved by the privileged party itself. The result was a transition from the Roman system based on registration to the medieval one based on an independent record of title. This shift in northern Gaul is dated to shortly before 600. South of the Loire, however, Roman-style administration functioned down to the beginning of the Carolingian period, guaranteeing that recipients had no need to archive their legal title themselves as the charter served only to set the registration apparatus in motion and there was no value in preserving it. Thus, unlike the north, the south remained a Roman cultural province down to the time of Charles Martel. In short, Kölzer argues that the survival pattern of the Merovingian diploma is proof of the "dying off of public administration" in northern Gaul and the continuation of the Roman practice of registration in the south.

This view of bureaucratic and administrative collapse leans on widely held beliefs about Merovingian history, but readers should be wary of too readily accepting its depiction of political and institutional conditions or the role it ascribes to registration. The civil wars Kölzer alludes to are described memorably and at length in the *Histories* of Gregory of Tours.²⁴ These dustups among the sons of Chlothar I were fought south as well as north of the Loire (among the prizes were the *civitates* of the deceased brother Charibert, who had controlled great swathes of southern Gaul). There is no evidence that the campaigns changed the character of regional government or brought about institutional collapse. The cities, the administrative centres of local and regional authorities, were not destroyed but continued to function. Wars fought by legitimate Merovingian kings one with

23 Introduction, pp. xiii–xiv. The main elements of the argument derive from Peter Classen (for example, "Kaiserreskript," Part II, p. 59; "Fortleben," p. 17, pp. 47–49). My remarks above for reasons of space deal directly only with the form of the argument as made by Kölzer.

24 *Historiarum libri X*, ed. Bruno Krusch and Wilhelm Levison, MGH SRM I/1, 2nd ed. (1937–1951), books 4–10.

the other to control the resources of the Gallic cities were in the scheme of things relatively restrained.²⁵

More serious questions concern Kölzer's assumptions of negative relationships between the survival of diplomas and both registration (*allegatio, insinuatio*) and the existence of public administration: a system of registration precludes the need for the preservation of records in the archives of beneficiaries; extant diplomas are indicators of the absence of public administration. These are false assumptions. The evidence that might sustain them needs to be examined a little more closely.

One can begin by asking the question, who would have been charged with registering royal grants and privileges, which thereby failed to survive, in Kölzer's view, because there was no need to keep a record of them in the archives of religious institutions? Though imperial officials might register rescripts, the heart of the Roman system was the *gesta municipalia*, the public records of the *civitas* or city, presided over by members of the local municipal council, or *curia*.²⁶ All the references we have to the registration of documents in Gaul likewise refer to a procedure before the *curia* and the entry of records into the *gesta*. Although the *gesta municipalia* are commonly said to have survived longest in the south, the evidence for Merovingian Gaul is actually better for the regions north of the Loire than south of it and, because of the skewed character of surviving Merovingian legal sources, better for the seventh than the sixth century. Bishop Bertram of Le Mans asked in his will that on his death it be registered by his archdeacon in the local *gesta*.²⁷ Bertram died in 623. Formulae for registering documents in the local *gesta* appear in seventh-century formularies from Angers and Paris.²⁸ Though the

25 Convenae (now St-Bertrand-de-Comminges), site of the only siege in the wars – and a short one at that – is the exception that proves the rule. It was destroyed in 585 for succouring the pretender Gundovald, and “no-one was left to piss against a wall” (Gregory of Tours, *Historiae* 7.38, quoting the bible). Convenae is about as far south as one can go and still remain in Gaul. Sigibert's angry intention of throwing the cities north-west of Paris open to his unruly troops from across the Rhine was forestalled by his followers (*Historiae* 4.51, a. 575).

26 Classen assumes the collapse of Roman provincial (that is imperial) administration long before the *gesta*; by the Frankish period, the *gesta* were what was left of Roman bureaucratic practices, and their disappearance by the eighth century completed the dissolution of bureaucratic forms. “Fortleben,” p. 36, pp. 42–47, but cf. 48–49. The relative chronology here is right, though not the conceptual relationship it assumes between registration and bureaucracy/public administration.

27 “Similiter ego Bertichramnus episcopus rogo filio meo archidiacono ut cum testamentum meum apertum fuerit, ipso prosequente, gestis municipalibus secundum legem faciat alligari, quo semper firmiter perduret.” Margarete Weidemann, *Das Testament des Bischofs Berthramm von Le Mans vom 27. März 616: Untersuchungen zu Besitz und Geschichte einer Fränkischen familie im 6. und 7. Jahrhundert*, Römisch-Germanisches Zentralmuseum, Monographien 9 (Mainz, 1986), p. 49. *Prosequere* means “to apply” for the opening of the records, *gesta*; the *prosecutor* was the applicant before the *curia*. See Angers formula in next note.

28 Angers: Formulae Andecavenses 1, 41, generally dated to the late sixth or course of seventh century. Paris: Formulae Marculfi 2.37, 38, ca. 690–700. Cf also from Sens, the Formulae Senonenses 13, 39, 40 (ca. 770), App. 1 (earlier and Merovingian). For the south: Bourges, Formulae Bituricensis 3, 6 (ca. 720s), 15 a, b, c (a. 805); Clermont, Formulae Arvernenses 2 (mid eighth century), and Tours, Formulae Turonenses 3, 17, 20, 23 (mid eighth century). *Formulae Merowingici et*

evidence is fragmentary, *gesta* were apparently functioning in the regions that have provided us with much of the corpus of diplomas.

Would registration have removed the need for other archives?²⁹ It hardly seems likely. Recourse to registration, whether required or sought out, did not mean that the recipients of donations and conveyances failed to keep records; proof of possession was still needed, and recipients requested and received often elaborate records of the registration carried out before the competent officials. The most detailed records we have of the proceedings before the *curiae* come from the *gesta* protocols preserved in the episcopal archives of Ravenna. Its archival practices were hardly exceptional.³⁰

If registration of diplomas regularly occurred in Merovingian Gaul, then, we would have to imagine it occurring before the local officials of the *civitas*, and we should assume the beneficiary went away with a record of the procedure. The problem is there is little reason to suppose any connection between registration in the *gesta* (*insinuatio*) and the type of grants and privileges we find in the Merovingian diplomas. It is uncertain if even imperial munificence always required registration.³¹ By the late fifth century, at any rate, the tide had clearly turned against the registering of imperial donations in the public records. The emperor Zeno (474–91) abolished the requirement, thereby giving imperial gifts “legal validity on their own,” independent of registration,³² and even the famous donation of Odovacar to Pierius in 489 that calls for registration does so in a fashion that suggests it was not always a condition of the king’s grants.³³ It is anyone’s guess what the range of practices were in Gaul originally with respect to royal donations and privileges, but from an early date solemn grants, especially to religious institutions and high status subjects, were likely deemed to be valid in themselves

Karolini Aevi, MGH LL 5, ed. K. Zeumer (1886). For an eleventh-century copy of a *gesta* protocol at Poitiers for the years 677/78, see Classen, “Fortleben,” pp. 43–44. The problem dividing scholars is whether late formulae recorded genuine registration of private documents as opposed to public examination and attestation of them expressed in old, stereotyped phrases.

29 Following Classen (“Kaiserreskript,” pp. 14, 17, 35; “Fortleben,” pp. 16–17), Kölzler stressed the lack of legal inscriptional evidence from the fourth to sixth century, the period of registration. The scarcity of inscriptions in this period, however, is a well-known, general phenomenon not restricted to the legal sphere.

30 Olof Tjäder, *Die nichtliterarischen Lateinischen Papyri Italiens aus der Zeit 445–700*, Acta Instituti Romani Regni Sueciae, series in 4^o 19, 2 vols. (Uppsala 1955, Stockholm 1982); for *gesta* protocols, nos. 4–5, 7, 10–11, 21. Tjäder attributes the solitary survival of the Ravenna papyrus to “a whim of fate” (p. 23). Copies of *gesta* proceedings could be fraudulently tampered with like other documents: *Edictum Theoderici* 90 (*Fontes iuris Romani antejustiniani*, pars altera, ed. J. Baviera [Florence, 1964], p. 700).

31 Classen, “Kaiserreskript,” Part I, pp. 16–37; see esp. 27–31 for Classen’s doubts. The constitution in the next note seems to me to imply it was relatively common prior to the late fifth century.

32 Zeno’s constitution is referred to by Justinian in Novella 52.2 (in *Corpus iuris civilis* 3, ed. R. Schoell and G. Kroll [Berlin, 1895 and later], p. 298) The quotation is Justinian’s, ἄλλ’ αὐτόθεν ἔχουσι τὴν ἰσχὺν, characterizing the effect of abolishing registration.

33 Tjäder, no. 10. The donation ends with a condition: “[nos] tribuentes adlegandi fiduciam ita ut a tuis actoribus fiscalia tributa solvantur.” Registration ensured the property paid regular taxes.

without completion of a registration process. Registration does not hold the key to the distribution of the diplomas, and the procedure it entailed is irrelevant to the survival of archives.

A more significant question raised by Kölzer's argument concerns the relation of Merovingian directives as a whole to royal regional officials who would have to deal with the claims of their bearers. Registration is not the sole criterion for bureaucratic practice or a synonym for public administration.³⁴ In the imperial period, officials, especially the governor of the province or fiscal administrators concerned with state properties, might be charged directly by rescript or indirectly by the bearer of a rescript with fulfilling the emperor's commands; they could also be responsible for examining rescripts and, when these depended on information provided by the petitioners, the claims of the beneficiaries.³⁵ Similar practices are attested in Merovingian Gaul in the narrative and legislative record. Gregory of Tours tells us about a certain Andarchius who extracted from King Sigibert a directive allowing him fraudulently to marry a young woman of Clermont; to put the directive into effect Andarchius first presented it to the local *iudex*, probably the count of the city, who was apparently not persuaded, because the issue ended up back in the king's court.³⁶ On the legislative side, we have Chlothar II's legislation that nullified royal directives obtained deceptively and acknowledged the need for local judicial scrutiny of their contents. These measures were, as the legislation itself recognized, the ideals of late Roman administrative practice ("antiqui iuris norma").³⁷

This evidence for the local examination of royal directives brings us to the decades bracketing 600. What about afterwards, in the times of the diplomas? The narrative and legislative sources fail us thereafter, and we are left largely with

34 Registration, like the desire to encapsulate all manner of legal transactions in a written instrument, is a late phenomenon of the fourth century and part of the widespread development of norms that are often called "vulgar law," to distinguish them from the legal models of the classical period.

35 Classen, "Kaiserreskript," Part 1, pp. 22–23.

36 *Historiae* 4.46. The second round in the king's court went to Andarchius as well, where he continued to hoodwink all concerned. He returned to Clermont a second time with a directive. Justice triumphed only when Andarchius was burnt to death trying to take possession of a villa belonging to the girl's father. For the Roman-law context of rescripts concerning marriage, see commentary of Stefan Esders on c. 7 of Chlothar's *Praeceptio* (as in next note).

37 *Capitularia*, nos. 8 and 9, ed. Boretius, for Chlothar's *Praeceptio* (intro. and cc. 2, 5, 7, 9) and his *Edict of Paris* (cc. 6, 16, 18) a. 614, pp. 18–23. Cf. the edition of the *Praeceptio* by Stefan Esders (*Römische Rechtstradition und merowingisches Königtum: Zum Rechtscharakter politischer Herrschaft in Burgund im 6. und 7. Jahrhundert* [Göttingen, 1997], pp. 31–87, 109–267) which supersedes the MGH edition. Esders provides extensive commentary on the Roman-law context of the *Praeceptio*. Like Boretius he assigns it to Chlothar II not I; he favours a date shortly after the *Edict* and a Burgundian provenance. Cf. my review in *Speculum* 77/2 (2002): 516–18. I misread the context of c. 2 (Boretius) in *Roman to Merovingian Gaul: a Reader*, p. 564. The translation should run: "Let what the laws determine with regard to blood relations inheriting be respected, and let permission to acquire something contrary to them by petition be completely withdrawn. If by some means permission to do so is acquired or procured, it is to be considered empty and void if the judges refuse to accept it."

the diplomas themselves, their address formulae to officials still bearing the marks of their origin in the imperial rescript system. But the diplomas constitute a rather narrow slice of the range of matters dealt with in directives as a whole. They are specialized documents, and the privileges they confer (donations, confirmations, exemptions) are not of the kind that would leave much room for local initiative. Peter Classen has stressed the distance the independent diploma had come from its Roman prototype, noting that the original petition that often gave rise to the diploma was not returned with the diploma itself to enable local officials to examine the grounds of the petition.³⁸ The distance is not as great as it seems.³⁹ Merovingian confirmations, which are essentially replies to petitions, commonly report the contents of the petition and note that the documentary evidence for the claims has been inspected. By anticipating examination, they seem to rule out the need for local inquiry, but they still convey to the addressee (that is, the royal official) information regarding the basis of the confirmation. The formulary of Marculf from the late seventh century also provides specimens of royal directives addressed to bishops and local officials with orders to give justice to petitioners, contingent on the truth of the petitioner's claims.⁴⁰ Whether by the late seventh century there were other circumstances in which directives might be conditional on local actions is unknown but should not be ruled out.

The Merovingian diploma as it has been preserved in the archives of beneficiaries is not a sign of the collapse of public administration. It existed within a system of administrative procedures that can be examined on its own terms.⁴¹ It was also a specialized expression of a distinctive system of privilege and subsidy, conveying to officials the king's command, which, in tune with the working of the

38 *Kaiserreskript*, parts 1, p. 23, and 2, p. 61; "Fortleben," pp. 47–48.

39 One should not imagine that all rescripts were subject to local examination – only certain classes – and it needs to be remembered before one relies on generalizations about imperial practice that our knowledge of the rescripts is poor, coming largely from legislation and Cassiodorus' *Variae* (Classen, *Kaiserreskript* Part 1, pp. 10–14, 19–20). Merovingian practice with regard to confirmations and donations is not likely to be an innovation. See Athalaric's confirmation in 527 of previously conveyed property; it explicitly excludes local examination into the grounds of the conveyance and provides a penalty clause if challenged (Cassiodorus, *Variae* 8.25, ed. Theodor Mommsen, MGH AA 12 [1894], p. 256); but cf. *Variae* 4.24, Theoderic's grant to a deacon of a derelict building lot, where despite the authority claimed by the rescript, acquisition of city approval for demolition of the existing structure seems implied. The value of the properties and the status of the recipients is at least part of the reason for the distinct treatment of the privileges. A circumstantial account of the treatment of petitions in the Burgundian kingdom is in the *Lex Burgundionum, Extravagantes* 21.14 (ed. Ludwig Rudolf von Salis, MGH Leges nationum Germanicarum, 2/1).

40 Marculf 1.26–29. Classen *Kaiserreskript* II, pp. 32–33.

41 Some of the issues are outlined in Alexander Callander Murray, "'Pax et Disciplina': Roman Public Law and the Merovingian State," *Proceedings of the Tenth International Congress of Medieval Canon Law, Syracuse, New York, 13–18 August 1996*, ed. Kenneth Pennington, Stanley Chodorow, and Keith H. Kendall (Vatican City, 2001), pp. 271–285.

system, was often expressed in a negative manner, forbidding the exercise of the state's fiscal prerogatives on the part of its agents.⁴²

There is good reason to believe that the diploma might also be part of a system of bureaucratic communication in which the beneficiary's copy formed only one part. This feature of seventh-century practice is shown by the chance preservation of two documents in the Le Mans dossier on the *curtis* of Ardin. The documents are exceptional; neither is a beneficiary's copy of the privilege itself, which would no doubt have resembled the standard form of the day, addressed to officials, but otherwise lacking explicit reference to a wider network of administrative practices. The basic circumstances surrounding the documents are as follows.⁴³ In 669/70 Childebert II granted to Le Mans fiscal rights in the *curtis* of Ardin. Ardin lay in Poitiers, not in Le Mans. In 673/4 Le Mans, under a new bishop, petitioned for a confirmation and Childeric granted it. Neither of these directives have survived in the Le Mans archives. What we have instead are records of the church's attempts to document its rights. The means at its disposal were royal directives written to others informing them of the grants and their terms. These were preserved in other archives. One is a letter written to Dido, bishop of Poitiers at the time of the original grant, informing him of the privilege, doubtless because Ardin lay in his diocese. Le Mans acquired an authenticated copy of the letter for its own records (D 107), presumably because it no longer had the original diploma. The other directive was received by an unknown secular official, likely a count or a *domesticus* (a royal fiscal official), on the occasion of the confirmation in 673/4; Le Mans a few months later acquired an authenticated copy of his instructions (D 110).⁴⁴ Records of the copies were included in a ninth-century history of the bishops of Le Mans (*Actus pontificum Cenomannis in urbe degentium*), which preserved them for posterity.⁴⁵ Childeric's dealings with Le Mans, therefore, were accompanied by directives sent to officials having an interest in Le Mans' claims to Ardin. There was no expectation that the king's directives favouring the church would be sufficient in themselves. They were not singular attestations of the conferral of a right, existing apart from administrative practices, but were part of a package of communications between the king and his officials.⁴⁶

42 Alexander Callander Murray, "Immunity, Nobility, and the Edict of Paris," *Speculum* 69/1 (1994): 18–39; [above ch. 5].

43 All the details are by no means clear. As well as the new edition's treatment of DD 107 and 110, see also Margarete Weidemann, *Geschichte des Bistums Le Mans von der Spätantike bis zur Karolingerzeit: Actus Pontificum Cenomannis in urbe degentium und Gesta Alderici* (Mainze, 2002) vol. 2, nos. 7 and 8, pp. 208–11. They resolve some of the difficulties rather differently.

44 The letter's opening address is missing but the internal address to "magnitudo seu utilitas vestra" shows that the recipient was a lay official. Kölzer's assumption of a general, plural address, seems to me unlikely in view of the purpose and contents. There is really no reason for Kölzer to consign parts of the document to the apparatus, even if one could be sure of a copyist's intervention in the text.

45 For the *Actus*, see Weidemann, *Geschichte des Bistums Le Mans*.

46 The system probably did not require the king's court itself to keep track of duplicate records. An exception is D 142, which mentions a copy being kept in the treasury. It revokes public revenues

Thus the historical and administrative context for the diploma as set out by Kölzer appears to be based upon mistaken assumptions about the political and institutional history of the Merovingian kingdom. To take the presence of the diploma in the historical record as a sign of moribund public administration and its absence as a mark of continuing bureaucratic practice seems unnecessarily paradoxical and appears linked to the common, but flawed, notion that the Merovingian kings represent the emergence of primitive, personal modes of rulership. Historians wishing to advance arguments about the nature of the Merovingian state can benefit from the new edition of the diplomas, but they should be cautious about proceeding from the kind of premises espoused in the editor's introduction to it.

II

The 196 diplomas that make up the first volume are arranged chronologically according to the regnal dates of the kings issuing them. The order of the new edition is unusual and deliberately avoids taking into consideration the authenticity of the diplomas, whereas Pertz had arranged them into two groups according to their classification as genuine or spurious, and then according to regnal dates within each of the groups. Brühl is adamant about the superiority of a simple chronological arrangement, arguing that it recognizes the grey areas of charter research where forgeries with genuine dates might prove useful in establishing royal itineraries or the classification of copies might prove mistaken. There are merits in the argument but they are modest and their logic frequently breaks down. Egregious forgeries constitute hardly a handful of exceptions. Charters with false dates now occupy jarringly illogical positions in the sequence. The edition begins with six thoroughly spurious charters attributed to Clovis I. These are the products of the eleventh and twelfth centuries; there is no logic that I can discover for their placement here.⁴⁷ The sequence of spurious specimens continues. Only at D 22, sixty-two pages into the volume, will the curious reader looking for the real thing find a genuine diploma (a St-Denis original of Chlothar II). Among copies,

in Marseilles, once allocated to St-Denis, offers the monastery a villa in exchange and consequently bears some resemblance to a transaction as well as a grant. Acquisition of resources by the fisc, not just their alienation, may account for the copy. Officials in Marseilles must have been thoroughly informed of the original and the new arrangements. Part of the revenue was back in the hands of St-Denis by 716 (D 170).

See Goffart (Goffart/Ganz, p. 912) on the "derisory fraction" of the total number of issued charters represented by extant examples. He notes Karl Ferdinand Werner's observation that six letters were needed to appoint a bishop. Werner estimates that kings issued hundreds of thousands of charters over the course of the period (*Les origines, Histoire de France* 1 [Paris, 1984], p. 361). To judge by Gregory of Tours' narrative, letters of varying description were a constant of political life. Chilperic even expected to communicate that way with St-Martin, and to receive a written reply (*Hist.* 5.14).

47 Another example: DD 62 and 63 are late medieval or modern yet occur early in the sequence under the reign of Dagobert.

the first specimens labeled as ‘interpolated’ and ‘reworked’ appear at D 25 and D 37 respectively.⁴⁸ The first copy classed as genuine is D 77.

The reasoning guiding Brühl’s arrangement reflects valid, but particular, interests, that not all readers, perhaps not even most, will share. It is better to recognize that there is in fact no single ideal organization for material of this kind and that different research interests require different means of ordering it. It would be churlish to complain about a beautiful print production such as the present volume but short-sighted not to recognize that its utility would be significantly enhanced by a digital database. The edition does provide some tools for exploring its contents – a list of recipients and modern archives, keyed to the diplomas, and a concordance of the new Kölzer numbers and those of Pertz and the preparatory study of Brühl. But these print aids are inevitably awkward and fail to cover all the likely search categories. The concordance is just barely sufficient. The editors also furnish a fair degree of quantification in the preparatory studies and introductions to the edition but not all the questions likely to be asked are covered. Readers, I expect, would appreciate not only the ability to search text that a database would provide but also the capability of searching and ordering the diplomas by at least the following fields: date and reign (the arrangement of the present edition); numbers of the Kölzer, *Chartae Latinae*, Pertz, Pardessus, and Lauer and Samaran editions (the scholarship of the last century and a half is still going to be consulted); originals versus copies; degree of authenticity according to the various categories adopted by the editor, as well as by other scholars; medieval archive or dossier (the latter including literary as well as documentary sources associated with particular institutions); date of copying; estimated date of fabrication, in *spuria* a date distinct from the purported date of issue and often from the date of copying; and the legal character of the instrument (donation, confirmation, exemption etc.). In order to carry out this review, I found it necessary to compile on the go a rough and ready (and probably idiosyncratic) database based on the printed edition and found it a valuable tool navigating the well over six hundred separate items that make up the two volumes.

The edition’s treatment of each diploma is thorough and includes the following elements: number of the diploma in the edition and status of the diploma’s authenticity; summary of contents and date, marked as to whether it is calculated by regnal year and indiction, inferred, or historically impossible; lists of MS sources and of previous editions, with their corresponding number, and facsimiles; discussion – often lengthy – of the charter’s diplomatic contents, including a summary of arguments regarding the criteria for establishing its authenticity; and finally the text itself, with text borrowings (*Vorurkunde*) marked out in smaller print, and apparatus. Only a few aspects of the approach of the edition can be dealt with here. I limit my comments to editorial premises that seem important in different ways for understanding the historical value of particular diploma texts.

48 D 25 is the oldest diploma genuine at its core, according to Brühl (*Studien*, p. 50).

Establishing the status of a diploma's authenticity, the *discrimen veri ac falsi* in Daniel van Papebroch's famous phrase, is the heart of Merovingian diplomatics.⁴⁹ Those diplomas whose authenticity is questionable are classified by Kölzer as *unecht* (spurious, forged), *interpoliert* (interpolated), *überarbeitet* (reworked), and *zweifelhaft* (doubtful). Genuine charters receive no explicit classification and are simply introduced by a number. Statistics by category are as follows. The interpolated class contains thirteen items;⁵⁰ reworked, three; and doubtful, one. The vast majority of problematical specimens are spurious, *unecht*: 118 or over 60 per cent of all charters.⁵¹ Genuine charters make up 31 per cent of the total. If the St-Denis originals are removed from the calculation and only copies are counted, the percentage of genuine items is cut in half to less than 15 per cent. If the reworked and interpolated charters are added to the genuine group to make up a class of "predominantly genuine" items, the figures rise to 39 per cent for copies and originals together, and to over 24 per cent for just copies.⁵²

However the calculation is made, this picture of the general reliability of the Merovingian diplomas is on the face of it grim; Kölzer calls it the worst of any corpus of royal charters.⁵³ Pertz by comparison had close to an even split of 50 per cent in his two categories of genuine and spurious; of the copies, about 40 per cent were genuine, 60 per cent spurious. The reevaluation of the Pertz edition is far greater even than these figures suggest because 11 of Pertz's *spuria* have also been reclassified as genuine. In all, more than one third of all the copies in the Pertz edition have been reclassified one way or the other in the new one.

But the grimness of the picture depends in part on how one regards the significance of the terms classifying the documents. Unfortunately they are presented as if their meaning is self-evident. A little more transparency would have eased the

49 The phrase – part of the birth announcement of diplomatics – comes from the title of a critical 1675 essay that stimulated Jean Mabillon to reply with his monumental *De re diplomatica libri sex* in 1681, the work that laid the foundations of the study. The bone of contention was D †65, a privilege of Dagobert for the nunnery of Oeren in Trier.

50 The Introduction lists 11, accidentally omitting D 151 and D 164.

51 That is out of 196 diplomas in volume one. If the 13 modern forgeries are included, the percentage rises to almost 67 per cent; if the interpolated, doubtful and reworked items are added, higher still. Further calculations above are based on the 196 figure, though there is no difference between a forgery from the late middle ages and one from the sixteenth century.

52 Classen's optimistic sense of things in 1956 (30 per cent of copies genuine; 44 per cent, wholly and "partly genuine" ["Kaiserreskript," Part II, p. 26]) seems to roughly match estimates of 50 per cent of all royal diplomas being forgeries made by Brühl in 1988 (p. 209) and Kölzer in 1990 (p. 16–17) – see works in n. 54 below. Brühl's estimate in 1990 was "more than half forgeries" ("Das merowingische Königtum im Spiegel seiner Urkunden," in *La Neustrie: Les Pays au nord de la Loire de 650 à 850*, ed. Hartmut Atsma, Beihefte der Francia 16/1 [Sigmaringen, 1989], p. 524).

53 Figures for particular groups are notably bad. Over 90 per cent of the forty-three items for Dagobert are spurious; of the remaining four, two are originals, two strongly reworked. Of the twenty-nine St-Denis items transmitted in copies only two are classed as genuine.

reader's burden.⁵⁴ The classifications and the criteria used to determine them in the end will probably not elicit universal approbation. Since all copies are in some measure 'reworked' (the editor notes that linguistic smoothing was already occurring in the eighth century), this category of 3 seems anomalous. 'Interpolated' charters generally have some text marked off by the editor as anachronistic, but it is unlikely to represent the sum of alterations, even if these cannot all be identified.

The discussion of a significant number of *unecht* diplomas also reveals just how fluid the spurious category can be. The editor tends to regard the presence of genuine formulae (*spolia*, *Spolien*) in demonstrably compromised texts as a sign of the reworking of a genuine Merovingian charter. It would have been helpful if this class (*Spuria nach echter Vorlage*) had been formally identified. The group raises troublesome questions. Why should *spolia* have originally applied to the institution using them or to the date of the copy?⁵⁵ Why do *spolia* indicate a genuine diploma at all and not an earlier forgery?⁵⁶ Can the contents of *spolia* be trusted or were they adapted to the claims of the moment? In short, it seems difficult to determine if *spolia* testify to the existence of a single, genuine model as opposed to access to genuine and compromised specimens for copying.

The most contentious *unecht* classifications will probably concern the some two dozen charters that past scholars (leaving aside Pertz) have regarded as genuine in varying degrees and that the new edition moves into the *unecht* category. This is sometimes done because of minor discrepancies between their language and what the editor regards as genuine Merovingian formulae.⁵⁷ An example is the copy D †50, a grant of a villa by Dagobert accompanied by an exemption from the attention of royal judges ("absque introitu iudicum"). The formalities of the text look Merovingian, but it is disqualified chiefly on the grounds that place-name formulae have been manipulated (*nomine* is said to be reserved for people not places except

54 General views on the forgery question are expressed by Brühl in "Die Entwicklung der diplomatischen Methode im Zusammenhang mit dem Erkennen von Fälschungen," in *Fälschungen im Mittelalter: Internationaler Kongress der Monumenta Germaniae Historica*, ed. Horst Fuhrmann (Hanover, 1988) pp. 12–27 and in "Der ehrbare Fälscher," *Deutsches Archiv* 35 (1979): 209–18; both rpt. in *Aus Mittelalter und Diplomatik*, vol. 3, pp. 12–27 and vol. 2, pp. 767–76, respectively; and by Kölzer in "Urkundenfälschung im Mittelalter," in *Gefälscht! Betrug in Politik, Literature, Wissenschaft, Kunst und Musik*, 2nd ed., ed. Karl Corino (Frankfurt, 1990), pp. 15–25. Brühl's views are more pointed and seem to be no guide to Kölzer's practices. Neither deals at any length with the Merovingian diplomas.

55 Exceptionally this point is acknowledged for D †103, which otherwise has long been accepted as genuine though reworked. The contents of this charter have considerable historical significance, which fortunately does not hinge on provenance of the original.

56 The mixture of Merovingian and Carolingian *spolia* in D †172 of Chilperic II is taken to mean that a genuine diploma of the king was not used directly. But compare this interpretation with the claim that D †186 is a *Fälschung nach echter Vorlage*, though it combines Merovingian, Carolingian, and later formulae. This forgery produces a whole series of *deperdita* going back to Childebert II in volume two (see below at n. 97).

57 The edition's view on Marculf-related charters, long a controversial question, should prevail as long as the present dating of the formulary to ca. 700 holds.

in *spuria*, and *in territorio* is used in place of the usual *in pago*). If these criteria are valid, one wonders why D †50 not classed as interpolated or reworked.⁵⁸ Brühl classed it as an “undoubted forgery” as part of an argument that unnecessarily located the introduction of the so-called *introitus* prohibition to a period later than Dagobert’s reign, a view that is impaired if D †50 is basically genuine.⁵⁹

And just how grim the picture is also depends on what one is looking for in the diplomas. A diplomatic perspective exploring the probabilities of earlier originals has different standards of worth from an historical one seeking to establish reasonably credible and precise data for reconstructing institutional, legal or political history. Both perspectives appear in the edition. The problem here is one of burden of proof and utility. The edition’s espousal of the maxim *in dubio pro reo*, giving compromised items the benefit of the doubt, is a thin reed on which to hang an historical argument, and the inability to detect *dolus malus* on the part of the forger provides cold comfort, even if one could be sure of its absence. These are old problems that an edition will hardly settle. Historians have wisely tended to be cautious in the use of copies, relying heavily instead on the originals and the formulary of Marculf. Brühl has suggested that the new edition should end the need for such wariness, but this opinion seems optimistic.⁶⁰ As helpful as the discussion of *discrimen veri ac falsi* may be, the quandary of how to use problematical charters (that is the vast bulk of copies) remains and will no doubt continue to be argued, charter by charter, and only partly on diplomatic criteria.

A valuable and fascinating feature of the new edition is the attempt to establish the dates at which spurious diplomas were fabricated. Many an *unecht* that might seem something only a *Diplomatiker* could love can, when contextualized, occupy a legitimate position in the burgeoning interest in the so-called problem of medieval forgery.⁶¹ When placed alongside its counterfeit mates, a forged diploma can provide insight not only into the archival practices of later religious institutions but also into the afterlife of the Merovingian monarchy and its representation in succeeding centuries. The accumulated data gathered here on these subjects is impressive. It is also scattered and abbreviated among the discussions of individual charters. Readers should supplement the edition by consulting those preparatory studies dealing with monastic dossiers as a whole. The dispersal of this data in the edition also tends to conceal the pace and phases of forgeries, a subject that Merovingian historians interested in the authenticity of individual charters and

58 Places *are* normally identified with *nuncupans* and *qui dicitur*. But cf. the original D 145: “curtibus . . . quae nominantur” – followed by six names. *In territorio*, followed by a name, is found in the Formulary of Marculf II 1, 21.

59 I only raise the question here without defending the text’s genuineness. In *Studien*, pp. 176–79, Brühl is more circumspect, basing his negative judgment on the totality of what he sees as small muddles in the text, none conclusive on its own.

60 “Entwicklung der diplomatischen Methode,” p. 213 [15]; cf. “Immunität,” pp. 153, 154.

61 See the survey of the issues and literature in the first two chapters of Alfred Hiatt, *The Making of Medieval Forgeries: False Documents in Fifteenth-Century England* (Toronto/Buffalo, 2004), pp. 1–35. For Brühl’s and Kölzer’s views, see works in n. 54.

the motives of forgers cannot afford to ignore. A few comments may be in order on the basis of admittedly rough calculations.⁶²

The forging of Merovingian charters has a claim to a long and ignoble history. There is no doubt it began in the Merovingian period itself.⁶³ The detection of contemporary or near contemporary forgeries, however, cannot be based on diplomatic criteria, since the formulae of the charters reveals a rough date, not the truth of the contents. From the Carolingian period onwards, it is possible that not a century went by until the nineteenth without the forging of a directive of a Merovingian king. The bulk of the *spuria* are not Carolingian as one might suppose, though the numbers are still considerable. The half century following the deposition of the last Merovingian king produces only two or three. Most forgeries of Carolingian date are the creation of the ninth century – about 25 per cent of the total *spuria*. Thereafter the pace drops off to around 14 per cent in the tenth. The next period of increase, with the largest overall number, begins in the eleventh century with about 20 per cent of the total and rises in the twelfth to close to 30 per cent. Thereafter the decline is precipitous: perhaps 3 per cent for the thirteenth century and negligible numbers for the fourteenth and fifteenth.⁶⁴ A slight rise occurs in the early modern period with about 5 per cent of the total in the sixteenth century, falling off to 3 per cent in the seventeenth. There is one forgery from the eighteenth century. The full significance of this pattern defies easy characterization. Some surges may be connected with the accidental timing of individual lawsuits and property claims, but continuity of production through the twelfth century, even with a tenth-century dip, shows there was no time in that period when written monuments of Merovingian kings were not prized. If the peak in the twelfth-century coincides with what has commonly been seen as the golden age of medieval forgery, it is worth noting preceding ages of bronze and silver. The puzzling feature of the pattern is the sudden drop-off in the thirteenth century.

The handling of the authenticity of individual diplomas and the significance this has for the value of spurious texts is not likely to be the only contentious aspect of the edition. Doubtful perspectives of legal and institutional history sometimes intrude on the handling of summaries and the discussion of diploma contents.

62 Not all the *spuria* are precisely dated, and some have date ranges that overlap the century divisions that I have adopted here. A far more nuanced account is possible.

63 Bishop Egidius of Rheims was found guilty in a hearing before Childebert II of forging grants of fiscal property in the king's name (Gregory of Tours, *Historiae* 10.19). (The truth of the charges does not affect the type of practice portrayed in them.) The trial took place in 590; the alleged grants would have been dated after 575, likely in the period 581–84. The referendary at the time of the grants was called upon and denied the authenticity of his signature. Gregory's account seems to rule out recourse to public records. Repeated confirmations of privileges may have alleviated the problem of forgery. Cf. also the earlier tampering with *gesta* records, n. 30 above.

64 If any. Uncertain dates for late forgeries only make fourteenth- and fifteenth-century dates possible.

As has long been standard practice in charter editions, each item is introduced by a brief summary of the diploma's text. Summaries would not require comment if they were always restricted to a factual report of the contents of the charter. In a number of instances, however, the editor's brief has been exceeded with a characterization of the legal contents. Eight of the *placita* are described as recording a *Scheinprozeß*, a term for a fictive trial whose form is used to achieve results unrelated to the apparent purpose of the process in which it is carried out. This characterization is an interpretation and merits discussion – though legal substance like this is a subject the edition generally avoids – but not inclusion in a summary. No diploma identifies itself as recording a fictive procedure.⁶⁵

The term *Scheinprozeß*, moreover, is not apt. Most of the *placita* in question record a procedure before a session of the king's court for the purpose of confirming previous private law transactions (sales or donations) between two parties. This procedure is part of an ancient practice in Roman law of using the public law power of state institutions, namely a court, to confirm and secure private law agreements and has analogies with the classical *in iure cessio* and the late Roman *allegatio* before the *curia*.⁶⁶ Though the procedure is recorded in a form with some resemblance to dispute procedure, there are notable differences.⁶⁷ There is no litigation. The petitioner's statement as to the terms of the previous agreement between the parties is confirmed by the other party, not contradicted. The bill of sale or donation documents that were previously drawn up are presented to the court for confirmation. There is no sentence or condemnation.⁶⁸ In effect, there is no pretence of dispute as a device to achieve a legal outcome. The *placita* recording previous sales and donations should just be regarded as a less formal species of royal confirmation.⁶⁹ They are not fictive procedures.

65 Nor as interpolated, but see the summaries of DD †186 and †188, for example where some clauses are marked as interpolated.

66 *In iure cessio*: Gaius, *Institutiones* 2.24; *Tituli ex corpore Ulpiani* 19.2–15 (*Fontes iuris Romani antejustiniani* 2: 51, 280–81). *In iure* means before a judge, the *praetor* in the case of Rome, the governor in the case of provinces. Most striking is the fact that the transferee's claim was a *vindicatio* as in the *placita*. Gaius and Ulpian simply see the procedure as one of several modes for the acquisition of property. The procedure is generally thought to have disappeared by the late third century. Its role was assumed by public registration before the *curia* (see above at n. 26). On the analogy of the confirmation-*placita* with the curial *allegatio* procedure, see Classen "Kaiserreskript," Part 2 p. 70, and, in greater detail, Walter Bergmann, "Untersuchungen zu den Gerichtsurkunden der Merowingerzeit," in *Archiv für Diplomatik* 22 (1976): 100–102.

67 Resemblances to a suit: in three instances the petitioner (that is the transferee) is initially described as coming (*veniens*) before the court *adversus* the transferor; in dispute-*placita*, the same phrase is used the same number of times and is in fact uncommon. The preposition is not restricted to hostile relationships. On the procedure as a *vindicatio*, see previous note.

68 In D 155 Kölzer's summary has the seller "zur Herausgabe . . . verurteilt." The summary to D 136 erroneously suggests conflicting claims between the parties. Pertz got these right and on the whole read the *placita* rather well (though not D 157).

69 There is no *arenga*, and though the legal substance of the *placitum* (*dispositio*) is the royal command in the present tense, the king does not sign his name. The *placitum* bears the signature of the referendary and the royal seal. Royal confirmations by conventional diplomas are preserved only

There is also a problem as to which *placita* should be regarded as confirmations and which as judgments terminating disputes. Heinrich Brunner discussed seven *placita* as *Scheinprozesse*; Peter Classen listed six; Walter Bergmann, eight.⁷⁰ There is no doubt that six are simply confirmations of sales and donations.⁷¹ Two are thought to be more difficult to classify.⁷²

Brunner regarded D 157, which confirmed St-Denis's right to a mill against the claims of mayor Grimoald's representatives, as the product of a *Scheinklage*.⁷³ The monastery's claim was settled by an inquest ordered by the mayor, and, on the basis of the mayoral judgment proceeding from the inquest, the *placitum* confirmed St-Denis' rights.⁷⁴ The sequence of events in this *placitum* are not as clear as they might be. The main problem is the inquest. Brunner saw it as having taken place before St-Denis' appearance in the king's court, thereby making the *placitum* simply a confirmation of Grimoald's judgment.⁷⁵ But the inquest can also be seen as the court's response to St-Denis' claim. This implies three stages to the hearing (complaint, submission of issue to an inquest, royal confirmation of the inquest) and has parallels in the formulae documenting disputes before local courts.⁷⁶ On balance, I think the second reading of the *placitum* is the correct one, but in neither case is the subject of confirmation a disguised conveyance. It is the resolution of a dispute.⁷⁷

for the decades in the mid seventh century in papyrus originals; *placita* confirmations begin only in the 690s. See Bergmann's argument ("Untersuchungen," p. 95–97) as to the significance of this pattern.

70 Heinrich Brunner, "Das Gerichtszeugnis und die fränkische Königsurkunde," in his *Abhandlungen zur Rechtsgeschichte: Gesammelte Aufsätze*, vol. 1 (Weimar 1931), pp. 441–448 (originally published 1873). Classen, "Kaiserrekrift," p. 70. Bergmann, "Untersuchungen," p. 103. Kölzer follows Bergmann's list.

71 These are ones listed by Classen, that is the sale and donation confirmations: DD 136, 143, 153, 155, 158, 187.

72 Richard Gerberding (*The Rise of the Carolingians and the Liber Historiae Francorum* [Oxford, 1987], pp. 103–04) has also claimed that D 149 involving Pippin's son Drogo is a so-called *Scheinprozeß* too, but this has generally been seen as a real dispute.

73 The issue might seem to be the personal property of Grimoald but the mill would have been part of the endowment of mayors going back to the time of Ebroin in the 660s and 670s.

74 The elements are as follows: 1) St-Denis claimed that its long standing right to a mill was being denied by the mayor of the palace's representatives, who said it was subject to one of the mayor's villas; 2) St-Denis then said that the mill originally belonged to an earlier mayor, Ebroin, who had granted it to the monastery; 3) Mayor Grimoald held an inquest that ended up maintaining St-Denis's rights and his representatives accepted the testimony of the inquest and the mayoral judgement that comes from it; 4) The king's *placitum* upholds the mayor's judgment, confirming St-Denis's claim.

75 Brunner's reading presupposes element 3 (as in previous note) was part of St-Denis's narrative of the claim, that is the inquest preceded the hearing in the king's court. The problem is one of voice.

76 Cf. the *iudicii* and *noticiae* in Angers Formulae recording the stages in disputes.

77 The *placita*-confirmations (in n. 71) show there was no need to disguise a conveyance in a dispute process.

The second doubtful case also concerns St-Denis and Grimoald.⁷⁸ That the *placitum* in question is not the resolution of a dispute is a recent perception. In D 156 St-Denis claimed that its right to tolls collected from merchants at the fair of St-Denis was being infringed by agents of the count of Paris and the mayor of the palace Grimoald. St-Denis supported its claim with a sheaf of diplomas from previous kings. Grimoald's representatives objected that the share they themselves collected was customary. St-Denis claimed an earlier count had introduced this custom by force. An examination of various persons and the diplomas of earlier kings was conducted. As it upheld St-Denis's claim to the tolls in their entirety, its finding was accepted by the mayor and the rest of the court.⁷⁹ The language of dispute, claim and counterclaim is unmistakable in this *placitum*.⁸⁰ D 156 could conceivably be a *Scheinprozeß* but its lengthy account of the issue reads easily enough as genuine litigation.

The *placita* form should not be regarded as an instrument limited to dispute settlement and *Scheinprozeß* in the guise of litigation. It is better viewed as a transcript of proceedings before a king's court, the legal content of which could vary.⁸¹ Most *placita* may have been trials, as our surviving specimens suggest, but a significant number were clearly simply confirmations of private law conveyances.⁸² Others terminated administrative disputes by confirming inquests initiated by judicial complaint or previously granted royal directives. The written record that we have taken to calling a *placitum* was a flexible instrument and may have dealt with other legal business that has left no traces.

78 DD 156 and 157 are dated respectively 13 and 14 December 709.

79 Bergman ("Untersuchungen," p. 174), must suppose this examination was part of an earlier mayoral hearing which issued St-Denis a favourable judgment. This reading parallels Brunner's understanding of D 157. But only mayoral agreement is mentioned in D 156, no mayoral hearing, no mayoral judgment; previous royal directives are upheld, not a mayoral decision, and the sequence of events is quite clear. For a translation, see Murray, *Roman to Merovingian Gaul: A Reader*, p. 585–587; in the introduction to the text I am overly accommodating to the possibility of *Scheinprozeß*. The fundamental assumption of Bergmann is that mayors did not lose suits in either their personal or official capacity and so there must be some other explanation for St-Denis' two wins (we do not know the losses). The assumption distorts Merovingian institutions, both legal and fiscal, as well as Frankish politics. There may be politics in some sense behind the two wins, but what are they? There are many possibilities. Cf. Bergmann with the political readings of Gerberding, *Rise*, pp. 103–04, and Ian Wood, *The Merovingian Kingdoms* (London, 1994), pp. 262–263; as there is little more to go on than the *placita* themselves, political scenarios could be multiplied.

80 Bergmann emphasizes the omission in St-Denis' claims of the phrase common to real-property disputes, *malo ordine (post se retinere)* – a point Brunner stressed in D 157. If this is significant and not simply discretion on St-Denis' part, it merely shows the term was unsuitable in what is really a fiscal-administrative disagreement among servants of the king. The same point also holds true for D 157.

81 Classen ("Kaiserreskript," pp. 69–70) notes the resemblance in form to minutes known from Roman and ecclesiastical sources.

82 The total number of *placita* is twenty-one, of which nineteen are classed as genuine; D 103 is classed as *unecht* by Kölzer (but should be seen as reworked) and D 118 as interpolated (but genuine by Havet). Sixteen of the 19 are originals: of these, 6 are conveyances, 13 are disputes.

Legal history is not the only factor influencing the edition's approach. On occasion historical interpretations, about which readers should be wary, affect discussion of individual charters and treatment of diplomatic questions. Most instances concern immunity, a sensitive and contentious subject that touches on fundamental features of the Merovingian state. Immunity is a significant concern of the diplomas; the numbers are quite consistent across various categories: 50 per cent of genuine copies and of *spuria* are privileges that would normally be classed as immunities – figures that reflect the importance these privileges held for institutions of the post-Merovingian period.⁸³ Brühl carried out a study of the Merovingian immunity, regarding it as part of the preparatory studies for the edition. He came to two main conclusions. First, so-called Frankish immunity with an *introitus* prohibition barring judges from the property (as distinct from Roman-style exemptions) only developed around the mid seventh century. Second, immunity did not exempt beneficiaries from taxation and other burdens but only gave the immunist the profitable right to collect the dues on behalf of the king. To support this point, Brühl cited the conclusions of Elisabeth Magnou-Nortier and Jean Durliat.⁸⁴

The edition does not follow Brühl on the first point with respect to the introduction of the *introitus* prohibition, since Kölzer accepts its existence at a very early date.⁸⁵ There is a reason to reject Brühl's view in that the legislation of Chlothar II already exempts beneficiaries of fiscal privileges from the attention of public officials.⁸⁶ But there is little justification for Kölzer's own assumption that the terms of late seventh- and early eighth-century confirmations containing an *introitus* prohibition matched those of sixth-century *deperdita* and that *spolia* in spurious confirmations *nach echter Vorlage* accurately preserve the terms of hypothetical, distant *deperdita*.⁸⁷

Kölzer appears to agree with Brühl's second point accepting Durliat's picture of the Gallic church dutifully collecting taxes on behalf of the Merovingian kings.⁸⁸ It is sufficient to note here that the question of the relation of immunity and taxation

83 The number rises to 60 per cent for the "predominantly genuine" group that would include interpolated and reworked items. Most contain the word immunity but some only employ formulae common to immunity charters. I do not include toll exemptions in the calculations.

84 Elisabeth Magnou-Nortier, "Étude sur le privilège d'immunité du IV^e au IX^e siècle," *Revue Mabillon* 284–297/98 (1981–84): 465–512; Jean Durliat, *Les finances publiques de Dioclétien aux Carolingiens* (284–889), Beihefte der Francia 21 (Sigmaringen, 1990), pp. 255–56. It is questionable whether Brühl's views are an exact reflection of Durliat's and Magnou-Nortier's.

85 But cf. Dep. 227 where the discussion seems dependent on Brühl's dating of the *introitus* prohibition after the time of Dagobert. Is this a consequence of the division of labour on the edition?

86 Murray, "Immunity," p. 21, on the *Præceptio* c. 11 [above ch. 5, n. 15 and ch. 6 at n. 20].

87 For example, D 140 for St-Calais and D †186 for Maurmünster (on which see below, p. 206f.).

The well-known Carolingian practice in confirmations of bundling old and new style privileges together and projecting the hybrid into the distant past is a warning against assuming confirmations maintained intact the texts of original grants. For an example of the tendency to assimilate the terms of grants, see Dep. 254.

88 Discussion to D 145.

is an open one, as is the role of taxation generally in the Merovingian Kingdom. The difficulties with seeing the churches as conveyors of direct taxation to the state can be gauged from a letter of Gregory the Great in 599 to Theudebert II and Theuderic II, rulers respectively of much enlarged Austrasian and Burgundian kingdoms. The subject is simony, the purchase of episcopal offices, a practice the kings tolerate and from which they benefit. Gregory adopts a tone of wonderment and resorts to tortuous circumlocution to avoid directly accusing the kings of involvement.

Audivimus autem quia ecclesiarum praedia tributa non praebeant et magna super hoc admiratione suspendimur, si ab eis illicita quaerantur accipi, quibus etiam licita relaxantur.⁸⁹

We have heard that the properties of the churches do not pay taxes, and we marvel greatly at this circumstance if there is a desire to receive illicit gains [that is simony] from those [that is bishops] to whom licit gains [that is taxes] are transferred.⁹⁰

Kings paradoxically relinquish legal rights but lay claim to illegal ones, according to Gregory: how can rulers who forgo the taxes owed to them from ecclesiastical property extract illegal fees for appointing bishops?⁹¹ Gregory's view that Gallic churches already enjoyed significant exemptions from direct taxation by the turn of the seventh century might explain why the 'classic' immunity of the late seventh century, rather than conveying tax exemption, or merely privileging the church with collectors' fees as Brühl claims, actually appears to be little concerned with direct taxation at all.⁹²

III

The need for a list of *deperdita* has been felt since at least the time of Stumpf, who in his review of Pertz's edition brought forward over a hundred references to non-extant charters.⁹³ Volume two of the new edition provides an extensive, if not yet fully comprehensive, list of 415 items, including 8 *deperdita* of queens.

89 *S. Gregorii Magni Registrum epistularum libri VII–XIV*, ed. Dag Norberg, Corpus Christianorum Series Latina 140a (Turnhout, 1982), IX 216, p. 778.

90 I have rendered the passive "si . . . accipi" phrase in the active voice.

91 John R.C. Martyn, trans., *The Letters of Gregory the Great*, Medieval Sources in Translation 40 (Toronto, 2004) 2: 680, n. 607 misreads the passage, believing that the king's agents were attempting illegally to collect taxes from exempt churches. Norberg's edition prints the passage, correctly I believe, as the conclusion to the paragraph on usury. Martyn treats it as a separate paragraph and different subject.

92 The focus is generally on judicial fees (especially the *fredus*) and requisitioning powers of officials. See the originals DD 142, 144, 147, 150, 166, and Marculf 1.2, 3, 4, 14, 16, 17. The term *emunitas* or *immunitas*, a term of Roman public law, just means exemption. The content varied.

93 See at n. 7.

The non-extant diplomas fall into two groups, diplomatic and literary, depending on the source of our information. The first group, diplomatic *deperdita*, come from references to non-extant diplomas in documents, usually from the surviving charter record of Merovingian and post-Merovingian rulers, whether originals, copies, genuine, compromised or forged. By Kölzer's calculations, diplomatic *deperdita* comprise about 60 per cent of the total. About 24 per cent of them come from genuine Merovingian diplomas. The editor would classify those stemming from *spuria* as Merovingian, but in fact they are products of subsequent ages and do not locate the centre of gravity of evidence, as he supposes, in the Merovingian period at all. The second group, literary *deperdita*, come from references to directives, often including strings of text of varying length, found in the literary, principally narrative sources of the Merovingian period and after. They make up the remaining 40 per cent. The sixth century is well represented thanks to Gregory of Tours, who provides twice as many examples as any other source. Gregory's references, and the few found in seventh-century saints' lives, incidentally confirm the broad range of subjects encompassed in royal directives and show what a specialized form the diploma in volume one is. Gregory, plus a small group of ninth- and tenth-century sources (texts associated with St-Wandrille, the *Gesta Dagoberti* and Flodoard's history of the bishops of Rheims) provide about half the literary items. Despite Gregory's prominence, by far most of the literary evidence comes after the Merovingians.

The process by which *deperdita* were selected for the edition is not as self-explanatory as it might seem. It was not possible to survey every potential charter source that might conceal references to non-extant charters and so readers are invited to communicate to the editors new discoveries (one hopes this is a sign that a digital edition is planned). In the case of literary *deperdita*, and some diplomatic ones, the case for inclusion was made dependent on references to a written instrument.⁹⁴ Rigour here has not always been a virtue, as references in the original D 142 to a villa having previously been exchanged with a bishop and subsequently granted to a layman have failed to make the cut.⁹⁵ And rigour has not always prevailed: Chlothar I's imposition of tribute on the Saxons [Dep. 36], mentioned by Fredegar, has slipped through despite the lack of any mention of a written instrument.

An effort has been made to classify the authenticity of the items. Since full texts are not available but only bare references or brief paraphrases, diplomatic criteria are only of limited value. The editor acknowledges the difficulty with literary *deperdita* of distinguishing a lost document from a lost *spurium* or a pure

94 The test terms are as follows: *auctoritas, c(h)arta, cessio, decretum, donatio, edictum, epistola, instrumentum, litterae, mandatum, praeceptum, privilegium, testamentum, tomus*. On the other hand, seventeen *deperdita* are inferred as the models of *spuria*. For an example, see below, on D †186.

95 The exchange is referred to as "in titulum commutacionis," and the grant as follows: "postea de fisco illustri viro Pannichio fuit concessum." It is virtually impossible that these transactions took place without the issuing of written directives. They are so well attested, they deserve inclusion.

fiction of the author, but abides optimistically to the *in dubio pro reo* rule with respect to both literary and diplomatic specimens. Since *deperdita* by their nature generally lack the circumstantial traits that would permit evaluation of their form, the result is that none are classed as *unecht*, even those recording anachronistic privileges like free abbatial elections or the Carolingian bundling of immunity and protection. Basically a twofold classification is employed: 'dubious' (*zweifelhaft*), and 'genuine.' One item (Dep. 165) rather unaccountably is classed as 'uncertain' (*unsicher*), though it resembles dozens of others that are treated as genuine. Approximately 60 per cent fall under the classification genuine and about 40 per cent doubtful, though these figures are not consistent across the two categories, more literary items being classed as genuine (75 per cent) than diplomatic.

In this scheme 'doubtful' might seem tantamount to *unecht* and offer shaky grounds for an historical argument. The commentary sometimes suggests otherwise. For example Dep. 54 records a grant of immunity to the monastery of St-Calais by Chilperic I (561–584) at the request of bishop Domnolus of Le Mans. It comes from the ninth-century *Gesta Aldrici*, and the editors recognize that it is part of a complex of forgeries from Le Mans that sought to extend episcopal control over the monastery in the mid-ninth century. In another commentary (to Dep. 99), however, it is accepted as documenting an original immunity grant by Chilperic. For some reason it is also associated with a series of *deperdita* derived from D 140, a St-Calais copy of an immunity confirmation by Clovis III in 693 that mentioned earlier grants going back to the time of Guntram (not Chilperic); St-Calais used this confirmation, along with a number of clear forgeries, in its attempt to avoid Le Mans' jurisdiction.⁹⁶ The edition's effort to document Chilperic's alleged grant seems gratuitous and credulous.

Immunity is a recurring theme in other commentaries. A series of Maurmünster *deperdita* provide a good idea of the editors' assumptions and method. The *deperdita* derive from D †186, the confirmation of a possession belonging to the monastery issued by Theuderic IV in 724. According to this *spurium*, Theuderic added to the confirmation a grant of immunity and protection, a combination that arose only in the Carolingina period and is therefore anachronistic.⁹⁷ Following Classen, Kölzer detects behind the occasional presence of Merovingian *spolia* in D †186 a genuine model. The text mentions an original grant by a Childebert (taken by Kölzer to be the second of that name, 575–96) and subsequent confirmations by a series of kings from Theudebert II (596–612) to Dagobert II (676–79). This series produces six *deperdita* (nos. 75, 130, 126, 146, 209, 322). A seventh *deperditum* (no. 390) is added to represent the lost model of Theuderic IV (D †186), though of course it is attested nowhere but in the analysis of modern scholars.⁹⁸ D †186

⁹⁶ St-Calais in its ninth-century forgeries in fact claimed immunity going back to Childebert I in 515.

⁹⁷ D †186 is preserved in a twelfth-century pseudo-original.

⁹⁸ Kölzer views it as containing an immunity but no grant of protection. The supposition of a genuine model in contexts like this has in my view no utility for historical purposes, because even if true it provides no guide to the substance of the grant.

gives circumstantial details of the grant by Childebert: the lands of the monastery were donated and their physical resources protected from encroachments. It was not exempted from the jurisdiction of judges.⁹⁹ This is the grant that was supposedly confirmed repeatedly down to the time when Theuderic IV in 724 purportedly provided it with immunity and protection in Carolingian fashion. The edition's treatment of Childebert's grant (no. 75), the earliest in the series of *deperdita* deriving from D†186, creates serious misunderstandings. Its summary treats it as awarding protection, though this is part of Theuderic IV's grant not Childebert's.¹⁰⁰ The commentary assures us that a genuine diploma of Childebert II is the basis of the *deperditum* and that this document contained an *introitus* prohibition and an immunity clause as we would find these in late seventh century diplomas.¹⁰¹ In fact D †186, whatever value it might have, never attributes an immunity grant to Childebert or his seventh-century successors at all. The assumption – present also in volume one – that the content of sometimes distant *deperdita* in confirmation charters matched the terms in more recent extant specimens, even spurious ones, seems to have led the editors astray.

The brevity of the testimony of the *deperdita* and their sometimes dispersed interrelation with the diploma volume give the commentary that accompanies them a special authority. But vigilance is required. The interpretation of the *deperdita* depends less upon diplomatic considerations than upon conventional historical perspectives about the treatment of sources and the legal and institutional history of the Merovingian kingdom.

IV

Editing the Merovingian diplomas is an unenviable task. It entails more than care and industry. The contexts of the documents as legal and historical monuments can seem obvious but are in fact elusive. The layers that make them up cannot readily be stripped back. Even the originals, the only truly contemporary texts, come from a period ill-provided with other sources that might illuminate their function. The judgments involved in preparing such documents for publication are not likely to please everyone. The irony of Pertz's edition is that though it failed to meet the standards of its day, and though its appearance was greeted with something less than jubilation, the need for it was such that it became an indispensable tool in the study of the Merovingian kingdom. Whether the new edition

99 "Ut nullus ibidem campos facere, nec porcos saginare, nec materiam succidere, nec fines penitus irrupere presumeret." This clause seems designed to protect the donee from fiscal tenants continuing to exploit the property as they had done prior to its donation. It is not an immunity clause.

100 As a consequence this problem is repeated throughout the sequence of Maurmünster *deperdita*.

101 The clause in n. 99 is distinctive enough to suggest it comes from somewhere other than the imagination of a post-Merovingian forger but it seems difficult without analogies to say much more. Other commentators, following the belief of Maurmünster, regard the donor as Childebert I (511–558), not II.

will match the longevity of the old one is of course impossible to say: one hopes that it will eventually serve as the basis of a kind of digital *texte vivant* that can respond with some promptness to research and the multiple scholarly interests that are likely to draw upon its contents.

Scholars of varying specializations should welcome the edition. One can imagine Latinists, for example, finding it a happy hunting ground, since it provides an under-studied corpus of texts, generally datable within narrow limits, with repeated motifs, fixed formulae, and occasional intertextual surprises, covering over half a millennium of shifting taste and usage.¹⁰² Historians of the Merovingians should rejoice in at last having a detailed and handy guide to all the Merovingian charters and their critical literature, even if there is a bit too much of the editor in the way it is handled. But by itself, I think, the edition is unlikely to change the diverse, received positions on the character of the Merovingian kingdom and its rulers. Though it will ease the critical process for historians of the Merovingians, the real fruits of this sizeable editorial undertaking will likely be reaped by those working in later periods. While I expect the editor would demur on this judgment, the edition as a whole – the diplomas and the *deperdita* – turns out to be far less about the Merovingian kingdom and its kings as they existed than about their representation from the Carolingian period through the High Middle Ages. This edition is likely to be an achievement of significant benefit to medieval history in the broad sense.

102 Merovingian Latin, strictly speaking, is confined to the originals. The indispensable guides to it are Jeanne Viellard, *Le Latin des diplômes royaux et chartes privés de l'époque Mérovingienne*, Bibliothèque de l'École pratiques des Hautes Études 251 (Paris 1927) and Mario A. Pei, *The Language of the Eight [h] Century Texts in Northern France: A Study of the Original documents in the Collection of Tardif and Other Sources* (New York, 1932).

SO-CALLED FICTITIOUS TRIAL IN THE MEROVINGIAN PLACITA*

From: *Gallien in Spätantike und Frühmittelalter (5.–7. Jh. n. Chr.)*, ed. S. Diefenbach and G. Mueller (Berlin/Boston: De Gruyter, 2011)

Nineteen examples of the judicial decisions of the Frankish royal tribunal have come down to us from the Merovingian period. This pool of charters, dating from the mid and late seventh century, is made up of sixteen originals and three genuine copies; it can be supplemented with three or four specimens from the Marculf formulary, plus, from the same source, a similar number of examples of auxiliary orders of the king that help explain how the royal tribunal worked.¹ The charters and formulae as a whole provide us with an invaluable body of evidence for the court practice of the late Merovingian kings and the character of Frankish procedure in general. To distinguish these charters from other enactments of the royal will, namely the broad mass of diplomas comprising royal grants of property and privileges of various sorts, scholars have dubbed the decisions of the royal court *placita*, a term now apparently unavoidable, if misleading, since it was never used in the Merovingian period to record the findings of the king's court.² The legal substance of the *placitum* (*dispositio*, as we now define it) is the royal command in the present tense, but the king does not sign his name, as in other diplomas. The *placitum* typically bears simply the signature of the referendary and the royal seal.

On the basis of their contents, the nineteen surviving *placita* can be divided into two broad categories: thirteen *placita* dealing with various stages of dispute

* [Full reference to works cited will be found in the bibliography at the end of the chapter.]

1 The charters are in the new edition of the MGH *Diplomata*, edited by Theo Kölzer 2001, vol. 1 (items henceforth abbreviated DM). The edition also contains two other *placita*, DM 103 and 118, classed respectively as spurious and interpolated. Neither is of value for the theme of this paper. The formulae are in the MGH edition of Karl Zeumer: Marculf I 25, 37, 38 (henceforth abbreviated FMarc). Auxiliary commands of the king are FMarc I 26, 27, 28, 29. The Supplement to Marculf (no. 2) also contains a formula that could be classed as a *placitum*, or, since it is addressed to a count, as an auxiliary executive order. It is Carolingian but almost certainly a copy of a Merovingian model.

2 There is no *arenga* in the surviving genuine examples, though FMarc I 25 suggests that is not a definitive trait.

process and six *placita* recording royal confirmations of private law conveyances – sales and donations brought by the parties before the royal tribunal.³ For almost a hundred and forty years, however, our understanding of the nature of the *placita* and the processes they embody has been complicated by a misapprehension about the procedures underlying both the conveyances and the disputes.⁴ There is a widespread conviction that the same procedure lies behind both disputatious suits and the confirmations of consensual conveyances. As a consequence, it is commonly said that the parties to the confirmations – namely the seller or donor on one hand, and the buyer or beneficiary on the other – resort to a fictitious trial before the court in which they play out the roles of defendant and plaintiff as in a real contested action. Conversely, it seems to follow, that if a confirmation can take the form of a suit, then a suit can disguise a legal process that actually confirms a conveyance, where plaintiff and defendant are really consensual participants in transactions that have already been completed – from one to three of the ostensible disputes have been identified as not really disputes at all, but disguised confirmations carried out in the form of a trial.⁵

One or both of these interpretations – that the conveyance *placita* on one hand and select dispute *placita* on the other record fictitious trials (*Scheinprozesse* in German) – have now become entrenched fixtures in the literature of the *placita* and have insinuated their way into political evaluations of late Merovingian politics. The new MGH edition of the diplomas, for instance, has incorporated the concept of fictitious procedure directly into summaries of the relevant *placita*, identifying all six charter confirmations and two of the dispute charters as containing *Scheinprozesse*, though no *placitum* ever so characterizes itself; a seller in one of them is even said to be ‘condemned’ to hand over property to the buyer, though the language of judicial condemnation is never actually used.⁶ The MGH is in line with the classification of the leading authority on the diplomatics of the *placita*, who regards the confirmations and two of the disputes as based on fictitious trials, though with incidental reservations on his part that make one marvel

3 Disputes: DM 79 (copy), 88, 93, 94, 95, 126, 135, 137, 141, 149, 156, 157, 167. The earliest is dated 642, but this is a copy; the earliest original is 657/78. Add to this group FMarc I 25, 37, 38; the four auxiliary commands in n. 1 also concern disputes. Conveyance confirmations: DM 136, 143, 153, 155, 158 (copy), 187 (copy). The earliest is dated 692. FMarc Supp. 2, is in the form of a conveyance confirmation.

4 The impression of Warren Brown 2001, 83, that the concept of fictitious disputes in Merovingian law derives from Ian Wood and Paul Fouracre (in Davies and Fouracre 1986) is doubly wrong. Barbara Rosenwein’s perception (1999, 91) that *Scheinprozesse* were first identified and analyzed by Walter Bergmann 1976 is only marginally better.

5 DM 156, 157. Richard Gerberding 1987, 103–04 has also argued that DM 149 is fictitious, but he has not been widely followed. Cf. n. 55, 57.

6 Summary of DM 155. The summary to DM 136 erroneously suggests conflicting claims between the parties. The *ChLA* characterization of the conveyance confirmations waivers equally between seeing them as confirming or awarding ‘definitivment’ the property claims brought before the court.

at the inertia of received opinion.⁷ Even scholars sceptical of reclassing dispute processes as disguised confirmations have nevertheless embraced the conveyance confirmations as lawsuits, ‘fake disputes’ as one historian calls them, displaying plaintiffs, defendants, and royal judgments.⁸ These characterizations are usually presented as if sound, undisputed facts of charter study.

Criticisms challenging the aptness of fictitious trial as a category for interpreting the *placita* have for a long time been few and far between. The Romanist Ernst Rabel in 1905 rejected in passing the concept for Frankish law as he did in exhaustive detail for archaic Roman procedure, seeing the conveyances for what they are, not mock trials. Rabel’s seminal work, which appeared in the *Zeitschrift der Savigny-Stiftung* was located, it seems, in the wrong *Abteilung* to make an impact on the study of Frankish law, for, as far as I can tell, early medievalists have passed it by.⁹ In 1934, again in passing, the Romanist Henri Lévy-Bruhl, who is credited incidentally as being the founder of legal anthropology in France, in a study of archaic Roman procedure rejected the fictitious, dispute character of one of the Frankish conveyances that had incidentally come to his attention.¹⁰ In 1950, Cesare Manaresi turned the issue on its head: in a study of Italian *placita* from the ninth to the eleventh centuries, he claimed that a procedure there (generally called an *ostensio chartae* in the literature), which seems analogous to the Frankish conveyance procedure, was not a fictitious trial because it was always part of a real dispute processes.¹¹ In more recent times, the pace of criticism has quickened somewhat but generally in passing and without systematic examination of the evidence.¹² From a Germanist perspective, Jurgen

7 Bergmann 1976, 1–186; reservations: p. 98, esp. ‘Vom rechtshistorischen Standpunkt aus erscheint der Begriff des Scheinprozesses nicht unbedingt treffend, da weder Kläger noch Beklagte, Klage oder sonst irgend etwas, was einen Prozeß charakterisieren, vorhanden sind. Die Rechtsgrundlage eines solchen Verfahrens ist ursprünglich eine andere’. But cf. the conventional discussion beginning p. 93, and the contradictions quoted below n. 18. Perhaps the desire to extend the concept of *Scheinprozess* from confirmations to disputes, and thus to invent a tool for recreating them as political documents, generates a reluctance to just let the idea go. See below, [pp. 223–27].

8 Classen 1956, 70 limited *Scheinprozeß* to the conveyance confirmations. Hübner 1891, no. 4–9 lists only the confirmations as *Scheinprozesse*. ‘Fake disputes’: Fouracre 1986, 26. Barbara Rosenwein 1999, 91 f. goes Fouracre one better and calls so-called *Scheinprozess placita* ‘showcase’ trials. This only slightly dramatizes the way scholars have treated them. For the context of this idea see below, n. 55.

9 Rabel 1905, 347–48.

10 Lévy-Bruhl 1934, 96–135; the *placitum* is DM 153, p. 135 – a contentious *placitum*, as it turns out (see Appendix I). He cites a source collection for the singular text he examines.

11 Manaresi 1950–51, esp. 179, 208–210, where he included brief reference to the Merovingian evidence. The characterization of Italian procedure as an *ostensio chartae* derives from a formula in the so-called *Cartularium Langobardorum*, 600, no. 17. Manaresi’s views have not been acknowledged for the Frankish context, as far as I can tell. The context of charters displaying the *ostensio cartae* formula are complicated and not reducible to a simple type (see n. 14).

12 The main detailed analyses are Brunner 1873 (as in n. 17), Bergmann 1976 (as in n. 7), and Kano 2007, 329–53, who came to my attention during the final revisions of this paper. All write from the general perspective of the validity of the concept of fictitious trial. Kano has important observations modifying the views of his predecessors.

Weitzel repudiated the value of the concept of *Scheinprozesse* for Frankish law, apparently to little avail, in 1985 and returned to the subject in 2006.¹³ In 1994, Mauricio Lupoi, surveying assemblies as the locus of general confirmations of legal relations, rejected the concept of ‘fictitious trial’ for the Frankish conveyances, linking them to the Italian *ostensio chartae* procedure, which he saw (in complete contrast to Manaresi) as non-disputatious.¹⁴ Olivier Guillot in 1995, while claiming to be agnostic on whether the Frankish conveyances are fictitious or not, offered an alternative to what he classified as the ‘classic interpretation’, considering them as possibly real disputes, much in the fashion of Manaresi, in which a defeated party was forced to acknowledge his cession of property.¹⁵ In 2005, in reviewing the new edition of the Merovingian diplomas, I devoted a few paragraphs to disputing the allegedly fictitious character of the *placita* marked out there as *Scheinprozesse*, seeing them simply as conveyances. I would like to thank the organizers of the present conference for the opportunity to expand and clarify those remarks.

‘Legal fiction’ is an important subject in European and comparative law whose literature stretches across various languages outfitted with assorted conceptual and terminological conventions.¹⁶ If the *placita* fitted comfortably into this complicated framework, the theoretical dimensions of the concept might be worth exploring. But since they do not, my remarks will mainly be concerned with exploring the context in which the concept of fictitious procedure entered the study of Frankish law and in asking in what sense the procedures in the relevant *placita* could have been considered fictitious to begin with. For reasons of both priority and time I am going to concentrate on the conveyance confirmations, but will conclude with some comments about the isolated disputes that have sometimes been classed as fictitious.

13 Weitzel 1985, 2: 839 f., 844–47; 2006, 307–11.

14 Lupoi 2000, 215–222, esp. 219, 221. The original Italian edition was published in 1994. Lupoi deals with unilateral and bilateral appearances before assemblies of varying types. His rejection of *lis ficta* does not stop him from dealing with bilateral appearances as if between plaintiff and defendant. His treatment of the Italian *ostensio cartae* is rather narrow. What the literature calls *ostensio cartae* seems to have been used widely in Italy in various contexts, including that of dispute, conveyance and contract. Compare Bougard 1995, 319–29, who notes in passing ‘les vrais “Scheinprozesse” de l’époque mérovingienne’, and Wickham 1997, esp. 185–91. Wickham’s conclusion about the context of the Italian *ostensio cartae* (p. 191) seems, at this point, about right: ‘The *placitum* [meaning the hearing that produced the final document] was an important legal occasion; it had many legal functions. It heard disputes; it ratified contracts; it made private agreements public. But we cannot always tell which is which’.

15 Guillot 1995, 711 f. The argument appears in n. 195 *bis*. Manaresi is not cited.

16 The two most relevant surveys to my theme are French: Dekkers 1935 and Dumont-Kisliakoff 1970. Neither is interested in, or apparently aware of, the Merovingian *placita*. For a sense of how far and how pointlessly the concept can be stretched, see the classic of Henry Sumner Maine, 1861, ch. II.

I

In 1873 fictitious procedure as a category for understanding the early Frankish conveyance confirmations was established by Heinrich Brunner, who was also the first to argue that a *placitum* apparently about a dispute could also conceal a matter previously settled among the litigants.¹⁷ He saw the purpose of the conveyance *placita* as the acquisition of an unchallengeable royal charter, which, he claimed, was obtained by a fictitious lawsuit staged between the parties before the royal tribunal. His principal argument was that the form of procedure in the conveyances was a lawsuit about property, and he proceeded to compare one of the conveyance confirmations with a regular dispute to demonstrate his contention. It is hard to see initially why he did so with such satisfaction. In the summary of the two procedures I am about to give, you should note that the Merovingian texts provide no terms for plaintiff and defendant, or, to use the terms suitable for the conveyance procedure, petitioner and respondent. The role of the parties has to be inferred from the content of their claims and the response of the court, and from the term the confirmations clearly do use for the respondent.¹⁸ This singular term, used in five of the six conveyance confirmations, is *auctor*, warrantor, a term derived from the Roman law of sale and conveyance.¹⁹

The disputes comprise a complicated group of five separate procedures: 1) Direct judgments in which the dispute is recorded from the appearance of the parties before the court to the command of the king in favour of one them. 2) Interlocutory judgments in which the court, having heard the pleadings as in a direct judgment, calls for one of the parties to produce proof of its contention at a future hearing. 3) Judgments after proof has been provided as demanded by an interlocutory judgment. 4) Judgments after one party defaults, that is fails to appear at a hearing appointed by an interlocutory judgment. And 5) Confirmations

17 Brunner 1873; rpt 1931, vol. 1: 441–448. Brunner was anticipated by Bethmann-Hollweg 1868, 493, for the Franks and see at n. 25; and, on Italian matters, by Ficker 1868, vol 1: 37–45 (note the pointed comment as to Ficker's priority by Manaresi, 1950, 179). For the common source, see von Jhering 1852–1865; 2nd ed. 1869, vol. 3: 503–42 at n. 28. The trail is clear in the cases of Brunner and Bethmann-Hollweg, but no less sure for Ficker, despite no acknowledgment.

18 The comment by Bergmann 1976, 93, 'Die . . . Parteien treten fiktiv als Kläger und Beklagte auf und werden in der Urkunde als solche formulgemäß bezeichnet', is assuredly mistaken. The first part of the statement is an interpretation unsupported by the language of the charter form. Cf. n. 7 above.

19 The *auctor* is the previous owner, obligated to warrant the title of the property and, in classical law, subject to penalties if the purchaser was later evicted by a rightful owner. See Berger 1953, s.v., for the basic definition. *Auctor* is a rare occurrence in the standard Roman law handbooks, but the term is all over later legislation. In Frankish law the physical presence of the *auctor* seems to have been essential to the suit: FAnd 47, 53; FMarc I 36 – the generally sure-footed translations of Alice Rio 2008 stumble a bit here. FMarc I 36 is the most illuminating because it refers to the need for royal permission to take over the defence of *auctores* who had died without heirs. Thirty-year prescription did away with the need for an *auctor* in a defence (e.g. see DM 126). I leave aside the role of *auctores* in the third-hand procedure of *Lex Salica*.

of a previous judicial finding.²⁰ Despite the various streams into which the dispute procedure could be channelled, there is a fairly uniform pattern to the way the pleadings were carried out. The plaintiff and defendant appeared before the royal tribunal and the plaintiff laid a charge against the defendant, usually for wrongfully retaining property that by right belonged to the plaintiff. The verb commonly used for laying a charge is *interpello*, but occasionally *suggero* is used, a more dispassionate term that means 'to bring forward information' or to petition. The information as it is reported, however, is clearly a charge of wrongful detention of the plaintiff's property. The *placitum* then immediately reports the rejection of the claim by the defendant. Sometimes we are told of a plaintiff's rejoinder to the rebuttal of the defense. Documents are commonly produced by the parties and examined by the court. The court then proceeds to an interlocutory judgment, awaiting further proof, or a direct judgment expressed through a royal command. The command is given on the basis of the testimony of the count of the palace that the *placitum's* account of the proceedings is accurate and that these were carried out properly.

The procedure for the confirmation of conveyances is far less diverse than for disputes. The petitioner appears before the tribunal opposite the respondent and lays the information about the previous transaction between the parties before the court.²¹ The verb used for filing the petition is always *suggero*. The petitioner produces the documents relevant to the transaction, the bill-of-sale or donation charter, to be read before the court. The respondent then steps forward and is asked by the court to confirm the veracity of the petitioner's claim, to verify the authenticity of the documents presented to the court, and to stand as warrantor of the transaction now and in the future. The *placitum* then ends with the royal command asserting the petitioner's full title to property as established by the original documents of conveyance and enjoining the transferor to stand as warrantor in the future.²² This last detail, by the way, shows that the property was not deemed to have been removed irrevocably as a source of a future claim by another party just because the document was issued in the name of the king. The *placitum* confirmed the right of the petitioner merely on the basis of the reported transaction;

20 1) DM 88, 93, 94, 95, 149, 156, 167; 2) DM 135; 3) DM 126; 4) DM 79, 137, 141; 5) DM 157.

21 'Opposite': the occasional word *adversus* is probably the only term shared between disputes and confirmations that could conceivably indicate dispute. It is found in six or seven *placita* (the text of DM 88 is uncertain), in about equal proportions between confirmations and disputes. It is not an essential element in the formulae. In the confirmations it is attached to the participle *veniens*, describing the petitioner's appearance before the court in company with the warrantor (DM 136, 153, 187). In the disputes it is attached to the main verb indicating a petition or a charge being brought before the court (DM 95, 141, 156). The preposition is not of course limited to hostile contexts. It seems to refer to the two parties, standing opposite one another before the court, one laying his petition before the tribunal with respect to the other.

22 The exception is DM 153, on which see Appendix II.

just as importantly it established a clear warrantor, should it become the subject of a third-party suit at a later date.²³

The common assertion that the procedure of conveyance confirmations and the trial of disputes are the same is demonstrably false.²⁴ The dispute and conveyance *placita* obviously share some terminology – I am about to return to this subject – and forms, but the procedures are distinct and it is difficult to detect elements of the confirmations that could be construed as fictional, never mind the process as a whole. The petitioner never lays a charge or claims that the respondent was unlawfully withholding property. The respondent never challenges the petitioner's claim but willingly supports it. The conveyance is presented in the past tense as lawfully concluded. The respondent in fact appears not as defendant but generally as warrantor of the property and its previous alienation. The royal command does not create the petitioner's title but confirms the original conveyance. In other words, the conveyance *placita* contain independent procedures that need to be dealt with in their own terms, not as adjuncts of lawsuits.

If there are no obvious fictional elements in the conveyance confirmation, it is worth asking how the concept of *Scheinprozess* came to enter the study of early Frankish law. Brunner was a great scholar. Why did he so confidently claim to have detected fictional disputes in the conveyances? The answer I believe is to be found in the state of Romanist scholarship at the time he first proposed his theory of *Scheinprozesse*. Brunner acknowledged that he was not the first to classify the conveyance confirmations as fictitious suits. Bethmann-Hollweg a few years earlier, noting the resemblance of the conveyance processes to the celebrated Roman conveyance of *in iure cessio*, had already declared the Frankish procedure to be a fictitious *vindicatio*, or action for the recovery of property, designed to acquit the new owner with an unchallengeable royal charter.²⁵ Bethmann-Hollweg borrowed the term *vindicatio* from Roman procedure and from *in iure cessio* itself, though there is an echo of it in the Merovingian texts. It is hard to escape the impression that the Roman *in iure cessio* was seen as some kind of pattern for the interpretation of the Frankish institution. Brunner too called the procedure of the conveyance *placita* a *Scheinvindikation*, and though he initially confined *in iure cessio* to his footnotes, he clearly viewed it as a critical analogy to procedures in German law. Later he referred to the confirmations of the *placita* as being carried out through a fictitious lawsuit 'in the mode of the Roman *in iure cessio*'.²⁶ Unlike recent commenta-

23 Cf. Kano 2003, 44 and 2007, 335 f. 338 who sees confirmation of the warranty as the principal aim of 'procès fictif'. Cf. Weitzel 2006, 308.

24 'Das Verfahren eines solchen Scheinprozesses entspricht formal dem eines echten Prozess' (Bergmann 1976, 93). Only slightly less categorical ('in allen wesentlichen Zügen'): Brunner/von Schwerin 1928, 2: 683; which also declares that the 'plaintiff's claim is disputed *zum Schein*'.

25 Bethmann-Hollweg 1868, 493.

26 '[...] nach Art der römischen *in iure cessio*': Brunner 1889, 275. Brunner included the Anglo-Norman institution of fine and the later English common recovery as 'Germanic analogies' to *in iure cessio* because of their fictional elements (ibid. 286).

tors, Brunner's contemporaries too noted the resemblance between the Roman and Frankish institutions.²⁷ There is a reason for the deserved prominence of *in iure cessio* in these accounts other than simply a Romanist background among the legal fraternity. According to the dominant Romanist doctrine of the day, as developed by Rudolf von Jhering, *in iure cessio* was a prime exhibit, in some ways the parade piece, of those archaic Roman procedures he dubbed *Scheingeschäfte*, or fictional transactions.²⁸ These included the common Roman conveyance of *mancipatio*, whose language imprinted itself on the new world of written instruments during the imperial period and continues to surface in Merovingian and early medieval texts. At the time Bethmann-Hollweg and Brunner wrote, *in iure cessio* was regarded with assurance as a fictitious trial based on a truncated action, or vindication, for the restoration of property.²⁹

The resemblances between *in iure cessio* and Frankish confirmations of conveyance before the royal tribunal are striking. Gaius provides a brief description of the archaic Roman law procedure. The parties to the conveyance appear before the magistrate, namely the praetor in Rome or the governor in the provinces – once again there are no plaintiff and defendant. Appearance before a magistrate is the meaning of *in iure*, corresponding in traditional Roman litigation to the first stage preceding the magistrate's assignment of a judge to try the case. *In iure cessio* means a cession of property made before a magistrate, not as the result of a lawsuit. To return to Gaius – the transferee, the person receiving the conveyance, claims the property before the court using an ancient phrase common to both litigation and private law transactions.³⁰ Then the magistrate asks the transferor whether he wishes to make a counter claim. The transferor replies in the negative or remains silent. The magistrate then 'assigns' the property to the transferee.³¹ The word used to express the transferee's assertion of ownership over the property is *vindicare*, a verb that just means to claim, but in the specialized substantive form *vindicaciones* was applied by Gaius to a class of lawsuits for the return of property.³²

I do not want to belabour the resemblances between the Frankish and Roman institutions, in part because the juridical implications of both procedures would

27 For example Richard Schröder 1889, 271 who follows his colleague, even apparently independently using the phrase as quoted in previous note.

28 Rudolf von Jhering 1852–65; I have used the 2nd ed. 1869, vol. 3: 503–42. There is a French translation of the third edition of vol. 3 by O. De Meunaere 1887. It employs the term *actes apparents* for *Scheingeschäfte*. The Italian equivalent is *processi apparenti* used in the discussion of *ostensio cartae*.

29 The *legis actio sacramento* is generally claimed as a model.

30 'Hunc ego hominem ex iure Quiritium meum esse aio': Gaius *Inst.* II 24 for *in iure cessio*; I 119 for *mancipatio*; IV 16 for *sacramentum in rem* (litigation). The slave (*homo*) is just an example of property.

31 Gaius *Inst.* II 24. The verb is *addico*; the range of meanings in the literature (adjudge, award, confirm) tends to follow dogmatic interpretations of the procedure's meaning.

32 Gaius *Inst.* IV 5: 'Appellantur autem in rem quidem actiones uindicaciones, in personam uero actiones [. . .] condictiones'.

take us down a twisted track of conjecture that for the purposes of the present subject would be a distraction. But some of the formal correspondences are worth noting. The parties in both cases appear before the court in a fashion with parallels in lawsuits. The claim of the petitioner is quickly resolved without any actual disputation at all (in the archaic Roman case the claim never enters the dispute stage before the judge). The claim is initiated by the transferee in the conveyance; Buckland has noted that the benefitting party making the declaration is a characteristic feature of Roman formal transactions.³³ Acquiescence to the claim by the respondent settles the matter in the eyes of the court.

There appear to be verbal echoes between the procedures as well. *Evindicare*, a Merovingian variant of the Roman *vindicare*, is used in the royal command of the *placita* to express the transferee's acquisition of title to the property.³⁴ In the procedure of *in iure cessio*, after the petitioner makes his claim, the magistrate asks the transferor if he wishes to respond.³⁵ This is the *interrogatio* of *in iure* procedure, originally, at least, carried out in litigation by the plaintiff, and exceptionally as in *in iure cessio* by the magistrate; it was designed to elicit answers binding on the other party.³⁶ *Interrogatio* appears in all six of the Merovingian *placita* following the

33 Buckland 1939, vol. 1: 16–26.

34 The usual phrase in disputes over property and in confirmations of conveyances is along the lines of DM 141: 'ipso locello [= accus.] [. . .] habiat evindicatum', meaning 'let him have the place in full title' or 'let him have acquired full title to the place'. That there is still a technical sense to (*e*)*vindicare* is shown by omission of the phrase in the one dispute regarding debt (DM 137). The 'e' presumably strengthens the simple *vindicare* to produce 'to vindicate thoroughly'. *Vindicare* in *Lex Salica* need have no connection with a lawsuit: LS 67 = 'claim', in the sense of 'have a right to', with *tenere* as a near synonym; similarly LS 100 § 1. It appears also ca. 600 in Ravenna donations with the same meaning (with near synonyms, *habere, tenere, possidere, defendere*): 'portionem [. . .] iure dominioque, more quo voluerit, in perpetuo vindicent' (no. 20, and see Tjäder references 1: 461). It means to acquire ownership in the highest sense: 'comparatorem [. . .] ingredi, habere, tenere, possidere, vindere, donare, [commutare a]c suo iuri in perpetuo vindicare permisit' (no. 36, a sale). Levy 1951, 210–19 outlines the range of meanings in late sources. The idea of lawsuit, however, was never essential for the concept, no matter its usual classical law connotations.

By 694 a newly coined synonym *vel elidiatum* was added to the Merovingian *evindicatum* clause in dispute formulae; the same appeared in the confirmations soon after, appearing by 702 (missing, and likely omitted in the copy DM 158 a. 710). It is generally, though not universally, believed that this is the verb *eligitare* (on the doubts, see Vielliard 1927, 50 n. 3). It can be used outside of dispute contexts simply to express the full legal right to something. For example in formula no. 48 of the *Cartae Senonicae*, it is applied to the full right to fruits in a vineyard used as a security (*cautio*). It is not uncommon in the formulae in the phrase *elidiato ordine*, meaning to have 'with full rights' or 'with protection of the law', regarding donation, usufruct, and possession (FSalBig 10, FSalMerk 21, 33, 34: Zeumer 1886). The earliest appearance I can find of the phrase is in DM 157 a. 709.

35 'Praetor interrogat eum qui cedit an contra uindictet'. Gaius *Inst.* II 24.

36 Berger, 1952, s.v. *Cognitio* rolled up the various ancient distinctions into a much more flexible process, driven by the judge.

declaration of the petitioner and it seems plain that the answers elicited are supposed to bind the respondent to the truth of the petitioner's claim of ownership.³⁷

Two questions immediately arise from the comparison I have just presented.

(1) The first question is awkward but unavoidable. Do the resemblances just outlined constitute grounds for supposing that Frankish conveyance confirmations are based on the *in iure cessio* procedure? In posing this question one should suppose that the details of *in iure cessio* as provided by Gaius would have in time been adapted to a legal world shorn of much of the archaism of classical, and earlier, law and would have become dominated by written instruments. The juridical meaning of the two institutions can be distinguished on various points based on fixed dogmatic constructs, but just as easily can be brought into almost complete harmony, especially if one recognizes distinct stages in a singular institutional development.³⁸ Connections in language and form between the two are recognizable.

The lesson of *in iure cessio* for Frankish law, however, may not lie in arguing that the Frankish procedure is a continuation of its Roman counterpart. The main difficulty in seeing the Roman and Frankish institutions as linked is the chronological gap in the historical record between the two. *In iure cessio* remained a living institution well into the classical period, which is why Gaius and others could write about it. But so far as we can tell, it did not in practice survive the legal changes of the fourth century, at least insofar as the view encompassed by late imperial sources is concerned. The last reference to it as a functioning institution is in a constitution of Diocletian from 293. Nevertheless, it continues to be referenced in legal literature until the sixth century, though not in a form that readily suggests a legal source for contemporary institutions.³⁹ It is hardly coincidental that its role in publicly attesting transactions suffered demise in the sources just as the practice of registration before the municipal councils and other officials provided a ready forum for recording transactions of various description. The role of municipal councils in providing a model for the procedure of the Frankish

37 The formula in five instances is 'interrogatum ei fuit' where 'ei' is the warrantor. An infinitive construction is used once, in the confirmation DM 153, which also shows the question is posed by the tribunal. *Interrogatio* appears twice in the disputes in contexts that are similar: once to examine and disqualify a second *ex parte* defendant (DM 141), and once to question the mayor's son Drogo and disqualify his claim that his wife had a right to the property in dispute (DM 149).

38 Lévy-Bruhl, 1934, 135, calls DM 153 (on which, see Appendix I) 'le meilleur exemple d'*in iure cessio* concrète' that we have, but this is intended, I believe, as a comparative not an historical analysis. He viewed both as simply confirmations.

39 CJ 8.53.11, which omits the passage mentioning *in iure cessio*. It is supplied by the *Consultatio veteris iurisconsulti* VI 10 (FIRA 2: 603). *In iure cessio* also appears in the *Fragmenta Vaticana* in writings attributed to Paul 47–51, 75.5 (FIRA 3: 474 f., 480 f.). Boethius treated it while commenting on Gaius (Boeth., in *top. Cic.*, p. 322, 15–25).

royal tribunal is accepted in the literature, though the details have not been fully explored.⁴⁰ The undoubted resemblances between the court confirmations of the Frankish kings and curial registration, however, creates its own conundrum, because those elements where the *placita* and *gesta* procedure overlap tend to correspond to elements of *in iure cessio*, namely: the forum of a public body, the petition by the beneficiary, and the presence of the alienator as warrantor of the transaction. Moreover in the *gesta* procedure, a court *interrogatio* could also occur but at the request of the petitioner; this is analogous if not quite identical to that of *in iure cessio* and the *placita*.⁴¹ *In iure cessio* still remains the closest parallel to the *placita* confirmation conveyances. The various resemblances and chronological difficulties suggest two ways of resolving the relation of the *placita* and Roman procedure. The first possibility is that there is a direct relationship between *in iure cessio* because it survived into the Frankish period as a prerogative of courts presided over by supreme magistrates in the regions of Gaul. It seems clear that it was never abolished and since it was a prerogative of office it may never have been relinquished. The second possibility is that a procedure basically reproducing the elements of *in iure cessio* was reconstituted by the Merovingian kings out of traditional Roman elements that had already been folded into registration as this occurred before the local *curia*.

(2) The second question is, do the few points of contact between *in iure cessio* and a lawsuit, a *vindicatio rei*, justify the former being classed as a fictional procedure? Its secure position among Jhering's *Scheingeschäfte* warranted Bethmann-Hollweg's and Brunner's characterization of the corresponding Frankish institution. But within a little more than a generation criticism began that slowly turned Romanist opinion against Jhering's interpretation.⁴² This criticism is now reflected in various ways in the handbooks where *in iure cessio* is no longer regarded as a fictitious trial but as just 'a conveyance which had to be performed in court', or as a derived or hybrid, though still independent, mode long since separated from its putative links to *vindicaciones* in the sense of litigation.⁴³ Where its alleged fictitious or

40 Classen 1956, 70. Bergmann, 1976, 101, provides a useful schematic, optimistic comparison (apparently based on B. Hirschfeld's dissertation of 1904) but avoids the variations of *gesta* form.

41 In Tjäder, no. 29 (a. 504), a fragment showing the registration of a sale in Ravenna, the purchaser requests the curia to question the vendor, who is present. In no. 31 (a. 540), agents of the curia leave the tribunal to seek out and question the vendor who is not present at the hearing. A similar procedure is followed in the famous donation to Pierius (nos. 10–11, a. 489). No. 32 (a. 540) is a letter by the vendors vouching to the curia for a sale to the purchaser; its intention may be in part to serve in lieu of the vendors' appearance. The Frankish sources that deal with conveyances provide no evidence of the dual appearance of petitioner and warrantor. Instead the party applying (*prosecutor*) to the curia to open the records appears with a mandate: FAnd 1 (mandate from the beneficiary; applicant is donor and *mandatarius*); FMarc II 37, 38 (mandate from a donor or testator); FTur 2, 3 (mandate from a donor).

42 M. Wlassak, 1904 and 1907 and Ernst Rabel, 1906 and 1907 were the tipping point. Dumont-Kisliakoff 1970, 11–15, provides a survey of later works. See also Lévy-Bruhl in n. 10.

43 The quotation comes from Fritz Schultz 1951, 338; see also Wlassak, Rabel, and Lévy-Bruhl as in previous note. Mitteis 1908, 278 ('hybrid'), Kaser 1966, 36 ('nachgeformt') following Rabel.

collusive character is still invoked, this is part of an explanation for its origin, not its character in historically attested times.⁴⁴ Arguments in favour of the fictitious roots of *in iure cessio* in fact belong to the heady realm of conjectural history.

There are lessons for us in the now outdated Romanist infatuation with fictitious trial as a key to understanding the bringing of conveyances before a public body. Fictitious procedure as a concept entered the study of Merovingian law from Roman-law studies but we have failed to notice its eventual rejection and the implication of this for our understanding of procedure before the royal tribunal. Bereft of the supposition that we have to be witnessing a fictitious trial, the resemblances between the conveyance confirmations and a lawsuit or trial in Frankish law seem to be rather minor: they share the opening formula describing the sitting of the king's court, the petitioner's appearance and request, and the employment of the royal command to implement the court's decision. In between, the real procedural meat of the hearing, they steer different courses. The confirmations of conveyances are not trials in any sense. The most that can be said is that they are potential trials. Whether the process before the tribunal will remain on the confirmation track of the petitioner's request depends on the respondent's answer to the *interrogatio* of the court. All our examples of course show the respondents affirming the petitioners' claims, but at least on a formal level, the procedure seems open to a negative response diverting the hearing along one of the tracks revealed in the dispute *placita*.

The sharing of parallel forms and expressions does not make one procedure real and the other fictitious or collusive. Nor need it mean that one is derived from the other. If we look at Frankish procedure more broadly, there is certainly no reason to follow the Romanist penchant for speculating on some original pre- or proto-historical legal collusion that might, according to a particular modern theoretical framework, have first given rise to the court's involvement in conveyances.

By the time we see the Merovingian royal tribunal taking under its mandate the confirmations of private law transactions, there was a long tradition of using the forum of public institutions as means of publicizing, validating, and strengthening legal transactions. To this point I have commented on the connections between the Roman-law approach to public attestation and the language and forms of the *placita*. I have mentioned *in iure cessio*, the closest parallel to the *placita*, and the procedure before the municipal *curia*, still attested in Frankish sources. However, there is another side to the Merovingian legal experience which, though much shallower in the depth of its historical record, also has a general bearing on the Gallic habituation to the court, including the royal court, as a forum for private transactions.

Frankish law and contemporary practice was no stranger to non-dispute court processes, including conveyances.⁴⁵ *Lex Salica* and *Lex Ribvaria* alone provide

44 Nicholas 1962, 64.

45 Lupoi's general point (as in n. 14) about the role of assemblies is surely correct.

half a dozen examples of transactions before local courts and that of the king, including a form of testamentary conveyance, and sales *in mallo* that thereby claim the right to a notarized bill-of-sale.⁴⁶ The formularies provide not only evidence of appearances before the curia involving registration in the public records but also transactions before regional courts, and, slightly more ambiguously, 'before the king': the latter included a form of testamentary conveyance.⁴⁷ In all, we are talking about a dozen forms of transaction that in the course of the sixth and seventh centuries could take place before public fora.

It seems reasonable to suppose, then, that by the time the *placita* record appears, the concept of court validation of private law transactions was a legal notion of considerable antiquity, enhanced by the ability of courts at various levels to issue written confirmation of the acts that took place before them. The Gallic habituation to the use of courts as a forum for private transactions was long standing by the time the conveyance *placita* are attested in the late seventh century, and there is no reason why the royal tribunal would resort to the collusion of a fictional trial and the drama of mock litigation to carry out the rather mundane confirmation of simple sales and donations.

To say 'by the time the *placita* record appears' avoids rather pointedly the question of when bilateral conveyance confirmations, involving petitioner and conveyancer/warrantor, became a commission of the officials making up the royal tribunal. The *placitum* form as a whole in fact appears pretty much at the same time as does the charter record and is thus conditioned by the rather lopsided pattern of document preservation that characterizes Merovingian evidence.⁴⁸ There is no reason to suppose that it, any more than conventional diplomas, was a new form in the seventh century.⁴⁹ The conveyance *placita* appear in the 690s. In concluding on the difficult problem of *placita* origins, I will limit myself to

46 LS 44 (disbursement of *reipi*); LS 100 (disbursement of *achasius*); LS 60 (unilateral repudiation of kinship ties); LRib 57 (manumission); LS 46, LRib 50 (testamentary conveyances); LRib 62 (sales *in mallo*) and cf. LS 47, which mentions in passing that transactions like sales, exchanges, and payments, had to take place *publice* – in LS 46 § 4, C redaction, *publice = in mallo*; in LS 25 § 3 it means 'openly'.

47 FAnd 1 a, b, c (ratification of a mandate and registration of donation). FAnd 32 (confirmation of property holding when title deeds destroyed); its opening formula describing the sitting of the joint episcopal and comital court echoes the *placita*. FMarc 12 (mutual donation), FMarc 13 (testamentary conveyance). FMarc 21 (creation of a mandate).

48 Legislation for the sixth and early seventh century, diplomas (including *placita*) for the seventh. There is no intrinsic reason for this pattern. Legislation was continued in the seventh century and diplomas were issued in the sixth. Another pattern among the diplomas is that original and genuine ones are virtually all Neustrian. See Murray 2005, 251–61 on the significance, or lack thereof, of this pattern.

49 'Das neue, nicht-römische Instrument der *Placita* ist ein Resultat des [...] Funktionswandels der Urkunde nach dem Verfall der letzten Reste spätantike-römischer Aktenführung' (Kölzer 2004, 46) begs a number of questions. Cf. Murray (as in note 48) on the alleged importance of the political altercations of the late sixth century. There are further reservations by Goffart (Ganz/Goffart 1990, 919 f.).

reservations about the current view that so-called fictitious trials were intrinsically late arrivals to the royal court. First, this view needs testing against our dependence on the central role of the Saint-Denis archive in creating the chronological profile of the Merovingian diploma, on the circumstances of the archive's survival during the medieval period, and its employment in forgery. (The earliest original diplomas survive largely because their text sides were glued down on backing and their reverse sides, giving the appearance of great age, were used for spurious charters). Second, the perspective that the appearance of conveyance *placita* in the late seventh century is a sign of the declining power of the monarchy, seems rather overdrawn at the expense of recognizing the *placita*'s merits as facilitating a relatively speedy, bureaucratic response to the desire for legal stability and a more extensive intervention of the monarch's authority into the private law transactions of its subjects. The principle argument for a late appearance of the *bilateral* conveyances (that is the so-called fictitious trials) as a mark of declining royal power is based on the survival pattern of *unilateral* confirmation diplomas: the latter are among the earliest surviving diplomas but leave no traces among later specimens.⁵⁰ This pattern is to be accounted for, so it is argued, by the monarchy losing control of the confirmation process and the replacement by the 690s of unilateral confirmations with bilateral conveyance *placita* that reflected better the aristocratic interests controlling the court.⁵¹ However, unilateral confirmations mainly survive because an early sequence of them was converted by Saint-Denis forgers.⁵² The idea that unilateral confirmations ceased in the late seventh century just because specimens do not survive in the corpus of late diplomas also seems flawed.⁵³ The formula of Marculf shows that wholesale confirmations of property including sales, donations, and exchanges continued to be issued by the monarchy to laypersons and ecclesiastical corporations in response to unilateral petitions.⁵⁴ Unilateral and

50 Early, original unilateral confirmations: DM 22 before a. 628 (testamentary donation); and see Debus 1967, 19. DM 28 a. 625 (donation); and see Debus 1967, 11. DM 32 a. 629 (inheritance and purchases), one of the only two unconverted papyrus originals from Saint-Denis, this one bearing Dagobert's signature. DM 75 a. 639/50 (various deeded properties); Kölzer 2001, 191, argues it is not clear when the document reached the Saint-Denis archive, though before 1061/65 when it was used in a forgery. A very early copy example is an interpolated Le Mans charter, DM 25. For the sake of simplicity, I give MGH dates.

51 Bergmann 1976, 96 ff., 100.

52 As a result of being pasted down on backing, they are in miserable shape, trimmed, lacunose and barely readable. Their attraction was that they were papyrus, a mark of great age. As for the apparently unconverted DM 32, Kölzer 2001, 87, argues that it was a late addition, after the eleventh century, to the Saint-Denis archive, a circumstance that would account for its relatively intact survival. Brühl 1998, 44 attributes its survival before the forger's hand to a clear autograph of Dagobert. In any case, on the borders, there are still remnants of glue (Kölzer 2001, 88).

53 As already argued by Kano 2007, 348–50. He uses a slightly different body of texts than I do. See next note. I reserve judgment on the *deperdita* that he cites. The general point is surely correct.

54 FMarc I 31 (for a layman): 'de omni corpore facultas suae, tam quod regio munere [. . .] quam quod per vindicionis, cessionis, donationis, commutationesque titulum ad praesens iustae et rationabiliter est conquestum et ad praesens possidere videtur'. FMarc I 35 (for a monastery): 'omnes

bilateral confirmations, by diploma and *placitum* respectively, existed side by side. The *placita* are more a testament to the routinization of government than a special indicator of the dwindling political power of the monarchy.

To summarize my remarks thus far. The concept of fictitious trial in the study of Frankish law is a distraction. *Scheinprozess* was introduced to the study of Frankish law as an offshoot of Romanist concerns about the peculiarities of early, by which I mean archaic, Roman procedure. The unexpressed implication in the early literature of the *placita* is that such archaic modes might be applicable to early Frankish procedure. No one has noticed that in the meantime Romanists have rightly moved on, and thus abandoned the conceptual constraints of the idea of *Scheingeschäfte*. The concept of fictitious trial has nothing to contribute to our analysis of the procedure of the Merovingian royal tribunal. It operated in a world conceptually connected to the recent Roman past and obviously contemporary Frankish procedure. None of this background, which readily accepted the use of public fora to register conveyances and other types of judicial business, suggests any predisposition to employ fictions to accomplish fairly straightforward legal ends. Nor does this background suggest that the procedure of the conveyance *placita* was necessarily a new creation nor a sign of waning Merovingian power. Other sources can tell us about that. We divert our attention from the real significance of the *placita* and related documents by clinging to outmoded concepts of legal history.

II

The implications of this diversion are prominent not only in the tendency to read the conveyances as markers of declining royal power but also in efforts to cast select dispute *placita* in turn as *Scheinprozesse*.⁵⁵ The judicial claims in these cases

facultates [. . .] quicquid aut regia conlationem aut privatorum munere vel antecessores abbatis [. . .] est legaliter atquesitum aut comparatum'. Kano 2001, 348 cites FMarc I 12, a mutual donation between spouses of usufruct, which I take not to be unilateral and limited in effect; FMarc I 13, a form of testamentary donation in which the king is a party to the act – there is a cession of property by festuca; and two rather difficult diploma *deperdita* (nos. 250 and 388, Kölzer 2001, vol. 2).

⁵⁵ The conveyance *placita*, however, have not been exempt from the attempt to read into them specific political significances. Barbara Rosenwein, 1999, 91–96, developing the term 'fictive disputes' into 'showcase trials', interprets them as political instruments, ritual enactments of enmity and rapprochement, by which Neustrian factions and the Pippinids announced their powers or made a show of capitulation. DM 136, the earliest of the conveyances (a. 692/3), is interpreted as a marker of division and reconciliation within a Chamblois faction whose doings are further traced in the famous dispute *placitum* DM 149 (here interpreted as *Scheinprozess*) between the abbot of Tussonval and Drogo, son of the mayor of the palace. The defeat of the latter is seen as a concession staged by the mayor Pippin to conciliate the Chamblois faction.

all involve, and always indirectly, the mayor of the palace, Grimoald. A leading assumption here is that kings were mere ciphers; the interest of mayors could not have been seen to be jeopardized in court cases before the tribunal, and therefore such trials, touching on what are perceived to be mayoral interests, must simply be confirmations and fictitious in some way. A counter assumption for those detecting continuing power of Merovingian kings is to see the same cases as indicators of the still contained power of the mayors. The power of the late mayors, however, is hardly a good starting point in reading late disputes. Jettisoning the concept of fictitious procedure, can help check the introduction of invented, tendentious circumstances into the record.⁵⁶

There are two principal candidates for fictitious trial among the disputes, one first suggested by Brunner and one by Bergmann.⁵⁷ The two *placita* have considerable intrinsic interest and, with more time, would be worth exploring. On the question of their fictitious character, however, whatever traction this idea has had stems largely from the perception that fictitious trials formed an element in the *placita* to begin with (on which I have said more than enough) and its counterpart that real trials virtually disappeared before the late Merovingians.⁵⁸ One can readily show, however, that both *placita* do not have fictitious elements and fit comfortably into the pattern of conventional dispute process.

Brunner regarded DM 157 to be a *Scheinklage*, despite all appearances to the contrary that it simply concluded a suit. The subject of the *placitum* is Saint-Denis's claim as plaintiff to a mill held by the fisc, whose own claim was defended by its

56 Theo Kölzer 2004 provides a valuable, and pointed overview of the problems of conceptualizing royal and mayoral power in the late seventh and early eight centuries. I do not endorse all his conclusions.

57 Gerberding 1987, 103–4 suggested DM 149 (cf. previous note 55, which draws on this notion) mainly because the loser was Drogo, the mayor's son. Wood's rebuttal, defending the powers of the later Merovingians (1994, 263), is also political. He accepts it as a genuine dispute because he can detect two later opponents of the Pippinids in the 'witness list' (by which he means members of the tribunal). The tribunal has about twenty names, supplemented by 'cunctis nostris fidelibus'. Both seem to regard the procedural elements as irrelevant to their arguments and are oblivious to the idea that there were times when rulers were subject to the processes they represented themselves as defending.

58 Cf. the characterization of the *placita* of the 'last Merovingians', apparently those after 700, by Heidrich (1967, 108 f.). All *placita* of the period are confirmations, she claims, with the single exception of DM 167. The implications here are quite misleading and depend on classing DM 157 as a confirmation, which is technically true, but it confirms a judgment and comes at the end of a dispute, and dismissing DM 156 as a dispute only in appearance. A better view of the late *placita* would find that four are conveyances and three are disputes. The big picture of the *placita* is not quite as skewed by the later record as Heidrich implies. Of the six *placita* originals and good copies before the 690s when the conveyances appear, all are judgments; but of the five originals, four are converted Saint-Denis papyrus specimens of which three reflect a dossier of some kind, since they are connected with a certain Ermelinus. Of the six *placita* of the 690s (all originals), two are conveyances. Of the thirteen *placita* from the 690s to 726 (originals and good copies), six are confirmations and seven are disputes. The tilt towards conveyance confirmations is real but it is subtle. Among Saint-Denis originals, the period after 700 produces two conveyances and three disputes.

representatives, agents of Grimoald, Mayor of the Palace. The fisc and its representatives were the defendants, not Grimoald personally. The monastery's claim was settled by an inquest ordered by the mayor, and on the basis of the mayoral judgment proceeding from the inquest, the *placitum* confirms Saint-Denis's right.⁵⁹ Like so many *placita* DM 157 is a confirmation, but of a judicial decision ending a suit not of a conveyance.

Interpretation of this *placitum* is complicated by the sequence of events outlined in its *narratio* which presents the reader with voice problems that are not easily resolved. Basically there are two ways to read the sequence preceding the confirmation of the royal court.⁶⁰ (1) The judicial process began before the mayoral court and subsequently was brought before the royal tribunal for confirmation. This is the view of Brunner and Bergmann. (2) The process began with a petition before the king. It was then taken up by the mayor for further investigation. The royal court then confirmed the mayoral judgment. Whether Saint-Denis's claim began in the palace or not, however, is incidental to the question whether the final procedure before the tribunal contains fictional elements or not.

Brunner's argument is that the procedure before the tribunal approximates that of the conveyance confirmations, which he had already defined as *Scheinprozesse*.⁶¹ It takes the form of a lawsuit though it is intended to acquire a confirmation. He laid stress particularly on the lack of the phrase *malo ordine* in the charge laid by Saint-Denis, implying that while the form of procedure resembled a lawsuit, the subject of the appearance was no longer really a claim about the illegal withholding of property, and therefore was at the same time both disputatious and fictitious. In rejoinder it can be pointed out that the confirmation conveyances are what they are: they are not lawsuits, they are not fictitious and have no bearing on DM 157. The procedure before the tribunal about the mill is likewise what it appears to be: the confirmation of a judgement ending a suit. There is no attempt to disguise the substance of the proceedings. The first part of the *placitum* provides the history behind the monastery's claim; there is no new charge of withholding property. Whether *malo ordine* had ever been part of the original charge is a moot point. There would have been no significance in its omission if it were not. Not all property disputes have it, nor should we suppose that it was essential to a charge. Moreover its inclusion in a claim against the royal fisc, which is what the mayor's representatives served, might have seemed impertinent. The dispute outlined in DM 157 was not about personal property and illegal acts but an administrative disagreement among the great servants of the king, the fisc and the monastery of

59 Formally the judgment of the mayor is decisive; procedurally the verdict is supplied by the inquest.

60 Murray 2005, 269 f. and see Appendix II.

61 This seems to be the reason for Bergmann's assertion (p. 176) that the mayor's auditor (the equivalent of the king's count of the palace) was physically present at the confirmation before the royal court: he would act in the role of the respondent as in the conveyance confirmations. But the auditor Rigofridus' attestation is only in the mayoral judgment; he is not said to be physically present to respond to the court. There is no *interrogatio*.

Saint-Denis, on how public resources ultimately derived from the crown had been allocated. DM 157 is merely a record of the tribunal's confirmation of the happy outcome for Saint-Denis. There are no fictional elements in it.

Administrative friction also forms the context of the other dispute *placitum*, DM 156, cited as a *Scheinprozess*. Again it is a quarrel between the fisc, that is the agents of the mayor, and Saint-Denis and was concluded in Saint-Denis's favour the day before DM 157.⁶² (In a short period of time, therefore, Saint-Denis won two victories, but of course given the nature of the record we never hear about its losses.) The candidacy of DM 156 as a *Scheinprozess* is recent and the argument owes much to its association with DM 157 and the argument made about the latter.⁶³ In DM 156 representatives of Saint-Denis appeared before the royal tribunal and claimed that its right to tolls collected from merchants at the fair of Saint-Denis was being infringed by agents of the count of Paris and Grimoald, mayor of the palace. Saint-Denis supported its claim with a sheaf of documents from previous kings. Grimoald's representatives objected that the share they themselves collected was customary. Saint-Denis responded that an earlier count had introduced this custom by force. An examination of various persons and the diplomas of earlier kings was conducted. As it upheld Saint-Denis's claim to the tolls in their entirety, its finding was accepted by the mayor and the rest of the court. Bergmann, whose argument is the most circumstantial, claims there was a previous mayoral judgment favorable to Saint-Denis issued before the Saint-Denis's appearance in court as in DM 157 about the mill; DM 156 is thus like DM 157 a *Scheinprozess*.⁶⁴ In fact only mayoral agreement to the consensus of the court is mentioned – no mayoral hearing, no previous mayoral judgment. The dispute took place before the royal tribunal and the language of dispute, claim, and counterclaim is unmistakable. The lengthy account of the issues and the different claims of the sides read easily enough as genuine litigation. Again, there are no signs of fictional elements in what is a direct judgment of the tribunal.

There has been a tendency to view the late placita involving Pippinids as political indicators of their strength. The concept of fictitious trial allows them to be

62 A translation is provided in Appendix III.

63 Bergmann 1976, 173–75, imports Brunner's argument *re malo ordine* and the supposition of a previous mayoral hearing. Kölzer (2001, 389; 2004, 55) accepts a previous hearing. The confirmation of Pippin DK 6 = ChLA 15: 602, which refers to a previous judgment ('illo iudicio evindicato domno Hiltberto rege et avunculo nostro Grimoaldo maiorum domo'), proves only the obvious: the existence of DM 156, not a separate, previous judgment by Grimoald. Grimoald's agreement with the court finding is found in DM 156. Further argument here seems pointless: there is no previous mayoral hearing in the text or in DK 6. Inventing a Pippinid *deperditum* here seems slightly perverse: Heidrich 1966, 270, no. 25. Though Heidrich eschews the term *Scheinprozess* her earlier interpretation of the suit in DM 156 suggested it was a dispute in name only.

64 There is an amazing circularity to the accrual of *Scheinprozesse*: the conveyance confirmations are claimed to be fictitious; DM 157, like the conveyances, is a confirmation and so must be fictitious like them; DM 156 (though quite superficially) resembles 157 and therefore it must be a fictitious trial too.

savvy political manipulators; its rejection shows them still not to be in the saddle but blocked by their enemies. The possibility that the cases have nothing much to do with either of these scenarios is largely unacknowledged. The routinization of procedure is ignored. The systematic, and bureaucratic, character of court procedure is disregarded. The structures of Frankish government are thoroughly personalized and reduced to a political show.

I do not want to suggest that the *placita* are of no value in arguments about the political conditions of the last phase of Merovingian history. I do argue however that the concept of fictional trial does not add to that discourse and is an unnecessary distraction. Moreover, I want to suggest that the *placita*, even those involving mayor's servants, and mayor's sons, are testimony to administrative and legal processes, first and foremost. We all know that these exist within particular political environments, but we also know that outside of modern, true authoritarian contexts they can operate according to rules that do not simply reflect the will of rulers or even elites. It would be worthwhile if there were some appreciation of the common regularities of law and administration before headlong, unchecked fixations on power heedlessly distort evidence that has important things to tell us about the functioning of early Medieval society.⁶⁵

65 Cf. remarks by Weitzel, 2006, 311.

APPENDIX I

Explaining DM 153

The *placita*, as scholarship has so designated them, readily break down according to content into two groups: disputes, namely a heterogeneous groups of judgments and phases in the judgment process; and conveyance confirmations, which have been discussed in the previous pages as a fairly uniform legal category. The *placitum* form, however, was likely very flexible and may have encompassed a variety of circumstances that have not come down to us.⁶⁶ There is no reason to assume *placita* only encompassed judgments about disputes and simple conveyance confirmations. Some slightly anomalous features of one of the latter needs discussion, for it is possible that the *placitum* in question comes at the end of an extrajudicial disputatious process, even though it is presented, quite unfictitiously, as a conveyance. By any reading, it contains an immediate cession of rights of a kind that is not found in the other conveyance *placita*.

DM 153, dated 702, records the conveyance to Saint-Germain-des-Prés of a monastery by Adalgudis and her deceased husband Gammo, as confirmed by a representative of Adalgudis called Aigatheus, who, the language of the *placitum* suggests, may be a party to the transaction before the tribunal. Only Aigatheus is present before the court.⁶⁷ Aigatheus confirms the documents made by Adalgudis and her husband in favour of Saint-Germain. Then Aigatheus 'both on behalf of himself and Adalgudis by *festuca* also said to the assembly on behalf of himself and Adalgudis that in all respects he was quit' of the small monastery that was the subject of the donation.⁶⁸ The conclusion of the court's decision confirming the documents also adds, uncharacteristically, the wish that 'dispute regarding this matter

66 Murray, 2005, 271. This owes much to Classen's observation 1955–56, 69–70 about the resemblance of the form to minutes, well-known in Roman and ecclesiastical sources.

67 Bergmann's not very exact summary 1976, 171 f. ignores Aigatheus and treats Adalgudis as if she acts before the court in person and was the sole donor. Woman had standing before the tribunal. The use of a representative must mean that she was not there at all, that she was present but preferred not to stand before the court, or that the representative acted not only on her behalf but also on his own.

68 'Qui et ipsi [= ipse] Aigatheus in praesenti per sua festuca tam pro se quam et pro ipsa Adalgude se in omnebus de ipso monasthyriolo Lemauso una cum adiecencias [. . .] dixit esse exitum'. *In praesenti* = openly, before those present, before the court; it can sometimes mean, 'on the spot',

be set to rest in the future'.⁶⁹ Aigatheus, on behalf of Adalgudis or himself, never offers, or is asked, to stand as warrantor of the donation. DM 153 thus stands out from the other conveyances for three reasons: immediate cession of an interest in the property by *festuca*; no mention of the opposite party standing as warrantor; the wish that in the future dispute may be set at rest. These features are the basis of a recent argument that DM 153 concludes a real dispute.⁷⁰

It is true that that DM 153 is the closest we can come among the conveyance confirmations to language that indicates a dispute, but there is no mention of a previous judgment in it and the form still hews pretty closely to standard conveyance confirmations. If it did come at the end of some disagreement between the parties, that dispute seems likely to have been extrajudicial, the subject of negotiations, mediation, or arbitration (to use terms of increasing formality that still fall short of litigation).

It is possible to speculate on some of the circumstances behind the *placitum* because DM 153 is unique in another way. There is a cartulary copy, dated 697, of what purports to be the terms of a donation agreement – the original one, we must presume, behind DM 153 – between Saint-Germain and the couple Gammo and Adaltrudis, made five years before the *placitum*.⁷¹ To go by the copy, Gammo and Adaltrudis made a donation of the monastery to Saint-Germain but, typical of the period, reserved usufruct over the place for the rest of their own lives and that of two daughters, one an abbess of the monastery and another called Maria.⁷² The donation, so it seems, was widely publicized when it was originally made.⁷³ None of these details are alluded to in DM 153. Nevertheless, the existence of

'immediately'. The subject of 'dixit' could of course be Adelgudis, but while this shifts the focus of the procedure a little, I do not think it clarifies anything.

69 'Et sit inter ipsos ex hac re in postmodo subita causacio'. A future wish of no dissension hardly constitutes grounds for assuming that a dispute has just taken place, but the phrase is used in dispute *placita* (see Appendix II for an example) and only in this one conveyance confirmation. The phrase may be suggestive but is hardly conclusive of anything.

70 Kano 2007, 340–42; DM 153 is thus not a *Scheinprozess*, but a real trial, according to categories of traditional scholarship. Kano, recognizing the obscurities of the context, never presses his interpretation home. He acknowledges that the dispute could have been extra-judicial. I hope some of my comments help resolve the distinctive features of the *placitum*.

71 The modern edition is Poupardin 1909, no. 10 = Pardessus no. 442. Brühl 1998, 115 and n. 51 supports its essential genuineness because of the existence of DM 153, but detects 'deutliche Zeichen später Überarbeitung'. The incompatibilities listed are minor (they go back to Mabillon) and of the readily detectable kind. There is more wrong with this charter, some of which I think could be established with close reading. The usufruct and the two daughters still emerge from the text, sometimes awkwardly, despite intrusions. I take the familial usufruct as genuine because it fits the cession of rights by *festuca* of DM 153.

72 The term usufruct is not used, though that is how we would understand the arrangement. The couple and their daughters retain the right 'res tenere vel dominare' for as long as they live.

73 The donation supposedly received considerable public, even royal acknowledgment: 'epistola huius donationis [. . .] Bituricas in civitate in conventu nobilium, in praesentia regis domini nostri Childeberti relectas, et Parisius civitate in monasterio Sancti Vicentii [. . .] super altare Sanctae Crucis posita'.

usufructuary rights seems to me obviously connected with the cession of residual interest in the property by means of a *festuca* recorded by the *placitum*. By the time of Aigatheus's appearance before the tribunal, Gammo had obviously died, and we are left to guess the fate of the daughters. DM 153 may simply be a confirmation of the original donation, occasioned possibly by the deaths of one or more of the principals and Adalgudis's decision to finally be quit of her interest in the monastery (which would not occasion the subject of warranty because the donation had been widely publicized). Thus, the confirmation is secondary; the main purpose behind the appearance before the tribunal is the cession of usufructuary rights.⁷⁴

If there is more to it than that, then, I would suggest the following scenario. Aigatheus, whom the *placitum* treats as an agent of Adalgudis and as an interested party on his own, is a relation, possibly a husband or even son of the said Maria, with an interest in the fate of the property. He has been persuaded to drop his interest (through negotiations, to follow the simplest course, that for all we know involved due consideration for his good will). He appears before the court as representative of Adalgudis, the only way in fact by which he could have standing, to confirm the donation in her name and to cede her and his own remaining interest in the property.⁷⁵ The question of being a warrantor is never addressed to him because Aigatheus was never an owner of the property and, after his cession of interest, will never be one. His warranty is immaterial. By this reading of the *placitum* the focus of the procedure is really Saint-Germain and Aigatheus, whose standing before the court depends on his role as agent of Adalgudis, but whose cession of interest in the property Saint-Germain is eager to have acknowledged.

By either reading, or some combination thereof, nothing is fictitious. There is no mock trial, no real trial, no distortion of confirmation procedure. The tribunal is exploited, but openly and legally to acknowledge the cession of proprietary interest in the monastery by Adalgudis, and Aigatheus. DM 153 is still a conveyance confirmation (of Adalgudis's and Gammo's original donation), and also a little more than that: the cession of residual rights in the property.

74 See Kano 2007, 341, whose comments are made within the self-imposed burden of defining 'fictitious trial'.

75 For intervenors without standing, see DM 141, where the son of the defendant is questioned and fined after his intervention. The penalties are pledged in court by *festuca*.

APPENDIX II

The sequence of hearings in DM 157

In the text I noted that ambiguities in the use of voice in DM 157 make it difficult to be clear about the sequence of appearances before the king and the mayoral court. The usual view is to read the appearance of Saint-Denis before the king as the one and only presentation of the case before the royal court. The background to the dispute, which concerned a mill, is consequently all part of a narration provided by Saint-Denis, including notice of the monastery's disputation with the mayor's officials and then the settlement of the dispute by the mayor's judgment (parts 1–2, in translation below). The mayoral judgment is then confirmed by the royal tribunal. The hearing referred to in the opening formula is in this scenario the same as the one that issues the final decision concluding the *placitum*. In the text I noted another way of reading the *placitum* in which the opening formula refers to a first appearance before the king. The case is thereafter taken up by the mayor who issues a decision in favour of Saint-Denis, which then comes back before the royal court to receive confirmation. There are thus in this scenario two appearances before the king. I would like to explore this reading a little more fully and consider the features of the *placitum* that seem to point in that direction. I have appended a translation, marked by Arabic numerals noting what I take to be the main components of the *placitum* and the main phases of the dispute process.

1. *Petition to the king*. It may seem to some natural to read the opening formula as a description of the beginning of the same hearing that gives a decision. But that practice is true only of *placita* that contain direct judgments and conveyance confirmations, in both of which a judicial determination follows directly on the appearance of the parties; there is no break in the proceedings, and so judgment follows on the appearance of the parties before the tribunal. This pattern is demonstrably not true for the range of procedures dependent on interlocutory judgments that involved at least two hearings. In these cases, the opening formula of the *placitum* refers to the first hearing when plaintiff and defendant appear together. The *placitum* itself is dated to the final hearing when, at least in the case of defaults, only one party was present.⁷⁶ The opening formula of DM 157, therefore,

⁷⁶ DM 79, 141 (defaults after interlocutory judgments); DM 126 (proof after interlocutory judgment). DM 126 has an 'ante dies' superscript in the opening formula noting the dislocation between

need not refer to the day the confirmation is given. The *placitum*, with its background to the suit and its course up until judgment, was written at the time of the confirmation but ranged back to the initiation of the complaint.

There are also positive reasons to doubt that the hearing in the opening formula of DM 157 is in fact a meeting of the tribunal at all. The king alone is mentioned in the formula, a pattern paralleled in one other *placitum*, DM 137, which raises similar problems to that of DM 157.⁷⁷ Only the agents of Saint-Denis are said to appear (the fisc's initial response appears in the narrative of the monastery). There is no mention of a counter party, equivalent of a defendant in direct judgments and a respondent in conveyance confirmations. The plea looks to be completely unilateral. The procedure portrayed reads easily as a petition brought before the king not a lawsuit before the dedicated tribunal. The common view that DM 157 resembles a conveyance confirmation also seems quite unwarranted. There is no respondent, no following *interrogatio*, no affirmation of the petitioner's claim, indeed no sign of another party at all.

The outcome of the petition is that Grimoald, in conjunction, typically enough, with other officials, agrees to investigate the monastery's complaint, which would fall under the jurisdiction of the fisc anyway. The monks, it seems, were able to make a *prima facie* case as to their version of the mill's relationship to Saint-Denis, a factor that is reflected in the mayoral prescription of proof in a form that privileges Saint-Denis's claim (below 2). One can imagine that Saint-Denis, frustrated in its attempts to gain satisfaction before local fiscal officials, has decided to approach the king and the palace directly. Having gained the attention of the mayor and palace officials, the case was speedily subject to mayoral inquiry.

2. *Transfer to the court of the mayor.* Grimoald decided to subject the issue to a form of inquest, requiring an oath from locals from both the mayoral and monastic collection centres who were to swear as to their knowledge of previous practices involving Saint-Denis.

3. *Report on the mayoral hearing.* The findings of the inquest and the decision of the mayoral court are found in the report of the proceedings made by Rigofridus,

charge and judgment. The charge was laid in Compiègne and the judgment issued at Luzarches. In DM 157 appearance and royal confirmation both took place at Montmacq, an inconclusive detail, because the place in dispute is only a short distance away and the total length of time for completion of the trial process need not have taken very long. In DM 141, despite possibly multiple hearings, the place of the initial hearing and judgment were the same, Valenciennes.

⁷⁷ The form is Bergmann's B class of introductions 1976, 61, 64 common only to DM 137 and 157. The case for the suit beginning before the king is a little more difficult to make for DM 137. It seems to start with a unilateral petition to the king, but since the *placitum* records a default process, the unilateral character of the introductory formula can be accounted for by the non-appearance of the defendant. The problem in DM 137 is whether the case started in an episcopal court and was only completed before the tribunal or whether a royal order, in response to a petition by the plaintiff, required the episcopal court to resolve the dispute by trial if possible. FMarc I 27 provides a possible model. The stages from petition, to failed resolution in the episcopal court, back to the royal court for final proof and default seemed to be marked by the relative adverb *unde*, but a conclusive argument is not yet possible.

the mayor's *auditor* (a mayoral parallel to the royal count of the palace); the report is obviously the basis for the confirmation of the royal tribunal. The decision of the mayoral judgment, as reported in the *placitum*, confirmed the priority of the Saint-Denis claim. It should be noted that, though judgment is given by the mayor, it is based on what amounts to a verdict issued by a local panel. The judgment of the mayor, for all his power, follows the finding of the inquest. The officials of the fisc, that is to say the defendants, we are told, accepted the verdict and the mayoral judgment, conceding to Saint-Denis its right to the mill.

4. *Decision of the tribunal and royal command.* The submission of the mayoral judgment really marks the substance of the procedure that took place on 14 December 709, the date the *placitum* was issued. There is no indication if Rigofridus is on hand to confirm the mayoral judgment in person or not. The document, with signatures and a seal, should have been sufficient. The mayor may or may not have been present as a member of the tribunal. Attestation by Rigofridus of Grimoald's judgment, the decision of the king's court to confirm that judgment, and, critically at least from a procedural point of view, the royal count of the palace's attestation that all of these steps were carried out properly in turn becomes the foundation for the point of the *placitum*, the royal command, validated by the referendary or his substitute.

When examined closely, DM 157 resembles neither a direct judgment nor a conveyance procedure. It has minor resemblances to interlocutory judgments. It really stands apart for what it is: the sole example of the confirmation of a previous judgment. It is obviously not fictitious in any of its elements. DM 157 attests to what is essentially an administrative dispute. Whatever politics there are behind it (and there surely were some) are wrapped in the regularities of petitions, hearings, inquests, and judgments. The royal confirmation may attest to the high value of documents issued by the king, as is usually supposed, but it may also be tied to the fact that the royal court is where the process began and where it was assumed to end. Nothing important for the mayor or the monarchy really hinged on a decision about a mill. Saint-Denis seems to have had a good case. The monks won. Neither king nor mayor, we may suppose, lost any sleep over the decision.

Translation of DM 157

The Latin text may be consulted in the DM 157 or *ChLA* 587 versions.

[1. *Petition to the king, Childebert III*] Agents of the basilica of our special patron lord Dionysius, wherein the precious man himself rests in the body and the venerable abbot Dalfinus presides as its head, came to our palace at Montmacq and brought to our attention [a petition] that agents of the illustrious mayor of the palace were withholding the mill in the place called Cadolaicus in the district of Uernus, which mill for a long time their predecessors always possessed [as an adjunct] to the basilica's villa of Latiniacus and [the agents of the mayor] were saying that it

was dependent on his villa of Uernus. The agents of Saint Dionysius next said⁷⁸ that for a period of many years that mill was never dependent on Uernus but on the villa of Latiniacus belonging to the basilica; Ebroinus, mayor of the palace, in his own day, when he was in possession of the villa, caused it to be so dependent and quite legitimately renders were made to them or the house of the holy Dionysius.

[2. *Transfer to the court of the mayor*] Now⁷⁹ after that, Grimoald, the mayor of our palace, along with our *fideles* ordered this claim to be brought before him so that he might investigate it with more care, and he has done so. Thus it was prescribed by Grimoald that six men of good faith from Uernus and six from Latiniacus should swear together in his oratory on the mantle of Saint Martin that for a long time the mill has always been dependent on Latiniacus, the *curtis* of the monastery of Saint Dionysius, and quite legitimately dues were paid there.

[3. *Report on the mayoral hearing in 2*] Now,⁸⁰ in so far as the illustrious Rigofridus, *auditor* of Grimoald, has attested that those men fulfilled in all respects the decision of Grimoald just as he prescribed it and those agents [of the fisc] accepted the oath, as prescribed, and the judgment, confirmed by the hand of Rigofridus and sealed with the ring of Grimoald, [acknowledging] that Dalfinus and his monastery of Saint Dionysius should possess and control the mill with secure title:

[4. *Decision of the tribunal and royal command, based on 3*] Whereas we have so decided along with our leading men, insofar as the illustrious Bero, count of our palace, substituting for the likewise illustrious count of our palace Gimbercthus, has verified that the said Rigofridus has provided his attestation, that this case was so done and decided before Grimoald, mayor of the palace, we order, now that the judgment of Grimoald, mayor of our palace, has been examined, just as he proclaimed it, that the aforesaid agents [of Saint-Denis] have gained title and acquired for all time possession of that mill on behalf of Abbot Dalfinus and the monastery of Saint Dionysius, without any further claim by Grimoald, our Mayor of the Palace, his agents, heirs, or successors and against anyone else; and may dispute about this matter be laid to rest in the future.

Dagobertus, substituting for Angilbaldus, has validated.

Given on 14 December in the sixteenth year of our reign at Montmacq under good auspices.

78 'Dicebant postia', and cf. 'postia dicebant' in DM 156, concluding the complaint.

79 *Sed* at the beginning of a sentence does not mean 'but' in Merovingian legal Latin. It generally marks a long pause, that can be rendered in English by a paragraph break, with or without the adverbs 'then' in the sense of next, or 'now' as a means of emphasis marking a slight change of focus or subject. The *sed* passage comes at the point where the defendant should respond, rebutting the charges, in a conventional dispute.

80 See previous note.

APPENDIX III

DM 156, judgment in favour of Saint-Denis regarding tolls

Translation of the text of DM 156

I have marked out the stages of the pleadings and the judicial decision in italics. The alleged previous mayoral judgment is supposed to be found in [5]. The Latin text can be consulted in the DM 156 or *ChLA* 586 versions.

[1. *S-D's case*] There came into our presence and that of our leading men in our palace at Montmacq representatives of the venerable abbot Dalfinus of the basilica of our special patron, Saint Dionysius, wherein the precious lord rests in the body, and made allegations about the representatives of the illustrious mayor of our palace Grimoald, saying that over a long period of time the late Chlodouius, our grandfather, and afterward our uncle Childericus and our lord and father Theudericus, and also our brother Chloдохarius, as stated by their directives, granted to the church of Saint Dionysius in its entirety that toll that [was collected] from all the merchants, Saxons and those of other nations attending the market on the feast of lord Dionysius; there was also the condition that neither afterwards or then would the fisc exact or collect on its own behalf either there at the market or within the *pagus* of Paris or in the city tolls from the merchants, but the toll was bestowed and granted in its entirety on the said basilica of lord Dionysius. Whereupon they presented to the court such directives of the said princes to be read out. When they were read and examined it was found that the grant had been so made by those princes in its entirety to that house of God. Next they said that agents of Grimoald, mayor of our palace, and also the count of that *pagus* of Paris took half of that toll from them and removed it from the possession of the basilica.

[2. *Case of the fisc*] Representatives of Grimoald, the mayor of our palace, alleged that for a long time the custom existed whereby the house of Saint Dionysius received half and the count received the other half on behalf of our fisc.

[3. *S-D's rebuttal*] The representatives of Saint Dionysius asserted in reply that the late Gairinus count of Paris imposed this custom there by force and at times took away half of the toll from them, but those representatives informed the palace of this and always renewed their directives in their entirety.

[4. *Examination*] Again an examination was conducted of many persons and also of the directives which the aforesaid princes originally and subsequently granted and confirmed without diminution.

[5. *Judgment*] Thus, with the agreement of Grimoald, mayor of our palace, our other many *fideles* also resolved and decided that the representatives of Grimoald on behalf of our fisc should invest that toll once again on the representatives of Saint Dionysius by means of a gage – which they have done.

[6. *Royal command*] Now whereas this matter was so treated, concluded, examined and determined, as the illustrious count of our palace Rigofridus has attested it was, we command, now that the previous directives to the monastery have been examined, that the monastery of Saint Dionysius, wherein the precious lord rests in the body, and abbot Dalfinus and his successors have gained and acquired title for all time to that toll in its entirety from the feast of Saint Dionysius, both that which arises on the lands of the basilica and after that in Paris.

[*Added guarantee*] In earlier times the market was moved on account of a catastrophe from the site of Saint Dionysius and was established in the city of Paris between the basilicas of Saint Martin and Saint Laurence, and for that reason they received directives from the aforesaid princes that the aforesaid basilica of Saint Dionysius should get the toll in its entirety there or wherever it set up to conduct business and commerce on the occasion of the feast. In view of these circumstances, should it happen that on account of some catastrophe or interruption the fair should be moved somewhere else, let that aforesaid toll, because of our devotion to that holy place, in present and future times, remain granted and bestowed upon that house of God to offset the cost of lighting [the basilica] of Saint Dionysius in respect for that holy place.

And on the part of our fisc and that of the agents of Saint Dionysius, may all dispute and contention be laid to rest.

Actulius has by command validated.

Given on 13 December in the sixteenth year of our reign, at Montmacq, under good auspices.

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THE LAW OF THE POST- ROMAN KINGDOMS

From: *Great Christian Jurists and Legal Collections in the First Millennium*, ed. Philip L. Reynolds, Cambridge Studies in Law and Christianity (Cambridge: CUP 2019)

This chapter is a profile of law in the Continental post-Roman kingdoms until around 750, with some comments on society, legal administration, and the church. That legal systems existed throughout the period is obvious, but the effort to characterize them in general terms is fraught with difficulty, especially as regards their relation to Roman law. We begin, therefore, with the ways in which legal historians have construed the law of the post-Roman kingdoms.

Approaches to the field

Broad surveys of European law and institutions usually deal with the post-Roman, successor kingdoms in two ways. If the focus is Roman law and ultimately the legal systems of Modern Europe, the period is seen as a grim interlude of deteriorating civilization before Europe happily regained its direction with the rediscovery of Roman law, especially Justinian's *Digest*, in the era of Irnerius, the famous scholar of Roman law and jurisprudence active during the late eleventh and early twelfth centuries. If the focus is abbreviated to legal and institutional themes in medieval history, the period is presented as an unimportant and primitive prologue to the vigorous, if in fact faltering, work of the Carolingians, followed by the state-building policies of the central Middle Ages – where, again, Irnerius plays a central role. Both approaches move quickly across what is regarded as the bleak terrain of the successor kingdoms to settle in the apparently more verdant pastures of later medieval history. These perversely dramatic narratives obfuscate much, in particular the continuous history of European law from the late Roman empire, through the kingdoms that succeeded it, and onward to the Medieval and Modern periods.

There have been exceptions to the indifference to the post-Roman period, and they are longstanding. Carl von Savigny (1779–1861), whose name now graces a venerable and prestigious German journal dealing in three *Abteilungen* with Roman, Germanic, and Canon law respectively, devoted two of his six volumes on the history of Roman law in the Middle Ages to the period before Irnerius.

These volumes appeared between 1815 and 1831, with the first two in the years 1815 and 1816.¹ They are still rewarding.

Savigny's broad, if still compartmentalized, view of European legal history, however, was not the one that prevailed. The history of German (*deutsch*) law, generally understood to subsume the Germanic (*germanisch*) law of the post-Roman kingdoms, arose as the foundational subject for the history not just of Germany but of the entire West, resting on the rough-hewn legal and political ideas of the barbarians that occupied the Roman provinces. The perceived primitiveness of the period that had discouraged many from treating it seriously was recast here as the vigorous, pregnant beginnings of Western institutions. Such ideas had famous and doughty exponents such as Georg Waitz (1813–1886) and especially Heinrich Brunner (1840–1915) – fine scholars and, again, still worth reading.²

This approach produced what can be thought of as the traditional teaching of early medieval institutions and law, as influential in Romance- and English-language scholarship as in German-language works. The Germanic order was basically seen as having been transferred into the Roman imperial provinces during a distinctive period of migration (*Völkerwanderungszeit*) or invasion – both concepts that, as generalizations, are seriously flawed as descriptions of historical process.³ Popular institutions and popular sovereignty were supposed to be at the heart of this order. Its original foundation, it was claimed, was visible in the legal sources as the *liberi*, understood as the common freemen, the center point of the political and legal system; and by the time of the settlements in the empire, this order had produced a Germanic form of monarchy, construed as elective but with dynastic elements claiming priority in the selection of kings. The general acceptance of the theory in the English-speaking world is perceptible for instance in the lectures given at Cambridge in the early part of the last century by the noted classicist J.B. Bury (1861–1927) who told his students that while the Germanic state outside the frontiers in late imperial times might have a king or not, in either case “it was virtually a democracy” in which the people were sovereign.⁴

1 Frederick Carl von Savigny, *Geschichte des Römischen Rechts im Mittelalter* (Heidelberg: Mohr/Zimmer, 1815–31). I cite this work by the section numbers of the 2nd edition (1834). I shall also cite the pages for the English translation of vol. 1 (Edinburgh: Black, 1829) where applicable. The journal mentioned is *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (often abbreviated ZRG or ZSS). James Q. Whitman, *The Legacy of Roman Law in the German Romantic Era: Historical Vision and Legal Change* (Princeton: Princeton University Press, 1990), outlines the broad context of Savigny's time.

For further information on translations of ancient texts cited in this chapter, see under Sources at the end.

2 Georg Waitz, *Deutsche Verfassungsgeschichte*, 8 vols. (Kiel: Schwers, 1844–78). Heinrich Brunner, *Deutsche Rechtsgeschichte*, 2 vols. (Leipzig: Duncker & Humblot 1887–92); 2nd ed. with Claudius Freiherrn von Schwerin (Leipzig: Duncker & Humblot, 1906–28).

3 Walter A. Goffart, *Barbarian Tides: The Migration Age and the Later Roman Empire* (Philadelphia: University of Pennsylvania Press, 2006).

4 J. B. Bury, *The Invasion of Europe by the Barbarians* (London: Macmillan, 1928; Norton reprint, 1967), 12.

The implications for legal history of this view were fairly straightforward, establishing popular sovereignty not just at the big level of kingship, but also down through a layer of administration to the adjudication of law and justice. The significant number of law codes from the period, sometimes outfitted by modern scholarship with contrived ethnic denominators (see further below), suggested the ready division of the legal components of the successor kingdoms into the binary components of Germanic and Roman law. The latter was thought to have been reduced to an ancillary role, focused mainly on the church and secondary populations, and a sometime, and often delayed, influence on the prevailing forms of essentially Germanic custom.

In the heyday of this approach, dissenters were few and far between.⁵ The most famous challenge to the Germanic focus of general history was mounted by the French historian Fustel de Coulanges (1830–1889). Beginning as a classicist, he eventually became an historian of the Merovingian monarchy and an advocate of Roman continuity in the institutions of the incipient French kingdom.⁶ But neither he, nor those of like mind, could prevail in their day against the Germanic interpretation of medieval institutions.

Even in fairly recent times, English-language scholars have still felt obliged to decry the traditional interpretation of medieval institutions in its general form and especially its notions about the roots of early medieval kingship, which today seem more plausibly traceable to Christian and imperial ideas of authority.⁷ But before English-language criticisms took hold, politically driven ideas arose in German-language scholarship that effectively inverted how the Germanic order of the successor kingdoms was understood. A new school, or more broadly approach, to European history eventually came to prevail among German scholars from the 1930s through the decades following the Second World War. Though in the post-war period, it often presented itself more cautiously as focused narrowly on German lands, it still, like the view it replaced, argued for a fundamental continuity from the late Roman Iron Age through the Middle Ages into later periods of German history in an attempt to define the eternal verities of German history and its

5 Hector Munro Chadwick (1870–1947) is a distinctive example worth noting for pre-WWI Britain. Roughly at the time Bury was giving his lectures, Chadwick was developing a much harder view of Germanic (and Celtic) society in a trilogy of works: *Studies on Anglo-Saxon Institutions* (Cambridge: University Press, 1905); *The Origin of the English Nation* (Cambridge: University Press, 1907); and *The Heroic Age* (Cambridge: University Press, 1912). Although he worked along Germanist tracks, he anticipated more recent trends of social and political analysis (see Murray, “Wenskus on Ethnogenesis,” 53, 54, 58, 67, as cited in n. 8 below).

6 N. D. Fustel de Coulanges, *Histoire des Institutions Politiques de l’Ancienne France*, 1st ed. (Paris, 1875). More volumes followed until his death in 1889. The standard edition is in 6 vols., edited in part by Camille Jullian (Paris: Hachette, 1900–1914). Later editions followed.

7 P. Grierson, “Election and Inheritance in Early Germanic Kingship,” *The Cambridge Historical Journal* 7.1 (1941): 1–22. Joseph Canning, *A History of Medieval Political Thought 300–1450* (London: Routledge, 1996). P. D. King, “The Barbarian Kingdoms,” in J. H. Burns (ed.), *The Cambridge History of Medieval Political Thought c. 350–1450* (Cambridge: Cambridge University Press, 1998), 123–54.

influence on the West. This claim of Germanic continuity meant by necessity that the new approach had to drive its interpretation, which was often based on questionable readings of Carolingian and post-Carolingian conditions, at least back to Merovingian Gaul and beyond that to imperial texts describing the peoples to the east of the Rhine and their relations with Rome.

Called at the time the new constitutional history and, once the bloom was off the rose, just the lordship theory, this new approach delighted – sometimes for clearly modern ideological reasons – in turning the old traditional interpretation on its head. The heart of the Germanic order, now transplanted into the Roman provinces, was supposedly not popular or democratic institutions but rather noble lordships of an ancient Germanic aristocracy whose powers derived originally from the domestic authority of the householder. Lordships ruled their dependents on the basis of autogenous rights that existed independent of the monarchy. The class of common freemen (*liberi*) of the old literature, formerly presumed to be the very foundation of law and political life, was now rechristened the “king’s free.” Their freedom was thought to have been conditional, linked to the monarchy, and derivative because it supposedly sprang from military service and settlement on royal land. The non-noble element in society was now to be envisioned as a servile appendage of monarchy and nobility. What the old literature had always seen as public law and public administration was reinterpreted as the private law arrangements of the monarchy for its dependents – though it was admitted that notions of a public sphere might still have relevance for southern, apparently Roman, areas of the Frankish kingdom. What had been freedom, with all its political implications in the old teaching for law and political authority, now became a dependent condition restricted to royal service, thereby overturning decades upon decades of the reading of major legal sources of early medieval and, especially, Merovingian history. The old-style history was now deemed, pointedly, to be the result simply of the wishful thinking of the nineteenth-century bourgeoisie.⁸ As part of the new history’s own wishful thinking, its proponents tossed aside conventional institutions and overlaid their seemingly realistic, if grim, reading of early society with the purportedly defining (though indemonstrable) irrational forces of sacrality and charisma. The former, thought to characterize monarchy, was supposed to be supported by widespread ideas of the divine descent of kings; the latter, a little less potent, was believed to be an attribute of nobility.⁹

8 Alexander Callander Murray, “Reinhard Wenskus on ‘Ethnogenesis,’ Ethnicity, and the Origin of the Franks,” in A. Gillett (ed.), *On Barbarian Identity: Critical Approaches to Ethnicity in the Early Middle Ages*, Studies in the Early Middle Ages 4 (Turnhout: Brepols, 2002), 39–68, at 53–54 [see ch. 11 at p. 290].

9 The case, and the sources, for a Merovingian sacral kingship – the only case still argued – is critiqued by Alexander Callander Murray, “*Post vocantur Merovingii*: Fredegar, Merovech, and ‘Sacral Kingship,’” in *After Rome’s Fall: Narrators and Sources of Early Medieval History, Essays Presented to Walter Goffart* (Toronto: University of Toronto Press, 1998), 121–52; [above ch. 1].

What were the implications for law in this new approach to institutional history? The new history did make the occasional use of the codifications to document its odd idea that the *liberi* were actually the “king’s free,” a completely modern construct, or to search for the existence of an allegedly ancient Germanic aristocracy that must have imprinted itself, it was believed, on Gallic sources. This history was also more inclined than the traditional teaching to recognize the role of Roman institutions, the parade piece here being the *centena* or hundred as a subdivision of the county in Merovingian Gaul.¹⁰ But here it took hold of an old motif of traditional German history: it relied on the argument that widespread Roman forms were adaptations to what was essentially Germanic content. Despite occasionally employing legal sources for its own ends, the lordship theory was fundamentally incapable of treating law seriously as a subject central to the character and development of society. Law was simply an accessory to power and privilege and supposedly ancient thinking, which rested on ideas intangible, irrational, even transcendent, divorced from the irrelevant and mundane process of law, legal institutions, and their administration in courts of law.

There is a comment that needs to be made here in passing with regard to the long, patently German struggle to define the nature of early society. The efforts of the old and the new history, quite variable in their manifestations and confident in their expression, were part of a psychological struggle to define German identity, not just in itself but also, given its recurring assertiveness, in its placement at the center of Europe and European history. The struggle was also linked at its various stages with contemporary politics. Why so much of this self-interested self-reflection was taken on so earnestly by other Western scholarly communities is a question that must be postponed to another time.

The “aristocratic turn,” prominent in lordship theory, was not limited in twentieth-century historiography to German-speaking lands, but as outlined above this new history was originally a product of a distinctively German right-wing milieu, although some of the ideas that survived the decline of this approach have found a congenial home on the political left. The lordship theory’s demotion of law as the key to popular sovereignty and societal forms in particular has contributed to an acceleration of the disparagement of law as an historical source. Normative forms like law codes are presently a subject of suspicion and often blithely sold short in comparison to documentary sources such as charters, though all source types take special handling and skeptical evaluation when used to suggest social reality.¹¹ There is no reason today, it seems, to think that legal history, since its dislodgment, will quickly regain its former position in the exposition of the general

10 The literature with a critique is in Alexander Callander Murray, “From Roman to Frankish Gaul: *Centenarii* and *Centenae* in the Administration of the Merovingian Kingdom,” *Traditio* 44 (1988): 59–100; [above ch. 4].

11 Compare Alexander Callander Murray’s review of W. Davies and P. Fouracre (eds.), *Property and Power in the Early Middle Ages* (Cambridge: Cambridge University Press, 1995), in the *English Historical Review* 112: 1235–36. And see also below n. 47 for a work that shows how efforts to extract

history of the early Middle Ages – and perhaps that is not entirely a bad thing. In any case, historians of law will continue to explore the legal foundations of the period and to assert the role of law and legal institutions in the development of European history. Master theories marginalize, which after all is their purpose and nature, and in the process they co-opt the legal evidence wherever they can and dismiss it when they have to. But legal scholars, and those with the same interest who recognize another remit, should persevere with their own agendas.

While lordship theory was gripping and reconfiguring German-language scholarship, the German scholar Ernst Levy (1881–1968) was developing a new approach to the law of the late empire and the Western successor kingdoms. He carried out this work far from the centers of Roman and Germanic legal history. As a German Jew, Levy had been caught up in the Nuremberg laws of 1935 and forced to retire from his university at the age of fifty-four, whereupon he moved to the United States and took up a position at the University of Washington in Seattle. There, he wrote in English on the *Sentences* of the classical jurist Paulus and on the Roman law of property, and in German on the law of obligations in Western Roman sources. He also wrote English-language articles about the nature and course of his research.¹² This body of work was organized around the idea of “Roman vulgar law” as a defining concept of Western law between the time of the classical jurists and Justinian’s codification and beyond. A recent, patronizing critic of Levy has suggested that the “scientific loneliness of America” freed him to erect his edifice of law to “an astonished public.”¹³

The idea of Roman vulgar law was no product of an American sojourn, as, indeed, his critics, including the last mentioned one in a less polemical mood, recognize. It began elsewhere and in fact has never particularly resonated in English-language scholarship; where its public was, and where it has had traction, is Germany. Levy was a thorough product of a German legal education, which included, as it had for Savigny, not just Romanist but Germanist teaching on law – indeed Levy seems often to have a disconcerting sense of just what constitutes Germanic law in our sources. And Levy did not come up with the idea

social and political reality from certain kinds of judicial charters (*placita*) can go rather off the rails without an understanding of legal form and procedure.

- 12 See, e.g., Levy’s “Reflections on the First ‘Reception’ of Roman Law in Germanic States,” *American Historical Review* 48 (1942): 20–29; “Vulgarization of Roman Law in the Early Middle Ages,” *Mediævalia et Humanistica* 1 (1943): 14–40; *West Roman Vulgar Law: The Law of Property* (Philadelphia: American Philosophical Society, 1951); *Weströmisches Vulgarrecht: Das Obligationenrecht* (Weimar: Böhlau, 1956). Various works by Levy are collected in W. Kunkel and M. Kaser (eds.) *Ernst Levy Gesammelte Schriften* (Cologne: Böhlau, 1963).
- 13 Detlef Liebs, “Roman Vulgar Law in Late Antiquity,” in Boudewijn Sirks (ed.), *Aspects of Law In Late Antiquity: Dedicated to A.M. Honoré* (Oxford: All Souls College, 2008), 35–53, at 44. Despite questionable judgments about some of Levy’s contemporaries, Liebs provides valuable criticisms on the problem of determining what is vulgar and what is not. He accepts the term in specific, limited, contexts. His own term “Germanic Roman law” requires a separate critique, only some of which can be found here.

of Roman vulgar law. It arose in 1880 with an (Austrian) Germanist, Heinrich Brunner (already mentioned). He identified it as the Roman law of practice in the Western provinces and successor states that often varied within itself and fell short of classical juristic standards because of local conditions or even because of the influence of geographically contiguous “tribal” (i.e., Germanic) law. Brunner also felt he had to gloss his general depiction of this “continuation of Roman law” with the phrase “or if one wishes, degeneration of the pure Roman law.”¹⁴ This particular perception, slightly awkward but retained by Levy, remains a problem in the exposition of the concept.

There was an analogy intended by use of the term “vulgar.” Brunner saw it as a parallel to the concept of “vulgar Latin,” the term for everyday Latin speech as opposed to literary Latin, and noted in passing that, alongside the distinctive coloring of legal and documentary language in Western sources (often expressed in what his readers would have thought of as vulgar Latin), there also existed a comparable vulgar law. (Both vulgar Latin and vulgar law, the curious might note, are concepts that have not always been limited to the late Empire and successor kingdoms – by many views, they were always in existence, no matter the prevailing high culture.) The point hardly escaped Brunner that it was vulgar, not classical, Latin that led to Romance.

The concept of vulgar law was not left in hiatus after Brunner. It was acknowledged by other European scholars, and Ludwig Mitteis (1859–1921), another Austrian, accepted it in a famous study (1891) of the eastern Roman provinces, treating it as distinct but complementary to a broader category of peregrine/indigenous law (*Volksrecht*).¹⁵ But, as even his critics acknowledge, it was Levy who established the concept in the basic discourse of West Roman legal studies, and indeed of Constantinian and later imperial law.

What did Levy say? He basically took Brunner’s concept of a simplified, and thus divergent, often common sense, Roman law and argued it out in technical detail in West Roman sources. Although varied influences on the development were possible, including non-Roman thought, the principal force driving the process was, in his view, a perpetual quest for simplification and popularization that from the late third century was no longer held in check by what he understood to be a creative and orderly jurisprudence. In casting the subject in this way, Levy was not always consistent. He said, for instance, that he used the term “vulgar” to replace the negative term “post-classical,” commonly used to characterize the law between the classical period and Justinian, yet at the core of his thinking were his own values as a classicist and jurist. He could be gushing in his praise of classical

14 Heinrich Brunner, *Zur Rechtsgeschichte der Römischen und Germanischen Urkunde* (Berlin, 1880; reprint Aalen: Scientia, 1961), 113. Cf. *Deutsche Rechtsgeschichte* 1:255 in the 1887 edition, or 1:378 in the 1906 edition.

15 Ludwig Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* (Leipzig: Teubner 1891).

law, and he repeatedly saw departure from it as a process of the disintegration of superior modes of traditional legal thinking. The departure was vulgar law.

Why is Levy's work important? Apart from the analysis of particular provisions in the sources, there were two observations that are of lasting importance for those studying the laws of the new kingdoms in the Western provinces. The first – and obviously correct at his time and beyond – was that modern handbooks and monographs on Roman law tended to understand it in terms of two distinct periods: the classical law of the Republic and the jurists of the early Empire, on one hand, and the codification efforts of Justinian (especially the *Digest*) on the other. These two perspectives were usually the points in the literature on which a contradistinction was made between Roman law and so-called Germanic law of the new kingdoms. This distinction, Levy rightly said, was based on a fallacy. The law that the legislators, teachers, notaries, and the general population knew in the late empire was pre-Justinianic and thus possibly classical, but also post-classical, or in Levy's terms vulgar, the law of the intervening period. This was the law that constituted what he called, rather affectedly, the "first reception" of Roman law among the Germans, even though it happened in the Roman provinces – and about a millennium before such a reception was commonly deemed to have occurred in Germany.

Levy's second enduring observation is already implied by the first, namely that supposedly Germanic laws of the successor kingdoms were affected by the legal culture of the provincials, and also, perhaps less obviously, that the Roman vulgar law of the provinces was in turn influenced by the customary practices of the new settlers, a point Brunner had earlier acknowledged. Wolfgang Kunkel, a student of Levy, and a notable scholar in his own right, caught the implication of Levy's work when he claimed, not completely inaccurately but a little precipitously, that the notions that underlay the codifications of the new kingdoms, even the codes designed for their Germanic populations, were Roman in origin; and noted, more modestly and importantly, that as a result of Levy's work the "question of Roman influence on the Germanic law of the early Middle Ages must now be posed anew."¹⁶

16 Wolfgang Kunkel, *An Introduction to Roman Legal and Constitutional History*, trans. J. M. Kelly (Oxford: Clarendon Press, 1966), 140. The importance of Levy's ideas for the West gained early, though anything but universal, recognition. Franz Wieacker used the term vulgar law rather broadly and indefinitely at the beginning of his *Privatrechtsgeschichte der Neuzeit* (1st ed. 1952, 2nd ed. 1967), English translation, *A History of Private Law in Europe: With Particular Reference to Germany*, translated by Tony Weir (New York: Clarendon Press, 1995), 13–25. Better, more specialized, and more focussed are J. Gaudemet, "Survivances Romaines dans le droit de la monarchie Franques du V^{ème} au X^{ème} siecle," *Tijdschrift voor Rechtsgeschiedenis* 23 (1955): 149–206; and Hermann Nehlsen, *Skavenrecht zwischen Antike und Mittelalter*, Göttinger Studien zur Rechtsgeschichte 7 (Göttingen: Musterschmidt, 1972) – both still important works. In English, cf. Alexander Callander Murray, *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Early Middle Ages*, Studies and Texts 65 (Toronto: Pontifical Institute of Medieval Studies, 1983),

Work on both his points, haltingly underway at the time he wrote and continuing thereafter, has even now hardly reached a point where broad generalizations are likely to garner consensus, though some historians have proceeded to suggest that notions of vulgar law or, a variant conception, provincial law, underlie what moderns regard as the codes of Germanic law in the successor kingdoms.¹⁷ Whether this is true requires more detailed research than has yet been undertaken and a revision of terminology. The details are in fact in the process of accumulation but will take time. The picture that emerges will surely differ from the old one, but its precise profile is yet to reveal itself.

The effect of post-classical law on so-called barbarian laws is just one aspect of Levy's work. This particular focus has been a subject of little interest to most Romanists who have tended to direct criticisms at those ideas of his more pertinent to historians of Roman jurisprudence itself. He suggested for example that vulgar law from the time of Constantine (the magnet since Antiquity for claims of major changes in Roman institutions) entered into imperial legislation as a major force in its configuration. This premise, which has generated significant criticism, is part of a larger issue on the influences, eastern and peregrine, shaping the production of imperial law that are beyond this exposition. So too is the extent to which changing rhetorical conventions in both a low style and an excessively high (and inexact) style have disguised the basic continuity of classical notions of law. Central also to Levy's thinking was the "interpolation problem": the view that the texts that were taken up by Justinian's commission to compose the *Digest* had already been emended by authors of the intervening period, even before the commission did its own smoothing to conform with the juristic thinking of Justinian's time. Again, this problem, important for understanding Levy's method as a whole, is outside the present remit.

For those focused on post-classical and "barbarian law" there still remains the question of the utility of the term "vulgar" to mark out the legal character of the period to which it is applied. Despite the value of Levy's work both in general and in detail, much depends on our conceptualization of both Roman law in a broad sense and its supposed counterpart and rival in the successor kingdoms, namely what is generally called Germanic law. It is not at all that clear how the term "vulgar" provides a key or tells us something generally significant about Roman law,

116–18, 179, recognizing Levy's importance but not employing his method; see 117 for a broad characterization of the contents of the codes.

17 One assumes the concept of vulgar law is influential in Ian N. Wood, "Disputes in Late Fifth- and Sixth-Century Gaul: Some Problems," *The Settlement of Disputes* (Cambridge: Cambridge University Press, 1986), 7–22, though Levy's name is consigned to a bare mention in the glossary. P. S. Barnwell, "Emperors Jurists and Kings: Law and Custom in the Late Roman and Early Medieval West," *Past and Present* 168 (2000): 6–29, employs mainly the concepts of provincial law and custom, though antecedent debt to Levy, while obscured, seems clear. Considerable use of modal verbs, or their equivalents, tends to be used in broad attempts such as these. Guy Halsall, *Barbarian Migrations and the Roman West 376–568* (Cambridge: Cambridge University Press, 2007), 462–66, deals forthrightly in vulgar law, but the tentative nature of the subject is still apparent.

its teaching, and its influence in the West. Perhaps these points will be clearer if we discuss the terminology that is commonly used to discuss the law of the period.

Talking about law in the successor kingdoms

The vocabulary of this subject may seem obvious, and so it appears to general histories, especially those of law. It is not. And the terms that are in use, especially “Roman law” and “Germanic law,” contain traps, misdirections, and clichés.

Roman law

As Levy’s criticism made clear, the general literature on this subject has tended to suppose a uniform Roman law, basically classical, unless recourse is had to Justinian, and then generally invoking approvingly his classicizing tendencies. Roman law was much more than that, and if one has doubts, not only the codifications of the successor kingdoms but also the everyday documents of their cities should be consulted, as well as everyday texts from the eastern parts in the late imperial and Byzantine periods.

Moreover, not always appreciated are the social and cultural evolution and even technological changes that overlie the ancient law of Rome. The originally archaic law, performative and oral in its expression, was for a long time vigorously maintained by the jurists and cleverly manipulated and modified by the law of the *praetor*, called the *ius honorarium*. But time does pass, and even clever tricks have to give way to new political, ethnic, and technical developments. It is hard, for instance, to overrate the role writing played over time (a long time) in reconfiguring the formal expression of classical law. Some formal terms, living on in new contexts in the overwhelmingly written and sometimes oddly conservative legal culture of the early Middle Ages, are often taken as signs of that cliché of late antique scholarship, degeneration, whereas the language has just been acclimatized, adapted, and subsumed to the new conventions of written instruments; the genuine invocation of the ancient line of Roman legislation and practice has generally at some point been discarded. Shocked expectation of anything else is misplaced.

Another example of the inevitable and hardly to be lamented historical processes working upon Roman law can be found in procedure in the late Empire where the two-stage formulary procedure involving first a magistrate and then a private judge gave way to the originally extraordinary (*extra ordinem*) procedure of *cognitio*, where the entire proceedings were handled by a single judge (usually an imperial official or delegate) and his tribunal. *Cognitio* and its ready adaptation of writing in all phases of procedure were two of the many late developments that stamped themselves upon the law of the successor kingdoms.

One peculiar characteristic of the study of classical Roman law as a juristic enterprise has, I think, rather misled scholars of the early Middle Ages. To the ancient jurists, and indeed to the modern scholars who study them, their subject

has been largely private law. Even given the fairly extensive dimension of Roman private law, which included the delicts of the law of obligations, much was left out of consideration – public law, criminal law (in a public not delictual sense), and the wide range of administrative practices, sometimes coercive, sanctioned by the State, but likely nevertheless to be contentious among those who had to put up with them. Scholars of the late Empire are naturally well aware of these areas, but legal scholars of the early medieval kingdoms, taking their cues from the Romanist focus on private law, have often cast a rather narrow gaze upon their sources; modern Roman legal handbooks here are generally of limited use as a point of comparison. The implications of this lapse will be considered below with respect to the administrative laws of the Merovingian kings.

Ancient Roman law thus is a broad subject covering the conventional areas of private, public, criminal, and administrative law, and extending for over a millennium from the Twelve Tables to Justinian. Its practice and application in the last centuries of the Western Empire and the East until at least the time of Justinian would seem to be the focus upon which scholars of the post-Roman kingdoms should concentrate, though an understanding of classical institutions will add depth and perspective to our grasp of legal culture and practice.

This part of the discussion was prefaced with the question of whether the term “vulgar law” illuminates this period. The pejorative implications of the term – and here I speak as an historian – are I think inherent if not in the term itself, at least in its definition, and are regrettable. Moreover, it hardly describes all Roman law of the age and for that reason its use should be limited (I avoid the question whether it influences imperial legislation). The concept has also had a checkered history and is at times interpreted inconsistently, sometimes in reference to style, sometimes to content; its detection in the sources is often controversial. The term has its uses (following Brunner and Levy’s definition) but the concept hardly captures a period or some hidden stratum of provincial law. The sources are there to be read for the imperial period and its successor states and they cover far more than the focus on classical-style juristic literature ever envisaged. Vulgar law should be left by the various types of historians of the post-Roman kingdoms as a term for Romanists to figure out, one day. It is a term that originated in, and applies to, modern juristic thinking about Roman law. The term is not without its uses, but I would endorse, as a general approach to the period, the view expressed at the outset of this volume [namely, *Great Christian Jurists*] by Jill Harries that “Roman law spoke with many voices.” Each of these has to be distinguished in its own terms and examined in its own right.

Germanic law

The term “Germanic law” is the binary opposed to “Roman law” in the usage of the specialist literature and in standard histories of Western law and institutions dealing with the early Middle Ages. Often resembling ideal types, the terms in conjunction are supposed to sum up the legal content of the age. As ideal types

they are often used to supply elements deemed to be missing from texts and social circumstances.

To generation upon generation of scholars and readers of historical literature, “Germanic” has seemed like a plain, self-evident, and indisputable term meant to reify the obvious. The term is not so obvious, and it is loaded.¹⁸ But even the severest misgivings about its usage have not yet dispelled its prevalence as an essential part of conceptualizing the field. Readers may have noticed that up to this point I have generally used it. That is because it is impossible to deal with historiography without the term. It is a standard and ubiquitous feature of the discourse and not really avoidable when such is the subject under examination. I will continue to use it as an historiographic term, and I will try where possible not to put quotation marks around it. But voice is important for readers and authors to remember and distinguish. As unavoidable as the term is in retrospective contexts, it is nevertheless in present circumstances misleading and usually inaccurate.

The origins of the term are ancient and go back to Caesar’s “discovery” of the *Germani* in his wars in Gaul. Whatever the original context of the term *Germani*, which is debated, the Romans used it (and its adjectival form, Germanic) in a generic fashion to apply to a variety of peoples with their own separate ethnic identifiers; the counterpart geographical form *Germania* was applied to vast territories beyond the Rhine and Danube, as well as to two provinces on the left bank of the Rhine. *Germani* and Germanic were in this usage exonymic; they did not reflect the self-consciousness of their subjects but were abstract classifications of ancient ethnography, whose inner meanings in particular instances were generally opaque. The problem is not the ancient terms (they are what they are) but their modern interpretation and role in historical discourse. I pass over the erroneous penchant for assimilating the terms to modern Germans (*Deutsche*) and Germany (*Deutschland*) – see for example the genre *Deutsche Rechtsgeschichte* which generally starts with the ancient and Merovingian sources. The now common scholarly acknowledgment that “Germanic” does not equal “deutsch,” however, only deals with half the difficulty. The problem for legal history is the following. In modern scholarship Germanic has become, on one hand, a linguistic term for a group of related languages; the beginnings of this classification go back to the Carolingian period. In modern linguistics, the Germanic group constitutes a branch of the Indo-European family of languages – a classification that is not about to change soon. There would be no problem if the term were used in a generic sense only for this related family of languages (which includes English) and even, formally, the speakers of them if the context is linguistic. The difficulty that compromises such a linguistic generalization has arisen because scholars have long assumed – confounding the independent variables of social existence and employing an inflated sense of the power of philology – that behind the resemblances in speech that justify the notion of a Germanic family of languages, there once existed a

18 Cf. Walter Goffart, *Barbarian Tides*, esp. 4–6 (cited previously).

common culture, a common approach to life, a common body of legal ideas, and even, in some versions, a common racial substrate. And it is not quite right to think of this culture as only existing in an indefinite and localized distant past; for its main traits were generally assumed to be an immutable aspect of language and the culture it was thought to support, stretching over time and space.

Germanic thus became a term to describe an abstract, coherent, alternative world to that of the Roman empire: indeed, the encounter of the “two worlds” is still a common metaphor and dramatic device for picturing the rise of the post-Roman kingdoms. In a legal context, this was conceived to mean, on one hand, a Roman legal tradition, written, urbane, and sophisticated, if (in common renditions of the view) enervated or degenerate by the time of the late empire (compare vulgar law) – and, on the other hand, a Germanic one, rural, primitive in one way or another, and sharing across the various peoples who established regimes in the Roman provinces a common heritage of legal traits marked by orality, simplicity, and crude energy. This concatenation of dubious tropes forms the basis of the perspectives outlined in the opening paragraph of this chapter. In one configuration or another, with deletions when the times deemed them inappropriate, it has passed easily from one historical school to another or to those of no particular historical school. It has been assumed by those searching for primitive democratic institutions, as well as by those discovering a putative Germanic order based on aristocratic houses; and it is taken for granted by traditionalists convinced of the fall of civilization with the end of Roman power, and by those suspicious of the capacity of early medieval states to organize society at all by means of institutions and directed, literate, administrations.

The misconceptions can pile up other terms thought to be suitable. For instance, part of this scholarly vocabulary of Germanic law is the frequent use of the modifier “tribal” to characterize the groups creating new kingdoms in the provinces. It is meant to establish the primitive character of their legal institutions. Its noun, “tribe,” is, like all such terms in social science, contested. I will not pretend to disentangle the viewpoints here (nor to touch the apparently German equivalent *Stamm* and its derivatives). It can be said that its use in the literature dealing with early Europe, and common enough in other literature, means societies organized by descent groups, that is to say clans (unilineal usually, but with room by modern lights for cognatic varieties). It has served as a central element in evolutionary paradigms of human development on a global level. “Tribal” is meant to suggest pre-state kinship-based forms of social organization with conservative, longstanding social practices. Though the clan has, until recently, been a common element in traditional accounts of early European and Germanic society (and still in general and reference sources where its ghost hangs on), there is, nevertheless, no evidence at all that the peoples who occupied the Roman provinces were ever organized along those lines. Indeed, the so-called Germanic laws rather show they were not.¹⁹ Invented “tribes” and clans

19 Alexander Callander Murray, *Kinship Structure*, cited earlier.

are just another way to suggest a grand encounter between a primitive Germanic law and a sophisticated Roman law in the Western provinces.

To speak of “tribes” and ethnic groups inevitably means touching on the makeup of the peoples (led by kings) who supplanted Roman power in the provinces and whose ethnic names grace the codes and legislation in modern collections of early European law. Traditional literature which speaks of “tribal law” and “Germanic law” tends to presuppose homogeneous groups with deep traditional roots, going back great temporal and geographical distances to imaginary times and lands far away. There is no reason to see these peoples that way. There is a long and respected, but until recently not dominant, tradition in Western historical scholarship of seeing them as composed of various, disparate, and fragmented groups, united under kings in the times of their encounter with Rome. The self-styled Vienna school has made hay on this perception, arguing with reason for the artificial, that is political, character of Western barbarian ethnic groups; with much less reason it has relocated distant continuity (still a desideratum in its view) to the realms of myth, genealogy, and the so-called *Traditionskern*, often translated as “nucleus of tradition.” This was first conceived of as the core of nobles around the king and then slyly morphed into merely enduring cultural attributes of myth and genealogy.²⁰

While the origins of the laws bearing the monikers of barbarian peoples have still to be worked out in a general way based on detailed understanding of their contents, it is clear at this point that the concept Germanic is a thoroughly inapt description. Even the linguistic criterion fails. The continental sources are all in Latin (with occasional Germanic terms, but relying on a common Roman law vocabulary, some of it technical); the insular Anglo-Saxon laws in the vernacular lie outside the scope of the present discussion, though they tend to imitate their continental models. The philological despair caused Germanists by the Latinity of the continental sources has not prevented linguists (nor should it have) from ransacking the sources for traces of Germanic terms and speech. At least to begin with, the societies for whom the laws were intended were in various ways bilingual. But the pickings for Germanists are disappointing. Even a set of Frankish glosses attached at some point to the (Latin) Merovingian code *Lex Saliica*, and apparently providing the forensic terms of the Frankish speaking population of north-Western Gaul, were badly understood by later scribes; in what is probably the second oldest manuscript of the law, the scribe famously commented that he was omitting the glosses he found in his exemplar because they were Greek. (He might be forgiven, for the common view by his time was that the Franks were in origin Trojans.)

How, then, should we characterize these laws closely connected with the settlements in the empire (or later reflecting the hegemonic kingdom of the Gallic Merovingian kings)? In a formal sense, the answer is fairly simple. There are ready

20 Alexander Callander Murray, “Reinhard Wenskus on ‘Ethnogenesis’,” cited earlier.

terms, based on the regimes under which the codes were produced: Gothic (in two varieties), Burgundian, Frankish, Alamannian, Bavarian, and Lombard – and so on under Frankish hegemony beyond the area and the time period dealt with here. From another perspective, some of the laws can be called Roman because they draw explicitly on late Roman collections and seem directed at provincial populations though not necessarily exclusively so. Such terms are descriptive, do not prejudice the source of particular laws, and limit their scope to historical conditions, even if these are not always well understood. The terms may seem a little awkward, for they have to do multiple duties referring to peoples, kingdoms, and the distinctive legal practices of the respective communities (whose ethnic names defined an ever-changing reality), but that is scarcely a hardship, and no different than Germanic as a term. Particular usages can always be made obvious. But even narrow legal and ethnic qualifications can be more complex than they first seem, though hardly requiring head-scratching. The *Edict of Theoderic* was Gothic because such was the ethnicity of the king who issued it, and it applied to the Goths of Italy. Seen from a slightly different angle it was also Roman, since it applied to both the Goths *and* the Romans, and it was issued by a king presiding over a Roman administration in the name of a Byzantine (Roman) emperor. Its content happens to be Roman law. Even if the term be generously interpreted, the *Edict of Theoderic* was never Germanic.

Law codes

What are the sources for the study of law in this period? What is their general character? The sources for law in the broad sense in the successor kingdoms cover a range of source-types that is extensive, though the depth of the evidence they contain has often barely been plumbed. Much of the attention of modern scholarship on European law has been directed at legal collections, generally categorized as “codes” and usually defined by various (often retrospective) ethnic modifiers. We can begin with the codes – without attempting a fancy definition of the term. They have played an artificially large, even an exclusive, role in evaluations of the period and its position in legal history.

Accompanying these codes are scholarly terms for them that imply more than they should. The Latin term *leges barbarorum* (“laws of the barbarians”), which we owe to the humanists, is still popular in English-language scholarship. Whether they are all the product of royal legislation – a common assumption – is an unresolved question. The German terms *Volksrechte* and *Stammesrechte* are considered in much of German scholarship to be far superior to *leges barbarorum*; the English terms “national laws” (or “folk laws”) and “tribal laws,” respectively, are roughly equivalent.²¹ The term “custom,” which has an ethnic

21 *Volksrechte* in current speech seems to refer to “popular” or citizens’ rights, but this use is distinct from its meaning in historiography.

implication even without a modifier, is another common and fair equivalent of the German terms. Such terms seem to exclude Roman-law collections of the period, although apart from the *Breviary of Alaric* (a version of the *Theodosian Code*) and a similar Burgundian collection (discussed below), there has historically been no agreement as to which collections should fall under the broad designation of “Roman.” All are nevertheless part of what constitutes the law codes of the post-Roman kingdoms.

The laws in continental codifications made before 750 can be listed in a variety of ways, depending on the pedagogical point the list is intended to achieve. I have chosen to classify the codes in two broad geographical groups: those of the southern kingdoms on one hand and those of the northern, Frankish dominated territories on the other. At least to begin with, I give the conventional names of the codes according to the designation of their modern editions (mainly MGH), though readers will soon learn of the artificiality of many of these titles. Running the risk of inconsistency, I have nevertheless tended for historiographical and mnemonic purposes to use these modern Latin titles as the basis of an abbreviation, appearing in parentheses.

Southern codes

Visigothic kingdom (418–711)

1) *Codex Euricianus* (CE), c. 476. Gallic Visigothic kingdom and beyond. The CE is the earliest of the codes and the name attributing it to King Euric (d. 484) is modern, though probably accurate enough in its way. The text gives no author or issuer because it is fragmentary. We are lucky to know of its existence, for it survives in a palimpsest, a text effaced and written over; only parts of it can be deciphered, and barely clauses 276–336 leave any traces. The code, which was substantial, looks as if it were intended for the Visigoths, but that does not exclude its general provisions having a wider application. It was a significant work, but its remnants have not elicited unanimity on the quality of its legislation, valuations ranging from very high to mediocre (much depends here on how one thinks law should be presented). It is by no stretch of the imagination *Stammesrecht*. Its Roman character in recent times is largely agreed upon. What is interesting is that the code seems to emend earlier written Gothic law that was essentially Roman, but now takes it in a direction that was more in tune with the concerns of the time in which it was issued.²² It had influence on Burgundian law (item 5, below) and particularly on the, apparently, much later *Lex Baiuvariorum* (item 12, below), some of whose provisions have been used in reconstructing the original

²² Murray, *Kinship Structure*, 236 with n. 3. See further 238–41 for CE’s temporary influence on the Roman-based inheritance elements of the *Lex Burgundionum*.

Visigothic text. A much greater general influence on subsequent Western laws can rightly be suspected, but the fragmentary nature of CE makes this likelihood hard to demonstrate.

2) *Lex Romana Visigothorum* (LRV), c. 506. Again, this is a modern name, “Roman Law of the Visigoths,” and supposed to contrast its contents with the putative Gothic code of Euric. The name intended at the time is not clear. The code was issued as an edict (*auctoritas*) by King Alaric II and calls itself at one point *Liber legum*, “Book of Laws.” Another common modern name for the LRV (since the sixteenth century) is the Breviary of Alaric (*Breviarium Alarici*). It contains both legislation and juristic literature, namely: selected titles from all sixteen books of the *Codex Theodosianus* (these laws are the ones in the Mommsen edition and the Clyde Pharr translation that have *interpretationes* attached to them), plus excerpts from the earlier private collections of imperial constitutions, the *Codices Gregorianus* and *Hermogenianus*; in addition there are excerpts from the post-Theodosian *Novels*, the *Sentences* attributed to Paul, an abbreviation of Gaius’s *Institutes*, and one title from Papinian’s *Responsa*. A valuable addition to the *Theodosian Code* are the above-mentioned interpretations (*interpretationes*), or juristic summaries, which reflect conditions and legal understanding close in time to the LRV codification. Interpretations are also attached to *Paul’s Sentences* and have been a major source for the concept of Roman vulgar law. The work was probably issued at Toulouse, before the Visigothic kings were forced to retrench further south after the Frankish conquest. The LRV was often copied, and abbreviated, and constituted a major source of Roman law in the Merovingian kingdom, and ultimately in France, though it was not the only source of Roman law available (see below).

3) *Lex/Leges Visigothorum* (LV). These are modern names for the *Liber iudiciorum* (“Book of Judgments”) of Recceswinth (653–72), a work of twelve books, like the *Codex Justinianus*, and perhaps published in 654. It draws upon, among other sources, previously mentioned Visigothic legislation, CE and LRV, and encapsulates a lawbook of Leovigild (568–86), called the *Antiqua*, and substantial work by Chindasvinth (642–53). A revised edition was issued by Ervig in 681, later supplemented by *novellae* (new laws) of Egica (687–702) and other laws.

Ostrogothic kingdom (493–553)

4) *Edictum Theodorici* (ET), c. 500. The date given here supposes that the Theodoric in question is the Ostrogoth of that name, the ruler of Italy (c. 493–526), though a Visigothic, pre-Eurician king of the same name has also been suggested. As the law itself says, the code was designed for both Goths and Romans. The substance of the law, as already noted, is Roman throughout. Modern editions point out the Roman-law text analogues.

Burgundian kingdom (c. 443–534)

5) *Lex Burgundionum* (LB), c. 500, “Law of the Burgundians.” Again, a modern name. Its original name seems to be *Liber Constitutionum*, “Book of Constitutions,” a designation which already shows that its legislators operated within the thought world of imperial legislation, though this impression may not always seem justified by some of its provisions. As to the legislators, the complicated and contrary manuscript tradition provides two possibilities: either Gundobad, former Master of the Soldiers for Gaul, Patrician and emperor-maker in Italy, and the king of the Burgundians (c. 474–516); or his son, King Sigismund (516–523). The usual resolution is to suppose a Gundobadian recension around 500 and a reissue by Sigismund in 517, with additions; the reissue is the version that survives.

6) *Lex Romana Burgundionum* (LRB), early sixth century, “Roman Law of the Burgundians.” This modern name is supposed to establish the code as an (official) partner of the LB, which it may have been, but unlike the latter no preface or grand name for the collection is given in the rather sparse traces of its survival. At one point it is modestly described as *capitula legis Romanae*, chapters of Roman law. It mirrors the LB to a significant extent, including laws of Sigismund, a circumstance suggesting it belongs to his reign. Its sources appear similar to those of the LRV – whether it used another version of its *interpretationes* is contested.

Lombard kingdom (568–774)

7) *Leges Langobardorum*, “Laws of the Lombards,” a general term for the sequence of laws that begin with the edict of King Rothair (*Edictum Rothari*) in 643 and proceed, intermittently, with the legislation of various kings: Grimwald in 668; Liutprand from 712 to 735, issued at various intervals; Ratchis in 745/6; and finally, Aistulf in 750 and 755. The laws of the Lombard Kingdom continued to accumulate under the Franks after the conquest in 774 and under the early German emperors, the sequence being collected in the eleventh century in a form that shows they had been for some time cultivated, and finally used for teaching and as subjects of learned glosses and expositions (*Liber Papiensis*, *Lombarda*, and *Expositio ad librum Papiensem*, which included references to what will come to be understood as the *Corpus Iuris Civilis*).

Northern, Frankish-based codes

As in southern Gaul and Italy, the beginning of the sixth century seems to be the beginning of Frankish, and Frankish directed codification (below, items 8–12). Text problems and attribution difficulties are a common denominator of *all* of the collections. The usual scholarly attribution of state (meaning Merovingian) direction to the earliest codifications (and sometimes the later ones as well) is not necessarily wrong, but it is also driven by wishful thinking.

8) *Lex Salica* (LS), “Salic Law.” Supposing an early sixth-century date for this codification is harmless enough, though much earlier dates are now suggested, but without, I think, sufficient basis. The earliest manuscripts are Carolingian, providing grounds for the complex interrelation of the various redactions that present themselves and date from the Merovingian to the Carolingian period. The earliest redaction, A, also called the sixty-five-title text (and possibly called *Pactus Legis Salicae* originally), has overwhelmingly been attributed by scholarship to Clovis at some imagined, convenient spot in his reign. The text is unaccompanied by any marks of official promulgation, though later redactions (C and D) add imaginative attributions of its origins. The traditional scholarly attribution to Clovis can only be considered possible. The original text is supplemented by various additions, often identifiable as Merovingian legislation. The existence of a *lex Salica*, a body of customary law associated with the Neustrian Franks though not coterminous with the codification of the same name (which I capitalize as *Lex Salica*), like its counterpart *lex Romana* (see below) complicates our grasp of the actual influence of the code on the law of the period. The currency of the codification *Lex Salica* as a written source of law before the Carolingian period and even after is in dispute.²³ The common view that the major recensions of the work are official products of the monarchy (bringing LS, incidentally, into line with the practice of southern legislation) is a supposition of the modern edition and modern commentators, not a product of research.

9) *Lex Ribvaria* (*LRib.*), early seventh century. Intended for the Austrasian Franks of the Cologne area, in significant parts *LRib.* is clearly a revised version of *Lex Salica*, though it presupposes the widespread use of writing to modify the oral procedures of its model. It is the best evidence we have of the currency of a *Lex Salica* before the Carolingian period, as opposed simply to a body of customary law called *lex Salica*. Despite the typical northern lack of signs of official promulgation, the redaction of the text tends to be attributed by scholars to Dagobert I (623–39), possibly at the moment when his son Sigibert III was established as king of Austrasia in 633/4. Arguments have been made for Carolingian interpolations. Provisions in the first part of the code (*LRib.* 61.1 and 2) with self-references in the first-person plural are thought to point to earlier laws by Chlothar II after 614.

The Frankish area also yields laws from the more southerly trans-Rhenan lands, regions never integrated into the Roman provincial system. The three laws listed here (10–12) are united at the very least by similar problems of dating, attribution, and material interconnections. Their prefatory introductions – not necessarily reliable – seem to assume great Frankish assemblies in their promulgation. The overlordship of the Merovingian kings is presumed in parts of the

23 Hermann Nehlsen, “Aktualität und Effektivität der ältesten germanischen Rechtsaufzeichnungen,” in Peter Classen (ed.), *Recht und Schrift im Mittelalter*, Vorträge und Forschungen 23 (Sigmaringen, 1977), 449–502. This is the most circumstantial account. With focus on a narrower group of texts, see Murray, *Kinship Structure*, 122–33.

texts, though there is room in the redactions for an autonomous ducal role as the public authority.

The law of the Alamannians consists of two texts:

10) A fragmentary one, *Pactus Alamannorum* (PA), from one manuscript; and (11) *Lex Alamannorum* (LA). The PA (*pactus* means something like “agreement”) is partly reproduced in titles 92–98, added to manuscripts of the LA. Though there is agreement that the PA belongs to at least the first part of the seventh century and the LA to the early part of the eighth, precise dating, and its political implications, tend to hinge on the question of the value of the various introductions.

(12) *Lex Baiuvariorum* (*LBai.*), “Law of the Bavarians.” Its prologue (with selections from Isidore of Seville) places the code in a world-historical context of famous legislation and is the most circumstantial of the introductions to the trans-Rhenan codes. As far as its origins are concerned, scholarship is divided as to whether the code is an accumulation of layers from the sixth to mid eighth century, or a late, mainly unified, composition in the last decade or so of that period. *LBai.*, despite its often-assumed late milieu and dating, is notable in using selected laws from the Visigothic CE; it also shows close correspondences to the LA, but the determination of priority here tends to founder on the dating problems of the laws in question and the possibility of a common intermediary.

Character of the codes

Much could be said about LRV and LRB regarding their selection of Roman texts and their form, but I shall limit my comments here to the other codes which have historically been connected in scholarship with the concept of national, Germanic law and so-called tribal custom, the *leges barbarorum*. Two features of these codes are worth noting here.

The first is the heterogeneity of their contents. As already noted, CE and ET consist basically of Roman and Roman-derived law, despite the ethnicities of those bound by their provisions. The other codes too, in varying degrees, contain rules based on Roman law or on practices arguably derived from Roman thinking and provincial norms. Since Savigny (who pretty much gives the *Ur*-list), scholars have suggested many examples of such features, even proposing in post-Levy historical scholarship provincial origins for broad areas of practice. The subject, including procedure, currently needs a comprehensive compilation and consideration of these at present isolated propositions, especially when they are based on specialized historical and legal research. The same codes also contain law recognizably based on Christian and ecclesiastical norms, either directly derivative of known texts of Roman law or canonical regulation, or based on Christian norms and biblical precedent. (Even the original redaction of LS may not lack for examples.)²⁴

24 For the use of biblical sources, see Hermann Nehlsen’s survey of his own work, “Der Einfluß des Alten und Neuen Testaments auf die Rechtsentwicklung in der Spätantike und im frühen Mittelalter bei den germanischen Stämme,” in Gerhard Dilcher and Eva-Marie Distler (eds.),

Whole sections of the LA and *LBai.* are given over to essentially public law regulating the right of clerics and the relation of the church to its dependents. LS 45, at an earlier date, regulates the vicinage groups of landholders (*vicini*) in a fashion that echoes regulations for corporate and rural fiscal associations in the *Theodosian Code*. It is a fair assumption too that some of the law in the codes was *sui generis*, that is specific responses to immediate concerns of the day and based on contemporary thinking without much reference to long tradition.

And naturally customary law of various ethnic communities also makes its way into most of the codes, without in itself telling us much about its antiquity or its ultimate source.²⁵ Scholars have often supposed that they could identify the character or subject matter of such customary law. Levy, for instance, thought that family law was the least likely to be influenced by Roman and provincial norms, retaining instead its supposedly Germanic character. This seems to be a mistake. Family law was in fact in flux by the late Empire (the eastern reforms of Justinian were only one solution), and Western law and legislation in the new kingdoms reflect focused efforts to balance competing interests as regards authority, inheritance, and property rights.²⁶

Scholars have also usually pointed to apparently primitive features in the laws as common Germanic practices. Judicial duel is a prime example. But though this form of proof is not Roman, it is also not found in Visigothic law, perhaps unsurprisingly; but neither is it found in Salic or Anglo-Saxon law, the usual exhibits for Germanic practices. The duel joins a list including oath-helping and ordeal, the latter generally a court's admission of defeat or suspicion of the litigants, that have until recently been stamped unproblematically with a Germanic provenance.²⁷ Detailed lists of penalties for homicide, wounding, and injuries of various kinds sometimes excite the derision of modern commentators for the primitive world of Germanic legal thinking, but the contents of the provisions have a rational cold logic that a modern actuary would hardly despise in his calculations. Colorful and quaint procedural points too arouse the conviction that we stand before primitive Germanic custom. But caution is required. For example, Bavarian law (and later documents from the region) require that witnesses be designated by having their ears tugged. But the practice looks as if it goes back to early Roman law, though its legal context is only first attested in literary sources of the late Republic and

Leges–Gentes–Regna: Zur Rolle von germanischen Rechtsgewohnheiten und lateinischer Schrifttradition bei der Ausbildung der frühmittelalterlichen Rechtskultur (Berlin: Erich Schmidt Verlag, 2006), 203–18.

25 Alan Watson, *The Evolution of Law* (Baltimore: Johns Hopkins University Press, 1985), ch. 2, 43–97 has important observations on the character of customary law that challenge common assumptions about the subject.

26 Murray, *Kinship Structure*, Appendix III, “The Succession Right of the Mother in Roman, Visigothic and Burgundian Law,” 235–42. Cf. Antti Arjava, *Women and Law in Late Antiquity* (Oxford: Clarendon Press, 1996), esp. ch. 3.

27 For an interesting and early attempt to push back on some of this, under the apparent influence of Levy's disruption of standard models, see Wood, “Disputes,” esp. 15–20.

early Empire. It was never the stuff of jurists or indeed legislation but was intrinsic to actual practice. It seems to make its last appearance in legal sources in the Dubrovnik region during the late Middle Ages.²⁸

Alongside customary laws and practices, scholars have long recognized that the codes contain provisions that originated in royal enactments. Indeed, this observation provides the old and misleading bipartite classification of the laws into *Volksrecht* and *Königsrecht* (i.e. popular law and royal law). The origins of particular provisions in enactments are sometimes obvious, but scholars do not always agree as to the range of laws that should be classified as royal enactments.

The codes were not only heterogeneous, drawing elements from various sources, but they were also interconnected, with shared features. These are not drawn from some hypothetical Germanic prehistory but from borrowings and shared sources, whether textual or legislative, or common practices of the period. CE, even in the depleted state we have it, clearly left its mark, not only on the later Visigothic laws but also on Burgundian and Bavarian law. *LRib.* was built on LS. Alamannian and Bavarian law share provisions, whether through textual borrowing or shared Frankish legislation.

Given the profiles and interrelation of the codes, it seems difficult to maintain the notion that most of them constitute a body of Germanic law or represent the ancient and ethnically distinctive customs of tribal societies. There are good reasons why among historians working on the period the tide appears to have turned away from the traditional model outlined at the beginning of this chapter.

Beyond the codes I: the sources and practices of Roman law

I said above that the codes tend to play an outsized role in evaluations of the law of the post-Roman kingdoms. Beyond the codes, other sources exist which rarely get much attention outside specialized studies. For example, West Roman legal sources have come down to us which passed through Merovingian and Italian scriptoria but so far as we know thus far did not necessarily leave a mark on practice.²⁹ One of these that did leave a mark, however, not just on legal sources but on legal and learned culture of the period is the *Theodosian Code* itself. It needs to be considered alongside its slightly later companion the LRV (see the list above, item 3).

28 Reinhard Selinger, "Das Ohrläppchenziehen als Rechtsgeste," *Forschungen zur Rechtsarchäologie und Rechtlichen Volkskunde* 18 (2000): 201–15; Nella Lonza, "Pulling the Witness by the Ear: A Riddle from the Medieval Ragusan Sources," *Dubrovnik Annals* (2009): 25–35. Savigny noted the connection (2: § 31), although he was not the first to do so. He makes it with a perplexing reticence, however, perhaps betraying awareness of incipient Indo-European studies. Rivers' translation of *LBai.* (see Sources at end) misinterprets the action as referring to "hearsay" evidence.

29 Fritz Schultz, *History of Roman Legal Science* (Oxford: Clarendon Press, 1946), ch. 3, surveys the eastern and western literature. For more detail on Gaul, see Detlef Liebs, *Römische Jurisprudenz in Gallien (2. bis 8. Jahrhundert)*, Freiburger Rechtsgeschichtliche Abhandlungen n. F. 38 (Berlin: Duncker & Humblot, 2002).

The *Theodosian Code*, and not just in its LRV version, proved influential in the early Middle Ages, at first mainly in Gaul, the original center of the Visigothic kingdom, but later elsewhere thanks to the Franks. In Spain and Italy, the practice of supplanting early codes with later ones seems to have depressed the value and diffusion of the *Theodosian Code*. But it flourished in Gaul, especially in educated culture, where it was a well-attested and important resource of learning in both ecclesiastical and lay circles. When legal and narrative sources refer to the *Theodosian Code*, it is often unclear whether they are referring to the original version or to the LRV (or its abbreviated offshoots). Nevertheless, the Gallic manuscript record of the *Theodosian Code* itself is solidly attested.³⁰

The period has also preserved a small but important collection of imperial laws, the so-called *Sirmondian Constitutions*, named after their Jesuit editor, Jacques Sirmond. Distinct from the *Theodosian Code* and transmitted separately, the collection provides not only fuller versions of laws found in the *Theodosian Code* but also constitutions that the Theodosian redactors either missed or omitted. The ecclesiastical focus of the collection, with an emphasis on rights and jurisdiction, explains its preservation and transmission but also arouses suspicion of authenticity in its parts.

The last example suggests there could have existed collections of Roman sources whose impact might go unnoticed because in the course of things they failed to leave manuscript traces. A curious indication of this appears in *LBai*. 2.1. The law, dealing with plots against the life of the duke (as it notes, appointed by the Merovingian king), cites verbatim language of the jurist Modestinus as repeated in Justinian's *Digest*. Savigny (2 § 29) spotted this, acknowledging that it might come from a source lying behind the *Digest*. Commentators have speculated on the nature of such a collection and the source-type that might have provided the text of the Bavarian-law provision.³¹

As to the Justinianic corpus (i.e., the *Institutes*, *Code*, *Novels*, and *Digest*): this was certainly received in Italy, where sixth-century manuscript fragments attest to its presence, and where a unique intact ancient manuscript of the *Digest* was preserved. But it appears that even here the *Novels* were more widely and seriously cultivated in the Latin *Epitome Juliani*. Justinian's laws even imprinted themselves on royal Visigothic and Lombard conceptions of the legislator's function.³² For the Frankish awareness of Justinian's Pragmatic Sanction, see below.

It is worth noting that in the early Middle Ages, especially in Gaul, the term *lex Romana* did not necessarily refer to specific, identifiable statutes or juristic texts, or to one of the versions of the *Theodosian Code* (which was not a comprehensive

30 Ian Wood, "The Code in Merovingian Gaul," in J. Harries and I. N. Wood (eds.), *The Theodosian Code: Studies in the Imperial Law of Late Antiquity* (London: Duckworth, 1993), 164–66.

31 See Stefan Esders, "Late Roman Military Law in the Bavarian Code," in *Clio@Themis: Revue électronique d'histoire du droit* 10 (2016), regarding this and a number of other passages in the *LBai*.

32 Gerhart B. Ladner, "Justinian's Theory of Law and the Renewal Ideology of the 'Leges Barbarorum,'" *Proceedings of the American Philosophical Society* 119.3 (1975): 191–200.

summary of law anyway but just a particular, if important, collection of imperial constitutions). The term *lex Romana*, thus, often seems to refer to Roman law as generally known among the Roman population, as Savigny long ago noted.³³ (Levy rather hastily characterized such law, unrooted in a surviving text, as vulgar law, though just calling it Roman law or practice would seem sufficient.)³⁴

Beyond the codes II: public law, royal enactments, legal practice, and legal documents in the Merovingian kingdom

There are still broader questions regarding law and the sources that support its interpretation to be considered. To understand the law of the post-Roman kingdoms, one has to consider sources that reflect actual administrative practices and legal conceptions on a wider scale than the codifications of the period could ever encapsulate. This huge subject, with multiple source-types spread over a wide expanse of time and space, is fundamental to forming an idea of the legal contours of the kingdoms. The following comments are limited to the Merovingian kingdom – or rather to that part of it on the Gallic side of the Rhine in the old Roman provinces. This limitation will provide focus while allowing us to draw on the broadest range of specimens that record legal activity in the period. The approach followed here will emphasize the Roman background, because oddly, or so it seems to me, the Frankish kingdom is commonly and spuriously held up (in comparison to Spain and Italy) as some bastion of Germanic institutions in an idealized form, imported into the body politic of the Roman provinces. I assume that readers will understand that Frankish practices and procedures can accompany some of the features that I outline below.³⁵

I begin with the administrative forms of the Frankish kingdom, which were the basic structures in which the law functioned and was dispensed and adjudicated. Law operated in the countryside as it always had: sometimes in patrimonial courts of landlords, and sometimes in public fora over which appointees of the central courts and their deputies presided. In a formal sense the jurisdictional order in Gaul was still based, at least through the seventh century, on the *civitas*: the old Roman regional unit based on an urban center (the city in a narrow sense), which was often surrounded by late Roman walls. (The final demise of these walls came much later, sometimes not until the modernizations of the nineteenth century.)³⁶

33 Savigny 1 §§ 37–38 (Eng. trans. 1:115–22). The term *lex Salica* (see list above, item 8) presents a comparable problem.

34 Levy, *West-Roman Vulgar Law*, 16 n. 69.

35 For a more circumstantial but still fairly concise account, see Alexander Callander Murray, “The Merovingian State and Administration in the Times of Gregory of Tours,” in Alexander Callander Murray (ed.), *A Companion to Gregory of Tours*, Brill’s Companions to the Christian Tradition 63 (Leiden: Brill, 2016), 191–231 [above ch. 7].

36 Michael Greenhalgh, *Destruction of Cultural Heritage in 19th-Century France: Old Stones versus Modern Identities* (Leiden: Brill, 2015), suggests just how long the monuments of this world lasted in significant quantities.

The persistence of such long-standing administrative units might tell us, I should think, something about the deep-rooted expectations of their legal communities. Administering this city, both the urban centre and its regional extension, were a count (*comes*), representing the king, and a bishop.

Who was the bishop representing? The bishop represented in the first instance the Christian community, which was the *civitas* construed as a diocese, although the last term was slow to acquire specialized significance. A bishop's actual appointment, however, often contentious in its politics, rested in the sixth and seventh centuries ultimately upon the approval of the king. If the community sent to the king a document, called a *consensus*, recommending a particular candidate to a vacancy, the king might designate this candidate; or he might choose to ignore the local input of the *consensus* and to appoint a candidate more to his liking or attuned to his interests. The metropolitan of the province and his suffragan bishops had to accept the royal instruction to consecrate whomever the king designated (with rare protestations and usurpations of the royal right in evidence). Both count and bishop were in fact creatures of the king. The ecclesiastical provinces, under the metropolitans, corresponded in large part with the secular groupings of *civitates* and their provinces of the late Empire, with readjustments especially in the southeast caused by the episcopal rivalries of the late fifth and early sixth centuries.

We have some idea of the law practiced in these cities because of the survival of formularies. These were essentially books of *formulae* recording legal transactions and even specimens of royal privileges, based it seems on previous models at the disposal of notaries. Formularies survive from the Merovingian through the Carolingian periods, although the surviving specimens hardly encompass all the regions of the kingdom. Their survival, like all the documents to which we have made reference up to this point, has depended on ecclesiastical archives and a good measure of serendipity. It should not be controversial to say that they largely contain Roman-based practices, as well as late Roman institutions, with extensive dependence on written instruments and even access to public archives. Distinctively Frankish rules are also recognized and integrated into the formularies' literate form. Sometimes only fine distinctions can separate Roman from Frankish norms.³⁷ Here, too, a systematic survey would be useful.

Both count and bishop exercised jurisdictions over the *civitas*, which eventually became the *comitatus*, or county. (The term originally denoted a count's office or command, but it eventually took on territorial connotations.) The count and his subordinates, especially the *centenarii* responsible for sub-districts, presided not only over policing and criminal matters but also, as *Lex Salica* shows, over non-criminal cases, especially those requiring public attestation. As to the matters

37 See Murray, *Kinship Structure*, 194 n. 4, on the confusions among scholars caused by similar but not identical wording in formulas dealing with representation in the direct line: Marculf 2.10 and Tours 22 – the former representing Frankish and the latter Roman practice, and both modified by *epistolae hereditariae*.

coming before the comital tribunal itself, in addition to criminal cases, much probably depended on the type of suits to which the count opened his court. (The same could be said of an even higher local official, the duke [*dux*], who presided over several counts and their jurisdictions.) These royal officials were accompanied on the tribunal by local notables, both lay and clerical. Others participated in the proceedings as experts in the law or as reliable witnesses, and were called *rachinburgs*, a Frankish term, or *boni homines* ("good men"), an old Roman term.³⁸

The jurisdiction of the bishop and the church is well documented, but its exact profile is hard to determine.³⁹ Bishops exercised the voluntary jurisdiction which went back to the Constantinian period, and which might handle serious cases indeed, but impose milder, healing, penalties relying on compensation. Clerics and their descendants for three generations were supposed to be subject to church jurisdiction as were dependents of the churches as well as freed persons for whose status the church became a guarantor. These jurisdictions were not always to go unchallenged by royal officials, and even individual clerics had their own idea of where their interests might be better served, though bishops and councils strove to channel their cases into ecclesiastical courts. Bishops claimed exemption from secular courts and seem to have been successful in maintaining their right to be tried by episcopal peers before a synod, in the presence of the king if he were party to a complaint. Mixed tribunals before an episcopal and a royal representative are also attested in matters where both the spiritual and the temporal authorities had interests. Such issues had a long history ahead of them. In the *Edict of Paris* (614), a number of the claims of clerical exemption and the right to episcopal jurisdiction received formal acknowledgement, at least for the time being. Here, too, both secular and ecclesiastical authorities were enjoined to protect widows, orphans, and the poor. The effect of such injunctions, though obviously part of the ideology of the period, is impossible to judge and was hardly an absolute separated from other interests and social views.

Complicating these already overlapping jurisdictions, there also existed on lay and ecclesiastical landed estates patrimonial courts, a customary institution with roots in the late Empire. Their authority by the late sixth century could be bolstered by grants of immunity from the monarchy that seem designed to contribute to a monopoly on the part of the landlord-recipient. The immunity, however, did not in itself establish jurisdiction, which was pre-existing. Nor did it exempt patrimonial courts or jurisdictions from claims by the royal authorities to produce parties of interest to the public tribunals. Perhaps this situation accounts for abbots presiding over courts in some of the *formulae*. Judges could be appointed

38 Karin Nehlsen-von Stryck, *Die boni homines des frühen Mittelalters: unter besonderer Berücksichtigung der fränkischen Quellen*, Freiburger rechtsgeschichtliche Abhandlungen nF 2 (Berlin: Duncker & Humblot, 1981).

39 Cf. Edward James, "Beati pacifici: Bishops and the Law in Sixth-Century Gaul," in J. Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge: Cambridge University Press, 1983), 25–46.

by ecclesiastical and lay possessors to preside over the judicial affairs of their tenants but, as reaffirmed in the early seventh century, only under the prescriptions of the public law.⁴⁰

Much seems to have depended on the confidence, cunning, and persistence of litigants, including their access to patrons, as to where their cases would be heard and what their chances of success might be in the various fora. The potential executive powers that these courts might deploy were surely another consideration, making the royal court the preferred venue for churches and elites. Written records, as known from *formulae* and *placita* (see below), were made at various stages in the proceedings. Even the earliest recension of LS notes that royal officials issued written receipts for fines paid to the state.

Sources of law extend well beyond the books of *formulae* and the codes. The edicts of the Merovingian kings are well-attested for the sixth and early seventh centuries, and we know from narrative sources that they continued after that, although no examples of these later edicts have survived.⁴¹ Seven sixth-century kings have left an example of an edict and sometimes more than one under their names, making a total of nine separate “capitularies,” as they are called in the MGH edition. Capitulary, for edict, is a long-standing recognized misnomer, persisting it seems because it is enshrined by the MGH. The word capitulary in origin was a Carolingian term for what the Merovingians, following precedent, called a *constitutio*, *auctoritas*, *edictum*, *praeceptio/praeceptum*, *decretio/decretum* – in sum, directives of a general or specific kind in the Roman mode. Some attest the participation of magnates and bishops in their promulgation. As general edicts, they tend to be, as a whole, a motley collection, as one would expect of ad hoc legislation.

Summarizing their content adequately in a short space is not really possible. Much is in support of the church, including recognizing privileges, supporting the clerical view of asylum (for malefactors and runaway slaves) and confirming prohibitions against alleged pagan (or better, non-Christian) practices, work on Sunday, and forced marriages with religious. An inordinate amount of the content deals with law as commonly experienced, that is, with public safety. Thus, there are various provisions on criminal law, including homicide, abduction, and what might be called incorrigible or professional criminals (who must have been numerous in a society with large numbers of mobile animal stock); and on summary procedure, some of it hard (if hardly unusual), including passing recognition of an established non-Roman and decisive proof: the ordeal of the lot (to be distinguished from the cauldron ordeal in the earliest redaction of LS). Despite this curiosity, most of these provisions fall readily within late antique patterns, but little of the harsh stuff is of the type that would ever have engaged jurists of important

40 Alexander Callander Murray, “Immunity, Nobility and the *Edict of Paris*,” *Speculum* 69.1 (1994): 18–39; [above, ch. 5].

41 Alexander Callander Murray, “The New MGH Edition of the Charters of the Merovingian Kings,” *Journal of Medieval Latin* 15 (2005): 246–78, surveys the character of the legal evidence; [above, ch. 8].

centers. Some measures are somewhat closer to the themes of juristic literature, such as Roman-law representation in the direct line (in aid of emending Frankish inheritance) and confirmation of rights of prescription (as defenses against dispossession). There are even signs of borrowing from the contemporaneous Byzantine world. The famous and constitutionally significant chapter 12 of Chlothar II's *Edict of Paris* (614), requiring that counts be recruited from the region in which they served, appears to be modelled on a provision from Justinian's Pragmatic Sanction for Italy (554) regarding governors. The aim in both cases was to facilitate the ability of subjects to sue the chief official set over them.

I will mention two sequences of this body of legislation:

The first is the *Constitution of Chlothar II* (584–629).⁴² Issued on an unknown occasion, this guaranteed to the provincials the operation of the ancient law (*antiqua lex*), with more than sufficient context to leave no doubt that this refers to Roman law. Even without a text before us, we might expect such affirmations, but what is more interesting is that the edict acknowledges an important Roman constitutional idea: that directives solicited against the law, even if they come from the prince, are invalid.⁴³ This principle is casually attested in literary sources, and it stands against a whole tradition of Germanist interpretations of early Frankish royal charters, including the *placita*, mentioned below.

The second is a series of provisions in the edicts regarding the regulation of police associations, composed of landholders obligated to act as watches and to mobilize against and to pursue thieves, seemingly rustlers of stock. Borders provided fertile ground for such activities, and the Merovingian kings took measures to check them, sometimes acting in collaboration. The means adopted recognize the existence of local associations on the ground even before the kings in question felt the need to get involved and replicate to a remarkable degree enduring late Roman provincial measures to control the countryside. Merovingian legislation on these matters illustrates the subterranean and largely unacknowledged forces of Roman provincial culture upon the legal framework of their kingdoms.⁴⁴

The general directives (i.e. legislation) I have just referred to are complemented in the seventh century by records of specific directives, namely grants, privileges, and exemptions as issued by kings, in our sources to churches, but quite clearly also dispensed to lay recipients. These documents generally go under the modern name of royal charters or diplomas, *diplomata* (s. *diploma*); their model is the imperial rescript.⁴⁵ The phenomenon of privilege or exemption is hardly new, but the contents of the seventh-century varieties are distinctive, especially that type

42 The alternative view that the king to which the title refers is Chlothar I (511–561) is not relevant to the following commentary.

43 See Esder's edition and commentary, cited under Sources at the end.

44 Alexander Callander Murray, "From Roman to Frankish Gaul: *Centenarii* and *Centenae* in the Administration of the Merovingian Kingdom" (cited previously) [and above ch. 4].

45 See Murray, "The New MGH Edition of the Charters of the Merovingian Kings" (cited previously), which provides direction on the German work of Peter Classen [and above ch. 8].

bearing the ancient name “immunity,” which became a model for legal privileges, including those of the ecclesiastical/episcopal variety that had nothing to do with the essentially secular, fiscal exemptions of the Merovingian kings. Immunity is a Roman concept of public law (and ancient beyond that). It grants exemption (which is what the term immunity means) from public burdens to those who can claim to be providing socially significant contributions deserving of recompense in some way through state exemptions (readers can readily think of modern analogies, generally of the business/corporate-taxation variety). The earliest Merovingian immunities followed pretty much the lines of Roman ones: granting tax exemptions along with grants to clerics on the understanding that they would somehow contribute to the mission of the church and by implication the health of the state; charity, prayer and liturgical services were readily so conceived in antiquity and the Merovingian kingdom as state services, and thus deserving of exemptions to support their performance. The later seventh-century Merovingian charter record is clear that the early fiscal tax exemption was reconfigured into an exemption also from judicial intervention and thus from the (still) fiscal collection of judicial fines, which now redounded to the benefit of the immunist, the receiver of the immunity grant, and assisted his control over a patrimonial court.⁴⁶

A special type of *diploma* needs to be noted: the records of judicial decisions before the royal court covering disputes but also public conveyances. The modern name for these documents is *placita*. The modalities are clearly derived from Roman practice, including the recording of minutes, no matter what precise track is thought to have produced them. For example, one elaborate inquiry involving multiple stages, and the rights of the fisc under the Mayor of the Palace, portrays clearly the use of the fiscal inquest – a mainstay of Roman administration.⁴⁷

Incidentally, analogous powers of inquiry, requiring testimony to questions under oath, were also employed by Roman security officials as a tool to manage peacekeeping in the countryside (though they were unlikely to be an imperial invention). The same process can be spotted in the police measures mentioned above and was even used to indict incorrigible malefactors. An addition to *Lex Salica* provides another example involving the investigation of a suspicious death.⁴⁸ Merovingian sources are an important way station in the long and influential history of the inquest.

Finally, what of “private” charters? Merovingian Gaul does not have its equivalent to the trove of Italian Ravenna papyri. It does, however, have its books of *formulae*, as already noted, based on actual practice. A few authentic, stand-alone

46 Alexander Callander Murray, “Merovingian Immunity Revisited.” *History Compass* 8/8 (2010): 913–28 surveys the issues [above, ch. 6].

47 Alexander Callander Murray, “So-Called Fictitious Trials in the Merovingian *Placita*,” in S. Diefenbach and G. M. Müller (eds.), *Gallien in Spätantike und Frühmittelalter. Kulturgeschichte einer Region* (Berlin: De Gruyter, 2013), 297–330. Appendix III, 319–22 is a translation of diploma 157 of the new MGH edition [above, ch. 9].

48 *Childeberti secundi Decretio*, c. 7 (Boretius edition). LS 102.

charters and wills have also survived. Far more come down to us in still mainly suspicious, copied versions. Their contents confirm the themes above, but, with some exceptions (those associated with Le Mans, for example) they have not on the whole received the same attention as the royal *diplomata*, apart from that species of charter recording supposed episcopal privileges granted to monasteries that show the same problems of authenticity bedeviling diploma copies.

Conclusions

It is time to bring this story to a halt. It is by necessity a short story. But what is it a story of? I began by commenting on current surveys of European and medieval European law and then looked at some of the standard historiographical interpretations, from which these modern accounts derive and that emphasize a putative Germanic order that supposedly stamped itself on the post-Roman kingdoms. In one form or another this perspective still lies behind widespread scholarly and popular conceptions. Seen this way it is a story of deep misunderstanding.

The work of Ernst Levy marks an important turning point at least as far as specialists in the period are concerned. Though he is not the hero of the tale (there are none), he did dispel the illusion that Roman law reflected a narrow slice of classical texts and legislation and, at the same time, broke down the reflexive distinctions between Roman and Germanic codes. Much of this kind of thinking had been elaborated much earlier for sources of the eastern parts of the Empire and even adumbrated tentatively for the West by the arch-Germanist Heinrich Brunner. But it was Levy who broke through the inertia in thinking about the Western sources – though the effect has been limited to a few specialists and historians of the post-Roman kingdoms. This occurred even as his broader assertions about late Roman law in a juristic sense were being assailed by Romanists. At the same time, his method, particular interests, and presuppositions never quite caught on among early medievalists, who were not trained in the tradition that Levy represented. While he has always been ignored by those sticking to Germanic-law tracks (especially translators), there is still noticeably a pre-Levy and post-Levy period in the way the sources have been approached by those early medievalists attuned to the period's connection to the late Roman Empire.

This brings us to another part of the story – the focus on sources. The codes and, among them, the West Roman sources, are valuable testaments of legal thinking and have long attracted the attention of scholars attempting to capture the essential legal character of the period. The successor kingdoms, however, preserve source-types that provide other ways of understanding the legal world of the post-Roman kingdoms, especially the recurrent products of cities (*civitates*) and kings: *formulae*, charters, and edicts. These often provide connections to late imperial practices, especially, as highlighted here, administrative law, but also other legal institutions well beyond the ken of traditional legal history. These institutions also undoubtedly look forward to future developments of fundamental importance to

European history. The institutional approach, now in disrepute, is certainly not new (though there are always new ways to carry it out) and has driven forward a significant part of European historiography since the early modern period. Its days are not over.

To conclude, the story presented here is in the end, as readers must have noticed, programmatic. The period is fascinating; its character is elusive and demonstrably important; it takes diverse skills to get at its reality. It should not be dealt with in tired clichés. There is, in short, much to be done, from systematic explications of historiography to new, detailed research on law and institutions. Perhaps one day even general histories will be persuaded to recast their portrayal of the legal foundations of the post-Roman kingdoms.

Sources

The diverse sources of late Roman law should form the basic point of comparison for the law of the post-Roman continental kingdoms. The standard edition of the *Codex Theodosianus* is by Theodore Mommsen (Berlin: Weidmann, 1905). It includes large parts of LRV (including its *interpretationes*), because Mommsen used it for reconstructing the *CT*. Theodore Mommsen, Paul Krueger, and Rudolph Schoell edited Justinian's *Institutes, Digest, Code, and Novels*, which together comprise the *Corpus Iuris Civilis*, in 3 vols. (Berlin and Hildesheim: Weidmann, 1872–95). The *Epitome Juliani*, a Latin digest of the *Novels* (most of which were issued in Greek), is edited by Gustav Haenel, *Epitome Latina Novellarum Justiniani* (Leipzig: Hinrichsius, 1873). There is an online version at the Volterra Project, www.ucl.ac.uk/volterra (accessed April 3, 2018). The edition of the Visigothic LRV is still that of Gustav Haenel, *Lex Romana Visigothorum* (Berlin: 1849).

The range of Roman source types for the late empire (and before) is found in FIRA = *Fontes Iuris Romani Anteiustiniani*, 2nd edition by S. Riccobono et al., 3 vols (Florence: Barbèra, 1943–1968). ET and LRB are found here in vol. 2 (ed. J. Baviera, and J. Furlani); there are also editions in MGH, below.

Most of the sources referred to in the chapter as *leges, capitularia, formulae, and diplomata* are edited in the *Leges and Diplomata* sections of MGH, available online (www.dmgh.de/, accessed April 3, 2018). Readers should compare in the series older and later editions of individual works. CE (found with *Leges Visigothorum* in MGH, *Leges nationum Germanicarum* 1) should be compared to the edition and commentary by Alvaro D'Ors, *El código de Eurico*, Cuadernos del Instituto Jurídico Español 12, *Estudios Visigóticos* 2 (Rome: CSIC, 1960). There is a new edition of what can properly be called the *Constitution of Chlothar* (Boretius, the MGH editor of the capitularies, called it *Chlotharii II Praeceptio*) by Stefan Esders, *Römische Rechtsstradition und merowingisches Königtum: zum Rechtscharakter politischer Herrschaft in Burgund im 6. und 7. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 1997), 109–267, which includes extensive commentary.

The remarkable Ravenna collection of papyri is edited (with a German translation) by Olof Tjäder, *Die nichtliterarischen lateinischen Papyri Italiens aus der Zeit 445–700*, Acta Instituti Romani Regni Sueciae, series in 4° 19, 2 vols. (Lund: C.W.K. Gleerup, 1955; Stockholm: Paul Åströms Förlag, 1982). For the Lombard charters, see L. Schiaparelli et al., *Codice Diplomatico Longobardo*, 5 vols. (Rome: Tipografia del Senato, 1929–2003).

Although some Gallic private charters claiming to be from the period can be found in particular editions of cartularies, the comprehensive and standard edition remains Jean-Marie Pardessus, *Diplomata, chartae, epistolae, leges aliaeque instrumenta ad res gallo-francicas spectantia*, 2 vols. (Paris, 1843, 1849; repr. Aalen: Scientia, 1969), which depended on a 1791 edition by Brequigny. Two new editions of important authentic materials are edited by Margarete Weidemann: *Das Testament des Bischofs Berthramn von Le Mans vom 27. März 616: Untersuchungen zu Besitz und Geschichte einer Fränkischen Familie im 6. und 7. Jahrhundert*, Monographien 9 (Mainz: Römisch-Germanisches Zentralmuseum, 1986); and *Geschichte des Bistums Le Mans von der Spätantike bis zur Karolingerzeit: Actus Pontificum Cenomanis in urbe degentium und Gesta Alderici*, 3 vols. (Mainz: Römisch-Germanisches Zentralmuseum 2002).

Original charters can be found in the series edited by Albert Bruckner and Robert Marichal, *Chartae Latinae Antiquiores: Facsimile Edition of the Latin Charters Prior to the Ninth Century*, 49 vols. (Olten: U. Graf, 1954–98). A second series for post-800 charters is scheduled for completion in 2020.

English-language translations exist for much, but by no means all, of this material. Readers should regard translations as an aid to the Latin text, not a replacement for it. Circumspection is required in the use of them, even the best; and if readers remember this caution, the following translations (most but not all English language) will prove useful.

Clyde Pharr's *The Theodosian Code* (Princeton: Princeton University Press, 1952) is invaluable and includes the *interpretationes* from the LRV version of the text. The *Digest*, a point of comparison for West-Roman sources, is translated by Alan Watson, *Digest of Justinian*, 4 vols. (Philadelphia: University Press, 1985). This edition includes the Latin text of the Mommsen/Krueger edition on facing pages. It is currently available in e-book formats, without the Latin text. An earlier, partial translation (first 15 books) under the same title by Charles Henry Monro exists as well, 2 vols. (Cambridge: Cambridge University Press, 1904–10). The *Codex Justinianus* is translated by S. P. Scott (though not according to the divisions of the modern edition), along with the entire Justinianic *Corpus Iuris Civilis* in 17 vols., under the title *The Civil Law* (Cincinnati, 1932; rprt. New York 1973). Scott's translations do not always elicit approval. The translations of Justinian's *Code* and *Novels* by Fred H. Blume are available online at the law library of the University of Wyoming: www.uwyo.edu/lawlib/blume-justinian/ (accessed April 3, 2018). Bluhme's translation of the Code with parallel ancient text and annotations is now published separately in 3 vols. (Cambridge: Cambridge University Press, 2016) under the general editorship of Bruce W. Frier.

For CE, see the Spanish translation of the D'Ors edition (cited above). LV is translated by S. P. Scott under the title *Visigothic Code (Forum Iudicum)* (first published Boston: Boston Book Co., 1910) and is available online at <http://libro.uca.edu/vcode/visigoths.htm> (accessed May 21, 2018).

A translation of ET can be found in Sean Lafferty, *Law and Society in the Age of Theoderic the Great* (Cambridge: Cambridge University Press, 2013), Appendix, 243–94.

Several codes are translated by Katherine Fischer Drew: (1) *The Burgundian Code* (Philadelphia: University of Pennsylvania Press, 1949); (2) *The Laws of the Salian Franks* (Philadelphia: University of Pennsylvania Press, 1991) – presenting a synthesized text that needs to be read against the edition and the various redactions and manuscripts; and (3) the pre-Frankish Italian royal laws of the Lombards: *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1973). Some Frankish laws and east-Rhenan codes are translated by Theodore John Rivers: *Laws of the Salian and Ripuarian Franks* (New York: AMS Press, 1986), with the same caveat as for the Drew translation; and *Laws of the Alamans and Bavarians*, based on particular versions (Philadelphia: University of Pennsylvania Press, 1977).

Two basic and tricky Merovingian formularies are translated by Alice Rio, *The Formularies of Angers and Marculf: Two Merovingian Legal Handbooks* (Liverpool: Liverpool University Press, 2008).

Various items – parts of *Lex Salica*, a few *formulae*, a fair selection of so-called capitularies, and some conciliar canons on the subject of ecclesiastical privilege – are translated by Alexander Callander Murray, *From Roman to Merovingian Gaul: A Reader*, Readings in Medieval Civilizations and Culture (Peterborough, Ont.: Broadview, 2000), 533–87; on the *Constitution of Chlothar*, a revision of c. 2 is found in Alexander Callander Murray, “The New MGH Edition of the Charters of the Merovingian Kings,” *Journal of Medieval Latin* 15 (2005): 258, n. 37 [above, ch. 6]. A translation of two *placita*, one a conveyance and the other a true dispute, can be found in Alexander Callander Murray, “So-Called Fictitious Trial in the Merovingian *Placita*,” in S. Diefenbach and G. M. Müller (eds.), *Gallien in Spätantike und Frühmittelalter. Kulturgeschichte einer Region* (Berlin: De Gruyter, 2013), Appendices II and III, 319–24 [above, ch. 7].

Further reading

General guides

The best general guide to the various laws and related subject matter, though weighted heavily toward traditional German scholarship, is the *Handwörterbuch zur deutschen Rechtsgeschichte*, ed. A. Erler, E. Kaufmann, and D. Werkmueller, 5 vols. (Berlin: E. Schmidt, 1964–98), abbreviated *HRG*. A second edition appeared in 2004, ed. Albrecht Cordes et al. Thus far, three of a projected six volumes have appeared. Items of the 2nd edition can be acquired online at a hefty per-page rate: www.hrgdigital.de/ (accessed May 14, 2018).

Other secondary works

Mainly English-language titles that supplement works cited in the footnotes:

- Arjava, Antti. "The Survival of Roman Family Law after the Barbarian Settlement." In *Law, Society, and Authority in Late Antiquity*, edited by Ralph Mathisen, 33–51. Oxford: OUP, 2001. (Based on the author's book of 1996, which is cited in n. 26.)
- Bibliotheca Legum: A Database on Secular Carolingian Law Texts*. www.leges.uni-koeln.de/en/, accessed May 14, 2018. (Despite the subtitle, also covers pre-Carolingian legal collections.)
- Dilcher, Gerhard and Eva-Marie Distler. *Leges–Gentes–Regna: Zur Rolle von germanischen Rechtsgewohnheiten und lateinischer Schrifttradition bei der Ausbildung der frühmittelalterlichen Rechtskultur*. Berlin: E. Schmidt, 2006. (Papers reflecting the state of research and controversy among German legal scholars, linguists, and at least one faction of the history fraternity. On the term "Germanic," see the contribution by Jörg Jarnut, p. 69. For guidance, see the review by Karin Nehlsen-von Stryck in the *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung* 124/1 (2007): 426–36.)
- Goebel, Julius. *Felony and Misdemeanor: A Study in the History of Criminal Law*. Philadelphia: University of Pennsylvania Press, 1976 (orig. published New York, 1937). (Dated classic, notable for its critique of the Germanist "peace theory.")
- Harries, Jill. "Not the Theodosian Code: Euric's Law and Late Fifth-Century Gaul." In *Society and Culture in Late Antique Gaul: Revisiting the Sources*, edited by Ralph W. Mathisen and Danuta Shanzer, 39–51. Burlington, VT: Ashgate, 2001. (CE is Roman law but, as the article title suggests, not to be rated highly as legislation.)
- Jurasinski, Stefan. *Ancient Privileges: Beowulf, Law, and the Making of Germanic Antiquity*. Morgantown: West Virginia University Press, 2006. (Nineteenth-century philology, ancient poetry, and the concept of Germanic law.)
- Matthews, John F. "Interpreting the *Interpretationes* of the *Breviarium*." In *Law, Society and Authority in Late Antiquity*, edited by Ralph Mathisen, 11–32. Oxford: OUP, 2001. (Influential, but the method developed here is arguably less than it seems.)
- Rio, Alice. *Legal Practice and the Written Word in the Early Middle Ages: Frankish Formulae, c. 500–1000*. Cambridge: Cambridge University Press, 2009. (The most comprehensive discussion of the *formulae* in English.)
- Volterra Project*. www.ucl.ac.uk/volterra, accessed May 14, 2018. (Online resources for both Roman and Early Medieval law.)
- Wormald, Patrick. "*Lex Scripta* and *Verbum Regis*: Legislation and Germanic Kingship from Euric to Cnut." In P. H. Sawyer and I. N. Wood (eds.), *Early Medieval Kingship*, 105–138. Leeds: University of Leeds, School of History, 1977. (An influential article.)



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Part IV

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REINHARD WENSKUS ON
'ETHNOGENESIS,' ETHNICITY,
AND THE ORIGIN OF
THE FRANKS

From: *On Barbarian Identity: Critical Approaches to Ethnicity in the Early Middle Ages*, ed. Andrew Gillett, *Studies in the Early Middle Ages 4* (Turnhout: Brepols 2002)

In a recent book called *Strategies of Distinction: The Construction of Ethnic Communities, 300–800*, Walter Pohl attempts to lay out future lines of inquiry in the study of what he calls 'ethnic rule' in the kingdoms of the Early Middle Ages.¹ Pohl's analysis of the problem relies in part on notions derived from the instrumentalist sociology of ethnicity, which locates the meaning of human behaviour in self-interest, status, and power.² The juxtaposition of two apparently incidental elements of his exposition seem to me worth commenting on. The first concerns Pohl's acknowledgment of the literature defining the subject. Those who have followed the discussion of ethnogenesis theory over the last decade or two may be surprised at the much diminished role now accorded Reinhard Wenskus. His renowned monograph, *Stammesbildung und Verfassung: Das Werden der frühmittelalterlichen gentes*,³ receives only grudging and limited acknowledgment buried in a note.⁴ On the other hand, in the text there appears repeated deferential acknowledgment of a name new to discussions of the world of barbarians and Romans:

1 *Strategies of Distinction: The Construction of Ethnic Communities, 300–800*, ed. by Walter Pohl, with Helmut Reimitz (Leiden, 1998). Pohl's ideas are expressed in the programmatic Introduction, pp. 1–15, and in 'Telling the Difference: Signs of Ethnic Identity', pp. 17–69. The essays by other authors that follow, notably that of Peter Heather, 'Disappearing and Reappearing Tribes', pp. 95–112, tend to steer their own course.

2 For an attempt to synthesize instrumentalism with other perspectives in the sociological and anthropological literature of ethnicity, see Siân Jones, *The Archaeology of Ethnicity: Constructing Identities in the Past and the Present* (London, 1997).

3 (Cologne, 1961). Henceforth *Stammesbildung und Verfassung*.

4 *Strategies*, p. 8 and n. 18; Wenskus continues to be cited on individual points. The subdued treatment of Wenskus' contribution to the historiography in *Strategies* should be compared with his prominence in Pohl's 'Conceptions of Ethnicity in Early Medieval Studies', *Archaeologia Polona* 29 (1991): 39–48; 'Tradition, Ethnogenese und literarische Gestaltung: eine Zwischenbilanz', *Ethnogenese und Überlieferung: Angewandte Methoden der Frühmittelalterforschung*, ed. by Karl Brunner and Brigitte Merta (Vienna/Munich, 1994), pp. 9–26; and 'Gentilismus', *RGA2* 11 (1998): 91–101.

Pierre Bourdieu, the celebrated French sociologist. Wenskus' fall from grace, if one were to judge by Pohl's comments, is to be attributed to his failure to discuss the Roman context of ethnic developments.⁵ This brings us to the second element of Pohl's exposition that I find noteworthy. In discussing hair as an ethnic marker, he deals with the well-known tale of Wodan granting victory and a new name to the Lombards when fooled into mistaking their women for men.⁶ No Roman context is detected here. The tale is interpreted according to the canon of Herwig Wolfram as an authentic Germanic myth, whose 'rich symbolism' reveals it to be a primitive record of a change of cult.⁷ In the words of Wolfram, deploying what he calls 'the language of myth', the Lombards and their womenfolk 'were prepared to give up their Vanic origins and adopt the Aesic God Woden as the leader of their warband' and 'sacrifice their entire past and cultic existence for the salvation and survival of the tribe'.⁸ Is the language of myth appropriate for Pohl's sketch of historiography as well? Have the gods of *germanische Altertumskunde* been sacrificed in favour of the gods of French sociology? Old gods do not always quickly disappear; sometimes they are merely demoted in the official cult. *Germanische Altertumskunde*, and the ideas of nineteenth-century anthropology that support it, thus still remain common elements of exposition in Pohl's approach.⁹ But perhaps

5 Wenskus is, according to Pohl, 'most successful in his refutation of traditional biological [= biological] views and presents a great number of interesting points, but still argues within the traditional model of *Germanische Stammeskunde* without discussing the Roman context' (*Strategies*, p. 8 n. 18). Wenskus in fact regarded what he calls ethnic thinking as central to ancient ethnography and at a number of points does consider the Roman context for sources (the *origo*-idea, for example, *Stammesbildung und Verfassung*, p. 56; cf. pp. 110–11) and institutions (cf. below, p. 299). He is not particularly sympathetic to Roman influence where questions of Germanic initiative, identity, and continuity are at stake. His book however is not principally about ethnic developments in the successor kingdoms but about processes which he argues were underway long before the encounter with Rome, never mind the creation of kingdoms in the western provinces. The image of the patient, elevating efforts of Roman genius (as espoused at n. 24 below) does not really fit his views. Wenskus still lays the foundation for most of what Pohl says in *Strategies of Distinction*.

6 The Lombard women draw their hair around their faces, making it appear as if they have beards. *Origo gentis Langobardorum* 1, and Paulus Diaconus, *Historia Langobardorum* I 9, MGH SS rerum Langobardorum, ed. by G. Waitz (1878). English translations of both are given by W.D. Foulke, *History of the Lombards* (reprint, edited by Edward Peters, Philadelphia, 1974; first published, 1907), pp. 16–19, 315–317. A distinct but related version appears in Fredegar's *Chronica* III 65, MGH SRM 2 (1888), ed. by Bruno Krusch; the passage is translated in Alexander Callander Murray, *4 to Merovingian Gaul: A Reader* (Peterborough, Ontario, 2000) no. 85, p. 610.

7 *Strategies*, p. 58, with n. 201. Behind Wolfram stands Karl Hauck ('Lebensnormen und Kultmythen in germanischen Stammes- und Herrschergenealogien', *Saeculum* 6 (1955): 186–223, and esp. 204–14) who sees so-called myth as 'legitimizing norms'. There are two premises here: the first is that the subject matter is authentic myth; the second is that it reveals the *Lebensnormen* of a distant period in the past. The grounds for error are therefore twofold.

8 Herwig Wolfram, 'Origo et religio: Ethnic Traditions and Literature in Early Medieval Texts', *Early Medieval Europe* 3/1 (1994): 22.

9 For example Pohl (again following Wolfram) detects in the tale of Wodan and the Lombards not only a change in cult but the passage from matriliney to patriliney. Glossing this concept derived from late nineteenth century evolutionary theory as a 'gender issue' does not conceal its origin. *Strategies*, p. 58.

the language of myth is too primitive an explanation for the roles assigned to Bourdieu and Wenskus and conceals from us meaning which only a properly nuanced instrumentalist analysis could provide. *Strategies of Distinction*, one suspects, is at least in one sense a well-titled book.

II

The following remarks are not about a potentially new approach to the study of ethnicity, but about the prevailing one, to which the term 'ethnogenesis theory' often serves as a convenient shorthand designation. Ethnogenesis is a word commonly (but not universally) used in the social sciences; only recently has it come to be used in the study of Late Antiquity and the Early Middle Ages.¹⁰ The term just means the origin or rise of an *ethnos*, that is a people or ethnic group, but inevitably it tends to be used to refer to particular theories of ethnic origins.¹¹ The currency of the term in studies of the late Roman empire is due to the influential ideas of Herwig Wolfram,¹² who portrays the subject less as a field of study than as a rigid template for interpreting both the sources and events of the so-called migration period.¹³ Wolfram's views are in turn an elaboration of theories developed by Reinhard Wenskus in the monograph of 1961 just mentioned.¹⁴ My

10 Its prevailing association in studies of the period is caught somewhat narrowly in the remarks of Ian Wood: 'People have different views of what ethnogenesis is. But having said that, I think the development of studies of ethnogenesis, meaning studies of literary sources to see how stories of origin are developed is actually a very, very useful area of study' (*Franks and Alamanni in the Merovingian Period: An Ethnographical Perspective*, ed. by George Ausenda and Ian Wood, *Studies in Historical Archaeology* III [Woodbridge, 1998] p. 28).

11 Though I use the phrase 'ethnogenesis model' in the following pages to refer to the views of Wenskus and Wolfram, note that the term ethnogenesis can be used in the literature without particular reference to either of them: *Ethnogenese Europäischer Völker*, ed. by W. Bernhard and A. Kandler-Pálsson (Stuttgart/New York, 1986), with contributions on the *Germanen* by H. Ament, W. Bernhard, and J.Ö.P. Pálsson; and Allan A. Lund, *Die ersten Germanen: Ethnizität und Ethnogenese* (Heidelberg, 1998).

12 Wolfram's most important work, *History of the Goths*, trans. Thomas J. Dunlap (Berkeley, 1988; first published in German in 1979), until recently has usually been the first introduction of his ideas to English-language readers; other works are mentioned in nn. 8, 16, 18, 63. An early sign that Wolfram's model was to be applied more broadly outside of the Gothic context appeared almost at the same time in a monograph devoted to the Frankish kingdom by Patrick Geary, *Before France and Germany: The Creation and Transformation of the Merovingian World* (Oxford, 1988), where a long, and seemingly pointless, excursus on Gothic Tervingi, Greuthungi, Amals and Balts and the like (pp. 64–73) precedes a short account of ethnogenesis within the Frankish 'tribal swarm'. On the last term, see nn. 20, 75, below.

13 See Charles Bowlus, 'Ethnogenesis Models and the Age of Migrations: A Critique', in *Austrian History Yearbook* 26 (1995): 147–164.

14 At. n. 3. Though the word ethnogenesis is now associated with Wenskus' name, he does not apply the term to his own work (cf. Bowlus, 'Ethnogenesis Models', p. 150). The appearance of the term in *Stammesbildung* is rare (cf. p. 109); he was aware of its role in Soviet ethnology, where it is common (cf. i.a. pp. 84–85, n. 438). Avoidance of the term (though not *Ethnos* without a suffix) was intentional.

comments have a limited aim: to clarify aspects of Wenskus' paradigm of ethnic development and its implications in present studies of the subject; and to weigh it against the evidence for the origins of the Frankish kingdom of the Merovingians. This may be a good time to consider the Franks as a test case for this particular branch of ethnogenesis theory. The Franks were central to Wenskus' own historical interests and that of the historiographical tradition which shaped his views and received his ideas into the mainstream of academic discourse.¹⁵ Recent work, on the other hand, tends to suggest, for a variety of reasons, that our understanding of barbarian and early medieval history hinges in some essential fashion on the interesting, if evanescent, history of the Goths.¹⁶

The subject of ethnicity has become fraught with terminological problems. These are intrinsic to the carefree ambiguity of ancient and modern languages, which are ill suited to the clarity that academics think inherent in so important a subject. Wenskus shared the social scientist's desire to establish a consistent typological vocabulary, the philologist's impulse to authenticate it by using the language of the sources, and the Germanist's penchant for explaining the world by means of etymology.¹⁷ Unfortunately the usage of the sources rarely lends itself to this purpose. Wenskus in fact admitted as much, but remained largely unfazed by

15 See below, pp. 295–301. I use the past tense in reference to *Stammesbildung*. Wenskus has also written widely on Prussia. His most recent work (as far as I am aware) also concerns the Franks: 'Religion abâtardie: Materien zum Synkretismus in der vorchristlichen politischen Theologie der Franken', in *Iconologia Sacra: Mythos, Bildkunst und Dichtung in der Religions- und Sozialgeschichte. Festschrift für Karl Hauck*, ed. by Hagen Keller and Nikolaus Staubach, *Arbeiten zur frühmittelalterlicherforschung* 23 (Berlin, 1994), pp. 179–248. Detailed discussion of its approach to the study of paganism and political thought requires separate treatment. Pohl unwisely adapts one of its elements regarding double axes in 'Telling the Difference' (p. 36). It is about time that the story of Clovis and the ewer was mercifully laid to rest.

16 The recent number of good monographs in whole or in part about Gothic history partially accounts for this. The perceptions that accompany this output are not always to be taken too seriously however. A recent work informs us that the Italian Ostrogoths (489–554) are 'the barbarian group most frequently used as a template for understanding all the barbarians' (Amory, p. 6, as in n. 71, below). This reflects focused reading, not the literature as a whole. Readers of Herwig Wolfram's strangely titled *The Roman Empire and Its Germanic Peoples* (Berkeley/Los Angeles/London, 1997) may not be aware that the German edition, *Das Reich und die Germanen*, Siedler Deutsche Geschichte, 1 (Berlin, 1990), was originally part of a series in which the Franks got their own volume. The Anglo-Saxons, surely card-carrying *Germani* and even certified occupiers of former Roman provinces, receive even less attention from Wolfram than the Franks. In Wolfram's skewed hierarchy of durability and importance the Anglo-Saxons come in far below the Goths (see German edition, 'Vorwort'). The change in title from the German to the English edition of this book is not explained (cf. below, n. 24).

17 Wenskus is responsible for popularizing the idea that in the sources *gens* is the technical term for the political community (equivalent to the Germanic **theutho* and Greek *ethnos*), *natio* the term for the community of descent, and *populus* for the political body; thus a *gens* is at the same time a *natio* and *populus* (*Stammesbildung und Verfassung*, pp. 46–54). This combination of ideas is what constitutes the basis for his use of the term *Stamm*, a term that, etymologically at least, implies descent. Descent is of course understood to be an ideological fiction, not a biological reality.

the contradiction, as have those who follow him.¹⁸ Linguistic efforts of the kind pursued by Wenskus tend to produce a kind of academic Klingon, with its practitioners piling up their own versions of technical vocabulary that possesses only an incidental connection to historical texts.¹⁹ Nevertheless, from the perspective of discourse, the problem of clarity is real enough, and to report on Wenskus' thought means accommodating oneself to the conventions of his vocabulary, if not accepting its implication.

Wenskus inherited the generic word *Stamm* for the various kinds of groups that concerned him and he continues to use it. In the Latin word *gens*, he thought he detected a technical term – with equivalents in the Germanic languages – for ethnically conscious, political groups that are the main focus of his interest. I leave it to German speakers to decide on the suitability of the word *Stamm* for ancient and early medieval ethnic groups.²⁰ Its English language translation 'tribe'

18 'Die lateinische Terminologie entsprach vielfach nicht den Ansprüchen der komplizierten ethnischen Verhältnisse Germaniens' (*Stammesbildung und Verfassung*, p. 50). Falko Daim's criticism of ethnographers for employing abstract, sociological definitions of *ethnos* seems particularly partial when set against his own claim that this term, following the Wenskus model (n. 17, above), is used in history and archaeology in the same sense as that found in late antique and early medieval sources ('Gedanken zum Ethnosbegriff', *Mitteilungen der Anthropologischen Gesellschaft in Wien* 112 (1982): 58–71). Herwig Wolfram is sufficiently undeterred by the inconvenience of actual usage to continue the attack on the 'all too extensive classification' of sociology and anthropology which allegedly fails to correspond to the sources ('Typen der Ethnogenese: Ein Versuch', in *Die Franken und die Alemannen bis zur 'Schlacht bei Zülpich' (496/97)*, ed. by Dieter Geuenich, *Ergänzungsbände zum Reallexikon der Germanischen Altertumskunde* 19 [Berlin, 1998], p. 609). As far as the term *gens* is concerned, the object of his displeasure is actually not broad abstract classifications at all, but the old anthropological use of *gens* as a term for the patrilineal clan, a practice that follows exactly, and with as much justification, the method he himself employs. Wenskus had been content to point out the distinction between his own usage and that of ethnology (*Stammesbildung und Verfassung*, p. 47 n. 213, 85 n. 438).

Making virtue of necessity, Wolfram now typically uses the disarray of Wenskus' typology to mystify the sources. In the introduction to the recent popular account of his views, he tells us that the bewildering diversity of the language of the sources will compel him 'to make observations like the following: "a *gens* is composed of many *gentes* and is led by a royal *gens*" or "the success of a royal *gens* promotes the creation on Roman soil of an early medieval *gens* and its kingdom." The reader is forewarned that such confusing statements, which defy any reasonable definition, are in fact the subject of this book' (*Roman Empire and its Germanic Peoples*, p. 9). The statements perhaps illuminate how Wolfram conceptualizes the subject (sacral kingship is being assumed), but no source in fact would express itself in such an awkward manner. The semantic range of *gens* in the statements is also peculiar in view of the criticism levelled against ethnology.

19 Wolfram continues to elaborate the terminology of ethnogenesis (*lex, memoria, origo, religio*). He is not alone. Similar language is used by Karl Hauck (*origo, primus rex, primordia, usus*): see i.a. 'Lebensnormen und Kultmythen' as in n. 7, above.

20 The use of German-language terminology is a more interesting problem than the coining of Latin terms, but beyond the scope and competence of this paper: *Stamm, Volk*, and *Völkerschaft* have been used in distinct, and contradictory, ways that have implications for how German, and early medieval, history is conceptualized. In his classification of the structure of group types, Wenskus also employs other terms, usually drawn from the current German literature: *Heerhaufen*,

is unsuitable, however, despite its continued popularity in the literature.²¹ I would be content to limp along using the comprehensive and marvellously ambiguous term ‘people’ (as in the phrase ‘Germanic peoples’),²² supplemented with modified forms of the words ‘group’ and ‘category’ where necessary, but the term people perhaps presumes too much about the content of Wenskus’ ideas. And so in what follows I shall employ the term *gens* (in the plural *gentes*) as a device of reportage. If occasionally the word ‘tribe’ breaks through, understand it in the same way as a term of the literature or as translating the German word *Stamm*.

In the *gens* of the imperial period and the successor kingdoms, Wenskus saw a group defined, not by language, culture, or law, but by political allegiance and a distinctive pattern of political thinking. No wonder, he claimed, traditional scholarly classification relying on the objective criteria of linguistic and cultural studies had failed to grasp the essential form and the historical role of the *gentes*. Only recognition of the subjective, self-conscious perceptions of ethnicity, and the political processes that lay behind them, could reveal the true character of ethnic groups and the forces of early European history. Indeed Wenskus began his study with a bold statement of historical idealism: ‘Nothing better illustrates the significance of political ideas in the historical process than the destruction of the Roman Empire.’²³ Roman universalism and culture, in his view, were forced to give way before the new and stronger political consciousness of the Germanic *gentes* whose patterns of thinking reached back deep into the Iron Age and beyond. Recognition of the formative power of the Roman Empire and antique culture is now one of the chief modifications of Wenskus’ thought, expressed by a quotation that

Wanderlawine, Stammeschwarm. Translations of them have a faintly comical sound, a circumstance that has not stopped their occasional employment in the English-language accounts of the subject.

- 21 The problem is not its alleged pejorative connotation – in a field that holds tenaciously to the word ‘barbarian’ as a term of art, this consideration is unlikely to cause much concern – but its application to groups defined by kinship, especially those constituted of clans and lineages.
- 22 A. D. Smith’s objections to the term seem to me weak: ‘socialist and Marxist ideologies have appropriated “people” for “lower” or “working” classes; and dictionary definitions include a host of synonyms, such as commonalty, enfranchised citizens, workpeople, king’s subjects, and persons belonging to a place, forming a company or class, or composing a race, community or nation, or even persons in general!’ (*The Ethnic Origin of Nations* [Oxford, 1986], pp. 230–31). The room for serious confusion is slight, but the lack of an adjectival form of the term is inconvenient; ‘ethnic’ generally serves the purpose, but only in particular contexts. I fail to see anything being achieved but faint puzzlement in Smith’s use of the term *ethnie*, a French form of the Greek *ethnos*.
- 23 ‘Nichts kann die Bedeutung politischer Ideen im Geschichtsprozeß besser beleuchten als die Zerstümmung des römischen Reiches. Diese Behauptung mag übertrieben erschienen; war es nicht im Gegenteil die nackte Gewalt naivunbefangener Barbarenheere, die den Raum eines sich als universale Macht verstehenden Reiches mit einem ausgeprägten Staats- und Kulturbewußtsein aufsplitterte und für die ganze Folgezeit zu einem System rivalisierender Nachfolgestaaten umgestaltete? [...] Es war eben mehr geschehen als nur eine Besitzergreifung von Teilen römischen Bodens. Gleichzeitig vollzug sich der Einbruch eines neuen politischen Bewußtseins in den Raum der antiken Geschichte, das dem spätromischen Staatsdenk geradezu “entgegengesetzt” war [...] Der “Gentilismus” der landnehmenden Stämme war als Denkform politisch stärker als das römische Reichsbewußtsein der Provinzialen’. *Stammesbildung und Verfassung*, pp. 1–2. Cf. n. 57, below.

has almost become a mantra in ethnogenesis theory: 'The Germanic world was perhaps the greatest and most enduring creation of Roman political and military genius'.²⁴ Nevertheless, there is no mistaking that Wenskus' paradigm of the force of Germanic political thinking and ethnic consciousness, what he called *Gentilismus*, lies at the heart of current approaches to describing state-formation in the late empire and successor kingdoms. Despite efforts to downgrade his contribution to the subject and to appropriate new forms of sociological analysis little has been changed.²⁵

If the *gens* was in the first instance a political group formed principally by political forces, it nevertheless conceived of itself, according to Wenskus, as a community of descent, a clan writ large.²⁶ This primitive ideological perspective, typical he believed of early thought, concealed the reality of the *gens*' formation, which Wenskus derived from the union of individuals and separate, and sometimes disparate, ethnic groups brought under the common leadership of a king and his close followers. This central group of king and followers, which Wenskus called the nucleus of tradition (*Traditionskern*), was the principal bearer of the consciousness of the *gens*. Tradition was the prerequisite for the *gens*' existence and its historical continuity. The hallmarks of tradition were genealogy and origin

24 This is the introductory sentence to Geary's *Before France and Germany* (p. vii). Its meaning is not obvious. Wolfram and Pohl, who regards it as 'brilliant', interpret it as the spirit moves them and one wonders if it has something to do with the title of Wolfram's recent book (see n. 16). Pohl reads it in terms of a bipolarity between civilization and the barbarians and a 'pull to the centre' ('Ethnicity', p. 42). The roles of creator and created in this kind of argument are of course readily reversed: did not the profile of the late Empire – its armies, fortifications, generals, usurpers, emperors, politics, taxation, social policy, settlements, and ideology – have something to do with the existence of *barbaricum*? Geary's own continuation of the statement, notable still for the echo of a providential *translatio imperii*, should perhaps be the last word on what he himself means: 'That this offspring [the Germanic world] came in time to replace its creator should not obscure the fact that it owed its very existence to Roman initiative, to the patient efforts of centuries of Roman emperors, generals, soldiers, landlords, slave traders, and simple merchants to mold the (to Roman eyes) chaos of barbarian reality into forms of political, social, and economic activity which they could understand and, perhaps, control'. A rhetorical indiscretion more than a decade old would not require comment if it were not perpetuated.

25 For example Walter Pohl (as in n. 1). The condescending tone occasionally adopted by Pohl on the question of ethnic perceptions, and some ill-informed comments, seem designed for some audience or another in the European Union, but instrumentalism is an unsteady foundation for the moral high-ground on these matters. The categories of 'achievement', 'success' and 'failure' are recurrent features of Pohl's analysis of ethnic groups, and seem to me thoroughly misguided on a number of interpretative levels.

Anthony D. Smith, 'The Politics of Culture: Ethnicity and Nationalism', in *Companion Encyclopedia of Anthropology*, ed. by Tim Ingold (London, 1994), pp. 706–733, has moderate and wise words to say on the subject of ethnicity and instrumentalism. An illuminating discussion of the concept of ethnicity, in part because it was written long before the obsession of the last generation and shows continuity of thinking on this subject, is E.K. Francis, 'The Nature of the Ethnic Group', *American Journal of Sociology* 52 (1947): 393–400.

26 *Stammesbildung und Verfassung*, pp. 14–17, 33–34. He regards the *Stamm*, according to the classification of German ethnosociology, as an endogamous *Klan*.

legends, archaic sacral institutions surrounding kingship, and above all, the name of the *gens*.²⁷

To the mere historian nothing is more troubling than the weight Wenskus places on names as the embodiment of living, historically dynamic traditions. His premise is not self-evident; indeed in numerous historical instances it is demonstrably untrue. But to Wenskus names constituted grounds in themselves for assuming the continuity of tradition. They are often the key to our understanding major elements in the ethnogenesis model. For example, the emergence of new tribal names along the Roman frontier in the third century and the existence in late imperial times of names that are thought to be first attested in the early Empire in the north are the chief basis for Wenskus' influential idea that, though *gens*-tradition was interrupted in the Rhineland, the north provided the source of the archaic political ideas that continued to direct the historical development of the successor kingdoms.²⁸ It is important to note that in Wenskus' model the name alone is sufficient grounds to suppose a body of tradition, endlessly repeated down through the ages. To demonstrate the preservation of Germanic ethnic traditions over the centuries even deep within Gaul, Wenskus cites the existence as late as the twelfth century of the *pagus Amavorum* and *pagus Attoariorum*, the products originally of Roman period settlements of the *Chamavi* and *Chattuarii* near Langres.²⁹ It would seem to me in this case that to state the argument is sufficient to reject the idea that lies behind it.

The same holds true for the contention that mere philological resemblances between distinct tribal names separated widely in time and space, and even by linguistic community, reveal ancient processes of ethnic division and migration.³⁰ For instance the northern *Ambrones* and *Ombrones* are brought into distant historical association with the Italian *Umbri*, the *gens antiquissima Italiae* according to Pliny, as are the northern *Teutones* with the like-named predecessors of the Etruscans, by means of the theory that tribal divisions must have taken place in the north around the turn of the first millennium BC (that is, in Wenskus' model, before the Germanic sound shift); these divisions resulted in migration to the south, and the now separated tribal components, still bearing the same name, in the course of time underwent separate linguistic development.³¹ When read-

27 *Stammesbildung und Verfassung*, pp. 54–82. Wenskus generally assumed a continuity in the tradition bearers. Wolfram is at his bewildering best when he attempts to obfuscate the connection between tradition and those that transmit it.

28 *Stammesbildung und Verfassung*, pp. 429–31.

29 *Stammesbildung und Verfassung*, p. 437.

30 The section 'Stämme, die alter sind als das Germanentum', *Stammesbildung und Verfassung*, 285–299, surveys an extensive list of candidates. Wenskus' views here are not peculiar to himself; he draws on long-standing debates among philologists. The selection of historical matches seems quite arbitrary. If the modest pretense to geographical, temporal, or linguistic logic were completely thrown to the winds, the list could be extended.

31 *Stammesbildung und Verfassung*, pp. 292–94. The *Ambrones* and *Teutones* accompanied the *Cimbri* in their famous march south: Plutarch, *Marius* 11–28, ed. and trans. by Bernadotte Perrin, vol. IX,

ers find such connections being made across languages, they may wonder what cultural significances are being implied, and they may also be inclined to consider other reasons for verbal similarities. The same method gains nothing by being applied within a linguistic group.

The confusion of philology with history continues to shape the ethnogenesis model and, following Wenskus' example, is applied even to personal names and institutional nomenclature, the examination of which is thought to unlock the secrets of continuous religious and institutional development.³² One cannot help wondering what conclusions we would confront, if, in the absence of conventional historical sources, the same kind of linguistic ingenuity were applied to the ancient remnants of Gallic, Latin, and Greek nomenclature that litter the texts of the late Empire and Early Middle Ages. A clue to the kind of picture that might emerge can be seen in recent comments by Herwig Wolfram on the significance of titles. What distinguishes Wolfram's account of real-enough, but poorly attested, Germanic terms is the inclusion of the Latin *tribunus* in the same explanatory model. He begins with etymology. The point of marshalling etymological evidence seems to be to show how ancient terms, which, he suggests, were originally applied to leaders of small kinship-based groups, maintained some kind of intimate, sacral association even after being transformed by ethnogenetic processes into larger scale units of social and military organization.³³ The account confounds alleged linguistic development with institutional development.

[T]he Latin tribal word *tribus* is complemented by the office of the *tribunus*. [. . .] To be sure, the Roman tribune did not remain a tribal chieftain, but came to occupy many offices, including even that of commander in a regiment in the army of the later Roman Empire. [. . .] History could thus carry a word far away from its original meaning, its etymology. Nevertheless, the fact that the old titles continued to be held testifies to the durability of what was once a life-sustaining connection between a group conceived as a descent group and its representatives.³⁴

LCL (Cambridge, MA, 1967); this would be their second trip in Wenskus' scheme. The *Ombrones* are mentioned by Ptolemy, *Geographica* III 5, ed. and transl by Edward Luther Stevenson (New York, 1932; Dover rpt., 1991) in the second century AD as living near the mouth of the Vistula; Wenskus is sure they originated in the Jutish-Scandinavian area. On the Umbrians: Pliny, *Historia Naturalis* III 14/112, ed. and trans. by H. Rackham, vol. II, LCL (Cambridge, MA, 1947); cf. comments in *OCD*, 2nd and 3rd edition (Oxford, 1970 and 1994), s.vv.

32 Wenskus' most recent work ('Religion abâtardie', as in n. 15 above) is almost completely driven by etymology and the uncritical use of comparative religion.

33 The pairs, on the model of group/leader are as follows: *tribus/tribunus* (Latin); *thiuda/thiudans* (Gothic); *kind/kindins* (Gothic); *druht/druhtin* (Frankish). *Roman Empire and Its Germanic Peoples*, p. 16; a similar account appears in 'Typen der Ethnogenese', p. 612. Most of this goes back to Wenskus, *Stammesbildung und Verfassung*, p. 69. The indiscreet addition of *tribunus* and kinship references are Wolfram's contribution.

34 *Roman Empire and Its Germanic Peoples*, p. 16. In the language of Wolfram, representation here refers to a sacral relationship. On representation in Wenskus, see *Stammesbildung und Verfassung*,

It is difficult to understand how anyone familiar with the historical evidence for tribunician offices could write this. To begin with, there is no good evidence that the term *tribunus*, even in the darkest proto-history of Rome, referred to a tribal chief. What is more important, the term *tribunus* in historical sources does not pertain to an institution that went through some kind of evolution, dragging behind it primitive ideas of kinship and sacrality. The term is applied to different kinds of magistrates and office holders often contemporaneously.³⁵ In the late Empire, military tribunes, upon whom Wolfram has decided to focus his remarks, were officers commissioned by the emperor, not representatives of their troops. One can be categorical. There is absolutely no institutional connection between late Roman unit commanders, called *tribuni*, and so-called primitive Roman 'tribal chiefs'.

The methodology when applied to a well attested term reveals the problem. The confident, though often mystifying pronouncements uttered over the remains of Germanic terms are no better founded. The unwillingness to separate the, often invented, philological dimension of language (especially etymology) from its particular context in part explains Wolfram's frustrating tendency to espouse, almost in the same breath, completely contradictory realities.

III

Why has *Stammesbildung und Verfassung* been so influential? Wenskus has in recent times been praised for recognizing the artificial character of the constitution of the *gens* and for rejecting nineteenth- and twentieth-century racial and biological theories of ethnic development.³⁶ Practitioners of his model rarely fail to

pp. 314–15 (citing Mitteis and Höfler). Wolfram imbibed the search for the irrational also directly from the *Stammvater* of Wodanic sacral-kingship teaching, Otto Höfler: cf. Höfler's 'Der Sakralcharakter des germanischen Königtums', printed several times in 1956; Otto Höfler, *Kleine Schriften*, ed. by H. Birkhan (Hamburg, 1992), pp. 255–284, is probably most convenient. Wolfram's views can be found i.a. in his 'Methodische Fragen zur Kritik am "sakralen" Königtum germanischer Stämme', in *Festschrift für Otto Höfler*, ed. by H. Birkhan and O. Geschwantler (Vienna, 1968), 2: 473–490. A critical appraisal of the historiography is given by Eve Picard, *Germanisches Sakralkönigtum: Quellenkritische Studien zur Germania des Tacitus and zur altnordischen Überlieferung* (Heidelberg, 1991).

35 A.H.M. Jones, *The Later Roman Empire 284–602* (Oxford, 1964), 2 vols, index, s.vv. tribunes, *tribunus*, gives a long list. The *OCD*, s.vv. *tribuni aerarii*, *tribuni militum*, *tribuni plebis*, and *tribus*, can serve for the Republic; cf. the 2nd and 3rd editions (1970 and 1994).

36 The implication in recent literature that before Wenskus scholars thought that the *gens* was a real descent group, and that it took Wenskus to see that the concept of common descent was a fiction, is quite incorrect. Wenskus himself provides a list of predecessors, *Stammesbildung und Verfassung*, p. 15, n. 12; it is quite selective. The fictive character of high order descent groups had long been an anthropological commonplace. Ironically Geary's, Wolfram's, and Pohl's ideas about kinship are a throwback to ideas that Wenskus (following Genzmer) apparently rejected in *Stammesbildung und Verfassung*, and revive views that had earlier suggested the natural and organic character of barbarian social and political organization. *Stammesbildung und Verfassung*, pp. 11, 300–05.

call attention to present ethnic conflicts and imply dire consequences if there is a failure to move toward their own enlightened view of the real origins of European peoples.³⁷

[T]ribes were [formerly] considered to have been hermetically closed communities, in which the members were very closely tied to each other by communal descent and by identical cult, language and morals. Today it is generally held that the tribes in the beginning of the Middle Ages consisted of a conglomeration of elements of various peoples.

Despite the slightly dated language, this comment on the *status questionis* may sound like recent appraisals that cite Wenskus as the source of our present-day wisdom, but the quote actually comes from 1949, in part of a discussion of the early history of the Netherlands.³⁸ The point was modestly stated. It was not (or should not have been) really news in 1949. It is not news now; in fact the composite nature of early Germanic peoples has been recognized since the beginnings of modern scholarship.³⁹ The same article, incidentally, also rejected the simple equations between tribe, culture, language, and material remains.⁴⁰ Wenskus himself seems to have been under no misapprehension that his rejection of the *gens* as a homogeneous product of natural organic biological processes was his own doing.⁴¹

37 Recently Wolfram seems to have linked his warnings to those who question his method: 'The critical attitude toward this past [of gods, origin myths and the like] has always done far less harm than the identification with the Germanic peoples; in fact, compared to the latter, it has *so far* been completely harmless' [my italics]. The views he refers to are 'after all nothing new, but rather an echo from the dark ages of nineteenth-century positivism' (*Roman Empire and its Germanic Peoples*, p. 15). Both Wolfram and Wenskus imagine their treatment of 'myth' is some species of functionalism (cf. *Stammesbildung und Verfassung*, p. 108). If only that were true. Cf. n. 7 above.

38 B.H. Slicher van Bath, 'Dutch Tribal Problems', *Speculum* 24/3 (1949): 336. The reference to 'communal descent' is anything but outdated and shows the ability (apparently rare to non-existent among present-day ethnicity specialists) of distinguishing between descent from a common ancestor and descent from a group. It suggests, by the way, that earlier scholars were hardly as ignorant about the concept of ethnicity as present-day stereotypes imply.

39 It is a notable theme in the work of jurist Karl Friedrich Eichhorn, *Deutsche Staats- und Rechtsgeschichte*, 4th ed. (Göttingen, 1834), vol. 1, esp. pp. 58–60, 82–85, 106–60. I have not been able to consult earlier editions.

40 This too has a context: see for example the critique of pre-war assumptions by the noted Finnish archaeologist A. M. Tallgren, 'The Method of Prehistoric Archaeology', *Antiquity* 11 (1937): 152–61 (it originally appeared in French the year before in *Eurasia Septentrionalis Antiqua* 10). This was an influential article, but it is not without predecessors.

41 The scope of the historiographical framework is stated in the first sentences of the foreword to *Stammesbildung und Verfassung*, p. ix: 'Vor etwa 150 Jahren mag die Verknüpfung der Begriffe "Stammesbildung" und "Verfassung" einigermaßen befremdlich angemutet haben. Sah man doch gerade in Stamm etwas 'natürlich' Gewordenes, organisch Gewachsenes. [. . .] Die Wissenschaften, die sich bislang vor allem mit der Erforschung der Stämme beschäftigt hatten, mußten jedoch in Laufe der Zeit einsehen, daß sich Stämme dieser Art nirgends fassen ließen. So sagte man sich ausdrücklich vom romantischen Stammesbegriff des 19. Jahrhunderts los'. Cf. also pp. 14, 87–89.

He wrote not to establish this point but to counter its implication that *Stamm* tradition had been interrupted by the political processes of the *Völkerwanderungszeit*.⁴²

It is quite true that race has no significance in Wenskus' explanation of the historical process.⁴³ It is difficult to see why such a viewpoint of the 1960s should deserve special commendation, let alone be seen as a turning point in scholarship. Though race plays no role in Wenskus' model of ethnic development, one may as well note, however, that the model in itself does not preclude a racial interpretation. Modern commentators on this subject often seem to confound nationalism with racism. Pre-war racial ideologies did not presuppose biologically homogeneous ethnic groups in the present or even in the distant historical past – quite the contrary. Race was seen as *the* dynamic and creative force in history precisely because it operated *within* historically constituted peoples; this is why European culture as a whole (and even the accomplishments of ancient Middle Eastern civilization) could be claimed as a product of the Nordic race and why eugenics was preached as selective purification.⁴⁴ The concepts of *Überlagerung* and *Oberschichtung* ('overlaying'), *connubium* of the trans-tribal *Hochadel*, which was set apart from its subject populations, and the role of the nobility as *Traditionskerne* or bearers of tradition (*Träger der ethnischen Tradition*) and as exponents of *Gentilismus*, are perfectly consistent with a racial history should one wish to deploy them for such a purpose.⁴⁵

I note in passing that old-style legal history never had any problem with the concept *Verfassung* being applied to the various Germanic peoples; cf. for example Eichhorn, as in n. 39.

42 Note the rejection of Franz Steinbach, *Studien zur westdeutschen Stammes- und Volksgeschichte* (Jena, 1926), who gave primacy to the political processes of the period but saw discontinuity in their historical consequence.

43 The section 'Gautyp und Rasse' (pp. 32–33) is the shortest of the eleven sections devoted to various characteristics of *Stämme* (*Stammesbildung und Verfassung*, pp. 14–107). There is no polemic. Emic and etic perspectives are considered. Questions are asked; few answers are given.

44 Hans F. K. Günther, *The Racial Elements of European History*, trans. G.C. Wheeler (London, 1927; reprinted, 1970; trans. from the 2nd German edition, *Rassenkunde Europas*, Munich 1926) is a good introduction. The well-meaning contemporary critique of such views in Julian Huxley and A.C. Haddon, *We Europeans: A Survey of 'Racial' Problems* (London, 1935), from an historical perspective, often misses the mark. For an official National Socialist pronouncement on the subject, see the guidelines for the teaching of history issued by the Minister of the Interior, Wilhelm Frick, in 1933: they were translated and published in *Nature* no. 133 (February 1934): 298–99; the German text appears in the *Nachrichtenblatt für deutsche Vorzeit* 9.6 (1933): 81–84. The guidelines cite both Günther and the noted prehistorian Gustav Kossinna, who died the year before.

45 *Überlagerung* and *Oberschichtung*, refers to a process by which one group established superiority or rule over another. Prehistorians had used it to conceptualize the close juxtaposition of allegedly different cultural complexes. These concepts can be deployed to explain how a group of conquerors become a ruling class (*Oberschicht*), distinct in varying degrees from those it governed. On the connection with *connubium* of the nobility, which cut across tribal divisions: *Stammesbildung und Verfassung*, pp. 25–26. On the *Hochadel*, high nobility, see below, p. 293f.

It is apparent that where the location of the *germanische Urheimat*, the home of his *Traditionskerne*, was concerned, Wenskus was uncomfortable using such concepts to interpret what he saw as intrusive and dominating outside forces. He rejected the idea of the 'overlaying' of the so called battle-ax and corded-ware people upon the native populations of the north; here he prefers

Wenskus was no innovator as far as biological interpretations of early European history were concerned. A general historiographical perspective suggests different reasons for the popularity of his ideas.⁴⁶ It is correct, I think, to point out that Wenskus' work came at the end of an historiographical development not the beginning, encapsulating and systematizing half a century of scholarly revisionism in the areas of ethnology and Germanic antiquity. The work he produced is massive, drawing – often eclectically – on philology, prehistory (archaeology), history, and social science; historians who know of it only by reputation may be surprised to learn that it begins with the palaeolithic.⁴⁷ Wenskus did not rely on self-citation.⁴⁸ One of the great merits of his study is the extensive notes documenting several decades of German scholarship. But though it can be crushing in its breadth and detail – even for German readers⁴⁹ – it could hardly be exhaustive. English-language scholarship shows similar developments. Some readers of current ethnogenesis literature may be unaware that Wenskus' fundamental notions regarding the political and artificial character of the *gens*, the role of retinues and kingship, the contrast between north and south, among much else, were clearly laid out in the work of Hector Munro Chadwick, published in 1907.⁵⁰

Durchschichtung and *Homogenisierung*. His bizarre handling in this context of the precious-metal topos of Tacitus, *Germania* 5, (ed. by J.G.C. Anderson [Oxford, 1938]) suggests some measure of his discomfort. *Stammesbildung und Verfassung*, pp. 279–82.

- 46 These ideas deserve separate evaluation for their significance *within* German scholarship, especially its specialist areas, which the present article does not pretend to do. Cf. the review of *Stammesbildung und Verfassung* by the historian František Graus, *Historica* 7 (1963): 185–191; and by the pre-historian Rolf Hachmann, *Historische Zeitschrift* 198 (1964): 663–674; and further, Hachmann's *Die Goten und Skandinavien* (Berlin, 1970), esp. pp. 3–4, 7–10, 147, 216–218. The multi-disciplinary and international dimension of relevant scholarship is hardly at any one person's command and creates a situation ripe for misunderstanding. In the developing international discourse of modern historiography, this problem will get worse. It is one of the main reasons for the present article.
- 47 Some of the continental social science background is noted by Daim, 'Gedanken' (as in n. 18 above), pp. 65–67; and cf. Pohl, 'Traditio, Ethnogenese, und literarische Gestaltung: eine Zwischenbilanz', in *Ethnogenese und Überlieferung: Angewandte Methoden der Frühmittelalterforschung*, ed. by K Brunner and B. Merta (Vienna, 1994), p. 10. Daim's notion (p. 61) that the individual determines ethnicity is a little misleading. Groups generally, though not universally, have a say on who will belong to them.
- 48 Hachmann (review of *Stammesbildung und Verfassung*, as in n. 46, p. 664) did the math, and not in *laudem*: 1,125 works in the bibliography, not counting many others cited only in the notes; 3,600 notes.
- 49 'Das Buch ist klar aufgebaut und schreitet folgerichtig fort, wenn auch bisweilen in schier erdrückender Breite und Detailliertheit': Rafael von Urslar, 'Stämme und Frundgruppen: Bemerkungen zu 'Stammesbildung und Verfassung' von R. Wenskus', *Germania* 43 (1965): 139.
- 50 *The Origin of the English Nation* (Cambridge, 1907), especially ch. 7, 'The Age of National Migrations', pp. 153–191. This is the second volume in a trilogy of interrelated works that established Chadwick (1870–1947) as an influential figure in British scholarship: the first work was *Studies on Anglo-Saxon Institutions* (Cambridge, 1905); the third, *The Heroic Age* (Cambridge, 1912). Chadwick's ideas anticipate more than those of Wenskus. They have, moreover, remained an influential source for early medievalists, especially Anglo-Saxonists. I expect few classicists have read him. Chadwick's work has been brought to the attention of Pohl ('Zwischenbilanz', p. 8, in n. 47) and

Timing and focus had a lot to do with the success of Wenskus' work. Its publication was closely connected to the emergence of a new school of German constitutional history that had its roots in the 1930s but which began to dominate German scholarship in the 1950s; once known as the New History, it seems sufficient at the beginning of a new century just to call it the lordship theory. Its principal representatives were Heinrich Dannenbauer, Theodor Mayer, and Walter Schlesinger.⁵¹ The lordship theorists rejected older notions that Germanic society had originally rested on democratic or popular foundations. Such a perception, in the new view, was simply a reflection of the wishful thinking of the nineteenth-century bourgeoisie; rather the lordships of aristocratic houses were the historically important forces in German history both in the ancient and medieval periods. Much of the force of this argument came from projecting back upon the early Germanic period contentious interpretations of much later conditions. The touchstone in the debate was freedom and the free, the *liberi* of the early medieval sources. The old literature had seen them as a broad, politically significant class of common freemen – they were the *Volk*, the people, in the broad sociological and political sense of the term. The lordship theorists, who denied the existence of such a class of freemen, rechristened the *liberi* as the king's free, whom they now interpreted as the domestic dependents of the monarchy. Lordship theory in effect deprived the people of any significant role in the constitutional history of the early state.⁵²

Wolfram by Andreas Schwarcz, and Wolfram ('Typen der Ethnogenese', p. 609, as in n. 18, above) now attributes the concept of *Traditionskern* jointly to Chadwick and Wenskus. Chadwick never employed the concept of *Traditionskern*. Wolfram was sufficiently familiar with Chadwick in 1990 to cite him as the authority for the concept 'Heroic Age' in *Das Reich und die Germanen*, p. 40.

- 51 Heinrich Dannenbauer, 'Adel, Burg und Herrschaft bei den Germanen', *Historisches Jahrbuch* 61 (1941), reprinted and expanded in *Herrschaft und Staat im Mittelalter*, Wege der Forschung 2 (Darmstadt, 1956), pp. 60–134; 'Hundertschaft, Centena und Huntari', *Historisches Jahrbuch* 62–69 (1949): 155–219. Theodor Mayer, articles in part reprinted in his *Mittelalterliche Studien* (Lindau, 1959). Walter Schlesinger, *Die Entstehung der Landesherrschaft* (1941; but cf. preface to reprint, Darmstadt 1964); 'Herrschaft und Gefolgschaft in der germanisch-deutschen Verfassungsgeschichte', *Historische Zeitschrift* 176 (1953): 225–76, translated in part as 'Lord and Follower in Germanic Institutional History' in *Lordship and Community in Medieval Europe*, ed. by F.L. Cheyette (New York, 1968), pp. 64–99. Aspects of their views are considered in my 'From Roman to Frankish Gaul: "Centenarii" and "Centenae" in the Administration of the Merovingian Kingdom', *Traditio* 44 (1988): 59–100 [above, ch. 4]; and 'Immunity, Nobility, and the *Edict of Paris*', *Speculum* 69/1 (1994): 18–39 [above, ch. 5]; both contains references to critical literature in German. For the intellectual and political background, see Howard Kaminsky and James Van Horn Melton, Introduction to their translation of Otto Brunner, *Land and Lordship: Structures of Government in Medieval Austria* (Philadelphia 1992); the original German edition appeared in 1939. Some of the historiographical issues are also outlined by John B. Freed, 'Reflections on the Medieval Nobility', *American Historical Review* 91 (1986): 553–75.
- 52 The answer invited by Dannenbauer's mocking query 'was der Unterschied ist zwischen einem germanischen König und einem Mamelukensultan' ('Die Freien im karolingischen Heer', in *Verfassungs- und Landesgeschichte: Festschrift Theodor Mayer*, ed. by Heinrich Buttner, Otto Feger and Bruno Meyer [Lindau, 1954], p. 51) reveals some of the tone of the German argument, which

The conjunction of this constitutional interpretation of German history with Wenskus' ethnic interpretation of the early Germanic *gentes* is quite evident. (Wenskus accepted the dubious theory of the king's free for instance.)⁵³ Three aspects of the conjunction of Wenskus' views with the prevailing currents of German historiography are worth commenting on. As regards the first, I shall be brief. Despite acknowledgment of Roman institutions by the exponents of the lordship theory,⁵⁴ their intention was to establish and redefine⁵⁵ the continuities of German history from the Iron Age to the appearance of the German Empire. It has become a cliché of the modern exponents of Wenskus' theory to assert the obvious truth that the history of the early medieval *gentes* is not necessarily German history;⁵⁵ and Wenskus too makes the distinction between German and Germanic history. No one who reads his book, however, can escape its focus on the geographical and ultimately political entity of modern Germany. It is dedicated to demonstrating the continuity of German history across the Middle Ages to the Iron Age and distant prehistory.⁵⁶ *Stammesbildung und Verfassung* is an earnest search to establish the foundations of German identity and the place of Germany in European history. In my view, the real interest of the book is to be found in the timing and character of this search.

The second aspect concerns the political dimension of Wenskus' thought. His introductory statement of idealism is neither exceptional nor incidental to the intellectual forces shaping his work.⁵⁷ Its particulars demand a little more attention. These too have a political and cultural context and reflect Otto Höfler's so-called *Kontinuitätsthese*, which became a staple of post war scholarship when

was ideologically charged. Chadwick's approach to the matter had been temperate, even discreet; without quoting him, he directed readers to Julius Caesar for the hard point: 'Caesar's remarks on the condition of the Gaulish commons will likewise hold good for the northern Teutonic peoples of the migration period' (*Origin*, pp. 190–1). The reference must be to *Bellum Gallicum* VI 13 (ed. by Fr. Kraner and W. Dittenberger, 20th ed. by H. Meusel, vol 2 [Berlin, 1965]): 'Nam plebes paene servorum habetur loco, quae nihil audet per se, nullo adhibetur consilio. Plerique, cum aut aere alieno aut magnitudine tributorum aut iniuria potentiorum premuntur, sese in servitutem dicant nobilibus: in hos eadem omnia sunt iura, quae dominis in servos'. Dannenbauer was familiar with Chadwick's work.

53 *Stammesbildung und Verfassung*, pp. 451–53.

54 In particular, the Merovingian *centena*, which was interpreted as originally a settlement of king's free on fiscal land, was thought to be patterned after Roman military settlements of *limitanei* and *laeti*. This idea has little to recommend it: cf. Murray, 'Roman to Frankish Gaul', as in n. 51 above.

55 However it seems a bit disingenuous for Wolfram to tell his readers in *Das Reich und die Germanen*, which forms the first volume of a section called *Das Reich und die Deutschen*, in a series called *Deutsche Geschichte*, that the Germans have as much a Germanic history as other peoples, whom he lists; included in the list of those with a Germanic history are the Turks and the Irish (*The Roman Empire and its Barbarian Peoples*, p. 12). The Turks and the Irish would not seem to have any at all; but cf. n. 85 below.

56 *Stammesbildung und Verfassung*, pp. 82–85. The *Stämme* are older than the *deutsche Volk*.

57 See above n. 23. On the ideological opposition between the Germanic north and southern Roman/Christian universalism in the literature of the 30s and 40s, see Paul Koschaker, *Europa und das Römische Recht*, 3rd. ed. (Munich, 1958), pp. 324 f.

elements of it were widely taken up by historians of the new constitutional history.⁵⁸ Its formulation belongs to the cultural and ideological struggles of the 1930s. Höfler, a student of Vienna Germanist Rudolph Much, first attracted attention in 1934 with a controversial thesis identifying among the *Germani* ecstatic male cultic associations ritually united with their ancestors and dedicated to the worship of Odin; within these *Männerbünde* Höfler located that 'most distinctive attribute of the Nordic race', its power of state-building (*staatenbildende Kraft*).⁵⁹ The year 1938, when Höfler took up a post at Vienna, was a banner year for the dissemination of his views on the political character of Germanic tradition, now broadened beyond so-called cultic associations to include themes of conventional historical interest. His aim in lectures and articles of that year was to direct concern with continuity in German history away from classical antiquity and focus it on a path he claimed led back three thousand years into Germanic prehistory; this newly defined *germanische Koninuitätsproblem*, central in his view to German identity, should be a principal undertaking of historical endeavour.⁶⁰ He laid out its implications for the history of the migration period in May in a talk he gave before the *NSD-Dozentenbund* of Christian-Albrechts-Universität designed to counter the impression created by *germanische Altertumskunde* that the early Germanic period was notable mainly for its cultural achievements.⁶¹ Opposing what he saw as the widespread acceptance of humanist aspersions cast upon the dull-wittedness of German political thinking and its dependence upon Rome for the idea of the *Reich*, he argued that native Germanic political conceptions were the basis for the cultural achievement about which modern Germans were so rightly proud. He began his argument with an even bolder claim, that 'in fact it was the creative political power of the early Germanic period that established the basis for the

58 Klaus von See, *Kontinuitätstheorie und Sakraltheorie in der Germanenforschung: Antwort zu Otto Höfler* (Frankfurt am Main, 1972), esp. pp. 41–42.

59 *Kultische Geheimbünde der Germanen* (Frankfurt am Main, 1934): 'Die eigenste Begabung der nordischen Rasse, ihre staatenbildende Kraft, fand in den Männerbünden ihre Stätte' (p. 357). On the cultural background of the *Männerbund* idea: Klaus von See, 'Männerbund und Männerbund-Ideologie von der Wilhelmischen Zeit bis zum Nationalsozialismus', in his *Barbar, Germane, Arier: Die Suche nach der Identität der Deutschen* (Heidelberg 1994), pp. 319–344. On Höfler and the rivalry to control the National Socialist agenda on scholarship: Klaus von See, 'Das "Nordische" in der deutschen Wissenschaft des 20. Jahrhunderts', *Jahrbuch für Internationale Germanistik* 15/2 (1983): esp. 29–36. Höfler's patron was Himmler, who facilitated his appointments at Kiel in 1934 and then at Vienna in 1938. On the treatment of National Socialism in present-day *Germanenaltertumskunde*: Walter Goffart, 'Two Notes on Germanic Antiquity Today', *Traditio* 50 (1995): 9–30.

60 'Das germanische Kontinuitätsproblem', *Historische Zeitschrift* 157 (1938): 1–28. This is the most famous statement of the thesis because it contains the argument that the imperial insignia of the holy lance was actually the mark of Odin. According to Birkhan's bibliography (see next note) the piece also appeared the same year in the *Schriften des Reichsinstituts für Geschichte des neuen Deutschland*; a Dutch translation followed in 1943 in *Volksche Wacht* 8. See next note for a slightly different version of the thesis.

61 'Die politische Leistung der Völkerwanderungszeit', in *Otto Höfler: Kleine Schriften*, ed. by Helmut Birkhan (Hamburg, 1992), pp. 1–16; originally published in *Kieler Blätter* 1938, Heft 4, pp. 282–97. The piece bears comparison with Frick's guidelines (above, n. 44).

political system of Europe even down to the present day'.⁶² More interesting than this ambitious thesis, and the paranoid conjunction of superiority and inferiority in its exposition, were the elements Höfler thought supported his political viewpoint: the continuity of political-genealogical consciousness extending deep into the heathen period; the connection between names and continuous political identity, linking prehistorical and historical times; the priority of the political, artificial group over the natural, kinship-based forms of society; the importance of the political institutions of sacral kingship and retinues; the sacral character of the community, founded upon kingship; and the potential of myth to open up the inner spiritual meaning of the political community. Höfler sketched all this out clearly before wandering off into a heathen fascist never-never land of death-cults and religious transfiguration presided over by Odin; we will never know, I suppose, whether the last part roused, puzzled, or sedated his audience. Wenskus' version of Höfler's thesis was certainly not designed to rouse. It was a bourgeois delight, restrained, mounded in footnotes, careful to avoid polemic, with rarely anything resembling a big picture at all. Odin was tamed and the exposition cast in the ethnic conceptions of *Stammeskunde*.⁶³ But the subject was the same: the role of political forces, rooted in sacral conceptions of the world, and the subordination of historical process to a particular type of northern political thinking that expressed the power of the Germanic *gentes*. The method was the same as well, founded upon the hidden meaning of names, genealogy, and myth.

The third aspect of Wenskus' conjunction with the main lines of contemporary history was the focus upon the aristocratic character of the early Germanic state. According to Wenskus, tribal self-consciousness – the principal criterion of ethnicity – did not embrace all members evenly but was the preserve of a small tradition-bearing core of nobles closely connected to the king. Kingship lay at the heart of tradition and embodied the *gens*, the genealogy of king and the *gens* being irrationally identified one with the other. Wenskus was aware of the paradoxes of his model. He located ethnic thinking for instance among the group – the high nobility – that, in his view, regarded itself as separated by descent from the rest of society and unfettered by the endogamy that bound the non-noble stratum of the

62 'Auf den Schöpfungen der politischen Gestaltungskraft gerade jener frühgermanischen Zeit beruht bis heute das politische System Europas' (ibid., p. 282).

63 Regarding constitutional history, Karl Bosl judged in 1962 that Höfler's continuity thesis still remained the *Kernfrage* of all research on the *Germanen* – after purification administered by H. Aubin and rehabilitation of the concept of Roman continuity, among other adjustments ('Die germanische Kontinuität im deutschen Mittelalter', reprt. in his *Frühformen der Gesellschaft im mittelalterlichen Europa*, [Munich, 1964], pp. 80–105). *Stammesbildung und Verfassung's* approach to Höfler's ideas was more discreet. Wolfram's recent retrospective statement that it was Wenskus' adaptation of ethnology that made the study of the *Germanen* thinkable once again 'nach den germanomanischen Exzessen' of the past (*Die Germanen*, Munich, 1995, p. 10) surely reflects this context. Adoption of Geary's quotation (at n. 24 above) seems to be part of the purification. Höfler was no stranger to ethnology; cf. the ironical comment of von See "Nordische" in der deutschen Wissenschaft', p. 32, as in n. 59 above.

gens.⁶⁴ He stressed as well the prevalence of foreigners in royal service within those circles charged with preserving the distinctive ethnic tradition of the *gens*. As a partial explanation for features that seemed to belie the ethnic concept, Wenskus relied on the argument that feelings of ethnic belonging were fluid in early states, which were constituted by personal ties.⁶⁵

Paradox is a recurrent feature of attempts to make use of Wenskus' ideas of ethnicity. Wolfram's recent effort to establish a typology of ethnogenesis on the Wenskus model, for instance, was soon reduced simply to a dubious classification of kingship types.⁶⁶ The reason for this is simple, the outcome almost unavoidable. Wenskus' notion of the *gens* has little room for anything but narrow concepts of royal service, tradition, and archaic kingship, which alone provides cohesion and historical continuity. Just as the lordship school had banished the *Volk* from German constitutional history, Wenskus' model of tribal development did the same for its ethnic history.

Some conclusions that have taken their departure from Wenskus' ideas are less inevitable. His notion that ethnicity was political in origin, fluid, and limited to a restricted circle is readily adaptable to modern sociological notions of ethnicity as an arbitrary situational construct. These ideas have been used by Patrick Geary in a study of ethnic terminology in the Frankish kingdom to argue that ethnicity was a malleable construct that was determined mainly by political circumstances and by the interests of lordship.⁶⁷ The method depends on confounding the occasions when ethnicity is mentioned (in political narratives, these occasions tend unsurprisingly to be political and military) with the criteria for ethnicity, and on finding confusion and contradiction in the sources' attribution of ethnicity.⁶⁸ The sources do not comply with the method. Their testimony tends to run doggedly to the banal, unambiguous, and conventional – ethnic association was something

64 *Stammesbildung und Verfassung*, pp. 17–32.

65 Chadwick's expression of the same idea is ambiguous and equally unsatisfactory: 'It fully accords with this absence of a national organization [that is, one independent of the king and his officials] that we find but little trace of any feeling of patriotism as we understand it'. *Origin*, p. 172.

66 'Typen der Ethnogenese', as in n. 18 above.

67 'Ethnic Identity as a Situational Construct in the Early Middle Ages', *Mitteilungen der Anthropologischen Gesellschaft in Wien* 113 (1983): 15–26.

68 Various types of identifiers are taken by Geary to be ethnic identifiers. Thus a term like *dux Alamannorum* is interpreted as meaning that the holder of the title in question is being designated an Alamannian by ethnicity. (The title is a term of office and has no such implication.) Supposed contradictions in the sources are then found: a certain Adalricus is said by various sources to have been born in Gaul, to be of a noble Frankish family, and to have led the Alamannian forces as a duke appointed by the Frankish king. Each of these methods of identification are interpreted by Geary as separate, contradictory ethnicities: Gaul, Frank, Alamannian (pp. 23–24, 25). Instrumental analysis is then used to resolve the contradictions and reveal the 'true' basis of ethnic affiliation. There are in fact no contradictions to begin with. As to the paradoxical claim that 'it is seldom if ever possible to determine exactly why an individual was termed a Goth, Frank, Roman, or Burgundian' (p. 21), see next note.

one was born into: a person was a Frank, a Roman, or a Burgundian by birth.⁶⁹ The present observation pertains to the synchronic context of ethnicity, of course; ethnic denominators rarely remain fixed when viewed over substantial periods of time. One need only consider the shifting compass and locus of the terms *Franci* and *Francia*, for example.⁷⁰

Similar methodological problems have also produced flawed results in the recent, much more ambitious work of Patrick Amory, who likewise confounds various types of identity – especially military and political allegiance and alliance – with ethnicity.⁷¹ His premise that the sources are confused on these matters is a perilous point of departure. It is hardly likely that ethnicity, whatever one is to make of its depth in society or the intensity of feelings it aroused, was simply an instrumental category and an attribute of royal ideology and political strategy. More often than not it seems to have had very little to do with political allegiance at all.

IV

From an historiographical perspective, Wenskus' ideas served to adapt the traditional concern with the *Stamm* and ethnicity to the new suppositions about German history that became increasingly prevalent after World War II; most of these suppositions were derived from the cultural and ideological conflicts of the 1930s. In this reinterpretation the history of the Franks played a pivotal role, as they constituted the link between the Germanic period and the emergence of Germany out of the Carolingian state. Wenskus' approach to the development of the Franks provides further occasion for more closely evaluating his methodology and treatment of sources.⁷²

69 Fredegar (*Chron.* IV 18, 24, 28, 29, MGH SRM 2, ed. by Bruno Krusch) refers to a series of five Frankish and Roman Burgundian mayors of the palace and patricians, mentioning the ethnic identity of each one by the phrase *genere Francus* or *genere Romanus*; that is they were either Romans or Franks by birth. In a famous passage (*ibid.* 78), he also identifies in a similar way the ethnicity of ten *duces* and a patrician leading Burgundian forces against the Gascons. Eight of the generals are Franks by birth; the other three are Roman, Burgundian, and Saxon respectively. The ethnic terms do not refer to the make-up of the forces under the command of each duke, as imagined by Geary. Cf. also *Herpo dux genere Francus* who was given ducal command over the Transjurans (*ibid.* 43).

70 In passing, it is worth noting that the territorial designation is as old as the name of the *gens*. *Francia* is found in early fourth-century sources (*Panegyrici Latini*, VI 10, a. 310, trans. by C.E.V. Nixon and Barbara Saylor Rogers, Latin text of R.A.B. Mynors [Berkeley], 1994) and appears on the right bank of the Rhine in the Peutinger Table. One can readily argue for a Roman perspectives here, but the tendency to insist on the personal character of early states is a little surprising in the view of the assertion by the philologically inclined that **theotho* (supposedly equivalent of *gens*, see n. 17, above) could mean land as well as people. The methods of philological history are selective. The model prevailing among many German historians is that the early state, like the *gens*, must have been a *Personenverbandsstaat*. The personal/territorial distinction is artificial.

71 Patrick Amory, *People and Identity in Ostrogothic Italy, 489–554* (Cambridge, 1997); pp. 168–89, 178–179 (the reference to Jordanes needs to be looked at in the original), 188–91, may serve as examples.

72 *Stammesbildung und Verfassung*, pp. 512–541.

The term Franks appears in Roman sources in the late third century as a general term for various peoples on the right bank of the lower Rhine; by the time of its appearance, the name was clearly well established.⁷³ The term is Germanic but the circumstances that gave rise to it are unknown. Whether the currency of the term in the fourth century is due to the Rhineland peoples themselves or the Romans is an open question, but most scholars have tended to accept that the term arose as a name for a confederacy of the Rhineland peoples. Interestingly enough, Wenskus rejected the idea of a confederacy of equal tribes, a concept foreign to his understanding of early political conditions.⁷⁴ Viewing the term as an adjectival substantive meaning the 'free' or 'bold', he preferred to see it in origin as an epithet for one of the older tribal names later widely adopted through self-association by neighbouring peoples.⁷⁵ Among those were the Salians, the source of the Merovingian house and the Frankish kingdom in Gaul, who first appear in fourth-century sources.⁷⁶

The search for the origins of the Salians in one of the previously attested names of the Rhineland peoples has long been, and remains, a keenly pursued, if fruitless enterprise. Wenskus rejected the usual local suspects, in particular the *Sugambri*, whose name appears in Remigius' famous injunction to Clovis at the time of his baptism: 'Gently bow your head, Sicamber; worship that which you have burned; burn that which you have worshipped'.⁷⁷ The *Sugambri*, a people of uncertain

73 *Panegyrici Latini* XI, a. 291. Aurelius Victor's history, referring to Franks under Gallienus (a. 260–67), is not a primary source: Tim Barnes, 'The Franci before Diocletian', in *Historiae Augustae Colloquium Genevense*, ed. by Giorgio Bonamente and François Paschoud, *Historiae Augustae Colloquia*, NS 2 (Bari, 1994), pp. 11–18; cf. Murray, *From Roman to Merovingian Gaul* (as in n. 6 above) nos. 1, 2.

74 He claims the idea is a model derived from nineteenth-century nationalism: *Stammesbildung und Verfassung*, p. 77, and cf. pp. 460–61. He cites earlier rejections of the *Bund* idea by Waitz, Büttner, and De Boone, who come to different conclusions; he might have added Eichhorn (as in n. 39, above).

75 In Wenskus' classification system, the Franks are a *Stammeschwarm*, a shifting, open association of tribes (cf. *Stammesbildung und Verfassung*, p. 53); his reading of Libanios' *Oratio* LXIX is forced (p. 518 n. 585; Libanios, *Opera*, ed. by R. Foerster, vol. 4 [Leipzig], 1904). Wenskus draws on African ethnographic examples for the notion of self-association (p. 78); association with peoples in the past, well attested in the Middle Ages, seems to me a distinct practice.

76 Wenskus' view that the Salians were the leading people of the Franks in the mid-fourth century is based on a mistaken understanding of Ammianus Marcellinus XVII 8.3 ('petit primos omnium Francos'): cf. XIV 9.4; XVI 2.12; XVI 8.12, etc.

Matthias Springer's recent interesting contention that the ethnic term *Salii* arose as a result of Julian's misunderstanding of a native word seems to me to involve a series of possibilities regarding the sources that in the end are not convincing individually and therefore fail doubly as a thesis of interconnected arguments: 'Gab es ein Volk der Salier', in *Nomen et Gens: Zur historischen Aussagekraft frühmittelalterlicher Personennamen*, ed. by Dieter Geuenich, Wolfgang Haubrichs and Jörg Jarnut, *Ergänzungsbände der Reallexikon der Germanischen Altertumskunde* 16 (Berlin, 1997), pp. 58–83. Among the less likely of the possibilities is the beginning point of the argument, namely that Julian decided to use a word he heard from the Franks for the first time in his campaign of 358.

77 Gregory of Tours, *Historiarum libri* X II 39, ed. by Bruno Krusch and Wilhelm Levison, MGH SRM I/1, 2nd ed. (1937–51). Modern exponents of the *Sugambri*-thesis tend to be divided on whether Sugambrian descent should be attributed to the Franks as a people or just the Merovingian house. The distinction is moot since the main premise is untenable.

linguistic affiliation, had been a thorn in the side of the Romans in the times of Caesar and Augustus; early in the first century they were finally annihilated and the survivors transported to Gaul.⁷⁸ Wenskus followed the view, common since the late nineteenth century, that the reappearance of the name in fifth-century sources was due to antiquarianism, not the persistences of first-century ethnic tradition. But in an argument anticipating the current ready detection of ethnic politics, he proposed the provisional hypothesis that Remigius' injunction reflected a political program whereby the king hoped to unify various Rhineland elements under an invented identity. Although the suitability of the Sugambrian name for this purpose can be argued, it is not particularly evident nor is there evidence for use of the name by the Frankish kings. The simplest explanation for Remigius' words is the late Roman rhetorical tradition of which the bishop of Rheims was a master.⁷⁹

As a source of genuine tradition, Wenskus' eye fell on a more distant candidate: the *Chauci* on the North-Sea coast of northern Germany. The *Chauci*, like the *Sugambri*, were a people of the early Empire whose name reappears around 400 in the mélange of antique ethnic appellations and upside-down geography of Claudian's verses.⁸⁰ A connection with the early Franks is not claimed by any ancient or Merovingian source, but depends on the modern deployment of asterisk philology, the inventive interpretation of late sources, and a profound faith in the undetectable, subterranean passage of ancient traditions. The argument is again based on names: specifically the *Hugas*, the name of a people mentioned in *Beowulf* associated with the Franks and Frisians; the personal name Hugo or Hugh attributed by Widukind of Corvey in his Saxon history (ca. 967) to the father of the early sixth-century Merovingian Theuderic I; and, in the early eleventh-century annals of Quedlinburg, another Saxon history, the attribution of the name Hugo, as a term for Frank, to the same Theuderic, and the claim that once upon a time all the Franks were called *Hugones* after a duke of that name. These names, so it is argued, derive, despite phonological difficulties, from a Germanic **hauhos*, the

78 Caesar, *Bellum Gallicum* IV 16, 18, 19; VI 35. Strabo, *Geographia* IV 3.4, ed. and trans. by Horace Leonard Jones, vol. 2, LCL (Cambridge, MA, 1923); Tacitus, *Annales* II 26.2, XII 39.2, ed. and trans. by John Jackson, vol. 2 & 3, LCL (Cambridge, MA, 1931). Suetonius, *Aug.* 21, *Tib.* 9, ed. and trans. by J.C. Rolfe, vol. 1, LCL (Cambridge, MA, 1951). Thomas Anderson Jr.'s supposition of a left bank Sugambrian ethnic 'reservation', or colony, supplying Roman troops from the time of the Julio-Claudians to the Merovingians is quite unsupported in the sources: 'Roman Military Colonies in Gaul, Salian Ethnogenesis and the Forgotten Meaning of *Pactus Legis Salicae* 59.5', *Early Medieval Europe* 4/2 (1995): 135–144, esp. 136–37 and n. 31. There is no regiment of the *VI cohors Sugambriorum* in the *Notitia dignitatum*, Or. XXXI 66, ed. by Otto Seeck (Berlin, 1876), p. 66, with n. 19.

79 Cf. Sidonius Apollinaris' letter to Remigius, *Epist.* IX 7 (*Sidonius: Poems and Letters*, ed. by W.B. Anderson, vol. 2, LCL [Cambridge, MA], 1965).

80 Claudian, *In Eutr.* I 379 (Honorius giving them *leges*); a right-bank *Sygambria* appears a few lines later (383). Idem, *De cons. Stilichonis* I 225; nearby are references to *Salii*, *Sygambri* and *Franci*. As a result of Stilicho's efforts, Claudian seems to think that the Gauls were free to pasture their flocks on the middle Elbe, among the Franks! Elsewhere Claudian deals happily in Assyrians, Parthians and Medes. *Claudian*, with trans. by Maurice Platnauer, vol 1, LCL (Cambridge MA, 1922).

equivalent of the *Chauci* of early Latin sources.⁸¹ This fine example of nineteenth-century *Germanistik* has long been used to argue that the *Chauci* were one of the peoples making up the Franks or that the Franks arose from the *Chauci*, and in epic tradition bore their name.

Wenskus' spin on this venerable thesis was to claim *Chauci* origins only for the *Traditionskern* connected with the Merovingian house, thus, incidentally, leaving the *Chauci* available for Saxon ethnogenesis as well. Enlisting another old theory in support of a northern origin, he also argued that behind Gregory of Tours' famous reference to the Pannonian origin of the Franks lay a tradition that actually mentioned a northern placename, such as Baunonia, a location on the North Sea referred to by Pliny in the first century, and which the bishop interpreted as the Pannonian birthplace of his hero St. Martin.⁸²

This chain of conjecture is revealing about the premises that drive Wenskus' understanding of European and German history. The choice of the *Chauci* as the source of Merovingian tradition is due to no accidental conjunction of limited sources, uncritical methodology, and a naive desire to discover the past. Underserving candidates have to be eliminated, like the *Sugambri*, locals with dubious linguistic credentials and, as it turns out, despite their location in the future *Francia*, the wrong geographical position, or that folk with the resonating name, the *Marvingi*, whose eastern direction in Ptolemy's second-century *Geography* is suitable but not their southern placement, close to Gregory's Pannonia.⁸³ There is more at work than just the compulsion to deploy bad evidence. A North-Sea origin for so-called Merovingian tradition in the archaic perimeter of the ancient world provides, as other locations do not, a source for the elements of sacral-kingship theory, with its love of ritual oxcart, royal fertility rites, and libidinous

81 *Beowulf and the Fight at Finnsburg*, ed. by Frederick Klaeber, 3rd ed. (Boston, 1950), lines 1202–14, 2354–68, 2501–08 (*Hugas*), 2911–21 (*Hugas*); there is no reason to take *Hugas* as a synonym for the Franks in these lines. Widespread, though not universal, agreement now exists that the *terminus ad quem* for the composition of *Beowulf* in its present form includes the ninth and tenth centuries. Widukind, *Res gestae Saxonice* I 9, ed. by Paul Hirsch and Hans-Eberhard Lohmann, 5th ed. (1935), pp. 10–11. *Annales Quedlinburgenses*, ed. by Georg Heinrich Pertz, MGH Scriptores in folio III (1839), p. 31. The sources are appraised by Walter Goffart, 'Hetware and Hugas: Datable Anachronism in *Beowulf*', in *The Dating of Beowulf*, ed. by Colin Chase (Toronto, 1981), pp. 83–100. On the phonology, cf. Wenskus, *RGA2* 4, s.v. *Chauken* I, II: 'Möglicherweise haben wir auch hier, wie so oft in der Namenwelt, besondere Bedingungen vor uns, die das Problem komplizieren und eine eindeutige Antwort unmöglich machen' (p. 397).

82 Gregory of Tours, *Hist.* II 9. Pliny, *Hist. Nat.* IV 94. Geary, *Before France and Germany*, p. 77, somehow imagines that a Pannonian origin was also intended to bring the Franks close to the homeland of the prestige-laden Goths. Geary's Franks suffer from a severe case of Goth-envy.

83 Ptolemy, *Geog.* II 10. It is interesting that a recent effort to plumb the philological depths of Merovingian personal names assumes (surely wrongly) that the element *mar-* is a clear sign of Merovingian connections: Eugen Ewig, 'Die Namegebung bei den ältesten Frankenkönigen und im merovingischen Königshaus', *Francia* 18/1 (1981): 29.

sea-beasts.⁸⁴ The *Chauci*, an offshoot of whom Wenskus detects in Ireland in the *Kaukoi* of Ptolemy's *Geography*, are also included by him among that select group of *Stamm* names, including the putative neighbours of the *Chauci*, the *Teutones* and *Ambrones*, whose expansion from the north-German, south-Scandinavian *Urheimat* shaped European history even before linguistic differentiation.⁸⁵ It is difficult to escape the conclusion, that for Wenskus, the *Chauci*-origin of the Frankish *Traditionskern* certifies, through the creative and sacrally conceived power of *Gentilismus*, the domestic origins of German history, bringing the beginnings of Frankish – and by extension, German – history back home as if by magic to the north German *Urheimat*.

Apart from the *Traditionskern* motif, Wenskus' account of Frankish origins sticks pretty well to the philological premises of nineteenth-century *germanische Stammeskunde*. His treatment of the foundation of the Frankish kingdom on imperial territory on the other hand closely adheres to the standard themes of the lordship theory: the seizure of Gaul by various Frankish groups, carried out by means of retinues; the rise of Clovis, leader of the Salian Franks, and in Wenskus' terms, the victory of Merovingian tradition; the acquisition of imperial domains settled by *coloni* and military colonists called *laeti*; the parallel settlement by the Merovingians of their dependents, the king's free (*Franci homines*), on crown lands. A distinguishing feature of Wenskus version of these events and the character of the Frankish state was his insistence on the ancient Germanic roots of the settlement of military dependents on crown lands, which he saw as a practice not patterned after Roman administrative procedures but merely rationalized by them.⁸⁶ His remaining treatment of Frankish tradition is limited to explaining the preservation of the name in the Paris Basin and in the east-Rhenish territory of Franconia – which he attributes to the former's close association with the Merovingian monarchy and the latter's colonization by the king's free.

What is wrong with this version of the origins of the Franks and the Merovingian kingdom? A sketch of what Frankish sources actually do say about origins and tradition suggests the depth of the problem. No mention of *Chauci* tradition or sacral kingship is to be found: sacral kingship is an idea derived

84 Such notions can perhaps be conjured up for many places, but the *locus classicus* that at least mentions wagons and fertility and a location near the sea is Tacitus, *Germania* 40, on the goddess Nerthus.

85 'In diesen Fällen dürfen wir wohl mit einiger Bestimmtheit annehmen, daß die Stammestradition in die Zeit vor der Ausbildung der germanischen Sprachgemeinschaft zurückreicht': *Stammesbildung und Verfassung*, p. 298. The cases include *Teutones*, *Ambrones*, *Chauci*, *Ingaevones*, *Eudoses*, *Hermunduri*, *Suebi*, Goths and Frisians. See above, p. 284. In 'Religion abâtardie' (pp. 190–91 with n. 64, 201, 217–18), Wenskus returns to the Irish *Kaukoi*, now called Germanic and identified with an apparently historical *Uí Cúaich*, in a string of literary and philological allusions that are intended to establish the north-German religious foundations of Fredegar's story of Merovech's birth (*Chron.* III 9).

86 See above at n. 54.

not from the religious-political rituals of primitive Franks but the irrational conceits of modern political thinking.⁸⁷ The king's free too are invisible: this concept is the product of an extreme ideological reaction to the democratic aspirations of nineteenth-century legal history.⁸⁸ What *can* be found are relatively late sources that reflect retrospectively on the early history of the Franks and their kingdom.

The first of these is the *Histories* Gregory of Tours, who completed his work in 594, the year of his death. Although he alludes in a matter-of-fact fashion to a contemporary view that the Franks came from Pannonia, his real concern was the origins of Frankish kingship not the Franks as a people.⁸⁹ One could construe this circumstance in favour of Wenskus' model. But in Gregory's approach, the origins of Frankish kingship were treated as a problem to be solved not a story to be recounted, a circumstance that hardly speaks to the supposition of the royal house as the essence of the *gens*, imprinting its own traditions upon the ingenuous ethnic consciousness of its followers and subjects. Gregory's efforts, which seem to have been focused and directed, have left to us important excerpts from the fourth and fifth-century histories of Sulpicius Alexander and Renatus Profuturus Frigeridus, whose three names, to paraphrase Gibbon, show him to be a Roman citizen, a Christian, and a barbarian.⁹⁰ The best that Gregory could do with this material is speculate on the possible connections of the current line of kings to an impressive mid-fifth-century king of the Franks called Chlodio.⁹¹ So much for the ideological cultivation and propagation of genealogy by the Merovingian *Traditionskern*.⁹²

Gregory's history provided the basis for later historians, but they were hardly content with his meagre offerings, especially as historical interest now encompassed the problem of the origins of the Franks as a people. Historians extended the history of Franks and the genealogy of its kings deep into the past, but in a direction that has often caused bitter lamentation among modern searchers for

87 The Frankish evidence is considered in my 'Post vocantur Merovingii: Fredegar, Merovech, and "Sacral Kingship"', in *After Rome's Fall: Narrators and Sources of Early Medieval History, Essays Presented to Walter Goffart*, ed. by Alexander Callander Murray (Toronto, 1998), pp. 121–152; [above ch. 1]. On the ox-wagon of the last Merovingians, cf. also Adolf Gauert, 'Noch einmal Einhard und the letzte Merowinger', in *Institutionen, Kultur und Gesellschaft im Mittelalter: Festschrift für Josef Fleckenstein*, ed. by Lutz Fenske, Werner Rösener and Thomas Zotz (Sigmaringen, 1984), pp. 59–72.

88 See p. 290 and n. 52 above.

89 *Hist.* II 9–10. For the contemporary context for the Pannonian reference, see Goffart, at nn. 14–15 in this volume [namely *On Barbarian Identity*].

90 Edward Gibbon, *The History of the Decline and Fall of the Roman Empire* (London, 1776–88), ch. 30, n. 89.

91 Gregory did not have access to the Gallic panegyrics of the late third and early fourth centuries. The first references to the Franks and *Francia* are to their kings: *Panegyrici Latini* X 10; XI 7; VI 10 (*reges Franciae*).

92 Gregory was anything but loath to give Clovis distinguished ancestry – but the proof he had to rely on was the king's victories in battle, not genealogy (*Hist.* II 10).

the traditions of Germanic antiquity. The solution to Frankish origins as we find it in the seventh-century historical compilation of Fredegar and the early eighth-century *Liber Historiae Francorum* drew on a theme that had already been widely used in European historiography. The Romans and some other western peoples, taking their cue from Greek historiography, had long since claimed to owe their origins to the dispersal of Trojans after the sack of Troy, the great event of Hellenic history. In Fredegar and the *Liber Historiae Francorum* the motif of Trojan descent was applied to the Franks, whose origins now, and for almost a millennium hereafter, were traced to the Fall of Troy.⁹³

The significance of this view has not been exhaustively studied, though one might doubt its relevance to the practical realities of ethnicity. I will here confine myself to two observations regarding its bearing upon Wenskus' theory of Frankish ethnicity. First, ethnic thinking, Wenskus assured us, conceived of the *gens* as a community of descent, a clan in a large sense; he understood by this belief in descent from a common ancestor or ancestral pair.⁹⁴ Such a notion is in fact rarely attested in the Early Middle Ages and certainly not in Frankish texts.⁹⁵ Fredegar

93 Fredegar, *Chron.* II 4–6, 8–9 and III 2, 9. *Liber Historiae Francorum* 1–4, ed. by Bruno Krusch, MGH SRM 2. Whether Gregory of Tours knew a version of the story still remains an open question. Jonathan Barlow's attempt to argue that the theory of Trojan origins was already applied to the right bank of the Rhine in the fourth century is based on a misreading of Ammianus Marcellinus: 'Gregory of Tours and the Myth of the Trojan Origins of the Franks', *Frühmittelalterliche Studien* 29 (1995): 86–95. In Bk. XV 9 1–7 Ammianus recounts various points of view on the origins of the Gauls, first autochthonousness, second Dorian immigration. The claim of the Druids is next, namely that some part of the Gauls was made up of refugees from war and flood from remote islands and regions across the Rhine. Then comes the fourth claim, that of Trojan immigration: 'Aiunt quidam paucos post excidium Troiae fugitantes Graecos ubique dispersos loca haec occupasse tunc vacua'. Barlow takes the *haec loca* as the lands deserted by the refugees of the Druidical theory, but the passage recounts a theory independent of that of the Druids; the *loca haec* [. . .] *tunc vacua* are the regions of Gaul in primeval times prior to being inhabited, not territories across the Rhine. Finally comes the view of the majority of the Gauls (*regionum incolae*) regarding their origins. Ammianus' subject is Gaul and Gallic civilization, not *insulae extimae* and *tractus transrhenani*.

In 'Trojamythos und fränkische Frühgeschichte', in *Die Franken und die Alemannen bis zur "Schlacht bei Zülpich", 496/97*, Ergänzungsbände zum Reallexikon der Germanischen Altertumskunde 19, ed. by Dieter Geunich (Berlin, 1998) pp. 1–30, Eugen Ewig dates both the Fredegarian and *Liber Historiae Francorum* versions of the Trojan tale prior to Gregory and proposes the bishop's knowledge of them. The argument is compelled to assume much, including multiple authorship of Fredegar, the domestic pagan myth of the Merovingian house, and an implausible interpretation of the epilogue of *Lex Salica*.

94 See n. 26 above.

95 Even Isidore of Seville's etymologically driven interpretation of *gens* (*Etymologiae* IX 2.1, ed. by W.M. Lindsay, vol. 1, Oxford, 1911), fails to measure up to Wenskus' notion of primitive ethnic thinking: 'Gens est multitudo ab uno principio orta, sive ab alia natione secundum propriam collectionem distincta, ut Graeciae, Asiae'. ('*Gens* is a large group sprung from the same beginnings, or distinguished from other peoples by coming together of its own accord, like the people of Greece or Asia'.) The first definition of the two could include a descent group but is still cast in abstract terms. Cf. *Etymologiae* IX 4.4 on *genus* (in the sense of family): 'Genus aut a gignendo et prognerando dictum aut a definitione certorum prognatorum, ut nationes quae

and the *Liber Historiae Francorum* understood the Franks to be descendants of the Trojans, but as a people one from the other, not as a descent group from a single point.

Second, Fredegar and the authors of the *Liber Historiae Francorum*, like Gregory of Tours before them, were unaware of Frankish ‘gentile’ tradition as that concept is understood by Wenskus. This was not a cultural or ideological oversight on their part. All these historians dealt at some point with genealogy and common tales of various kinds, and Fredegar and the author of the *Liber Historiae Francorum* were intensely interested in fleshing out the narrative they inherited from previous sources.⁹⁶ To picture them overlooking the cultivated ancient traditions of an ethnically conscious, ideologically combative political group around the monarchy (*Traditionskern*) is to wed credulity to fancy.⁹⁷ They missed Wenskus’ ‘gentile’ tradition because it was not there. Their solution to the problem of Frankish origins was, we would now recognize, an invention designed to overcome the deficiencies in the historical record and cultural traditions of the Merovingian kingdom and to expand the horizons of Frankish origins. These deficiencies have not somehow or another been made up by the passage of time. Wenskus’ model of ethnic development, despite its learning, is no less an invention designed to overcome the same deficiencies and to integrate the study of Germanic antiquity into the prevailing scholarly conventions of his day.

V

In 1907 Hector Munro Chadwick wrote *The Origin of the English Nation*. From that time to the present, his ideas have percolated through the thinking of English-language medievalists concerned with both insular and continental social and cultural

propriis cognationibus terminatae gentes appellantur’. (‘Genus is so-called from giving birth and generating or from the stipulation of a number of those who have been born, just like *nationes* which are set apart through internal kinship relations and are called *gentes*’.) The claims of etymology aside, Isidore saw peoples as self-defined groups reproducing themselves through birth.

The curious classification of peoples, based on Tacitus’ *Germania* 2 but dating from ca. 520, which views the western peoples as the descendants of three brothers, Erminus, Inguo, and Istio, is not Frankish and is now believed to have an originally Byzantine provenance: see Walter Goffart, ‘The Supposedly “Frankish” Table of Nations: An Edition and Study, in *Frühmittelalterliche Studien* 17 (1983): 98–130 (rprt. in his *Rome’s Fall and After*, London/Ronceverte, 1989, pp. 133–165).

96 Most of the tales are brought together in Murray, *From Roman to Frankish Gaul*, nos. 78–102. Fredegar’s interest in stories extended well beyond the Frankish realm.

97 The one instance where court influence may well be detected in Fredegar, the etymological tale of Merovech’s conception (*Chron.* III 9), points to Roman not Germanic tradition, and not to authentic myth, but learned rhetorical conceit: see Murray, ‘*Post vocantur Merohingii*’, pp. 146–68 [above ch. 1].

history.⁹⁸ Many of his views, though by no means all, have insinuated themselves rather quietly among the standard features of the scholarly landscape. The implications of his work have been debated, even in recent times.⁹⁹ In 1961 Reinhard Wenskus wrote *Stammesbildung und Verfassung*, relying upon very similar ideas.¹⁰⁰ It too was about the origins of a nation. *Stammesbildung* was immediately hailed as a milestone in German scholarship.¹⁰¹ Subsequent apotheosis elevated Wenskus' ideas, and often not the better ones, into a model of ethnic development that was promoted in an increasingly competitive international academic world as a revolutionary new approach to the history of the European peoples and their ethnic development.¹⁰² Wenskus deployed ideas current in recent works of German social science but these were adapted to an historiographical framework remarkable for its adherence to traditional modes of philological history and a vulgar theme of German history: the creative, dynamic role of the Germanic *Urheimat* in shaping Europe's destiny. In nineteenth-century scholarship, the north-German homeland was seen as furnishing through national migrations the legal and institutional foundations of modern European history. In the increasingly racialist and racist

98 As far as I know, the intellectual background of Chadwick's ideas has not been investigated, and unfortunately Chadwick was a member of that ample tribe of British scholars which finds historiography a distraction. Some sources could very well lie in French scholarship and in older German ideas about retinues that most of Chadwick's contemporaries thought had been superseded; for example, Eichhorn (as in n. 30) regarded *Gefolgschaften* as a basis of tribal formation, especially in frontier areas.

It is interesting to note that J.B. Bury, the noted classicist, was lecturing in Cambridge at the same time as Chadwick and telling his students that in late imperial times the Germanic state outside the frontiers "might have a king or it might not, but in either case it was virtually a democracy" in which the people were sovereign (*The Invasion of the Europe by the Barbarians* [London, 1928; Norton reprint, 1967], p. 12). Bury nevertheless perfectly well realized the composite nature of the peoples appearing in late imperial sources.

99 Richard Abels, *Lordship and Military Obligation in Anglo-Saxon England* (Berkeley, 1988), pp. 3–4, 25, 27–28, may not be the most recent work to invoke Chadwick, but it is notable for its appeal also to the German theory of the king's free (pp. 20–21).

100 An indirect encounter with Chadwick occurs in *Stammesbildung und Verfassung* (p. 75, n. 387) where T.G.E. Powell, *The Celts* (London, 1958), is the target of some misdirected criticism. Powell briefly summarizes Chadwick's views as established opinion, without bothering to cite their author (p. 52).

101 The word milestone was used by the prehistorian Hachmann (as in n. 46, above); his criticism of the book, however, is devastating. The cryptic review by Wallace-Hadrill (*English Historical Review* 79 (1964): pp. 137–139) is hardly an hurrah. By modern lights, the reviewer got the wrong message, seeing the kernel of the study as the proto-history of the Germanic peoples: 'To the general historian, the main interest of this may well lie in the author's frank admission that disentangling Germans from Germans is sometimes less difficult than disentangling Germans from Celts. It is the Celts and not the Romans who emerge as the first architects of modern "Germanentum"'. (This is not an unreasonable reading.) Regarding the role of *Gefolgschaften*: 'Dr. Wenskus's conclusion is not out of line with modern German views on the matter'. Anglo-Saxonists are directed to his *Traditionskern* theory 'for a general lesson' on the constitution of a people.

102 The campaign goes on: Patrick Geary's advertising note to Wolfram's *Roman Empire and Its Barbarian Peoples* suggests that the synthesis it contains 'could bring about a sea change in how contemporary Western society understands its relationship to the past'.

theories of the late nineteenth and twentieth century, it provided the superior aesthetic and religious sensibilities of advanced culture and supplied the European peoples with their creative ruling classes that brought regional cultures to the apogees of their development. In Wenskus' version of the model, stripped of race, belligerent nationalism, and largely bereft of institutions, the *Urheimat* was the source for the concepts of *Gentilismus* and *Traditionskerne*, understood as the creative, if often scarcely rational, forces of ethnic political thinking.

The *Traditionskern* idea will always elude demonstration and refutation. Like the conveniently cremated bones of the Nordic race in pre-war prehistory, it leaves no trace. It is unattested in sources: the evidence for it is always indirect – splinters of tradition, allegedly masked by a cultural setting far removed in time, and often in place, from the origins that supposedly gave them birth, or buried in the meanings of words dispossessed of context. Whether Wenskus' concepts will appear at all stylish decked out according to the current vogue for Pierre Bourdieu's sociology or the like, only time will tell. One may be foolhardy to predict the vicissitudes of fashion, but I would find it surprising if they find lasting appeal even in their own *Urheimat*.

THE COMPOSITION OF THE HISTORIES OF GREGORY OF TOURS AND ITS BEARING ON THE POLITICAL NARRATIVE

From: *A Companion to Gregory of Tours*, ed. Alexander Callander Murray, Brill's Companions to the Christian Tradition 63 (Leiden: Brill 2016)

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1 Preliminary: the books of the *Histories* and their scope

Gregory finished writing his *Histories* in 594, the twenty-first year of his episcopate and, as it happened, the year of his death.¹ The *Histories* is a large, complicated

1 Some of the conclusions and arguments of this paper were first presented in "Chronology and the Composition of the *Histories* of Gregory of Tours," *Journal of Late Antiquity* 1/1 (2008): 157–196, and others given in "The Political Perspective of Gregory of Tours' *Histories*," a talk delivered before the Medieval Academy of America's 85th Annual Meeting, Yale University, March, 2010. Cross-references below to Murray, "Chronology," will point readers to slightly more extensive discussions of individual points; [and for some of which, see below Appendix 2].

[Abbreviations used in the present text and Appendix 2 include the following: Gregory of Tours, *Hist.* = *Historiarum libri X*, ed. Bruno Krusch & Wilhelm Levison, MGH SRM 1.1 2nd ed. (1937–51);

work in ten books, the scope and contents of which are not easily mastered. It amounts to over 120,000 words in a language noted for its succinctness. Its text occupies 537 pages, including apparatus, in the standard Latin edition, and it takes a fat Penguin book of 540 pages to render its text in English.² It begins broadly as a kind of world history with biblical and secular material in the fashion of Jerome and Orosius, but by Book 2 soon begins to focus on Gaul in imperial times and comes down, by the end of Book 10 to 591, the sixteenth year of Childebert II, king of Austrasia. The chronological profile of the work deserves some consideration.

Book 1	Covers 5596 years from Creation to 397 and the death of Saint Martin, Gregory's hero and predecessor as bishop of Tours. (Martin remains a living force in the events of Gregory's own time.)
Book 2	Covers 114 years, from the death of Martin to the death of Clovis in 511, the founder of the Frankish kingdoms of Gregory's time.
Books 3 & 4	Cover 37 and 27 years respectively, encompassing 64 years and ending with the death of the Austrasian king Sigibert I in 575, the second year of Gregory's episcopate.
Books 5 to 10	Cover a mere 16 years from 575–591; these remaining 6 books are organized in annal form, based on the regnal dates of Childebert II, Sigibert's successor.

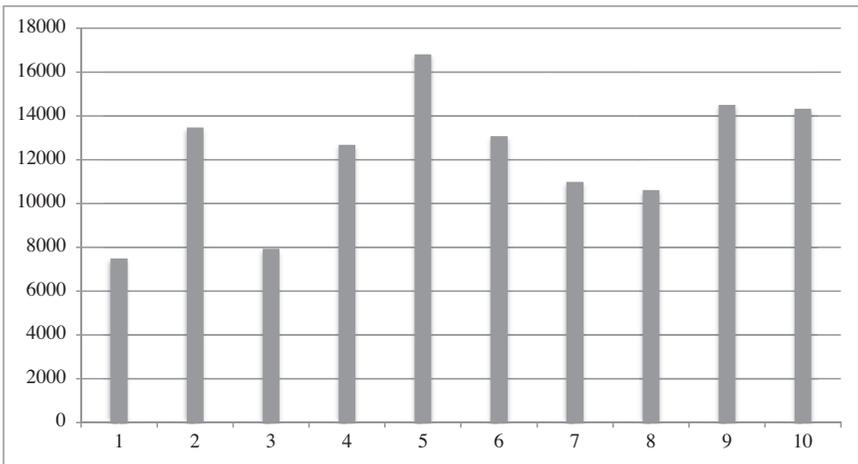
The dimensions of the books vary, though the disparities are modest to small. The books range in size from about 7500 words to well over 16,500. The small books are the first, dealing with biblical and imperial history and the early Christianization of Gaul; and the third, sketching out the reigns of the sons of Clovis from 511 to 548. The largest is Book 5, focussed on the couple, King Chilperic and his wife Queen Fredegund, but this covers five years (576–580). The rest of the books, all substantial, includes much shorter periods of time. Book 6 comprises the last three years of Chilperic's reign, concluding near the end of 584. The period encompassed by Books 5 and 6 deal with the years 576–584 in which Chilperic was king over Tours. Book 7 covers less than a year and treats the Gundovald revolt. Books 8–10, each covering from less than two years to two years, brings the narrative down to 591. Books 7 and 8, dealing with the revolt of Gundovald, appear to be the epicentre of the narrative, Book 7 taking in about half a year, as does most of Book 8. Despite the prominence of the two

Miracula et opera minora, ed. Bruno Krusch, MGH SRM 1.2 (1885): *GC* = *Liber in gloria confessorum*; *GM* = *Liber in gloria martyrum*; *VM* = *Libri I–IV de virtutibus sancti Martini episcopi*; *VP* = *Liber vitae patrum*. References to Krusch are to the *Praefatio* of his edition of the *Hist.* and notes to the text. Translations of *Histories*: Giesebrecht = Wilhelm Giesebrecht (Berlin, 1851); Dalton = O.M. Dalton (Oxford, 1927); Buchner-Giesebrecht = Rudolf Buchner, Wilhelm Giesebrecht (Darmstadt, 1955); Thorpe = Lewis Thorpe (Harmondsworth, 1971); of *VP*: Edward James, *Life of the Fathers* (Liverpool 1991). Venantius Fortunatus, *Carm.* = *Carmina* ed. Friedrich Leo MGH AA 4.1 (Berlin, 1881)].

2 Figure 12.1 gives some data based on word counts.

arch villains Chilperic and Fredegund in Books 5 and 6 (and in the literature on the *Histories*), Gregory actually devotes two-thirds more coverage to the six years when Childebert II controlled Tours (from 585 onward) than on the almost nine years Chilperic was ruler.

The simplest lesson to be learned from the above, straightened, account of the chronological distribution of Gregory's work is that the *Histories* is essentially a history of contemporary events. In fact, among Latin historians of the early Middle Ages, Gregory of Tours stands out as the most prolific recorder of such. Two-thirds of the *Histories*' contents deal with affairs from the end of 575, when Childebert II became king of Austrasia, down to 591. The skewed chronological



Bk	Words	No. of years	Scope
1	7502	5596	Creation to †St Martin ca 400
2	13460	114	ca 400 to †Clovis a. 511
3	7925	37	511 to to †Theudebert a. 548
4	12684	27	548 to †Sigibert I a. 575
5	16795	5	576-580
6	13070	3+	581-584 to †Chilperic
7	10989	< 1	584-585
8	10607	< 2	585-87
9	14506	2+	587-89
10	14328	2	590-91
Total	121866		

Figure 12.1 Word count of the books making up the *Histories*

Note: The word counts are based on the substance of each chapter and a simple heading and do not include tables of contents or various preliminary matter in the MSS.

profile this produces, with books down to Book 6 constantly reflecting smaller and smaller chronological units is not unique, though its scope is hard to match in Antiquity. Two hundred years earlier, Ammianus Marcellinus, generally regarded as the last great classicizing Latin historian, produced a Latin history with the same telescoping feature; Ammianus' earlier books started with the reign of Nerva, picking up where Tacitus left off, but the burden of his narrative by far was the 4th century and especially the reign of the emperor Julian, Ammianus' pagan hero, and his successors down to 378.³

The lopsided chronological structure of the *Histories* does not mean that the early books are unimportant. The treatment of biblical and early ecclesiastical history is critical for establishing a perspective on the spiritual meaning of human history and is hardly irrelevant to understanding Gregory's handling of the petty events of his episcopacy, which, it is fair to say I think, he regarded as coupled to the verities of history as he understood it. And the lengthy Book 2 stands out for its extensive treatment of Clovis' career, a subject, encompassing over a third of the book, obviously important to Gregory's conception of his own day, but also one about which he was imperfectly informed. This book has often consumed the interest of historians and general readers alike, at the expense of the later, thicker, descriptions of contemporary affairs.

Another feature of the contemporary emphases of Books 5–10 needs to be stressed. Gregory's treatment of chronology in the early books is often vague, and sometimes seems inaccurate.⁴ But in Books 5–10 it becomes exacting, for these books are arranged in the form of annals, with each year (none are omitted) introduced by the regnal date of the Austrasian king Childebert II, starting in December 575.⁵ Although this does not stop Gregory when he wants to from casting his eye back and forward chronologically, sometimes by many years,⁶ the regnal years of Childebert become the format for the recording of events, even to the extent of postponing the completion of an ongoing event until the chronologically

3 For the present, disputed *status questionis* on Ammianus' perspective, see T.D. Barnes, *Ammianus Marcellinus and the Representation of Historical Reality*, Cornell Studies in Classical Philology 56 (Ithaca/London, 1998) and John Matthews, *The Roman Empire of Ammianus Marcellinus* (Baltimore, 1989). Cf. Murray, "Chronology," pp. 157–59. And on the last book cf. Michael Kulikowski, "Coded Polemic in Ammianus Book 31 and the Date and Place of its Composition," *Journal of Roman Studies* 102 (2002): 79–102.

4 However the jury is out on the chronology of Clovis' career. The best introduction to the Clovis problem is Marc Spencer, "Dating the Baptism of Clovis," *Early Medieval Europe* 3/2 (1994): 97–116. There are also problems in the post-Clovis period down to the early years of Gregory's own lifetime. For the literature on Quintianus, his expulsion from Rodez, and the harrying of the Auvergne, see James, *VP* 6, nn. 4, 9.

5 For practical purposes I treat this, and succeeding years, as beginning January 1st of the following year. Childebert's first year is thus AD 576. As far as I can tell this convenience does not materially distort Gregory's chronology. See Table 12.1.

6 See below regarding Mummolus, Rauching, Sagittarius, and Hermenegild.

Table 12.1 Books and chapters keyed to the regnal years of Childebert II*

Bk 5	5.1–14(a)	576	I
	5.14(b)–24	577	II
	5.25–26	578	III
	5.27–32	579	IV
	5.33–50	580	V
Bk 6	6.1–13	581	VI
	6.14–24	582	VII
	6.25–32	583	VIII
	6.33–46	584	IX
Bk 7	7.1–23		
	7.24–47	585	X
Bk 8	8.1–37		
	8.38–42	586	XI
	8.43–46	587	XII
Bk 9	9.1–19		
	9.20–25	588	XIII
	9.26–44	589	XIV
Bk 10	10.1–23	590	XV
	10.24–31	591	XVI

*For the sake of convenience, the year in Arabic numerals corresponds to the Roman calendar year beginning in January. Childebert's first year actually began at Christmas 575 but is listed above as 576. Roman numerals correspond to the year numbers of Childebert's reign as given by Gregory.

appropriate point.⁷ Even within years, Gregory tended to lay out events chronologically, though he was perfectly capable of transgressing this limitation for narrative purposes, when he wanted to.

This annalistic structure has not always been fully appreciated, even by specialists.⁸ It is not specially marked out in the text (though it is obvious enough when reading its political narrative continuously). Readers, professional or merely interested, who in particular dip into the *Histories* for references, can easily miss its significance (and even presence) for ordering the material, creating an artificial puzzlement about the dating of events. The annalistic structure is of course not compromised by the occasional mention of the regnal years

7 The Sichar/Chramnesind feud (*Hist.* 7.47 a. 585 and 9.19 a. 587), allowed to play itself out in two entries divided by two years, is hardly the only example. On which, see Walter Goffart, *Narrators*, p. 125, n. 56 (as in n. 16 below) and Heinzelmann, *Gregory*, as at n. 16 below, p. 60, n. 45.

8 Heinzelmann, *Gregory*, pp. 43 n. 11, and 51 n. 31, as at n. 16 below, grudgingly acknowledged that from Book 5 onward Gregory dated events "almost annalistically." For the passages causing him unnecessary doubts, see next note. And see, p. 116, where unwarranted suspicion is cast on the precision of Gregory's dating and sequencing (all the events can be placed fairly accurately in reasonable sequence in late 584 and early 585).

of other kings: Guntram and Chilperic had regnal dates different from that of Childebert, and occasionally Gregory, having introduced the year according to Childebert's regnal year, will note an event's chronological equivalence according to regnal years of his uncles, which had a different configuration than his.⁹ But there is no escaping the framework of Childebert's reign for the ordering of events after 575.¹⁰

Such an emphasis on recent events fits neatly with Gregory's characterization of his work with the unmodified term *Histories*.¹¹ This is the title that Gregory gave at the end of the work when he summed up his literary output (*Hist.* 10.31). It may give pause to readers of English (and French) translations of the work who are habituated to the late Carolingian title for it, *History of the Franks*. But that is not the title Gregory gave it and the *Histories* are not a national history of the Franks or anyone else, though in the century following his death they gradually and increasingly were turned to that purpose by abbreviators and excerptors. Their appeal in modern time to general readers and scholars alike has often rested on the same false understanding of their contents.¹²

One final observation of modest significance needs to be made. One can argue about when history became 'contemporary' for Gregory or what he saw as recent versus ancient times, but the above discussion of the *Histories*' structure suggests a rather simple way of viewing the historical content of the books as a whole: Books 1–4, coming down to the second year of Gregory's episcopate, were intended as a kind of introduction to the annals of Books 5–10 covering a period when Tours was under, first Chilperic (576–84), then briefly Guntram (585), and then Childebert II. This period corresponds to the second year of Gregory's episcopate down to the year 591, with an epilogue written in 594, the year of Gregory's death.

9 For Childebert's 3rd, 4th, 7th, and 16th year. There is really no pattern to these ancillary references because not all the events immediately following the establishment of the year involve the older kings, though some do. There are also a couple of incidental references to the regnal dates of Guntram in later books. *Hist.* 8.1 dates Guntram's trip to Paris via Orleans, where his stay there is described in some detail, to the 24th year of the Burgundian king, but the event, which took place in the middle of 585, is still placed resolutely in the sequence of Childebert's years. The number of Guntram's regnal year is mentioned in passing in *Hist.* 10.10 where the subject is a judicial duel fought in the Vosges before the Burgundian king (the year for the purposes of the *Histories*' structure is defined earlier in 10.1 with just Childebert's number).

10 Table 12.1 lays out the chapters of Books 5–10, according to the years of Childebert.

11 See Walter Goffart, "From *Historiae* to *Historia Francorum* and Back Again: Aspects of the Textual History of Gregory of Tours", in *Religion, Culture, and Society in the Early Middle Ages: Studies in Honor of Richard E. Sullivan*, ed. T. F. X. Noble, J. J. Contreni (Kalamazoo, 1989), pp. 55–76; reprinted in Goffart, *Rome's Fall and After* (London and Ronceverte, 1989), 255–74. And see also Helmut Reimitz, "The Early Medieval Editions of Gregory of Tours' *Histories*," in *A Companion to Gregory of Tours*, ed. Alexander Callander Murray, Brill's Companions to the Christian Tradition 63 (Leiden: 2016), pp. 519–564.

12 See previous note, and Goffart, *The Narrators of Barbarian History*, as at n. 16.

2 Introduction

One of the purposes of the present study is to say a few relatively simple things about Gregory's political views, his loyalties, and his opinions of contemporary political figures as they are reflected in his *Histories*. I offer these as the basis for future, deeper thinking about the political dimension of his work and indeed of his age. A simple task like this might seem odd or unnecessary at so late a date in Gregorian studies. Should we not have the basics down by now? Should not some close reading by ordinary intelligent readers be sufficient to establish the main political lines of his depiction of events? Attention to the current literature of the subject reveals, however, that there is hardly agreement at all regarding even elementary conclusions about Gregory's attitudes to contemporary politics.

The reason is not just the complexity of Gregory's narrative or his sometimes oblique method of commenting on events. There is another reason – which brings me to a second purpose: namely, to clear away a stumbling block that has bedevilled Gregorian studies throughout the modern phase of its history and continues to confound our understanding of Gregory's relationship to the politics of his day. The identification and removal of the stumbling block points the way to the simple but important conclusions about Gregory's political perspective to which I just alluded.

What is the stumbling block? Since at least the nineteenth century scholars have claimed they can detect graduated phases in the composition of the *Histories*. In particular, the narrative from Book 5 onward – that is, roughly at the point when Gregory's account deals with events contemporary to his episcopacy – is commonly said to keep pace with the events being described, or to present a running account of their occurrence and to constitute a veritable diary of contemporary affairs. In short, the account is supposed to be narrowly synchronic with the events it describes, as if Gregory's text existed in some sense in real time. The critical books here for the theory are Books 5 and 6 which cover the events of 576–584 during the time Tours was under the rule of the Neustrian king Chilperic. This assumption of synchronicity, not just a vague contemporaneity, is what could be called the chronicle fallacy – the demonstrably false supposition that works of this form must be dishing out items 'hot off the press' as it were, just as they were happening.¹³

3 Traditional depictions of the *Histories* and its author: the naive compiler and diarist

The theory of synchronic or graduated composition until quite recent times existed within a wider framework of views about Gregory as an historian that we can consider the traditional approach to interpreting the *Histories*.

13 See below, n. 36. "Hot off the fire" is Erich Auerbach's phrase, in *Literary Language and Its Public in Late Latin Antiquity and in the Middle Ages*, trans. Ralph Manheim (Princeton 1965), p. 109, quoting himself with satisfaction from *Mimesis: The Representation of Reality in Western Literature*, trans. Willard Trask (Princeton 1953), p. 90. [For the apparently long history of graduated composition, often combined with detection of an original six-book version, see Appendix 2 no. 1.]

The size of the *Histories* and what I just referred to as its complexity have commonly been taken by modern commentators as a confused medley of secular, ecclesiastical, and topical events. Gregory's deployment of discrete narrative fragments was found by moderns difficult to weave into conventional patterns of historical exposition. These narrative fragments – constituting Gregory's famous 'episodic style' – were acknowledged to be attractive in their particularities but at an interpretative level were thought best understood as the product of the author's ad hoc piling up of events as they happened and a failure on his part to grasp the requirements of sophisticated and meaningful historical narrative. By this measure Gregory was a naive and superstitious compiler of raw data, which he conveyed to his readers in disjointed narrative fragments that belied any deliberate reflective and selective perspective. In documenting the misbehaviour of his contemporaries, Gregory could be read in effect as a conduit that perfectly reflected unconsciously the chaotic barbarism that was supposed to characterize his age.¹⁴

The way the manuscript tradition was commonly, though not universally, understood seemed to many to show the piecemeal composition of the *Histories*. The Merovingian B class of manuscripts containing a six-book version (Books 1–6), ending with the death of king Chilperic in 584, was regarded as documenting an early first edition.¹⁵ This was thought of as being completed at the time of the king's death and published long before Gregory wrapped up the ten-book version at the end of his life. The Chilperic books (5–6), therefore, must have been written close to, if not contemporaneously with, the events as they happened. And since the ten-book version of the *Histories* contained chapters (often of a local and ecclesiastical nature) that were not found in the B class of MSS, these chapters, it was supposed, must have been added in a second edition. English language readers of Thorpe will still see these passages marked out with asterisks as addenda to an original edition; readers of Dalton will confront a dual numbering system that is supposed to alert them to the putative additions.

Were all these characterizations to truly capture the nature of the *Histories* and its author, it would not be unreasonable to suppose that Gregory had worked as a kind of diarist, reacting to events as they occurred, with no significant subsequent reworking of the original perspective.

But present-day Gregorian scholarship has with good reason jettisoned such a characterization of the *Histories* and its author as just outlined. The work of Walter Goffart and Martin Heinzelmann in complementary but sometimes contrasting ways has rejected the chronicle fallacy about the *Histories*, showing instead that the fragmented character of the narrative should be seen as involving integral

14 The classic statement of the last point is M.J.J. Ampère, *Histoire littéraire de la France avant le douzième siècle* (Paris, 1839) 2: 275–314. From a pedagogical perspective, one might regard this as the 'how not to book' in approaching Gregory.

15 On text classes of the *Histories*, see Pascal Bourgain, "The Works of Gregory of Tours: Manuscripts, Language, and Style," in *A Companion*, pp. 142–188, and Reimitz, as in n. 11 above.

elements of a unified moral or theological vision that sets the vain strivings of the reprobate against the ethical and ecclesiological norms of the elect and the church of Christ.¹⁶ The episodic quality of Gregory's writing is not a product of disorderly compilation but can now be more readily understood as a consequence of conscious structuring on the part of an historian, not the ad hoc recording of ephemera by a diarist. And once Gregory's reasons for particularizing and laying out the narrative are appreciated, his tracing of political events hardly looks disconnected; the narrative is anything but unplanned or undirected.¹⁷ As for the two-version theory of the *Histories* (an earlier six-book edition to the death of Chilperic and a final ten-book redaction with various additions to the six-book version), this supposition has long been recognized – and well before the standard English translations were made – as resting on a misreading of the contents and manuscript tradition.¹⁸ Gregory never published a six-book version; the six-book *Histories* of the B manuscripts is a post-Gregorian abridgement of the ten-book work that Gregory left to posterity at his death in 594.¹⁹ The *Histories*, measured by this revised understanding of its main features, might seem to have the look of a unified work.

What this new picture implies should be clear. Gregory was not some kind of diarist-chronicler and inadvertent interpreter of his age; he was a real historian, and like any number of the fraternity of great practitioners of that discipline, one who consciously shaped the world around him and purveyed particular views of the human condition and the impersonal forces operating within it. Well, this would seem to be the implication, but, strange to say, these new views still coexist with the tendency to read Gregory through the old notion that he was a synchronic recorder of the events of his episcopacy and that his history was composed in graduated steps that are detectable in the text. Indeed in recent literature this idea has been rather twisted into a series of inconsistent formulas for plumbing the depths of the bishop's psychology.

16 Walter Goffart, *The Narrators of Barbarian History (A.D. 550–800): Jordanes, Gregory of Tours, Bede, and Paul the Deacon* (Princeton, 1988), ch. 3, 112–234; paperback edition, with a new retrospective Preface, xx–xxvi (Notre Dame, 2005); and Martin Heinzlmann, *Gregory of Tours: History and Society in the Sixth Century*, Christopher Carroll, trans. (Cambridge, 2001); original German edition, *Gregor von Tours (538–594): "Zehn Bücher Geschichte", Historiographie und Gesellschaftskonzept im 6. Jahrhundert* (Darmstadt, 1994). Giselle de Nie, *Views from a Many-Windowed Tower: Studies of Imagination in the Works of Gregory of Tours* (Amsterdam, 1987), 1–26, provides a valuable survey of scholarly efforts to grasp the character of Gregory's style.

17 Alexander Callander Murray, trans., *Gregory of Tours: The Merovingians, Readings in Medieval Civilization and Cultures 10* (Peterborough, 2006), lays out the political narrative elements consecutively, with a guide in the Introduction to its interconnected political components.

18 Fundamental for the background is Goffart, "Historiae to Historia Francorum," as at n. 11.

19 See Goffart, *Narrators*, 112–234; Heinzlmann, *Gregor von Tours*, 192–201; John Contreni, "Reading Gregory of Tours in the Middle Ages", in *The World of Gregory of Tours*, ed. Kathleen Mitchell and Ian Wood (Leiden, 2002), pp. 419–34, and Reimitz, as in n. 11, above.

4 An unhappy synthesis: Gregory the diarist and Gregory the political actor

The synchronic interpretation of the *Histories*' composition fitted easily enough with old views of Gregory as a naive compiler, heaping up observations of events round about him in chaotic fragmented narrative chunks. But it was of little practical consequence as long as scholarly interests largely saw the *Histories* as a mine to be quarried for modern reconstructions. The last generation of scholars, however, has largely shed the old understanding of Gregory as a simplistic diarist and he is now readily seen as an author structuring and shaping his narrative.²⁰ This new understanding has had another consequence as well. It has moved Gregory himself into the centre of interpreting his *Histories*, making him the key for understanding the people and events he portrays. This trend, I think, explains why a number of influential scholars, happy to align themselves with an interpretation that recognizes the creative agency of Gregory, have nevertheless been reluctant to abandon the theory of synchronic composition. Indeed they have wholeheartedly taken it up (it is never argued) and elevated it into a methodological tool for investigating the bishop of Tours himself and the supposed developments in his perspective and personality.

It is not as if they have not been warned against doing this. The two current leading exponents of a unified vision in Gregory's work have explicitly shunned reliance on chronological schemes to interpret the *Histories*. According to Walter Goffart, who did not summarily discount some form of graduated composition, "The work is homogeneous enough to discourage a sustained concern with [Gregory's] chronology of composition. We are well advised to concentrate on the finished ten books [of *Histories*], alongside the *Miracula*, just as the author left them at the end of his life."²¹ Martin Heinzelmann, again open to an early composition of Books 1–4, and an initial composition contemporaneous for the Chilperic years, still thought Books 5–10 were completed in a final form of redaction and revision: "Gregory's *Histories*," he says, "should therefore be seen and understood as a single, homogeneous work. After all, this was what the author intended."²²

If this is not good enough to ward off narrow synchronic interpretations, one can note that long ago even Gabriel Monod, one of the architects of graduated composition, and apparently now held up as the authority for Gregory's writing in

20 The tendency in English-language scholarship to be hostile to Heinzelmann's and to privilege Goffart's view, seems, in my opinion, to be accompanied by misreadings of both of them.

21 *Narrators*, pp. 124–25: "The work was neither composed all in one piece nor systematically set down *pari passu* with the events even in the most contemporary books." Goffart is open to the possibility of an early composition of Books 1–4 before 580 but hardly endorses the idea (p. 153). The preface to the paperback edition (see at n. 16) is even more resolved in rejecting the utility of chronological schemes.

22 "Une oeuvre composée pendant toute sa vie d'évêque": M. Heinzelmann, "Structures typologique de l'histoire d'après les *Histoires* de Grégoire de Tours: Prophéties–accomplissement–renouvellement," *Recherches de Science Religieuse* 92.4 (2004): 569; idem, *Gregory of Tours*, pp. 114–115.

real time, wrote the following: “It is impossible in fact to determine precisely the period when [Gregory’s history] was written. Gregory worked on it his entire life and reshaped it repeatedly.”²³ Monod, who even accepted the priority of a putative six-book version ending in 584, believed Gregory wrote his work in chronological stages closely connected with the events of his life, but he didn’t think that was much of a key to interpreting his work. I would say a work ‘reshaped’ throughout a lifetime, could hardly be interpreted as a graduated, much less a synchronic composition at all – just one that took a long time to complete.

The current reliance on the theory of synchronic composition steadfastly refuses to confront its limitations. Monod is cited as if his reservation about the utility of the theory was an irrelevant afterthought. What is even more surprising, the traditional theory of graduated and synchronic composition is accepted not as a general statement about a process of writing *and* revision but as an unproblematic, indeed precise, relationship between text as we have it and event: it has become in the hands of current advocates of it a methodology for establishing a close to absolute synchronic relationship between an event and its recording in Gregory’s history.

Synchronic methodology can produce on particular points disturbingly disparate interpretations, but it also leads to regularities in approach. The common effect that synchronicity produces is – if I may use the word – the disarticulation of Gregory’s views. All statements of the bishop are potentially uncoupled one from the other, rooted only in the particular context of the event, without connections to other texts or other parts of the narrative. Disarticulation in itself rarely produces much meaning and so an interpretative *deus ex machina* is employed by practitioners of the method, who are indeed looking for meaning beyond the immediate context of the text. Disarticulation also provides the basis for intellectual biographies of Gregory over the course of his episcopacy, and the detection of turning points in his development as an historian.

I mention three recent examples.²⁴ Adriaan Breukelaar produces an intellectual biography that is largely psychological.²⁵ Gregory begins for Breukelaar as a naive archivist piling up a record of the events of his time, until the appearance of the pseudo-prophet Desiderius in 587 – his turn in the *Histories* is limited to one chapter in Book 9 (*Hist.* 9.6). Desiderius is Breukelaar’s *deus ex machina*. Despite Gregory running Desiderius out of town, the bishop was now forced, according to Breukelaar, to contemplate the spiritual and apocalyptic implications of his narrative. Passages betraying what are deemed to be mature or reflective

23 Gabriel Monod, *Études critiques sur les sources de l’histoire mérovingienne, 1e partie* (Paris, 1872), p. 45. Cf. Heinzelmänn in n. 22. And on the rocky road of recent attempts to find just the right authority for synchronism, see Murray, “Chronology”, n. 14 [and see Appendix 2, no. 2].

24 A more circumstantial account of these, with examples from their works, can be found in Murray, “Chronology”, pp. 186–194.

25 Adriaan H.B. Breukelaar, *Historiography and Episcopal Authority in Sixth-Century Gaul: The Histories of Gregory of Tours Interpreted in their Historical Context*, *Forschungen zur Kirchen- und Dogmengeschichte* 57 (Göttingen, 1994).

religious thinking are, by this reading, to be viewed as the product of a late reshaping and distinguished from the ad hoc reports of the political diarist. Judgements about individuals that are not simple and homogeneous are attributed to different times of writing – and contradictory evaluations of character – even if they are tightly grouped in Gregory's narrative.²⁶

Breukelaar's biography is hardly a result of anything that Gregory tells us but of the trends of historiography. It is an amalgamation of the old and new Gregory – the primitive political reporter *and* the thoughtful theologian. It documents not Gregory's intellectual development but the currents of modern historiography, of which it is an imagined reflection.

Ian Wood and Guy Halsall provide a very different psychological portrait.²⁷ This has movement too of a kind – in the events swirling around the bishop of Tours and his changing response to them. It imagines, however, a continuous psychological anchor of sorts in the depiction of the bishop as a fearful political trimmer. The *deus ex machina* that gives meaning to synchronicity here is the constant fear that Gregory has of those in power.

In this portrayal the bishop is a devious reporter and political player, carefully navigating the treacheries of Merovingian politics, hedging his bets until one party comes out on top, and then, when necessary, covering his tracks – all the time casting his narrative to correspond to the requirements of the immediate political context, and fearful he is about to be exposed. Invocation of fear and synchronicity are also Wood's justification for claiming he can recognize a coded subtext that inverts standard readings. For instance, by this method, a treasonous outburst by Sagittarius of Gap, one of the truly unregenerate villains of the narrative and a stain on the episcopate, can be made to represent the views of Gregory himself, though Gregory introduces his utterance by calling the bishop of Gap a "flighty, vacuous, senseless, babbler."²⁸

While Gregory's judgments are allegedly conditioned by fear, Wood and Halsall cannot actually agree on the source of the fear in particular instances. I will refer here only to their quite contradictory interpretations of Gregory's obituary of Chilperic. Wood sees its harshness as a mark of Gregory's immediate relief at the king's passing. Halsall, following Wood's method, merely finds it 'ironic' and driven by the new fear of Guntram.

26 Breukelaar, *Historiography*, p. 48; on Cato († 571), see *Hist.* 4. 5–7, 11, 15, 31, the last viewed as showing Gregory retracting his previous negative judgments of Cato on the latter's death.

27 Ian Wood, "The Secret Histories of Gregory of Tours," *Revue Belge de Philologie et d'Histoire* 71 (1993): 253–70 – a work with a revealing, if unexplained, title; idem, *Gregory of Tours* (Bangor, 1994). Guy Halsall, "Nero and Herod? The Death of Chilperic and Gregory's Writing of History," in *World of Gregory of Tours*, eds. Mitchell and Wood, pp. 337–350; and idem, "The Preface to Book V of Gregory of Tours' Histories: Its Form, Context and Significance," *English Historical Review* 122/496 (2007): 297–317.

28 *Hist.* 5.20. This is part of an attempt to show that *Hist.* 5.17, 20 (both a. 577) and 35 (a. 580) are synchronous with the events – and hinge in some way on the real-time death of Guntram's queen Austrechild. The chronological scope of *Hist.* 5.20 extends well beyond 577; see Murray, "Chronology", p. 191 n. 106, and below at n. 60. [And see Appendix 2 no. 3 for more detail on Wood's method.]

Like Breukelaar, Wood and Halsall also detect psychological turning points. To Wood the key one occurs in 580 when Gregory was tried for treason before Chilperic and realized that from now on he would have to watch his every word.²⁹ To Halsall, Gregory merely dramatized the trial. Gregory's fear really started in 585 when Guntram became the dominant king and Gregory needed to cover his tracks, especially the allegedly cozy relationship he had with Chilperic.³⁰

The method of synchronicity plus fear produces the following results: Gregory can mean what he says, he can mean the opposite. Statements by figures in the history can be truer to what Gregory believed than what the bishop dared say, or the contrary. What is said in one place is no guide to what is said in another, or the contrary, because Gregory's political circumstances may or may not have shifted between one statement and another.

Let me note, scepticism about Gregory's candour is nothing new nor in itself unwarranted. Siegmund Hellmann expressed some of the main worthwhile points of these political portraits over a hundred years ago and in a more plausible fashion, casting them as an expression of literary strategy, habits of mind, and personality, not shifting chronological circumstance and abject terror.³¹

The depiction of Gregory as an apprehensive, expedient politician is really a variant on the old idea that the bishop of Tours was essentially a diarist. But instead of the bishop naively recording events as they occurred, the new view now portrays him as nervously looking over his shoulder, fearful that the wrong people might get a look at his thoughts and tailoring his narrative to the momentary political situation.

5 The case for synchronic composition

Is there a way out of this rabbit hole of inversion and dislocation? We could begin by taking Monod's warning seriously. But we can go much further than that by asking if there is any substance to the theory of synchronic and graduated composition at all. It is alluded to in the literature in a piecemeal fashion but until recently has never been examined comprehensively.³²

29 Wood's imaginative and contradictory reflections on whether Gregory's *Histories* were discovered by the king at this time have apparently insinuated themselves into the literature: Max Diesenberger, "Hair, Sacrality and Symbolic Capital in the Frankish Kingdoms," in *Construction of Communities*, ed. Richard Corradini et al. (Leiden, 2003), p. 198, introduces the subject in his exposition to no particular purpose.

30 On the actual chronology of Guntram's very limited association with Tours, see below, p. 331. Failure to grasp the chronology leads astray Rob Meens, "The Sanctity of the Basilica of St Martin: Gregory of Tours and the Practice of Sanctuary in the Merovingian Period," in *Texts and Identities in the Early Middle Ages*, ed. Richard Corradini et al. (Vienna, 2006), p. 286. And see below, Appendix 1.

31 Siegmund Hellmann, "Studien zur mittelalterlichen Geschichtschreibung I: Gregor von Tours," *Historische Zeitschrift* 107 (1911): 57–99, rpt in idem, *Ausgewählte Abhandlungen zur Historiographie und Geistesgeschichte des Mittelalters*, ed. Helmut Beumann (Weimar, 1961), pp. 1–43.

32 See Murray, "Chronology," pp. 157–196.

It is difficult to escape the conclusion that the foundation for graduated and synchronic composition, its *sine qua non*, is the false notion of a six-book *Histories* existing before a ten-book version. Without this misreading of the manuscript tradition establishing the basic grounds for synchronicity in some broad sense, it is hard to comprehend why various textual indicators have been thought to confirm the idea. I have dealt with these at some length elsewhere but the following summary captures the main issues.³³

One might begin most basically with the structure of the *Histories* itself, which incredibly enough is just assumed to correspond to the sequence of composition and from Book 5 onwards to be in step and in close conjunction with the events. A typical division in the literature, with the usual dates of composition for the divisions, would run something like this:

- Hist.* 1–4 Composed first, around 576, and covering the period from Creation to 575 and the death of Sigibert of Austrasia, ending with a computation of the years, a sign, we are assured, of a compositional unit drawn up shortly thereafter. The events of *Hist.* 4.47–51, which included the struggle for Tours between Chilperic and Sigibert, are thus often seen as a unit written between 573–575, and completed in 576.
- Hist.* 5–6 Written next and continuously, covering the period Chilperic ruled over Tours (576–584). Completed in 584 with Chilperic's death. Despite Chilperic's rule, the years are dated according to the reign of Childebert II, Sigibert's son. Book 5 and its prologue (the last one in the *Histories*) are often dated to 580, when Gregory supposedly looked back on events up to that point.
- Hist.* 7–10 Last stage of composition, but still a continuation of the yearly dating begun in Book 5, and largely synchronous in its writing. Gregory is often thought to have paused for a while after completing Books 1–6 (a notion pretty much demanded by the two version theory), but Book 7, it is claimed, is still somehow synchronous.³⁴ These books cover the period when first Guntram and then Childebert had control of Tours.

It seems too obvious to point out that the compositional elements of an historical work need not be joined to the events it recounts in a simplistic one-to-one relationship of sequence and strict contemporaneity.³⁵ Even chronicles, despite their raw appearance, are in fact rarely impulsive responses to immediate circumstance just as it happened.³⁶ Simple sequential structure of a work on its own tells us very little about its composition and dating.

33 "Chronology," as in previous note.

34 On the supposed 'pause' after Book 6, see Murray, "Chronology," pp. 163–64, n. 18 [and Appendix 2 no. 4 below].

35 Murray, "Chronology," p. 165, and see Breukelaar, *Historiography*, p. 29.

36 Thorpe's introduction captures common simplistic views on the supposed contemporaneous and diary-like quality of the chronicle as a genre. For the corrective see Steven Muhlberger, *The Fifth-Century Chroniclers: Prosper, Hydatius, and the Gallic Chronicler of 452* (Liverpool, 1990). [And see Appendix 2 no. 5.]

Then there are dubious and ambiguous interpretations of Latin temporal modifiers, taken to be references to the time of writing as opposed to the time of the events. Most of these (*hoc anno*, for example following the establishment of a regnal year) have long since been abandoned and are rendered in the translation process as references to the year in question, not the time of writing! One such usage still persists, however, as a proof text – the use of *praesenti anno* in *Hist.* 7.23 s.a. 584, taken to be a clear indication of synchronicity of event and composition in Book 7.³⁷ But *praesens* is relative like other temporal modifiers and indeed in *Hist.* 10.13 Gregory uses it in a passage about the raising of Lazarus from the dead. It is possible to detect a pattern in its use in 7.23 and its three other appearances in the table of contents to the books of the *Histories* (*Hist.* 7.45; 9.44; 10.30). Each usage comes at the end of the chronological sequence of the year's events and appears to be a marker for events (such as the weather, or in 7.23, a protracted criminal case) that Gregory did not want to fit precisely into the sequence of the year's events. *Praesenti anno* in these contexts does seem to signal the course of a year already established, but usage here is hardly rigorous; *hoc anno*, repeated and unmodified, can be used to indicate exactly the same idea. Indeed some translators simply render both phrases as 'in this year'.³⁸

The urge to document graduated or synchronic composition has also led to strange and faulty resolutions of relatively straightforward grammatical points. Thus readers of Thorpe may be led to believe that Gregory himself mentions in the explicit of Book 5 that he finished writing it in 580 ("Here ends Book 5, which I finished in the fifth year of King [Childebert]").³⁹ But this is a misreading of a past participle in a colophon that merely notes that the contents of the book came to end in that year. Among translators Thorpe is unique in his rendering, though he did not invent it.⁴⁰

Then there is the tortured resolution of a future tense (*faciet*) in *Hist.* 5.19, found in two B manuscripts. The passage refers to God being bountiful to the Emperor Tiberius.⁴¹ English readers of Dalton and Thorpe, who both used the Corbie manuscript as edited by Henri Omont, have been spared this aberration because it provides an unproblematic perfect (*fecit*), placing the text in the past

37 Murray, "Chronology," p. 168 [citing i.a. Giesebrecht and Monod].

38 Such references of course have previously been defined by an *anno Childeberti* followed by the particular year.

39 "Explicit liber quintus finitus in anno quinto Childeberti regis."

40 The author of the error, and others like it, seems to be Gustavo Vinay, *San Gregorio di Tours* (Turin, 1940), pp. 58–63, who is still cited as an authority on dating the *Histories'* composition. Thorpe, as all translators do, must have momentarily nodded at this point because the error is one of two in the explicit – at least in the early printing I possess (the king mentioned is Chilperic). The error makes its way into Guy Halsall, "Nero and Herod? The Death of Chilperic and Gregory's Writing of History," in *World of Gregory of Tours*, eds. Mitchell and Wood, p. 339 n. 12.

41 "[N]ec ei [= Tiberius] Dominus aliquid defecere faciet pro bona voluntate sua."

tense.⁴² Max Bonnet spotted this instance of the future tense a long time ago and assumed it meant that Tiberius (†582, s.a. 583 in *Hist.* 6.30) was still alive when Gregory wrote. German readers will find this future in Buchner's translation, but are denied a sense of the tense sequences of the passage.⁴³ Gregory had the still common bad habit of using the historical present tense for vividness – even in distant history. These historical presents in Gregory's writing are connected to an original perfect establishing the placement of the events in the past. The passage on Tiberius, Gregory's foil for Chilperic, is full of historical presents. Translators tend to smooth all these tense switches, inelegant to modern readers, into the past tense. In the case of *Hist.* 5.19 the future is dependent on an historical present, whose temporal placement has already been determined by a perfect. The future in *Hist.* 5.19 is simply a future in the past, a feature completely lost in Buchner's translation where the historical presents are resolved into past tenses and only the future tense is left to stand out rather oddly. One does not need to be a Latinist to see there is a problem in this treatment. These uses of tense sequences (past–historical present–future) can be understood readily in modern patterns of speech and have nothing to do with a future beyond the ken of the speaker.⁴⁴

The confounding of Gregory's tenses in *Hist.* 5.19 is really just another example of an obstinate resolution of temporal indicators in Gregory's language in favour of synchronic composition. The use of the past tense for Tiberius in the passage (the base tense for the passage), by the way, is a sign that the emperor was dead by the time Gregory composed the passage (see further below).

And finally there remains textual references, claimed to be datable allusions. Surely Gregory somewhere makes a statement about events that can be dated unambiguously to the same time in which he was writing, or roughly soon thereafter, and specifically to the time of Chilperic? Apparently not, though two passages are optimistically claimed to show this. They are hardly unambiguous about synchronicity or any kind of graduated composition, and indeed tend to demonstrate its opposite.

Both are in Book 5. To take them in the sequence of their placement in Gregory's text:

1. *Prologue to Book 5*. Basic assumptions about the prologue (and Book 5 itself) are as follows. The prologue is often thought to have been written prior to Chilperic's death in 584 (*Hist.* 6.46), because, as Monod said, it “addresses the kings whose quarrels then were tearing Gaul apart.”⁴⁵ The year 580 is commonly suggested as a more precise date, on the assumption that Gregory penned the prologue

42 Henri Omont, *Histoire des Francs* (Paris, 1886).

43 Rudolf Buchner and Wilhelm Giesebrecht, *Zehn Bücher Geschichten* (Darmstadt, 1955), 1: 323–324.

44 A literal translation, rendering the various tenses as written, is given by Murray, “Chronology,” pp. 172–74, with suggestions of some common modern speech analogies. [See Appendix 2 no. 6.]

45 Monod, *Études*, p. 46; and cf. Buchner, *Zehn Bücher* 1: xxi.

when he completed Book 5, after completing his account of the first years Chilperic held Tours (a. 576–580).⁴⁶

The prologue is a lament on the dangers of civil war but nothing in it is datable in a useful sense and the kings addressed are not named. A single king, again not named, is addressed at the end and urged to fight the spiritual war in himself against sin, thereby drawing a comparison between the wrongful wars of Merovingian politics and the righteous internal battle of the devout Christian. Its contents fit as well the continuing conflicts of Childebert's reign after he took back Tours as it does the years 576–584. Without the false supposition of a first edition of the *Histories* ending with Book 6 in 584, it is hard to see why it should only be referring to these years. Civil war was not new and quarrels real and potential remained endemic throughout Gregory's episcopate and beyond. Gregory did not need to be prescient to know that conflict among Merovingians was built into the prevailing system of partible inheritance and dynastic rivalry.⁴⁷

Structurally as well the prologue of Book 5 serves all the remaining books. Gregory's work contains a general preface, and then four prologues: the first for Book 1; the second for Book 2; the third for Books 3 and 4; and finally the fourth, the prologue to Book 5, the book that begins the set of annals dated by the regnal years of Childebert II of Austrasia, and continuing down to Book 10 in 591.

By the way, the prologue, as a preliminary to Book 5–10, belies the common assumption that the audience for the *Histories* must have been strictly clerical. The address to kings shows that Gregory hoped his books might function in the fashion of that rather indefinite genre known as 'mirrors of princes'. We can only guess who Gregory thought these kings might be (the sons of Childebert?) because his work was not published in his lifetime.⁴⁸

2. *Hist. 5.14, s.a. 577: Gregory's dream of the death of Chilperic and his sons.* Their demise is announced in a dream by an angel flying through the air exclaiming, "God has struck down Chilperic and his sons. No issue of his loins has survived to rule his kingdom down through the ages." Gregory then comments: "Chilperic

46 In an attempt to establish this as the point at which Gregory began the *Histories*, Halsall, dates the prologue to Easter 576 in the form of a sermon preached before the young king Merovech, Chilperic's son. To make the references contemporary he must assume Gregory was aware of Merovech's intentions to go against his father, which in fact were not revealed until after the prince left Tours for Rouen ("Preface," p. 310).

47 The comment by Buchner (*Zehn Bücher* 1: xxi) that "Chilperic's death established a reasonable internal peace in the Frankish kingdom for the rest of Gregory's life," is unworthy of his scholarship. It has been repeated without attention to the events it glosses over (e.g., De Nie, *Many Windowed Tower*, p. 57). The stability Buchner imagines was in fact only established in 613 after numerous campaigns among the interested parties and the elimination of the Austrasian line. For a partial recitation of events, see Murray, "Chronology," pp. 165–67. On partible inheritance, see below, Appendix 1.

48 The not uncommon view that the kings are entirely fictional is quite plausible, though I accept that Gregory thought they would be members of the Austrasian house. But in the end, the house of Chlothar II prevailed, and Gregory's work suffered an abridgement consisting of the first 6 books, that fitted better the political conditions of the 7th century.

at that time had four sons by different wives, not to speak of daughters,” and notes that the dream was later fulfilled. The dream and its context deserves a more extended treatment, but I will limit the present analysis to its significance for dating. The common claim is that Gregory could not have written this prophecy before Chilperic was bereft of sons in 580 and scarcely after 582 when new sons were born; thereafter Chilperic was without a successor only briefly in 584; from 584 Chilperic’s son Chlothar II took up his kingdom. Thus there was only a small window between 580 and 582 when this prophecy could have been written and made sense.

Attentive readers may have already detected problems with this interpretation. Gregory had until 594 to fiddle with this prophecy if he had felt uncomfortable with its truthfulness.⁴⁹ Placing the time of writing around 580 is also dependent on only half the prophecy. Summaries of the prophecy in the literature regularly only mention the second part, the *mors filiorum Chilperici* – the death of the king’s sons. But the angel also predicts the death of Chilperic himself and Gregory assures us both parts of the dream have been fulfilled. Chilperic was killed late in 584, suggesting of course composition after that date. As to the notion that continuation of Chilperic’s line in the child Chlothar II precluded the passage being written after his birth and succession, this is contradicted by long-standing observations about Gregory’s representation of Chlothar II’s reign. Since Hellmann pointed it out over a century ago, scholars have been well aware of the seed of doubt about Chilperic’s paternity and Fredegund’s fidelity sown by Gregory in the second half of the *Histories*: charges of adultery against the queen in 580 – Gregory’s defence of his own role in the scandal is hardly a ringing endorsement of the queen: “I denied in truth having uttered these things, saying I heard others say them, but I had not devised them” (*Hist.* 5.47, 49); Guntram’s public suspicion about Chlothar’s paternity and demand for proof of Fredegund’s probity, satisfied only by the oaths of three bishops and 300 magnates (*Hist.* 8.9); ambiguous comments about the relationship of Fredegund and the chamberlain Eberulf (*Hist.* 7.21); and Gregory’s own designation of Chlothar as “the alleged son of Chilperic” (*Hist.* 8.31).⁵⁰ Doubts about Chilperic’s paternity, of course, benefitted the Austrasian court, and were no doubt propagated by it; readers sympathetic to the house of Childebert might be expected to agree that the prophecy was fulfilled in both its aspects with the death of Chilperic in late 584.⁵¹ As Merovingian history shows, the cultivation of such doubts could be preparatory to the removal of a king. The

49 I am avoiding the question of whether the dream really happened as described or not and simply treating it in a text-critical fashion. To accept Gregory’s account as a report on an oneiric event that occurred at the time simply dissolves its relevance to the dating of actual events. Gregory’s insistence that it had been fulfilled by his writing however does seem to ground it to events – unless Gregory thought the extirpation of Chilperic’s line would surely occur at a future time when readers would plainly see the veracity of the angel’s prophecy.

50 Siegmund Hellmann, “Studien,” pp. 27–28 (rpt pp. 83–84).

51 Wood, “Deconstructing the Merovingian Family,” in *Construction of Communities*, ed. Corradini et al., pp. 163–64, accepts the veracity of the suspicions.

prophecy is hardly the basis of an argument for composition under Chilperic, but rather supposes a *post quem* date following his death.

Such are the usages of the *Histories* and the passages that have been thought to confirm synchronic composition beginning deep in the reign of Chilperic over Tours. Breukelaar has noted sanguinely that datable allusions to synchronicity are “hardly overwhelming.”⁵² On examination they prove to be a lot less than that. The negative findings presented above are in the end less important than positive evidence for the time of writing, which will be presented next.

6 The case against synchronic composition

The text provides numerous signs that it was composed, not continuously from the time of Chilperic’s control over Tours after 576, but after 585 when, in Gregory’s view, the rightful Austrasian king, Childebert II, took control of the city. Some of this evidence is structural, some of it datable elements producing reasonably late *post quem* dates. Some evidence only establishes good probabilities of composition under Childebert II, but other evidence establishes *post quem* dates with certainty. I give a partial list. Some of this evidence has been noted before in my previous treatment of it, but in the past it has invariably been interpreted by early daters, variously, as a product of ‘additions’, ‘a late reworking’, or even ‘a late redaction of the text.’

Perhaps the most obvious sign of the period of composition is the dating structure of the *Histories* itself, the implications of which have surprisingly received little attention. It seems to me that if the *Histories* and its author were less well known and were unburdened by the scholarly assumptions and misconceptions that have for centuries defined the reading of the text, the dating structure would have quickly been recognized as *prima facie* evidence for showing composition under Childebert. It should be the evidence to beat for those asserting synchronicity, but instead it has been quietly folded into naive views about the relation of episcopacy and kingship in the Merovingian kingdom, with only the occasional eruption quietened by tendentious or bizarre explanations that would account for a process of composition under Chilperic.

As already noted, Gregory dates Books 5–10 after the regnal years of Childebert II, the underage, imperilled, king who succeeded Sigibert in December 575. Every one of the nine years in which Gregory and Tours were subject to Chilperic were dated in the *Histories* according to the reign of Childebert II, a period in which

52 *Historiography*, p. 25. His own assumption of graduated composition is posited on the notion that the *Histories* followed the pattern of *De virtutibus sancti Martini episcopi* [henceforth VM], ed. Bruno Krusch, SRM 1.2 (Hannover, 1885), on which see Richard Shaw, “Chronology, Composition, and Authorial Conception in the *Miracula*,” in *A Companion*, pp. 102–140.

there was no particular sign that Chilperic was imminently about to go the way of all flesh. Gregory was an Austrasian loyalist, and could represent himself opposing Chilperic and Fredegund on matters of episcopal rights and theology, but he was not a political fool. He understood and sympathized with the political compromises bishops had to live with and he made them himself.⁵³ Books 5 and 6, as they stand, would have been treasonous were they composed under Chilperic. (So far as I know, no early dater has grasped the nettle on this question by arguing that the entire chronological structure of the *Histories* must be a late revision – because it leaves synchronicity in tatters.) And in addition to the recognition of Childebert's legitimate claim to Tours as reflected in the dating system, the contents of the *Histories* themselves regarding Chilperic and Fredegund should speak for themselves, though efforts have been made to explain them away.⁵⁴ The only flutter to ruffle the feathers of synchronic daters is the artificial question of whether Gregory's *Histories* were brought to light during his treason trial in 580. Weighty, pointless reflections on this come inevitably to no resolution.⁵⁵

The obvious way to read the chronological structure (and the contents) of Books 5–6 is as the product of Childebert's years of control over Tours, 585 to Gregory's summing up in 594. The Austrasian character of the composition as a whole, however, imprints itself on more than just the books contemporary with Gregory's episcopate. The sections of the *Histories* from Book 3 onwards (that is following the death of Clovis) are written doggedly in Austrasian time – that is to say according to the dynastic chronology of the Austrasian house which ruled over Clermont from the time of Clovis' son Theuderic and claimed Tours from the time of Sigibert. Book 2 ends with the death of Clovis I, the ancestor of all subsequent Merovingian kings, it is true, but therefore also the founder of the Austrasian house and its kingdom. Book 3 and onward more clearly reveal the Austrasian cast to the organization of the books. The book ends with the death in 548 of Theudebert I, the greatest of Clovis' successors and ruler of the north-eastern kingdom and its southern appendages. Although the death of Chlothar I in 561, bringing with it the subsequent division among the warring kings of Gregory's generation, is the point modern commentators with good reason choose as the pregnant juncture for late 6th-century politics, Gregory places this event in the middle of Book 4. Book 4 ends instead with the death of the Austrasian king Sigibert I in 575. As a scion of the Clermont aristocracy, Gregory chose a method of dating that reveals his own loyalties to the Austrasian monarchy. The deaths of

53 See his sympathetic treatment of Bishop Theodore of Marseilles, represented as obliged to follow orders issued by the Austrasian court in the name of Childebert (*Hist.* 6.24, 8.12, 13, 20). When Poitiers and Tours were threatened by Burgundian forces on the death of Chilperic in 584, Gregory's advice was completely pragmatic (*Hist.* 7.13). His deference to Fredegund's real wishes regarding Leudast's excommunication shows he well realized the limits of his position (*Hist.* 6.32).

54 See Halsall and Wood (as in n. 27), with Murray, "Chronology," pp. 189–193. [And Appendix 2 no. 3.]

55 See at n. 29.

Clovis I, Theudebert I, and Sigibert I, form the basic architecture of Gregory's 6th-century chronology because Gregory in the first instance was writing his history for an Austrasian audience, and one can reasonably infer that an Austrasian king was in charge when it was laboriously drawn up.

This Austrasian structure to the *Histories* should also put to rest a recurring speculation about Gregory's plans for the work. Inferring that Gregory died before he could truly finish and noting his penchant for divisions marked by the death of kings, scholars have sometimes supposed Gregory's intention would have been to end with the death of a king. To compound the difficulty, they tend to believe that king to be Guntram, whom Gregory treats at some length, often, but not always, sympathetically.⁵⁶ But in fact there are good reasons to think Gregory's death did not preempt a resounding conclusion featuring Guntram, had the bishop wished a regal passing as an end point. First, Guntram was not Austrasian and so a grandiloquent obituary of him to end the *Histories* was never really in the master plan, to the extent that a truly contemporary history could have such a thing. Second, Guntram died in 592, after Gregory draws contemporary events to a close in 591, it is true, but before wrapping up the *Histories* in 594. Gregory's works in fact acknowledge Guntram's death (*VM* 4.37). In the *Histories* Guntram's obituary is actually found in *Hist.* 9.21 s.a. 588, where Gregory's famous characterization of the Burgundian king's qualities are placed securely in the past tense. As will be noted below, Gregory's conclusion of political events in *Hist.* 10.28, perceived as a letdown by some modern commentators, is apt and in complete harmony with his views of Frankish politics.

The Austrasian structure of the *Histories* is not the only indication of the date of the composition. As previously noted, datable elements in the text confirm unambiguously writing in the years of Childebert's rule over Tours or point strongly to the same circumstance. These elements render futile the notion that we can tap into an unmediated diary recording events of the Chilperic years.

For example cross references in early books point to hagiographic compositions that we know were only written, sometimes quite late, during the years Childebert ruled Tours. Monod clearly saw that *Hist.* 4.36, with its allusion to *VP* 8, a late composition, had to have been written after 585. But he accepted the existence of an original six-book version and, almost by necessity, thought it must be an addition made at the time of the redaction of the ten-book version. We know there was no six-book version with additions made to it, only a six-book abridgement made after Gregory's death.

And *Hist.* 4.36 is not an isolated case. Bruno Krusch provides a list of thirteen other passages in Books 1–5 that cross-reference Gregory's hagiography and are a poor fit with an early date. To maintain his belief in an early date for the books in question, Krusch had to imagine a late textual reworking, allegedly still

56 The royal fixation of the *Histoire littéraire de la France*, vol. 3 (Paris, 1735), p. 377, even makes such reflections a reality, characterizing the *Histories* as coming down to the death of Guntram.

incomplete at Gregory's death.⁵⁷ The approach of Ruinart in his 1699 edition of Gregory's works was more logical if perhaps too simple. Well aware of the pattern of cross-references, he concluded from the circumstance that the *Histories* reference at some point all the *Miracula*, but the *Miracula* never refer to the *Histories*, that the *Histories* were written after the *Miracula*.⁵⁸

Gregory also pointedly anticipates that events occurring under Chilperic will find their completion in later chapters in the years under Childebert. The best known example (because it is noted to be explained away as an addition) is Rauching in *Hist.* 5.3 s.a. 576. He is introduced as the husband of the new widow of Godin. His abuse of slaves and the sanctuary process is detailed and Gregory tells us he intends to relate the circumstance of his death at a later date. His execution by Childebert, described by Gregory, occurred in 587 (*Hist.* 9.9).

Again, the broad perspective on Rauching is not an isolated example. Gregory introduces Mummolus at great length in *Hist.* 4.42, 44, 45, telling us about his disreputable rise to the office of count, and then, as patrician of Guntram, his exploits, none of them altogether savoury, against Saxons and Lombards and rebellious citizens of Poitiers. This happened all in the pre-annal phase of the *Histories*, but these campaigns can be roughly dated ca. 572–73. Gregory then tells us to be patient and to expect more in its proper spot.⁵⁹ That comes in a significant sense in Book 7 (34–39), where Mummolus as the leader of the Gundovald rebellion finally meets his end, once more after discreditable behaviour that bears out Gregory's earlier characterization. Then there is Bishop Sagittarius who appears in *Hist.* 5.20, s.a. 577, in company with his brother Salonius, involved in an episcopal scandal. Again Gregory tells us to wait for the outcome, namely their destruction by the anger of God. Salonius disappears from the narrative but Sagittarius has a starring role in the Gundovald debacle along with Mummolus, and has his head swept from his shoulders by a sword, hood and all, in the aftermath of the rebellion's suppression (*Hist.* 7.39).⁶⁰

References to Rauching, Mummolus, and Sagittarius are hardly the result of an ad hoc piling up of events but are carefully crafted retrospective portrayals composed with knowledge of the later, sad outcomes in question. Mummolus' portrayal is the most circumstantial. He is introduced in Book 4 with a discursive account of his early career, and an implied warning about how this manner of life would turn out. But Gregory does not just wait until the outcome to wrap it up. Mummolus was too important to the narrative. Instead Mummolus is tracked

57 See the critique in Murray, "Chronology," pp. 176–178, which mentions other dissenters. [And see below Appendix 2 no. 7.]

58 PL 71, § 84.

59 "What I have said about Mummolus is enough for the time being. The rest must be set out in order later on" (*Hist.* 4.45).

60 On the chronological layering of 5.20, see below, p. 329 [90]; for scholarly recognition of the implications of the narrative, and at least one effort to save appearances, see Murray, "Chronology," p. 180; and cf. n. 106.

(*Hist.* 5.13, 6.1, 6.24, 6.26) until his grand moment on stage in Book 7. The 7th-century redactor of the six-book version of the B manuscripts in the process of abridgement saw the implications very clearly. A Mummolus who did not go beyond Book 6 obviously escaped the finale implied by *Hist.* 4.45, and so he excised from his text Gregory's anticipation of a resolution.

Gregory tracks others as well, though their sorry tales cannot be pressed too hard on the Chilperic/Childebert composition question, as Gregory provides no anticipatory signal of the outcome of their careers. Nevertheless I would regard the representation of their careers as no accidental accumulation of facts but as crafted expositions of figures whose recent demise came at the time of Gregory's writing and marked at least partially paid to their devious careers. Among the most prominent examples treated in this way are dukes Desiderius and Guntram Boso and Bishop Egidius of Rheims. Guntram Boso and Desiderius are both first noted in the wars of the 570s, Guntram being held responsible for the death of Theudebert, Chilperic's son, and the disgraceful treatment of his body (*Hist.* 4.50). Guntram's duplicitous behaviour is a running theme of Gregory's extended treatment of him, even if his charm is hard to hide.⁶¹ Desiderius' career is first presented as a failure, and then as proceeding through brutality, stupidity and treachery in the Gundovald affair, to a rash and ignominious death outside the walls of Carcassonne in 587.⁶² Egidius' first appearance in 577 associates him, at least according to rumour which Gregory reports, with the disgraceful murder of Merovech and the shadowy role allegedly played in it by Guntram Boso and Fredegund, with whom Egidius had had supposedly a friendly relationship for some time (*Hist.* 5.18). Egidius' fall came in 590 in a trial highlighting his relationship with Chilperic, but after Gregory had described his role in negotiations with Chilperic regarding the Nogent agreement; his humiliation in the army mutiny by the Austrasian rank and file against the Neustrian-Austrasian alliance; his leadership of an unseemly embassy to Guntram; warnings given by Guntram to his nephew of Egidius' malicious influence; and the bishop's implication in a plot against King Childebert.⁶³

Gregory's stance as a moralist is not simplistic; his portraits, spread across the episodes of his books, do not always simply retail elements of uniform moral significance. Gregory was perfectly capable of neutral reporting about some of the subjects of his extended portraits, but the overall burden of representation and Gregory's judgment of the destructive effect of various actors on Gallic affairs from the 570s through the 580s is hard to miss. That Gregory could combine harsh judgments of individuals in one place with neutral reporting of their actions in another has long been noted without the conclusion being drawn that this reflected synchronicity and shifting agendas on the part of the author. Disarticulating the elements of Gregory's portraits, as some recent scholars have done, can

61 *Hist.* 4.50; 5.4; 5.14; 5.18; 5.24; 5.25; 6.24; 6.26; 6.31; 8.20; 9.8; 9.10; 9.23.

62 *Hist.* 5.13; 5.39; 6.12; 6.31; 7.9–10; 7.27; 7.34; 7.43; 8.27; 8.45.

63 *Hist.* 5.18; 6.2; 6.31; 7.13; 7.33; 9.14; 10.19. Wood's treatment of the trial claims to find Gregory sympathetic to Egidius; see "Secret Histories," p. 268; *Gregory*, p. 20.

lead to wildly inaccurate evaluations of the bishop's relationship with the figures in his narrative.⁶⁴

These examples show us something about Gregory's general method. Though with major villains like Rauching, Mummolus, and Sagittarius, Gregory cannot help himself from anticipating their demise, his practice is nevertheless to place events where they belong in the chronological sequence; events and biographies that we might be inclined to assume should be telegraphed, indeed shouted out, to the reader, are quietly placed in their proper order. Their meaning is expected to reveal itself in the reading of the text – and Gregory surely expected knowledgeable readers to have awareness of the characters in question on their first appearance.⁶⁵ This is all part of Gregory's famed 'episodic style', which bears comparison with chronicle writing and its placement of narrative elements in their appropriate spot.

One can think of this as Gregory's default style, but it hardly met all his narrative needs and he did not feel strictly bound by it unless it suited his purposes. From Book 5 onwards Gregory's chapters always contained an element datable to the year in which he placed it, but the form could be complicated by intricate chronological layering of some chapters, and even sequences of chapters, that precludes them being composed near in time to the year in which the principal event is placed. Chapters not in the episodic style belie the view of the *Histories* as a diary of a naive chronicler.

For example, *Hist.* 5.5 s.a. 576, a passage famous for recounting the intrafamilial feud involving Gregory's brother, Peter, and his eventual death in 574. The reason for the dating and placement of the chapter at this point is a rude letter from Felix of Nantes involving a dispute over a villa that the chapter ignores. The chapter is called "On the Bishops of Langres" and gives not only an account of Peter's troubles but a brief sketch of the bishopric of Langres, long a preserve of Gregory's family, from the 560s to the 580s (certainly *post* 582). Gregory achieves much in the chapter (including the disparagement of Felix, an enemy and one of

64 See Chilperic, above n. 27, and Chlothar, below at n. 71, as examples among the kings; and Murray, "Chronology," pp. 189–90. [And Appendix 2 no. 3.] Some have thought Egidius was a friend or patron because the bishop of Rheims was ordered to consecrate him (Fortunatus, *Carm.* 5.3), hardly an indicator of warm relations (Gregory must have consecrated Badegisil of Le Mans! [*Hist.* 6.9; 8.39]), and because, in a passage written after Egidius' fall in VM 3.17, Gregory happens to mention that he was once graciously received by Egidius in Rheims. See Murray, "Chronology," n. 119.

65 The style evinced by Gregory is apparently by no means dead, because it has immediacy and dramatic narrative purposes. See a (positive) review in the *New York Times* of a recent biography of Barbara Stanwyck by Victoria Wilson, who sticks rigorously to the 'time frame' of her subject, sometimes to the consternation of the reviewer. The book covers the years 1907–1940, with a second volume promised. The reviewer complains: "As an example of Wilson's determination to stay in the moment, when Ruby [Barbara Stanwyck] befriends an even wilder girl-about-town named Billie Cassin, a.k.a. Lucille LeSueur, Wilson doesn't even mention at that point that she is the future Joan Crawford!" *Sunday Book Review*, January 5, 2014.

his *bêtes noires*) but the occasion for its placement is merely incidental to these designs.⁶⁶

Another example already touched on, is *Hist.* 5.20 s.a. 577, which alludes to Bishop Sagittarius' death in 585. But the chapter recounts his wicked career and that of his brother Salonius, and their recalcitrant ways, going back at least to 570, when a council dealt with their transgressions. It is not completely clear whether the entry of *Hist.* 5.20 is recording a second or third outrage at their behaviour or whether some of their antics mentioned here go beyond 577. Their criminal condemnation by a council, at any rate, came again but only in 579; Gregory leaves notice of that to its proper place (*Hist.* 5.27).

Or *Hist.* 6.37–39 a. 584, an interrelated series of chapters involving ecclesiastical politics that presuppose not only purposeful juxtaposition but a date of composition ca. 587 or afterward. Though the placement and genesis of the intricately linked events are placed deep in the last year of Chilperic, their resolution, described by Gregory, could only have been composed under Childebert II.⁶⁷

These chapters all suggest chronological complexity and distant perspective, but some chapters, plain enough in their contents, simply show distance between event and composition. *Hist.* 8.30, s.a. 585, for example, presupposes a date of composition after the treaty of Andelot in 587, because Gregory notes that cities restored to Childebert at the time were contributing forces to the Burgundian army in 585. Even widespread acceptance of theories of graduated composition has not quashed recognition that material in even early books of the *Histories* may be the result of late composition. Buchner, for one, has suggested that Gregory's knowledge of Antiochene and Armenian affairs was derived from the visit of the Armenian bishop Simon to Tours in 591 (*Hist.* 10.24), though Gregory places the events themselves appropriately enough in the 570s (*Hist.* 4.40).⁶⁸

It is hardly likely that the chronological excavation of the chapters of the *Histories* is exhausted.

One final signature of Gregory's distance from chapters, and occasionally an indicator of compositional date, is his deliberate use of past and present tenses in reference to figures in the narrative. I am not referring to the events or actions that the figures were involved in – these are in the past tense (or in an historical present that means the same thing) – but rather the characterization of the existential qualities or attributes of being of the character. Thus Guntram Boso's penchant for lying and betraying his friends is cast in the past tense in *Hist.* 5.14, s.a. 576, the same chapter that mentions the prophecy about Chilperic and his sons, the composition of which I have already suggested lies squarely after Chilperic's death in 584. Guntram Boso was executed in 587 and his lying days were done at the time of writing *Hist.* 5.14. On the other hand, the devil's were not: in the same

66 Lenthier discussion in Murray, "Chronology", pp. 180–82. [See Appendix 2 no. 8.]

67 For a more extensive discussion, see Murray, "Chronology," pp. 182–85. [And see Appendix 2 no. 9.]

68 Buchner, *Zehn Bücher* 2: 382 n. 4.

chapter we are told that he – in the present tense – is a liar from the beginning. In *Hist.* 5. 19, again one of the parade pieces of synchronicity, we are told that Tiberius, introduced in the past tense, “was a great and true Christian,” destroying any idea of synchronicity, which the passage does not support anyway, but showing a date of composition after Tiberius’ death. And while Guntram Boso had a (past) predilection for lying, his namesake King Guntram (*Hist.* 9.21 s.a. 588) had had a similar, by the time of writing, past proclivity for almsgiving, vigils, and fasting. This too marks the time of writing as after his death; as suggested above, the passage as a whole is really Guntram’s obituary. Its reiteration in medieval and modern sources pretty much fulfills Gregory’s intention.⁶⁹

7 When did Gregory compose his *Histories*?

The premise of the previous pages is simply that Gregory of Tours’ *Histories* are the product of the period following the year 585 when Tours was restored to the Austrasian King Childebert II. There is actually no evidence that any part of the *Histories* (I include here the far less contentious Books 1–4) was written prior to Childebert’s taking control of the city in 585 and a great deal of evidence points to a compositional date after that time. This leaves out a lot we might like to know. We do not know the phases of composition of the *Histories*. It is too big to have been written from scratch over a short period of time just prior to the bishop’s death in 594, but when Gregory took up his pen, or began dictating to his secretaries, are developments lost to us. Such considerations do not preclude Gregory writing notes or memoranda at any time during his episcopacy, or indeed during his literate lifetime. But such writings did not constitute the *Histories* as we now have them. These were written after 585 at a time when Tours was under the control of the Austrasian king, Childebert II. And Gregory, I believe, was hardly finished tinkering with his text when he died in 594, though at that time he brought the work into a near final shape. But does any of this matter very much? Synchronicity between event and narrative is a false key. No part of the *Histories* was published before the year of his death and to say that they reflect a view of around 590 and seem to have been finally shaped from around that date to his death should serve more than adequately the varied purposes of scholars grappling with their significance for contemporary and distant history.

8 Gregory’s political viewpoint: the basics

This brings me at last to the principal reason for this chapter – a brief statement about the main outlines of Gregory’s political perspective in his *Histories*. When the bishop of Tours started to put his history together, Chilperic was dead at the

⁶⁹ A counterpart to the characterizations in the past tense for those deceased are those put in the present tenses for individuals still alive in the 590s: Avitus †594 (*Hist.* 4.35); Theodore of Marseilles †591/594 (*Hist.* 8.12); Sulpicius of Bourges †591 (*Hist.* 8.12 s.a. 585).

hands of an assassin, having “got what he asked for” (*Hist.* 7.2). He could be condemned as Gregory saw fit and his devious actions, as well as the rumours that flew about the various deaths in the circle around the king, could be reported freely without fear of retribution. Having been a metropolitan bishop of the king, and a guardian of the shrine of Saint Martin, where he had to provide for high status asylum seekers fleeing the wrath of Chilperic and Fredegund, Gregory knew a lot and had heard even more. As for Fredegund, “the enemy of God and man” (*Hist.* 9.20), as Guntram called her, she had been removed to Rouen in 585 to look after her son Chlothar II and was no longer a personal concern; Gregory could be unsparing in depicting her involvement in, among other crimes, the assassination of Sigibert and the killing of her mature stepsons to further the claims of her own, young children by Chilperic. Gregory was free to catalogue her intrigues and murderous behaviour as the bitter rival of Brunhild and fearsome adversary of Guntram’s possessive, and Childebert’s hostile, interest in her son’s kingdom.

Chilperic’s reign was in the past. Guntram’s was not, at least not until a year after Gregory’s narrative halted in 591 and a year or so before he drew the *Histories* to a close. Guntram ruled Tours after Chilperic, but a point often lost sight of in current commentaries is that he did so only for a brief time in late 584 and the first part of 585. Gregory could depict the various sides of Guntram, including his suspicion and impulsive outbursts, while admiring the king for his piety and treatment of the church. This positive portrait of Guntram, by the way, is not the consequence of constraint or invention on Gregory’s part. The source used by Fredegar in the following century echoes the same themes of goodness, piety and harmonious relations with the episcopate (*Chron.* 4.1). The present rulers of Tours, Childebert and his mother Brunhild, demanded slightly more discreet, but not uncritical, attention.⁷⁰

The period following Chilperic’s death hardly meant the end of important Gallic events to record. As indicated in my preliminary remarks, Gregory was not fixated on the reign of Chilperic, though the portrait of the king is memorable. The epicentre of the *Histories*, to judge by the density of the narrative, occurs in Book 7, which covers a mere six months and mainly concerns the short-lived attempt by the pretender Gundovald to challenge the monopoly on legitimate power held by the accepted sons of Chlothar I. There were also frustrated attempts by Austrasian nobles to overthrow the rule of Childebert and his mother; deaths to record of big and devious players in the politics of the last decade; and finally the downfall of Egidius of Reims, one of the main architects of the contentious alliance between the Austrasian court and Chilperic made at Nogent almost a decade earlier.

As Gregory brought his *Histories* to a close, there was still plenty of potential for serious internecine conflicts among the present kings and their supporters and no prospect that this condition would improve when the new generation divided

70 The triad of chapters mentioned above at n. 67 (*Hist.* 6.37–39) manages to compare the queen’s role in episcopal appointment unfavourably to that of Guntram’s and implies she was involved in the killing of an abbot.

the vast territories of Austrasia and Burgundy. (This, I argue above, is the broader context for the Prologue to Book 5, and consequently Books 6–10, not just the immediate events of the 570s.) Gregory's final political vignette (*Hist.* 10.28) portrays the baptism of Chlothar II in the presence of his uncle, and godfather, Guntram, and the remonstrance of Childebert's envoys. Some scholars, disarticulating Gregory's views, have inferred from this incident that in the end the bishop finally put his hope for the future in Chlothar II, the young son of Fredegund and Chilperic.⁷¹ We know that Chlothar quite implausibly came out on top in the civil wars twenty years later, but Gregory did not. In fact, Gregory left the kings as he found them – quarrelling – and, considering his earlier intimations about the child king and his mother Fredegund, without dispelling the uneasy suspicion he had created that the young Chlothar might not be the son of Chilperic at all.⁷²

Much more can be said about the politics of the *Histories*. This simple and incomplete sketch is merely proposed as a starting point for considering the implications of Gregory's narrative, and will serve, I hope, as a sound basis for critically approaching political commentaries, both old and new, that seek to explicate the *Histories* and 6th-century Gallic history.

Let me conclude this section with some remarks on the question of fear which has played such a large role in recent expositions. In identifying Gregory's fears, the creators of political portraits paradoxically look to the figures about whom the bishop of Tours wrote most freely: Chilperic and Guntram. The latter's portrait is particularly rounded and varied and rivalled in vividness only by the depiction of Fredegund, his arch villainess. For Gregory to have told us so much about those whom he allegedly feared most seems incongruous. What marks each of these evocative portraits is that by the time Gregory was writing, he was out of the reach of all of them. The marker of real fear is silence, which is uncommonly hard to explore and occurs for many reasons. Where the sound of silence is most striking, though is hardly complete, is in the portraits of Childebert and Brunhild, rulers whom Gregory must have known well, whom he served and to whom he owed political allegiance, and who were still alive and in power as he brought his *Histories* to a close. Whether fear or discretion explains his cautious depiction of the Austrasian house is one of those questions worth further exploration.

71 Breukelaar, *Historiography*, p. 57; and see Marc Reydellet, *La Royauté dans la littérature latine de Sidoine Apollinaire à Isidore de Seville* (Rome, 1981), pp. 355, 359 and 427 on the allegedly positive implications of the baptism. Reydellet even imagines the bishop of Tours attempting to convince himself of Chlothar's legitimacy, though having once doubted it.

72 Reydellet's views (as in previous note) have hardly escaped unscathed: Goffart, *Narrators*, pp. 185–86; Heinzlmann, *Gregor*, p. 184.

APPENDIX 1

Gregory, the unreliable narrator: the bishop of Tours and Chilperic, once again

Scepticism about Gregory's narrative is nothing new. As already noted, scholars have for some time been wary about his knowledge of distant events, and especially the accuracy of his chronology in the late 5th and early 6th centuries, though they are divided on the extent to which there are errors and whether these are marks of an agenda by which Gregory manipulated some of his material.⁷³ It has also seemed wise to many (even to those treating him as a naive purveyor of the events of his day) to take his Catholic and episcopal perspective into consideration and to read his judgment of figures in the *Histories* against his prejudices. Historians for instance have often expressed sympathetic understanding of Chilperic's outburst against the bishops, as reported in Gregory's obituary – and for good reasons.⁷⁴ Reading Gregory is undeniably a critical undertaking, and scholarly disagreement is its natural accompaniment, because it usually involves pushing the text beyond the self-evident meaning of the moment or contextualizing it in such a way as to open up new meanings. But the recent scholarship that has just been canvassed dealing with the political Gregory may have introduced a new dimension to the interpretative discourse – namely the notion that the bishop of Tours is fundamentally an unreliable narrator.⁷⁵ The 'unreliable narrator' is the term for

73 See n. 4, above.

74 For the context behind Chilperic's remarks, see Alexander Callander Murray, "Merovingian Immunity Revisited," *History Compass* 8/8 (2010): 920–21, 926 n. 33; [above ch. 6 at n.]. Cf. Heinzelmann, *Gregory*, pp. 190–91, for a sympathetic attempt to understand Chilperic's position within competing ecclesiological perspectives.

75 The granddaddy of this kind of approach might seem to be the ominously titled article by Bruno Krusch, "Die Unzuverlässigkeit der Geschichtsschreibung Gregor von Tours," *Mitteilungen des Instituts für Österreichische Geschichtsforschung* 45 (1931): 486–90. But the problems to be solved by Krusch's self-described superior knowledge of Gregory's sources, though valuable, are all minor, chronologically early, or in the scheme of things, prosaic. Like a headline in an internet tabloid, the title fails to deliver despite Gregory being described as the author of legends that have deceived the world for a thousand years! That would be, one supposes, until about 1600. That the principal items are about the early Franks – a sensitive subject to Krusch's contemporaries – probably accounts for the hyperbole. They have no bearing on Gregory's contemporary narrative. When Krusch in passing tells us that Chlodio's Dispargum was the first residence of a "German (*deutsch*) king," it is apparent that he has some reliability problems of his own.

a literary device whereby the reader is (or becomes) aware that a narrator is not telling the truth, or at least the whole truth. Gregory himself frequently uses the technique himself, giving figures speeches that contradict what he has just told us has happened; the reader is supposed to be in on the lie, even if gullible listeners in the text may not be. Now, however, readers of the *Histories* have been assured that in effect Gregory himself is the unreliable narrator. The scholar interpreting him is the new reliable author, pointing out the falsities of Gregory's narrative or claiming privileged understanding of an alleged subtext. The result is the displacement of Gregory's narrative in favour of the modern commentator's, which the reader is to understand is the real story of the *Histories*. The method is capable of producing, not just tweaks and adjustments to the bishop's narrative, but a massive rewriting of it and consequently the main lines of 6th-century Gallic political history, which depends largely (though not quite exclusively) on Gregory's work. The approach is illustrated in a recent treatment of Gregory as an unreliable narrator by Marc Widdowson; it is largely independent of graduated or synchronic composition in its argument, though it appears to assume such.⁷⁶

The big picture of Gallic political history that it seeks to overthrow runs like this, following Gregory. Frankish politics in the 6th century are characterized by four partitions (or five if we go just beyond Gregory's death), each based on some idea of partible inheritance as a principle allocating the territories of the kingdom to its Merovingian heirs. The *first* was the division of 511 shared by the four sons of Clovis. The *second* took place after the death of Chlodomer in 524; his surviving sons, being groomed for the kingship by their grandmother Chlothild, were murdered by Chlothar I and Childebert I, and the kingdom of their father divided by their uncles. The *third* was the partition of 561, in which the four sons of Chlothar I, the surviving son of Clovis, again divided the kingdom. The division as recorded by Gregory, however, took place after Chilperic attempted to anticipate his brothers by occupying Paris; the final outline of the division was forced upon Chilperic by his brothers. The *fourth* occurred in 567/8 when one of the brothers, Charibert, died and his territories were shared among his surviving siblings.⁷⁷ This division reverberates in Gregory's narrative of the political events of his episcopacy. The *fifth* occurred in 596, two years after Gregory's death, when Childebert of Austrasia died after inheriting most of the vast territory ruled by his uncle Guntram of Burgundy. This expanded kingdom was divided between Childebert's two sons, Theudebert and Theuderic.

With particular regard to the first, third, and the fourth divisions, Widdowson seeks to establish the following points. The heritability and partibility of the kingdom was never the normal practice of the Merovingian kings and their followers. Partible inheritance was only the view of one faction (which Gregory represents in his *Histories*). Instead a unitary kingdom was the practice, which Widdowson

76 Marc Widdowson, "Merovingian Partitions: A Genealogical Charter?" *Early Medieval Europe* 17/1 (2009): 1–22.

77 On the date, see Stefan Esders, "Gallic Politics in the Sixth Century," in *A Companion*, at n. 23.

implies, reflects the legitimate principle of Merovingian succession. Consequently there was no division of 511.⁷⁸ Theuderic, Clovis' son by a concubine, succeeded to the kingdom as a whole by Widdowson's account, only permitting his half brothers (by Chlothild) to oversee particular regions when they came of age. Similarly, he argues, in 561, Chlothar had intended for the entire kingdom to go to his favourite, Chilperic, but his brothers rebelled against his authority. Chilperic thus fought thereafter to restore his legitimate authority over his rebellious brothers (and of course was the rightful king of Tours; Gregory was merely a partisan of Sigibert's party); Sigibert in fact may only have been able to wrest the title of king in 575, as he prepared to eliminate Chilperic.⁷⁹ It follows from this view, apparently, that there could have been no division in 567 because it would have been illegitimate.

There is some history to Widdowson's claims, other than simply the view that Gregory is a devious narrator. All but the last of them do not quite come out of the blue.

Ian Wood in 1977 argued that the succession and division of 511 was not some long-standing practice but the result of a political settlement in the wake of Clovis' death between Theuderic and Chlothild, representing her sons, in conjunction with the Frankish aristocracy and the Gallo-Roman bishops. Of this suggestion, he wrote at the time: "This recreation of events is necessarily speculative."⁸⁰ His views have apparently clarified themselves with time, and his initial reservation has been set aside.⁸¹ Wood cast his arguments as an assault upon the notion of partible inheritance, drawing a dichotomy, for some reason, between inheritance practices and the political context of succession.⁸² Though Wood seems to regard 511 as setting a precedent that set the norm for subsequent divisions based on partible inheritance,⁸³ in Widdowson's retelling

78 This reconfiguration of Gregory has a similar and distant predecessor in *Grandes Chroniques de France*, 2.1, ed. J. Viard, Société de l'Histoire de France, 10 vols. (Paris, 1920–1953) 1: 95, which, though accepting multiple concurrent Merovingian kings, held that there was only one king of France at a time – namely the king who ruled from Paris. I want to thank Courtney Dahlke for alerting me to this reference.

79 Widdowson piles up the 'may have's' and 'could have's', and the like, rather precipitously but such caveats are tactical and hardly impinge on the thrust of his narrative and the marginalization of Gregory's.

80 The argument made to reach this point is often tendentious, but the inconclusive supposition is at least in its own terms reasonable. Ian Wood, "Kings, Kingdoms and Consent", in *Early Medieval Kingship*, ed. P.H. Sawyer and I.N. Wood (Leeds, 1977), p. 26; and cf., "events of 511 can never be known" (*ibid.*).

81 *The Merovingian Kingdoms* (London/New York, 1994), p. 58.

82 The dichotomy Wood draws between 'tradition' = partible inheritance and politics, as if they were clean different things, seems oddly naive (or just thesis-driven) to me. The dichotomy does not really exist.

83 To go by "Royal Succession and Legitimation in the Roman West, 419–536", in *Staat im frühen Mittelalter*, ed. Stuart Airlie et al. (Vienna, 2006), pp. 64–65 and *Merovingian Kingdoms*, p. 136. Although compare his treatment in the latter of 561, at n. 85, below.

partible inheritance becomes simply a notion espoused by those excluded by the normal, legitimate, single heir. Obviously from this perspective Gregory's narrative must be wrong, or worse.

Such is the source for 511. Behind Widdowson's account of 561 lies Marc Reydellet's analysis of Fortunatus' panegyric to Chilperic on the occasion of the synod at Berny in 580, an occasion in which Gregory had to defend himself on charges of treason for defaming the character of Fredegund.⁸⁴ This is the key to Widdowson's argument because the panegyric is supposed to put in question Gregory's sincerity.⁸⁵ Reydellet noted Fortunatus' claim in the panegyric that Chilperic was his father's favourite and concluded that the elder Chlothar had intended him to be his privileged heir ("son héritier privilégié"). Wood took this idea up in 1994, speculating that "Chlothar may have intended that Chilperic alone should succeed."⁸⁶ Widdowson tries to enrol Gregory in his narrative, assuring us more than once that the *Histories* tell us that Chilperic took "the throne" [my italics] right after Chlothar's death, whereas what Gregory actually says is that Chilperic moved on Paris and occupied the residence of his uncle Childebert I (*Hist.* 4.22), the seat of his uncle prior to the succession of Chlothar I.

Fortunatus' flatteringly equivocal evocation of Chilperic's virtues can hardly be pinned down with the precision that Widdowson would like. Reydellet plausibly suggested that in all of its abstract expression, the panegyric did tell us something about the preferred propaganda of the Neustrian court. But what exactly was that, and was it true? Widdowson thinks he knows exactly what that was – not just that Chilperic was the apple of his father's eye but that he was intended as sole heir of the entire kingdom – and yes, it was absolutely true; furthermore, he adds, there could have been no division in 561 because it would have been illegitimate.⁸⁷ Marius of Avenches († ca. 581) in the Burgundian region, and an occasional, rare external confirmation of Gregory's narrative, mentions the division among the four kings under the year 561 of his

84 Reydellet, *La Royauté*, pp. 309–313. The circumstances of the synod have sparked some comment; see Michael Roberts, "Venantius Fortunatus and Gregory of Tours: Poetry and Patronage," in *A Companion*, with literature, at n. 29.

85 In terms of his presentation, Widdowson actually begins his paper by invoking a model drawn from African anthropology (Laura Bohannan, "A Genealogical Charter", *Africa: Journal of the International African Institute* 22/4 [1952]: 301–15) in which genealogical data can be invented for contemporary purposes. But the 6th-century issue is royal inheritance practices, not genealogy at all. Widdowson (apart from inventing a King Sigivald for some reason) accepts the basic genealogy of the main players as provided by Gregory.

86 This comment sits equally beside two other quite contrary ones: a paraphrase of Gregory's quite short account; and speculation that Chilperic as the single son of Aregund moved quickly to prevent his being excluded by his half-brothers. Later Wood seems to presume multiple succession was normal Merovingian practice. *Merovingian Kingdoms*, pp. 59, 136; but then again, just to keep you guessing, cf. p. 60.

87 And, for the same reason so too the division of 567.

Chronicle.⁸⁸ Widdowson dismisses him as another partisan of the faction supporting partible inheritance.⁸⁹

But even if Fortunatus' tribute to Chilperic floats in a wispy inflated cloud of hyperbole, it can fit the spare details that Gregory gives us without much trouble. Chlothar, Fortunatus tells us, recognized that Chilperic deserved better (things), *meliora*.⁹⁰ This is not what he got in 561. Chilperic was pushed out of Paris (which I take to be the prize and the key to Merovingian politics throughout the last half of the 6th century) by his brothers who imposed on him in the settlement that followed a measly slice of territory with few prospects of enlargement, an unjust outcome for (in Fortunatus' terms) the favourite son.⁹¹ Gregory is clear that this is the division of 561, not whatever putative arrangements were made by Chlothar and the Franks before the king's death. There should be no surprise (with or without Fortunatus) about Chilperic's resentment over the events of 561 (and then 567/8). Fortunatus also tells us that Fortune, which at first had been jealous of Chilperic, had now restored him to the "better things" he had been denied.⁹² By 580, when Fortunatus presented his panegyric, Chilperic was in the ascendancy. Paris was his. Sigibert was dead. And Chilperic was successfully running roughshod over cities in the south. But, on the other hand, Sigibert's son Childebert was king in Austrasia, as was Chilperic's brother Guntram in Burgundy. To the panegyrist, the restoration of Chilperic's fortunes did not entail kingship over a united Frankish kingdom because even the court of Chilperic did not go that far in its claims.

Widdowson's final claim is this: while Gregory was a partisan of the partible-inheritance faction his personal interests were paramount. The Treaty of Andelot, which Widdowson construes as the product of Gregory himself and a faction of like-minded magnates, in supporting the assumption of partibility in the past, was designed to remove Gregory from the control of Guntram and into the hands of, apparently, a much more malleable Childebert; indeed in the end perhaps his aim was only to strengthen his control over his metropolitanate against locals still

88 *La Chronique de Marius d'Avenches (455–581)*, ed. and trans. Justin Favrod (Lausanne, 1993), s.a. For an English translation: Alexander Callander Murray, *From Roman to Merovingian Gaul: A Reader* (Peterborough, Ontario, 2000), p. 105.

89 The invention of faction is often the last refuge of scholars with bad sources for their point of view and has been developed imaginatively by political historians dealing with the poorly documented late 7th century. Invocation of it is not always unwarranted as a general condition, but as an explanatory device in particular contexts, it should require a modicum of evidence. [Cf. above, ch. 9, esp. at n. 55.]

90 Fortunatus, *Carm.* 9.1.35: "Agnoscebat enim te iam meliora mereri." Here and below, at n. 91, I do not follow Reydellet's translation ('higher' for *meliora*), which in any case he changed for his edition, 3: 10. Cf. Judith George, Venantius *Fortunatus: A Latin Poet in Merovingian Gaul* (Oxford, 1992), p. 200.

91 See Map 4 for the division of 561. The territories of the kingdom in 561 (and presumably the 511 division were similar) were sliced like a pie (or wheel of cheese, if you prefer), centring on the northern areas around Orleans, Paris, Soissons, and Rheims.

92 *Carm.* 9.1.55: "fortuna . . . meliora dedit"; and cf. 60: "aspera non nocuit sed te sors dura probavit:/ unde gravabaris, celsior redis."

resentful of his appointment in 573. By this account Gregory begins to resemble a kind of low-concept Egidius of Rheims, fearful of losing his seat and manipulating two kingdoms to maintain his apparently precarious position. And this, as a 'just-so story' would tell us, is how the hidden agenda of the bishop of Tours came to completely misrepresent the history of 6th-century Gaul.

The problems with Widdowson's reconstruction and analysis of Andelot are legion. I will only comment on one unnoticed chronological fact. By 587, when the Treaty of Andelot was negotiated between Guntram on one side and Childebert and Brunhild on the other, Tours was already under the control of Childebert, and had been for two years or more. At the time when Gregory was supposedly plotting to attach himself to Childebert, the bishop of Tours had actually been dealing with the young king, who had already reached his majority by Andelot – indeed Gregory had been in his service as a spokesman (*Hist.* 8.13 s.a. 585). I leave aside the question of the king's interfering mother, who, whatever one might guess about her son, was anything but pliable.

This critique just scrapes the surface of Widdowson's reconstruction and the point of it is not really to challenge it in detail, but, as some readers must surely have noticed, to question the method it employs.⁹³

Most of what we can know of 6th-century politics in Gaul comes from Gregory of Tours (and not just the *Histories*). This is a fact of studying the period. Attempts to tap oblique perspectives (such as Marius or Fortunatus or saints' lives) are worthwhile but, so far, appear limited in their ability to alter his narrative, though they can confirm it and add to it. Gregory's near singularity does not mean he must be right – or, conversely, according to some contrarian conviction, that he must be wrong. Critical method, however inadequate this might be at times, can help but it can hardly prove absolutely the truth or falseness of what Gregory says – which should hardly be an intellectual hardship for a modern historian of the period. To overcome our reliance on Gregory, by inventing a counter narrative that, even when it relies on his (which it must), depends on distorting it, is hardly an advance. The narrative of inversion that this approach produces not only reverses judgments of the narrator but also what reasonably can be accepted as the facts of the narrative, which are turned upside down. It presupposes far more than the usual faults staining the intellectual commitment of a narrator to his subject and places duplicity at the centre of his overall purpose. Discovering a fundamentally duplicitous agenda marginalizes the medieval author and centres the modern author's thesis, which can then slice through the text as if it were the Gordian knot, deploying its bits at will and sometimes in contradictory ways. The burden of proof seems to be shifted from the modern scholar to the medieval text.

93 Partible inheritance was a characteristic feature of Merovingian succession throughout the 6th-century and a tenet of the political and military class that supported the kings. A more wide-ranging discussion is in preparation. Some of the assumptions about the subject in recent literature are flawed.

In practice the approach is tantamount to the Hollywood claim, 'based on a true story'.

The origin of this unreliable Gregory, the mischievous narrator, lies in the synchronic interpretation of his politics as developed in the last generation. It remains to be seen whether it will have a life of its own, divorced from the chronology of composition problem, and whether in possibly multiple forms it becomes a new chaotic slant on Gregory that readers from now on will have to deal with. All historical narrators are in some sense unreliable, not because they are wilfully telling us lies, though they might be, but because, no matter their earnestness, they are presenting a point of view. Recognizing Gregory's point of view obviously requires more on our part than a reliance on old clichés about his naiveté and superstition. But, on the other hand, we should not jump to the conclusion that Gregory was the Loki of 6th-century history.

APPENDIX 2 [2021]

Selections from “Chronology and the Composition of the *Histories* of Gregory of Tours,” *Journal of Late Antiquity* 1/1 (2008): 157–196

The text of the selections (along with their footnotes) are in Roman type. Italics and boldface mark the commentary of the present volume, as do square brackets. The heading numbers corresponds to references found in the footnotes of the “Composition of the *Histories* of Gregory of Tours” (2016), above.

1) Development of the theory of graduated composition

The theory of a first, six-book edition, and the tendency to spot graduated, chronological phases of composition in the narrative fragments after about 573 (the year Gregory took up his episcopacy) have tended to go hand in hand in the scholarly literature since the 19th century. It is not clear how far back these ideas go. The following bibliographical information from “Chronology,” p. 163 n. 13, provides some of the track to be followed.

Thierry Ruinart, in the introduction to his influential 1699 edition of Gregory’s works (repr. in PL 71) simply regarded the *Histories* as Gregory’s last work and notes earlier theories of a preliminary six-book version (§ 84). Ruinart still was the standard to be met in the early nineteenth century. Rudolph Köpke, whose arguments have been influential in the modern understanding of graduated composition, believed Ruinart’s view had been disposed of by an 1839 Breslau dissertation by Karl Gustav Kries (unavailable to me) and Johann Wilhelm Loebell, *Gregor von Tours und seine Zeit vornehmlich aus seinen Werken geschildert: ein Beitrag zur Geschichte der Entstehung und ersten Entwicklung romanisch-germanischer Verhältnisse* (Leipzig, 1839); I have consulted the second edition of 1869, which marks off additions to the first. Köpke’s own arguments were developed in a lengthy review of Wilhelm Giesebrecht’s translation, *Gregor von Tours, Zehn Bücher fränkischer Geschichte*, *Die Geschichtsschreiber der deutschen Vorzeit* 4.5, 2 vols. (Berlin, 1851), which developed the idea of graduated composition further. Giesebrecht’s translation is the basis of Buchner’s 1955 edition. Rudolf Köpke, “Gregor von Tours,” in *Allgemeine Monatschrift für Wissenschaft und Literatur*, 775–800 (Kiel, 1852); I cite the reprint in idem, *Kleine Schriften zur Geschichte, Politik, und Literatur*, ed. G. Kiessling, 289–321 (Berlin, 1872).

2) Modern authorities for synchronicity

“Chronology,” p. 163 n. 14.

The influential modern statements are Gabriel Monod, *Études critiques sur les sources de l'histoire mérovingienne* (Paris, 1872) 1.45–49; Krusch, xxi–xxii; and Buchner, *Zehn Bücher* 1, xx–xxv; these rest on earlier work mentioned in [no. 1 above]. Gustavo Vinay, *San Gregorio di Tours* (Turin, 1940) amplifies Monod with dubious arguments that have rarely been followed. Vinay's scheme, however, was taken up by Jean Verdon, *Grégoire de Tours* (Le Coteau, 1989), whose summaries were used by Ian Wood, *Gregory of Tours* (Bangor, 1994), p. 3, to produce an elaborate scheme for the dating of all Gregory's works. Wood now cites Monod (see “The Individuality of Gregory of Tours,” in *World of Gregory of Tours*, p. 30 n. 11).

3) Anomalies, monsters, fear, and coded narrative in Ian Wood's portrayal of Gregory's views

Wood's method of detecting and reading coded text. “Chronology,” pp. 189–92.

The source of this insight [that Gregory shows himself to be a devious political player] is identified as Gregory's own narrative itself, which contains, in Wood's view, anomalies that subvert the apparent meaning of the account and provide a coded sub-text written in almost perfect sync with unfolding events.⁹⁴

Wood begins by arguing that Gregory's scathing obituary of Chilperic (6.46), depicting him as a ‘monster’, is an anomaly, out of character with the portrayal of the king up to that point, and explicable by Gregory writing at the time of Chilperic's death, freed for the first time from the fear that had constrained his writing in Books 4–6.⁹⁵ But it is questionable how restrained Gregory's writing is in these books.⁹⁶ Commentators have long noted Gregory's combining harsh judgments of selected individuals with apparently neutral reportage of some of their activities, without linking this to synchronicity. Gregory shows Chilperic acting moderately

94 Wood's skepticism about Gregory's candor is anticipated by the observations of Siegmund Hellmann, [as at n. 31 above] esp. pp. 77–97 (21–41).

95 Cf. Hellmann, p. 79 (23), referring to earlier views of the obituary. Wood's term “monster” has only dubious rhetorical significance. Reydellet thought Gregory had mistakenly made of Chilperic “un monstre d'un prince trop enclin à gouaille” (*Royauté*, 419). Monod thought posterity would view Chothar I as the monster of Gregory's work (*Études*, p. 134).

96 Wood exaggerates the number of positive passages about Chilperic, and his list could be pared considerably (“Secret Histories” p. 255). For example, *Hist.* 6.27, describing Chilperic's *adventus* into Paris, preceded by relics to offset the broken promise he had made with his brothers not to enter the city, does not depict the event as “the beginning of a period of happiness.” The entry merely occasions revelry on the part of Chilperic who had his son baptized. Even when Gregory supposedly “comments on the *prudencia vel patientia*” of the king, the context in fact can be understood in more than one way: “Mirati sunt omnes regis vel prudentiam vel patientiam simul” (*Hist.* 6. 49).

on occasion because the bishop tended not to draw one-dimensional extended portraits, nor did he portray contemporaries, with the possible exception of Rauching, as monsters.⁹⁷ Even Fredegund, whom Gregory casts in a harsher light than her husband, can be depicted as a banal and pathetic human being.⁹⁸ But the “criminal couple,” as Siegmund Hellmann characterizes Gregory’s portrayal of Chilperic and Fredegund, are hardly treated well.⁹⁹ Given Gregory’s cataloguing of Chilperic’s reprehensible behavior for two and a half books (including the murder of his queen Galswinth), it is difficult to see why anyone would find the moral strictures of the obituary a harsh disjunction in the portrait of the king. It could have been a lot worse. The obituary is not of a “monster,” as Wood represents it, but of an aggressive, immoral tyrant and disparager of the church and its episcopacy; significant human failings implied in earlier chapters are passed over.¹⁰⁰ The obituary’s stress on the king’s anticlericalism in fact has often been seized upon by modern commentators, with little liking for ecclesiastical power themselves, as grounds for rehabilitating the king, offsetting the otherwise devious, dangerous, and morally deficient character who dominates Books 5 and 6. [. . .]

Fear induced by his trial before Chilperic for treason in 580 (Hist. 5.49), we are told, taught Gregory a lesson about how he could cast his narrative with impunity.

[S]ubsequent books were written by an author keenly aware of exposure and constantly trimming his sails before the political winds of Merovingian politics. In addition, on certain matters he had no choice but to employ anomalous statements, along with other literary tricks, that served the purpose of alerting the reader to problems within the narrative, thus revealing the constraints under which he was writing and casting doubts on what he was saying.¹⁰¹

The selective invocation by Wood of Gregory’s fear, sense of self-preservation, and penchant for giving the game away, all tied to a real-time narrative of events, produces unnecessary or odd interpretations and curious possibilities. The death

97 It is possible to argue about the literary strategy behind this approach. For the inhumanity of Rauching, see esp. *Hist.* 5.3. He seems to have a female counterpart in the matron Magnatruide, who castrated male slaves and seared with hot plates the private parts of female ones (*Hist.* 8.39); but Gregory also shows her rather spiritedly rousing her household and driving off the former count of the stables, Chuppa, when he attempted to abduct her daughter (*Hist.* 9.5).

98 For the human side of the queen, see her reaction to the death of her children: in *Hist.* 5.34 it turns to repentance; in *Hist.* 6.35 to vengeance.

99 “Studien,” p. 79 (23).

100 Gregory’s final judgment in the obituary (comprehending much that had been said before) is not without pathos: “He never loved anyone sincerely and was loved by no one”; in death the king was abandoned by his followers, his remains being attended by a single bishop who happened to be waiting for an audience. Ferdinand Lot, *End of the Ancient World and the Beginning of the Middle Ages* (1931; repr. New York, 1961), p. 354, silently appropriated the portrait of Chilperic for the entire dynasty: “Being a suspicious, cruel, capricious and selfish despot, the Merovingian Monarch could not be loved.”

101 The anomalies have the habit of turning out to be nothing but different viewpoints, not even necessarily contradictory, of speakers in Gregory’s narrative. Cf. “Secret Histories,” pp. 266–67, and 270. *Gregory*, pp. 54–55.

of Austrechild, Guntram's wife, in 5.35 supposedly lifts the fear constraining Gregory's writings about the domestic politics of the Burgundian king earlier in the same book (5.17, 20).¹⁰² Gregory is revealed to be sympathetic to Sagittarius' treasonous remarks about the sons of Guntram.¹⁰³ We are assured that Gregory would have had little to worry about by portraying Fredegund as a serial murderer of the royal family, as long as he made only indirect comments about her infidelity.¹⁰⁴ Gregory's sympathies for Gundovald and the conspirators supporting him are detected.¹⁰⁵ The possibility that Guntram Boso was uninvolved in inviting Gundovald to Gaul is aired.¹⁰⁶ Gregory is said to be so enmeshed in establishing the alliance between Chilperic and Austrasia at the time of the Nogent agreements in 581 that he later needed to play down his involvement.¹⁰⁷ His account

102 "Secret Histories," p. 262; *Gregory*, pp. 51–52. This perception is doubly odd because all the time these chapters were supposedly being written Gregory was a subject of Chilperic.

103 *Gregory*, pp. 52–53. This argument is offered as part of a labored attempt to demonstrate that *Hist.* 5.17, 20, 35 are synchronized, chapter by chapter, with the events they describe and reveal Gregory's fear of Austrechild, Guntram's queen. Sagittarius challenges the right of the king's sons to succeed because their mother had been a household slave (*Hist.* 5.20). Gregory notes that Sagittarius was unaware that the female line was irrelevant and that "regis vocitantur liberi, qui de regibus fuerant procreati." Wood attempts to argue that Gregory's words signal agreement with Sagittarius, an opinion that could only be expressed surreptitiously in a subtext because of fear of Austrechild. Taking *regis* as a conventional genitive, Wood detects tautology in the phrase (an anomaly?) ("Secret Histories," p. 262) and then more plausibly allusion to the norm that servile offspring followed the status of the mother (*Gregory*, p. 52). It is questionable, however, that Gregory is saying (to use Wood's most recent translation) "those who are procreated by kings are called the sons of a king" ("Deconstructing," 165). No notice is taken of an orthographical crux in the phrase. The vowels *i* and *e* frequently are interchanged in the Latin of Gregory's time, e.g. *regis* = *reges* in many instances: Denise St-Michel, ed., *Concordance de l'Historia Francorum de Grégoire de Tours*, Collection de listes et concordance de textes de l'Université de Montréal, 2 vols. (Montreal, 1979) produces examples based on the Arndt edition (including "omnes regis [= reges] gentes [= gentis] illius" [*Hist.* 4.29], showing the mutual interchange); word searches in Krusch produce slightly different sets of examples. The text then readily can be taken to read: "offspring that had been born of kings are called kings." The passage is not easily construed, but however exactly Gregory expressed himself, he was hardly agreeing with Sagittarius, whom he called a "flighty, vacuous, senseless babbler," by way of introducing his opinions on royal succession. Wood's comment that the issue of the king's sons was "academic" (another anomaly?) in *Hist.* 5.20 because their death was recorded in *Hist.* 5.17 is an error caused by his commitment to a synchronicity of narrative and event. The subject of *Hist.* 5.20 is the misbehavior of Salonius and Sagittarius; Gregory extends the narrative back by many years and, it should be added, forward, and notes that Guntram's sons were alive at the time of Sagittarius' treasonous remark, a. 577.

104 "Secret Histories," pp. 258–59. This is special pleading and fails to understand, among other things, the authority of the queen and Gregory's own view of Fredegund the person (for example, see *Hist.* 6.32).

105 "Secret Histories," p. 264, *Gregory*, 19, 50. Cf. Hellmann, *Studien*, 90–92 (35–36).

106 "Secret Histories," pp. 265–66. Where Wood stands on the question is anybody's guess. The argument for argument's sake seems designed as an attack on modern historians who rely on a degree of candor in Gregory's sometimes oblique narrative.

107 "Secret Histories," p. 54. All evidence for Nogent and those involved in it comes from the *Histories*.

of Egidius' trial properly interpreted is supposed to portray Egidius sympathetically as a scapegoat.¹⁰⁸ Even the famous description of Guntram's holiness in a chapter following Gregory's account of his embassy to the Burgundian court in 588 (9.20–21) is better regarded as a surreptitious criticism of Austrasian policy than as a vital aspect of Gregory's assessment of the king.¹⁰⁹

4) A pause in writing at end of Book 6?

Views on a 'pause' from p. 164 n. 18, "Chronology"

A pause in these circumstances [namely, a completed Book 6 and still synchronous Book 7] seems hardly worthy of the name. The contradiction is Monod's (*Études*, 47–48), who made the claim of both a pause after Book 6 (ending with Chilperic's obituary) and the absolute contemporaneity of text and events in 7.23 (still a. 584); [for the supposed synchronicity of 7.23 see above at n. 37]. The modern argument for a pause after Book 6 seems to begin with Loebell, the opening words of 7.1 originally being his only proof-text for publication of a six-book version by Gregory (*Gregor von Tours*, p. 15). Ruinart § 84 had noted it as an old argument in his own day as well. Gustavo Vinay rejected it (*San Gregorio*, 61 n. 2). Krusch (p. xxi) still entertains the idea of a pause in composition, though rejecting the theory of a Gregorian six-book version. Buchner notes pointedly he can find no indication of a pause in 7.1 (*Zehn Bücher* 1: xxii n. 3). Latouche both fails to find reference to a hiatus in the text itself and accepts nonetheless a brief interval in composition of the work (*Histoire des Francs*, pp. 11–12). Reference to a pause is rejected by Goffart ("From *Historiae* to *Historia Francorum*," p. 73 n. 49). The opening text of 7.1 reads "Licet sit studium historiam prosequi, quam priorum librorum ordo reliquid [sic], tamen prius aliqua de beati Salvii obitu exposcit loqui devotio, qui hoc anno obisse probatur." Those finding a pause here inevitably only quote half the sentence ("Licet [. . .] reliquid"). The effort seems designed to validate the idea of an original six-book version of the *Histories*: after publishing his six-book version, surely Gregory must have halted his labors for while? The whole sentence hardly supports such an idea: "Although I am anxious to get on with the narrative from the (chronological) point I left it in preceding books, reverence first demands something be said about the death of the blessed Salvius, who died in this year [a. 584]." The year in question had been established in 6.33. As others have noted, the words are merely a formal introduction to a rather lengthy exposition that follows on the sanctity of an important holy man.

108 "Secret Histories," p. 268; *Gregory*, p. 20. Wood's argument that Childebert himself was implicated in the Nogent agreement fails to take into consideration the fact that the king was eleven years old at the time and under the control of a group of guardians, the initiators of Austrasian policy. Egidius' prominence in the Nogent treaty with Chilperic could hardly have been secret. The Nogent alliance itself is not what his trial is about.

109 "Secret Histories," p. 261.

The previous book, ending with the obituary of Chilperic, and Book 7, opening with the obituary of a saint, who confirmed by experience the reality of the after-life, seem arranged with the edification of the reader in mind and show the close compositional relationship between the two books, not a disjunction.

5) Thorpe on the natural historical form of the age

From "Chronology," p. 159, n. 5

The view of Lewis Thorpe, translator of the Penguin edition of Gregory's *Histories*, *The History of the Franks* (London, 1974), nicely captures the larger context for viewing Gregory's work in this light [as a chronicle/diary] and should be appreciated for its candor: "[Gregory] would naturally think in terms of a chronicle, for in the sixth century a historian of contemporary events meant a historiographer, and a historiographer meant a chronicler, a recorder who listed happenings in quasi diary form more or less as they occurred [. . .]" (p. 24). Although this assumption could affect his translation [as noted above at n. 40], Thorpe never supports it with datable references to Gregory's text, only with invocation of the natural historical form of the age. Thorpe should be viewed as a translator, not an historian, but his views are in line with the specialist literature of the time and his decision to cite the supposedly well-known conditions of the period, not datable text, is significant. Regarding his understanding of chronicles, it might be noted that they were as likely as not to be thoughtful confections written more or less at one point after the events they record. On the purposive aim of chroniclers, see Steven Muhlberger [above, as in n. 36].

6) Gregory on Tiberius: a literal translation

Tense switches in the Tiberius story (Hist. 5.19), with the future faciet at end. From "Chronology," pp. 172–74

Et quia [. . .] magnus et verus christianus erat, dum hilare distributione pauperibus opem praestat, magis et magis ei Dominus subministrat. Nam deambolans per palatium, vidit in pavimento domus tabulam marmoream, in qua crux dominica erat sculpta, et ait: "Crucem tuam, Domine, frontem nostram munimus et pectora, et ecce crucem sub pedibus conculcamus!" Et dicto citius iussit eam auferre; defossamque tabulam atque erectam, inveniunt subter et aliam hoc signum habentem. Nuntiantesque, iussit et illam auferri. Qua amota, repperiunt et tertiam; iussumque eius et haec aufertur. Qua ablata, inveniunt magnum thesaurum, habentem supra mille auri centinaria. Sublatumque aurum pauperibus adhuc habundantius, ut consueverat, subministrat; nec ei Dominus aliquid defecere faciet pro bona voluntate sua. Quid ei in posterum Dominus transmiserit, non omittam [. . .]

And because [. . .] he was a great and true Christian, as long as he cheerfully distributes alms to the poor, the Lord provides him with more and more. For example, he was walking about the palace and noticed in the pavement of the building a marble slab in which a cross of the Lord was carved and said, "With Your cross, Lord, we protect our brow and breast, and look, we are treading it underfoot." Without more ado, he ordered the slab removed. When they dug around it and pulled it up, they find another one with the same sign. When they told him, he ordered it removed also. When it was taken away, they also find a third stone. At his command, this is removed. When it was removed, they find a great treasure of over a hundred thousand pounds of gold. After the gold was taken up, he provides for the poor even more profusely, as he had been accustomed to do; and on account of his good-will, God will not have him lack for anything. I shall not pass over what God conveyed to him at a later time [. . .] [a story about his acquisition of Narses' treasure follows].

Future in the past usages are currently common in informal and public speech.¹¹⁰

7) Cross-references between the *Histories* and the *Miracula*

Krusch (mainly) and cross references to the Miracula, from "Chronology," 176–78

Book 4.36 on Nicetius [recognized by Monod as referencing a late element in VP 8] is not a lone wolf in Gregory's books of histories. Krusch lists no less than thirteen other passages in Books 1–5 that cross-reference Gregory's hagiographical works and fit poorly with the traditional dating of the early books of the *Histories*. But Krusch was committed to an early date for these books, and had to view all of the cross references as evidence of a late textual reworking, which he viewed as incomplete at the time of Gregory's death because it did not extend beyond Book 6.¹¹¹ It is true that there are no cross-references in Book VI, but they are found again in diminished numbers in Books 8–10.¹¹² And nothing about this pattern is odd. Breukelaar, who on other grounds favors the general synchronicity of the early books, correctly notes that the earlier density of cross-references simply

110 And not limited to the vividness of sports news: "he scores/scored the winning goal in the second period, and will/would put two more in the net before the evening is/was over." All the forms are interchangeable.

111 I agree that Gregory probably was not completely through with shaping his text in 594 but this impression fits both a late and early date model of the *Histories*. It is no argument in itself for the former.

112 There is no particular significance to a lack of cross-references in Book VI. Krusch's grudging concession to three of Giesebrecht's suggestion for "interpolations" (of a different kind than cross references) in Book 6 ("neque excedunt librum sextum," p. xii) is pointless because they all sit comfortably in the texts where they are found.

corresponds to the period when most of Gregory's holy men actually lived.¹¹³ The effort by Krusch to invoke a late limited textual reworking in order to discount the fact that numerous cross-references in early books point to much later dates for the early books of the *Histories* just begs the question.¹¹⁴ In 1699, Ruinart (§ 84), familiar with the data of cross-references, concluded that, because the *Histories* referred at some point to all of Gregory's *Miracula* but none of his hagiographical works referred in turn to the *Histories*, the *Histories* was written after the hagiographical works, and that the *Histories* was Gregory's last work. This is a logical conclusion, but not decisive, and, one is entitled to imagine, possibly too simple. Nevertheless, the implication of the cross-references to the *Miracula* point to dates of composition for the early books of the *Histories* well within the period when Childebert controlled Tours. At the very least, they show the folly of reading the early books as an unmediated primitive, near-synchronic text.

8) Beyond the default style: chronological layering in *Hist. 5.5*

From "Chronology," pp. 180–82

Despite his occasional anticipation of future events, Gregory, following the requirements of annals, for the most part laid out his events, as he said, in the

113 Krusch's list of cross references (p. xxii), which only go to Book 5, needs to be compared with Breukelaar's complete list, covering I–X (*Historiography*, pp. 54–55). Breukelaar gives 24 examples in all. He sees the references as a late start to Gregory's theological thinking [. . .], but the distribution of references according to his own observation about the reason for their early density does not bear that out (about half come from Books 1–4). He detects two errors in Gregory's references, which he takes to be a sign of distance from the "original." They are not likely to be errors. The first recalls Tetricus (*Hist.* 4.16), "cui in superiori libellum memoriam fecimus (whom I mentioned in a previous little book)." Gregory does use some variant on the phrase *in superiore libro* to refer to previous books of the *Histories*: see examples s.v. "superiore(m)," in Denise St-Michel, *Concordance*, vol. 2. Tetricus, however, is not mentioned in the preceding books of the *Histories* and Gregory is hardly likely to be referring to them. Tetricus does appear in *VP* 7.4 and a projected chapter 105 in *GC*. *Libellus* fits these contexts much better than an earlier book of the *Histories* (see s.v. "libellus" and "liber" in St-Michel, vol. 1). *Superior* is ambiguous and means "previous" (as in "above" but also as in "earlier"). The second example is a well-known, failed proof-text used by Monod to argue that Book 4.49 was written before *VM* 2.5 (*Études*, 45). Gregory mentions three paralytics being healed in the basilica of St. Martin on the same day as peace was made between Sigibert and Chilperic and notes "[q]uod in sequentibus libris, Domino iubente, desseruimus (I recorded this with God's help in later books)." The *libri* cannot be a reference to the *Histories* because there is no other place in their chronological ordering for a return to the incident just described. Monod saw that the place Gregory recorded the miraculous healing was in the *VM* 2.5–7. Unaccountably Monod also read the passage as a promise to the reader of a *future* work he had not yet written. But *disseruimus*, to standardize Gregory's orthography, is in the perfect tense. Gregory is merely saying he later logged the miracle in books of the *VM* that he had not yet written at the time of the event in 574.

114 Buchner (*Zehn Bücher* 1.xxiii) notes cross-references in 8–10 and distances himself from Krusch's theory (xxiii) of a limited revision completed only to Book 5.

proper order (*esse digerenda*), namely, according to the date of the events, or an element of the events, that fell in a particular year, or even at a particular point in the year. The method did not always make the internal chronological layering of his narrative simple. An analysis of one chapter will perhaps show the complexity of the chronological perspective this approach might entail, a complexity that was not due to different stages of composition but of a single distant perspective and an authorial practice that for its own reasons found a particular year a suitable spot for an entry.

Hist. 5.5 is a well-known chapter that recounts a family feud leading to the death of Gregory's brother Peter. Gregory begins by noting that "at this time," in 576, Felix, bishop of Nantes, one of Gregory's suffragans, wrote him an insulting letter that said Gregory's brother, Peter, a deacon in Langres, had killed his bishop out of a greedy desire to possess the bishopric himself. The reference to greed is a clue to why Felix wrote this in 576, some time after accusations had been made against Peter in 572 and indeed after Peter's death in 574. The real subject of the letter was a dispute between Nantes and Tours over a villa that Tours possessed and Gregory refused to give up.¹¹⁵ Peter's greed, one might speculate, had been cited as a family trait. Gregory tells us nothing about the dispute but gives us part of his reply to Felix, citing Isaiah's warning against joining house to house and field to field and mocking Felix's verbosity. His sardonic comment to Felix that the latter ought to have been bishop of Marseilles where he need never run out of imported papyrus is a famous proof text in the economic history of Merovingian Gaul. Gregory ends his account with a statement about the character of Felix: "He was a man of incredible greed and boastfulness."¹¹⁶ Felix was deceased at the time this entry under 576 was written, an inference supported by subsequent chronological elements in the narrative. Felix died in 582 and Gregory notes his passing under that year but gives no obituary and contents himself with describing Felix's uncanonical attempts to have an unsuitable nephew succeed him (6.15). Gregory's obituary of Felix actually is given under his account of the property dispute of 576.

The dispute and Felix are left behind in the rest of the chapter, which is an extensive, interlocking narrative of Peter's troubles and the history of the bishopric of Langres from the late 560s to the 580s. The chapter heading labels the subject "On the Bishops of Langres," omitting reference to Felix or Peter. The bishopric, in the Burgundian kingdom of Guntram, had been held by relatives of Gregory for much of the sixth century.¹¹⁷ The account ranges over the episcopacies of several bishops of Langres: Tetricus, from the late 560s to his death

115 "Sed ut haec scriberet, villam ecclesiae concupivit."

116 "Immensae enim erat cupiditatis atque iactantiae." Cf. characterizations of living contemporaries [above at n. 69].

117 Gregory of Langres, ca. 506–39, Gregory's grandfather on his mother's side; Tetricus, 539–72, Gregory of Langres' son. Neither of his successors Pappolus nor Mummolus the Good appear to have been relatives.

in 572; Munderic, who was bishop designate under an ailing Tetricus from ca. 568, and who was forced to flee to the kingdom of Sigibert before he could take up the episcopacy; Silvester, bishop elect in 572 and kinsman of Peter and Gregory – his death sparked public charges of homicide against Peter; Pappolus from ca. 572 to his death ca. 580, a bad bishop, at least according to report; and finally Mummolus, called “the Good,” from ca. 580 to some unknown date after 585. Mummolus still was alive when Gregory wrote the chapter because he refers in the simple present tense to the praise lavished on him for his Christian behavior. Mummolus also is commended by Gregory for dispossessing and humbling the deacon Lampadius, an instigator, as Gregory tells it, of the false charges laid against Peter and an accessory in his death. Lampadius’ hostility to Peter had been occasioned sometime ca. 570 when Peter had been a party to removing Lampadius from a position of trust in which he had despoiled the poor.¹¹⁸

Chapter 5.5 thus was written in the middle years of the 580s or later. It does not embody raw data that came to Gregory’s notice in 576 or even soon after but provides a complex narrative that served a number of purposes. The only event in it that actually occurred in 576 was Felix’s letter about a dispute over property rights that Gregory had no interest at all in describing. The letter, which we might assume only mentioned Peter in passing, gave Gregory an opportunity in reporting his reply to give a succinct obituary of Felix in a context that Gregory thought showed his suffragan’s greed and boastfulness.¹¹⁹ The accusation that Felix had made in 576 also allowed Gregory to provide a lengthy defense of his brother that surveyed the history of the bishopric of Langres from the 560s to the 580s. The ending is particularly suitable: the election of the upright Mummolus, after eight years of Pappolus’ unworthy episcopacy during which time Lampadius had enjoyed his ill-gotten gains, finally led to the reduction of Peter’s enemy to

118 “In cuius loco Mummolus abba, quem Bonum cognomento vocant, episcopus substituitur. Quem multi magnis laudibus prosecuntur: esse eum castum, sobrium, moderatum ac in omni bonitate promptissimum, amantem iustitiam, caritatem omni intentione diligentem. Qui, accepto episcopatu, cognoscens, quod Lampadius multum de rebus fraudasset ecclesiae ac de spoliis pauperum agros vineasque vel mancipia congregasset, eum ab omni re nudatum a praesentia sua iussit abigi. Qui nunc in maxima paupertate degens, manibus propriis victum quaerit.” The second verb is obviously an historical present, but it seems reasonable that subsequent presents are simple. *Nunc* reinforces the sense of contemporaneousness in the narrative but Gregory can use it as a relative indicator of time as well.

119 The attempt of William C. McDermott, “Felix of Nantes: A Merovingian Bishop,” *Traditio* 31 (1975), 1–24), to mitigate the bad relations between Gregory and Felix fails to appreciate the depth of the quarrel. In Gregory’s trial before Chilperic in 580, Gregory states that Felix was a *fautor*, a promoter or supporter, of the serious charges against him. Typically Gregory does not tell us this when describing the proceedings but only when explaining Felix’s intervention to save the archdeacon Riculf, imprisoned for resisting Gregory’s authority (*Hist.* 5.59). Felix’s agents who freed Riculf are accused by Gregory of committing perjury.

manual labor, demonstrating the rightness of Peter's position and the falseness of the charges laid against him.¹²⁰

9) In dispraise of Brunhild?

A series of chapters (Hist. 6.37–39 s.a. 584) located ostensibly in Chilperic's reign that evince implied criticism of Brunhild, praise of Guntram, and a composition date a. 587 or after.

The first chapter in the series, 6.37, tells us that abbot Lupentius of Javols was summoned before Brunhild and accused by Innocentius, the count of the city, of having uttered treasonous remarks about the queen. The abbot was cleared after investigation and dismissed. While on the road he was attacked by the count and decapitated, the body and head being separately sunk in the Aisne River. The attempt to conceal the body ultimately failed. A few days later the unidentified corpse was recovered by shepherds, and during the funeral preparations, an eagle miraculously found the head and deposited it on the riverbank, thus allowing the body to be identified. In a concluding remark that clearly distances text from event and presupposes the beginnings of a cult, Gregory says, "They say now a light appears [at the grave] sent from God; and if an invalid prays devoutly [. . .] he will go away with his health restored."

The next chapter (6.38) at first seems unconnected to its predecessor as it describes the quarrels among the contenders for the bishopric of Rodez after the death of its incumbent. The successful candidate, however, turns out to be Innocentius, the same count who, Gregory has just assured us, killed abbot Lupentius. To draw a further connection with the previous chapter, Gregory also tells us Innocentius was elected with the assistance of Brunhild. Innocentius, then, as bishop of Rodez, began to harass Ursicinus, bishop of Cahors, claiming that Ursicinus held parishes that belonged to Rodez. We learn later in the *Histories* that Cahors was part of the marital endowment of Brunhild's sister Galswinth and was still a subject of dispute at the time of the treaty of Andelot in 587, when Guntram, who had taken control of it after Chilperic, finally granted Brunhild possession (9. 20). In 584, Innocentius, it seems safe to say, was pursuing the interests of his mistress Brunhild,¹²¹ but he was unsuccessful. Gregory tells us that "this long

120 Another possible purpose may be being served. By acknowledging the suitability of Mummolus, a non-kinsman, it would seem, Gregory can appear to counter suspicions of family partisanship in his version of Langres' history. Pappolus, an outsider, was bad; but Mummolus was good. Mummolus of course could have had unmentioned connections to Gregory.

121 The connection with Brunhild's claim to her sister's property is noted by Janet Nelson, "Queens as Jezebels: Brunhild and Balthild in Merovingian History," in Derek Baker, ed., *Medieval Women* (Oxford, 1978); repr. in Janet L. Nelson, *Politics and Ritual in Early Medieval Europe* (London, 1986), 24. The Austrasian interest in Cahors may have been longstanding. The *civitas* was originally part of Theuderic's kingdom, but fell to Charibert in the division of 561. See Auguste Longnon, *Géographie de la Gaule au VIe siècle* (Paris, 1878), 522–23.

lasting dispute” grew in intensity and, “after a few years” (“post aliquot annos”), the metropolitan (unnamed at this point in the narrative) met with his suffragans at a synod held in Clermont and awarded the parishes to Cahors. The synod, to judge from Gregory’s reference to the passage of a few years, likely took place at a time when the city had been promised to Brunhild or already passed into her hands; the parishes were now Brunhild’s and the claim of Rodez, poorly grounded from the beginning to judge by Gregory’s account, counted for little. The queen’s control of the city would have for the first time removed impediments to a ready resolution of the ecclesiastical dispute in favor of Cahors. A date around 587 or 588 seems reasonable for both the synod and a *post quem* date for the writing of the chapter.¹²²

The next chapter (6.39) concerns Bourges, the metropolitan city of the old province of *Aquitania prima*, which included Cahors and Rodez, but which had been divided among the sons of Chlothar I, complicating its ecclesiastical management; the metropolitan see lay in Guntram’s kingdom. After the death of Remigius, Gregory tells us, Sulpicius was chosen bishop with the support of Guntram. Gregory takes the occasion to give Guntram a speech rejecting simony and notes unmistakably in the present tense the fine qualities of Sulpicius, even though he was drawn from the laity. The implied comparison of Guntram/Sulpicius and Brunhild/Innocentius is hard to miss. Gregory’s final comment is to note that the synod that met to investigate the dispute over the parishes of Cahors did so at the urging of Sulpicius. The *post quem* date for the chapter therefore, like 6.38, is ca. 587.

Chapters 6.37–39 of the *Histories* make an interesting triad. They obviously were not written under Chilperic but under Childebert, at some point after 586. They were meant to be read together, and this determines to a significant degree their placement. They occur in the narrative about midway in Book 6’s events of 584, which end with Chilperic’s death in the fall of the year, but their interrelation belies completely unmediated synchronic composition. Only part of the narrative could have fallen in 584. The investigation of Lupentius, his killing, and the finding of his body parts can, if one so wishes, all fit indeterminately within the first part of 584. Gregory’s reference to a recurring light at his grave and healings “at the present time (*nunc*),” looks ahead some distance beyond the immediate events. The election of Innocentius as bishop of Rodez, due to the influence of queen Brunhild, could have occurred still within Book 6’s shortened year, which Innocentius began as count of Javols and which brought him into conflict with abbot Lupentius. So could his claims regarding the parishes of Cahors. The growth of the

122 Odette Pontal, *Histoire des conciles mérovingiens* (Paris, 1989), 178, proposes after 588 for the council because Ursicinus was suspended for three years at the synod of Mâcon in 585 for receiving Gundovald. The suspension concerned, however, the sacramental activities of the bishop. Gregory tells us he continued to fully control the *utilitas ecclesiae* – that is the administrative regulation of the church’s affairs (*Hist.* 8. 20). His suspension was irrelevant to his being a party in the dispute.

dispute and its resolution several years later obviously point forward, well beyond Chilperic's reign and to a time when Guntram and Childebert still quarreled over their rights to cities formerly controlled by Chilperic. In the same year of 584, Sulpicius was elected bishop of Bourges, a noble, praiseworthy, and learned man, who was still alive when Gregory wrote the chapters (he died in 591), and a model of the type of layman (unlike Innocentius) whom monarchs should promote to episcopal office. Gregory stresses Sulpicius' role as metropolitan in the settlement of the episcopal dispute between the sees of Rodez and Cahors – lying in the kingdoms, respectively, of Childebert and Guntram in the period immediately following Chilperic's death. The intervention of Guntram's metropolitan may have formally terminated the ecclesiastical side of the quarrel, but we are entitled to see the resolution a little more broadly as contingent on the negotiations behind the treaty of Andelot, which accepted Brunhild's long-standing claim to Cahors in 587, and conveyed the city into her hands.¹²³ In any case, it is from this vantage point that Gregory wrote about the intersecting events of 584.

123 The treaty of Andelot (*Hist.* 9.20) states that Cahors was acknowledged by Guntram as belonging to Brunhild in the time of Chilperic, Sigibert and Guntram (that is at some point after the murder of Galswinth). Guntram certainly saw things differently after Chilperic's death (*Hist.* 7.6) and took control of the city as originally part of Charibert's share, which he regarded as defaulting to him after the death of his brothers. He retained the other cities belonging to Galswinth after Andelot, on condition they revert to Brunhild on his death; Cahors was a concession on Guntram's part.

MAPS¹

1	Merovingian-period bishoprics and the <i>Notitia Galliarum</i>	354
2	The regions of Gaul and its environs in the Merovingian period	362
3	Gaul in the sixth century	363
4	The division of 561	364

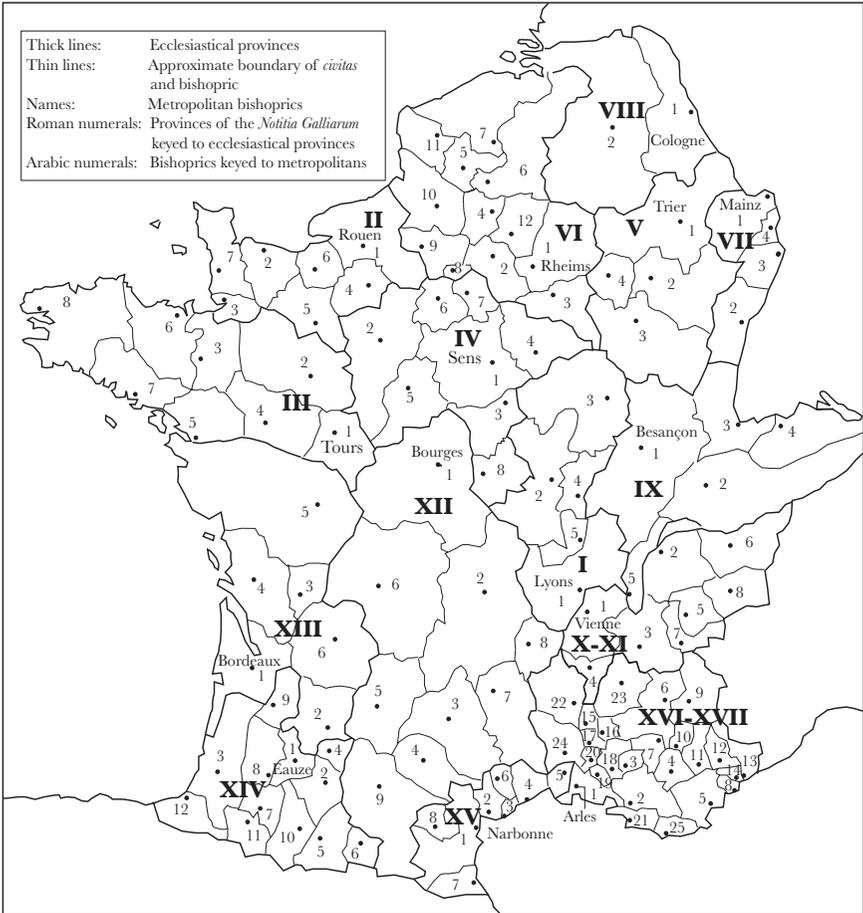
The following maps have been compiled over some time from information from many sources, some of them forgotten. However, the results have been checked against the major authorities: Auguste Longnon, *La géographie de la Gaule au VI^e siècle* (Paris, 1878); Louis Duchesne, *Fastes épiscopaux de l'ancienne Gaule*, 3 vols (Paris 1894–1915); Eugen Ewig, “Die fränkische Teilungen und Teilreiche (511–613)”, in idem, *Spätantikes und fränkisches Gallien, Gesammelte Schriften*, ed. Hartmut Atsma, Beihefte der Francia 2/1, 1: 114–71; and the *Topographie chrétienne des cités de la Gaule, des origines au milieu du VIII^e siècle* (15 vols. as of this writing). Other sources are noted at Map 1.

Recent attempts to represent the divisions of the 6th century (Map 3) can be found in Edward James, *The Franks* (Oxford, 1988); Ian Wood, *The Merovingian Kingdoms* (London, 1994) and Martin Heinzlmann, *Gregory of Tours: History and Society in the Sixth Century* (Cambridge, 2001; German ed. 1994).

Despite the available resources, many details, both geographical and political, remain obscure. See Map 1 for reservations about the accuracy of the diocesan map that underlies the representations of Gaul.

Shorelines for the Zuyder Zee follow roughly their configuration in the modern period, not those of ancient times or the present day.

1 This is a modified version of a collection of maps and text which I prepared for *A Companion to Gregory of Tours*, Brill's Companions to the Christian Tradition (Leiden: Brill 2016), 583 ff.



Map 1 Merovingian-period bishoprics and the *Notitia Galliarum*

This map, and the list that accompanies it, highlight the *Notitia Galliarum*, a late imperial listing of *civitates* and other important administrative sites, dating in its original version to about 400. Despite the originally secular character of this source, the principal aim of the present list is to record the bishoprics of the Merovingian period (6th and 7th centuries). It draws inspiration from an earlier version by Edward James, *The Origins of France: From Clovis to the Capetians* (London, 1982), pp. xiii–xvii, xix–xx, and a long line of French geographical summaries. It cannot strictly be relied on as a reference tool.

On the map, the boundaries of the dioceses, and in some regions, the provinces, must be understood as approximations based on retrospective, imperfect reconstructions. For the diocesan problem, see Jacques Dubois, “La carte des diocèses de France avant la Révolution”, *Annales: Économies, Sociétés, Civilisations* 4 (1965):

680–691. Happily, the scale required by a book-page map, will probably not lead anyone astray by too much. The certainty created by the requirements of a list keyed to a map, however, adds its own problems. The map's purpose is pedagogical not scholarly and is meant to show the main lines of diocesan development from Roman to Merovingian Gaul. It is, and indeed has to be in some way, achronic, representing the bishops in their relationship to their metropolitans at various times in the 6th and 7th centuries when their profiles become clear (not every passing reference to a bishopric in the 5th and 6th centuries has been included nor note taken of every transitory status).

In the list, column one gives a register of the bishoprics, under the name of their metropolitan bishopric, which is in caps. This has been keyed in the second column to the *Notitia Galliarum*. This imperial-period catalogue was kept up in the Middle Ages as a record of bishoprics; see Stefan Esders, ch. 12, n. 78 (in Murray, *A Companion to Gregory of Tours*), for the two late 6th–early 7th-century manuscripts with the earliest versions. These, plus the editions by Otto Seeck, *Notitia Dignitatum* (Berlin, 1876), pp. 261–274, and Theodore Mommsen, MGH AA 9/1(1882): 552–612, have been consulted for the present compilation.

The two columns are often in harmony, but not always. Comparing the two is a way to see the changes (or in most regions, the conservative continuity) in ecclesiastical and civil administration in the years from imperial to Merovingian hegemony. The consequences of late Roman ecclesiastical politics are particularly noticeable in the south east. One should also note that *Septimania* (mainly *Narbonensis prima*) was subject to the Visigoths until the Arab conquest. Moreover, there is no attempt made in the map, or list, to deal with trans-Rhenan regions.

Column one uses the following conventions:

- Metropolitan bishoprics of the Merovingian period are in caps, spelled in their modern form.
- Their suffragan bishops come next, numbered, following in general (but not always strictly) the order of the *Notitia Galliarum*.
- A slash indicates the movement of a bishopric from one site to another.

Column two, which is really a version of the *Gallia Notitiarum*, is much more complicated:

- Caps are used to mark the divisions of the *Notitia Galliarum*. The major late Roman divisions (between the Gauls and the Seven Provinces) are noted in boldface caps.
- Individual provinces are marked in caps, prefaced with a Roman numeral. The *Notitia Galliarum* noted the number of provinces as 17 and these numbers, in Roman numerals, are used on the map. Readers will notice these numerals generally correspond to Merovingian ecclesiastical provinces under metropolitans. But sometimes they do not, especially in the south east, where a great deal of reorganization is in evidence. Where the *civitates* of two Roman

provinces have been integrated into one ecclesiastical province, I give the two numbers of the *Notitia* together on the map. (The more or less stable number of Merovingian provinces settled in at 15.)

- Thus *civitates* are given according to their placement in the *Notitia* but only receive a number in column one under their metropolitan of the Merovingian period. In the exceptional case of Brittany, I give two *civitates* (Osismes and Corseul) as attested in the *Notitia* and 5th-century sources. The silence of Merovingian sources on the region can have several meanings, but in any case a new paradigm emerged under the Carolingians.
- Some *civitates*, because of reorganization, are listed twice: once in their original spot in the *Notitia* but also in their place among Merovingian bishoprics, where they receive a number in column one; the original position of these numbered bishoprics is noted in square brackets.
- *Civitates* mentioned in the *Notitia* that do not correspond to a Merovingian-period bishopric are given in small caps in column two, but without a number in column one. Generally it can be assumed they were integrated into a neighbouring ecclesiastical diocese.
- *Castra* in the *Notitia* that did not become bishoprics have been omitted.
- Italics indicate an addition to the early form of the *Notitia*. Italics and square brackets across the two columns indicate that the names do not appear at all in the *Notitia*.

A. THE GALLIC PROVINCES

I. LUGDUNENSIS PRIMA

1. LYONS	Metropolis civitas Lugdunensium
2. Autun	Civitas Aeduorum or Augustedunum
3. Langres	Civitas Lingonum
4. Chalon(-sur-Saône)	Castrum Cabillonense
5. Mâcon	Castrum Matisconense

II. LUGDUNENSIS SECUNDA

1. ROUEN	Metropolis civitas Rotomagensium
2. Bayeux	Civitas Baiocassium
3. Avranches	Civitas Abrincatum
4. Evreux	Civitas Ebroicorum (Atuaticorum)
5. Sées	Civitas Saiorum
6. Lisieux	Civitas Lexoviorum
7. Coutances	Civitas Constantia

III. LUGDUNENSIS TERTIA

1. TOURS	Metropolis Turonorum
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2. Le Mans	Civitas Cenomannorum
3. Rennes	Civitas Redonum
4. Angers	Civitas Andecavorum
5. Nantes	Civitas Namnetum
6. Corseul/Alet?	Civitas Coriosolitu(m)
7. Vannes	Civitas Venetum
8. Osismes/Carhaix/Quimper/ St-Pol-de-Léon?	Civitas Ossismorum
	CIVITAS DIABLINTUM (Jublains)
	IV. LUGDUNENSIS SENONIA (QUARTA)
1. SENS	Metropolis civitas Senonum
2. Chartres	Civitas Carnotum
[2a. <i>Châteaudun</i>	<i>castrum Dunense</i> (Gregory, <i>Hist.</i> 7.17)]
3. Auxerre	Civitas Autisiodorum
4. Troyes	Civitas Tricassium
5. Orléans	Civitas Aurelianorum
6. Paris	Civitas Parisiorum
7. Meaux	Civitas Melduorum
8. Nevers	<i>Civitas Nivernensium</i>
	V. BELGICA PRIMA
1. TRIER	Metropolis civitas Treverorum
2. Metz	Civitas Mediomatricum, Mettis
3. Toul	Civitas Leucorum, Tullo
4. Verdun	Civitas Verodunensium
	VI. BELGICA SECUNDA
1. RHEIMS	Metropolis civitas Remorum
2. Soissons	Civitas Suessionum
3. Châlons(-en-Champagne)	Civitas Catalaunorum
4. Vermand/Noyon	Civitas Veromandorum/Noviomagus
5. Arras/Cambrai	Civitas Atrabatum
6. Cambrai	Civitas Camaracensium
7. Tournai	Civitas Turnacensium
8. Senlis	Civitas Silvanectum
9. Beauvais	Civitas Bellovacorum
10. Amiens	Civitas Ambianensium
11. Thérouanne	Civitas Morinum
	CIVITAS BONONIENSIIUM (Boulogne)
12. Laon	<i>Civitas Lugduni Clavati</i> (cf. <i>Hist.</i> 6.4)

- | | |
|-----------------------------|--|
| 1. MAINZ | VII. GERMANIA PRIMA |
| 2. Strasbourg | Metropolis civitas Magontiacensium |
| 3. Speyer | Civitas Argentoratensium (Strateburgo) |
| 4. Worms | Civitas Nemetum (Spira) |
| | Civitas Vangionum (Warmatia) |
| | VIII. GERMANIA SECUNDA |
| 1. COLOGNE | Metropolis civitas Agrippinensium, Colonia |
| 2. Tongres/Maastricht/Liège | Civitas Tungrorum |
| | IX. MAXIMA SEQUANORUM |
| 1. BESANÇON | Metropolis civitas Vesontiensium |
| | CIVITAS EQUESTRIUM, NOIODUNUS (Nyon) |
| 2. Avenches/Lausanne | Civitas Helvitorum, Aventicus |
| 3. Basel | Civitas Basiliensium |
| 4. Windisch /Constance | Castrum Vindonissense |
| 5. Belley | Castrum Argentariense (Civitas Belicensium) |
| | X. ALPES GRAIARUM ET POENNINARUM |
| | Metropolis civitas Centronium (see under XI 5 VIENNE) |
| | Civitas Valensium (see under XI 6 VIENNE) |
| | B. THE SEVEN PROVINCES |
| | (X)–XI. VIENNENSIS [AND ALPES GRAIARUM] |
| 1. VIENNE | Metropolis civitas Viennensium |
| 2. Geneva | Civitas Genavensium |
| 3. Grenoble | Civitas Gratianopolitana |
| | Civitas Albensium (Vivarium) (see under XVI-XVII 22 ARLES) |
| | Civitas Deensium (see under XVI-XVII 23 ARLES) |
| 4. Valence | Civitas Valentinarum |
| | Civitas Tricastinorum (see under XVI-XVII 15 ARLES) |
| | Civitas Vasiensium (see under XVI-XVII 16 ARLES) |
| | Civitas Arausicorum (see under XVI-XVII 17 ARLES) |

- Civitas Carpentoratensium* (see under XVI-XVII
18 ARLES)
Civitas Cabellicorum (see under XVI-XVII
19 ARLES)
Civitas Avennicorum (see under XVI-XVII
20 ARLES)
Civitas Arelatensium (see under XVI-XVII 1
ARLES)
Civitas Massiliensium (see under XVI-XVII
21 ARLES)
5. Tarentaise
 Metropolis civitas Centronium, Tarantasia
 [Alpes Graiae et Poenninae]
6. Martigny (Valais) /Sion
Civitas Valensium, Octodurum [Alpes
 Graiarum et Poenninarum]
- [7. *St-Jean-de-Maurienne*
 8. *Aosta*
Civitas Mauriennensis
Civitas Augusta]
- XII. AQUITANICA PRIMA
 Metropolis civitas Biturgium
Civitas Arvernorum
Civitas Rutenorum
Vicus Arisitensium (Hist. 5.5)]
Civitas Albigensium
Civitas Cadurcorum
Civitas Lemovicum
Civitas Gabalum
Civitas Vellavorum
Civitas Tolosatium [Narbonensis prima]
- XIII. AQUITANICA SECUNDA
 Metropolis civitas Burdigalensium
Civitas Aginnensium
Civitas Ecolisnensium
Civitas Santonum
Civitas Pictavorum
Civitas Petrocoriorum
- XIV. NOVEMPOPULANA
 Metropolis civitas Elusatium
Civitas Ausciorum
Civitas Aquensium
1. BOURGES
 2. Clermont (-Ferrand)
 3. Rodez
 [3b. *Alais (Alès)*
 4. Albi
 5. Cahors
 6. Limoges
 7. Javols/Mende
 8. Velay/Le Puy?
 9. Toulouse
1. BORDEAUX
 2. Agen
 3. Angoulême
 4. Saintes
 5. Poitiers
 6. Périgueux
1. EAUZE
 2. Auch
 3. Dax

- | | |
|------------------------------|---|
| 4. Lectoure | Civitas Lactoratium |
| 5. St-Bertrand-de-Comminges | Civitas Convenarum |
| 6. Couserans (Saint-Liziers) | Civitas Consorannorum |
| | CIVITAS BOATIUM |
| 7. Lescar (Béarn) | Civitas Bernarnensium |
| 8. Aire-sur-Adour | Civitas Aturensum |
| 9. Bazas | Civitas Vasatica |
| 10. Tarbes | Civitas Turba ubi castrum Bogorra (Bigorra) |
| 11. Oloron | Civitas Elloronensium |
| 12. Bayonne | Civitas <i>Lapurdo</i> (<i>Hist.</i> 9.20) |

XV. NARBONENSIS PRIMA

- | | |
|-----------------------|--|
| 1. NARBONNE | Metropolis civitas Narbonensium |
| | Civitas Tolosatium (Toulouse, see under XII 9 BOURGES) |
| 2. Béziers | Civitas Beterrensum |
| 3. <i>Agde</i> | Civitas <i>Agatensium</i> |
| 4. <i>Maguelonne</i> | Civitas <i>Magalonensium</i> |
| 5. Nîmes | Civitas Nemausensium |
| 6. Lodève | Civitas Lutevensium |
| | Castrum Ucetiense (see under XVI 24 ARLES) |
| 7. <i>Eln</i> | Civitas <i>Elnensium</i> |
| 8. <i>Carcassonne</i> | Civitas <i>Carcassonnensium</i> |

XVI. NARBONENSIS SECUNDA (WITH XVII AND PARTS OF VIENNENSIS)

- | | |
|--------------------|--|
| 1. ARLES | Civitas Arelatensium [Viennensis] |
| 2. Aix-en-Provence | Metropolis civitas Aquensium |
| 3. Apt | Civitas Aptensium |
| 4. Riez | Civitas Regensium |
| 5. Fréjus | Civitas Foroiuliensium |
| 6. Gap | Civitas Vappincensium |
| 7. Sisteron | Civitas Segestericorum |
| 8. Antibes | Civitas Antipolitana |
| 9. Embrun | Metropolis Civitas Ebrodunensium [Alpes Maritimarum] |
| 10. Digne | Civitas Diniensium [Alpes Maritimarum] |
| 11. Senez | Civitas Sanitiensium [Alpes Maritimarum] |
| 12. Glandève | Civitas Glannatena [Alpes Maritimarum] |
| 13. Cimiez/Nice | Civitas Cemelensium [Alpes Maritimarum] |

14. Vence	Civitas Vintiensium [Alpes Maritimarum]
15. St-Paul-Trois-Châteaux	Civitas Tricastinorum [Viennensis]
16. Vaison	Civitas Vasiensium [Viennensis]
17. Orange	Civitas Arausicorum [Viennensis]
18. Carpentras	Civitas Carpentoratensium [Viennensis]
19. Cavaillon	Civitas Cabellicorum [Viennensis]
20. Avignon	Civitas Avennicorum [Viennensis]
21. Marseilles	Civitas Massiliensium [Viennensis]
22. Alba/Viviers	Civitas Albensium (Vivarium)
23. Die	Civitas Deensium
24. Uzès	Castrum Uceciense (Civitas Ucetecensium, Eucetica) [Narbonensis prima]
25. Toulon	Civitas Telonensium

XVII. ALPES MARITIMARUM

Metropolis Civitas Ebrodunensium (see
under XVI 9 ARLES)

Civitas Diniensium (see under XVI 10 ARLES)

CIVITAS RIGOMAGENSIIUM

CIVITAS SALINENSIIUM (Castellane)

Civitas Sanitiensium (see under XVI 11 ARLES)

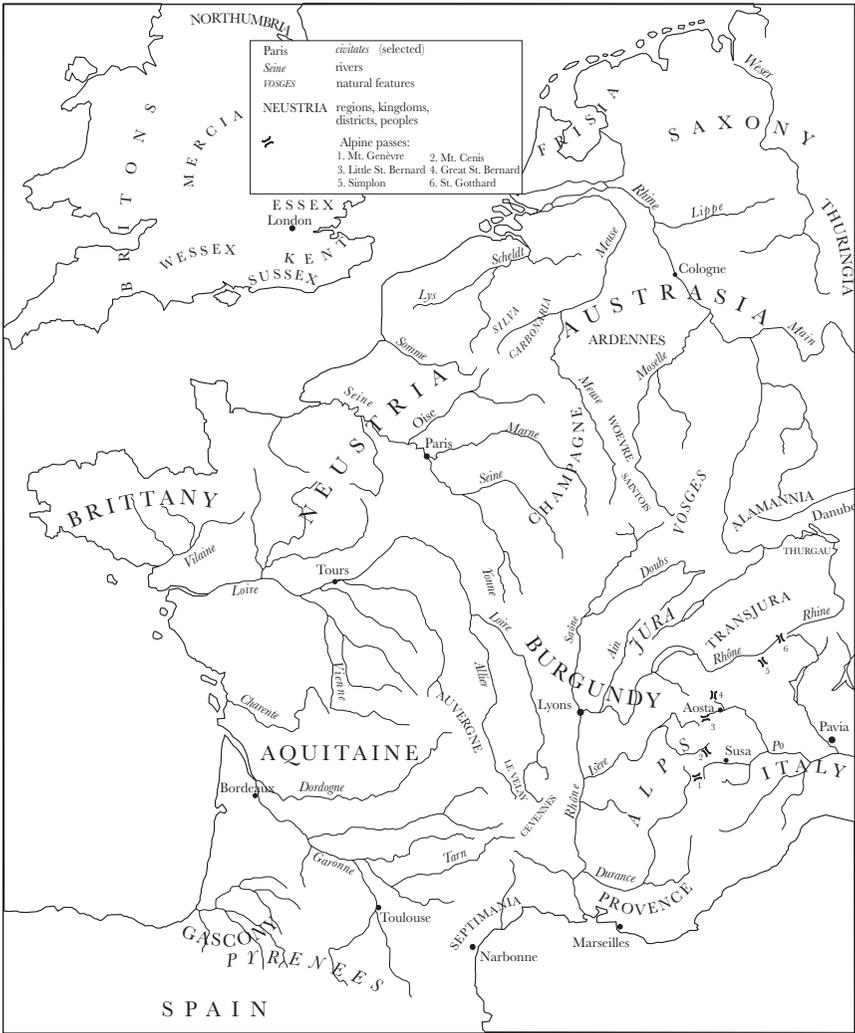
Civitas Glannatena (see under XVI 12 ARLES)

Civitas Cemelensium (see under XVI 13 ARLES)

Civitas Vintiensium (see under XVI 14 ARLES)

There are 17 provinces
with 115 *civitates*

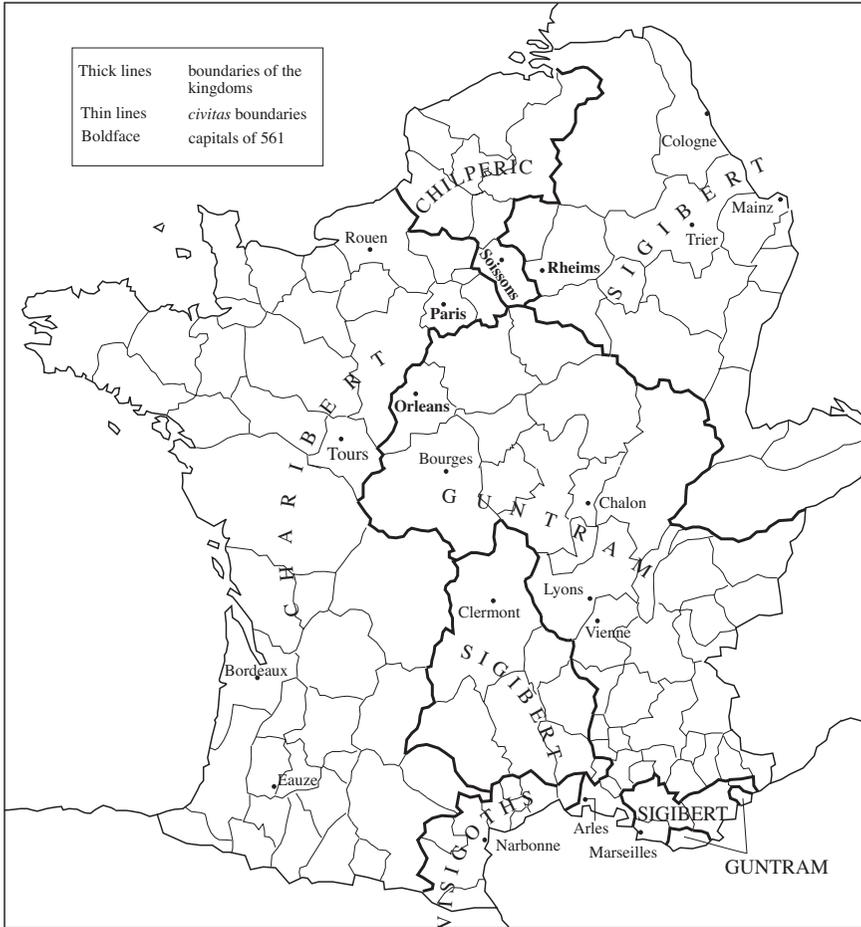
MAPS



Map 2 The regions of Gaul and its environs in the Merovingian period



Map 3 Gaul in the sixth century

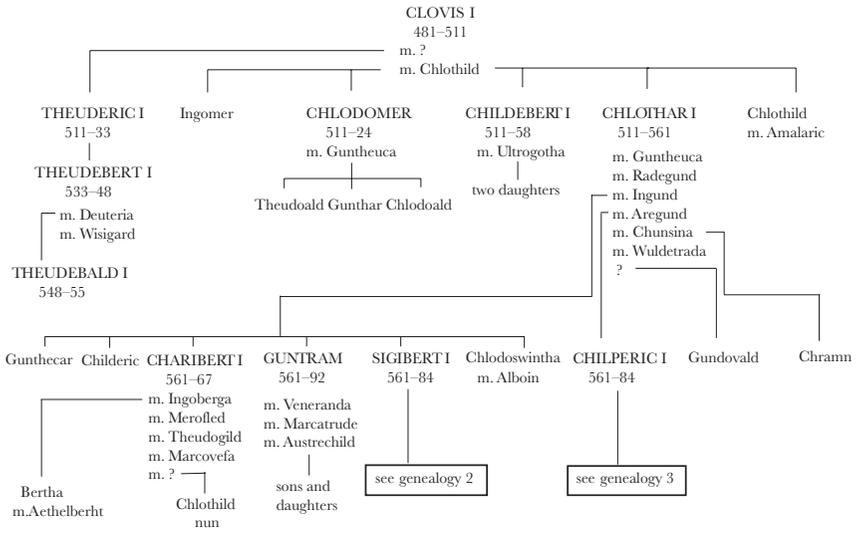


Map 4 The division of 561

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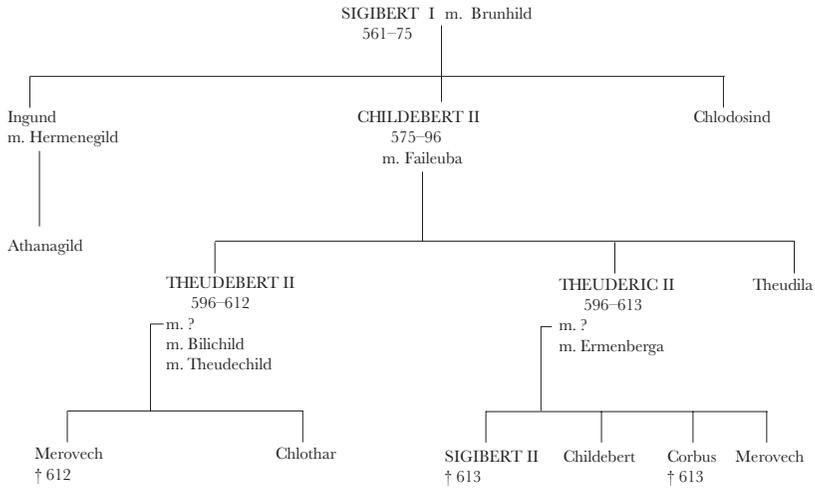
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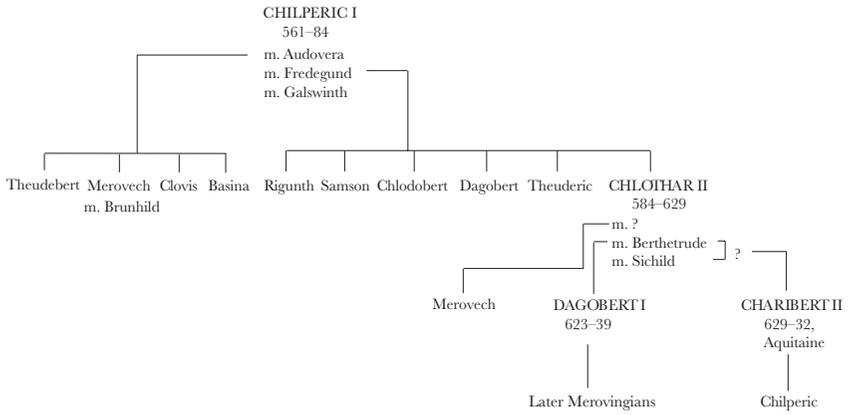
Genealogies 1 The Early Merovingians: Clovis, his Sons, and Grandsons

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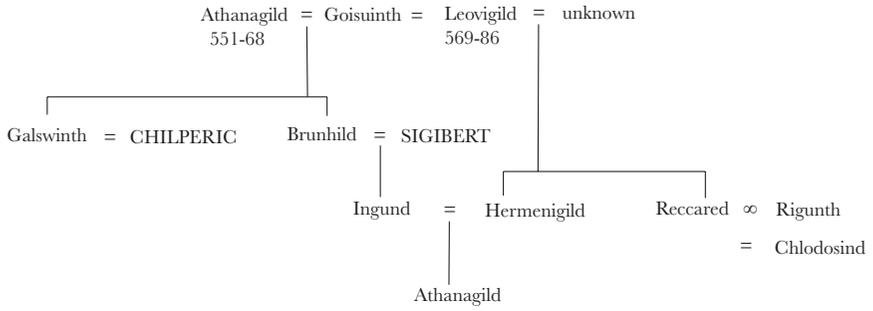
Genealogies 2 The Early Merovingians: Sigibert I, Brunhild, and their Descendants

GENEALOGIES



Genealogies 3 The Early Merovingians: Chilperic I, Fredegund, and their Descendants

GENEALOGIES



Key
∞ = betrothal

Genealogies 4 The House of Chlothar I and the Visigothic Monarchy

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