



The Legislation of *Magistri Militum*: the laws of Gundobad and Sigismund La législation des *Magistri Militum*: les Lois de Gondebaud et Sigismond

Abstract: The legislation of the Gibichung rulers of Burgundy, and especially that which is contained in what is commonly known as the *Lex Burgundionum*, is particularly interesting for the study of late- and post-Roman law from the Barbarian West.

Résumé : La législation des rois des Burgondes et spécialement la loi appelée Loi Gombette est particulièrement intéressante pour l'étude du droit romain tardif et post-classique dans les royaumes barbares occidentaux.

Keywords: *Lex Burgundionum* – late and post-Roman law – Gundobad – Sigismund

Mots-clés : Loi Gombette – droit Romain tardif et post-classique – Gondebaud – Sigismond

1. The legislation of the Gibichung rulers of Burgundy, and especially that which is contained in what is commonly known as the *Lex Burgundionum*, is particularly interesting for the study of late- and post-Roman law from the Barbarian West. It is unusual in providing a large number of references to the legislative process, not least because the so-called Burgundian Code is made up of a number of constitutions, some of which still bear the date and place of issue. As a result, we gain particular insight into the promulgation of individual laws in addition to their collection into a law-book.¹ Indeed the *Lex Burgundionum* seems originally to have been called the *Liber Constitutionum*.² The title seems significant: both in its emphasis on the constitutions that the book contains, and, as we will, in its lack of any ethnic descriptor.³

1 For emphasis on edicts rather than law-books, see I. N. Wood, "The Code in Merovingian Gaul", in *The Theodosian Code*, J. Harries and I. N. Wood (eds.), London, 1993, p. 161-77, at p. 170-6; id., "Roman law in the barbarian kingdoms", in *Rome and the North*, A. Ellegård and G. Åkerström-Hougen, Jonsered, 1996, p. 5-14, at p. 10-12.

2 See the edition of L. R. De Salis, *Leges Burgundionum, MGH Leges Nationum Germanicarum*, II, 1, Hannover, 1982: in the following footnotes I will refer to the *Liber Constitutionum (Lex Burgundionum)* as *LC*, and the *Forma et Expositio Legum (Lex Romana Burgundionum)* as *FEL*.

3 Early scholarship on the Burgundian laws is conveniently surveyed in K. Fischer Drew, *The Burgundian Code*, Philadelphia, 1949. Among more recent discussions of the Burgundian laws see H. Nehlsen, "Leges Burgundionum", in *Handwörterbuch zur deutschen Rechtsgeschichte*, 2, Berlin, 1978, col. 1901-15; I. N. Wood, "Disputes in late fifth- and sixth-century Gaul: some problems", in *The Settlement of Disputes in Early Medieval Europe*, W. Davies and P. Fouracre (eds.), Cambridge, 1986, p. 7-22; D. Boyson, "Romano-Burgundian society in the Age of Gundobad: some legal, archaeological and historical evidence", *Nottingham Medieval Studies*, 32, 1988, p. 91-118; D. Frye, "Gundobad, the *Leges Burgundionum*, and the struggle for sovereignty in Burgundy", *Classica et Medievalia*, 41, 1990, p. 199-212; P. Amory, "The meaning and purpose of ethnic terminology in the Burgundian laws", *Early Medieval Europe*, 2, 1993, p. 1-28; id., "Names, ethnic identity and community in fifth- and sixth-century Burgundy", *Viator*, 25, 1994, p. 1-30; J.-P. Poly, "Olybriones quondam. Loi, romanité et barbarie aux V^e-VI^e s.", in *Traditio Iuris, Permanence et/ou discontinuité du droit romain durant le haut Moyen Âge*, Lyon, 2005, p. 325-53; R. Kaiser, *Die Burgunder*, Stuttgart, 2004; B. Saitta, *I Burgundi (413-534)*, Milan, 2006; I. N. Wood, "Le Bréviaire chez les Burgondes", in *Le Bréviaire d'Alaric. Aux origines du Code civil*, M. Rouche and B. Dumézil (eds.), Paris, 2009, p. 151-160; P. Heather, "Law and Society in the Burgundian kingdom", in *Law, Custom, and*

2. The original title of the other Burgundian collection, the so-called *Lex Romana Burgundionum*, would appear to have been *Forma et Expositio Legum*.⁴ Again the title would seem to have some value for assessing the nature of the text. Rather than being a straight collection of laws, we are faced with a number of clauses in which a brief discussion of a particular crime and a statement of the appropriate punishment concludes with direction to the relevant clauses of the *Codex Theodosianus* and other imperial legislation, notably the Novels of Valentinian III, Majorian, Marcian, Leo and Severus, together with citations from Gaius, Paul, the *Codex Gregorianus* and the *Codex Hermogenianus*, and intriguingly from two laws which would later be included in the *Codex Justinianus*, but which do not seem to have been in the Theodosian Code.⁵ The *Forma et Expositio* thus constitutes legislation, but primarily it acts as a guide (*expositio*) to law that was in force. It also presupposes the availability of earlier legal documents or collections.

3. Since the *Liber Constitutionum* states that Romans should be judged by Roman Law,⁶ and since the *Forma et Expositio* includes legislation issued in 465,⁷ which provides an important *terminus post quem* for the collection, it might at first sight seem reasonable to see the latter collection as providing a key to the law that was in force among the Roman subjects of Gundobad and Sigismund,⁸ while the Book of Constitutions was directed to the Burgundians. Such an assumption, however, is oversimplistic. Certainly the *Forma et Expositio* would seem to have been compiled so that judges in cases concerned with Romans should not be ignorant of the law, which would seem to suggest that the compilation was aimed at those *comites* who were of non-Roman origin, and who, despite their judicial functions had not been trained as jurists: indeed many of them would have been military figures.⁹ At the same time, many of clauses of the *Liber Constitutionum* were clearly applicable to both barbarian and Roman subjects.¹⁰ In fact, neither the *Forma et Expositio* nor the *Liber Constitutionum* should be read as law intended for one “ethnic” group: there would seem to have been no clear-cut division between law for the Burgundians and Romans. Indeed, one clause of the *Liber Constitutionum* very remarkably modifies a law of Constantine.¹¹ Moreover, the *Forma et Expositio* clearly addresses many of the concerns of the *Liber Constitutionum* (which would appear to be later in date). Thus the thirty-year rule of the compilation of Roman Law would seem to be a point of reference for the *Book of Constitutions*,¹² as would other laws of the Roman collection.¹³ The links between the two texts might even suggest that the *Forma* was in some way used as a blue-print for the *Liber Constitutionum*.¹⁴

4. Of course, the two Burgundian codes, and especially the *Liber Constitutionum*, have been the subject of considerable study, not least for what they reveal about the settlement of the Burgundians,¹⁵ about their

Justice in Late Antiquity and the Early Middle Ages, A. Rio (ed.), London, 2011, p. 115-53; S. Kerneis, “*De Theodosiani codicis auctoritate*. Le code théodosien et le droit des populations barbares dans l’Empire” (forthcoming).

4 I. N. Wood, “Le Bréviaire chez les Burgondes”, p. 155.

5 See the edition in De Salis, *Leges Burgundionum*.

6 *LC*, *Prima Constitutio*, 8.

7 *FEL*, 46.

8 I. N. Wood, “Le Bréviaire chez les Burgondes”, p. 159.

9 *LC*, *Prima Constitutio*, 8: the significance of this is signaled in S. Kerneis, “*De Theodosiani codicis auctoritate*”.

10 For comment on the positions adopted by H. Nehlsen, “*Leges Burgundionum*”, and P. Amory, “The meaning and purpose of ethnic terminology in the Burgundian laws”, see P. Heather, “Law and Society in the Burgundian kingdom”, p. 115-6.

11 *LC*, 105, citing *Codex Theodosianus*, II, 30. The opening phrase of the law, which announces that it is the *titulum centesimum quintum*, is unique, and deserves consideration.

12 *FEL*, 31; *LC*, 79.

13 *LC*, 80 would seem to allude to *FEL*, 22.

14 I. N. Wood, “Le Bréviaire chez les Burgondes”, p. 156.

15 W. Goffart, *Barbarians and Romans A.D. 418-584. The Techniques of Accommodation*, Princeton, 1980, p. 127-61. For a more recent assessment, I. N. Wood, “L’installation des Burgondes dans l’empire romain. Histoire événementielle”, in *Expropriations et confiscations dans les royaumes barbares*, P. Porena and Y. Rivière (eds.), Rome, 2013, p. 69-90.

ethnic make-up,¹⁶ and about society and politics of the Gibichung kingdom.¹⁷ The actual process of legislation has been rather less discussed, at least in recent years¹⁸ – though certainly a vast amount of work was done in the nineteenth century.¹⁹ Unfortunately the value of much of this early work was vitiated by the fact that it began from an assumption that the *Liber Constitutionum* represented Germanic law. My intention in what follows is first to look briefly at the structure of the Book of Constitutions, though this has been done many times, not least by De Salis in his edition for the *Monumenta Germaniae Historica*, and also more recently by Peter Heather: then to consider in more detail two moments of legislation: 500-2 and 517. This will lead us into questions about the capacity in which the legislator was acting – in the context of their law-giving did Gundobad (d. 516) and Sigismund (516-24) see themselves first and foremost as *reges* or as imperial officials, and more particularly as *magistri militum*? From this we will turn to the question of the identification of those subject to the legislation: a rather less obvious question than was once assumed, as we have already seen. Again this is a question that has been discussed by implication, although there are, I think, problems with some past assumptions about who might and might not be classified as Burgundian, and why.²⁰ Taken together, I hope these questions constitute a reasonably full discussion of the process of Gibichung law-making.

5. Before turning to the laws themselves, it is necessary to say a word about the constitutional position of the Burgundian rulers. The earliest Gibichung for whom we have much evidence is Guntarius or Gundichar, who appears in the second decade of the fifth century as phylarch in Olympiodorus and slightly later, in Prosper of Aquitaine, as *rex Burgundionum*:²¹ what exactly the term phylarch implies is unfortunately unclear. In the next generation, that is the third quarter of the fifth century, Gundioc and Chilperic, who were probably sons of Gundichar, held the title of *magister militum*, in addition to being kings from the Gibichung family. Presumably their Roman title should be understood as *magister militum per Gallias*. It would seem to have been under Gundioc that a party of Burgundians was settled in Sapaudia, a region which includes land to the north of Geneva, though this group would not appear to have been very numerous, and we cannot be sure that they constituted all the Burgundians²² – nor can we be sure of Gundioc's involvement: he is not mentioned in the sole reference we have to the Sapaudian settlement, and he may, therefore, have been associated rather more closely with what remained of the imperial army than with those Burgundians settled in the region of Geneva. His son, Gundobad, spent the first part of his known career as Ricimer's right-hand man in Italy, and indeed on the latter's death he seems to have acquired his office of *magister militum praesentalis*²³ – he was thus extremely well placed to know of legislation issued subsequent to the *Codex Theodosianus*. This may be of some significance when considering citations of the Novels of Valentinian III, Majorian, Marcian, Leo and Severus in the *Forma et Expositio Legum*. Gundobad would subsequently abandon his career in Italy, returning to the Rhône valley, and establishing himself as leader of his father's people in somewhat obscure circumstances. He did not, however, give up the title of *magister militum* (presumably *praesentalis*, but perhaps his father's

16 P. Amory, "The meaning and purpose of ethnic terminology in the Burgundian laws"; id., "Names, ethnic identity and community in fifth- and sixth-century Burgundy".

17 D. Boyson, "Romano-Burgundian society in the Age of Gundobad. Some Legal, Archaeological and Historical Evidence", *Nottingham Medieval Studies*, 32, 1988, p. 91-118; D. Frye, "Gundobad, the *Leges Burgundionum*, and the struggle for sovereignty in Burgundy", *Classica et mediaevalia*, 41, 1990, p. 199-212; See also J. Favrod, *Histoire politique du royaume burgonde (443-534)*, Lausanne, 1997; I. N. Wood, "Gentes, Kings and Kingdoms – the emergence of states: the Kingdom of the Gibichungs", in *Regna and Gentes*, H.-W. Goetz, J. Jarnut and W. Pohl (eds.), Leiden, 2003, p. 243-69.

18 But see P. Heather, "Law and Society in the Burgundian kingdom", and S. Kerneis, "*De Theodosiani codicis auctoritate*".

19 Above all C. Troya, *Storia d'Italia del Medio-evo*, Naples, 1839-59, vol. 1, pt. v: *Della condizione de' Romani vinti da' Longobardi e della vera lezione d'alcune parole di Paolo Diacono intorno a tale argomento*, Naples, 1841; K. Binding, *Das burgundisch-romanische Königreich*, Leipzig, 1868.

20 See n. 10, above.

21 Olympiodorus, *Fragment*, 17, ed. and trans. R. C. Blockley, *The Fragmentary Classicising Historians of the Later Roman Empire*, vol. 2, Liverpool, 1982; Prosper of Aquitaine, *Epitomata Chronicon*, s.a. 435, ed. T. Mommsen, *Chronica Minora 1*, *Monumenta Germaniae Historica, Auctores Antiquissimi*, IX, Berlin, 1982; I. N. Wood, "Gentes, Kings and Kingdoms", p. 246. Most of the documentation for the Burgundian kingdom is now conveniently gathered together in K. Escher, *Genèse et évolution du deuxième royaume burgonde (443-534)*, Oxford (BAR International Series 1402, 2 vols.), 2005.

22 I. N. Wood, "L'installation des Burgondes dans l'empire romain", p. 79; K. Escher, *Genèse et évolution du deuxième royaume burgonde*, vol. 2, p. 654.

23 J. R. Martindale, *Prosopography of the Later Roman Empire*, vol. 2, *AD 395-527*, Cambridge, 1980, p. 524-525.

position of *magister militum per Gallias*). This was an office he still held at the time of his death, and which he endeavoured to pass on to his son Sigismund.²⁴ As *magistri militum* these Burgundian leaders automatically exercised judicial authority over the soldiers under their command.²⁵ Yet although the office was essentially a military one, increasingly it had encroached on the civilian authority of prefects, and indeed one of the novels of Valentinian III expressly instructed Aetius to enforce legislation relating to the ordination of bishops.²⁶ Gundioc would likewise find himself, as *magister militum*, involved in the solution of religious disputes.²⁷ With the collapse of the imperial government in Gaul the civil jurisdiction of the surviving *magistri militum* no doubt increased yet further: such, at least, is implied by the references to Gundioc's brother Chilperic in the letters of Sidonius and in the *Vita Patrum Iurensium*.²⁸ Any attempt to understand the laws of the Gibichungs must take into consideration their complex constitutional position.

6. Turning to the laws, the *Liber Constitutionum* provides a number of chronological indications concerning their promulgation.²⁹ Above all there is the *Prima Constitutio*. Unfortunately this survives in what are essentially two contradictory recensions: one ascribing the collection to Gundobad, the other to his son Sigismund. Traditionally the ascription to Gundobad was thought to be correct, and de Salis in his edition for the *Monumenta* reconstructed the opening clause according to the recension which includes the earlier king's name. There was an apparent logic to this. The Code is often referred to as the *Lex Gundobada* or *Loi Gombette*. This title, however, is derived from Agobard writing in the ninth century, and although he may have had a copy of some recension of the *Liber Constitutionum* in front of him, he was thinking especially about one clause, 45, which introduced ordeal by battle for the legislator's people³⁰ – *populus noster*, a term to which we shall return. This clause is fortunately dated, to 502, thus indicating that it is indeed a law of Gundobad. The collection as a whole, however, includes the laws of at least two rulers, probably more.

7. It is clear that the *Liber Constitutionum*, as we have it, was the product of more than one moment: the collection underwent a number of revisions, though the *Prima Constitutio* in all but one of its surviving recensions, has a dating clause which ascribes it to March 29th in the second year of the king's reign.³¹ By chance this same date is appended to another law, where there is also a consular date, making it quite clear that it was issued in 517, which happens to be the second year of Sigismund's reign.³² We can, therefore, be sure that a compilation known as the *Liber Constitutionum* was issued by Sigismund in 517. This was probably not the last recension of the collection, nor the first.

24 I. N. Wood, "Gentes, Kings and Kingdoms", p. 251-4. See Avitus, epp. 78, 93, 94, with ep. 49, ed. R. Peiper, *Monumenta Germaniae Historica, Auctores Antiquissimi*, VI, 2, Berlin, 1883. See also the translations and commentary in D. Shanzer and I. N. Wood, *Avitus of Vienne, Letters and Selected Prose*, Liverpool, 2002, p. 141-153.

25 See S. Kerneis, "De Theodosiani codicis auctoritate" for a convenient summary of military *ius singulare*.

26 Nov. Val. 17. On the *magistri militum*, see A. E. R. Boak, "The Roman magistri in the civil and military service of the Empire", *Harvard Studies in Classical Philology*, 26, 1915, p. 73-164.

27 R. W. Mathisen, *Ecclesiastical Factionalism and Religious Controversy in fifth-century Gaul*, Washington D.C., 1989, p. 212, 216.

28 Sidonius Apollinaris, epp. V, 6, 2; V, 7, 1; VI 12, 3, ed. A. Loyen, Paris, 1970; *Vita Patrum Iurensium*, 92, 9; 96, 7, ed. F. Martine, *Vie des Pères du Jura*, Paris (*Sources Chrétiennes*, 142), 1968.

29 J.-P. Poly, "Olybriones quondam", p. 347, argues for two recensions of the *Liber Constitutionum* under Gundobad, the second dating to 502, a recension under Sigismund, from 517, and a final recension under Godomar from 534. Unfortunately, while it is clear that there were a number of recensions of the collection, the only one that can be dated with absolute certainty is that of Sigismund.

30 Agobard, *Liber adversus Legem Gundobadi*, *Patrologia Latina*, 104, col. 113-26.

31 *LC*, *Prima Constitutio*, 1; Manuscript B 8 has a date of 31st July (*die secundo kalendas augustas*), ed. de Salis, p. 30.

32 *LC*, 52; I. N. Wood, "Disputes in late fifth- and sixth-century Gaul: some problems", p. 10. P. Heather, "Law and Society in the Burgundian kingdom", p. 118, n. 6, suggests that the date should really be 518, on the grounds that the *LC* 62 is clearly dated to 10th June 517. For Sigismund's promulgation of the code the date of March 29th 517 is absolutely fixed. The *Prima Constitutio* was issued in the second year of the king's reign, which must be 517, since Sigismund was already ruling by March 8th 516, as is clear from *Constitutio Extravagans* 20. Further, *LC* 62 was issued on March 29th 517, and here we have a consular rather than a regnal date. What *LC* 62 shows is that new legislation was enacted on the same day as the promulgation of the Code. In addition, the clause states that it was issued during the Easter festival: in 517 Easter fell on March 26th: in 518 it fell on April 15th. The Easter context can be shown to be important for Gibichung legislation.

8. Gundobad had almost certainly issued a Code of his own,³³ which may have formed the core of Sigismund's law-book, and Peter Heather has suggested that this might be preserved largely as clauses 1-41 of the *Liber Constitutionum*.³⁴ One notable feature of the Burgundian *Book of Constitutions* is the extent to which individual laws refer to others in the same compilation:³⁵ however, as Heather has pointed out, the references to earlier laws seem to begin with clause 42, which might indicate that previous clauses belong to a first recension of the collection. The argument is certainly attractive, at least in broad terms, but it cannot be taken to prove that the first 41 clauses constitute an unaltered collection of law issued by Gundobad. Moreover, the *Liber Constitutionum* as we have it is most certainly not what Sigismund issued in the second year of his reign, though the first 88 laws may largely (but, as we shall see, not entirely) reflect the collection of 517. Laws 89 to 105 sometimes appear in the manuscripts as continuations: they can also appear as the first 17 of a group of laws known as the *Constitutiones Extravagantes*. We can thus infer that there was a Sigismund collection, to which additions were made, but we can also be sure that Sigismund's compilation from the second year of his reign – like the putative collection, or collections, of Gundobad – does not survive in its original form: for a start clause 52 was issued on the same day as the *Prima Constitutio*, and cannot, for that very reason, have been part of the prepared collection. Equally important, however, clause 43 emends clause 60: if they had both been part of the original *Liber Constitutionum* they would surely have been placed next to each other, either in chronological or in thematic order.

9. We should, therefore, acknowledge that we do not have an unaltered text of Sigismund's collection of 517, although we may have all the clauses which were part of it. Moreover, we also have to acknowledge that the order of the laws does not reflect the arrangement of the 517 Code exactly: some are clearly out of order; others, like clause 52, must be later additions to the collection. Moreover, we should also note that not all of the continuations or *Constitutiones extravagantes* are to be dated later than 517: in particular, *Constitutio extravagans* 20 has a consular date of 516. *Constitutio extravagans* 21 might have been issued by Gundobad shortly after 508, although there is also a case for seeing it as a late piece of Burgundian legislation, issued by Godomar, Sigismund's brother, after 524.³⁶

10. Yet, while we cannot take the order of the clauses of the *Liber Constitutionum* as providing an exact insight into what Sigismund actually issued in 517, or what was added thereafter, either by Sigismund himself or by his brother, Godomar, who ruled from 524-34, we are given a clear indication that legislation was issued with some regularity, and not just at the moments at which the compilations of the *Liber Constitutionum* and the *Forma et Expositio* were promulgated. For a start seven of the clauses are dated: to 501,³⁷ 502,³⁸ 513,³⁹ 515,⁴⁰ 516,⁴¹ and two to 517,⁴² one of which was issued on the same day as the *Liber Constitutionum* itself.⁴³ In addition, at least eighteen laws provide relative chronology, in that they explicitly refer to earlier law, while a further 25 implicitly do so.⁴⁴ Whether or not these laws were all included in Sigismund's compilation of 517, they indicate a considerable tradition of law-giving by his predecessors. Two laws even point back to the period before Gundobad's reign: in one Gundobad himself refers to freedmen of his royal ancestors:⁴⁵ in another there is a reference to the Mauriac Plains (in other words the defeat of Attila in 451) as a limit of legal memory.⁴⁶

33 It may be that the date of 31st July belongs to a Gundobad recension: see above, n. 31.

34 P. Heather, "Law and Society in the Burgundian kingdom", p. 127-128.

35 *Ibidem*, p. 147-148.

36 I. N. Wood, "Gentes, Kings and Kingdoms", p. 256. The suggestion that a recension was issued by Godomar in 534; J.-P. Poly, "Olybriones quondam", p. 347, is hypothetical.

37 *LC*, 42.

38 *LC*, 45.

39 *LC*, 76.

40 *LC*, 79.

41 *LC*, *Constitutio Extravagans*, 20.

42 *LC*, 52; 62.

43 P. Heather, "Law and Society in the Burgundian kingdom", p. 119.

44 *Ibidem*, p. 120, 147-148.

45 *LC*, 3.

46 *LC*, 17.

11. In considering the possibility that Gibichung rulers legislated prior to the period of Gundobad's rule, it is worth remembering Syagrius, to whom Sidonius Apollinaris wrote around the year 470.⁴⁷ The latter commented on his friend's ability to translate the language of the barbarians and on his acting as *arbiter* and *disceptator* in their *negotiiis mutuis*: he was a *Novus Burgundionum Solon in legibus disserendis*.⁴⁸ The Burgundians were clearly the subject of legislation in the days of Gundobad's father and uncle. It is also worth remembering that Sidonius' epitaph suggests that he too helped legislate for the barbarians: *Leges barbaros dedit furori*⁴⁹ – perhaps he was working alongside Syagrius: he certainly spent some time in places under Burgundian control,⁵⁰ so the barbarians for whom he legislated are as likely to have been Burgundian as Visigoth. Gundioc and Chilperic, like Gundobad, were Roman officials, and would have needed regular advice from men conversant with Roman law, and we might well guess that Syagrius and Sidonius played some role in collecting law that was subsequently enshrined in the *Forma et Expositio*.

12. The Gibichungs, then, are leaders used to legislating: we are not just dealing with the one-off promulgation of a law book.⁵¹ Moreover, almost all the earlier laws which the *Liber Constitutionum* claims to be revising would seem to have been written: there is next to nothing to suggest that the Burgundians had a well-established tradition of unwritten legal custom, although there are a handful of references that can be construed in that way. We hear of *antiqua calumnia*:⁵² of *consuetudo antiqua*;⁵³ of things that have long been conserved (*haec in populo nostro antiquitus fuerint conservata*);⁵⁴ and, less certainly referring to tradition, of *certa sub districtione olim... constitutum*.⁵⁵ More problematic is a statement *secundum consuetudinem barbarorum, praebeat iurisiurandum*.⁵⁶ At first sight, since oath-taking was, according to academic tradition, a Germanic means of witness, this seems straightforward. There is, however, first, the point that oath-taking was by no means confined to Germanic law: it is both Roman and Christian.⁵⁷ In addition, another law, the infamous *Loi Gombette*, makes it clear that the *populus noster* of the legislator did not take oath-taking seriously: indeed it was treated as a joke: hence the need to introduce ordeal by battle.⁵⁸ On the other hand, we should not instantly assume that ordeal by battle was traditional to Gundobad's Germanic followers. There is nothing in the law to say that it was an *antiqua consuetudo*. We might just as well assume that this is a legal practice whose origins lay among the military – perhaps even the Roman military, although its presence in Lombard law may suggest that it was widespread among Germanic peoples.⁵⁹

13. Thus far, I have argued that the promulgation of law was a regular occurrence among the Gibichungs, and especially in the time of Gundobad and Sigismund. Clearly their followers did follow certain established customs, though whether there is anything to be gained by calling these customs Germanic is far from certain. Such customs would seem to have been much less important than written legislation,

47 Sidonius, ep. V, 5, 3: see the comments on Sidonius and Syagrius in S. Kerneis, “*De Theodosiani codicis auctoritate*”. Whether one should draw a distinction between the attitudes of Sidonius and Syagrius is perhaps questionable: modern interpretations of Sidonius were established without attention being paid to his epitaph, which could suggest that his position was closer to that of Syagrius than is usually assumed: the irony in ep. V, 5, need not be critical.

48 P. Wormald, “*Lex Scripta and Verbum Regis*: legislation and Germanic kingship from Euric to Cnut”, in id., *Legal Culture in the Early Medieval West*, London, 1999, p. 1-43, at p. 26.

49 Ed. C. Luetjohann, *Monumenta Germaniae Historica, Auctores Antiquissimi*, VIII, Berlin, 1887, p. VI. See also S. Kerneis, “*De Theodosiani codicis auctoritate*”.

50 Sidonius, *Carm.* 12. See also S. Kerneis, *Ibidem*.

51 See n. 1, above.

52 *LC*, 18.

53 *LC*, 60, 1.

54 *LC*, 51.

55 *LC*, 55.

56 *LC*, 60, 3.

57 I. N. Wood, “Disputes in late fifth- and sixth-century Gaul”, p. 14-16.

58 *LC*, 45.

59 *Edictum Rothari*, 164-5, 198, 202, 228, 365; *Leges Grimualdi*, 1, 2, 4, 7; *Leges Liutprandi*, 11, 56, 68, 71, 118, 121; *Capitula Adelchis*, 6, 7; *Codex Gothanus*, 5, ed. C. Azzara and S. Gasparri, Rome, 2005. See also *Lex Alamannorum*, 81, ed. K. A. Eckhardt, *Monumenta Germaniae Historica, Leges*, V, 1, Hannover, 1956.

both imperial Roman law and that of the Gibichungs themselves. We should also envisage the use of Roman provincial law equivalent to that preserved in the later Byzantine *Farmer's Law*.⁶⁰

14. Gibichung rulers thus seem to have issued laws on numerous occasions. As we have already noted, there are a number of dated laws.⁶¹ In addition, some other (undated) laws were clearly issued in response to problematic cases that had arisen, and effectively constitute a public statement of a specific legal decision.⁶² There are, however, particular moments of legislation that seem to be more important than others: obviously these included those occasions on which collections of laws, or law-books, were issued – and it is important to note that the issuing of a code was much rarer and had far more, and different, significance from the promulgation of an individual law.⁶³ One particularly important moment was surely the 29th March of the second year of Sigismund: the date of the *Prima Constitutio* of the *Liber Constitutionum*. In the opening clause itself we learn that Sigismund was offering directives on law to all his law enforcers, Burgundian and Roman, although curiously the 31 names of *comites* appended to the constitution are without exception Germanic. Fortunately we know a little more about the gathering that issued the Code than is immediately apparent from the *Prima Constitutio*, from clause 42, which was issued on the same day.

15. This particular constitution deals with the case of a widow Aunegild, who, of her own volition, and with the consent of her parents, had been betrothed to the king's sword-bearer, Fredegisil. But then as the title of the clause has it, "incited by desire" she went off with Balthamodus instead. This was a breach of Aunegild's vows, for which she and Balthamodus both merited the death penalty. However, since the case was being judged during Eastertide (the feast itself falling three days earlier, on 26th March), the more lenient penalty of the payment of wergeld was enforced. The fact that it was at Easter that the Aunegild case was judged, and that the *Prima Constitutio*, and thus Sigismund's recension of the *Liber Constitutionum*, was promulgated on the same day tells us a good deal. We know from the correspondence of Avitus of Vienne that the Easter festivities at the royal court were of great importance, and that it was hoped that leading churchmen might attend – though this was, of course, problematic, because a bishop would be expected to officiate in his own cathedral on Easter Sunday.⁶⁴ From the *Prima Constitutio* alone, and indeed from the case of Aunegild, which involved the king's sword-bearer, one might conclude that Sigismund was simply meeting with his Germanic *comites* – though the office of *comes* should surely be understood as a Roman one.⁶⁵ From the precise date, and from the correspondence of Avitus of Vienne, however, we know that the meeting took place at the holiest time of the year, when there would have been plenty of people other than Germanic *comites* at court, among them a number of leading Romans and clerics. We can go one step further: March 517 was the second Easter of Sigismund's reign, but since he came to the throne in 516, this was probably the first Easter court for which the king had had a significant period of preparation. We know that he was already ruling by March 8th 516,⁶⁶ but that must have been very early in his reign indeed, since he did not succeed to his father's kingdom until after the start of the year. Thus we can conclude that the *Prima Constitutio* was issued at the first great Easter court for which Sigismund could have been fully prepared. Presumably he had commissioned the code in his first year. The Code itself should surely be read as a public statement of his authority – but the laws contained in it were not new, and we can assume that the one piece of new legislation issued on that day, relating to Aunegild, was not part of the original law-book.

60 W. Ashburner, "The Farmer's Law", *Journal of Hellenic Studies*, 30, 1910, p. 85-108; 32, 1912, p. 68-95. See also P. Barnwell, "Emperors, jurists and kings: law and custom in the late Roman and early medieval West", *Past and Present*, 168, 2000, p. 6-29.

61 *LC*, 42; 45; 52; 62; 76; 79; *Constitutio Extravagans*, 20.

62 *LC*, 51; 53; 74; 75; *Constitutio Extravagans*, 21.

63 For the symbolic significance of law-books, P. Wormald, "*Lex scripta* and *verbum regis*", remains central, although it underestimates the extent to which individual laws were in force.

64 Avitus, epp. 76; 85.

65 A. C. Murray, "The position of the *grafio* in the constitutional history of Merovingian Gaul", *Speculum*, 64, 1986, p. 787-805.

66 *Constitutio Extravagans* 20; see also Marius of Avenches, *Chronicle*, s.a. 516, ed. J. Favrod, *La Chronique de Marius d'Avenches (455-581)*, Lausanne, 1991.

16. 517 also saw another major gathering, that of the bishops of the kingdom, who met at Épaon in the beginning of September.⁶⁷ Although the title given to the council in the manuscript includes the phrase *tempore Sigismundi regis*, there is no other reference to the king in the canons, and even the dating clause of the *acta* is merely consular. On the other hand, the bishops at Épaon dealt at length with the issue of incest.⁶⁸ In this they may have picked up on a clause in the *Liber Constitutionum*.⁶⁹ Although this has been doubted,⁷⁰ the bishops would certainly have been aware of the secular legislation. Moreover, the issue of incest was to become extremely significant within a short period of time, when the king allowed one of his own officials to ignore the ban on marrying the sister of his dead wife: an act which prompted a second episcopal council, and a mass walk-out by the episcopate.⁷¹

17. While we can be certain of the importance of the legislation of Sigismund's second year, Gregory of Tours identified another moment as crucial for Burgundian law-giving. In 500 Clovis invaded Gundobad's territory, and was joined by the Gibichung king's brother, Godegisel.⁷² Gundobad was driven into exile in Avignon, but when Clovis withdrew his forces from the Rhône valley the older Burgundian retook his kingdom, killing his brother, after besieging Vienne. He then tortured and killed many *seniores* and Burgundians, but thereafter, according to Marius of Avenches, ruled *feliciter*.⁷³ Gregory also notes the siege, the slaughter of the Roman nobles and of the Burgundians who had supported Godegisel – though captive Franks were sent unharmed to Toulouse. Gundobad then instituted *leges mitiores* among the Burgundians to ensure that they did not oppress the Romans.⁷⁴ Gregory clearly regarded the period after 500 as a time of significant legislation. Since his great-grandfather, Gregory of Langres, was *comes* in Autun at the time,⁷⁵ we may guess that he had good reason to know about the *leges mitiores*.

18. As the kinder laws were concerned with the Romans, it is tempting to think that this was the context in which the *Forma et Expositio Legum* was compiled – although a date as early as the late 460s is technically possible:⁷⁶ the latest piece of legislation to be excerpted in the collection was issued by the emperors Leo and Libius Severus in 465;⁷⁷ and, as we have seen, Sidonius commented on the involvement of Syagrius in Burgundian law, and was himself involved in legislation for the barbarians.⁷⁸ It might, however, be possible to see in some of the laws collected, and especially those concerned with violence and rape, a reflection of concerns prompted by the civil war of 500.⁷⁹ Certainly, since the *Forma et Expositio* would seem to have been in existence before the *Liber Constitutionum* was drawn up, it would most likely have been authorised by Gundobad. Yet Gregory is explicit that the laws which made life better for the Romans were issued to the Burgundians. While the aftermath of the civil war of 500 may provide the context for the *Forma et Expositio*, the collection can, therefore, hardly be Gregory's *leges mitiores*, which must surely be sought for in the *Liber Constitutionum*.

67 Council of Épaone (517), ed. J. Gaudemet and B. Basdevant, *Les canons des conciles mérovingiens (VI^e-VII^e siècles)*, vol. 1, Paris (*Sources Chrétiennes* 353), 1989; Avitus, ep. 90.

68 Épaone, c. 20.

69 *LC*, 36.

70 P. Mikat, *Die Inzestgesetzgebung der merowingisch-fränkischen Konzilien (511-626/7)*, Paderborn, 1994, p. 104-6; I. N. Wood, "Incest, law and the Bible in sixth-century Gaul", *Early Medieval Europe*, 7, 1998, p. 291-303, at p. 298.

71 Council of Lyon (518-23), ed. J. Gaudemet and B. Basdevant, *Les canons des conciles mérovingiens*, vol. 1; I. N. Wood, "Incest, law and the Bible in sixth-century Gaul", p. 296-302.

72 Gregory of Tours, *Libri Historiarum*, II, 33, ed. B. Krusch and W. Levison, *Monumenta Germaniae Historica, Scriptores Rerum Merovingicarum*, I, 1, Hannover, 1951; Marius of Avenches, *Chronicle*, s.a. 500.

73 Marius of Avenches, *Ibidem*.

74 Gregory of Tours, *Libri Historiarum*, II 33. See I. N. Wood, "Le Bréviaire chez les Burgondes", p. 153-154, 159.

75 Gregory of Tours, *Liber Vitae Patrum*, VII, 1, ed. B. Krusch, *Monumenta Germaniae Historica, Scriptores Rerum Merovingicarum*, I, 2, Hannover, 1885.

76 I. N. Wood, "Le Bréviaire chez les Burgondes", p. 153-154, 159.

77 *FEL*, 46.

78 Sidonius, ep. V, 5, 3; epitaph of Sidonius: see above, n. 37.

79 *FEL*, 8, 9: see G. McDormann, "The Burgundian civil war and the transformation of early medieval kingship" (forthcoming).

19. It is tempting to think that Gregory had in mind an earlier recension of the Code, and indeed it has been suggested that Gundobad issued such a recension in 502.⁸⁰ Peter Heather has even seen the first 41 clauses of the *Liber Constitutionum* as Gundobad's collection.⁸¹ Yet these are very clearly concerned with a wider range of issues than relations between Romans and Burgundians: so the collection as a whole can hardly constitute the legislation described by Gregory. Yet we do not have to assume that the bishop of Tours was talking about a law-book rather than individual laws. Moreover, we may be able to identify some individual laws as belonging to the *leges mitiores* issued during the period after the return of Gundobad in 500. This is not to deny the possibility that Gundobad collected Gibichung legislation into a law-book at some point after the civil war. It is, however, worth emphasising the fact that certain individual laws, rather than a complete code, may well have addressed the complaints of the Romans, especially because interest in the collections of barbarian laws has tended to overshadow an appreciation of the significance of the promulgation of individual edicts.

20. The *Liber Constitutionum* contains two laws dated to 501 and 502. The first of them is unlikely to have had much impact on the Roman population, being concerned with the inheritance of those who die without children.⁸² Since this refers explicitly to the *morginegiva* given by the husband to his wife, it is surely directed primarily towards the Burgundians or barbarians more generally: there would be no other reason for using the Germanic term. The law of 502 is rather different.⁸³ This is the law in which Gundobad institutes trial by battle. Since individuals among *populus noster*, out of greed, have been swearing oaths about matters over which they could not be certain, Gundobad ordered that a party could refuse the oath of his opponent and opt instead for the judgement of God: that is trial by battle. This may not seem immediately to help the Romans, but it is one of a number of clauses concerned with cases in which Burgundians seem to have been exercising undue pressure on the Roman population – the problem, of course, was an old one: the involvement of *barbari* in appeals is dealt with in an edict of 405.⁸⁴ One law of the *Liber Constitutionum* bans the use of Burgundian *patrocinium* in cases between Romans:⁸⁵ another excludes Burgundians from involvement in Roman land-disputes:⁸⁶ a further law prevents Burgundians from refusing to provide hospitality to visiting legates, and from directing them to Romans instead.⁸⁷ So too, one might see a number of the laws regulating the land-division and preventing Burgundians from exceeding their rights as belonging to this period.⁸⁸ The *leges mitiores* are probably to be found in such legislation, rather than in the issuing of a complete law-book. But the rhetoric of better treatment for the Romans seems not to be confined to the period immediately following 500: it is an underlying concern of the *Prima Constitutio* of 517. One might wonder whether Sigismund has deliberately picked up his father's rhetoric.

21. If we turn from the moments of legislation, to the legislative body involved, we again find a good deal of evidence in the *Liber Constitutionum*. The *Prima Constitutio* issued in Lyon itself makes it clear that the king has sought the consent of his *comites* and *proceres*.⁸⁹ The lengthy *Constitutio Extravagans* 21, which contains laws issued at the *conventu Burgundionum* held in Ambérieux, talks of discussions with the ruler's *comites*. Further laws – two of them concerned with inheritance, and a third with the mitigation of the death penalty laid down by Constantine – mention the involvement of *obtimates*.⁹⁰ Thus we see the king and his counts and other *obtimates* legislating from at least two centres, Lyon⁹¹ and Ambérieux.⁹² Ambérieux might perhaps be seen as a centre rather more closely associated with the Burgundians than

80 J.-P. Poly, "Olybriones quondam", p. 347.

81 P. Heather, "Law and Society in the Burgundian kingdom", p. 128.

82 *LC*, 42.

83 *LC*, 45.

84 *Codex Theodosianus*, XI, 30, 62.

85 *LC*, 22.

86 *LC*, 55.

87 *LC*, 38, 7.

88 *LC*, 28; 31; 54, 1, 2; 84.

89 *LC*, *Prima Constitutio*, 2.

90 *LC*, 53, 1; 74, 1; 105.

91 *LC*, *Prima Constitutio*; 42; 52; 79.

was Lyon, with its established imperial traditions and senatorial families. One might see a number of inscriptions from the nearby site of Briord as reflecting the presence of high-status Burgundians in the region.⁹³

22. For the most part, the clauses of the *Liber Constitutionum* indicate that the king was acting with the leaders of his Germanic following. Certainly only *comites* with Germanic names appear in the subscription list of the *Prima Constitutio*, and one of the Ambérieux laws talks of a *conventus Burgundionum*.⁹⁴ Yet we should remember that the *Prima Constitutio* was issued at Sigismund's second Easter court, which, as we have seen, would have been attended by Romans. Further, it is worth remembering that there were Roman as well as Burgundian *comites* in the Gibichung state, which raises the question of why only Burgundians signed the *Prima Constitutio*. Perhaps the law was ratified at more than one meeting, and the surviving versions of the text derive from a gathering limited to the Burgundian military. It was surely they who dealt with the case of Aunegild, Fredegisil and Balthamodus, that was judged on exactly the day that the *Liber Constitutionum* was issued.⁹⁵

23. One law contained in the *Constitutiones Extravagantes* was explicitly inspired by a Roman bishop. On March 8th 516 Sigismund legislated on foundlings in response to a request by Gimellus of Vaison.⁹⁶ Exposed children had been left to die because of worries about later claims over them. It would even seem that there had been law-suits between Romans and Burgundians. Important for us is the explicit admission that the law was prompted by Gimellus, who was clearly present at court. Surely much of the other legislation in the *Liber Constitutionum* would have required the presence of Romans, since it concerned them, and since it was on occasion based on laws in the *Forma et Expositio*: or, in the case of one law, responded directly to legislation of Constantine.⁹⁷ Sidonius' comments on the role of Syagrius in the 460s or 70s are a clear indication of the involvement of Romans in Burgundian legislation before the days of Gundobad and Sigismund,⁹⁸ and, as we have seen, Sidonius' epitaph may indicate his own involvement.

24. Although the laws present the Burgundian rulers as legislating primarily in discussion with their Germanic followers, it is notable how rarely they are said to be legislating as kings. Sigismund appears as *rex* in the *Prima Constitutio* three times; he also appears as *rex Burgundionum* in the heading to the law of foundlings.⁹⁹ Gundobad appears once with same appellation in the title to a law on arrests.¹⁰⁰ Whether the titles of these last two laws, both of which only appear in the *Constitutiones Extravagantes*, are original is perhaps questionable: it is worth remembering that the *Liber Constitutionum* has not come down to us in its original state, and that a later Frankish redactor might have added the ethnic descriptor. It should be noted that *rex* rarely appears in an official Burgundian document with an ethnic signifier:¹⁰¹ outsiders were more likely to use the phrase, and no doubt to do so could be a deliberate disparagement: the title *rex Burgundionum* is arguably more limiting than is that of *rex*. References to the king, without any ethnic descriptor, are to be found in the *Liber Constitutionum*: thus we hear of *munera regis*,¹⁰² *servus regis*,¹⁰³

92 *LC*, 42; *Constitutio Extravagans*, 21. It is not absolutely clear whether Amberiacum refers to Ambérieux-en-Dombes or Ambérieux-en-Bugey.

93 The relevant inscriptions, from Briord, which can all be found in F. Descombes, *Recueil des inscriptions chrétiennes de la Gaule antérieures à la renaissance carolingienne, XV: Viennoise du Nord* (Paris, 1985), have been reprinted in K. Escher, *Genèse et évolution du deuxième royaume burgonde*, vol. 1, p. 156-157.

94 *LC*, *Constitutio Extravagans*, 21.

95 *LC*, 52.

96 *LC*, *Constitutio Extravagans*, 20.

97 *LC*, 105; *Codex Theodosianus*, II, 30.

98 Sidonius, ep. V, 5, 3; S. Kerneis, "De Theodosiani codicis auctoritate".

99 *LC*, *Constitutio Extravagans*, 20.

100 *LC*, *Constitutio Extravagans*, 19.

101 I. N. Wood, "Gentes, Kings and Kingdoms", p. 246, n. 61.

102 *LC*, 1.

103 *LC*, 2, 1.

conviva regis.¹⁰⁴ *Rex* also appears twice in the *Forma et Expositio*.¹⁰⁵ In addition, Sigismund is described as *rex* in the headings of letters he, or rather Avitus on his behalf, wrote to the emperor Anastasius. Of course, these may be editorial additions.¹⁰⁶ Tellingly, however, Avitus states *cumque gentem nostram videamur regere, non aliud nos quam milites vestros credimus* (“Even though we seem to rule our own people, we think of ourself as nothing other than your soldiers”).¹⁰⁷ The king rules over a *gens*, but one without ethnic definition.

25. But the legislator is not described solely as *rex*. Almost as common is *domnus* – a term which Katherine Fischer Drew in her translation of the Burgundian Code unhelpfully rendered as “king”¹⁰⁸ – or *dominus*, which, while usually simply meaning lord, on one occasion seems to refer to either Gundobad or to Sigismund.¹⁰⁹ The *Forma et Expositio* more generally uses the term *princeps*. Although on occasion the reference is explicitly to an imperial legislator,¹¹⁰ on other occasions the word would seem either to apply to the Burgundian ruler or to be ambiguous.¹¹¹

26. It is worth adding a point observed by Mark Handley. Among the rulers of sub-Roman kingdoms the Gibichungs would appear to be unusual in their preference for consular over regnal dating.¹¹² Although Handley’s case is overstated, because of an acceptance of forged documents, and of the inclusion of letters which were issued from the papal and not from the Burgundian chancery, it would appear that Gibichung edicts were dated primarily by consular year, rather than that of the king.¹¹³ This use of a system of dating which linked the kingdom firmly with the eastern Empire is also to be found in other documentation, and on inscriptions. It is fully in tune with the expressions of subordination to the Empire expressed in Avitus’ letters to the emperor.¹¹⁴ Remarkably, Jonas of Bobbio, writing in 659 talks of the late fifth century as being a time when a consul ruled the Gauls.¹¹⁵

27. It would not seem, therefore, that the legislation of Gundobad or Sigismund was seen as being associated particularly with their position as king. It may be significant that most of the occurrences of the word *rex* occur in the years 516 to 517, which could have been a problematic time for Sigismund. His elevation to power was a complex one. Like his father Gundobad, and his uncle Chilperic, he held the title *patricius*.¹¹⁶ This was already his position sometime before 515. He was also elevated *in regnum* at Carouge on his father’s orders.¹¹⁷ He did not, however, become king until after the death of Gundobad in 516.¹¹⁸ Meanwhile first Gundobad and then Sigismund tried to negotiate with the emperor for the younger man to receive his father’s title of *magister militum*. Although the title does seem eventually to have been conferred, Sigismund does not seem to have received it until some time after his father’s death.¹¹⁹ In other words, at the time of the 516 edict on foundlings, and perhaps still at the time of the promulgation of the

104 *LC*, 38, 2.

105 *FEL*, 2, 6; 30, 2.

106 Avitus, epp. 78; 93; 94.

107 Avitus, ep. 93; trans. D. Shanzer and I. N. Wood, *Avitus of Vienne*, p. 146-147.

108 *LC*, 72; *Constitutio Extravagans*, 21: *rex* also appears in some manuscript variants in the *Prima Constitutio*.

109 *FEL*, 2, 5.

110 *FEL*, 2, 2; 3.

111 *FEL*, 2, 5; 4, 1; 30, 1, 3; 33, 1, 3, 5.

112 M. A. Handley, “Inscribing time and identity in the Kingdom of Burgundy”, in *Ethnicity and Culture in Late Antiquity*, G. Greatrex and S. Mitchell (eds.), Cardiff, 2000, p. 83-102.

113 Consular dating: *LC*, 42; 52; 76; 79; *Constitutio Extravagans*, 20; Regnal dating: *LC*, *Prima Constitutio*, 62.

114 Avitus, epp. 78; 93; 94; D. Shanzer and I. N. Wood, *Avitus of Vienne*, p. 141-153.

115 Jonas, *Vita Iohannis*, 2, ed. B. Krusch, *Ionae Vitae sanctorum Columbani, Vedastis, Iohannis, Monumenta Germaniae Historica, Scriptores rerum Germanicarum in usum scholarum*, Hannover, 1905.

116 Avitus, ep. 9: *Vita Abbatum Acaunensium absque epitaphiis*, 3, ed. B. Krusch, *Monumenta Germaniae Historia, Scriptores Rerum Merovingicarum*, VII, Hannover, 1920; I. N. Wood, “*Gentes, Kings and Kingdoms*”, p. 254-255.

117 Fredegar, *Chronicle*, III, 33, ed. B. Krusch, *Monumenta Germaniae Historica, Scriptores Rerum Merovingicarum*, II, Hannover, 1888.

118 Marius of Avenches, *Chronicle*, s.a. 516.

119 Avitus, epp. 93; 94; I. N. Wood, “*Gentes, Kings and Kingdoms*”, p. 255.

Liber Constitutionum in 517, Sigismund may not have been *magister militum*, but only *rex*. There may, thus, be a reason for the fact that the preponderance of legal references to Sigismund as *rex* fall in the first two years of his reign.

28. What of the people with whom the *Liber Constitutionum* is concerned? As we have seen, a traditional view would be that these are laws for the Burgundians, a Burgundian Code, and that the Romans had their own discrete laws, as is mentioned in the *Prima Constitutio*.¹²⁰ These laws could be the *Forma et Expositio*, or the *Codex Theodosianus* itself.¹²¹ Yet this is clearly not an adequate description of the contents of the *Liber Constitutionum*. While it may be addressed primarily to Burgundians, or the Burgundian counts who subscribed, the *Prima Constitutio* makes it quite plain that relations between Burgundians and Romans are at the heart of the legislation. Judges are to judge between the two groups according to the revised laws: *Omnes itaque administrantes ac iudices secundum leges nostras, quae communi tractatu compositae et emendatae sunt, inter Burgundionem et Romanum praesenti tempore iudicare debebunt* (“Therefore all administrators and judges must judge from the present time on between Burgundians and Romans according to our laws which have been set forth and corrected by a common method”).¹²² Romans appear frequently in the laws, not least with regard to property and the Burgundian settlement, but also more generally in cases of dispute settlement. The great Italian legal historian Carlo Troya noted that what he regarded as Gundobad’s laws mentioned Romans more than forty times.¹²³ In making the point he had in the back of his mind the apparent absence of any reference to Romans in the Lombard laws: Burgundian law could be used to illustrate the oppression of the Italians in the Lombard period. One may question the comparison, but Troya’s emphasis on the presence of Romans in the clauses of the *Liber Constitutionum* is still important.

29. Despite the simplicity of the statement that judges are to deal with relations between Romans and Burgundians, it would be wrong to think that Roman and Burgundian constitute straightforward categories. The Romans we can perhaps regard as an easily defined group (although, as we shall see, the term *ingenuus* presents problems of distinguishing Roman from Burgundian). There is nothing easy about the definition of a Burgundian, as has long been recognised. Indeed, the *Liber Constitutionum* itself is inconsistent in its terminology. It talks of Burgundians, barbarians,¹²⁴ and *populi nostri*,¹²⁵ and contrasts them with Romans, Jews,¹²⁶ Franks and Goths,¹²⁷ *externae gentes, adveni* or *homines extraneae nationis*¹²⁸ – although the word *extraneus* might also mean nothing more than someone who was not a local.¹²⁹ In a much-cited article Patrick Amory saw a steady shift away from the use of Burgundian as an ethnic term, which he regarded as having particular significance at the time of settlement: in its place he saw a growing use of the terms *populus noster* and *barbarus*, which he regarded as expressing social rather than ethnic difference.¹³⁰ The general point may be valid, although it is unfortunately unverifiable because far too many of the laws in question are dateless, and, as we have seen, they do not even have to date from before the 517 promulgation of the *Liber Constitutionum*. Certainly *Constitutio Extravagans* 21, which might have been issued any time between 508 and 534, talks very clearly of *Burgundiones*.

¹²⁰ *LC, Prima Constitutio*, 8.

¹²¹ I. N. Wood, “*Gentes, Kings and Kingdoms*”, p. 257; see also Id., “The Code in Merovingian Gaul”, p. 170-172; id, “Le Bréviaire chez les Burgondes”.

¹²² *LC, Prima Constitutio*, 3; trans. Fischer Drew, p. 18.

¹²³ C. Troya, *Storia d’Italia del Medio-evo*, Naples, 1839-1859, vol. 1, pt. V: *Della condizione de’ Romani vinti da’ Longobardi e della vera lezione d’alcune parole di Paolo Diacono intorno a tale argomento*, Naples, 1841, p. CCLXI.

¹²⁴ *LC, Prima Constitutio*, 11; 2; 10, 1; 17, 5; 44, 1; 47, 1; 55, 1-5; 60; 61; 79, 1.

¹²⁵ *LC*, 2; 45; 46, 1; 51, 1; 54; 74, 1; 77, 3; 79, 1.

¹²⁶ *LC*, 102.

¹²⁷ *LC, Constitutio Extravagans*, 21, 3, 9.

¹²⁸ *LC*, 38; 39.

¹²⁹ *LC*, 84, 2.

¹³⁰ P. Amory, “The meaning and purpose of ethnic terminology in the Burgundian laws”.

30. While allowing that Amory is right to see the term Burgundian as having particular (although not exclusive) currency in the laws relating to settlement (which, one should note, was not a single event, but rather a sequence),¹³¹ it is perhaps more useful to look at the use of three other terms: *barbarus*, *populus noster* and *ingenuus*. The latter word at times goes with the ethnic descriptors *Burgundio*, *barbarus* and *Romanus*.¹³² On only one occasion is the term *ingenuus* linked exclusively with *Burgundio*;¹³³ elsewhere it appears together with the phrase *tam Burgundio quam Romanus*¹³⁴ or *tam barbarus quam Romanus*.¹³⁵ Clearly the word is simply concerned to describe the social status of an individual. His (or her) ethnicity is of no significance. Katherine Fischer Drew's slightly cumbersome translation "native freeman" seems largely correct. Eighteen of the laws of the *Liber Constitutionum* concern *ingenui*, and we may assume that they were directed to any native freeman of the Gibichung realm, regardless of ethnicity.¹³⁶

31. More problematic are the other two terms, *barbarus* and *populus noster*. *Barbarus* is a particularly interesting term to use, because it flies in the face of the standard assumption that no one would have identified himself as a barbarian.¹³⁷ This assumption might seem to hold true when one considers the *Variae* of Cassiodorus: in the Ostrogothic kingdom the *barbari* were outsiders.¹³⁸ This, however, was not the case in Gibichung Burgundy.¹³⁹ It is true that on one occasion the term does seem to be used to describe a non-Roman from outside the kingdom,¹⁴⁰ but in most other cases the word would seem to be used simply as a synonym for Burgundian¹⁴¹ – there is, however, one exception which suggests that this is a statement that will need some modification. *Liber Constitutionum* 2 talks of killing *hominem ingenuum ex populo nostro cuiuslibet nationis aut servum regis, natione duntaxat barbarum* ("a native freeman of our people of any nation, or a servant of the king, in any case a man of barbarian tribe").¹⁴² The implications of this may perhaps become clearer once we have looked at the other awkward descriptor, the phrase, *populus noster*.

32. The term *populus noster* is reasonably common in the *Liber Constitutionum*, occurring twelve times.¹⁴³ For the most part it would seem to be synonymous with the words *barbari* or *Burgundiones*. Certainly it could encompass the higher sections of society: the ruler legislates after discussion with the *obtimates populi nostri*,¹⁴⁴ but it also encompasses people lower down the social scale. The rhetoric of *populus noster* is, of course, rather different from that of *barbarus*, implying a direct association between the ruler and his people. It is worth noting here that the phrase *populus noster* would seem to be alluded to by Avitus of Vienne in one of the letters to the emperor he wrote for Sigismund, to secure the transfer of his father's title of *magister militum*.¹⁴⁵ There Avitus uses the phrase *vester quidem est populus meus*. The king's people is in the service of the emperor. Sigismund might wish to imply that all the people, Roman and Burgundian, under his jurisdiction were part of the Byzantine Empire. He might be wishing to make a

131 I. N. Wood, "L'installation des Burgondes dans l'empire romain ».

132 *LC*, 4, 1, 3, 5, 7; 44, 1; 47, 1.

133 *LC*, 44, 1.

134 *LC*, 4, 1.

135 *LC*, 47, 1.

136 *LC*, 5, 1, 7; 6, 4, 9, 10; 8, 1; 26, 4, 5; 27, 1, 4, 9; 30, 1; 32, 1; 33, 1, 4; 35, 1-2; 46, 2, 4; 55, 6, 7; 56, 2; 60, 3; 63; 89, 5; 91; 92, 1, 4; 103, 6.

137 T. Jones and A. Ereira, *Barbarians: an alternative Roman history*, London, 2006, p. 13.

138 Cassiodorus, *Variae*, II, 5; 15; III, 24 (title), 43; IV, 3; V, 14; IX, 21; X, 29; XI, 1, ed. T. Mommsen, *Scriptores Rerum Merovingicarum, Auctores Antiquissimi*, XII, Berlin, 1894. See L. Traube's comment in the index, p. 519, "Ipsi Gothi in variis eo nomine numquam appellantur, possunt Gothi esse barbari E391" (= Gelasius, ep. to bishops, Quinegesius and Constantinus, p. 391).

139 I. N. Wood, "The term 'barbarus' in fifth-, sixth-, and seventh-century Gaul", *Zeitschrift für Literaturwissenschaft und Linguistik*, 41, 2011, p. 39-50.

140 *LC*, 79, 1.

141 *LC*, *Prima Constitutio*, II, 10, 1; 17, 5; 44, 1; 47, 1; 55, 1-5; 60; 61.

142 *LC*, 2: trans. Fischer Drew, p. 23.

143 *LC*, *Prima Constitutio*, title; 1, 3; 45; 46, 1; 51, 1; 53, 1; 54, 1; 74, 1; 76, 1; 77, 3; *Constitutio Extravagans*, 21, 1. See G. Halsall, *Barbarian Migrations and the Roman West, 376-568*, Cambridge, 2007, p. 479.

144 *LC*, *Prima Constitutio*, title; 53, 1; 74, 1.

145 Avitus, ep. 93.

rather less elevated claim, that all the Burgundians were subject to the emperor. Or alternatively he might have been wishing to suggest that the military force he could command was at the emperor's service. Of course, given the ambiguity of the rhetoric, all three meanings might have been intended.

33. The Avitus letter raises the possibility that the language of the laws was deliberately ambivalent. *Populus noster* might mean the Burgundians, and clearly at some moments does. Yet it might also stretch rather wider than that, and might encompass those who could not have been included within the descriptor *Burgundio/Burgundiones*. The same might be argued for the term *barbarus*. While we tend to see this last term as derogatory, it might have the advantage of being applicable to men other than Burgundians who were still not Roman. With this possibility in mind, it is worth returning to the history of the Gibichung state.

34. The origins of the Burgundian kingdom within the Roman Empire are always (although perhaps rather too simply) traced to the transfer of the remnant of the people to Sapaudia in c.443, following their destruction by the Huns some ten years earlier.¹⁴⁶ Exactly why Aetius settled Burgundians in the region to the north of Geneva is unknown, although creating a buffer zone against the Alamans has been suggested. What is equally unclear is the scale of the settlement. It is mentioned in only one Chronicle (that known as the Chronicle of 452), and the archaeology does not suggest that large numbers of identifiable Burgundians were transferred to Sapaudia.¹⁴⁷ Of course, identifying peoples archaeologically is questionable, and the question of numbers might be radically reopened if new cemeteries are discovered. Even so, in the current state of our knowledge, it is unlikely that the Burgundian settlement in Sapaudia was extensive. In any case, there may not have been a large pool of Burgundians after the Hunnic onslaught.

35. The next event relevant to the establishment of the Gibichung kingdom was the arrival of Burgundians in the central Rhône valley. This party was led by Gundioc.¹⁴⁸ It is an assumption that Gundioc's Burgundians were only drawn from Sapaudia: they could have been a different group that had not been settled by Aetius. Certainly they were first and foremost an army. This expansion into the central Rhône was short-lived, and Gundioc and his men were driven back by Majorian. Soon after 461, however, they returned. On this occasion Gundioc seems to have had the support of Ricimer, who must by this time have been his brother-in-law,¹⁴⁹ and he was even recognised as *magister militum*.¹⁵⁰ In this office he was succeeded by his brother Chilperic, sometime around the mid 460s. Thus far, we can talk of a relatively small body of Burgundians, under the leadership of kings who had also come to hold the office of *magister militum*. We have no legislation that we can identify as being issued by either Gundioc or Chilperic, but we can be certain that these two leaders had a say in the settlement arrangements which can be traced in later laws.¹⁵¹

36. We know remarkably little about events in the zone controlled by Chilperic, despite a few comments in the letters of Sidonius Apollinaris and in the *Vita Patrum Iurensium*. Perhaps more important was the career of Gundobad, who left Burgundy for Italy, where he served under his uncle Ricimer.¹⁵² When the latter died in 472 Gundobad took over his office of *magister militum praesentalis*. Two years later,

¹⁴⁶ *Chronicle of 452*, s.a. 443, ed. T. Mommsen, *Chronica Minora* II, 1892. See I. N. Wood, "L'installation des Burgondes dans l'empire romain".

¹⁴⁷ K. Escher, *Genèse et évolution du deuxième royaume burgonde*, vol. 2, p. 654, 823, 830-831.

¹⁴⁸ Marius of Avenches, *Chronicle*, s.a. 456; Prosper, *Continuatio Havniensis*, s.a. 457, ed. Mommsen, *Chronica Minora* I: trans. S. Mulhberger, "The Copenhagen continuation of Prosper: a translation", *Florilegium*, 6, 1984, p. 71-95, at p. 78; I. N. Wood, "L'installation des Burgondes dans l'empire romain", p. 80.

¹⁴⁹ We can deduce this from Priscus, *Fragments* 64, 65, ed. Blockley, *The Fragmentary Classicising Historians*, vol. 2, p. 372-5, with p. 400, n. 201, 203. Priscus talks of Gundobad as both the nephew and the brother-in-law of Ricimer: the former description would seem to be correct. It would appear that Ricimer married Gundioc's sister. Given the career of Gundobad the marriage must have taken place in or around 450.

¹⁵⁰ I. N. Wood, "Gentes, kings and kingdoms", p. 251.

¹⁵¹ I. N. Wood, "L'installation des Burgondes dans l'empire romain", p. 75-85.

¹⁵² Priscus, *Fragments* 64, 65, ed. Blockley, *The Fragmentary Classicising Historians*, vol. 2, p. 372-5, with p. 400, n. 201, 203.

however, he abandoned Italy, apparently after the elevation of Julius Nepos. As we learn from letters of Avitus of Vienne, however, he did not see himself as giving up his title. We may infer that he returned to the Rhône valley with at least a portion of Ricimer's old forces. If these included men who had not been among Gundobad's original companions when he left the Rhône valley they might not have been Burgundians.

37. Gundobad's rise to the rulership of the Burgundian kingdom is obscure. He may have overthrown his uncle Chilperic,¹⁵³ or he may have succeeded naturally. All we can say is that he was well established by 490, when he received an embassy from the Ostrogothic ruler of Italy, Theodoric, led by Epiphanius of Pavia. Ennodius in the *Vita Epiphani* described Gundobad as *rex* and as *princeps Burgundionum*.¹⁵⁴ The ethnic term, however, cannot have remotely described the reality of Gundobad's subjects. The Gallo-Romans, of course, would have constituted the majority of the population. The Burgundians of Sapaudia and of the Rhône would have been a small minority. They were not even the only barbarian group settled in the Rhône valley the 440s by Aetius: the *Chronicle of 452* records the settlement of Alans under Sambida in Valence under what can be read as the year 439.¹⁵⁵ And then there is the question of the scale and political importance of the following that accompanied Gundobad back from Italy. This, however, was not the end of immigration into the Gibichung kingdom. There are also *adveni* and *homines extraneae nationis*, who appear in the *Liber Constitutionum*.¹⁵⁶ These may have been no more than travellers, although the law does suggest that some may have been intent on staying longer. More important, in *Constitutio Extravagans* 21, which is unfortunately dateless, but is unlikely to be earlier than 508, we hear of Goths who have escaped from the Franks, and who are being given permission to settle *in regione nostra*.¹⁵⁷ The fact that this merits legislation suggests that there were quite a few Gothic refugees following Clovis' victories.¹⁵⁸

38. All barbarian peoples were mongrel, but the ethnic mix among the followers of Gundobad and Sigismund seems to have been extreme. Against this background, the tendency to substitute *barbarus* for *Burgundio* surely makes a good deal of sense. So too, the use of the phrase *populus noster* was a convenient way of talking about all the subjects of the ruler, but especially the barbarians among them. The people of the Burgundian kingdom were indeed the people of the Gibichung ruler. These terms represent a simple reality, and would no doubt have been more acceptable to a non-Burgundian barbarian living within the kingdom than would the word *Burgundiones*, especially in those laws dealing with matters other than the settlement of Burgundians. So too, the word *ingenuus* marked a distinction more important than any ethnic one: being free.

39. Given the mongrel nature of the Gibichung subjects, one might also consider the value of the term *rex*. That Gundioc, Gundobad, Sigismund and Godomar were all called *rex* at some point is clear enough.¹⁵⁹ We even hear of Sigismund's elevation in both Marius and Fredegar.¹⁶⁰ But these men were scarcely kings of the Burgundians, although the phrase *rex Burgundionum* does occur occasionally, albeit almost always in non-Gibichung or later sources. We are not dealing with ethnic kingship. Gundobad's emphasis on his Roman title and his desire to pass it on to his son, thus makes a good deal of sense. This was an authority that all, including the Romans, could recognise. It was, however, an authority which was first and foremost military. It is perhaps not surprising that the signatories of the *Prima Constitutio* were Burgundian *comites*, who may well have been primarily military men rather than urban administrators.

153 Avitus, ep. 5: see the translation and commentary in D. Shanzer and I. N. Wood, *Avitus of Vienne*, p. 208-212.

154 Ennodius, *Vita Epiphani*, 174, ed. F. Vogel, *Monumenta Germaniae Historica, Auctores Antiquissimi*, VII, Berlin, 1885.

155 *Chronicle of 452*, s.a. 439.

156 *LC*, 39, 1.

157 *LC*, *Constitutio Extravagans*, 21, 4.

158 On the Burgundian involvement in these campaigns, however, see I. N. Wood, "Les Wisigoths et la question arienne", in *Franks et Wisigoths autour de la bataille de Vouillé (507)*, L. Bourgeois (ed.), Paris, 2010, p. 19-22.

159 Gundobad describes Gibica, Godomar, Gislahar, Gundahar, Gundioc and Chilperic as being of royal memory (*regiae memoriae*), *LC*, 3; J. Favrod, *Histoire politique*, p. 137-54.

160 Marius, *Chronicle*, s.a. 516; Fredegar, *Chronicle*, III, 33.

Here it is worth remembering that the *Liber Constitutionum* contains numerous laws that can best be viewed from a military point of view: among them there are the laws on settlement, but also the infamous *Lex Gundobada*, instituting trial by battle. Of course, the Gibichungs legislated on issues that went far beyond the military, and their power was over the whole population. It is, however, worth remembering Sigismund's words to Anastasius, as expressed by Avitus: *cumque gentem nostram videamur regere, non aliud nos quam milites vestros credimus*.¹⁶¹ Gundobad and Sigismund understood their authority as being derived from their military position.

40. Ethnic terminology has bedevilled interpretations of the post-Roman period. To speak of the Burgundian kingdom is a convenient shorthand, but the area ruled by the descendants of Gundioc was not Burgundian in a meaningful sense. The Burgundians were not numerically dominant, nor were they the only barbarian group within the Gibichung realm. *Barbari* was a more accurate description of the non-Roman followers of Gundobad and Sigismund: not surprisingly they used the term in their legislation, even though modern scholarship would see it as derogatory. *Populus noster* was yet vaguer and perhaps for that reason had its own value: it could imply the personal following of the ruler, but it could also stretch to cover all his subjects, Romans included. As for the rulers themselves, they were *reges*, but preferred not to see themselves as *reges Burgundionum*, arguably because the descriptor might seem to be limiting. They were *principes* and *domni*, and above all they were officers of the empire, legislating within an imperial tradition, with Roman laws in front of them, which they used and modified as they thought fit. Their jurisdictional authority came from their positions as servants of the empire: as Sigismund, through Avitus, remarked to Anastasius, *vester quidem est populus meus*. He stated this, angling for the office of *magister militum*, which had been held by his father, grandfather and great-uncle. He may not have received the title before he issued the *Liber Constitutionum*, but the origins of the Code surely lie in the Roman authority of the Gibichungs.

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¹⁶¹ Avitus, ep. 93: "Even though we may seem to rule our own people, we think of ourselves as nothing other than your soldiers", trans. D. Shanzer and I. N. Wood, *Avitus of Vienne*, p. 146-7.