Abstract: Salic Law, the most famous of the so-called barbarian leges, was both barbarian and Roman. It was made during the 4th century for the Frankish military dependants (dediticii) and their families settled in the Extrema Galliae, the Far Gaul. Its main goal was to eradicate the feud system, unacceptable in the Roman army. It did not succeed in the long run but it gave the Franks the cohesion which allowed them to conquer Gaul, the text turning ultimately into an element of national identity down to the French revolution.

Résumé : La loi Salique, la plus célèbre des lois dites barbares, était à la fois barbare et romaine. Elle fut faite au IVe siècle pour les déditices Francs et leurs familles établis dans les Extrema Galliae, « les régions ultimes de la Gaule ». Son principal objectif était d’éradiquer le système vindicatoire, inacceptable dans l’armée romaine. Elle n’y réussit finalement pas mais elle donna aux Francs la cohésion qui leur permit la conquête de la Gaule, le texte devenant un élément d’identité nationale jusqu’à la Révolution française.


Thus, by a singular coincidence, the Germans framed their artless institutions at a time when the elaborate system of Roman jurisprudence was finally consummated. In the Salic law and the Pandects of Justinian, we may compare the first rudiments and the full maturity of civil wisdom; and whatever prejudices may be suggested in favor of Barbarism, our calm reflection will ascribe to the Romans the superior advantage not only of science and reason, but of humanity and justice.

1. In the month of September, year 1996, the pope came in France to celebrate the 1500th anniversary of king Clovis’ baptism. The sovereign pontiff called back to the oblivious French their ancient conversion to Christianism and to Rome, alleged to be a brand of identity. Taking advantage of the event, some historians assembled in Rheims to investigate the conditions of the royal conversion and its supposed

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1 E. Gibbon, The History of the Decline and Fall of the Roman Empire (1776), J. B. Bury (ed.), London 1906, p. 239. “It was probably composed in the beginning of the fifth century, before the era of the real or fabulous Pharamond. The preface mentions the four cantons which produced the four legislators, and many provinces, Franconia, Saxony, Hanovre, Brabant &c., have claimed them as their own”. Franconia, Saxony and Hanovre was the English point, the Law being thus Saxon and not French, cf. Shakespeare’s Henry V, 1.1: “There is no bar to stay your highnesse claime to France / But one which they produce from Faramond / No female shall succeed in salick land / Which salicke land the French unjustly gloze / To be the realme of France / Yet their own writers faithfully affirme / That the land salicke lyes in Germany / Between the flouds of Saleck and of Elme / Where Charles the fifth having subdued the Saxons / There left behind and settled certaine French”.

Clio@Thémis - n°10, 2016
appurtenance, the making of the Frankish law, the *Lex salica*. The link between the royal baptism and the *lex* – a first French law for a first French king – had been already alleged in the 17th century, in the great debate about the *constitution primitive* of the French kingdom. In the end of the Ancien Régime, Clovis prevailed as a law-maker upon the former Faramund.

2. What was at stake in the controversy was then quite clear: was the author of the *Lex salica*, the first law of France, christian or pagan? Surely, the pagan dispositions of the old law were obvious to those who cared to read it, but the point was that the pagan king Clovis and his people had been washed by baptism and therefore entitled by God’s grace to build a nation and have their own law. Still, at the time of the controversy, the only practical interest of the Salic law was to dismiss women’s claim to the throne, an old legal trick dating back to the 14th century and especially designed for the English. At that time, the French customs had been romanized, Roman law was subsidiary for the king’s High Court, le Parlement de Paris, and in much use everywhere in Southern France. The debate about the ancient law of “nos ancêtres les Francs” had thus become a matter of ideology.

3. The 19th century historians accepted the perspective of the 18th, albeit with some reserves now and then. Clovis’ reign became a threshold between Germanic barbaritas and Christian romanitas. The Franks were supposed to have left over barbarity, beginning as French their march towards enlightenment or, as wrote Gibbon commenting upon Agathias’ praise of the Franks, “displaying the social disposition and lively graces which in every age have disguised their vices and sometimes concealed their intrinsic merit”. Came the 20th century, the reservations of the previous historians were forgotten and a somewhat hasty dating got the better, the great thing being the romano-christian heritage. Of more ancient cultures there was a clean sweep, except by the stark nationalists, or worse, in Germany, which did not make the matter the more attractive for others. What does actually the *Lex Salica* tell us about the past of France and more broadly, of Western Europe and its national kingdoms, after the fall of the Western Roman Empire?

4. At the end of the 5th century, a roman officer of Frankish origin, Hlodwig, succeeded his father, king Hildrih, to the government, both military and civil, of the province of Belgica secunda. At that time, the Frankish communities of the province were not judged in roman style, by a Justice- Governor learned at Hildrih, to the government, both military and civil, of the province of

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5 Thus Godefroid Kurth: “Avant (Clovis) cette loi était déjà arrêtée et fixée dans un ensemble de formules non écrites mais confiées à la mémoire et comprises dans l’idiole germannique des Francs. Cette rédaction germanique primitive, non mise par écrit, c’est évidemment celle qui fut l’œuvre des quatre prud’hommes, au dire de la tradition franque ... Tout porte à croire que la première rédaction latine de la loi et sa mise sous écrit sont du temps de Clovis. Le Grand prologue de la loi, sans le dire explicitement, marque cependant le commencement de l’activité de ce grand roi, l’épilogue parle également de Clovis bien qu’il ne le nomme pas, et tous les deux ajoutent qu’il a fait des additions à la loi”, *Clovis* (1895), ed. 1978, p. 575. Kurth distinguishes a “first latin addition in the time of Clovis” and “an oral addition” (sic), more ancient.
7 Not of course the Pandects of Justinian, as wrote Gibbon.
centenarius\textsuperscript{8}. The unfrequent appeals and some very important cases went before the king\textsuperscript{9}. The judges of these country courts could use a small law-book named Lex salica. In the words of Gibbon, “the first rudiments of civil wisdom” opposed to Roman law, “the full maturity” of it\textsuperscript{10}. Though this lex was written in latin, it quoted the frankish words spoken “at the mound of the pleas”, mallobergo\textsuperscript{11}. Some of the rules were pagan and most of them fixed a compensation to end feud, a characteristic pattern of tribal/segmentary societies\textsuperscript{12}.

5. Those elements pointed at the antiquity of the law-book, but how ancient was it? At the end of the 8th century, Charlemagne had decided to reform the law. What was left of paganism was no more to be tolerated by a king engaged in what was styled Renovatio Imperii Romanorum. New versions of the law had been made and a clerk of the chancery issued a longer prologue (the grand prologue of the French historians) extolling “the noble Frankish people by God founded, strong in arms, profound in counsels ... even then searching the key of knowledge while still holding the barbarite rite, longing for justice and keeping faith inasmuch as its customs permitted. But when, thank God, Clovis king of the Franks ... first received the catholic baptism, what in the Pactus was considered unseemly was corrected with a decree, very carefully and clearly, by the noble kings Clovis, Childebert and Clothaire\textsuperscript{13}. How could a law “of barbarian rite” have been accepted in a kingdom whose kings were Christians the clerk explained easily: the first baptized king had corrected the law and after him his sons. Anyway, even in their pagan period, the Franks were already true and faithfull, what!

6. The intervention of Clovis’ sons the clerk who wrote the longer prologue had read in the old version of the law. At the beginning of the 6th century, king Childebert had thought necessary to add a decretem to the old law – the judgments and decisions of his council –, and he invited his brother Clothaire to join in. The man who wrote the adjunction ended it by a summing up (cumulacio/conlatio, the epilogue of the French historians) where he stated briefly what the text had been before his kings’ decree: according to him, “the first king of the Franks” – or “a first king of the Franks” – had established (statuit) 65 titles and added 13 others.

\textsuperscript{8} Tunginus, sometimes linked with the thing or the tungervafa/villicus, is rather akin to o.e. gethungen, “risied (upon the shield?)”, heabthungen, “high ranking”, both meanings being cancellable (cf. Aelfric’s gloss emuricis, prorectus). Jos Bowsorth and T. N. Toller, An Anglo-Saxon Dictionary, Oxford, 1898, abrev. ASD); K. Modzelewski, L’Europe des barbares, Paris, 2006, p. 268, compares with the herabafolding or the gotli.

\textsuperscript{9} PLS, 46.6: “aut ante regem aut in mallo publico legitimo, hoc est mallobergo ant theoda od thungino” (corr. aut theoda(n)), “or to the theoden or to the thungen”.


\textsuperscript{11} Passages named malbergic glosses; the Frankish terms do not gloss the latin text, it is rather the latin text which spreads out the costumary designation of the actions. We shall explain them after the old English, a language akin to the Frankish dialects with an ancient, diverse and vast written vocabulary.

\textsuperscript{12} PLS, 2.16 (theft of the sacrificial piglet): anonomochamithetheo, “anaem eo hamtheode, “take/offering to the Yew for the ham folk” (cf. old engl. nidaen et eo/iw; geweihter Gemein-Barch in the translation of Eckhardt, in 1965, rather a paraphrase of the latin); 55.4 (despoiling a tomb): the wargu is banished antiqua leges, 64.1 et 64.3 (witchcraft). In 55.6-7, cf. 62b), looting or arson of a basilica, perhaps an addition (cf. 55.7). T. M. Charles-Edwards, “Law in the Western Kingdoms between the fifth and the seventh century”, in Late Antiquity: Empire and successors, A. Cameron et ali (ed.), Cambridge, 2000, p. 260; later paganism, P. Demolon, “Les Francs et le christianisme à l’époque mérovingienne dans le nord de la France”, CHM, z (supra n. 3), p. 81t. J-P. Poly, Le chemin des amours barbares, Paris, 2003, p. 176. In “Débats médiévaux autour de la peine de mort”, La peine de mort, I. S. Papadopoulos et J. H. Robert (ed.), Paris, 2000, p. 89, J.-M. Carbase notes that the Gaulish bishops may have preferred the compensation system to the death penalty. Legal barbarism might have its advantages.
7. Three centuries later, the Carolingian clerk assumed that this first king should be Clovis. But the text of the epilogue denies such an identification. The writer would never mention the king’s father in such an off-hand manner, and besides, he states that Childebert’s adjunction was made “a long time after” the anonymous first king (post multum autem tempus). Childebert’s joint decree with Clothaire implies peace between the brothers, around year 524, therefore, for Childebert’s referendarius or notarius, the first king who had done the statutum was certainly not Clovis, gone only some twelve years before. Nor was Clovis considered in the Frankish tradition as the initial law-maker, as is shown in the shorter prologue of the law (the petit prologue of the French historians). When this prologue was written, very likely at the end of the 6th century, it made use of legendary elements that Childebert’s man could not ignore. The shorter prologue considered as law-makers four viri electi who had “settled by judgment” (decreverunt) a pactus, and the shorter prologue made no mention of a king. For the Franks of the sixth century, Clovis neither created the Lex salica nor amended it.

8. Some years ago, I attempted to date the Pactus and, in accordance to this dating, to understand its purpose and the social conditions of its making. The shorter prologue – and no matter here the legendary elements it made use of – clearly expresses the aim of the law. It was not made to state a scale of compensations which could be dealt with and adjusted at will, as in other vindictive systems (systèmes vindicatoires). The purpose of the law was “to root out the fights” (rixae). To achieve this goal, the compensations were fixed once for all in a way both compulsory and accurate. They went for two thirds to the plaintiff or his kin, and for a third to the king for his peace, a third of this third going to the judge. In the Salic law, since the payments are now fixed, the old vindictive system draws nearer to the roman system, or our modern ones, where damages and fines are both decreed by the judge. The whole point was not regulating the vindictive system, but substituting it with what was in fact a penal system, or not far from it. This analysis seems today admitted; in some studies it even seems a matter which never needed a demonstration. But how had the Franks, living in a tribal society still grounded on kin, agreed to forsake feud, this fortress of kinship, even during some generations, since later they took to it again? While many historians have accepted easily enough the compulsory character of compensations in the Salic law, they do not seem to realize it meant the disruption, albeit for a period, of the old customary system of feud.

9. In 1993, I suggested that the law had first be made for the Frankish military settlements of the extrema Galliae in the years 350-353. The condition of refugees of the Salii Franks, hounded out by the Saxons from their territories north of the Rhine, would have left them no choice. In 2006, taking advantage of constructive critics and a better lecture of former literature, I rallied to a two-time creation: an oral pactu. To achieve this goal, the payments are now fixed, the old vindictive system draws nearer to the roman system, or our modern ones, where damages and fines are both decreed by the judge. The whole point was not regulating the vindictive system, but substituting it with what was in fact a penal system, or not far from it. This analysis seems today admitted; in some studies it even seems a matter which never needed a demonstration. But how had the Franks, living in a tribal society still grounded on kin, agreed to forsake feud, this fortress of kinship, even during some generations, since later they took to it again? While many historians have accepted easily enough the compulsory character of compensations in the Salic law, they do not seem to realize it meant the disruption, albeit for a period, of the old customary system of feud.

13 About these elements, infra II.


15 For Raymond Verdié, le système vindicatoire opposed to the acte vindicatif, pulsion and doing, infra n. 16.


prologue and the epilogue (II). Their purpose was different: the legal dispositions, more or less before Clovis’ reign, had to rule the legal practice; the prologue and the epilogue, some three or four generations after Clovis’ reign, relied on tradition to enhance the statute.

I. Judicial practice in the army

10. If we try to understand the social situation when the Salic law was born, we must consider two basic elements: the people who submitted to its jurisdiction, the personae iudicatae, and the territory which this jurisdiction was intended to rule, the locus iudicandi. The people amenable to the Salic hundred courts were military groups called banda, “banners”. Their jurisdictional territory was determined in a title of the Pactus ruling the guarantee for eviction.

Frankish banners

11. Two kinds of people were concerned by the Pactus, the Salii Franks who gave their name to the law, and other “barbarians living under the lex salica”. The law, though occasionally, cared also about people labelled Romani. Amongst those Romani were land-holders (possessores), some being commensals to the king (convivae regi), the others tributarii, mere tenants liable to the tax (tributum) which the possessores probably no longer paid20. The mention of these Romans in the Salic Law is plain evidence that the Salii and their fellow-barbarians were established in imperial or ex-imperial territory. About that everybody agrees21. But established when and with what status?

12. The name of the Salii appears in the sources at the very time when those who bear it are crossing into imperial territory22. During the summer 358, the Cesar Julian, by now firmer in his government of Gaul, went campaigning:

He attacks the first of all Franks, those commonly called Salii, who one fine day (olim) dared take the liberty to build up their shanties on Roman soil, in the region of Toxandria. He was arriving at Tongres when an embassy came to him from them ... claiming peace with that legal condition (sub bac lege) they would be quiet and at home, and nobody would attack them or bother them. All things considered, he puts up to these delegates several conditions that were asking for discussion and sends them back with presents, telling them he would not leave the regions (tractu) until they return. As soon as they were gone, he followed them earlier than he said, marched on all of them (tractu),

20 PLS, 41.1, 14.2 (robbery): Si Romanu <bomo> barbarum…Salico expolavertit; 14.3: Si Francu Romano…; 16.5 (arsen): Si Romanus boc Romanum admisserit… (only A2), 39.5 (plagiatu): Si (quis) Romano plagaviert... (only A2); 41.1 (manslaughter): Si quia vero ingenuum, Francum aut barbarum qui legem salicam vivit, occiderit ...; 41.8: Romanou homone convivae regis; 41.9: Si Romanu bomo possessor <et convivae regis non fuerit>; 41.10: Romanum tributarium; 42.4 (murderous assault): De Romanu vero occis vel lethis <et pueris>; 71.1 (castration): Si Salicu Salicum castraverit; The “other barbarians” Renard (n. 64) thinks could be scythian groups; but their customs were quite different; J-P. Poly, “Les trois flèches des Pakhtoas, Ordale et acculturation en Gaule à la fin du IVe siècle”, Droit & Cultures, 65, 2013, p. 17.


22 The name was questioned by M. Springer, “Gib es ein Volk der Salier?”, in Nomen et gens. Zur historischen Aussagekraft frühmittelalterlicher Personennamen, D. Gevenich et alii (ed.), Berlin, New-York, 1997, p. 58; Amman’s “all together” (infra n. 23) indeed points to a coalition of different groups, but the mere use by Julian of the name of the roman Salians’ collegium is unlikely. Amman considers the name to be customary, it must have been substituted for another some generations before. But it may have been heard as a latin homophony.
sending general Severus along the riverside (of the Rhine, with another column?) and knocked them head over heels as a thundering hurricane. Then they showed more entreaties than resistance, and victory turned to seasonable clemency: he accepted them in dedition (se dedentes receptit) with their goods and children.

13. Ammianus was both a soldier and an accurate writer. He tells that the campaign unfolded in regions under military control, the tractus – in Belgica secunda and Germania inferior – and that when Julian marched against the Salii in 358, they had already been there for some time. According to Nicomachus, another contemporary source used by Zosimus, the Salii had just been expelled from Betuwe, the Batavorum insula they were holding at that time, and their aggressors were some Quadi subordinates to the Saxons, not the danubian Quadi of course, but the Nord-Schwabisch group of this name. These northern Quadi were already assaulting the Salii before the time when Julian became Cesar in 355, thus in the reign of emperor Constant or that of the Britto-Frankish usurper and emperor’s former officer Magnentius.

With the Quadi, another tribe, the Chamavi, had entered Roman territory.

14. The imprecision about the time of the Salii’s arrival, the daring they showed, the leniency they benefited, all that may be explained if Julian had resumed the policy of the usurper, a continuity not to be stressed by Ammianus his admirer. The Salii had been asking for a lex “without bothering”, that is a foedu with no compulsory service or fatigue, a status that Magnentius, in time of need, would have granted them. Once overcome by Julian, they were still accepted in imperial territory but as dediticii, liable to any labour duty.

15. Notwithstanding, they were not distributed in the agri deserti as coloni while eventually providing recruits like other country folks, the policy enforced by Constancius I. The dediticii of Julian are left in the borderland and all men are enrolled on the roosters (matriculae) of the auxiliary units, τάγμα τε καταλόγος says Zosime. The pax constantiniana was then gone; as Magnentius, Julian was in need of soldiers, not peasants.

Two generations later, three auxiliary units named Salii are listed in the roll of the auxilia palatina, recruited among non-citizens. On their blue shield, some of the western Salii seniores bear, in white, “the bond” (sal) which they had in their name.


24 Tractus was first “a stretch (of land)”, generally determined, e. g. tractus oppidi, tractus venafranus. Later the Saxons looted the gallicanos tractus (Amm. 27.8.3), not all regions in Gaul but the (militia)res tractus (Amm.30.7.8), the coastal military districts, among which the tractus venafranus (infra n. 60).

25 Zos. 3.6.1-3; in 498/498, he follows the History of Eunapius, itself based on the Annales of Nicomachus Flavianus (334-394) (S. Ratti, “D’Eutrope et Nicomaque Flavien à l’Histoire Auguste”, Dialogues d’histoire ancienne, 25, 1999, p. 247, as Paschoud). The Quadi have been questioned since the name designates another group settled on the left bank of the middle Danube (Paschoud, II, p. 76 n. 15); but see infra n. 46.

26 Se dedentes, σκότοντες. K. F. Werner, Histoire de France I, Les origines, Paris, Fayard, 1984, p. 260: “Des peuples de la ligue franaise avaient profité de l’usurpation de Magnence ... pour occuper massivement la Batavie et pour étendre leur emprise en Toxandrie ... Julien permit aux seuls Francs saliens de s’établir ... en qualité de dediticii...”. For Renard, p. 327, “déraite et deditio des Francs saliens ... sont clairement datées par Ammien et Zosime du règne de Julien l’Apostat, plus précisément de l’année 358”, a confusion between arrival in the empire, olim (supra n. 21) and defeat; he sets rightly aside “le renouvellement d’une deditio antérieure”; indeed, there was most probably a foedu in 350, hence the tractus (infra) replaced in 358 by the deditio.

27 Deditici as coloni, A. Barbero, Barbaras. Immigrés, réfugiés et déportés dans l’empire romain (2006), Paris, Éd. Tallandier, trad. 2011; he excepts the Salii, p. 93-99 et 130. The Cesar recruited the Salii and part of the Quadi and of those who were in the Batavic island ... for units which, as can be seen, still exist nowadays ... Julian continually increased his army”, Zosime 3.8.1 and 4; καταλογος is the Greek for matricula, “the mum”, the pay rooster which fed the soldier, Végèce, Epitome rei militaria 1.26 et 2.5 (c. 390); CTh. 8.4.20 (407) for civilian coloni; Procopius, cit. infra n. 41.

28 Cf. the plates in the Notitia Dignitatum (infra n. 38) where there has been shifts between names and shields, cf. Seeck ed., introd. p. XX. Sallii: Or.5.9=5.51 might be the Laeci sent by Julian, blue with two birds (hawks or Woden’s crows), not the Brachiani; Oc.5.29=5.177 with the bond (sal); Oc.5.36=5.210 with a friendly white wolf. Brachiani: white with arm-rings, Or.5.11, cf. Oc.5.20-21=159, confusion with the Mattiaci. Batavi: red with horns (for seniores) or without (juniores), Or.5.10, cf. Oc.5.19 and 38=5.163 et 186. Mattiaci: blue, Or.5.8 cf. 6.13 and Oc.5.15=5.164/165 (confusion with the Brachiani), Or.
16. Let us translate the names of the other gentes partaking their history, a task, granted, neither secure nor easy. But the historians who discard it from the start are like anthropologists who would disregard kinship structures alleging their complexity, and the gentes may appear as “a blurred multitude of several ethnic elements, disguising their diversity under pseudo-kinship labels”. He who would say so today about the Guayaquis, the Dogons or the Mois would be rightly considered somewhat ethnocentric, if not worse.

17. The ethnic names of the groups entering the extrema Galliae tell much about them. In the first place the Salii. Two important dispositions of their law show that they are former Ingaeones, clans of matrilinear kinship, according to Tacitus one of the three major divisions of the Germans; Pliny says that in this division were only left the Cimbri and the Chauci. The white Cimbri, “CuHymBaere, “Who Bears Cow’s Hym” – a collective singular –, or rather what remained of this most famous tribe, were entrenched in the North of the Jylland peninsula. The Greater Chauci, “HoHoc”, “High Hawk”, on the coast East of the Weser, had surrendered to the emperor considered by them as an image of Woden – no shame to stoop before a god – and in 289, they had renewed this bond. This tardy passing over to a “political odinism” would have won those Eastern Chauci the designation “Sal-Iw, “Bond Yew”, the name linking Freya’s tree and Woden’s bond which changed wolves into the god’s disciplined dog-warriors. In 358, as we have seen, they did not really wish to fight the empire.

18. Julian’s offensive aimed at others too, whence the “all together” (cuncti) in Ammianus. Zosimus, after Nicomachus, states that became also dediticii “some of those who were in theinsula Batavorum”. In Germania, everybody remembered that the Batavi, “BatHawe”, “The Observer (who went) in a Dispute”, had parted from other Chatti after a dispute, the Chatti being Hatte, “Called One”, a wolf’s name. The Batavi had come to an island in the Rhine, giving their name to it. When some groups settled in the land left by them and in the neighbouring lands of the Chamavi kin of the Batavi, those new-comers were styled Hettware, “Hatte(-land) keepers”, thus distinguished from the Franks in the Salland, East of the

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5.290= 5.49 (the blue, too expensive, was omitted by the first copyist in the whole page and those after). The blue was Woden’s colour, the red Thunera’s/Thor’s, the yellow Freya’s, the white the Ingaeone Cimbri’s (Plutarque, Via, Marius 23.7, vanic bull; 24.9, color; R. Flacelière ed., t. V, 1971). With some different identifications, P. Berger, The Insignia of the Notitia Dignitatum, New York, 1988, comp. by L. Ueda-Sarson, Later Roman Shield Patterns from the Notitia Dignitatum, on line.

29. “Sous les noms de Cimbres, Teutons, Goths, Germains, Slaves et combien d’autres, agissent et réagissent sans trêve une multitude confuse d’éléments ethniques, dissimulant leur diversité sous des parentés d’étiquettes mais étalant d’ailleurs la même incapacité à dégager de l’humus des forêts, de la boue des marécages leurs formes politiques longtemps confuses, comme à demi enlisées” (sic), L. Febvre, Le Rhin, Histoire, mythes et réalités (1935), Paris, 1997, p. 80. Most of the time the alleged philology goes back to Müllehof but the problematic has somewhat changed; when it comes to ethnic names, philology cannot set aside anthropology (cf. the Salii infra n. 31). Current summaries about the following names will be found propria verbi in the Reallexikon der germanischen Altertumkunde (cit. supra n. 10) whose second rejuvenated edition reached completion in 2009.

30. Ingaeones elements: PLS, 59, De adolos; PLS, 44, De reipis; PLS, 2.16, sacrifice of the pig, Freya’s animal (cit. supra n. 12). Pliny, Hist. Nat. 4.96 and 99-100, Poly, Le chemin, op. cit., p. 78, 95, 99. Chauci has been linked with Hohe and Hügel; we proposed “HoHoc”. “High Hawk” (collective singular); the hawk is nor. haukre, dan. høg, sued. hök, the o.e. distinguishing animal and men by a prefix, “hauk/beck-hoe, “the hawk which rises” (as ogh. habak?), høk, beak is for the predominant position of the group, “populus inter Germanos nobilissimus... superiora agunt” (Tacitus, Germania, 35), a contrast to their kin left in the Alócia islands, “AlHokÆeg, “All hawks islands”, known as Cimbri (cf. the voyage of Pythéas, J.-P. Poly, “Ballade d’un Grec et des gens de Thulé”, in Vertige du Droit, Mélanges franco-helléniques à la mémoire de Jacques Prystia, H. Helmis et alti (ed.), Paris, 2011, p. 303). The hawk was Freya’s animal, as was the pig (supra n. 12) and the cow, whence the form Caut, “CoHoc, infra n. 110. There was probably no Chauci (cf. Beowulf v. 2503-2508, ed. R. W. Chambers, London, 1920; see also v. 1081-1082) in the country of the Hettware (infra n. 32); sydhadesve hæð to fordaged haman Dængfræte weardr / to hand bonan, hauk(e) companion, “ever since I killed Dayraven the Frank in front of the two armies” (A. Orchard, A critical companion to Beowulf, Woodbridge (GB), 2003, p. 231); “Dayraven” was champion of the frankish king Thierry alias Hug-Dietrich, maybe akin to Huginn, Odin’s crow, and to the Hugmerki in Frisia, whence, in the Beowulf, Frecensying, “king in Frisia” not “of the Frisians”.

31. The first radical, o.e.sal, “bond, halter” (-o to sell, formerly handing over by the halter?) is sure, because of the shield (supra n. 28) and the anthropologic likeness (who would accept to bear a name meaning “dull, dirty”, fr. salis, who would call a group “the hails”, fr. salis? The old philology is sometimes suprising). The name shows the Salii’s faith in Wodan, normal among Hermanniomas tribes, but original for people who stayed Ingaeones (supra n. 30). Responsive to philological criticism, we have to explain the last syllable: the second –i is of course the mark of the latin declension, the first –i could be i(o), a second radical designating Ingaeone as devouts of the vanic tree. “First among the Frans” (supra n. 23).
Ijssel. From these Franks of Betuwe, some surrendered to the Cesar who was merciful to them, others fled beyond the Rhine, in the Gelderland hills, thinking they would be safe. But in 360 Julian crossed the river at Xanten and launched his last offensive in Gaul; victor once more, he made peace and the many prisoners he captured reinforced his vast supply of troops.

19. Four other players in this northern “great game” underwent different handlings. First the Quadi, that is the *Cauwaeedd, “Cow-pledged”, part of the great league of the Suevi, but recently returned from the Danube. Amongst them some were accepted in dietitionem as were the Salii, others were left beyond the Rhine. Then the Chamavi, *HamHawe, “Observer (stay at) Home”. They were repelled beyond the Rhine in the old “home” of the Sicambri, Batavi’s ancestors and theirs. As for the Germans of the right shore beyond Colonna, the Bructeri, *Brohobere, “Army that led (in the old time of the Cimbrian invasion)”, and their kin Amsivari, *Emsuare, “Em’s Keeper”, as soon as 356 the Cesar had taken care to make a peace treaty with their kings, turning them into federates.

20. Some forty years later, the magister militum Stilicho had to fight another campaign in the same region of the Lower Rhine. Claudian, a courtier poet, fond of archaisms but precise, tells that the general subdued the Chauci and the Suevi, that is the Salii and the Quadi, the dediticii of the former generations. He had also beaten the free Germani on the right shore, that is the Bructeri and Amsivari, and the Chamavi. Those last, named by Claudian and later others with the ancient and noble name of Sicambri, the other part of the Sicambri, the Batavi, had gone a long way from the border. The Sicambri left beyond the Rhine, that is the Chamavi, became dediticii too. All the dediticii were inscribed in the roosters, as Julian had done with the Salii.

21. At that time the Germanic auxiliaries in the Roman army were using the word *let*, which meant in their language “tributaries”, as a designation of the dediticii. The word slipped into army Latin with this special meaning, perhaps a bitter joke since the *let* who had lost their freedom had no reason to be “joyful”, laeti. The Salic law does not of course mention dietitiones and it uses the word *letus* only to name half-free farmers, the former meaning of the word. When the law was written, the second meaning was no longer convenient; but the first was still quite necessary to qualify half-free people since there was no Latin term for them to be named. Tacitus had noted this difference in the status of those he called servi among Romans and Germans. Later, master Gaius had reminded his students than in Roman law “all men are either free or slave”, though but some lines afterwards he noted the existence of the manumissi ex lege Aelia Sentia who, said he, had a status drawn from that of the foreign dediticii which he shortly explained.

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34. Land of the Salii: *Salaborn*, 9th c., *Sallant*, 12th c. (M. Gyseling, Toponymisch Woordenboek van België, Nederland, Luxemburg, Noord-Frankrijk en West-Duitsland, Gent, 1960, abrev. *TW*, p. 88); perhaps “home for the Bond (people)”; Gyseling thinks to a plur. dat. *Salaborn, “to the Salahas". Also called Iljelgow, *Ilegouwe*, 8th c. (L. Vanderkindere, La formation territoriale des principautés belges au Moyen Âge, Bruxelles, 1902, II, p. 311; abrev. *FTPB*, *HamHawe, “At Home Observers”*; in the first century one fraction of the Sicambri stayed in Gelderland, the other part being the Batavi, *BaetHawe, “Observers (who went) in a Dispute” (better than “tribute”, Poly, 2006, supra n. 14); Hamalant, terra saxonia, *FTPB* (n. 33) II, p. 304. In the 9th century the three counties of Hamalant (=Graafschap Gelder), Betuwe and测试特特 were a ducaittus surrounded by Saxland, Friesland and Maaszau, with a law different from the Salic law, *ewe quae se habet ad Amorori* (*AmOra*, “The Uncle’s Bank”, cf. in the North the island Amenia, *AmEna, which became after the great floods the tiny island of Ameland; *MGH*, LL V, p. 269, tit. 44 and 26-29). Considered as *(Sug>Sig)*AmBanM, and speaking *battacu lingua* (infra n. 81). They were *I(d)itaewone, worshipping Thor, but allied to the vanic bull (J.-P. Poly, *Le chemin*, p. 78 and 115). Become dediticii: “Shorn Sicambria serves under our ensigns”, infra n. 113.

22. The Salii, Julian’s dediticii or laeti, had been settled on the border were they had been beaten, in the tractus of the extrema Galliae. In 399, April the 5th, some months after granting “laws and rights” to the Chauci (Salii) and the Suebi (Quadi)\(^\text{36}\), emperor Honorius ordered an inquest about the terrae leticae that had been previously given to people recently come, or come back, to the empire:

Since (people) from many nations following Roman fortune joined our imperium, for whom letic lands must be ruled, (we order) that none of these territories be received without our adnotatio. And since quite a lot of them occupied more than they had earned or since they receveid a broader measure of land than was asked for in the account, either with the collusion of the principala or defensores or by surreptitious writs, let an appropriate inspector be sent who shall reclaim what has been wrongly given or by some received with dishonesty.

Those people who had received terrae leticae came from different gentes – those beaten in 398 by Stilicho, Chauci, Suevi, Sicambri, or in more recent names Salii, Quadi, Chamavi – and they were sequentes romanam felicitatem, a deft expression to avoid stating which status they had, some being dediticii, some “inequal” foederati, the main point being that, no matter how, they were now under roman rule. Many had taken advantage of the usurpations during the former years – those of Maximus and Eugenius – to occupy more than they had received from Julian or Valentinian, the subrepticii rescribi being a stone cast at the late magister militum Arbogast. From now on, terrae leticae would be granted only with the emperor’s nota, actually the decision of his magister militum Stilicho, entitled to rule the praepositoriae of the laeti et gentiles as we may see in the Notitia Dignitatum. The same resetting was done in Africa in 409, with a constitution about “land granted to the gentiles” (in 386?). This land free from taxes was to support the servicum of the fossatum Africam by the Moors of the local praepositoriae, not be bought to escape the fiscum. The insertion of the constitution in the Code transformed it into a general rule (CTh 7.15.1). The constitution of 396 was briefly commented in the following century by a summation: “The foreigners (peregrini) occupying land in a Roman province must receive no tenure (beneficium) but what will be granted by the prince’s leniency (indulgentia). He who has occupied more than he was granted will have to give it back”. This was the time when Aetius settled his barbarian troops, most probably without asking the emperor, and the comment was not irrelevant\(^\text{37}\).

23. In the Notitia Dignitatum, around year 400, the roll of the letic commands (praepositoriae) still mentioned two of them in the region. To the West, in the province of Belgica secunda, “the laeti of the (land of the) Nervii” (laeti Nerviorum), likely the Franks once settled by Maximian\(^\text{38}\). In the center, in the

\(^{36}\) Infra n. 110.

\(^{37}\) “Quoniam ex multis gentibus sequentes romanam felicitatem se ad nostrum imperium contulerunt quibus terrae leticae administranda sunt, nullus ex his agris aliquid sine nostra adnotatione mereatur. Et quoniam aliquanti aut ampliu quam meruerant occuparent aut concludo principaliam vel defensionem vel subrepticii rescribi maiorem quam ratio poscebat terrarum medium sunt consecuti, inspector idoneus dirigiatu qui ea revocet quae aut male tradita aut improbe ab aliquibus occupata” (CTh 13.11.10), CTh 7.15.1. Summarium (CTh MS Var. Reg. Lat 886) quoted by H. Brunner, Deutsche Rechtsgeschichte, Leipzig-München, I, 1966, p. 54.

\(^{38}\) The references are to the old edition by O. Seeck, Notitia dignitatum (1876), reed. 1985 (abrev. ND). P. Brennan, “The Notitia Dignitatum”, in Les littérature technique dans l’antiquité romaine, ed. C. Nicolet, Genève, 1996, p. 230; C. Neira Faleiro, La Noticia Dignitatum. Nueva edición critica y comentario historico, Madrid, 2005, gives a survey of the bibliography (Jones, Clemente, Hoffmann, Treadgold) and the latest datations. We disagree about some points: the praefectus lactorum nerviorum is “of the laeti navoriorum” not “of the laeti nervii” (ND, Oc 42.39), in the territory of the gaulish Nervii between the Eburon, annihilated by Cesar, and the Menapii. There, a little before 297, had been settled the Frank receptus in lega, “accepted in the laws (of the emperor)”, a dediticius “at the emperor’s conditions” (Panégyriques latina IV, 21.1, ed. E. Galletier, Paris, Les Belles Lettres, I, 1949); at the same time the former laeto (of the Haiti Mattiinius) was postliminio restitutus, “re-established (in its status) according to the postliminium right”, this status being his old dediticia conditio, as a group with a territory and not spread in the cities territorities as were the new dediticia turned in colonia (Tacticus, Germania 29); he was settled again as dediticius among the Treveri, North of Ivois (praefectus lactorum actorum cor. Attorum) epuso belgicae primae, (ND, Oc. 42.38; the medieval pagus Mennesis? FTPB (n. 33), II, p. 348). Barbero (supra n. 27) rightly emphasizes the rustic status of the new dediticia, but sees the praefecti lactorum as officers in charge of provincial prisoners freed from the barbarians, but the laws insist the ex-prisoners must be sent back in their province. Reserves for the auxiliary units (religionature), S. Kerneis, Les Céltes, servitude et grandeur des auxiliaires bretons dans l’empire romain, Clermont-Ferrand, 1998, p. 215 and 66 (pseudo-civitate).
province of **Germania Inferior**, another command, the "laeti Lagenses, near Tongres", those settled by Julian. This designation deserves attention: the Latin suffix –*ensi* indicates people linked to a place called *Lagum*. This Germanic word means both a set of rules, a law, and the territory submitted to it, in that case important enough to designate the *laeti*, thus not styled *Iungenses*, the city name being added solely as a precision\(^9\). Following these two commands in the *Notitia dignitatum* were two other *praepositurae* written on four lines which were cancelled when the list was hastily corrected probably after the rebellion of Clodio, the ancestor of Clovis; in the first blank was later written a new Suabian command created in Aquitaine, the second blank remained empty\(^10\).

24. The groups answerable to these commands did not disappear with the fall of the empire. In 552/554 Procopius, informed by a Frankish embassy to Constantinople, summarizes the situation in the regions across the Lower Rhine. There were the *Τιρρακοντα*, the free Germans on the right bank – the Saxons – and on the left bank the *Αρβορυχοι*, "Ere-Brought", "now soldiers for the Romans", federates. Near those lived "other soldiers for the Romans; you can see them still muster today according to the rolls where they were written on, and they line up in battle bearing their own banners"\(^24\). The muster-rolls (*καταλογοι*), identical to the *matriculae* of Julian and Stilicho, and the "ensigns* (*σημεια*) kept in a particular region imply districts for the levies. According to later charts, six counties (*pagi*) bore the name *bant*, "ensign, banner", a word well known in army Latin. In the 5th century, the units and their banners did not go away to fight, and the shock troops had turned territories. Their ensigns, now kept at home, named proudly their counties and these names, like in all ancient tribal societies, had a meaning then known and understood though with the time it was lost\(^42\).

25. In the nervian command (*praepositura*), we find the Brabant, a possible *B(oh)RaecBant*, "the banner presenting the ring". The *pagus* was divided in four *pagi minores* which could have been establishment and

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\(^9\) *ND*, Oc. 42-43, O.e. *lagu*, plur. *Laga* (*lab* in compound), "what is layed down", replaced *ae(w)eu* (C. T. Onions, *The Oxford Dictionary of English Etymology*, Oxford, 1966), still used in pagan Sadland, in the county Amor on the Lower Rhine (supra n. 34) or in England. The suffix –*ensi* implies a place-name; near Tongres, it is *Lauw/Lowaige*, 12th century *Lude, Lunneg, Leuwe*, with deglutination *Le Wége, weia/wegia* (*TW*, p. 598). The form *lude* seems to exclude *blaw*, "mound", pointing rather at the compound *lab-u-de*, "law pledging", Flemish equivalent of the wallon form, the Flemish afterwards keeping only the simple form *Lauw-Lab*. In the "ban de Lauw" was the mound of Herstappe, *Hartapla* (*TW*, p. 486); Gysseling quotes rightly *Lex Rib.* 31.1, *veri-tieratio* is done *ad regis stipulam vel ad eum locum ubi malba est*, qui était "la pierre du roi/königstein", a column near the old praetorium of Cologie; *i.e.* *stapol* means both "pillar, post" (were the shield was hoisted, *ubi mallu est*), *Ledu, Leuge, Lewege*, *Rhine* (*supra* n. 34) or in England. The suffix –*ensi* implies a place-name; near Tongres, it is *Lauw/Lowaige*, 12th century *Lude, Lunneg, Leuwe*, with deglutination *Le Wége, weia/wegia* (*TW*, p. 598). The form *lude* seems to exclude *blaw*, "mound", pointing rather at the compound *lab-u-de*, "law pledging", Flemish equivalent of the wallon form, the Flemish afterwards keeping only the simple form *Lauw-Lab*. In the "ban de Lauw" was the mound of Herstappe, *Hartapla* (*TW*, p. 486); Gysseling quotes rightly *Lex Rib.* 31.1, *veri-tieratio* is done *ad regis stipulam vel ad eum locum ubi malba est*, qui était "la pierre du roi/königstein", a column near the old praetorium of Cologie; *i.e.* *stapol* means both "pillar, post" (were the shield was hoisted, *ubi mallu est*), *Ledu, Leuge, Lewege*, *Rhine* (*supra* n. 34) or in England. The suffix –*ensi* implies a place-name; near Tongres, it is *Lauw/Lowaige*, 12th century *Lude, Lunneg, Leuwe*, with deglutination *Le Wége, weia/wegia* (*TW*, p. 598). The form *lude* seems to exclude *blaw*, "mound", pointing rather at the compound *lab-u-de*, "law pledging", Flemish equivalent of the wallon form, the Flemish afterwards keeping only the simple form *Lauw-Lab*. In the "ban de Lauw" was the mound of Herstappe, *Hartapla* (*TW*, p. 486); Gysseling quotes rightly *Lex Rib.* 31.1, *veri-tieratio* is done *ad regis stipulam vel ad eum locum ubi malba est*, qui était "la pierre du roi/königstein", a column near the old praetorium of Cologie; *i.e.* *stapol* means both "pillar, post" (were the shield was hoisted, *ubi mallu est*), *Ledu, Leuge, Lewege*, *Rhine* (*supra* n. 34) or in England. The suffix –*ensi* implies a place-name; near Tongres, it is *Lauw/Lowaige*, 12th century *Lude, Lunneg, Leuwe*, with deglutination *Le Wége, weia/wegia* (*TW*, p. 598). The form *lude* seems to exclude *blaw*, "mound", pointing rather at the compound *lab-u-de*, "law pledging", Flemish equivalent of the wallon form, the Flemish afterwards keeping only the simple form *Lauw-Lab*. In the "ban de Lauw" was the mound of Herstappe, *Hartapla* (*TW*, p. 486); Gysseling quotes rightly *Lex Rib.* 31.1, *veri-tieratio* is done *ad regis stipulam vel ad eum locum ubi malba est*, qui était "la pierre du roi/königstein", a column near the old praetorium of Cologie; *i.e.* *stapol* means both "pillar, post" (were the shield was hoisted, *ubi mallu est*), *Ledu, Leuge, Lewege*, *Rhine* (*supra* n. 34) or in England. The suffix –*ensi* implies a place-name; near Tongres, it is *Lauw/Lowaige*, 12th century *Lude, Lunneg, Leuwe*, with deglutination *Le Wége, weia/wegia* (*TW*, p. 598). The form *lude* seems to exclude *blaw*, "mound", pointing rather at the compound *lab-u-de*, "law pledging", Flemish equivalent of the wallon form, the Flemish afterwards keeping only the simple form *Lauw-Lab*. In the "ban de Lauw" was the mound of Herstappe, *Hartapla* (*TW*, p. 486); Gysseling quotes rightly *Lex Rib.* 31.1, *veri-tieratio* is done *ad regis stipulam vel ad eum locum ubi malba est*, qui était "la pierre du roi/königstein", a column near the old praetorium of Cologie; *i.e.* *stapol* means both "pillar, post" (were the shield was hoisted, *ubi mallu est*).

\(^42\) The word appears in the 6th century, precisely in Procopius (Poly, 1993, cit. n. 13). Six units (*numeri/arithmoi*) made a division (*moira*); in Maurice’s *Strategikon*, the unit commanded by the tribune is still named *bandon*, albeit it then had no more than 400 to 200 men, W. Treadgold, *Byzantium and Its Army*, 284-1085, Stanford (Calif.), 1995, p. 94. Gysseling (*TW*, p. 98), proposing *bante*, "region", *gives in Bante*, at Texel, 9th c., and *Bant*, an island in the *Vita Lindgeri*, not districts but place-names which perhaps named the central forts of the Frisian and Chauc auxiliaries of the first century. About the importance of place-names, C. Archan, "Les règles de droit dans la prose des *Dindelvenches de Rennes*, *Droit & Cultures*, 64, 2012, p. 91.
recruiting districts for the four hundreds of a *numerus*. The size of the *pagus* and the fourfold structure seem to imply continuity.

26. In the other command, that of Tongres, we find the Hashannium, Haspenewe, Hesbain, were *bant* would be omitted for the sake of a more gratifying *Haebann*, “the order-district who calls (to assembly)”; this county too was divided into four *pagi minores*, an evidence for continuity.

27. A third banner, the Osterbant, “Eastern banner”, had been East of the others, probably the settlement of the Frankish Hettware east of the Maas, in *Germania Inferior*. But the banner must have left to follow Clodio of Duisborg. The *praepositura* was cancelled in the list of the *Notitia Dignitatum*, leaving the second blank, and the name was left for a small *pagus* not far from Cambrai, around Hellesmes were Clodio had been beaten by Majorian’s cavalry.

28. Another banner, the Caribant, “the return banner”, a small *pagus* north of Arras which would have followed the rebel Clodio, was what was left of the Quadi, the Siabians “returned” from the Danube who had been invading the *extrema Galliae* in the 350s. Perhaps they had first be settled by Julian in the North-Brabant, the ancient gaulish *Ttrixandria*, where we find a region named Keerbergen. This *praepositura* too was cancelled in the *Notitia*, replaced perhaps by a new *praepositura* of Suevi in the far Angoulême.

29. The fifth and the sixth banners guarded the vasty mouths of the Rhine. Near Betuwe was the Testrebant, likely the country of the Sicambri enlisted by Stilicho. Between Kromme Rhein and IJssel, the

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43 *Pagus Brachantensis* in the 7th century; first radical obscure (NW, p. 178); *bracan/breacan*, breaking the enemy, is uncharacteristic among warriors; *broga*, “terror” (Poly, 1993), is not very characteristic too; *B(ae)Eace*, “addition” to the Sicambri who “bear” their maternal uncle (Poly, *Le chemin*, p. 87) is far-fetched. There was an auxiliary unit of Brachant, “those with the bracelets”, the arm-rings painted on their white shields (ND, Or. 5.11=5.50 and Oc. 5.20=5.195 were the bracelets ar in a cross, better in a Christian army; Or. 5.11 has four bracelets for the four hundreds? About the shifts, supra n. 28); we could then understand *B(cab)RaecEaht*, “Present the Bracelet” (on their shield), the complete name of the unit being eventually *B(cab)RaecEaht*, “The suit/kin (nor. aett) presenting the bracelet”, of course attracted by the latin. *Pagus minores* in the 9th c.: Hal/Halle, Bruxelles, Aalst/Alost, Ename, cf. FTPB, II (n. 33), p. 102.

44 Gysseling gives *bann*, “judicial district”, and *hasia*, gen. pl. of *Hasias*, “Hessen” (TW, p. 488). But this last ethnic name is a forme de *Hatte*, pp. de hatan, “to be called, commanded”, with dim. –sio; the first radical, better than the river Hase (as Poly, 1996), must be analogous to o.e. haes, “call, command”, which will give the name of Austrasia, “*EasterHaes. For their superiority, supra n. 30 et 39. *Pagi minores*: Diest, Avernas (Looz), Haspinga, Hu(c)garda, cf. FTPB (n. 33) I, p. 131, 141-144.

45 For Gysseling “eastern region” (TW, p. 775); Osterbannium et Asturoba(n)teusa, FTPB, I (n. 33), p. 134, 137. The small size of both Ostrebant and Caribant show they had been deprived of men.

46 Caribant, 9th c., later Carembaut (“CarHerbod, “command of the return Home”), north-west of Hellesmes where Clodio was defeated by the cavalry of Aetius under Majorian; Gysseling identifies *bant* but does not explain Car- (TW, p. 220), possibly the return of the ancient fraction of the Marsi (“MaerHype, “Youth of Maer” the giant), the Mauring/Maeroingas gone to Bohemia and then part of the Quadi, “CaWædd, “Cow-pledged” (with a legendary Thudrih, Poly, 1996, supra n. 14), themselves part of the *Seufas* (those barbarians, moving all the time, can’t stay at attention). This Belgian Suevis, mentioned with the Frisians by Venantius Fortunatus, will be evangelized by Eloi (S. Lebecq, Marchands et navigateurs frisons du haut Moyen Âge, Lille, 1975, 2, p. 18 et 48). Place-names for clearings outside the *pagus*: Zwevegem, Suwengemel 11th c.; Zwiwage, Suitwengem 12th c.; Zwieveke, Suevka 13th c.; Zweezele, Swiswele 11th c.; Kwadham, Quatetham 14th c.; KwaadIIeper, QuatIpra 13th c. (TW, p. 1108 et 583; Gysseling thinks to kwaoed, “schoeck”; add Kwadrechte (traitectus) and Kwaatmechelen. FTPB (supra n. 33) I, p. 282. A fraction of the Nord-Schabben, the Myringiis, dwelt in Schleswig (*Widsith*, v. 35-44, ed. R. W. Chambers, 1965); another followed the Saxons but had their own law, the Suwckhe (Poly, *Le chemin*, p. 79).

47 Kyberge, 11th c., Kereberche, 12th c., TW, p. 556, not explained, in the Waverwald, FTPB (supra n. 33), I, p. 121. *Texandria* mentioned by Pliny; today Kempen/la Campine (TW, p. 958 and 956).

48 Supra n. 40.

49 Testerbant, Testarbant 9th c., for Gysseling oghb. *Tehistera*, “right, West” (TW, p. 957; FTPB, I, p. 121), unlikely *theister, “dark”* (as Poly, 1993). Rather *TyEutSteorBand*, “the banner of the bull of Tiw’s Giant (cf. Teutones)”, a group of Chamati/Sicambri since Testerbant and Hamaland were on *AmOre* (supra n. 34). In 470 Sidonius Apollinarius notes that the Sicamber lets his shorn hair (of a *laetus*) grow again, *infra* n. 113.
Swifterbant may have been Swabian50. Small regions, left-over: many warriors would have followed Clodio, their neighbour at Doesburg. Off to Angoulême too.

30. The text of the Salic law confirms the evidence for the military status of the people under its rule. Those were soldiers under the banners who named graef, “catcher”, the praepositus coming in their families to levy the young recruits or the fatigue parties51; whose local chief with his retinue of 120 youngsters, the thungen, was styled centenarius, the highest of the NCO in the Roman army52; in whose language a torp was an armed group of eight to ten men the PLS explicitly calls a contubernium, the group of comrades in the same tent or room, the basic cell in the Roman army53; amongst whom, when the public character of a judicial mote needed to be plain, the regimental shield was hoisted54; and whose ancestral tenure, terra salica or aviatica, could be inherited only by sons, the rule for military beneficium, quite different from the customary equality between sons and daughters claimed in the same title for the allodes, the family chattels55. The people under the Salic law in the late 4th century – the Salii and other groups living along the same rule – are no others than the dediticii settled fifty years ago in the lands of the extrema Galliae. A title in the law corroborates the previous evidences; it states the customary area where its dispositions worked.

The guarantee for eviction

31. Title 47 of the Salic law is named De filtortis/feltortis – which is *fyltorhte, “complete clearance” –, with the precision “(for) those who live under the Salic law” (qui(bus) lege salica vivunt), as in the first paragraph of the capital title 41, De homicidii. The title 47 ruled the guarantee for eviction, a disposition we may find for example in the French C. Civ. art. 1626, “le vendeur est obligé de droit à garantir l’acquéreur de l’évacuation qu’il souffre…”, the guarantee being completed by the “action récursoire” for he who sold in good faith, against his own vendor. There is the same mechanism in title 47: if the owner of a chattel – most of the time a horse – is charged with theft and he says that he bought it from another man, the chattel must be put in third hand and the owner must summon his vendor; if needed, this vendor summons in his turn his own vendor, and so on; the one who defaults is guilty. The law gives a delay to present a vendor, distinguishing two situations: either the defendant or the vendor dwells in a customary area, and the delay is 40 days; or the defendant or the cunnegociator dwells out of this area, and then the delay is double, 80 days.

32. The customary judicial area where the shorter delay applies is *citra Ligere aut Carbonaria, generally translated “within the Loire and the Ardenne”, the other limits – the Rhine, the North Sea, and the kingdom of Burgundia – supposed to be implied56. Legal delays are generally longer than strictly

50 Swifterbant, 8th century, today a polder in former IJsselemeer, a land sunk with the great Carolingian flood (TW, p. 949. “SwaefDeor, “the braves of the Swaben”, the part of the Quads left behind?
51 Grafio, akin to o.e. geroafa, grofa glossed praepositus by Aelfric (ASD); from gerefan, “take by force”. Was the praepositus one of the four centenaries chosen by the Headquarters to govern the county? Later, the pugi minora of Brabant had their own graef, but one of them was landgraf, answerable to the emperor.
52 supra n. 8.
53 Ps.-Hygin, De munitionibus castrorum 2 (ed. M. Lenoir, Paris, 1979); PLS, 14.6 “at the mallberg turpafalthio, o.e. thorpe faell theaw, “troop’s offending behavior”; also PLS, 42.1 and 3 et 43.1.
54 In the judicial settings for a reipus or an anfathom, the thungini-centenarii “mallum indicant et scutum in ipso malle habere debent”, PLS, 44.1 et 46.1. Those who must have the shield (to the stapulum, supra n. 39), are the centenarii, not the witnesses as É. Magnou-Nortier understands in “Remarques sur la genèse du Pactus Legi Salicae et sur le privilège d’immunité”, CHM (supra n. 3), p. 495. By the schild-raising, the mallus publicus legitimus of the centenarius, the hundred court, was distinguished from a mere ordinary meeting.
56 The Loire supposed Clodio’s kingdom before the conquest of Aquitaine; but the lack of limit with Burgundy was worrying (Renard, p. 340-342). The Lex Rib. 33.1 has 14 days inside the duca tus, 40 in Austrasia, 80 outside this kingdom.
necessary. In that case, if we consider the length of the judicial area, the shorter delay is impossible: from one end to the other there are almost 1200 km as crow flies; in forty days the defendant should travel this distance to seek his vendor and be back with the man to the session of the court. This means a ride of thirty kilometers each day, quite easy for a trained carrier changing horse during a short period. But the defendant would ride his own horse without interruption, arrive to his vendor’s estate after twenty days on the saddle, find his vendor at home and ready to follow him, and both would remount immediately for another twenty days ride back, notwithstanding accidents on the road, a stone in the shoe of the horse, a bad storm, a flooded river and so on. “Qui veut voyager loin ménage sa monture”: such a voyage would kill a horse to recover another.

33. Other limits must be found. For the *Liger*, the solution was proposed by the Belgian historians, Godefroi Kurth and Guillaume Des Maretz. They identified the Leie/Lys (ligieie/legieie), a tributary of the Scheld running parallel to the seaside and an old limit between Brabant and coastal Flanders. The judicial area was thus determined by the Leie to the West, the Charbonnière, considered to be the Ardenne, to the South and of course the *limes*, the line of forts on the bank of the Rhine. Within these limits, the delay was adequate. But why except from the judicial area the region between the Leie and the sea? It had been the territory of the ancient gaulish Menapii but the land, flooded by the sea transgression in the 3rd century, had become a marshy country, a resort for pirates and bandits, *flæmas*. The empire had put it in the special control of the Channel fleet, under the name of *tractus nervicus*. A Frankish abode was neither wished for nor allowed. In the 7th century, the region was known as *Flandriae*. The division was at that time obsolete and in manuscripts of the *lex salica* one copyist substituted the Maas for the Leie, others preferring *Liger*, the Loire, or reading *eligere* or *ligare*. The disposition disappeared in the *Lex carolina*.

34. At the time when Kurth and Des Maretz identified the Leie, Van Der Linden was interested by the *Carbonaria*. His work has been summarized and completed by René Noël. In Cesar’s time, a boundless forest stretched out from the Rhine to the straight of the Maas and beyond, “the greatest forest in Gaul” thought Cesar, “stretching on more than 500 millia passuum”. It filled the northern part of the territory of Trier’s Treveri and extended to the Remi of Rheims, the Nervii of Bavai and the Eburoins of the Maas who took refuge in it. Its gaulish name was Ardenne. Then “l’homme a pris pied de côté et d’autre; il a bousculé la végétation et démembre plusieurs massifs forestiers. Ainsi s’est détachée la forêt Charbonnière”.

*Carbonaria* is a latin name: after the Roman conquest in Gaul, much coal was needed for the ironworks and the big public baths in the cities. Government demanded deliveries of coal and the fatique-parties of the coloni soon called the forest for what they had to do with it, *Carbonaria*, “charcoal place”. But did this word name part or the whole of the old gaulish Ardenne, or another forest?

57 Before the 18th c., traveling was slow, F. Braudel, *L’identité de la France*, Paris, 1986, p. 98.
59 As has *ligere*, as CS, at §5, *TW*, p. 643 gives *legia* (*7th* c., cop. 106), *Leia* (*9th* c., cop. 106), Lis (*11th* c.).
60 Victrice, bishop of Rouen (390-404), had evangelized the region according to Paulin of Nola (Ep. 18.4, ed. M. Kemptner 1999): “Terra Morinorum situs orbis extrema... ubi quondam deserta silvarum ac litorum pariter intuta advenae barbari aut latrones incolae frequentabant, nunc venerabile et angelici sanctorum chori… celebrant… In remotissimo nervici litori... terra inondée”, or better, for Pirenne, with *o.e.* “terre inondée”, or better, for Pirenne, with *o.e.*
62 A3 has *legere*, as CS, at §5, *TW*, p. 643 gives *legia* (*7th* c., cop. 106), *Leia* (*9th* c., cop. 106), Lis (*11th* c.).
63 F. Braudel, *Flandriae in Vita Eligii* (*7th* c.); vexata quaestio: *Vlaanderen* and *Vlaamse* (*TW*, 1919, ref. to J. Dhondt, M. Gysseling, “Vlaanderen …”, in *Album Frank Baur*, Antwerp, t, 1948, p. 192, *non legi*) are linked with “anglo-frisian” *flæman*, “terre inondée”, or better, for Pirenne, with *o.e.* *flæma*, “runaway”, from *flæaman* (ASD); the name would have designated the dwellers of a military no-man’s land, the banished men of the vindictive system, *wargt* (*supra* n. 12); the second radical would be *o.e.* *deor*, *osax*: *dier*, “wild beast/brave man”. For Vanderkinderen (*FTP*, I, p. 36), “une zone de défense maritime analogue au *litus saxonicum*”.
35. Two medieval texts show that Thiméon, north of Charleroi, was “near the Carbonaria”, and so was the abbey of Lobbes. Some 12th century charts mention forest-rights in the Carbonaria for the town-folks of Ecaussines, Reulx et Senffe, North of Lobbes. René Noël notes:

Une série de documents – de vrai tardifs – dénomment (ainsi) divers bois qui s’érègent sur une trentaine de kilomètres plus au Nord (de Lobbes) et pourraient se prolonger jusque dans la vallée de la Dyle en Brabant. Rien de sûr néanmoins : les failles dans la continuité des témoignages, que les relevés toponymiques combinent imparfaitement, inquiètent par leur ampleur66.

36. The “relevés” he mentions are presented in maps 2, 3 and 4 of the study, nicely drawn by Étienne Renard. They show the ancient abodes, the land-clearing place-names, the archaeological remains, all this interesting indeed but without any textual link with the Carbonaria, and the three only places linked to the forest, albeit perhaps not in it, in the 12th century, putting all that under the daring title “La forêt Charbonnière de Thuin à Nivelles”. From Thuin to Nivelles, it is of course not enough for this virtual Carbonaria to be an important march, whence a step further, a mere hypothesis, its extension towards the North to the forest of Soignes/Zonènwoud near Bruxelles, famous from Waterloo. While Noël’s conclusion was doubtfull – “nothing sure” – the title of Renard is more affirmative. Nevertheless Renard rightly accepts the identification of the Leie, hard as it be to conciliate with the supposed bearings of the Charbonnière from Thuin to Soignes. When he tries to draw on the map such a delimitation – westwards: the Leie on some 70 km; eastwards: the hypothetic Carbonaria from Sambre to Dyle, somewhat the same length –, the inconsistency is obvious: the proposed judicial area has no limit northwards on some 70 km, and no limit southwards on some 90 km67. No legal text, even today, could bear such imprecisions.

37. To know where was the silva Carbonaria, it needs only to read carefully the study of Noël. The forest is mentioned for the first time in the History of Sulpicius Alexander, when he tells the offensive of the imperial army which had started from Trier to go and fight the Franks ransacking the region of Cologne. Those looters who had not crossed back the Rhine in good time were wiped off in the year 377. Two centuries later the name Ardenne indicated only the heart of the ancient forest, around the Sémois, the Ourthe, the Amblève et the Hautes-Fagnes. Noël notes that the region had been a royal fiscus and before, an imperial salus of Valentinien. As a fiscum, it was exempted of the carbonis conlatio, and this is why for the middle part of the forest the old name was not replaced by the new one68. In the Eastern part the remembrance of the killing may have introduced the name Eifel. In the western part, the most exploited sector by the charcoal-makers, the name Carbonaria got the better.

66 Whence the jesting in the Querulus 2.7, when the lare, a dirty servant, appears as a white divinity: “I thought you worked to the coal, and you come from the bakery” (C. Jacquemard-Le Saos ed., Paris, 1994). In 382, the emperors exempted the estates of the palatini with the maneria sordida, limestone, timber, baking bread and bringing coal (carbonis inlatio) but for mint and weapons, “nisi eum quem monetam sollemniter vel fabricatio secundum veterem morem poscit armorum”, exemption extended in 390 to the estates of the Church (CTh. 11.16.18). A mint and two weapons fabrics at Trier and others at Rheims, Amiens and Soissons (ND, Oc 11.44 et 9.35-39), the charcoal coming along the rivers, Moselle, Oise, Somme or Aisne.

67 Silva de Carbonarius, “the forest of charcoal-places”, in 1125, 1133, 1138, becomes nemus de Carbonibus, “the wood of the charcoal-men” in 1186 and 1190 (TW, p. 11). Noël p. 657, speaks of a “prolongement de l’Ardenne” between Sambre and Meuse, but sees the abbey of Lobbes “dans une échancrure de la partie Sud de la forêt”. Bu there is the Massif des Fagnes stretching just south of Lobbes, likely part of the old Ardenne.


38. Thus in 687 Pippin of Herstal, marching against Thierry III, went through the forêt Charbonnière and reached Tertry-en-Vermundois in Neustria. Some years later, Charles Martel and the Austrasian army crossed again the Charbonnière, arrived at Vinchy-en-Cambrais and ransacked Neustria. In 954/955, the Hungarians who had looted the region of Tongeren-rond the Charbonnière, attacked the abbey of Lobbes and further layed siege to Cambrai. These three armies, following the road from Maastricht to Bavai, crossed a Carbonária which might stretch from Lobbes towards the North as well as towards the East.

39. But the position of the Charbonnière is shown by the Annales Mettenses priores telling that Pippin, mayor of Austrasia, “governed the people dwelling in the vast territories between the silva Carbonaria, the Maas and unto the borders of the Frisians”, who then held Zeeland and Duurstede. The Carbonaria, since it limits “vast territories”, must stretch south of Hesbaye where was Landen, abode of Pippin, and south of Brabant where lies Nivelles, his funeral church. Likewise, in 1142, Nicolas, canon of Liège, giving the limits of ancient Austrasia in the perspective of his own age when Empire held Brabant and Hesbaye, says: “from Burgundy to the sea of the Frisians (the North Sea) and on one side the Rhine, on the other the Carbonaria forest or the Argonne”, the Argonne joining the Carbonaria which was thus where today are the Fagnes Occidentales, thus the western part of the old Ardenne.

40. Carbonaria, at the end of the Roman empire, named the ancient immensis silva of Ardenne in its parts liable to the carbonis conlatio; only the center, the former imperial demesne, once exempted of the coal delivery, retained the gaulish name. In the 8th century, the eastern part of the forest bore the new name of Eifel and the designation Carbonaria was restricted to the western part. Later the forest in this part was broken into woods and the name Carbonaria disappeared, replaced by local designations. Before that, the silva Carbonaria was a southern limit for the Maas and Lower Rhine region. As for the limit to the Leie, it belongs to the tractus nervicus, a token of the imperial dominion over the country.

41. The same dominion is supposed by the existence of people living under Salic law and buying horses or other chattels outside their customary judicial area. Rather than Franks scattered in the great kingdom of the 6th century, where this judiciary area would make no sense, the distinction inside/outside the customary limits might indicate the links with a Frankish group removed from the area in the second half of the 4th century, namely the Franks of Rennes mentioned amongst the praepositurae laetorum in the list of the Notitia.

42. Once the practice of the guarantee for eviction is understood, the limits in the title 47 may be correctly defined and the judicial area coincides with the territory of the three main Ingaewone banners in Northern Gaul. This was the place where the Salic law was created. Let us hear what the Frankish tradition had to say about it.

II – Remembering ancient times

43. The Frankish tradition of the Lex salica is reflected in the shorter prologue of the Pactu and, with a laconic and seemingly inconsistent manner, in the epilogue. Prologue and epilogue were written in the

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71 Cf. supra n. 62, the correction Mosa to PLS 47.
72 S. Lebecq (supra n. 44), I p. 102, 108, 214 et II, p. 54. The treaty of Meersen gave Brabant and Hesbaye to Charles the Bald but in the 10th century both counties were answerable to the Empire.
73 Other barbarians were not concerned: those of Amora had their own law (supra n. 34) as had the Bretons (S. Kerneis, “L’ancienne loi des Bretons d’Armoriques”, Revue historique de droit français et étranger, 73, 1995, p. 175).
6th century, therefore much more than the time they remember? Both re-use legendary elements which show how the Franks imagined and kept in memory the making of their law. According to the prologue, the law had been decreed – a decretum being then a judgment, what would be called later in French courts “un arrêt de règlement” – as a pactus, that is stricto sensu an unwritten act; the law-makers had been four chiefs and the law had been enacted in three estates (villae). According to the epilogue, a first king had established the law in a written form (statuerat), this text being the version in 65 titles where the king is steadily mentioned. Both traditions were true.

**The three estates and the four chiefs**

44. According to the austrasio-burgundian tradition in the shorter prologue, the law had been decreed, after a thorough discussion, by viri electi de pluribus, namely Uuisouuast – in other manuscripts become Uuisogast by attraction of the other names –, Arogast, Salegast and Widogast. They would have held assemblies (convenientes) in three sittings (malls), a proceeding suited to an oral agreement. The three mootings took place “in the estates which are over-Rhine in Bothem/Bodachaem, Salehem/Salachaem et Uuidohem”76. The area, as well as which the time, have been considered with a priori which still ponder on the discussion.

45. The area. For a French historian or for a Roman annalist, over-Rhine was in Germany. The German historians followed in the steps of the French, perhaps because for them the best side of the Rhine was the right bank, Germania libera. The three villae were therefore searched for East of the Rhine, albeit without enthusiasm, a legendary traditions being of no avail for positivist history76.

46. From an anthropological perspective, over-Rhine is relative and one has to check where it was in Frankish tradition. Drawing from the same old tales than the shorter prologue, Gregory of Tours declares:

74 The author would be the referendarius Asclepiodotus who wrote the treaty of Andelot in 587 (for Eckardt) and the edicts of Childerick II in 593-595, placed at the end of the PLs; likely a iurisperitus, he used the technical word pactus; O. Guillo, “Clovis, le droit romain et le pluralisme juridique”, in Libertés, pluralisme et droit..., H. Van Goethem (ed.), Bruxelles, 1993, p. 69; S. Kerneis, “Le pacte et la loi. Droit militaire et conscience franque à la fin de l’empire romain”, in Autoritas, op. cit., p. 129.

75 “Incipit pactu legis salicae. Placuit auxiliante Domino atque convenit inter Francos atque eorum proceribus ut pro servandum inter se pacis studium omnium incrementa rixarum rescere deberent... ut iuxta qualitate causarum sineret criminalis actio terminum. Exitterunt igitur inter eos electi de pluribus, quorum quattuor hos nominibus, Wisogastus, Arogastus, Salegastus et Widogastus, in villae, que ultra Rhenum sunt, in Bothem, Salehem et Widohem, qui per tres mallos convenientes omnem causarum origines sollicite discutiant, de singulis iudicium decreverunt hoc modo. The text is found in five located and dated manuscripts, Eckhardt’s C5 (BN lat. 4403b, Luxeuil, end of the 8th c.), C6 (BN lat. 18217, ND. de Paris c. 850), K35 (BN lat. 10738, S. Remi de Rheims, c. 850), K35 (BN lat. 4628A, S. Denis de Paris, c. 850) and K32 (BN lat. 9654, S. Vincent de Metz, 10th c.). The ms. of class A and C are PLs in 65 titles, class K is the official carolingian version in 70 titles. The mss. of A family do not have the prologue; they come from non-frankish regions. The ms. C5 does not have the prologue but only the names of the electi with the remark uuisuast, aroast, saleats, uicats qui uero manserunt in lege salice in bodice, the end perhaps a very bad reading of the place-names bodachaem and salachaem); the ms. C6, from a frankish region, has the prologue without the three place-names. It is therefore possible that the place-names are a gloss to in tres mallos convenientes in the prologue, but they are already known in the Liber Historiae Francorum c. 4, in 726/727, possibly taken from another text, perhaps a slightly different version of the prologue: “tunc habere et leges cooperunt quae corum priores gentiles tractauerunt hos nominibus uuisuastus, uuisogastus (d’read s), arogastus, salegastus in villabus quae ultra Rhenum sunt in bothagm, salechagm et uidechagm” (cf. ms. C5: “hoc sunt qui lege salica tractauerunt”). The three mss. K all come from frankish region, they have the longer prologue, but they took care to reproduce the shorter prologue as well. K27, late, from Chartres, has the distorted passage: hes sunt nomina eorum qui fecerunt lege salica uuisuast, aroast, saleats, uicats qui uero manserunt in lege salice in bodice, the end perhaps a very bad reading of the place-names salice(m), uisogast(m), budice(m)?

76 Gibbon notes that the Law had been claimed by Franche, more boldly by Saxonia and Hanover, more truly by Brabant (supra n.1). G. Kurbh, p. 575 bypasses the text: “Lorsque les traditions disent que les auteurs de la loi firent outre-Rhin, elles se trompent sans doute au point de vue géographique, mais elles ne font qu’accentuer l’origine toute germanique de la loi”. About the a priori of German historiography, see the presentation by P. Schöttler, in L. Febvre, Le Rhin, Histoire, mythes et réalités (1955), rééd. Paris, 1997, p. 48, for the French side, see Febvre supra n. 29 or p. 111: “Franci, Alamanni, ces hommes voyagent et avec eux, ils ne traînent pas seulement une smala prolifique, des femmes, des enfants durement soumis au mundium des pères, bétail humain livré sans garantie à la force du maître...”. In the thirties then, “une smala”.

Clio@Thémis - n°10, 2016
In fact, many tell that this same (Franks) went out from Pannonia and dwelt first on the banks of the river Rhine and afterwards, crossing the Rhine, passed over in Thoringia and there, according to countries or cities, they created over themselves long-haired kings drawn from the first and, if we may say, the noblest of their families, for which later were evidences the victories of Clodio ... It is told that Clodio ... dwelt in the castle of Dispargum, which is on the limit of the Thöring. In these regions, that is to the South, lived the Romans, unto the Loire"?

In the end of the 6th century, the migration, in the memory of the Franks, went through three stages. It started in Germania from a Pannonia identified as the Danubian Pannonia by Gregory and his likes, not much interested in frankish antiquities and paying them lip-service. This Germanic Pannonia must be a "BanHonia on the sea-coast, the country of the “Killing-Hen”, a kenning for the she-hawk of the Chauci, the High-hawks later established in the empire. From there the Salii, the “Bond-Yew” Franks, arrived indeed to the banks of the Rhine, North to the river. They crossed in Thoringia, the country of Those of Thor, the Sicambri Batavi and Chamavi between the Ijsel and the Waal; those, unlike the Salii, were I(d)staewone, of patrilineal kinship. In this Salic version of the tradition, the Franks had passed over the Rijn from the right bank to the left, from Germania into imperial territory where, “southwards”, lived the Romani.

47. In 726/727, the author of the Liber Historiae Francorum presents a somewhat different version which might well be that of the Sicambri since it concerns that part of the Franks who spoke (H)attica lingua, of course not the language of the Athenians but that of the Hatti. They too had been “in Pannonia” but “near the Meotides marshes”; the Azov Sea being out of question, it must be again an homophone, likely the marshy meadows of the WhiMode. There they had established a Sicambria, that is the Saxon Ammerland, West of the Weser estuary. Then, after fighting for Valentinian against runaway Alamans, they had come in “the farthest regions of the Rhine, in the castles of Germania”, and there they had made kings over them, likely one king ruling after another. At this stage, the Liber inserts the passage of the shorter prologue about the four chiefs and the three estates over Renum, stating, as did Gregory who is the writer he is relying on: “At that time, in these regions cisRenum, the Romans lived unto the river Loire, and beyond the Loire ruled the Goths. For the Liber, the country cis-Rhenum is obviously to the south of the river, trans-Rhenum therefore should be to the north of it, the three estates being there. But they are on the bank of the river, not in the deep of the Germania libera, and it is worth noticing that the Toringia which Gregory places after the crossing of the Rhine from the North was, according to the Liber, Not the island for bishop, shortly after 591, one Faramund (A. Duchesne, Fastes, II, p. 467), a royal name come from the Chassian Rhine country (infra n. 112) whence possibly the “Hattic” tale; version B author (c. 736), who knows the Ardenne, might be Austrasian. The story of the tribute under Valentinian, and that of Marcomer and Sunno are likely borrowed from Sulpicius Alexander (cf. the scribal lectures Primarius for Ricinarius, and Alani for Alamanni).

77 Gregory, Hist. Franc. 2.9, does not say Dispargum is in Thoringia but “on the limit”, i.e. Doesburg (not Distelberg, as Poly, 1996) at the junction of Ijssel and Oude Ijssel, not far from Betuwe. Gregory relies upon oral tradition, “some say Merovee, father of Childeric, descended from Clodio”; as Fredegar tells that the queen, Clodio’ spouse, had been impregnated by a monster come from the sea, we may understand the discreet wording of Gregory. A. C. Murray, “Fredegar, Merovech and ‘Sacral Kingship’”, in After Rome’s Fall: narrators and sources of early medieval history: essays presented to Walter Goffart, Toronto (Ca.-London-Buffalo, 1998, p. 121, criticizes the reconstruction by Hauck – where the Quinotaurus is Pro and an unknown Pro’s bull – but he ignores that Fredegar’s Quinotaurus is likely o.e. Cwenathorn alias Maer the giant (Poly, 1996), and he explains Merovech as Neptuni Bestia (“Sea-cattle”; better “Present from Maer” to the queen ...), thus linked to the Minotaur and Greco-roman mythology, a no less arbitrary construction than those of the 19th century, Germanistik.

78 Cf. o.e. bana/bona, “killer”, and bana/bona, “cock, hen”. The tale about this “hen” and her seven chicks – the she-hawk and her High-hawks clans –, alias the whore (Freya) and her seven children who dwelt in the marshes, had been kept among a group of Hocings rallied to the Lombards (J.-P. Poly, Le chemin, p. 266; another Hocing clan stayed in Jylland). Not the island Bannonia/Bannonia of Pliny, Hist. Nat., 4.94, where amber was found, “before Scythia”, between Mounts Riphaioi (Oural) and the cape of the Cimbri (North Jylland), indications from Pytheas, supra n. 30. It is no wonder that the ancient authors or the mediaeval clerks could not, or cared not, understand the old germanic names of the tradition, pulling them into greek or latin words; that this interpretatio roman may have deceived modern historians is more surprising.

79 Supra n. 34.

80 The tale of Snorri about the Tanakvisl on the Black sea is different: the gods, not the people, came from it.

81 Liber Historiae Francorum 1-5 (MGH Script. Rer. Merov. V, p. 241-245) compile Gregory and Fredegar. As noted by Krusch, version A author (726/727) is a devout of saint Ouen honoured at Paris, and as such a Neustrian, but the seat had for bishop, shortly after 591, one Faramund (A. Duchesne, Fastes, II, p. 467), a royal name come from the Chassian Rhine country (infra n. 112) whence possibly the “Hattic” tale; version B author (c. 736), who knows the Ardenne, might be Austrasian. The story of the tribute under Valentinian, and that of Marcomer and Sunno are likely borrowed from Sulpicius Alexander (cf. the scribal lectures Primarius for Ricinarius, and Alani for Alamanni).
“a region of Germania”, thus meaning the Roman province of that name. One can understand these hesitancies: which Rhine was crossed, the Kromme Rhein unto Staveren and Texel to the North, or the Waal to the South, Betuwe and the Thoringia being in the midst? Nevertheless, drawing on a tradition in his time very ancient, the clerk of the Liber thought already like a French. Over-the-Rhine had changed side.

48. The Franks who, at the end of the 6th century, had told to the king’s referendarius the tale of the four chieftains did not care about what would become later an inaccurate precision. The three estates of the tradition, not far from the Lower Rhine and the near Thoringia, were on the left bank, a day’s march from one another, following the very order given by the prologue: Bothem/*Bodachem, slightly changed in Bodingahem, was in Brabant, Zelhem was in Hesbaye and Wittem was East of the Maas. This is again the area of the laetai’s settlements of the 4th century. There, and not in the deep of Germany, the Franks and the four electi had debated over the law they would have. Who were then the “chosen men”?

49. A tradition is no mere historical recording, and Wolfgang Haubrichts has rightly claimed a mythological lecture of the Petit prologue. In our former studies, we had thought, with a rather short-sighted view, that if the names of the law-makers had their endings in –gast from the historical Arbogast, it was for the mere sake of alliteration. Truly, the Liber Historiae Francorum had recorded the forefathers (priores) who bore these names as pagans (gentiles). But Haubrichts has rightly stressed that in a legendary tradition the word gâst certainly qualifies the four electi as “spirits”. Still, though Haubrichts’ analysis stems from a right acknowledgment, his interpretation of the four names seems somewhat “post-dumézilienne” and has no special adequacy to the Franks. Accepting his general view, let us start not from an a priori threefold scheme but from the name whose meaning is the more reliable.

50. Salegast can hardly means “the spirit of the hall”, an “inside spirit” opposed to an “outside spirit” which would be Widogast as “spirit of the wood”. In the Frankish tradition, Salegast – whatever the meaning the first radical may have had elsewhere – was surely understood as SaleGaest, “Spirit with the Bond”, he who protected the Salii and their ethnic name. Probable too is the meaning of a second name, actually the first in the list and thus likely to be the leader of the three others: in the beginning of the 8th century, it still was Wisowast/*WiAwAest, “The very first of the wise law”; at the end of the century, it had become Wisogast/*WiAwAugust, “Spirit of the wise law”, likely the law of the compensation of the faidxa, the feud, whose spirit was Woden, indeed called “father of all (the gods)” and “the very first”. The meaning is confirmed by an addition inserted after the name by a copyist of the monastery of Luceuil: he wrote the injunction wiow ado, “destroy the ‘wise law’”, the monks being of course hostile to Woden and the old custom. The last two names may be interpreted in accordance with the formers, Arogast being

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82 Renard thinks that “le scribe, incapable d’identifier ces villages, a supposé qu’ils devaient se trouver outre-Rhin où l’on situait traditionnellement la patrie originelle des Franks” (cf. already Kurth, supra n. 76).
83 Both forms of the name are parallels to those of the name Bauto-Baudo; there was a Botecham, 12th c. non-identified, supposed to be not far from Cambrai (TW, p. 169); (Sint-Martens) Bodegem is an ancient Bodingahem, a form in –ingham much used in Flanders (80% in West- and East-Flander, 20% in flemish Brabant). Saleham is the Salechem of the 12th c. (TW, p. 1100). Widoham, “the abode in the wood”, might be the distorsion by the tale of an original Witham linked with a Witra (infra n. 96; TW, p. 1084, gives Witham 12th c., from wit, white). There is indeed a Zelhem North of the Rhine, and a possible Botecham around Cambrai, but the three names of the Prologue have to be near the Lower Rhine, and must be found not far one from another.
84 W. Haubrichts, supra n. 10. See also J. H. Hesse, Lex salica, London, 1886, in the note by H. Kern, p. 561.
85 The dat. of sâl is correct, but it is not the case with widu/wudu. Sel, “happy, prosperous”, would not give sal; we have seen that salu/salu, “dull” (mod.e. sallow, mod.fr. sale, salaud) seems out of question; sele, fr.salle, “hall”, philologically possible, is unlikely.
86 Cf. o.e. wiss/wis, “sure, certain”. But as an historian warned by the philologists, we have to be careful: o cannot be here a declension, it has to be explained; we propose åd/åd=åeåw, “(customary) law”, here most probably revenge; æst is a short form for aerest, “first of all”, which was Woden’s rank. Ado is imper. of adon, “take away, remove, destroy, expel”; the remark of the monk confirms å=åeåw.
similar to old-english *AerOcGaest, “Spirit too of the Former (people)”87; and Widogast to *WidOcGaest, “Spirit too of the Large (people)”88.

51. Under the dominion of feud’s god Woden, three assemblies had been held in the three main settlements, each of them embodied by a gaest. The spirit of the Salii was at home at Salehem/Zelhem in Hesbaye; in the West another spirit cared for the banner of Brabant established half a century before the Salii, the people there being “former” to the Salii; and the spirit of the “large people”, the many Hetwares, guarded the Eastern banner before it became the tiny Ostrevent. Once the names were said to be those of proceres, the authority of the ancestral spirits was concealed, albeit this concealment had not eluded the vigilance of the monk of Luxeuil89. The spirits companions to the blue Lord were the ethnic avatars of the wanderer who sometimes guided the stray ones: the wolf with the leash, Wodan’s hound sitting up friendly on a shield of the Salii, the white wolf so well known in France than it became proverbial, “connu comme le loup blanc”90. The drafter of the shorter prologue of the law, Asclepiodotus aut eiusmodi similis, did not know about that, or rather he did not want to know.

52. But the electi viri of the tale are not only legendary characters. Claude Lévi-Straus has shown that myth is not exclusive from history, it absorbs the social traumas, bringing back a distressing historical situation to never-ending structures91. The shorter prologue of the Salic law is a good example of this proposition. Tales always tend to the symmetry of their elements, thus, in the prologue two names of the characters correspond to the names of two estates, i.e. Salegast to Salehem and Widogast to Widchem. But the symmetry is not complete as should be expected. Neither Wisowast, the first name in the list, nor Arogast, the second, fit the name of the first estate, Bothem/Bodehem92. This discrepancy was inherited from history.

53. Some thirty years ago, I suggested we could identify the four characters of the shorter prologue with four Frankish officers of the imperial army in the 4th century: Gaiso, Arbogast, Salia and Nevitta93. This trespass of Antiquity into Middle Ages displeased some medievalists. The identifications would lack philological relevance, as if, in the field of proper nouns come to us from another language, the philological rules should always stayed firm94. Still, let us try to improve our demonstration, beginning again by the likeliest.

54. Arogast in the prologue has for a long time been spotted out as an echo of the famous magister militum Arbogast95. The name *ArbBobGaest “the guest with a (king’s) collar in inheritance”, might have

87 Apart Salegast, the two other first radicals end in -o, but óewdew as for Wisowast makes no sense; o.e. ar=“glory” not excluded but not very original (all people are glorious); aor-“early, former”, is more characteristic for a Frankish group, that of the nervian country, cf. supra n. 38. Oc could be ac, cac, “added”.
88 The o.e. wed- is well-known in compounds, e.g. wedefolc, “large people”, widland, “vast country”.
89 Cf. the ms. C5 of Eckhardt, supra n. 75.
90 Cf. their devotion to Marculf, “wolf in the forest”; Grez-Doiceau in Hesbaye was a great pilgrimage of the saint.
92 This asmetry worried the Luxeuil copyist of the 8th century (ms. C5 of Eckhardt); after Arogast, he added in the list a Bodegast from his make, since it is found in no other manuscript.
94 W. Haubrichts, supra n. 84.
95 Identification by Zöllner and by Heinzelmann. He was a Frank, barbara exul and transrubenana genere (the son of the king of the Quadi, prisoner and by Julian? Zosime, Histoire Nouvelle, 1.6-7), and in 380 lieutenant and kin of the frankish magister militum Bauto/Bauo; perhaps comes domesticorum, he succeeded Bauto in 387 and became quasi-emperor in 392. M. Waas, Prospography der Germanen im Römischen Dienst des 4 Jahrhunderts, Bonn, 1965, and A. H. M. Jones and
been given to the man when he was the young son of a king and hostage to the Romans. This identifying has not raised philological objections but a seemingly common-sense criticism: Arbogast, self murdered at the battle of the Vipava in 394, would then have been an old man had he been a praeceptor laetorum in 350/353. This argument is plainly inaccurate. Many epitaphs record soldiers gone in their sixties after some forty years in service. As for commanding officers, barbarian princes or roman noblemen, only death would put an end to their career\textsuperscript{96}. Arbogast, a “barbarus exul” who became at a time the real ruler of the Western Empire, was a die-hard, at sixty-five he would not be impotent, and anyway he was not supposed to lead the charge. Let us go back to the asymmetry between the chieftains’ names and the place-names and its explanation: if Aroagast in the prologue does not go with an Arohem, but with a Bothem/Bodechaem, it is because the then young Arbogast was likely a delegate (\textit{vicarius}) of his kin, the Frankish general Bauto/Baudo. Albeit it forgot the reason why, the tale would not modify the particular.

\textsuperscript{55.} The second radical in Arbogast’s name, \textit{gaest}, had seasonably been used by the tradition to record in an acceptable manner the guardian spirits. But the three other identified characters had but short names – Gaiso, Nevitta, Salia–, as often in the army where barbarian names rasped the latin mouths or ears. They died sooner than Arbogast, likely because they were older. If Gaiso was put to death in 333, Nevitta, known in 358, died not much after 362, Salia died in 372. The philological criticism has worked on the names of the last two: we are told that shortened forms in \textit{–a} being used only by Eastern Germans, the two men could not have been “chosen amongst the Franks”\textsuperscript{97}. Let us have a better look.

\textsuperscript{56.} We had identified Widogast as Nevitta, understood \textit{“HnaepWita} and translated “Knock-head Guy”. The first radical was drawn from Ammianus’ remark that the man was “rude and fierce”, and by the military practice of the centurions using their staff to hit the men’s heads. But “Guy”, we have to confess, was an approximation: \textit{Witta} is not \textit{Wido}. Nearer to the precise form, we must look at old-english \textit{wit(t)a}, “wise, counselor”. Nevitta was an ironic(177,423),(969,753)
spared in 353, he was put to death, but, as was done throughout the period, the emperor kept the three others in his service. Such was likely the historical background of the legend.

59. Years went by and the collective memory slowly transformed the personality of the law-makers. The pronunciation of their names shifted slightly to have them wear the masks of the "everlasting wights of the dream". The traditionskern showed up in the shorter prologue which kept the memory of what had been the law for the Franks: a pactus, as said the referendarius Asclepiodotus – a lawyer, he was probably right in his field, since there had been a foedus –, but also, in his own word, a decretum, for the Franks a doom, a judgment by electi, very chosen men indeed, the spirits of the faida, the wolf-ancestors. The new law which deprived the Franks of their old feud custom could not exist but by the gods’ will, a pact indeed, a covenant with the Powerful-ones. Thus the tradition could forget the yoke of the deditio to Julian which had unfortunately followed the foedus with Magnence. Of course tradition just not goes on by intrinsic strength and its resumption in Austrasia after the death of king Sigebert was no accident. It expressed a try by the queen-regent, “the most glorious lady, dame Brunehaut” to win popularity with the chiefs of the great lineages, granting them the Frankish law as a making of the forefathers who were the stems of the kins. In some 9th century manuscripts, the shorter prologue was still written alongside the longer though the later had been made precisely to replace the former. That too was no accident, rather a go at the carolingian king’s heavy authority.

60. But wolves, even wolf-wights, seldom write. Writing what is to be writ was a king’s work. Who was then the law-maker?

The law of the unnamed king

61. The epilogue, as we have seen, credited the writing of the law to a “first king of the Franks”. This element is no much more historical than the four electi of the shorter prologue. The notarius had acknowledged that this first king lived “a long time ago”. Curiously enough, the tradition is there less than talkative. Gregory of Tours had already declared, as an echo to the epilogue: “Who was the first king of the Franks, many ignore it”. A strange wording: if many ignore, do some know? And did Gregory? The good bishop, as ever crafty, does not insist and brings forth his sources, quoting the former century historians, Sulpicius Alexander and Renatus Profuturus Frigeridus, who named no first king, only duces or reguli. Why had Childebert’s notarius no name for the king who had the Salic law written?

62. Recent studies, namely Renard, have drawn attention on two dating elements for the text: one is in the Pactu Legi Salicae itself, the other is in a political source, a court-poem for emperor Honorius.

63. In the Pactu Legi Salicae, compensations are worded in denarii whose equivalence in solidi is systematically given, forty silver denarii for one gold solidus. Not many among the common Frankish parentillae had gold, silver coins were much more in use. But the fines imposed by the courts, as all other taxes for the imperial lord, were demanded in gold. Whence the importance of a fixed rate of exchange. Philipp Grierson has demonstrated that this rate of 1/40 was decreed by Honorius, in 393-423, perhaps precisely in 397. Now the redactor of the Pactus not only repeats the rate for every given fine, but he has

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Clio@Thémis - n°10, 2016
added to the law, under the title *Incipient chunnas*, a table of equivalences to estimate in *solidi* the hundreds of *denarii*. We thus learn two things: that the hundred courts could decide fines unspecified by the law and that the equivalence in silver of such fines could be disputed, which indicates that the ratio was not yet customary, but recently established. This points at a redaction towards year 400.

64. There comes the second element. In 398, an administrator and courtier of Honorius, Claudian, composed a poem against the eunuch Eutrope, Eastern imperial prefect and sworn enemy of the Western emperor and his generalissimo Stilicho. The eunuch had just been distinguished by a consulate, whence the wrath of Stilicho. In the poem, an allegoric Rome, shamed by the baseness of her new consul, wants to complain to the emperor, she crosses the Pô, flying “to the camp of his rectio”, Honorius, at Milan. There, what a contrast with the feeble Arcadius and his knavish minister! After Stilicho’s campaign on the Rhine, the emperor:

haughty gave answers to the begging Germans from beyond (the Rhine), with his sign he marked laws for the Chauci, rights for the red-haired Suabians. To some he grants kings, with them he concludes treaties after being given ostages; the others he writes down for the employments of war, so that the shorn *Sicambria* serves under our banners … What could I (=Rome) under thy principate, fresh facts do teach: the sea milder once the Saxon is tamed, Britain now safe since the Pict is broken, at my feet I enjoy the Frank humble and the sad Suabian and I see, o German, that the Rhine is mine”.

65. The next year, Rome’s complaint had been heard: Eutrope was put to death and Stilicho was given a consulate. Claudian, back to his toady’s job, pronounces the general’s panegyric and tells us more about the new kings:

Province will expel the governors sent to it before *Francia* does the same to the kings by thee given. We do not with an army repel rebels any more, with chains we now can punish them, under our justice a Roman prison claims the kings’ crimes. Marcomer and Sunno do teach us: one of them to the end endured a Tuscan exile, the other, posing as the former’s avenger, under his own people’s steel has fallen, brothers in mind and criminal desires, eager to stir up revolutions, mad with the hate of peace.”

This same year, as we have seen, Honorius, that is Stilicho, set again the grants of *terre laeticae*.

66. Much later the *Liber Historiae Francorum*, noting the legendary arrival of the *Sicambri* in the castles of the Rhine, told that, on the counsel of one of their chieftain Marcomer, the Franks chose for king Faramund son of Sunno. Most probably the clerk, like Gregory of Tours, had read Sulpicius Alexander. Such had been the *res novas concrere* of the two confederates: to take advantage of Arbogast’ death to elect a king, Marcomer drawing the benefit of Sunno’s son. One and the same king for all the Franks, right bank and left bank *foederati* or left bank *laeti*, a chief who would lead a mad war against the empire. A dangerous innovation indeed, and Stilicho’s campaign put a stop to it.

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110 “Tam forte decorum / cum Stilichone gener pacem implorantibus ultra / Germanis responsa dabat, legesque Cauicis / ardua et flavis signabat iura Suebias. / His tribuit reges, his obide foedera sancit / indicito, bellorum alios transcrivit in usum / militum ut nostris detensa Sygambria signis … Quantum, te principe, possim / non longinquus docent, domito Saxone Tethys / mitior aut fracito secura Britannia Picto, / ante pede humili Franco tristique Suebi / perfruor et nostrum video, Germanice, Rheum” (*Carmen 18* in *Eutropium*, v. 377-395, *MGH*, Auct. Ant. X, 1892, p. 88). In the Roman “Asiatic style”, the writers were fond of ethnic names to give an exotic colour, and of synonyms to vary the wording and R. W. Mathisen (“Catalogues of Barbarians in Late Antiquity”, in *Romans, Barbarians and the Transformation of the Roman World*, Mathisen and D. Shanzer (ed.), 2011, p. 17) thinks that “one size fits all”. But ethnic names here are not used only “to do the verse”, and for a good poet, metrical necessities did not hinder terminological pertinence. In the 5th century, Roman administrators had a rather fair knowledge of the nearest barbarians and Stilicho and his officers would not appreciate a praise where the names of their vanquished enemies would have been fantastic. This is why the name of the *Chauci* was slightly shifted, *bea*, “high”, no more exact, being replaced by *ca/co*, “cow”, which marked their religious proximity with their neighbours’ *CuWade* (supra n. 46).

67. Beyond the Rhine the Germani, free warriors or former federates, sued for peace and the lord emperor was good enough to answer their asking, although their former kings were punished\textsuperscript{112}. As seen before, the Sicambri – that is the Chamavi – became shorn dediticii and were put on the rolls to form the Testreabant\textsuperscript{113}. The former laeti of the left bank, the Salii and the Quadi, referred to by Claudian under the ancient names of Chauci and Suevi\textsuperscript{114}, had joined the rebellion, now they were prostrated and sad. The warning to the imperial government had been understood, the former dediticii will be given kings\textsuperscript{115}. What counts is that the Rhine is “our”, the area becomes quasi-provincial, the kings are appointed by the emperor as he does for the provincial governors, military or civilian, duces or praesides.

68. Nonetheless, divide ut imperas, all Barbarians do not have the same lot. “Those” (hiis) – the foederati Bructeri and Ampsiarii – have their foedus renewed, they keep their status; “others” (alios) – the Sicambri once free – are inscribed in the military roosters, a lesser status; “these” (hiis) – the Salii and Quadi – receive kings, and Honorius also “marks with his sign” laws and rights (leges et iura) for them, the two words together meaning Law, not conditions in a treaty\textsuperscript{116}; for the former laeti the signatio is an equivalent for a foedus, a better status\textsuperscript{117}.

69. When after the intervention of the imperial army in 398/399 the short-lived Faramund disappeared, Honorius and his general Stilicho provided new kings for the peoples of the Lower Rhine. The one appointed to rule the Salii was very likely Thiudemer son of Ricimer, ex-general to Theodosius\textsuperscript{118}. The old oral pactus of the Lagenses and other Ingaevones their neighbours had a revival. Written and enlarged, it was presented by the frankish king to Honorius, and His Majesty was good enough to set his sign – legi written with purple ink by his august hand – upon a document in all respects so useful.

70. “Province will expel the governors sent to it before Francia does the same to the kings by thee given”. Unlucky oracle. Just before telling the famous raid of Clodio unto Cambrai, Gregory of Tours notes that “in the Fasti consulares” – likely a brief chronicle with the dating by consulates – he has read the murder of king Thiudemer and his mother. Since Martin Heinzelmann’s study of Gregory’s work, we know what may be thought of the bishop’s feigned naivety\textsuperscript{119}. The setting together of the annalistic note about Thiudemer and the rise to power of Clodio may not be mere chronology. The success of the Merovingian lineage was built upon the downfall of others. Better forget who had been the “first king of the Franks”, the rebel Faramund, the faithfull Thiudemer or the ruthless Clodio. While “many ignored it”, some actually knew, albeit with different preferences; as under the reign of Richard of Gloucester, it was not safe for a

\textsuperscript{112} Both kings, “brothers” only by their politics, are known as duces, regales or reguli during 388-391 from the fragments of Sulpicius Alexander reproduced by Gregory of Tours; Marcomer, defending the country of the Chamavi, was leading Chatti (the Chamavi themselves and some kin-groups? supra n. 32 and 34; different from Hattuare) and Ampsiarii (a fraction of the Bructeri, the people of Sunno?).


\textsuperscript{114} Cf. supra n. 30 and 46.

\textsuperscript{115} P. J. Heather, “Foedera and Foederati of the Fourth Century”, in From Roman Provinces to Medieval Kingdoms, T. F. X. Noble (ed.), London, 2006, p. 294, notes that the foedera of the 4\textsuperscript{th} century are more unequal (iniqua) than those of the following century.

\textsuperscript{116} Leges Caesaris et iura Suebi is a chiasm for leges et iura Caesaris et Suebi.

\textsuperscript{117} The author of the Liber, after telling the brief history of Faramund, adds that the Franks then received their law “from the pagan foremen (priores) Wisowast, Widogast, Aregast et Salegast in the estates of Bothagm, Salechamg and Widechamg, beyond the Rhine”, a remplot of the tradition inserted in the shorter prologue. For the clerk, the creation of the oral Pactus – mistaken for the written law – follows the election of Faramund, but he does not consider him as the law-maker.

\textsuperscript{118} Primarius for Ricimarius is remembered in the Liber Historiae Francorum, likely a wrong reading from Sulpicius Alexander.

\textsuperscript{119} The purposes and tactics of Gregory have been shown in his Gregor von Tours’Zehn Bücher Geschichte’: Historiographie und Gesellschaftskonzept im 6 Jahrhundert, Darmstadt, 1994.
71. The Salic law was first a *pactus*, an oral agreement made around year 350 between the commanding officers of an usurper in need of troops and several groups of Frankish refugees themselves at bay. Its aim was to eliminate feud, the “système vindicatoire” which threatened military discipline. It assigned a fixed compensation for each customary action before the hundred courts, the list being kept in memory at the *mallberg* by its annual recitation. Then, at the turn of the century, the whole *lega* was written by the king in charge of the Frankish troops in the *extrema Galliae*, this drafting being acknowledged by the emperor and later, with other such military rules, by the Roman code of *Theodosius*120. This for the “singular coincidence” of Gibbon.

72. The *Pactus Legi Salicae* was therefore neither the Frankish custom, even if it did record many of its dispositions, nor the Roman law though it participated from it. It tried to conciliate both the penal Roman structure and the tribal uses of the clansmen, their “freedoms”. The success, actually, was far from complete: the laws of the Britons or the Burgondians set limits to revenge but do not put an end to it, and feud was a general practice in the Merovingian kingdom, notwithstanding the old *Pactus*.

73. After the fall of the empire, the Franks could have left aside a system which claimed to cut short the best in a man’s life, fight and palaver. But the Salic law had allowed them, as the prologue says, “to hold sway over the other peoples their neighbours”, to conquer almost the entire Gaul thus turned into France74. The law remained, often eluded but accepted as a whole. It had become not only a law-book, but a *Traditionskern*75, in that case neither the exaltation of a *Heerkönig* and his followers, nor the noblemen’s pride against royal authority, but a set of rules every free man would know and more or less accept76.

74. As Gibbon had admitted with some condescension, “the laws of the Barbarians were adapted to their wants and desires, their occupations, and their capacity”. Actually, these laws did not fit only Barbarians but many people in the empire, weary with the “grand strategy” of pretended *Kosmokratores* ineffective and the more arrogant. The written *Pactus* came during a harsh process of forced acculturation, when the refugees from across the border blended with the rustic subjects of the late Empire in the melting-pot of northern Gaul77. Not much was then left of the “humanity and justice” Gibbon praised in the Romans. The dereliction of the *pauperes* by the class who bore the “full civil wisdom” of the Roman code explains

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120 S. Kerpeis (“Francois cives, miles romanus, les barbares de l’empire dans le Code Theodosien”, in *Droit, religion et société dans le Code Theodosien*, J.-J. Aubert and Ph. Blanchard (ed.), Genève, 2009, p. 377) links the so-called barbarian laws to a novella of Theodose II, promulgating the Code in 418; discarding as obsolete all previous laws, it declares still applicable “the constitutiones kept at the principia of the soldiers”, these constitutiones being likely the jugements (*decreta*) of the *magistri militum*, not deemed worthy of publication in his law-book.


122 A. C. Murray (“Reinhard Wenskus, on Ethnogenesis, Ethnicity and the Origins of the Franks” in *On Barbarian Identity. Critical Approaches to Ethnicity in the Early Middle Ages*, A. Gillett (ed.), Turnhout, 2002, p. 39) criticizes Wenskus’ works – in his own words the “bourgeois” version of a “pagan fascimus” ... – and refuses any pertinence to the elements employed. The effort to discredit the old “germanistik” – truly not above criticism – leads to the denial of non-roman cultures, at best an admission of impotence – nothing can be known –, at worst a naïve *ethnocentrisme*, thus W. Goffart (“Does the Distant Past Impinge on the Invasion Age Germans?” *ibid.*, p. 21) asking “did early Germans remember differently from us?” and answering “without pretence of scientific method” by telling the ignorance of a student. If these learned colleagues would read e.g. Malinowski, Leach, Rohmeim, Levi-Strauss, they would leave branding the nazism of Höfler or Eckhardt, sad as it is, and learn more about the cultures of oral customary societies. Walther Pöhl (“Ethnicity, Theory and Tradition: a response”, Gillett, *ibid.*, p. 221), answering with humor the former’s assaults, justly criticizes Wenskus’ *Traditionskerne: eine Geistesgeschichte* supposing immutability and the dichotomy Romanism/ Germanism; but he points at an opposite trend considering the texts as literary artefacts, a post-modernism which projects “the concern of modern academics in the distant past”. Other implications of the debate, K. Modzelewski (*op.cit.* supra *n*. 8), p. 1-16, curiously ignored by many critics.

123 K. Modzelewski, *Ibidem*, p. 56, notes the strong consistence between the laws and the origin-tales given in the prologues.

124 According to the “sur-romanist” analysis, the barbarians in the empire were not settlers but rentiers like other noblemen; just criticism of W. Liebenschütz, “Cities, Taxes and the Accomodation of the Barbarians”, T. F. X. Noble (ed.) (*supra n*. 102), p. 309. S. Lebecq, “The Two Faces of Childeric”, *Ibidem*, p. 327, shows the ambiguity of the time and the contrast between French and German historians.
that the Salic law spread so easily\(^\text{125}\). In 212, the *Constitutio Antoniana* had given Roman citizenship to all inhabitants of the *oikoumene*, except the *dediticii*. Some centuries later, the Roman law had turned into much simplified legal books, the *epitomae*, made for populations which had become regional communities, *Provinciales* or *Aquitanii*, while the dependant peasantry, the *coloni*, worked under some sort of "law of the manor"\(^\text{126}\). In the East, where the Roman Empire was to hold on for a thousand years more, Athen’s democratic system, *il va sans dire*, had been abandoned for centuries. The praise for Athenian democracy or Roman Republic prevailed but long after, when humanist and democratic princes such as Henry Tudor, Catherine de Medicis or Albert of Hohenzollern would acknowledge these models while reading Machiavel. Though *demokratia* is claimed nowadays to be the peculiar Europe’s heritage and identity, our governants still don’t care much about it, the more when it concerns Greece, not to mention any providential exception of an “état d’urgence”.

75. If there was, at least partly, a “power to the people” in old Europe, it was not only because truly christian bishops and enlightened philosophers showed the right way to go. It was also because, at the end of the Roman Empire, the sophisticated *iu* of the *Amts aristokratie* in the imperial offices was left aside. The elders and military officers, who were local chieftains, were judges. The popular *directum*, supposed plain and fair, had for a while the better: at least this law the free commoners in a hundred court could understand, and the “ol’uns” had better make a judgement they accepted since they had weapons and knew how to use them. Those who had not, well, mate ... they ‘ave accepted to pay, ‘aven’t they? The *tributarii* would endure what was left of the late Roman system, the original version of the “retenue de l’impôt à la source” in the big fiscal estates given *in beneficio* to a nobleman. The debts enslaved them to the same landowner who was in charge of the *tributum publicum* which put them in debt. The freemen’s parentages did not care, they had their herstaples, their wapentakes, their gairethings, they had their law in their own hands and the king’s court would only be ruling a few special cases\(^\text{127}\). It lasted a couple of centuries till kings and kings’ counsellors learned they had to enforce God’s will through the *Renovatio Imperii Romani*, and later of course, without God, the marvelous “*Quod principi placuit...*”. The lesson was longer to teach to the illiterate in those dark ages, and they never quite grasped it. Such was the imperfect start of European democracy\(^\text{128}\).

\(^{125}\) In 467 the Burgundian king, *Galliae patriciu*, ruled out the claim of a Roman landowner against *pauperes* defended by Lupcinus, accused of preaching against the king and the barbarians (*Vita Lupicinii* c. 92, *Vie des Pères du Jura*, ed. F. Martine, Paris, 1968). According to Augustine or Salvian, such cases were not uncommon.

\(^{126}\) E.g. the so-called *Lex romana Burgundionum*, actually a *summarium* of CTh.

\(^{127}\) Such a direct democracy was kept up, not without trouble, to the nineteenth century by the Szekely, the hungarian military communities in Transylvania, cf. N. Kalnoky, *Les constitutions et privilèges de la noble nation sicule. Acculturation et maintien d’un système coutumier dans la Transylvanie médiévale*, Budapest-Paris-Szeged, 2004. The Swiss still think they have it, with their banks and “l’optimisation fiscale” of course.

\(^{128}\) Cf. The book of Karol Modzelewski, one of the founder of Solidarnosc (*op. cit. supra n. 8*).