



*To my mother*



PUNISHMENT FOR VIOLENT CRIMES: AGGRESSION AND  
VIOLENCE IN THE EARLY GERMANIC LAW CODES

The Graduate School of Economics and Social Sciences  
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İhsan Dođramacı Bilkent University

by

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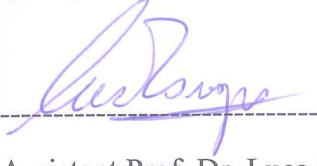
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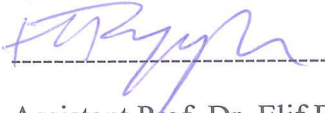
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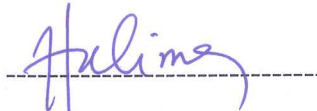
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## **ABSTRACT**

### **PUNISHMENT FOR VIOLENT CRIMES: AGGRESSION AND VIOLENCE IN THE EARLY GERMANIC LAW CODES**

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Germanic law codes, which are also known as *leges barbarorum*, date to between the 5<sup>th</sup> and 11<sup>th</sup> centuries. The *leges* were highly influenced by external legislative regulations and can be basically defined as a combination of Roman law, Germanic tribal laws and canon law. This thesis attempts to examine punishment for aggression and violent crimes in the early Germanic law codes. Violent crimes against another person such as murder, homicide, bodily harm, injury, abduction and rape in the *leges barbarorum* are analysed in a historical context and punishments for such felonies are investigated in a detailed manner. Specifically, certain issues became apparent due to various social, ethnic and sexual backgrounds of the barbarian people who were subjected to the *leges barbarorum*. Such matters are discussed in detail by going through each and every article that deals with the punishments for violent crimes. The other purpose of the thesis is to perceive the transformation and adaptation of the Germanic peoples to the new legal systems and to conceive the legal transition process of these newly established political entities using violent crimes base. Main discourse of the research project consists of different kind of studies and investigations as it comes into existence under the distinctive topics. In other words, primary goal of the project is not only to understand the compensation for aggression and violence in the barbarian *leges*, but also to analyse the differences between the *leges barbarorum* of the early Germanic societies in the cases of violent crimes and punishment.

**Keywords:** Aggression, Barbarorum, Leges, Punishment, Violence

## ÖZET

### ERKEN CERMEN KANUNNAMELERİNDE SALDIRGANLIK VE ŞİDEET SUÇLARI

Ayaz, Fevzi Burhan

Yüksek Lisans, Tarih Bölümü

Tez Danışmanı: Yrd. Doç. Dr. David E. Thornton

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Bu çalışma, 5. ve 9. Yüzyıllar arasında yazılmış olan Cermen kanunnamelerinin içerdiği suç ve ceza temalarına odaklanmaktadır. Roma İmparatorluğu'nun yıkılışının akabinde batı Avrupa'yı istila eden ve ardından bölgede irili ve ufaklı birçok krallık kuran Cermen kabileleri, yeni yönetimleri altında bulunan tebaanın hukuki meselelerini çözmek adına birtakım yöntemlere başvurmuşlardır. Başvurulan bu yöntemlerden bir tanesi ise yazılı olmayan kanunların kâğıda dökülmesi suretiyle örfi hukukun düzenlenmesidir. Ekseriyetle Latince yazılan bu kanunnameler, gündelik yaşamın belirli bir standart içinde yürütülmesi adına aile hukuku, ceza hukuku, miras hukuku ve borçlar hukuku gibi konularda çeşitli maddeler içermektedir. Bu maddelerin bir kısmı Roma hukukundan ödünç alınmış olsa da önemli bir bölümü Cermen törelerine ve sözlü hukukuna dair kayda değer veriler sunmaktadır. Şiddet, cinayet, cismani zarar, fuzuli işgal ve gasp gibi cürümlerin yaptırımları Roma hukukundan etkiler taşımamakta olup, bu suçlar Cermenlerin kendine ait töreleri uyarınca cezalandırılmaktadır. Bu tezde, adı geçen kanunnamelerin sekiz tanesi örnek olarak alınmakta ve ağır suçlar teması altında detaylı bir biçimde incelenmektedir. Aynı zamanda, kanunnamelerin Latince orijinallerinden faydalanılmakta ve diğer birincil kaynakların rehberliğine başvurulmaktadır. Çalışmanın temel gayesi, erken Cermen krallıklarında şiddet suçlarının ne gibi yöntemlerle cezalandırıldığını karşılaştırmalı olarak sunmak ve bu cezalardan edinilen çıkarımlar ışığında Cermen toplumlarının yapısal özelliğine ışık tutmaktır. Etnisite, cinsiyet ve sınıf farklılıklarının Cermen toplumlarındaki yeri ve karakteristik özellikleri, suç ve ceza ekseninden yola çıkarak araştırılmakta ve yasalar arasındaki temel farkların ortaya konulması amaçlanmaktadır.

**Anahtar Kelimeler:** Cermen, Ceza, Cürüm, Suç, Yasa

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## ABBREVIATIONS

MGH = *Monumenta Germaniae Historica*

LG = *Lex Gundobada*

ET = *Edictum Theodorici*

LS = *Lex Salica*

LR = *Lex Ribuaria*

ER = *Edictum Rothari*

PLA = *Pactus Alamannorum*

LA = *Lex Alamannorum*

LB = *Lex Baiwariorum*

LV = *Leges Visigothorum*

# CHAPTER I

## INTRODUCTION

### 1.1 Objective of the Thesis

Objective of this thesis is to analyse punishments for violent crimes and to examine the theme of aggression during the Early Middle Ages, particularly between the 5<sup>th</sup> and 9<sup>th</sup> centuries. In the light of *leges barbarorum*, the study will mainly focus on the legal issues of the Germanic peoples who adopted written rules of law after forming their own system of government. Such themes will be examined along with the problems occurring in analysis of such concepts. Methodologically, a comparative way of examination will be providing the basis in this attempt. In the cause of a wider research, this thematic study of the *leges* of barbarian kingdoms will be limited to the continental code of laws. [Respectively, these codes are *Lex Gundobada*, *Edictum Theodorici*, *Lex Salica*, *Lex Ribuariorum*, *Edictum Rothari*, *Pactus Leges Alamannorum*, *Lex Baiuvariorum* and *Lex Visigothorum (Liber Judiciorum)*.]<sup>1</sup> To be more specific, certain issues became apparent due to various social, ethnic and sexual

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<sup>1</sup> Based on the *Codex Euricianus* the Visigothic king Leovigild (569-586) draw up a new codification for his recently consolidated kingdom. His successors extended the text, so that a revised version came into being in the mid 7th century. This redraft with the original title *Liber Judiciorum* forms the basis of the surviving manuscripts. It was divided into 12 books and presumably dates back to the time of King Reccesvinth (653-672). Further enhancements were made by the kings Ervig (680-687) and Egica (687-702). The codification continued to have an impact even after the end of the Visigothic kingdom in 711.

backgrounds of the barbarian people who were subjected to the *leges barbarorum*. These matters will be discussed in detail taking account each and every article that deals with the punishments for violent crimes. In addition to these questions concerning the problems which arise from the variety of different origins, the aim will be to perceive the transformation and adaptation of the Germanic folk to the new legal systems and to conceive the legal transition process of these newly established political entities using violent crimes such as homicide and bodily harm as base. Main discourse of the research project will consist of different kind of studies and investigations as it will come into existence under the distinctive topics. In other words, primary goal of the project is not only to understand the compensation for aggression and violence in the barbarian *leges*, but also to analyse the differences between aforementioned law codes of early Germanic societies in the cases of violent crimes and punishment.

As it has already been stated, the punishments for specific crimes will be demonstrated in a detailed manner. In the first stage, the main objective will be examining the compensations and penalties for each violent crime on an individual basis, by examining their particular cases as fully as possible. Thus, some tiny distinctions will be made among each *leges* in order to discover their resemblances and differences on a sound basis. After analysing all *leges* from the standpoint of crime and punishment, forward inferences will be drawn in the light of the barbarian *leges*. Since there are limited amount of early medieval court register, the thesis will focus on the relevant legal titles and attempting to construct criminal paradigms pertaining to the laws of the barbarians. Most importantly, the study will address the unique characteristic of each law code from the point of violent crimes.

## 1.2 The *Leges Barbarorum* and Barbarian Invasions

Several Latin law codes of the Germanic peoples written in the Early Middle Ages survive, dating to between the 5<sup>th</sup> and 9<sup>th</sup> centuries. The Germanic peoples adopted various types of legal systems that were created and enforced through social or governmental institutions in order to regulate human social behaviour.<sup>2</sup> These legal systems emerged in various forms and have been customized in accordance with the legal requirements of different communities.<sup>3</sup> Some were created from scratch by showing regard to the oral customs and traditions while some were borrowed from other legal systems, or a combination of the two. Ultimately, they laid the foundations of the contemporary legal orders that were mainly based on four systems: civil law, common law, statutory law and religious law. This study, however, fundamentally relies on the civil law that can be put in the historical context as the group of legal ideas and systems eventually derived from the Roman law, but heavily overlaid by Germanic practices.<sup>4</sup>

Germanic law codes,<sup>5</sup> which are also known as *leges barbarorum*, date to between the 5<sup>th</sup> and 11<sup>th</sup> centuries.<sup>6</sup> In other words, codifications of the laws of the barbarians almost coincide with the fall of the Western Roman Empire. These *leges* were highly influenced by external legislative regulations and can be basically defined as a

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<sup>2</sup> Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (London: Penguin, 1999), 90.

<sup>3</sup> For a detailed description of characteristics of custom in the Middle Ages, see Amanda Perreau-Saussine and James B. Murphy, *The Nature of Customary Law* (New York: Cambridge University Press, 2007), 155-61.

<sup>4</sup> Charles Arnold Baker, "Civilian," *The Companion to British History*, 2nd ed. (London: Routledge, 2001), 308.

<sup>5</sup> The most convenient edition of the various barbarian law codes is to be found in the *Leges* volumes of the *Monumenta Germaniae Historica*, while a more up-to-date edition together with German translation of the most important of the codes is to be found in the *Germanenrecht* series published by the Akademie für deutsche Rechtsgeschichte in Weimar. To access *Leges Nationum Germanicarum* (LL nat. Germ.) via internet, see <http://www.dmgh.de/de/fs1/object/display.html>

<sup>6</sup> Peter Stein, *Roman Law in European History* (Cambridge: Cambridge University Press, 1999), 38.

combination of Roman law, Germanic tribal laws and canon law.<sup>7</sup> Yet, it should be noted that since it is impossible to separate the “state” from religion in early medieval kingdoms, the legal statutes are visibly under the influence of religious law and legislations. In a sense, the terms “decline” or “fall” do not apply to the Roman law as much as the canon law.<sup>8</sup>

Early Germanic law codes in the west are essentially barbarized versions of Roman legal systems that are based on Roman law. What is indicated by the Roman law is in fact the *Codex Theodosianus*, which was published in Latin in 438.<sup>9</sup> It was followed by several codifications promulgated by various Germanic rulers, perhaps the most widely disseminated of all, *Lex Romana Visigothorum* or *Alaricanum Breviarum* was compiled by unknown writers and approved by Anianus<sup>10</sup> on the order of Alaric II, King of the Visigoths, with the advice of his bishops and nobles.<sup>11</sup> Although the *Corpus Juris Civilis* of Justinian (529) was also written in Latin, it was not used extensively in Western Europe until the 11th century.<sup>12</sup> Apart from these codifications, there are also Germanic *leges* of the Burgundians, Franks, Alamans, Bavarians, Lombards, Saxons, Thuringians and Frisians. Except for the laws of the Anglo-Saxons, all *leges barbarorum* were written in Latin and mainly based on the Theodosian Code’s structure and style.<sup>13</sup>

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<sup>7</sup> Ibid., 39.

<sup>8</sup> Rosamond McKitterick, *The Early Middle Ages 400 – 1000* (Oxford: Oxford University Press, 2001), 44.

<sup>9</sup> Alexander P. Kazhdan, ed., “Codex Theodosianus,” in *The Oxford Dictionary of Byzantium* (Oxford: Oxford University Press, 1991), 475.

<sup>10</sup> Anianus was a Gallo-Roman nobleman who served as the referendary of Alaric II, king of the Visigoths. He was asked by Alaric to authenticate with his signature the official copies of the Breviary of Alaric.

<sup>11</sup> Bernard B. Woodward and William L.R., Cates, *Encyclopedia of Chronology: Historical and Biographical* (London: Longmans, Green and Co., 1872), 90.

<sup>12</sup> McKitterick, *The Early Middle Ages*, 43.

<sup>13</sup> Harold Dexter Hazeltine, “Roman and Canon Law in the Middle Ages,” in *The Cambridge Medieval History*, V, (New York: The Macmillan Company, 1926), 720-21.

Before the *leges barbarorum* were put down on paper, laws were being held in the memory of designated men who acted as judges in confrontations and dispensed justice in accordance with customary rote, based on careful memorization of precedent. For instance, “*rachinburgii*”<sup>14</sup> were the ones responsible for such a task before 500, when the Franks had no written codes of law.<sup>15</sup> In his *De Origine et Situ Germanorum*, which is the only available written source that makes mention of the early Germanic customs and traditions, Tacitus also provides valuable information on oral laws of the Germanic tribes. According to the picture that he paints, meetings were assembled by the tribal chiefs with the participation of all the freemen in order to settle the disagreements between parties, hear accusations and to determine punishments such as hanging for treason and desertion, smothering in bogs for cowardice or lighter sentences like imposing fine for murder, battery, robbery and horse or cattle thievery. For these kinds of lighter offenses, criminals were being obliged to either pay compensation to the injured party or pay a specified fine to the king or city the authority of which had been transgressed. Chosen men selected in the tribal councils, as Tacitus states, were dispensing justice along the *pagi* that were located in the country districts inhabited by peasants.<sup>16</sup> In this respect, post-Roman Germanic law-courts appear to be based on such assemblies where Roman magistrates and tribal authority coexisted in the *civitates* of early medieval west. The choice of these Roman magistrates, however, was in the hand of tribal leaders and

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<sup>14</sup> Even though the *rachinburgii* were responsible for memorizing the laws before the Frankish laws were textualized, they continued to exist after the laws were constituted. Nonetheless, their function gradually evolved into decision makers during the Merovingian period. The decisions rendered by the *rachinburgii* were in turn pronounced by the judge, yet they could not themselves proclaim the judgement. For a more detailed description of the *rachinburgii*, see Johannes Wilhelmus Wessels, *History of the Roman-Dutch Law* (Grahamstown: African Book Company, 1908), 158.

<sup>15</sup> Michel Rouche, “Private Life Conquers State and Society,” in *A History of Private Life: I. From Pagan Rome to Byzantium*, ed. Paul Veyne (London: Belknap Press of Harvard University Press, 1987), 421.

<sup>16</sup> Tacitus, *De Origine et Situ Germanorum*, ed. J. G. C. Anderson (Oxford: Oxford University Press, 1938), 7–8.

clergy.<sup>17</sup> During the Early Middle Ages, punishments for crimes such as offence against the person, violent offence and sexual offence were dealt with through blood feuds or trial by ordeal between the parties. Compensation made to the victim or injured party, known as *wergild*, was another widespread punishment for such violent crimes. Those who are not able to make compensation faced with harsh penalties including various forms of corporal punishments such as mutilation, whipping, branding, and flogging, as well as execution. Leastwise, banishment and exile were also mentioned in the *leges*.

In order to comprehend what Tacitus tells about early Germanic practices, to review the political landscape during the late antiquity also becomes significant. In *De Origine et Situ Germanorum*, he mentions several large and small tribes each have their own characteristic features. Although it is possible to draw a political portrait of east of the river Rhine considering his account, it loses its validity due to the *Völkerwanderung*, which was a time of widespread migrations within or into Europe between the 4<sup>th</sup> and 8<sup>th</sup> centuries. Fortunately, the accounts of notable Roman writers such as Pliny the Elder, Plutarch, Claudius Ptolemy, Cassius Dio and Cassiodorus make important contributions in joining parts together. By virtue of the fact that the Germanic peoples, whose legal practices are examined in this study all migrated into the Roman lands centuries after the account of Tacitus, primary chronicles also become supplementary in understanding both social and political context. Nonetheless, since this thesis aims to examine legal issues of certain Germanic nations in the early medieval west, the political landscape will be touched briefly in order to create a basic idea of the whole picture.

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<sup>17</sup> Arnold H. M. Jones, *The Later Roman Empire* (Oxford: Blackwell, 1964), 479–84.



Migration of the Germanic tribes<sup>18</sup> towards the lands of Western Roman Empire, in fact, occurred in two main phases. The first wave took place between 300 and 500, which was partially written down by Greek and Latin historians, puts the Germanic nations in control of western and north-western provinces of the Western Roman Empire.<sup>19</sup> In summary, after a clash with the Hunnic forces, the Tervingi entered into the Roman territory in 376 and were followed by the Visigoths who afterwards invaded Italy and eventually sacked Rome in 410. After these course of events, the Visigoths settled in *Gallia Aquitania* in 418 until they were defeated and displaced by the Franks under Clovis I in the Battle of Vouillé.<sup>20</sup> The Kingdom of Visigoths continued its existence in the Iberian Peninsula for another 250 years. They were followed by some other Germanic peoples such as Herulians, Rugians, and Scirians under Odoacer who became the first barbarian King of Italy until he was killed by Theodoric the Great, king of the Ostrogoths who also settled in Italian Peninsula until his death in 526. During the 5<sup>th</sup> century, the Franks entered into the Roman territories as well. Under Childeric, who laid the foundations of Frankish Kingdom in northern Gaul, the Franks established themselves as a force to be reckoned with in the eastern part of the river Rhine. Defeating other Germanic groups such as Alamans, Burgundians, and Visigoths, the Kingdom of the Franks consolidated their power and gradually developed into the Carolingian Empire by the end of the 8<sup>th</sup> century. Anglo-Saxon invasion of Britain also took place from the mid-5<sup>th</sup> to early 7<sup>th</sup> centuries and followed by the foundations of Anglo-Saxon kingdoms in the south and east of Britain. Last but not least, the Burgundians, who had gained *foederati* status by Flavius Aëtius in 443, settled in North Western Italy, Switzerland and

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<sup>18</sup> See Appendix 7.

<sup>19</sup> Guy Halsall, "The Barbarian Invasions," in *The New Cambridge Medieval History, Vol. 1: c. 500 – c. 700*, ed. Paul Fouracre (Cambridge: Cambridge University Press, 2006), 51.

<sup>20</sup> Bernard S. Bachrach, *Merovingian Military Organization 481-751* (Minnesota: University of Minnesota Press, 1972), 11.

Eastern France until they were subjugated by the Franks in 532 in consequence of the Battle of Vézeronce.<sup>21</sup>

The second wave that included Slavic migrations into the central and eastern Germania started in the early 6<sup>th</sup> century and lasted about two hundred years.<sup>22</sup> In addition to the barbarians of non-Germanic origin such as Slavs, Avars and Bulgars, certain Germanic peoples such as Lombards, invaded Italy and settled in the peninsula with their Herulian, Sarmatian, Suebian, Saxon and Thuringian allies in the 6<sup>th</sup> century. After destroying much of the Gepid Kingdom that had dominated in the eastern regions of the Carpathian Basin, the Lombards eventually established their own rule in Italy under their leader King Alboin.<sup>23</sup> His successors gradually conquered most of the peninsula and captured regions under the control of Eastern Roman Empire.<sup>24</sup>

### 1.3 Sources

#### 1.3.1 Lex Gundobada<sup>25</sup>

The Laws of the Burgundians were issued by King Gundobad presumably after 483, who ruled the Burgundians from 476 to 516.<sup>26</sup> These laws were both compiled for the Burgundian and Roman subjects of the kingdom established by the Burgundians

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<sup>21</sup> Hans-Henning Kortüm, “Merovingian Franks,” in *The Oxford Encyclopedia of Medieval Warfare and Military Technology*, Vol. 1, ed. Clifford J. Rogers (Oxford: Oxford University Press, 2010), 127.

<sup>22</sup> Zbigniew Kobylński, “The Slavs,” in *The New Cambridge Medieval History, Vol. 1: c. 500 – c. 700*, 530-37.

<sup>23</sup> Herwig Wolfram, *The Roman Empire and Its Germanic Peoples* (Berkeley: University of California Press, 1997), 283.

<sup>24</sup> See Appendix 8.

<sup>25</sup> In this study, digitalized version of the *Lex Gundobada*, which is edited by Ludwig Rudolf von Salis, will be used. See *Leges Burgundionum*, ed. L. R. deSalis, *Monumenta Germaniae Historica* (MGH), Legum Sectio I, Legum Nationum Germanicarum, Tomi II, Pars I (Hanover, 1892).

<sup>26</sup> Since there is a close relationship between the *Lex Gundobada* and the fragments of the *Codicis Euricani*, it seems not very likely that the *Lex Gundobada* was issued before the *Codicis Euricani*. For example, *LG, XVII, 1*: “All cases which involve Burgundians and which were not completed before the Battle of Chalons are declared dismissed.” The exact same year, 451, is also set in the *Codicis Euricani*. The other parts of the *Lex Burgundionum* seem related with an earlier *Lex Visigothorum*. For other similarities between the *leges barbarorum*, see H. Brunner, *Deutsche Rechtsgeschichte*, I, 505, n. 33.

in the Rhineland and then in Savoy in the 5th century. While the lawbook of the Burgundian subjects is known variously as *Lex Burgundionum* and *Liber Legum Gundobadi* the lawbook of the Roman subjects is simply known as *Lex Romana Burgundionum*. Even though the dates of both lawbooks are not known exactly, it is estimated that the *Lex Romana Burgundionum* was written after the earlier part of the *Lex Gundobada*.<sup>27</sup> Influence of the *Lex Romana Burgundionum*, however, did not last very long and eventually replaced by the *Breviary of Alaric*, after the Burgundians were subjugated by the Franks in 532.<sup>28</sup> The *Lex Gundobada* on the other hand, remained influential even after the Frankish conquest and had a significant impact on the subsequent Germanic lawbooks.<sup>29</sup> It deals with a considerable amount of legal cases including a system of fines and compensations along with the Germanic practice of *faida*.

### 1.3.2 Edictum Theodorici<sup>30</sup>

*Edictum Theodorici* or *Edictus Theodorici* is probably compiled sometime around 500 AD, in order to settle legal issues arising between the Romans and Goths after the decline of the Western Roman administration. The Edict of Theodoric has been preserved only fragmentally in which it contains a preface, 155 chapters and a conclusion. Its dispositions are mostly taken from Roman Law, such as the *Codex Gregorianus*, the *Codex Hermogenianus* and the *Codex Theodosianus*.<sup>31</sup> The fragments of the text are primarily based on Pierre Pithou's *Editio Princeps* from

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<sup>27</sup> Katherine Fischer Drew, *The Burgundian Code* (Philadelphia: University of Pennsylvania Press, 1972), 5-6.

<sup>28</sup> Hazeltine, "Roman and Canon Law in the Middle Ages", 722.

<sup>29</sup> Katherine Fischer Drew, "Barbarian Kings as Lawgivers and Judges," in *Life and Thought in the Early Middle Ages*, ed. Robert S. Hoyt (Minneapolis: The University of Minnesota Press, 1967), 9-12.

<sup>30</sup> In this study, digitalized version of the *Edictum Theoderici Regis*, which is edited by Friedrich Bluhme will be used. See *Edictum Theoderici Regis*, ed. Friedrich Bluhme, *Monumenta Germaniae Historica* (MGH), Legum Nationum Germanicarum, Toms V, (Hannover, 1889).

<sup>31</sup> Sean D. W. Lafferty, "Law and Order in the Age of Theodoric the Great (c. 493-526)," *Journal of the Early Medieval Europe* 20 (2012): 260-90.

1579.<sup>32</sup> However, the manuscripts used by Pithou have not survived. There are also a number of problems in identifying the author of the code even though it was attributed to the Ostrogothic king Theodoric the Great by Pithou. Article 111 of the code, where specific dispositions regarding Rome are present, provides some kind of evidence that the lawbook was addressed to people who were living in the Italian Peninsula.<sup>33</sup> The issue, however has been highly disputable after Giulio Vismara alternatively attributed it to the Visigothic king Theodoric II in 1955 with an argument that its compilation would be set about 40 years earlier.<sup>34</sup> While others have attributed this code to Odoacer, its actual promulgator still remains to be seen. Its authenticity, nonetheless, is no longer dubious. As for its content, the *Edictum Theodorici* can be seen as an updated version of Roman legislation for the most part, in which both the Romans and barbarians are treated equally in contradistinction to most Romano-barbaric codes.<sup>35</sup>

### 1.3.3 Lex Salica<sup>36</sup>

The laws of the Salian Franks were issued by Clovis presumably sometime between 507 and 511. This primary text that is attributed to Clovis contains 65 legal titles in total. It is, however, slightly modified and edited by his successors Theuderic (511-533) and Gunramn (561-592).<sup>37</sup> With the exception of the Anglo-Saxon law code, the *Lex Salica* appears to be the most Germanic among all barbarian law codes despite containing a number of Roman legal elements. Although it can be claimed that

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<sup>32</sup> John Moorhead, *Theodoric in Italy* (New York: Oxford University Press, 1992), 76.

<sup>33</sup> *ET*, CXI: “Qui intra urbem Romam cadavera sepelierit, quartam partem patrimonii sui fisco sociare cogatur: si nihil habuerit, caesibus fustibus civitate pellatur.”

<sup>34</sup> See the vast, extremely well documented analysis by Giulio Vismara, “Edictum Theoderici” in *Lexikon des Mittelalters Band 3* (Münich: DMA, 1986), 1573-64.

<sup>35</sup> Moorhead, *Theodoric in Italy*, 76.

<sup>36</sup> In this study, digitalized version of the *Lex Salica*, which is edited by Karl August Eckhard, will be used. See *Pactus Legis Salicae*, ed. Karl August Eckhardt, *Monumenta Germaniae Historica* (MGH), Legum Sectio I, Legum Nationum Germanicarum, Tomi IV, Pars I (Hanover, 1862).

<sup>37</sup> Cristoph Hickeldey, *Criminal Justice Through the Ages*, trans. John Fosberry (Rothenburg: Medieval Crime Museum, 1981), 7.

the code is neither diverse nor very well organized in terms of law of the family, law of inheritance and law of obligations, many of the articles mostly devoted to monetary payments and punishments for violent crimes, *Lex Salica* deals with such damaging acts in a great detail. It both applied to the Gallo-Romans as well as the Franks, yet it was never extended beyond Frankish Gaul. Eventually, it was replaced by the *Corpus Juris Civilis* in the 11<sup>th</sup> and 12<sup>th</sup> centuries outside of the northern France, but in northern France it remained influential throughout the middle ages.<sup>38</sup>

### 1.3.4 *Lex Ribuaria*<sup>39</sup>

The lawbook of the Ripuarian Franks has reached the present day in 35 manuscripts and fragments, which mostly date from the 9<sup>th</sup> and 10<sup>th</sup> centuries except a manuscript dating from the late 8<sup>th</sup> century. These manuscripts are divided into two groups as group A (13 manuscripts) and group B (22 manuscripts).<sup>40</sup> The laws are probably originated in the early 7<sup>th</sup> century and edited in the 8<sup>th</sup> and 9<sup>th</sup> centuries. It is, in fact, attributable to Dagobert I who was the king of Austrasia between 623 and 634. Despite there are some authorities (notably Bruno Krusch) who claim the *Lex Ribuaria* is more of a Carolingian product, such a statement seems highly doubtful.<sup>41</sup> Although the *Lex Ribuaria* appears to be more organized version of the *Pactus Legis Salicae*, there is a high possibility that the *Lex Burgundionum* set a model for the laws of the Ripuarian Franks presumably because of the Burgundian influence in the Merovingian court. Such impression can be had by examining the considerable number of articles that show certain parallelisms with each other. In the *Lex*

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<sup>38</sup> Katherine Fischer Drew, *The Laws of the Salian Franks* (Philadelphia: University of Pennsylvania Press, 1991), 31.

<sup>39</sup> In this study, digitalized version of the *Lex Ribuaria*, which is edited by Franz Beyerle and Rudolf Buchner, will be used. See *Lex Ribuaria*, ed. Franz Beyerle and Rudolf Buchner, *Monumenta Germaniae Historica* (MGH), Legum Sectio I, Legum Nationum Germanicarum, Tomi III, Pars II (Hanover, 1954).

<sup>40</sup> Theodore John Rivers, *Laws of the Salian and Ripuarian Franks* (New York: AMS Press, 1986), 7.

<sup>41</sup> Bruno Krusch, *Die Lex Bajuvariorum. Textgeschichte, Handschriftenkritik und Entstehung* (Berlin: Weidmann, 1924), 336-38.

*Ribuaria*, legal titles concerning the punishment and compensation for the murder and violent acts are mostly included between the article 1 and 35. However, since these legal titles show noticable Christian influences, it might be asserted that the *Lex Ribuaria* differs from the *Pactus Legis Salicae* in terms of it containing less Germanic elements.

### **1.3.5 Edictum Rothari<sup>42</sup>**

The Lombard laws were promulgated as written text between the years 643 and 755 by order of various Lombard kings. The Rothair's Edict that issued in 388 titles by King Rothair in 643 was the very first of these laws. In contrast to the near-contemporary *Forum Iudicum* of the Visigoths, it was neither influenced by the Roman nor canon laws. Notwithstandingly, it deals with certain ecclesial matters such as prohibition on violence in churches. In the Edict, there are no references to public life, instead, the laws are mainly concerned with compensations for various crimes, including murder, homicide, theft, abduction and bodily harm. Bodily injuries were all detailedly catalogued, with a compensation set for harm done to each tooth, finger or toe. However, there are a number problems in its language since the laws were not written in classical Latin and several untranslatable Germanic words such as *arga*, *sculdhais*, *morgingab*, *metfio*, *federfio*, *mahrworfin* and *aldius* appear throughout the text.

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<sup>42</sup> This research will be based on Friedrich Bluhme's digitalized edition of *Leges Langobardum* and Drew's translation work, *The Lombard Laws*. See *Edictus Rothari*, ed. Friedrich Bluhme, *Monumenta Germaniae Historica* (MGH), Legum Nationum Germanicarum, Toms IV, (Hannover, 1868). Also see Katherine Fischer Drew, *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1973).

### 1.3.6 Lex Alamannorum<sup>43</sup>

*Lex Alamannorum* is an edited and expanded version of an earlier law code called *Pactus Legis Alamannorum* that comparatively shows more primitive characteristics. The *Pactus* is a fragment of an older Alemannic law book that only survives in one manuscript. In fact, the *Lex Alamannorum* is more detailed edition of the *Pactus* that deals with limited number of criminal cases. While the *Pactus* appeared about 613, conceivably at the behest of Duke Gonzo of Alamanni (613-6130), the *Lex Alamannorum*, which is a later compilation, appeared about 717-719 and attributed to Duke Lantfrid (709-730). These laws of the Alamans can be categorized into three main parts as private, public and ecclesiastical law. The text, in fact, is closely related to the *Lex Baiuvariorum* and is concerned with ecclesiastical matters. However, Clausdieter Schott's theory<sup>44</sup> that the lawbook was an ecclesiastical forgery seems questionable. In terms of the content, the *Lex Alamannorum* shows many resemblances with the other Germanic lawbooks, especially with the laws of the Franks. It is also more concerned with the personal injuries and compensations for murder similar to the laws of the Franks.

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<sup>43</sup> This study will be based on Eckhard's Latin edition of the Alamannic laws. *Leges Alamannorum*, ed. Karl August Eckhardt, *Monumenta Germaniae Historica* (MGH) Legum Sectio I, Legum Nationum Germanicarum, Toms V, Pars I, (Hannover, 1966). It is also available in the edition of Karl Lehmann (1888) and Karl August Eckhard (1934 and 1962). In 1934, Eckhard has translated the *Lex Alamannorum* into modern German, its English translation was published by Theodore John Rivers in 1977.

<sup>44</sup> Clausdieter Schott, "*Lex und Skriptorium: Eine Studie zu den Süddeutschen Stammesrechten*," in: Gerhard Dilcher / Eva-Marie Distler (Eds.), *Leges - Gentes - Regna: zur Rolle von germanischen Rechtsgewohnheiten und lateinischer Schrifttradition bei der Ausbildung der frühmittelalterlichen Rechtskultur* (Berlin: Schmidt, 2006), 257-290.

### 1.3.7 Lex Baiuvariorum<sup>45</sup>

Although the *Lex Baiuvariorum* bears many resemblances with the *Lex Alamannorum*, it has some differences in terms of dating and promulgation of the laws. The oldest surviving redaction of the *Lex Baiuvariorum* is the Ingolstadt Manuscript thought to have been written in the early 9<sup>th</sup> century, nearly fifty years after the first publication of the laws by Duke Odilo of Bavaria, who promulgated the laws between 744 and 748. The Visigothic law, the *Lex Alamannorum* and Frankish laws served as models of this law text, and maybe even also as antecedents of the Bavarian law from the 7th century. Very recently the Abbey of St. Emmeram in Regensburg has been suggested as the place of origin.<sup>46</sup> In the Ingolstadt Manuscript, the *Lex Baiuvariorum* is divided into twenty three major titles. Each title is subdivided into several individual laws. Criminal law is dealt with between title IV and XXIII, including the principal offenses such as treason, murder, abduction, theft, arson and sexual assault.

### 1.3.8 Leges Visigothorum<sup>47</sup>

The earliest Visigothic lawbook *Codex Euricanus* was compiled at the order of King Euric, presumably sometime before 480 at Toulouse. The code is largely confused and it appears that it was merely a recollection of Gothic custom altered by Roman law. Only the titles 274 to 336 of the *Codex Euricanus* have survived fragmentarily

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<sup>45</sup> This study will be based on the digitalized version of the *Lex Baiuvariorum* that was edited by Ernst von Schwind (Hannover, 1926). See *Lex Baiuvariorum*, ed. Ernst von Schwind, *Monumenta Germaniae Historica* (MGH) Legum Sectio I, Legum Nationum Germanicarum, Toms V, Pars II, (Hannover, 1926).

<sup>46</sup> Peter Landau, *Die Lex Baiuvariorum: Entstehungszeit, Entstehungsort und Charakter von Bayerns ältester Rechts- und Geschichtsquelle* (Munich: Bayerische Akademie der Wissenschaften, 2004), 3.

<sup>47</sup> This research will be based on Karl Zuemer's digitalized edition of *Leges Visigothorum* (Hannover / Leipzig 1902) and S.P. Scott's translation work, *The Visigothic Code* (1910). See *Leges Visigothorum*, ed. Karl Zuemer, *Monumenta Germaniae Historica*, (MGH) Legum Sectio I, Legum Nationum Germanicarum, Toms I, (Hannover/Leipzig, 1902). Also see Samuel Parsons Scott, *The Visigothic Code: Forum Judicum* (Boston: The Boston Book Company, 1910).



in a single codex. On the other hand, the Breviary of Alaric or *Breviarium Alaricianum*, which was approved by Anianus on the order of Alaric II in 506, applied not only to the Gothic subjects, but also to the Hispano-Roman and Gallo-Roman population living in the Visigothic Kingdom. Amongst the Visigoths, the code was known as *Lex Romana*, or *Lex Theodosii*. The title *Breviarium*, in fact, was introduced in the 16<sup>th</sup> century in order to distinguish it from a recast of the code, which was introduced into northern Italy in the 9<sup>th</sup> century for the use of the Romans in Lombardy. *Lex Visigothorum*, which is the final code of the Visigoths, was codified by King Leovigild (569-586) and it is mainly based on the Code of Euric. The text was extended by his successors, so that a revised version came into being in the mid-7<sup>th</sup> century. It is estimated that this version dates back to the time of King Reccesvinth (653-672). The code is divided into 12 books, where each deal with different legal issues. Contrary to other Germanic *leges*, the *Lex Visigothorum* combined the Catholic Church's Canon law, and as such has a strongly theocratic tone.<sup>48</sup>

#### **1.4 Literature Review**

As it has already been briefly mentioned, the barbarian *leges* will form the basis of this research. The *leges* will be analysed in accordance with the chronological order to avoid historical anachronism of any type. In this section, however, law codes of the Germanic peoples will be introduced along with the modern literature examples dealing with Germanic codes of law.

For the legal historiography in the English language, the lack of academic interest in the barbarian codes until the second half of the 20<sup>th</sup> century had been unfortunate

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<sup>48</sup> A. K. Ziegler, *Church and State in Visigothic Spain* (Washington: Catholic University of America, 1930), 58.

since they deal with a variety of materials concerning the Germanic custom upon Roman law. The barbarian codes give an extensive description of social life and legal institutions emerging from such impact. Before 1960, social history covered various subjects that were not a part of “mainstream” political, military, diplomatic and constitutional history. It was rather sophisticated without a main theme and it mostly dealt with political movements, such as Populism, that were "social" in the meaning of being outside the elite system. The “new” social history arrived in the picture in the 1960s and rapidly started to take its place in the dominant styles of historiography in the U.S., Britain and Canada. The French historians, however, founded the Annales School that dominated French historiography for years. The Germans called the social history "*Gesellschaftsgeschichte*" in a sense the history of an entire society from a social-historical viewpoint.<sup>49</sup> Nevertheless, long before this process German scholars had already been dealing with the *leges barbarorum* as part of their ethnic history. After the nationalization of history took place in the 19th century, German historians emphasized the cultural, linguistic, religious and ethnic roots of the nation, leading to a strong support for their own government on the part of many ethnic groups. Especially after the unification of Germany in 1871, widespread intellectual interest in early Germanic codes rapidly increased and most of the *leges* started to be translated into German.

As for the English language, even though interest in the early Germanic law increased in the second half of the 20<sup>th</sup> century, the first English translation of a barbarian code was Samuel Parsons Scott's *The Visigothic Code: Forum Judicum* (1910). After this exceptional work, Floy King Rogde's unpublished Master's thesis *The Alamannic and Bavarian Codes* (1941) and James P. Barefield's unpublished

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<sup>49</sup> Jürgen Kocka, *Industrial Culture and Bourgeois Society: Business, Labor, and Bureaucracy in Modern Germany, 1800-1918* (New York: Berghahn Books, 1999), 276.

Master's thesis *The Ripuarian Code* (1958) did both increase the involvement in the translation of the *leges* amongst the scholars writing in English. *The Burgundian Code* (1972), a translation book that was written by Katherine Fischer Drew, was perhaps the most systematic English translation of the barbarian codes. Her second book *The Lombard Laws* was published a year later, much more comprehensive than the first because of the greater depth of the Lombard laws that includes five separate edicts of five different kings. Finally, Drew's third book *The Laws of the Salian Franks*, which is her final work on the barbarian *leges*, was published in 1991. Drew's works are particularly useful since the early Germanic materials are central in any detailed consideration of the *leges barbarorum*. Besides the translations themselves, there are extensive introductions in these books that provide concise historical backgrounds to the works, as well as a brief discussion of the conflict that existed between customary law and statutory law. She also discusses throughout the books various pertinent terms such as: 'solidi',<sup>50</sup> 'faida',<sup>51</sup> and 'wergild'.<sup>52</sup>

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<sup>50</sup> The *solidus* (pl. *solidi*) was originally a relatively pure gold coin issued in the Late Roman Empire. Under Constantine, who introduced it on a wide scale, it had a weight of about 4.5 grams. It was largely replaced in Western Europe by Pepin the Short's currency reform, which introduced the silver-based pound / shilling / penny system, under which the shilling (Latin: *solidus*) functioned as a unit of account equivalent to 12 pence, eventually developing into the French sou. In Eastern Europe, the nomisma was gradually debased by the Byzantine emperors until it was abolished by Alexius I in 1092, who replaced it with the hyperpyron, which also came to be known as a "bezant". The Byzantine *solidus* also inspired the originally slightly less pure Arabian dinar. In late Antiquity and the Middle Ages, the *solidus* also functioned as a unit of weight equal to 1/72 of a pound.

<sup>51</sup> *Faida* referred to in more extreme cases as a blood feud, vendetta, faida, beef, clan war, gang war, or private war, is a long-running argument or fight, often between social groups of people, especially families or clans. Feuds begin because one party (correctly or incorrectly) perceives itself to have been attacked, insulted or wronged by another. Intense feelings of resentment trigger the initial retribution, which causes the other party to feel equally aggrieved and vengeful. The dispute is subsequently fuelled by a long-running cycle of retaliatory violence. This continual cycle of provocation and retaliation makes it extremely difficult to end the feud peacefully. Feuds frequently involve the original parties' family members and/or associates, can last for generations, and may result in extreme acts of violence. They can be interpreted as an extreme outgrowth of social relations based in family honour.

<sup>52</sup> *Wergild*, also known as man price, was a value placed on every being and piece of property, for example in the Frankish Salic Code. If property was stolen, or someone was injured or killed, the guilty person would have to pay wergild as restitution to the victim's family or to the owner of the property. Wergild payment was an important legal mechanism in early Germanic society; the other common form of legal reparation at this time was blood revenge. The payment was typically made to the family or to the clan.

Certainly, Drew is not the only one who translated the barbarian *leges* into English. In his book *Laws of the Alamans and Bavarians* (1977), Theodore John Rivers examines the legal matters of the Alamans and Bavarians with a translation. Also, in his other work *Laws of the Salian and Ripuarian Franks* (1986), in addition to the Salian laws; Rivers covers the laws of the Ripuarians that is basically an updated version of the Salic law. Like Drew, Rivers also provides a history of those peoples and discusses the influence of economic conditions, the Church and the judicial traditions of the barbarian tribes. The minor codes such as *Lex Saxonum*, *Lex Suavorum* and *Lex Thuringorum* remain untranslated into English. Nonetheless, in *The Baiuvarii and Thuringii: An Ethnographic Perspective* (2014), Heike Grahn-Hoek, discusses certain differences of the barbarian codes and analyses certain *leges* in terms of their particularities by placing the *Lex Thuringorum* in the center.<sup>53</sup>

There are works that do not necessarily focus on the *leges* yet make some mentions on them as well. To illustrate, John Michael Wallace-Hadrill's classic *The Long-Haired Kings* (1961) is a considerable work in understanding the social and political environment in the post-Roman Europe. It is possible to obtain general information on the *Lex Salica* and its functions along with the Frankish traditions. In *A History of Private Life, Volume I: From Pagan Rome to Byzantium* (1992), which covers the early Middle Ages from a social perspective, Paul Veyne examines violence in the barbarian kingdoms by giving references to their *leges*. Similarly, in *The Early Middle Ages* (2001), Rosamond McKitterick reviews the legal issues of the barbarians by making comparisons with the Roman law.

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<sup>53</sup> Heike Grahn-Hoek, "The Thuringi, the Peculiarities of Their Law, and Their Legal Relations to the *Gentes* of Their Time, Chiefly According to the *Lex Thuringorum* and the Other *Leges barbarorum* of the Early Middle Ages," in *The Baiuvarii and Thuringii: An Ethnographic Perspective* (Woodbridge: Boydell Press, 2014), 289-316.

Lastly, in his relatively recent book *Law and Society in the Age of Theodoric the Great* (2013), Sean D. Lafferty explores the evolution of Roman law with the *Edictum Theodorici*. He does not only argue how peaceful, prosperous and Roman-like Theodoric's Italy was, but also focuses on the social, political religious transformations that took place in the Theodoric's Italy.

### **1.5 Thesis Structure**

This study is basically composed of three main chapters. In each chapter, a different theme will be examined. At the same time, each chapter is divided into ten parts that include an introduction and a conclusion. Those eight parts are committed to analyse the eight different law codes mentioned above. Each chapter will follow a chronological structure, but the main changes that can be seen throughout the laws will be outlined in each conclusion. Unique characteristics of each code on certain themes and their comparison with the others will be the features that create the base in analysing each law code. By doing so, secondary literature is capitalized on as much as the primary sources. As it has already been stated, these main parts will be shaped by the cases of aggression and violence. Furthermore, these investigations will be made by predicating on the various ethnicities, social ranks, genders and occupational groups addressed by the *leges barbarorum*. Human injuries inflicted by domestic and quadruped animals will also be mentioned briefly since concerned articles form a significant part of the cases of violence. All in all, the primary intention is to cover as many cases as possible to develop an understanding on punishment algorithms of the barbarian law codes and their distinct characteristics in somewhat similar cases of violence as it is classified in the following paragraphs.

In the second chapter, the different cases of homicide against freemen will be focused on. The chapter is mainly based on murder of freemen by various social

classes and the homicides committed by freemen. Due to the fact that the cases related to the murder of freemen include wider range of articles, other violent crimes such as bodily harm and injury will be elaborated in the third chapter. Also, this chapter will center upon the punishment and compensation for homicide felonies. The results, emerging from the comparison of such matters, will be analysed under particular *leges*. As stated above, such analyses will be made by considering the social identities of both murderer and murdered.

The main focus of the third chapter is aggression and violence towards freemen and unfree men. Certain crimes excluding homicide and manslaughter will mainly be providing the basis of the chapter. To illustrate, the cases that result in physical injury and mutilation are discussed in detail in consideration of the *leges barbarorum*. This chapter is also victim oriented in a similar manner as the others. In other words, the social status of the victim will be the first criteria in examining violence towards the freemen. In such case, the chapter will be shaped according to the relatively minor offenses committed against freemen by other freemen, freewomen, freedmen, freedwomen and slaves.

The fourth chapter will focus on violence against women. In contradistinction to the previous one, this chapter will mainly be shaping around freewomen and crimes committed against them. Such crimes include femicide, domestic violence, sexual assault, honour killing and other lesser offenses against women who are subject of the *leges barbarorum*. Additionally, the social perception towards women will be analysed in the case of each *leges* in order to determine which code of law attributes more importance to the social position of the women. The purpose of this chapter is to examine how gender influenced early medieval Germanic legislation was.

As a consequence of the above-mentioned criminal topics, I will attempt to create a picture that substantially based on hard data and attempt to develop an understanding of social life in the newly established barbarian kingdoms with special reference to violent offences against individuals. In doing so, I aim to enter into the details of each and every punishment as far as possible, in order to demonstrate the legal issues that had crucial impacts on people's social life. The idea that the barbarian invasions interrupted the European civilization has long been abandoned. However, can we claim that social life in the post-Roman Europe was less violent than it used to be? Or, can we really draw a portrait of early medieval life by taking the *leges* as reference points? Can we be sure that each crime has a punishment in the barbarian societies? Were there any type of discrimination between free and unfree, male and female, native and foreigner, upperclassman and lowerclassman in the early Germanic communities? Answering such questions may be difficult. Yet, this comparative study of the codes may thus be one way to approach the writing of the social history of the Early Middle Ages.

## CHAPTER II

### AGGRESSION AND VIOLENCE TOWARDS FREEMEN

#### 2.1 A General Outlook on Violent Crimes in the *Leges Barbarorum*

Although it is difficult to know if violent deaths were far more common than today in the early medieval barbarian societies due to lack of surviving materials that include early Germanic court decisions, the large coverage of fatal violence in the lawbooks might indicate that crimes such as murder and homicide were not unusual. This chapter will analyse violent crimes in the barbarian *leges* that resulted (intentionally or otherwise) in another person's death and the punishments for such deeds. Fatal violence in the Middle Ages can be examined in two different crimes: murder and homicide.<sup>54</sup> In fact, the determining factor for such a division lay behind the method of killing. If a killer had committed the killing by hiding his intention and tried to conceal it, this situation has to be evaluated as a murder. Nevertheless, no official distinction was made between murder and manslaughter until these distinctions were

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<sup>54</sup> The medieval crime category of murder has been interpreted quite differently and had other connotations. The most important defining factor was the method: if a killer had acted secretly and tried to conceal the homicide, this would qualify as a murder. There are clear parallels between homicide and murder on one hand and robbery and theft on the other. Just as with robbery and theft, murder was seen as worse than homicide because of the way it was perpetrated. Murder was a dishonourable deed, just like theft. However, the boundaries between homicide and murder were not always clear. For the further discussion see Christine Ekholst, *A Punishment for Each Criminal: Gender and Crime in Swedish Medieval Law* (Leiden: Brill, 2014), 108.



instituted by the re-introduction of Roman law in the 12<sup>th</sup> century.<sup>55</sup> On the other hand, the legal enforcements on homicide are often interpreted with concepts such as blood feud and retaliation. The laws of the barbarians usually inflicted extra punishments on those who try to conceal the killing in addition to the crime itself. To illustrate, the standard amount of wergild for an ordinary freeman is specified as 200 solidi in the *Lex Salica*. In other words, if anyone kills a freeman he is compelled to pay 200 solidi to the relatives of the victim.<sup>56</sup> However, if he hides the victim's dead body in a well, under water or anywhere, this amount increases to 600 solidi.<sup>57</sup> Such an example, in fact, points out the sharp distinction between a murder and homicide in the barbarian *leges*. Similarly to the relationship between murder and homicide, there is a conceptual difference between robbery and theft. As with murder, theft was also seen as a more dishonourable act compared to robbery. Such larcenies, however, will not be included in the chapter unless they result in death. As we shall see, despite there being clear parallels between the murder and homicide, boundaries between the two may not be clear all the time. Due to the fact that some *leges* do not make any distinction between the two crimes, it may become difficult to distinguish them. The *Lex Gundobada*, for instance, attach great importance to the extenuating circumstances in case of a killing. As shall be elaborated below, each lawbook has its own unique characteristic when it comes to deadly violence such as homicide, murder, arson and witchcraft.

This chapter, however, basically focuses on violent crimes that arise from aggressive behaviours of different types, namely murder and homicide. Arson and witchcraft

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<sup>55</sup> Cristoph Hinkeldey, *Criminal Justice Through the Ages*, trans. John Fosberry (Rothenburg: Medieval Crime Museum, 1981), 99-101.

<sup>56</sup> *Pactus Legis Salicae* (hereinafter referred to as LS), ed. Karl August Eckhardt, *Monumenta Germaniae Historica*, MGH Legum Sectio I, Legum Nationum Germanicarum, Tomi IV, Pars I (Hanover, 1862) XLI, 1.

<sup>57</sup> LS, XLI, 2.

will also be included in cases of death. The legislation on killing evolved from aggression based on revenge and compensation to a system that sentenced the killer to capital punishment will be argued in consideration of different law codes. Additionally, it is possible to see a system that was based on wergild and examples of the victims' ability to defend themselves with selected men. Along with such common applications, this chapter attempts to demonstrate how different criminal sanctions observed in the *leges barbarorum* and their connections with each other. From this point on, certain variables such as social position, ethnicity and gender of the victims of fatal violence will provide a basis for examining punishments for violent crimes. Finally, although the Germanic law codes correspond to each other in terms of some juridical subjects, at the same time, they have certain diversities on account of specific legal transactions. Another goal will be to investigate such discrepancies between the written codes by interpreting both external and internal factors. Origins of those different parts that are available in the various law codes will be researched by getting to the bottom in the historical context. Such an attempt will be made by examining the *leges* individually and by addressing the problems during analysis.

Before closing the introduction, it might be of interest to mention some Germanic legal terms included both in the *leges* and this study. First and perhaps the most important of all is *wergild*, which was a value placed on every being and piece of property. For instance, in the *leges barbarorum* if property was stolen, or someone was injured or murdered, the guilty party should pay *wergild* as restitution to the victim's family or to the owner of the property. *Wergild* payment was an extremely significant legal mechanism in the barbarian communities. The payment was usually made to the family or to the clan. Beside the *wergild* to be paid to the victim's clan, a

*fredus* (peace money) must also be paid to the public authority or to the king's treasury and it was typically represented by a judge. Although some *leges* do not make mention of *fredus*, an obligatory payment is mentioned in the *Lex Gundobada*, *Lex Ribuaria* and *Edictum Rothari*. The other widespread form of legal compensation was *faida*, in other words, "blood revenge". According to Marc Bloch, it was most commonly a death that had to be avenged. In this case the family group went into action and the *faide* (feud) came into being, to use the old Germanic came to mean "the vengeance of the kinsmen" which is called *faida*. The whole kindred, therefore, placed as a rule under the command of a chieftain, took up arms to punish the murder of one of its members or merely a wrong that he had suffered.<sup>58</sup> Besides these terms, there are also technical Germanic concepts that appear in certain articles, particularly in the *Lex Salica* and *Lex Baiuvariorum*. I will also include those technical terms between parentheses in order to describe certain acts of violence in a comprehensive manner. To give an example, while (*leodi*) refers to murder of freemen in the *Lex Salica*, (*mathleodi*) means hiding the victim's corpse after the act of killing. Most of these Germanic terms refer to an act of violence. In addition to such Germanic concepts, I will include certain Latin terms in square brackets in order to avoid any possible confusion. These terms in Latin, however, will mostly refer to a personality rather than an act of violence. To illustrate, [*in truste dominica*] refers to a person who is a member of the king's retinue. Lastly, such medieval currencies as *solidus*, *denarius*, *semissis* and *tremissis* will be used in representing

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<sup>58</sup> Marc Bloch, *Feudal Society Vol. I*, trans. L. A. Manyon (Chicago: University of Chicago Press, 1964), 125-126.

the monetary payments since penalties for criminal acts were defined in such currencies in the *leges barbarorum*.<sup>59</sup>

## **2.2 Punishment for Murder and Homicide in the *Lex Gundobada***

In the *Lex Gundobada*, any type of killing has a criminal sanction regardless of whether it is committed by a freeman or a slave. Anyone who perpetrates such an act ought to make restitution for the crime committed either by shedding his own blood or paying compensation. In terms of pecuniary punishments, however, related legal topics differ from its later counterparts (other Germanic law codes) in most cases. Despite all the differences in the amount of penalty fines, in classification, particular crimes do not differ greatly from each other as it will be discussed below. Not surprisingly, the murderer of a nobleman is expected to be punished heavily while such offense against an ordinary slave is given a lighter penalty in comparison. Therefore, the amount of wergild that the criminals are obliged to pay varies depending on the social status of the victim and one's location. Also, the time period is one of the significant determinants depending on the average wealth of the community and solidus' monetary value might as well differ from the past. Thus, it is possible to come across various levels of enforcements for aforesaid reasons in general. In particular, however, those differences will be evaluated in their own rights in the following section.

When murders are in question, the *LG* offers several compensation amounts according to the victims' position in the social hierarchy and their capabilities. For instance, while a slave goldsmith's wergild may correspond with that of a freeman, who belongs to the middle class, a royal agent's wergild might equal to a lower-class

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<sup>59</sup> To obtain more information about coinage and currencies in the early Middle Ages see Philip Grierson and Mark Blackburn, *Medieval European Coinage: Volume 1, The Early Middle Ages (5th-10th Centuries)* (Cambridge: Cambridge University Press, 2007), 102-10.

freeman. In the first article of the murders section, the clause indicates that if anyone from any nation kills or injures a native freeman or a servant of the king from barbarian nation (tribe), he will have to make restitution unless he wants to shed his own blood.<sup>60</sup>

Shedding one's own blood here presumably means that the guilty should be handed over to death unless he can afford to pay the wergild. Nevertheless, it is difficult to deduce if there was a third option in such a case since it is not included in the article. Yet, it is possible to make an inference with reference to article LII.<sup>61</sup>

Nor do we remove merited condemnation from Balthamodus who presumed to receive a woman due in marriage to another man, for his case deserves death. But in consideration of the holy days, we recall our sentence for his execution, under the condition that he should be compelled to pay his wergeld of one hundred fifty solidi to that Fredegisil unless he can offer public oath with eleven oathhelpers...<sup>62</sup>

In fact, the third option appears to be swearing with certain number of oath-takers even though that is not included in the *leges*. Also, there is little doubt that the Burgundian king was no longer acting as a law compiler or even as a lawgiver — he was acting as a judge and lawmaker.<sup>63</sup>

Regarding the following topic, which essentially deals with the attenuating circumstances for certain acts of violence, the law decrees that if any kind of murder or bodily harm is committed in case of self-defence then the guilty must pay half the wergild of the victim according to his social status.<sup>64</sup> In other words, 150 solidi for

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<sup>60</sup> *Leges Burgundionum* (hereinafter referred to as LG), ed. L. R. deSalis, *Monumenta Germaniae Historica*, MGH Legum Sectio I, Legum Nationum Germanicarum, Tomi II, Pars I (Hanover, 1892), II, 1.

<sup>61</sup> LG, LII, 4.

<sup>62</sup> Katherine Fischer Drew, *The Burgundian Code* (University of Pennsylvania Press, 1972), 60.

<sup>63</sup> Katherine Fischer Drew, "The Barbarian Kings as Lawgivers and Judges" in *Life and Thought in the Early Middle Ages* ed. Robert S. Hoyt, (Minnesota: Lund Press, 1967), 20.

<sup>64</sup> LG, II, 2.

anyone from the highest class [*optimas nobilis*], 100 solidi for anyone from the middle class [*mediocris*] and 75 solidi for a lowerclassman [*minor persona*].

In the last sentence of the second article<sup>65</sup> that covers the killings, the expression seems somewhat clear. It underlines that no one but the criminal is responsible for such unlawful incidents and no relatives of the victim should harm anyone except the killer. As it is specified above, remission of the sentence had already been decided by the legislators according to the killed man's social status. Thereby, no matter who is the avenger, he must consider pursuing the guilty rather than someone else, most probably the killer's kin and relatives in this case. Apparently, hereunder, the legislator's purview is to avoid potential blood feuds between the individuals and amongst the tribes since it is emphasised that only the criminals need to be punished while the innocent should sustain no injury.

Accidents that happen by chance are also covered in the *LG*. Namely, if someone's animal kills a man or it causes death to a man, the owner should be exempted from the ancient rule of accusation, and no penalty should be inflicted on him, because according to the ancient rule of accusation, what happens by chance should not conduce to the loss or discomfiture of man.<sup>66</sup> Similarly, if anyone throws a lance or any kind of weapon upon the ground and kills a man or an animal by accident [*simpliciter*], he should neither be convicted nor obliged to pay any compensation.<sup>67</sup>

In fact, the *LB* is one of the rare codes that includes legal cases of *faida* in detail. Controversies on punishment for practice of revenge killings and blood feuds between rival parties are represented extendedly. In addition, no punishment for manslaughter is one of the notable characteristics of the *LB* as opposed to other *leges*.

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<sup>65</sup> *LG*, II, 7.

<sup>66</sup> *LG*, XVIII, 1.

<sup>67</sup> *LG*, XVIII, 1, *LG*, XVIII, 2.

While most *leges* require at least half of the wergild in such cases, according to the *LB* no penalty should be inflicted on those who kill someone unintentionally. The *LB* is also fairly significant for setting place to a full court record, in which an affair between Aunegild, Balthamodus and Fredegisil is dealt with. It also exemplifies how compensation system worked in the Burgundian judicial system.<sup>68</sup>

### **2.3 Punishment for Violence and Murder in the *Edictum Theodorici***

Due to the fact that only fragments have been preserved of the *Edictum Theodorici*,<sup>69</sup> it is rather challenging to attain all cases and conditions of law enforcements in particular. Contrary to the other law codes that survive until today, the *ET* shares notable similarities with certain Roman laws as stated above. Nevertheless, even the fragments make it possible to examine the specific parts of the *ET*, especially when the matter violence is being underlined. In regard to arguments from the content, first of all, it would be comprehended that the community is aware that the concepts of homicide and murder differ from each other and the punishments should be given by taking the variables into consideration. Second, involvement of handmade tools plays a crucial role in determining penalties given to criminals. Third, secretly committed crimes appear to be discriminated and attached particular importance in concluding the criminal's punishments. Lastly, the comprehension of social gap between the master and slave makes it presence felt and is heavily reflected in the legal sanctions in the codex. Although all of these determining factors have a great emphasis in the other Germanic law codes as well, the *ET* has undoubtedly its own, despite all the aforementioned limitations.

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<sup>68</sup> For the full article see *LG*, LII.

<sup>69</sup>*Edictum Theoderici Regis* (hereinafter referred to as *ET*), ed. Friedrich Bluhme, *Monumenta Germaniae Historica*, MGH, Legum Nationum Germanicarum, Toms V, (Hannover, 1889), XV.

As for the criminal justice of the *ET*, it is rather difficult to give an example of a punishment for those who murder someone in cases of self-defence. According to article XV, anyone who kills a man in self-defence cannot be regarded as criminal. In such a case, the self-defender must be about to be hit with any tool made of iron. Herein, there is a probability that the word *ferrum* might refer to a sword, spear or an axe.<sup>70</sup> Under any circumstances, it is more than enough to claim one's innocence as long as he is under a physical assault. Murders in the *ET*, are also one of the rare grounds for divorce. According to the article LIV, couples are allowed to divorce under such circumstances if one of the spouses was involved in certain crimes like witchcraft, violation of graves and murder.<sup>71</sup> It can be inferred that the crime of murder was considered to be one of the serious offenses in Ostrogothic society along with the crime of witchcraft.

Among all these law enforcements, apparently the *ET* XCIX is a fairly significant inscription in that it contains the two main cases of murder. Firstly, those who kill commit murder, should be sentenced to death.<sup>72</sup> Secondly, if anyone support or encourages someone to commit a murder, he will be handed over for death as well.<sup>73</sup> In other words, it is difficult mark a significant difference between the cases of killing someone and prompting someone to commit homicide. More specifically, to murder anyone presumably signifies the killings committed without authority of jurisdiction. It can be inferred that only the adjudicator or adjudicators held the judicial districts apart from the victim of an armed aggressor. As discussed above, the victim also has the right of self-protection and instinctively has the justification to

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<sup>70</sup> *ET*, XV. Qui percussorem ad se venientem ferro repulerit, non habetur homicida: quia defensor propriae salutis videtur in nullo peccasse.

<sup>71</sup> *ET*, LIV.

<sup>72</sup> Sean D. W. Lafferty, *Law and Society in the Age of Theodoric the Great: A Study of the Edictum Theodorici* (New York: Cambridge University Press, 2013), 138.

<sup>73</sup> *ET*, XCIX.



kill the attacker under the aforementioned conditions. In addition to those who are responsible for the jurisdiction, the *ET* CLII includes the problems arising from masters and slaves. Since this section predominantly covers the murders committed by the freemen, in such case the masters, it would be reasonable to comprise the results concerning the master. According to the *ET* CLII, if a master kills another's slave, he must compensate for the damage by two slaves.<sup>74</sup> In short, while when the freeman is the victim in question, there is no other option except the death penalty, but for the slaves who are in a similar position, one is allowed to pay compensation in order to be acquitted.<sup>75</sup>

As it has been mentioned above, the *ET* does not require compensation for killings in case of self-defence as opposed to *LG* in that the killer should pay half wergild of the victim. Such a difference may be derived from the fact that the *LG* is mainly influenced from Roman law while the *ET* has its unique legal characteristics. Legal sanctions on usage of weapons are also implemented differently than the *LG*. While usage of a weapon is not specified in the *LG* at all, it is actually one of the crucial determinants of punishment for murder in the *ET*. As we shall see below, there are more codes of law that prohibit individuals from using weapon against other person in an illegal way.

#### **2.4 Punishment for Fatal Violence against Freemen in the *Lex Salica***

We have little information about the Salic legal system before the Germanic tribes made contact with Rome. Before the migration period, the Frankish judicial system heavily relied on the organization between kin groups and the blood feuds amongst

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<sup>74</sup> *ET*, CLII.

<sup>75</sup> On the use of other punishment types against lower class men and women in the Late Antiquity, see Olivia F. Robertson, *Penal Practice and Penal Policy in Ancient Rome* (New York: Routledge, 2007), 99-127.

them. In the *Lex Salica*, as is the case for other Germanic codes, civil and criminal causes are not distinguished from each other. Since the Franks did not have a police force to arrest criminals, criminal cases were handled as civil suits for damages.<sup>76</sup>

Contrary to the *LG*, cases of killing of freemen are represented in a more detailed manner in the *LS*. Article XLI, which consists of twenty-one clauses in total, essentially covers how a freeman is murdered and specifies what the amount of penalty fine is.<sup>77</sup> The *LS* also shows certain distinctive characters in terms of sentences and expressions of the criminal sanctions. Although, it is possible to make a comparative analysis between the *LS* and *LG* in terms of specific homicidal cases, it should be kept in mind that the *LS* appears to address a wider range of ethnicity along with various commonalties. While the same applies to the *ET*, its lack of availability in full obliges us to apply a method of induction in making such a comparison. As for the other notable characteristics of the *LS*, the higher amounts of criminal fines are drawing attention in comparison with the other codes. In addition, more cases of homicidal acts seem to be considered in the making of the law and apparently, any case of murder is attempted to be covered by the lawgivers as much as possible. Lastly, in the *LS*, compensation and wergild amounts are calculated as both *denarii* and *solidi*. In other words, if any criminal is liable to pay 12,000 *denarii* for instance, which equals 300 *solidi*, in this case the laws are prone to give its *solidi* equivalent. In this study, nonetheless, it is preferred to use only the *solidi* amounts in order to avoid any confusion and make the comparison easier amongst the *LS* and the others.

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<sup>76</sup> Katherine Fischer Drew, *The Laws of the Salian Franks* (Philadelphia: University of Pennsylvania Press, 1991), 33.

<sup>77</sup> *LS*, I, 21.

To start with the examination of the sub-articles of the *LS* XLI, which deal with the killing of freemen, there is a differentiation made between the victims' nation. He who kills a free Frank or other barbarian who lives by Salic law and he who kills a Roman are treated differently and there is a difference in the amount of fines as well. Secondly, as it is understood by the first sub-article, the society seems to be divided into two parts as Romans and "barbarians" regardless of which ethnic group a barbarian individual belongs. At this juncture, it is known that the Franks had subjugated several tribes including the Alamans, Visigoths and Thuringians by the year of 532 and had been subduing many others where a sight of a cosmopolitan community comes into the picture.<sup>78</sup> However, without making a differentiation amongst the barbarians, the expression of "Frank or other barbarian" is simply concerned with non-Romans.<sup>79</sup>

Another conspicuous mention in the *LS* is that the criminal is obliged to pay the fine as long as he has proven to be guilty. Such an expression is the evident reasoning of how much importance is given to presumption of innocence, which is a fundamental principle in the modern criminal justice systems. In respect of the penalty fines, if the crime is already proven against the murderer he shall be liable to pay 200 solidi for he killed a free Frank or other barbarian (*leodi*).<sup>80</sup> If he hides the victim's corpse in a well or under water he ought to pay 600 solidi (*mathleodi*).<sup>81</sup> However, if he does not hide his misdeed (*moantheuthi*), he has to pay 200 solidi. Again, if he hides the dead body by means of sticks or tree barks and if the crime is proved, then he has to pay

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<sup>78</sup> Herbert Schutz, *The Germanic Realms in Pre-Carolingian Central Europe, 400–750* (New York: Peter Lang, 2000), 411.

<sup>79</sup> Si quis (vero) ingenuum Francum aut barbarum, qui lege Salica vivit, occiderit, cui fuerit adprobatum, mallobergo leodi sunt VIIIIM denarios qui faciunt solidos CCculpabilis judicetur.

<sup>80</sup> *LS*, XLI, 1.

<sup>81</sup> *LS*, XLI, 2.

600 solidi (*matteleodi*).<sup>82</sup> Similarly, if he kills a man who is in the king's trust or a free woman, the fine is 600 solidi.<sup>83</sup> However, in this case, if he throws the dead body into the water or into a well or if he conceals it with sticks or bark or hides, then he must pay 1800 solidi.<sup>10</sup> Lastly, he who kills a freeman inside his house ought to pay 600 solidi (*amestatio leode*).<sup>84</sup> In respect of killing a freeman who is in the army, if a freeman who is not a member of the king's retinue [*in truste dominica*] is murdered by his companions while he is in the army [*in conpanio de conpaniones suos*], the guilty should pay 600 solidi as long as he is convicted (*leude*).<sup>85</sup> But if the guilty had killed a man from the king's retinue, then he ought to pay 1800 solidi once it is proved (*mother*).<sup>86</sup>

Concerning the incidents involving Romans, the penalty fines are specified as following: when a Roman who is a table companion of the king is killed (*leudi*), the murderer has to pay 300 solidi.<sup>87</sup> If the victim is a Roman landholder who is not a table companion of the king, then the murderer has to pay 100 solidi (*walaleodi*).<sup>88</sup> If the murdered is a Roman who pays tribute, the murderer is obliged to 61.5 solidi.<sup>89</sup> Surely, in order to impose such pecuniary punishments, the crime is supposed to be proven against the alleged criminal. Regarding the incidents that require a relatively lesser amount of penalty fines, the punishment is 100 solidi for those who kill a freeman without hands or feet whom his enemies have left at a crossroad (*wasbuco*).<sup>90</sup> In addition, those who set free someone without the permission of the punisher are not omitted in the *LS*. For taking down a freeman down from a gibbet

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<sup>82</sup> *LS* XLI, 4.

<sup>83</sup> *LS*, XLI, 3.

<sup>84</sup> *LS*, XLII, 1.

<sup>85</sup> *LS*, LXIII, 1.

<sup>86</sup> *LS*, LXIII, 2.

<sup>87</sup> *LS*, LXI, 5.

<sup>88</sup> *LS*, XLI, 6.

<sup>89</sup> *LS*, XLI, 7.

<sup>90</sup> *LS*, XLI, 8.

without permission, the rescuer is fined 45 solidi (*sabanc heo*).<sup>91</sup> Apparently, harming one's victim is not tolerated as well by the *LS*. Those who take down the head of a man whose enemies have put on a stick, is liable to pay 100 solidi (*banchal*).<sup>92</sup> On this basis, it might be asserted that the Franks were aware of a type of principle that protects the individuals' sanctuary and possibly their right of privacy as well.

The *LS* also deals with the homicides committed by a group, namely a band of men [*contubernio*]. If a band of men attack a freeman in his house and murder him, then the murderer has to pay 600 solidi (*chambistalia*) but if the murdered person is one of the king's sworn bodyguards [*trustis*], then the murderer needs to pay 1800 solidi.<sup>93</sup> For such an action, the other three members (*druchtelimici*) of that band should pay 90 solidi each and another three have to pay 45 solidi (*seolasthasia*) each regardless of the victim's status.<sup>94</sup> However, if the victim is a Roman half-free man or a servant [*puer*], half the amount involved in the rule above must be paid.<sup>95</sup>

For the homicides of one of a band of men, if there are four or five men together participating in a dinner and if one of the men is killed, then the other group members ought to convict one of them and the accused shall pay the penalty fine or if they refuse to do so, the payment must be divided amongst all the members (*seolandestadio*).<sup>96</sup> However, if there are more than seven men, not all of the group members are fined except those who are responsible.<sup>97</sup> In other words, if there are more than five men involved, the other group members have to surrender the

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<sup>91</sup> *LS*, XLI, 8/1.

<sup>92</sup> *LS*, XLI, 8/2.

<sup>93</sup> *LS*, XLII, 1.

<sup>94</sup> *LS*, XLII, 3.

<sup>95</sup> *LS*, XLIII, 4.

<sup>96</sup> *LS*, XLIII 1.

<sup>97</sup> *LS*, XLIII 2.

murderer or all of them must pay the compensation. Once there are more than seven men, not all shall be held guilty. But if a man is murdered when he is outside of his home and if he received more than three wounds on his body, then three members of the guilty party must each pay compensation. In this case, three of them must pay 30 solidi, and if there are more, other three must pay 15 solidi.<sup>98</sup>

By reason of the fact that the killings may not always be committed by human beings and as the Franks had been aware of such possibilities, the *LS* covers the killings by four-footed animals (*quatrupedibus*). In this case, if a man is killed by a quadruped, the owner of the beast shall pay half of the wergild for he did not take proper care of his animal. Additionally, he should give his animal to the victim's relatives, as the other half of the compensation.<sup>99</sup> However, if the animal's owner does not acknowledge that he has a role in this incident and claims that his animal killed the man accidentally, then he might defend himself in court to be proven innocent.<sup>100</sup>

With regard to the homicide of a count (*grafio*) in the *LS*, anyone who kills such a prominent person ought to pay 600 solidi (*leode saccemitem*).<sup>101</sup> But if the victim is a sagibaron (*sacebaroor*) a count (*obgrafio*) who is the king's servant [*puer*], the murderer should pay 300 solidi (*leode saccemither*).<sup>102</sup> However, if the killed sagibaron is a freeman rather than a servant, then the guilty has to pay 600 solidi.<sup>103</sup> Also, the law decrees that there should not be more than three sagibaron in a court. If they made a final decision about a case, which has been submitted to them, they must keep it confidential and the case should not be taken to the count repeatedly.<sup>104</sup>

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<sup>98</sup> *LS*, XLIII 3.

<sup>99</sup> *LS*, XXXVI, 1.

<sup>100</sup> *LS*, XXXVI, 1.

<sup>101</sup> *LS*, LIV, 1.

<sup>102</sup> *LS*, LIV, 2.

<sup>103</sup> *LS*, LIV, 3.

<sup>104</sup> *LS*, XXXIV, 4.

The above mentioned compensations should to be paid by the guilty (or the guilty party) to the victim's relatives or kinsmen as wergild. Apparently, it was very common to come across some disagreements between the relatives about how they should divide the wergild amongst themselves. Under this circumstance, article LXII adjudicates how to split the wergild in the event of the homicide of a father. In such a case, half of the compensation ought to be given equally to the victim's children and the other half should be divided equally amongst the victim's relatives who are nearest from the paternal as well as the maternal side.<sup>105</sup> However, if the victim has no relatives from either side, then the money should be received by the public treasury or by the one to whom the public treasury decides to give it.<sup>106</sup>

In the light of all the information, what we generally see in the *LS* is similar with the other *leges*. It deals with many cases of both murder and manslaughter, yet underlines several circumstances in case of a killing. Indeed, what distinguishes the *LS* from the others is that it includes a large number of criminal details by attempting to cover each and every condition of homicide. Perhaps the most interesting point of the *LS* is that the barbarians are not ethnically differentiated. On the contrary, barbarians are treated equally as long as they live under Salic law, which is in contradiction with the Ripuarian laws, as we shall see in the following section.

## **2.5 Punishment for Murder and Homicide of Freemen in the *Lex Ripuaria***

While the *Lex Ribuarica* shares a certain number of similarities with the *LS* in context and concept, it is most certainly better organized and does not have the complex characteristics of the latter. As for the comparison with the other codex, the *LG* appears to be a prototype for the *LR* in terms of the criminal cases relating to man

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<sup>105</sup> *LS*, LXII, 1.

<sup>106</sup> *LS*, LXII, 1.

and animal, with many other crimes that concern every segment of society. As seen in many others, oathtakers in the *LR* play a significant role in lawsuit processes even though the required number may differ. Once again, homicide of men from various backgrounds is interpreted according to the hierarchical structure as well as one's ethnic origin. At the same time, it points to the compensation that should be received by the government unlike *LG* does when it comes to murder. Also, it should be noted that usage of means makes an observable difference in the amounts of penalty fines and the possibility of manslaughter is shown relatively little tolerance. As for the different ethnic groups, each one is treated separately as in the other law codes, yet in the *LR*, men from the other Germanic communities are judged according to their ethnic origin in particular. In short, the barbarians are referred to as separate tribal groups rather than being regarded as an integrated nation.

According to the *LR*, the criminal penalty for killing a free Ripuarian is 200 solidi, but if the murderer refuses to pay, he needs to swear with twelve oathtakers that he did not commit the homicide.<sup>107</sup> However, if the victim is one of the king's men [*homo regius*], then the murderer is fined 100 solidi, the number of oathtakers that he needs to swear with, is determined as twelve in this case.<sup>108</sup> Additionally, if a free Ripuarian kills [*mordridus*] another free Ripuarian and hides the body by means of branches or if he throws it in a well or under water or wherever he considers appropriate, then he has to either pay 600 solidi or swear with seventy-two oathtakers.<sup>109</sup> If anyone murders a man inside his own house with a group of men (*hariraida*), he is liable to pay threefold of the victim's wergild and the first three

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<sup>107</sup> *Lex Ribuarica* (hereinafter referred to as *LR*), ed. Franz Beyerle / Rudolf Buchner, *Monumenta Germaniae Historica*, MGH Legum Sectio I, Legum Nationum Germanicarum, Tomi III, Pars II (Hanover, 1954), VII, 1.

<sup>108</sup> *LR*, IX, 1.

<sup>109</sup> *LR*, XVI, 1.



men in the group are liable to pay 90 solidi each. If there are more men in the band, then the rest should pay 15 solidi each.<sup>110</sup>

If the victim is a churchman [*homo ecclesiasticus*], the amount is once again, one hundred solidi.<sup>111</sup> In such a circumstance, the murderer needs to pay an extra amount of 15 solidi to a king's man or a churchman, in order to recompense.<sup>112</sup> To elaborate, the amount of compensation is 100 solidi for a free-born clerk,<sup>113</sup> 200 solidi for a subdeacon,<sup>114</sup> 300 solidi for a deacon,<sup>115</sup> 200 solidi for a free-born priest,<sup>116</sup> and 900 solidi for a bishop.<sup>117</sup> As for a soldier from the king's retinue [*trustis*], if anyone kills such a man, he either has to pay 600 solidi or to prove his innocence (if he is); he needs to swear with seventy-two oaths.<sup>118</sup> If anyone kills an ordinary soldier from the army, he is obliged to pay threefold of the victim's wergild.

Concerning different categories of homicide and their compensation, contrary to Clovis' *LS*, the *LR* detailedly covers the cases between different individuals from various ethnicities. That being mentioned, if a Ripuarian murders a Frankish man, he is compelled to pay 200 solidi.<sup>119</sup> If a Ripuarian murders a Burgundian, he is compelled to pay 160 solidi.<sup>120</sup> If a Ripuarian murders a Roman, he is compelled to pay 100 solidi.<sup>121</sup> If a Ripuarian kills an Alaman, Frisian, Bavarian or Saxon, then he is compelled to pay 160 solidi.<sup>122</sup>

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<sup>110</sup> *LR*, LXVII.

<sup>111</sup> *LR*, X, 1.

<sup>112</sup> *LR*, X, 1.

<sup>113</sup> *LR*, XL, 5.

<sup>114</sup> *LR*, XL, 6.

<sup>115</sup> *LR*, XL, 7.

<sup>116</sup> *LR*, XL, 8.

<sup>117</sup> *LR*, XL, 9.

<sup>118</sup> *LR*, XI, 1.

<sup>119</sup> *LR*, XL, 1.

<sup>120</sup> *LR*, XL, 2.

<sup>121</sup> *LR*, XL, 3.

<sup>122</sup> *LR*, XL, 4.

For the quadrupedal animals that kill a man, the owner of the beast should hand his animal to the victim's relatives as half of the wergild and its other half should be paid in currency, according to the victim's wergild amount. In this case, whatever his quadruped does, the owner is not exacted to pay compensation (*fredus*) to the judge or the treasury.<sup>123</sup> However if the animal kills or injures another quadruped, the owner of the latter should receive an amount of compensation as much as the dead or the injured animal is worth, along with the animal that killed his quadruped. As for the owner of a quadruped that kills another, he should receive the disabled or dead animal.<sup>124</sup>

The *LR* also covers the cases in which certain means are involved such as handmade weapons and their misuse by the people. Article LXXIII includes the pecuniary punishments for those who kill anyone by means of a piece of wood. If a man is murdered by a piece of wood, the killer is not required to pay a price for it unless he has taken the weapon for his own use. If he does so, then he is held liable without payment of *fredus*.<sup>125</sup> However, if anyone digs a pit or trench, or sets a trap, or accidentally hit someone via slingshot, so that he injured or killed a cow or a man consequently, then the perpetrator should be compelled to pay the full compensation regardless of whether it is done unintentionally or not. The perpetrator ought to pay the wergild according to the decrees of the *LR*, in other words, according to whom he killed. Or he may as well swear with the required number of men that is specified in the *LR*.<sup>126</sup>

Already in the Ripuarian Law the divergences from the old Germanic law are greater than in the *LS*. In the Ripuarian Law a certain importance is attached to written

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<sup>123</sup> *LR*, XLVIII, 1.

<sup>124</sup> *LR*, XLVIII, 2.

<sup>125</sup> *LR*, LXXIII, 1.

<sup>126</sup> *LR*, LXXIII, 2.

deeds; the clergy are protected by a higher wergild: 600 solidi for a priest, and 900 for a bishop; on the other hand, more space is given to the *cojuratores* (sworn witnesses); and the appearance of the judicial duel is noted, which is not mentioned in the *LS*.

## **2.6 Punishment for Indictable Offences in the *Edictum Rothari***

Before examining the *Edictum Rothari*, it should be noted that the articles are written sequentially, in which each title contains only one article rather than to include multiple items in one title, contrary to the titles available in many other law codes. As for the content, aggression towards the people from higher social stratum is judged relatively harsher and it has more severe consequences compared to the other *leges*. Also, the laws give priority to the king's authority over his subjects in the articles and they have a tendency to acquit any murderer who committed homicide by permission of the king while most of the other law codes do not necessarily include such a particular condition. In addition, punishments for homicidal attempts are mentioned as much as penalties for homicides. Even though someone is not actually involved in a killing, yet he is one of the abettors, it is often emphasized that he cannot abscond from the justice of the king. Also, fratricide appears to be one of the criminal offenses on which the *ER* puts a particular emphasis. Concordantly, such an act requires harsher penalties like disinheritance along with the monetary payment. All in all, the *ER* is one of the law codes that have multiple characteristic features in terms of punishment for murder as elaborated below.

If anyone plots against his king by organizing a conspiracy or encourages somebody to kill the king, he will not only be handed over to death but also all of his property

will be confiscated.<sup>127</sup> But, if anyone plots against a freeman to see him dead and if his plot is revealed and failed, he has to pay 20 solidi as compensation.<sup>128</sup> However, if the king's himself is the one who orders somebody to kill a man, then the perpetrator is not to be blamed. The same applies to the perpetrator's heirs for they shall not suffer from any type of feud or harm by the kinsmen of the man conspired against. As the man who murders someone on the king's counsel, is exempted from any punishment.<sup>129</sup> Regarding homicides without the king's consent, if a freeman gratuitously kills another, he should pay the victim's wergild. If there is more than one conspirator, each of them should pay 20 solidi upon their failed conspiracy.<sup>130</sup> But if such band of freemen commits a murder in collaboration, it is not allowed that they may pay the victim's wergild as one. If one of them claims that he is innocent and he has nothing to do with such a crime, then he ought to prove his innocence. If he manages to do that he shall be proven innocent but if he is not able clear himself then he is considered as guilty as the others. However, if it is proven that he is one of the conspirators of the homicide even though he was not involved in it physically, then he is liable to pay 20 solidi, as article X of the *ER* decrees.<sup>131</sup>

With respect to the man who murders his lord [*dominus*], he should be punished with death. If anyone tries to defend such a man who murdered his lord, he should pay 900 solidi as compensation, which is to be shared equally between the king and the victim's relatives. In such a circumstance, if anyone refuses to help (if needed) the one who seeks revenge, then he should pay 50 solidi as compensation, once again

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<sup>127</sup> *Edictum Rothari*, (hereinafter referred to as *ER*), ed. Friedrich Bluhme, *Monumenta Germaniae Historica*, MGH Legum, Legum Nationum Germanicarum, Toms IV, (Hannover, 1868), I.

<sup>128</sup> *ER*, X.

<sup>129</sup> *ER*, II.

<sup>130</sup> *ER*, XI.

<sup>131</sup> *ER*, XII.

half to the king and half to the victim's relatives.<sup>132</sup> However, if one of the victim's relatives still seeks to avenge his fallen kin despite having received the compensation, he is not allowed to wage a feud. If he does so, he has to repay the wergild twofold to the relatives of the victim.<sup>133</sup> If anyone is killed by an insane person, no payment is required from him or his heirs, likewise if anyone kills such a man, no compensation should be paid by the murderer since nonsanes are considered as weighty sinners and possessed men.<sup>134</sup>

Concerning the murders (*morth*) committed against freemen, if anyone kills a freeman, he should pay 900 solidi to make restitution.<sup>135</sup> If there is more than one man involved in such felony, each of them ought to pay the victim's wergild according to his social status (*in angargathungi*). And if they plunder the corpse, they should pay an extra 80 solidi in return.<sup>136</sup> However, if the man is killed by a tree, for example, if a couple of men kill someone as a result of cutting down a tree, they are compelled to pay the victim's wergild equally. If the victim was one of those men who were cutting a tree down, in this case, the others should pay an equal share of total wergild of the victim, and no feud should be waged between their relatives since it is considered as manslaughter rather than homicide.<sup>137</sup>

On poisoning or attempting to poison someone, a freeman or freewoman, whoever mixes poison in order to make someone put it into another's drink shall be liable to pay 20 solidi in the event of failure, since it is regarded as organizing a conspiracy.<sup>138</sup> However, he/she who puts the poison to kill someone shall pay half of the intended

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<sup>132</sup> *ER*, XIII.

<sup>133</sup> *ER*, CXLIII.

<sup>134</sup> *ER*, CCCXXIII.

<sup>135</sup> With reference to the previous sentences, presumably, half to the king and half to the victim's relatives.

<sup>136</sup> *ER*, XIV.

<sup>137</sup> *ER*, CXXXVIII.

<sup>138</sup> *ER*, CXXXIV.

victim's wergild in accordance with his status.<sup>139</sup> But, if he/she manages to kill him/her by putting the poison into his/her drink, then he/she should pay the full wergild of the victim, according to his status.<sup>140</sup> Concerning the man who plots his own kinsman's death by any means (not necessarily by means of poisoning), if he conspires against his brother, nephew (paternal), cousin or his other relatives in order to succeed him in inheritance, the law requires that he shall not succeed his dead kin despite of him being the primary heir, instead the other near relatives shall be inherited. And if the victim has no other near relatives or legitimate heirs but the one who plots against him, then the king's fisc should succeed the victim. Additionally, the king shall judge him and determine his punishment, and if the victim has no other legitimate heir, his property will be seized by the king's fisc.<sup>141</sup>

Regarding the incidents that occur between the wild animals and men, if a wild animal has been struck by a man and with the impact of the hit; if it kills someone due to its agony, then the man who hit the animal should pay compensation for the death in accordance with the victim's status, that is the hunter has full responsibility of the wounded beast. However, if the animal causes harm to someone after it manages to run away from the hunter, no compensation should be recovered from the man who hit the animal.<sup>142</sup> Likewise, if a man traps an animal and the animal kills someone, the man who set the trap should be imposed to pay the compensation.<sup>143</sup> But, if a man is killed by an animal that is hit by another's strike, no compensation should be required from the one who hit the animal since the victim attempted to take it for his own.<sup>144</sup> To be more precise, if a dog, horse or any other beast goes wild and

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<sup>139</sup> *ER*, CXL.

<sup>140</sup> *ER*, CXLI.

<sup>141</sup> *ER*, CLXIII.

<sup>142</sup> *ER*, CCCIX.

<sup>143</sup> *ER*, CCCX.

<sup>144</sup> *ER*, CCCXI.

kills someone eventually, the owner of that animal is exempted from paying a compensation; similarly, if a man kills such an animal, he is not compelled to pay any fine.<sup>145</sup> The same applies for the quadrupedal animals as well.<sup>146</sup> Though, if such a beast kills someone while it is in another man's service, no payment is required from the owner of the animal, instead the one who hired him should pay the victim's wergild.<sup>147</sup>

The concept of blood feud had apparently not yet disappeared from the sense of the Lombards, for the *ET* decreed that if an injured party who had accepted a wergild and thereby break the peace within a year would not only pay for their misdeed, but the wergild had to be paid back in twofold. The actual crimes were evidently seen as an oath, not murder. In case of accidental fires the damage was to be replaced. In case of deliberate incendiary incriminations, the damage has to be paid in threefold.

## **2.7 Punishment for Murder, Fratricide and Parricide in the *Lex Alamannorum***

The *Lex Alamannorum* can be categorized into three divisions: private, public and ecclesiastical law. It is one of the codes that puts emphasis on Church sanctuary and it orders that no fugitive seeking refuge in a church should be removed by force, or be killed within the church. Besides, it contains many similar subject matters with the other Germanic law codes such as the punishments for murder of higher nobles, craftsmen, churchmen and ordinary freemen. Also, organizing a conspiracy against anyone's life is considered as indictable offence, even if the plot fails. Similarly, killing one's own kin is regarded as a felony since the LA seems to be influenced heavily by the canonical law. Regarding a man who is killed by another's animal, however, the LA imposes quite stricter regulations in punishing the animal and owner

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<sup>145</sup> *ER*, CCCXXIV.

<sup>146</sup> *ER*, CCCXXV.

<sup>147</sup> *ER*, CCCXXVII.

himself. In case of murder, location of crime is a significant determinant in penalizing the offenders, which can also be seen in most of the other code of laws. As for the unintentional killings, the *LA* appears to be less forgiving than the others since it does not necessarily dwell on the punishments for manslaughter in most cases. Nonetheless, the *LA* has several characteristics in common with the others apart from a small number of variations.

If anyone kills [*mortaudus fuerit*] a freeman [*baro*] or a freewoman, he is liable to pay ninefold of his victim's wergild, otherwise he should swear with twenty-four chosen oattakers or eighty men that whomever he is able to find.<sup>148</sup> If he has stolen anything of the victim's property after this deed, and offers it to his own kins, it is not to be obtained.<sup>149</sup> However, if the murderer has not offered it, he should pay 40 solidi in addition.<sup>150</sup> If a freeman murders another freeman, the murderer should pay 160 solidi to the victim's children, if he does not have any children or relatives, the guilty should pay 200 solidi for him.<sup>151</sup> If such a crime is committed against an Alamannic freewoman by anyone but a freeman, the offender ought to pay 80 solidi or swear with twelve men.<sup>152</sup> When it is committed by a freeman, he should pay twofold<sup>153</sup> of her wergild, which makes 160 solidi. But if the victim is an ordinary Alaman, the murderer is supposed to pay 200 solidi to the victim's parents.<sup>154</sup> Concerning the homicide of craftsmen: for a blacksmith the compensation is particularised as 40 solidi<sup>155</sup> and for a goldsmith it is 50 solidi.<sup>156</sup>

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<sup>148</sup> *Leges Alamannorum*, (hereinafter referred to as *LA*), ed. Karl August Eckhardt, *Monumenta Germaniae Historica*, MGH Legum Sectio I, Legum Nationum Germanicarum, Toms V, Pars I, (Hannover, 1966), XV.

<sup>149</sup> *LA*, XVII, 1.

<sup>150</sup> *LA*, XVII, 2.

<sup>151</sup> *LA*, LX, 1.

<sup>152</sup> *LA*, XVII, 5.

<sup>153</sup> *LA*, LX, 2.

<sup>154</sup> *LA*, LX, 3.

<sup>155</sup> *LA*, XLI, 1.



As for the animals involved in a killing, if someone's dog kills a man, its owner is obligated to pay half of the victim's wergild.<sup>157</sup> But, if the victim's kindred ask for the full amount, all the owner's doors must be closed except one, and he should be coerced to enter and leave through that one entrance. And the dog should be hung nine feet above that particular door till it becomes entirely decayed and only the bones remain. As it is stated, the owner is not allowed to use another entrance and remove the dog from there. If he does so, he is obliged to pay the other half of the wergild.<sup>158</sup> However, if a man is killed by another's animal such as his horse, pig or ox, the owner of that animal is liable to compensate the entire wergild of the victim.<sup>159</sup>

In terms of homicides relating to the ecclesiastical scope, if anyone kills a freeman within the territories of a church, he is liable to pay 40 solidi to the church for it is regarded as he acted against God in an unholy manner, a *fredus* to the king's treasury; and a legitimate wergild to the victim's relatives.<sup>160</sup> Though, if anyone murders a freeman who is indentured to a church [*colonus*], he should pay the same wergild as for other Alamans.<sup>161</sup> However, if a man kills a bishop, he should be fined as if he killed the duke and the compensation should be paid either to the king, the duke or the church where the victim was pastor.<sup>162</sup> If the victim was a parish priest, an amount of 600 solidi should be paid either to the church where the priest served or

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<sup>156</sup> LA, XLI, 2.

<sup>157</sup> LA, XXVIII, 1.

<sup>158</sup> LA, XCI, 3.

<sup>159</sup> LA, XCI, 4.

<sup>160</sup> LA, IV.

<sup>161</sup> LA, VIII.

<sup>162</sup> LA, XI.

to the bishop in whose parish he was positioned,<sup>163</sup> and the amount of compensation is specified as 300 solidi for deacons<sup>164</sup> and monks.<sup>165</sup>

The other sentences that *LA* includes are as follows: if anyone plots against his duke in order to kill him and if he has already been condemned by the duke and popular princes, he either shall be handed over to death or he should swear in a church with twelve designated men before the duke or anyone who is sent by the duke.<sup>166</sup> Independently of such type of a judgement, if anyone kills another in the street or the field because of a quarrel, afterwards if the dead man's peers follow the perpetrator with weapons and kill him inside his house, then he [the second] should be compensated with a single wergild.<sup>167</sup> On the other hand if they [the peers] do not pursue the perpetrator immediately after the incident but instead, if they go, after a while, to his neighbourhood in a hostile way after assembling a couple of men and putting aside their weapons and if they follow him into his house and then kill him, his wergild should be paid as nine fold.<sup>168</sup> If a man is murdered in the duke's courtyard, the guilty should pay threefold of the victim's wergild since he has broken the duke's rules on disturbance of the peace in his household.<sup>169</sup> However, if anyone attempts or manages to kill the duke at his own courtyard, then the offender is responsible for paying the triple wergild even if the duke escapes alive or wounded.<sup>170</sup> But if the offender takes refuge in a count's place and if he is killed or injured there, the person who does hurt him is obliged to pay threefold for all things he did.<sup>171</sup> Though, if anyone murders the duke's messenger within the boundaries of

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<sup>163</sup> *LA*, XII.

<sup>164</sup> *LA*, XIII.

<sup>165</sup> *LA*, XIV.

<sup>166</sup> *LA*, XXIII.

<sup>167</sup> *LA*, XLV, 1.

<sup>168</sup> *LA*, XLV, 2.

<sup>169</sup> *LA*, XXVIII, 1.

<sup>170</sup> *LA*, XXVIII, 2.

<sup>171</sup> *LA*, XXVIII, 3.

Alemannia, he has to pay a triple wergild for him as well or he ought to swear with twelve designated and twelve chosen men if he pleads not guilty.<sup>172</sup>

Concerning the man who murders or attempts to kill his own kindred (*parricide* and *fratricide*), such as his father, mother, brother, sister, uncle, or his nephew, he is considered as a great sinner according to God's commandment and all his property should be confiscated and his heirs shall inherit nothing from him. In such a case, he should be punished according to the canon laws of the Church.<sup>173</sup>

The Christian Church, apparently, had a considerable impact on the *LA*. The clergy not only aided in the promulgation of these laws but they also added laws that protected themselves and church property from injury. The abovementioned ecclesiastical laws introduce both law codes and contain similar notions. While the *LB* includes several biblical references, the *LA* includes none. The church applied both secular and ecclesiastical punishment to those who threatened the clergy or its property. Offenders not only were made to pay the wergild and monetary compensation, but they were also threatened with excommunication.<sup>174</sup>

## **2.8 Punishment for Murder of Freemen in the *Lex Baiuvariorum***

The *Lex Baiuvariorum* appears to take the *LV*, the *LA* and *LS* as models and maybe even also antecedents of the *LB* from the 7th century. In most cases, their subject matters resemble each other in many aspects. Yet, the *LB* is undoubtedly more systematic than the *LA*, presumably because it is constituted in the later years. Concerning the murders, it can be considered relatively strict in terms of punishment for homicides that might result in enslavement of the criminals in specific

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<sup>172</sup> *LA*, XXIX.

<sup>173</sup> *LA*, XL.

<sup>174</sup> Theodore John Rivers, *Laws of the Alamans and Bavarians* (Philadelphia: University of Pennsylvania Press, 1977), 39.

circumstances. Likewise, banishment was also being applied by the Bavarian judicators regardless of the fact that it was a rarely seen punishment type in the other codes. As for the major offenses, clearly, murder of a duke and ecclesiastical officials are the primary ones, as was the case in the others. Yet, unlike in the *ER*, the one who murders his duke might be exempted from capital punishment by paying his wergild, which is fourfold of the standard amount. Independently of the other codes, the *LB* indicates a number of noble families that shall be compensated with double amount of wergild in case of any harm or murder. One of the other characteristic features of the *LB* is that it requires payments in gold in some cases, which is quite unusual. In some instances, the amount of compensation may depend on how much weight the victim has, which is also unique to the *LB*.

The *LB* begins with articles relating to ecclesiastical matters and the rights of churches. On the killings of clergy, the *LB* decrees as follows: If anyone kills a priest or a deacon who is appointed by a bishop and approved by the ecclesiastics, he is obliged to pay 300 solidi in gold, unless he has enough gold, he shall pay the compensation by giving his other property such as slaves and land until he covers the damage.<sup>175</sup> For deacons, the murderer is obliged to pay 200 solidi both to the church and the duke, along with an extra amount of 50 solidi as *fredus*.<sup>176</sup> If anyone murders a bishop who is appointed by the king or chosen to be a high priest by the people, he is liable to pay for him to the king, the people or victim's kindred. The amount shall be as much as the victim weights in gold; if he does not have that much gold, he should give up his other property such as slaves, land, villas or whatever valuable until he fulfils it completely. But, if he does not have enough property to cover the

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<sup>175</sup> *Lex Baiwariorum*, (hereinafter referred to as *LB*), ed. Ernst von Schwind, *Monumenta Germaniae Historica*, MGH Legum Sectio I, Legum Nationum Germanicarum, Toms V, Pars II, (Hannover, 1926), I, 9.

<sup>176</sup> *LB*, I, 9.

charge, then he should place himself in slavery to that church along with his wife and children until they are able to redeem them. And his property should be given to the use of the church permanently. However, if another bishop commits such a murder and if he is condemned, then he shall either be deposed or banished.<sup>177</sup>

As for the murder of the duke and the criminal cases relating to him, if anyone tries to kill the duke who is assigned by the king or chosen by the people themselves, the offender's punishment shall be decided and his property shall be seized by the state. If he has no property, then he should be put into slavery to serve those to whom he has inflicted damage, until he restores the whole debt. In such a case, three witnesses are required in order to place a final judgement on the guilty. But, if one of them contradicts the other, they should fight a duel to reveal the truth, in the presence of the people.<sup>178</sup> However if the attacker manages to kill the duke, he shall be sentenced with capital punishment and his whole property shall be seized by the state.<sup>179</sup> For those who provoke somebody to start a revolt (*carmulum*), the one who is provoked first, should pay 600 solidi, his other followers who kept counsel with him should pay 200 solidi each and the other lesser [*minores populi*] accessories should pay 40 solidi to the duke, so that a possible rebellion shall be prevented in the province.<sup>180</sup> And during a quarrel, if anyone in the army is killed by an official who was appointed by the duke, he should be compensated with 600 solidi, to be received by the state. Judicially, the others should be penalized according to their social rank and the lesser men's punishment shall be decided by the duke.<sup>181</sup> However, if a man is

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<sup>177</sup> *LB*, I, 10.

<sup>178</sup> *LB*, II, 1.

<sup>179</sup> *LB*, II, 2.

<sup>180</sup> *LB*, II, 3.

<sup>181</sup> *LB*, II, 4.

murdered on the order of the duke, the killer should neither be questioned nor involved in a feud, also he and his sons should be protected by the duke.<sup>182</sup>

With regard to the murder of freemen; if anyone kills a freeman, he should pay 160 solidi to the victim's relatives. In the case that the victim has no relatives, his wergild should be paid to the duke or to whom he (the victim) was commended.<sup>183</sup> However, when a freewoman is killed, the murderer should pay double amount of wergild since a woman is not able to defend herself with weapons. But, according to the *LB*, if she wishes to fight courageously just like a man, her compensation should not be doubled up.<sup>184</sup> About the murder of foreigners, which presumably means anyone who is not a Bavarian, if anyone kills such an outlander passing on a road and if the outlander has no relatives, he should pay 100 solidi valued in gold and he should distribute his property to the poor. If the duke allows him to keep his property, he is compensated with 80 solidi.<sup>185</sup> Regarding champions and the cases that are concerning them, if one of them kills another, the dead should not be compensated with more than 12 solidi, even though he is a noble person. And this amount should be paid by the one who hired him, if the victim is an ordinary freeman.<sup>186</sup>

On the families and their compensation; specifically, the families called Hosi, Draozza, Fagana Hahilinga, Anniona shall always be compensated with the double amount since these are the families that come first after Agilolfinga. Agilolfinga family, to which the duke of Bavarians belongs, however, shall always be compensated with quadruple amount. In other words, if someone takes one of his

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<sup>182</sup> *LB*, II, 4.

<sup>183</sup> *LB*, IV, 28.

<sup>184</sup> *LB*, IV, 29.

<sup>185</sup> *LB*, IV, 30.

<sup>186</sup> *LB*, IV, 31.

family member's lives, the offender shall be fined 640 solidi, the duke, however, shall be compensated with 960 solidi.<sup>187</sup>

An Alaman or Bavarian who was not able to gather the required number of oath-takers could not defend himself in a court of law, and without this, he could not exercise his rights. Thus, it was quite important that others valued and trusted his spoken word, because personal freedom was directly linked to its application. Oath-takers were generally coming from one's relatives and those who cannot manage to bring sufficient numbers of oath-takers together, could not defend their case. Once this happened, the defendant lost his case and could be declared outside the law's jurisdiction, that is, an outlaw.<sup>188</sup>

## **2.9 Punishment for Homicide and Manslaughter in the *Lex Visigothorum***

*Lex Visigothorum* is a code that puts a great emphasis on the distinction between the concept of homicide and manslaughter. According to the *LV*, unintentional killings cannot be put in the same equation with voluntary killings by any means, even if a number of people sustained an extraordinary injury. Nevertheless, in case of any accidental killing, the guilty party should compensate the victim's relatives with a pound of gold, which is a much affordable sentence in comparison with the intentional killings. Especially when it is considered that the punishment for murder is death penalty and punishment for solicitation to murder is pecuniary penalty or whipping. Also, the *LV* is one of the few codes that contains flogging freemen, unlike most of the Germanic law codes, in which such a penalty is usually imposed upon slaves (for the harms that are caused by them). Furthermore, enslavement of criminals is one of the methods of punishment in cases where the offender is not able

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<sup>187</sup> *LB*, III, 1.

<sup>188</sup> Rivers, *Laws of the Alamans and Bavarians*, 39.

to compensate for the damage, which is also seen in the *LB*. Patricide is regarded as one of the major offenses in the *LV* as well. Committing such a crime is associated with the offense committed against God, which substantially symbolizes the influence of the canon law on the *LV*.

In the *LV*, there is a difference in terms of penalization between killing someone intentionally and unintentionally. In other words, if a man kills anyone accidentally (without knowing it), he is not regarded as guilty.<sup>189</sup> Likewise, if a man kills anyone while he is not aware of his presence at the time, he shall not be penalized as long as there is no hostility between them previously and if the killer is able to prove that it was manslaughter rather than a homicidal act.<sup>190</sup> Similarly, if a man accidentally kills another by pushing him, he should not be punished. Though, if the latter pushes a third party upon impact and if the third one dies, then the one who gave the first push is liable to pay a pound of gold.<sup>191</sup> However, if anyone unintentionally kills a third person during a brawl, a legal investigation should be made in order to find the one who started the quarrel. Afterwards, the man who struck the death blow should pay 50 solidi to the victim and the other man who stirred up the strife should pay 100 solidi since he is the one who originated the quarrel.<sup>192</sup> Regarding the killing of a freeman who is killed while interfering in a brawl, if he is killed while trying to make peace, the killer should not be convicted as long as he can prove that it was a homicide by misadventure, either by his own oath, or by the testimony of respectable witnesses. Yet, the killer should pay a pound of gold to the victim's relatives.<sup>193</sup> When anyone intends to injure another by means of a kick or punch but kills him

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<sup>189</sup> *Leges Visigothorum*, (hereinafter referred to as *LV*), ed. Karl Zeumer, *Monumenta Germaniae Historica*, MGH Legum Sectio I, Legum Nationum Germanicarum, Toms I, (Hannover/Leipzig, 1902), Liber Sextus, V, 1.

<sup>190</sup> *LV*, Liber Sextus, V, 2.

<sup>191</sup> *LV*, Liber Sextus, V, 3.

<sup>192</sup> *LV*, Liber Sextus, V, 4.

<sup>193</sup> *LV*, Liber Sextus, V, 5.



accidentally, he should be charged with murder.<sup>194</sup> If anyone incautiously, or recklessly, or in sport, or in a crowd, unintentionally kills a man, he should not suffer any punishment as long as it is proven by the witnesses. Instead, for he did not avoid a possible accident, he shall be liable to pay a pound of gold to the victim's relatives and he shall receive fifty lashes with scourge.<sup>195</sup> Likewise, if a man, who is under the patronage of a person, dies during an immoderate punishment that is given to him by his teacher, patron, or master, the one who gave the punishment should not be considered a murderer.<sup>196</sup>

For murders committed intentionally, the *LV* decrees as follows: if anyone kills a man on purpose, he shall be convicted of homicide.<sup>197</sup> If a group of freemen commit murder, while the one who actually commits the killing should be condemned to death, the other group members shall receive two hundred lashes each in public and they should pay 50 solidi each, to the relatives of the victim; but if any of them is not able to possess the sufficient amount, he shall be enslaved by the relatives of the victim and he shall serve them throughout his life.<sup>198</sup>

Concerning the homicide of kinsmen and relatives, if anyone murders his/her father, mother, son, daughter, brother, sister, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law or anyone else who is related to him/her in blood or lineage, he shall be handed over to death. Also, all his property should be obtained by the victim's heirs or seized by the Crown.<sup>199</sup> However, if anyone kills one of his relatives unintentionally or in self-defence, he shall neither be charged with murder,

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<sup>194</sup> *LV*, Liber Sextus, V, 6.

<sup>195</sup> *LV*, Liber Sextus, V, 7.

<sup>196</sup> *LV*, Liber Sextus, V, 8.

<sup>197</sup> *LV*, Liber Sextus, V, 11.

<sup>198</sup> *LV*, Liber Sextus, V, 12.

<sup>199</sup> *LV*, Liber Sextus, V, 18.

nor his property shall be seized by the others. In this case, similar provisions apply as with all cases of manslaughter.<sup>200</sup>

The *LV* states that only a guilty person will be liable for punishment; that the severity of the punishment should be proportional to the seriousness of the crime; and the whole book goes to great lengths to ensure that the punishment be inflicted according to the degree of culpability. The legislation in the *LV* tries to take into account as many modifying circumstances concerning a crime as possible. Some extenuating factors in the determination of culpability are the following: obeying orders of a superior; physical coercion; different kinds of accidents and carelessness and sudden provocation. As the case for Theodoric's Edict, self-defence also seems to erase all responsibility and possible guilt, even in the case of death.

## **2.10 Discussion and Conclusion**

When all the data relating to the subject of unlawful killings is put together, a conspicuous panorama comes in sight, inevitably. In all Germanic law codes, first of all, it appears that there are various ways to compensate a killing unless the offender committed a homicide that is considered major offense, such as the killing of a superior or kindred. Yet, it is crucial to state that this is not the case for all. In other words, these major offenses may not necessarily end up with capital punishment in case of certain law codes. While the *ER*, *LA* and *LG* clearly decree that anyone who kills the ruler should be sentenced to death, the other codes of law do not particularly require such a punishment. In the cases of the *LS* and *LR* anyone who kills the count might be acquitted by paying compensation despite the fact that it should be compensated with threefold of the standard amount. On the other hand, the *LG*, *ET* and *LV* do not specifically cover the murder of a king, duke or count in a particular

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<sup>200</sup> *LV*, Liber Sextus, V, 19.

way, yet the punishment for such an offense can be inferred from other articles that deal with homicide in general. To be more precise, both *ET* and *LV* appears to be more concerned with whether a homicide is committed intentionally or unintentionally, rather than the social position of the murdered. Although the *LG* has an interest in both, it merges any of these ruling elites under the name of *optimas nobilis*. Unlike the *LS* and *LR* that oblige the murderer to pay threefold of standard wergild, the *LG* decrees that if anyone from the highest class is killed, then the murderer is liable to pay 300 solidi, which equals to one and a half of the standard amount. In the case of *LS*, the laws mention major offenses towards the count, including homicide or manslaughter. Compensation for murder of the count is 600 solidi, which equals to threefold of an ordinary freemen's wergild. In such a case, it might be inferred that the Salic legislators apply more severe sanctions than their Burgundian counterparts and a Salic count might have been regarded as superior to a Burgundian elite. Most probably in consequence of the Burgundians having already been defeated by the Franks in the year of 500, as Gregory of Tours put it. In such circumstances, The Franks may be estimated as the major determinant in the region of Gaul and apparently, the legal issues are heavily influenced by the political landscape, namely, by the dominant political powers of the time. Considering the *LG* was compiled earlier than the *LS*, the *LG* might have been taken as a model by the Salic legislators and due to the fact that the predominance of the Salian Franks in political sphere, the wergild amounts might also have been kept higher. After the massive conflict between these two in 500, the Franks established themselves as the main political actors in Western Europe and presumably set the standards for the other law codes in terms of the compensation prices. In the end, both diplomatic and political conditions have an impact on the rate setting, including both the wergild and *fredus* amounts. As for the other cases of murder in the *LS*, the higher compensation

amounts stand out against its Burgundian counterpart even though it is not possible to make a comparison between certain cases. While the wergilds of craftsmen are not included in the Clovis version, Gundobad's text excludes the cases relating to women, clergymen and different occupational groups such as soldiers and retainers. Despite all the differences, the wergild of an ordinary freeman is set 200 solidi in both codices and this amount may increase or decrease depending on one's social rank.

The relationship between the *LS* and *LR*, however, can be interpreted as two different variants of one codex as the Salians and Ripuarians are the two essential constituent elements of the Frankish kingdom. Although the *LR* includes many similar inscriptions with the *LS* and the *LG*, it contains unique clauses and slightly differs in terms of the classification of foreigners. In the *LR*, the foreigners' wergilds are specified in accordance with their ethnicities, which is a usual method of classification as it is seen in the other lawbooks. Though, in the *LR*, those foreigners' ethnic origin or "nation" is specified in particular such as Alaman, Frisian or Bavarian instead of a generic method of differentiation as Roman or Barbarian, which is the case for the *LS* and the *LG*. As might be expected, the ones who belong to another ethnic group are compensated with higher wergilds than the Romans most probably since they are still regarded as barbarians. Certainly, such a comprehensive method simplifies the Ripuarian judicator's work, yet it is far from attributing a meaning to each separate group being judged according to their particular way of life. In other words, its uniqueness disappears once the content is examined by virtue of the fact that the other non-Frankish individuals' wergilds are similar with each other. To illustrate, in case of a Burgundian, Alaman, Frisian, Bavarian or a Saxon foreigner is murdered, the killer shall compensate it with 160 solidi, which attributes

the same value for all these people from different origins while they could easily be classified as “other barbarians”. That is to say, even though the Ripuarian laws might be seen as if it attaches a great importance to the other ethnicities, it actually evaluates them in the same manner as the others. The only difference, however, is that the major tribe’s name are mentioned in the *LR*, which has a paramount importance in identifying the other groups living within the boundaries of Frankish kingdom. The rest of the articles that deal with murder pretty much correspond with the Salic law including the wergilds of churchmen, women and servants. Not to mention its coverage of freedmen and people from different age groups. Like the *LS*, the *LR* might also be defined as one of the more inclusionary codes of law especially by comparison with the Burgundian code. Yet, it would be reasonable to consider that the compilation of the *LG* is dated much earlier than the others (except the Code of Euric) and it should be noted that there is a high possibility of the *LB* having set the standards for its later counterparts, at least for the communities who were living in the boundaries of the Frankish kingdom.

The *ET*, on the other hand, is probably the most self-imposed codex among all, the Edict was mostly Germanic tribal law dealing with wergilds, not a code of Roman law. In spite of its Latin language, it was not a Roman product, and unlike the near-contemporary *Forum Iudicum* of the Visigoths, it was not influenced by Canon law. The wergild of an ordinary freeman is 150 solidi, contrary to 200 solidi, which is the usual amount in the law codes. For a landholder, this amount increases to 300 solidi. On the other hand, in case of the murder of the king, there is no other option than the capital punishment and in such a case; the ones who attempt to defend the killer are fined heavily as well. Contrary to the other lawbooks, the killer does not have the privilege of swearing an oath with the chosen men in order to absolve himself from

such an act. This exceptional case, however, is only valid for the king. Moreover, the king holds the privilege of exemption from being judged as the co-perpetrator himself in case of a justifiable homicide. The *ER* varies from the others in which, it provides the king the right to kill without being judged along with his co-conspirators. It is also forbidden for the victim's relatives to seek revenge in such a case because of the fact that the crime was ordered by the king. Apart from such an exceptional situation, however, the *ER* encourages the individuals and their families to seek revenge in events that result in the death of one of their relatives. In the other lawbooks, although it is possible to come across cases of mitigation of punishment in the cases of self-defence, the *ER* imposes sanctions on those who are not willing to help their kinsmen in an on-going feud. Murder attempts also have a wide coverage in the *ER*. Concordantly, the ones who try to poison, trap or organize a conspiracy against another, are liable to pay a symbolic amount rather than a full compensation in case of failure. Even though this amount varies in accordance with the victim's social rank or type of the plot, yet in most cases, the amount to be paid does not exceed 20 solidi. These amounts are clearly for the ordinary Lombard men from various social ranks. As for the king, obviously, such amounts are not even a matter of discussion since in the event of failed assassination attempt the perpetrator's punishment is clearly specified. As mentioned above, he shall not only be handed over to death but also all of his property will be confiscated. Due to the fact that the other law codes do not include consequences for any kind of offense against the king, it is difficult to put them in the same equation with the *ER*. Nevertheless, based on the inscriptions concerning the duke or count and the cases that pertain to him, it might be possible to make a rough comparison, considering the fact that the early medieval rulers' sovereignty rights may bear certain resemblances to each other regardless of their title. When the offenses against the ruler are examined in general,

apparently, there are various ways to make compensation. However, this double standard in favour of the king, which is applied by the *ER*, might as well represent the king's will of unconditional sovereignty over his subjects and his wish to achieve dominance on different parts of public life. At the same time, King Rothair's attitude towards the other dukes when he ascended the throne may give us some clue about why he included specific inscriptions to the benefit of the king in the Edict. Those aforementioned clauses on the personal immunity of the king and his agents certainly helped him to not only legitimize his position but also consolidate his power during an age of political instability.

In terms of crimes committed against the duke of Alamannia, as things stand, execution without due process is avoided in the laws of the Alamans, yet it is specified that the criminal should be judged by the popular princes and duke himself or the duke's appointee in this case. Punishment for such felony is the death penalty as it is also enacted in the *ER*. In such cases, the *LA* provides criminals an opportunity to give a deposition with the testimony of twelve designated men. Even though these twelve men are not identified in the codex, most probably they are prominent figures in the Alamannic society and may be the freemen who come after popular princes in hierarchy. It is certain that these people are appointed by someone, yet it is difficult to know which criteria they need to meet in order to fulfil such a task. Although the same, in fact, applies for the Ripuarian Laws as well, two types of oath-takers appear to play a part in the judicial process; one is designated man who is chosen for that particular case [*electus*], the other is an ordinary freeman. Though, the first group is presumably selected by the ruler or judges, the second group may either have been chosen by the offender himself amongst his kith and kin due to the fact that their oaths might lead to the suspect's acquittal. While the testimony of the

designated men is usually required in case of major crimes including the offenses against the ruler, the other group can be visible in cases of lesser offenses. Eventually, consulting with the testimony of other people from various backgrounds seems to have a significant role in lawsuit processes in cases where criminals are unable to make compensation.

The Laws of the Alamans also cover the killings by quadrupedal animals in a more serious manner. When the inscriptions in all law books related to deaths caused by the quadrupedal animals are put together, while the *LS* and *LR* obliges the owner to pay half of the victim's wergild, the *LG* treats such cases as accidental killings and requires no compensation. An incident of this type is not included at all in the *ER*, *LB* and the *LV*. Even if the *LB* appears to be more concerned with the killings of another's animal, its contemporary, the *LA* on the other hand varies from the other law books in terms of its provisions on the quadrupeds that kill a man. In case of the killing of a man by a quadruped, it grants the privilege of claiming the full compensation to the victim's relatives if they wish to do so. Yet, the owner of the animal that was involved in such a killing has also the privilege of giving up his animal for the other half of the wergild. In other words, the laws oblige the animal's owner to make a choice in order to prevent any kind of inadvertent killing by the animals. Such regulation may well be legislated in order to avoid future incidents arising from the animal owners' obliviousness. The fact that Alemannic laws devote more attention to protection of individuals from runaway beasts might indicate more than one thing. First, such incidents may have been taking place more frequently within the boundaries of the Duchy of Alamannia than any other location. In this connection, such a law might have been enacted since a large number of individuals were trying to take advantage of the situation by exploiting the rules. Especially the



strict regulations against the dogs may as well demonstrate that there are certain instances of getting someone killed by using personal dogs. Secondly, it may also be an indicator of a higher rate of animal raising in the duchy. Presumably, a considerable number of Alamans was showing a great interest in dog sitting, which can also mean that the dogs are more extensively used in certain activities like hunting, tracing and perhaps even in battles. Taking into account the fact that war hounds were actually quite a significant unit in the pre-modern battles because of their various abilities, the importance attributed to the dogs by the Alamans might even symbolize the war hounds of better quality were in fact much more popular amongst the other provinces of the Frankish Kingdom.

The murder of free churchmen is a topic that ought to be examined separately than the murder of freemen as a wide coverage is given in most of the law codes apart from the *LG*, *ET* and *ER*. The rest, however, put a great emphasis on the murders relating to the ecclesiastics and expectedly, wergilds of the clergymen vary in accordance with the church hierarchy. Starting with the lowest, according to the Ripuarian laws, wergild for a free-born clerk is 100 solidi, a subdeacon 200 solidi, a deacon 300 solidi, a priest 600 solidi and a bishop 900 solidi. Even though the amounts differ in the other law books, the hierarchical order remains unchanged. Nevertheless, some of the ranks are missing in the other law codes and they mostly include only the bishops and deacons. The laws of the Alamans are putting the monks in the order by specifying the wergild of a monk as 300 solidi, which is equal to the wergild of a deacon. Additionally, wergild of a parish priest is included in it and the amount is specified as 600 solidi, which is equal with the wergild of a bishop.

Consequently, when analysing lethal violence against another person in the *leges*, one should be aware of the fact that there were many different types of murder and homicide. It is obvious that all barbarian codes of law apply severe sanctions on the killer or his owner. Although there is a chance of making restitution even for such serious offences in most cases, compensation amounts can be extreme, especially when the victim is an upperclassman. In some cases, the same even applies to those unfree men from specific occupational groups due to the valuable products that they manufacture. In fact, it can be asserted that in cases of unfree men the *leges* are more concerned with the social function of individuals rather than their ethnic background. Ownership of the slaves is also a determining factor. As for the freemen, apparently, Romans were in inferior position in social stratification as well as different barbarian ethnicities who were subject to a specific code of law. As it has been exemplified in length, certain codes were more prone to exclude other barbarian peoples by attributing relatively less monetary value to their compensation. In terms of lesser violence against a person, however, a different portrait emerges. Although there are considerable differences between the compensation amounts of free and unfree, this may not always apply to different ethnic groups. In the next chapter, the cases of lesser violence against unfree people will be examined.

## CHAPTER III

### AGGRESSION AND VIOLENCE AGAINST HALF-FREE MEN, FREEDMEN AND SLAVES

#### 3.1 A General Outlook on Assault and Lesser Violence in the *Leges Barbarorum*

The scholars have long been discussing about how frequent violence and aggression against another person was in the medieval period. When the Middle Ages were represented as a time of darkness and violence, there was a consensus that people lived in constant fear since terror reigned in many places.<sup>201</sup> Medieval people were often portrayed as individuals who had “few emotions outside fear and anger” and as if they were not able to control their emotions and impulses.<sup>202</sup> Recent studies, however, have proven that there are many examples of non-violent conflict of resolution in medieval times. Gert Althoff argues that such well-developed systems did actually exist and we should be aware of the fact that most of the time violence surpasses these aspects of medieval society.<sup>203</sup> There are many scholars who emphasize the importance of discovering the thoughts behind the violence in medieval times. In fact, medieval violence cannot be thought as simply spontaneous,

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<sup>201</sup> Eva Österberg and Dag Lindström, *Crime and Social Control in Medieval and Early Modern Swedish Towns* (Stockholm: Almqvist & Wiksell, 1988), 10.

<sup>202</sup> William Ian Miller, “Deep Inner Lives, Individualism and People of Honour”, *History of Political Thought* 16 (1995): 190-207.

<sup>203</sup> Gerd Althoff, “Satisfaction: Peculiarities of the Amicable Settlement of Conflicts in the Middle Ages,” in *Ordering Medieval Society: Perspectives on Intellectual and Practical Modes of Shaping Social Relations*, ed. Bernhard Jussen (Philadelphia: University of Pennsylvania Press, 2000), 271.

illogical outbreaks; instead, we should approach medieval violence according to its own logic, rules, and honour codes.<sup>204</sup> As a matter of fact, aggression and violence were limited and regulated by authorities and legal systems. There were acceptable and unacceptable forms of violence as well as legal and illegal violence. While a criminal of unacceptable violence could be easily punished in accordance with the norms of both the local society and the legal system, someone guilty of acceptable violence may not be viewed as criminal by the local society, it might still be illegal.<sup>205</sup> Guy Halsall states “Precise political circumstances largely determined the clarity of the definition of legitimate or illegitimate violence.”<sup>206</sup> Lesser violence, in fact, shows some parallels with fatal violence in the early medieval period. In a similar way to murder and homicide, for instance, violence committed secretly was judged differently than violence committed openly. To illustrate, illegal acts committed at night or secretly were seen as more dishonourable.<sup>207</sup>

As today, aggression was a part of daily life in the early Germanic societies. Nevertheless, it also symbolised a part of an honour system in a culture that violence was mostly used by individuals in order to take revenge and redeem themselves. Most of the legal topics in the *leges barbarorum* deal with violence either against another person or another person’s property. This chapter will focus on individuals who were subjected to violence and received compensation for certain acts of aggression such as bodily harm, injury and mutilation. This chapter will also investigate the distinctions with which the laws focus on different injuries and wounds. These legal topics show a detailed system for describing assault: the

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<sup>204</sup> A.J. Finch, “The Nature of Violence in the Middle Ages: An Alternative Perspective,” *Historical Research. The Bulletin of the Institute of Historical Research* 70 (1997): 264, 67.

<sup>205</sup> Christine Ekholst, *A Punishment for Each Criminal: Gender and Crime in Swedish Medieval Law* (Leiden: Brill, 2014), 77.

<sup>206</sup> Guy Halsall, “Violence and Society: An Introductory Survey,” in *Violence and Society in the Early Medieval West*, ed. Guy Halsall (Woodbridge: Boydell & Brewer, 1998), 9.

<sup>207</sup> Ekholst, *A Punishment for Each Criminal*, 78.

severity of the wounds can be literally read on the body of the victim. In doing so, the social status of the violence victim will be the first criterion in examining violence towards the freemen. As such, the chapter will be shaped according to relatively minor offenses committed against freemen by other freemen, freewomen, freedmen, freedwomen and slaves. Finally, violence of different types, both by means of kick, punch, and weapons will be discussed in an attempt to analyse varying legal topics on violence.

### **3.2 Punishment for Assault and Lesser Violence in the *Lex Gundobada***

In the *Lex Gundobada*, slaves are categorized into two groups: royal slaves and ordinary slaves.<sup>208</sup> These two, in itself, is also classified in accordance with the occupational groups to which they belong. While the violence against the royal slaves is penalized more severely, the wergilds of ordinary slaves are expectedly lower. In the case of the artisan slaves, however, compensation amounts can be equal to a freeman's wergild and even a freeman from the middle class. To illustrate, the wergild of a slave goldsmith is similar with the wergild of a freeman who belongs to the middle class. The nationality of a slave is also one of the determining factors in the Laws of the Burgundians. Although wergild amounts of their Roman equivalents are not included, wergild of a barbarian house servant or a messenger is overemphasized. Nevertheless, such a racial discrimination does not apply when it comes to a ploughman or swineherd, which means Romans and barbarians are held under the same condition in the matter of killing slaves.<sup>209</sup>

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<sup>208</sup> Katherine Fischer Drew, *The Burgundian Code* (Philadelphia: University of Pennsylvania Press, 1972), 14.

<sup>209</sup> *LG*, X.

In terms of the wergild amounts of unfree people, the amount for a royal agent (steward) is 150 solidi,<sup>210</sup> a private person's agent is 100 solidi,<sup>211</sup> for a slave goldsmith it is 200 solidi,<sup>212</sup> for a slave silversmith it is 100 solidi,<sup>213</sup> for a slave blacksmith it is 50 solidi,<sup>214</sup> for a slave carpenter it is 40 solidi,<sup>215</sup> for a barbarian trained house servant or messenger it is 60 solidi, for an ordinary slave it is 30 solidi and for a slave (Roman or barbarian) ploughman or swineherd, the wergild amount is set at 30 solidi. In addition to the wergild, an extra amount of 20 solidi should be paid as a fine.<sup>216</sup>

In cases of slaves (*servi*) and serfs (*originarii*) who are accused of crimes, the master of the accused slave should receive a wergild as much as the value of the slave or serf by the accuser. After that, the accused slave or serf should be handed over for torture. If he confesses his crime, he shall be handed over to death and his master should get his wergild back, if he does not confess, then the master of the accused slave should either be compensated with a substitute slave by the accuser or he may as well prefer to keep the wergild that he had already received.<sup>217</sup> Despite its complexity at first glance, it seems that such enforcement is applied in order to prevent any false accusation. The application of prepaid wergild is apparently implemented in order to in order to avoid any misunderstanding between the parties. Because of the fact that bringing an accusation against somebody is something that requires no pecuniary obligation under normal circumstances, in such a serious case that the parties may easily contradict enforcement of prepaid wergild is definitely the

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<sup>210</sup> *LG*, L, 1.

<sup>211</sup> *LG*, L, 2.

<sup>212</sup> *LG*, X, 2.

<sup>213</sup> *LG*, X, 3.

<sup>214</sup> *LG*, X, 4.

<sup>215</sup> *LG*, X, 5.

<sup>216</sup> *LG*, X, 1.

<sup>217</sup> *LG*, VII.

most deterrent factor. It makes the accuser party think about the consequences before being completely certain. To some extent, it is to avoid criminalizing an innocent slave. It also prevents the slave owners from making malicious accusations.

On striking another's freedman or slave by various means such as lash, rod, a kick or a punch, if anyone strikes a freedman, he shall be liable to pay 1 semissis for each blow and 4 solidi as fine.<sup>218</sup> However, if he strikes another's slave, he shall pay 1 tremissis for each blow and 3 solidi as fine.<sup>219</sup> Moreover, if anyone violently pulls hair of another's freedman or slave, his punishment will be determined in the case of blows.<sup>220</sup> If a slave strikes another in order to protect his master, the master shall pay 1 solidus for the blow that was struck by the slave.<sup>221</sup>

In cases of inflicted wounds, if anyone cuts off another's arm, the aggressor should pay half of the victim's wergild but if the arm is not cut off, the amount should be determined in accordance with the seriousness of the wound.<sup>222</sup> In case of inflicting a wound on another's face, the aggressor should pay three times the price of the fee ordinary for wounds on other parts of the body.<sup>223</sup>

As for knocking out teeth, if a slave intentionally does that to a native freeman, his hand shall be cut off. If he knocks it out accidentally, he shall pay the price for the tooth in accordance with the victim's status.<sup>224</sup> However, if a freeman knocks out a tooth of a freedman, he shall be liable to pay 3 solidi, if the victim is another's slave then he shall pay 2 solidi to his master.<sup>225</sup>

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<sup>218</sup> *LG*, V, 2.

<sup>219</sup> *LG*, V, 3.

<sup>220</sup> *LG*, V, 5.

<sup>221</sup> *LG*, V, 7.

<sup>222</sup> *LG*, XI, 1.

<sup>223</sup> *LG*, XI, 2.

<sup>224</sup> *LG*, XXVI, 4.

<sup>225</sup> *LG*, XXVI, 5.

Concerning those who have bound a freedman or a slave illegally, if anyone does that to a freedman, he shall pay him 6 solidi and pay an additional 6 solidi as fine.<sup>226</sup>

If anyone binds a slave, he shall pay 3 solidi and pay an additional 3 solidi as fine.<sup>227</sup>

However, if a slave binds someone, he shall receive a hundred blows.<sup>228</sup>

As it has been already mentioned, the royal slaves (*pueri nostri*) and servants (*wittiscalci*) are treated differently in the *LG*. In order to avoid striking down the royal slaves who execute the judgements and collect fines, certain measures are taken. In such a case, the attacker, either a man or a woman, shall pay 3 solidi for each blow. In the *LG*, it is made sure that these agents shall be avenged.

### **3.3 Punishment for Lesser Violence in the *Edictum Theodorici***

Although content of the *Edictum Theodorici* is comparatively limited for the aforementioned reasons, a number of articles relate to the matter of slaves and serfs. Nevertheless, most of these deal with the crimes committed by them, especially against freemen and freewomen. Since crimes against such individuals are covered in other chapters of this work, the subject matter of this section mainly dwells on the unfree men who are involved in a crime. Clearly, it is not fairly certain that the offenses against one's or another's slave are involved in the nonextant sections of the code. Still, the remaining articles provide an opportunity to comprehend the value attributed to the unfree people.<sup>229</sup> It is also possible to come across relatively harsher impositions of penalty, not only on the slaves but also on the half-freeman, which is called *colonus*.

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<sup>226</sup> *LG*, XXXII, 2.

<sup>227</sup> *LG*, XXXII, 3.

<sup>228</sup> *LG*, XXXII, 4.

<sup>229</sup> Sean D. W. Lafferty, *Law and Society in the Age of Theodoric the Great: A Study of the Edictum Theodorici* (New York: Cambridge University Press, 2013), 140.



The *ET* decrees that the slaves who intentionally inflict violence towards others shall be punished extremely. However, in the case of slaves who commit violence through the instruction of their master, the punishment shall be given to the master, who will be held for the penalty of violence.<sup>230</sup> Concerning the slaves and *colonus* who commit arson, they shall be burned to death.<sup>231</sup> Additionally, if anyone tortures another's slave, he shall be liable to pay compensation as much as the slave's value to the owner of the slave.<sup>232</sup>

All in all, even though the *ET* lacks certain punitive sanctions on the slaves and freedmen, it essentially covers the basic impositions of penalty in cases that they are involved directly or indirectly. As is the case with the other codes, the amounts of compensation are not mentioned in the Edict. However, it is possible to observe the results of specific criminal damages, which may as well differ in practice. Not to repeat the fact that these punishment phases include relatively harsher penalties, which is also unique to the Rothair's Edict. Additionally, the coverage of *colonus* in conjunction with the slave is visible in numerous cases. That means the people who are at the status of *colonus* are not judged independently of the slaves despite they being placed in a state between freedom and slavery.

### **3.4 Punishment for Indictable Offences in the *Lex Salica***

Although the *Lex Salica* offers a wide range of content on the murder of freemen of any status, the rarity of sentences concerning the unfree subjects is a notable feature of this code. Nevertheless, it contains quite a few cases including the offenses both committed by the unfree and committed against them. In terms of the context, it is possible to draw the conclusion that the Salian Franks attach more importance to

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<sup>230</sup> *ET*, LXXVII.

<sup>231</sup> *ET*, XCVII.

<sup>232</sup> *ET*, C.

their slaves than anyone else since the criminal slaves are not easily sentenced to death as long as they do not kill a freeman. Instead, the slave and his master share punishment in most cases as elaborated below. In addition, the *LS* estimates the same value for the unfree people in spite of their different professions. Such a differentiation between different occupational groups is not strictly observable in the *LS*, apparently there is no such a distinction between the different genders.

The *LS* decrees that when a slave murders another, whether the victim is male or female, their masters should divide the slave between themselves (*theoleodi* or *theoleodina*).<sup>233</sup> If a freeman beats another's slave so that he prevented the slave from doing his job for more than forty days, he shall pay one solidus to the master of the slave (*daudinario*).<sup>234</sup> If a slave or half-free man murders [*letus*] a freeman, he shall be handed over to the relatives of the victim as half of the wergild. The other half shall be compensated by the owner of the perpetrator.<sup>235</sup> If anyone murders a male household slave [*vassum ad ministerium*], a female household slave [*puellam ad ministerium*], or a blacksmith, or a goldsmith, or a swineherd, or a wine merchant, or stableman he shall be compelled to pay 30 solidi. Additionally, he should pay an extra amount (*fredo*) of 45 solidi as compensation (*faido*) for the breach of the peace.<sup>236</sup>

### **3.5 Punishment for Indictable Offences in the *Lex Ribuaria***

The Laws of the Ripuarian Franks differ on a vast scale from its Salian counterpart in terms of giving a wider coverage to several cases of slaves who are involved in a number of criminal acts. The cases are clearly dealt with in a more comprehensive

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<sup>233</sup> *LS*, XXXV, 1.

<sup>234</sup> *LS*, XXXV, 4.

<sup>235</sup> *LS*, XXXV, 8.

<sup>236</sup> *LS*, XXXV, 9.

manner, including both the offenses committed by the slaves and against the slaves. The narrow gap between the number of articles concerning the slaves and the freemen in most cases is also one of the notable features of the *LR*. Violence towards the servants of the king is also emphasised in multiple cases. The offenses committed by those, however, are penalized more severely than the offenses committed by the ordinary slaves. Aggression towards churchmen by the unfree is also touched upon more particularly, which is an indicator of the clergymen's exceptional position in Ripuarian community. For every offense a slave committed, as in the cases of freemen, the *LR* offers two options for the criminal slaves and their owners; either making a monetary payment in order to cover the damage or swearing an oath with specified number of oathtakers. While, the sum to be paid is the owner's responsibility, the identities of those to swear an oath on behalf of the offender remains uncertain.

According to the *LR*, if anyone murders a slave, he either should be liable to pay 36 solidi as compensation or he should swear with six oathtakers.<sup>237</sup> However, if the victim is one of the king's men, the offender either should pay 100 solidi or swear with twelve oathtakers.<sup>238</sup>

In cases of bloodless batteries, if a freeman strikes a slave more than three times but if he does not shed his blood, he should pay 1 solidus or he if he denies it, he may also swear with six oathtakers.<sup>239</sup> If a clergyman or a king's man does that, he shall be compelled to pay 3 solidi or he may swear with six oathtakers.<sup>240</sup> However, if a slave strikes at a king's man or a clergyman or a Frank, he should pay 3 solidi up to

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<sup>237</sup> *LR*, VIII.

<sup>238</sup> *LR*, IX.

<sup>239</sup> *LR*, XX, 1.

<sup>240</sup> *LR*, XX, 2.

the third blow or his master should swear with six oath-takers.<sup>241</sup> If a slave batters another, he does not need to pay any compensation up to three blows, yet he should pay 1 tremissis for disturbance of the peace.<sup>242</sup>

Concerning the shedding of blood caused by slaves, if a slave sheds a freeman's or a king's man or a clergyman's blood, he shall be liable to pay 5.5 solidi or his master may swear with six oath-takers.<sup>243</sup> Likewise, if a freeman or a king's man or a clergyman sheds a slave's blood, then he shall be liable to pay 5.5 solidi.<sup>244</sup> However if a slave sheds the blood of another slave, he should pay 3.5 solidi.<sup>245</sup>

In cases of broken bones of slaves, if a freeman or a king's man or a clergyman breaks the bones of a slave, he shall be liable to pay 9 solidi or he should swear with six oath-takers.<sup>246</sup> If a slave does that to a freeman or a king's man or a clergyman, he shall be liable to pay 36 solidi. However if a slave breaks the bones of another slave, he should pay 5 solidi.<sup>247</sup> If he puts another slave's eye out or cuts off his ear, nose, hand or foot, his master shall be liable to pay 18 solidi.<sup>248</sup> If he castrates another slave, he should either pay 36 solidi or swear with six oath-takers.<sup>249</sup> If a slave murders another slave, his owner shall be liable to pay 36 solidi or he should swear with six oath-takers on behalf of his accused slave.<sup>250</sup> If a slave commits arson, his owner should pay 36 solidi and compensate for the damage or he should swear with six oath-takers if his slave pleads not guilty.<sup>251</sup>

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<sup>241</sup> *LR*, XX, 2.

<sup>242</sup> *LR*, XXIV.

<sup>243</sup> *LR*, XXI, 1.

<sup>244</sup> *LR*, XXI, 2.

<sup>245</sup> *LR*, XXV.

<sup>246</sup> *LR*, XXII.

<sup>247</sup> *LR*, XXVI.

<sup>248</sup> *LR*, XXVII.

<sup>249</sup> *LR*, XXVIII.

<sup>250</sup> *LR*, XXIX.

<sup>251</sup> *LR*, XXVII.

### 3.6 Aggression and Violence against Unfree Men in the *Edictum Rothari*

In the Rothair's Edict, the unfree men and women are divided into two categories as half-free (*aldii*) and household slaves (*servi ministeriales*). While, the household slaves are those who have been taught, nourished and trained at home,<sup>252</sup> the *aldii* are basically half-freemen who cannot enter into legal transactions in their own name and are possessed by an owner (*dominus*). In terms of legal sanctions, the *aldii* are ranked with the slaves in almost all cases. Nonetheless, the main characteristic of the *ER*, which makes it remarkably distinctive among all, originates from its intensive coverage of several criminal cases concerning the unfree as much as the cases related to the freemen. Undoubtedly, such detailed provisions regarding the unfree on several occasions, reflect on the high variety of penalty clauses in the Rothair's Edict. In addition, one's profession is also one of the deciding factors in determining the amount of compensation, which is in direct proportion to the social roles of the unfree people. Finally, the mention of doctor's fee in cases of physical injury is unique to the *ER*, which will be evaluated at length in the following pages.

If anyone wounds an *aldius* or a household slave by striking him, he shall be liable to pay 1 solidus in compensation. In case of two blows he should pay 2 solidi, three blows he should pay 3 solidi, four blows he should pay 4 solidi. If he hits him more than 4 times, they shall not be considered.<sup>253</sup>

If anyone strikes another's *aldius* or household slave on the head, he shall be compelled to pay 2 solidi for each blow. In other words, in cases of two blows, he shall pay 4 solidi and an extra amount of money for he prevented him doing his job

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<sup>252</sup> *ER*, LXXXVI.

<sup>253</sup> *ER*, LXXXVII.

in addition to the doctor's fee. Though, if the slave received more than two blows in the head, they shall not be considered.<sup>254</sup>

If anyone hits the head of another's *aldius* or household slave and consequently, he breaks one or more bones, he shall be liable to pay 4 solidi along with the damage for he prevented him doing his job in addition to the doctor's fee.<sup>255</sup>

Concerning the other injuries inflicted on different parts of the body of another's *aldius* or household slave, if anyone puts another's *aldius'* or household slave's eye out, he shall be liable to pay half of the victim's wergild (*pretium*).<sup>256</sup> If anyone cuts off the nose of another's *aldius* or household slave, he shall be liable to pay 8 solidi along with the damage for he prevented him doing his job in addition to the doctor's fee.<sup>257</sup> If anyone cuts off the ear of another's *aldius* or household slave, he shall be liable to pay 2 solidi along with the damage for he prevented him doing his job in addition to the doctor's fee.<sup>258</sup> If anyone cuts off the lips another's *aldius* or household slave, he shall be liable to pay 4 solidi along with the damage for he prevented him doing his job in addition to the doctor's fee.<sup>259</sup> Similarly, in the case of teeth, 4 solidi for each,<sup>260</sup> for the molar teeth, 2 solidi for each,<sup>261</sup> for a broken arm, 6 solidi should be paid.<sup>262</sup>

If anyone cuts off the hand of another's *aldius* or household slave, he shall be liable to pay half of the victim's wergild.<sup>263</sup> If anyone cuts off a thumb of another's *aldius* or household slave he shall be liable to pay 8 solidi for he prevented him doing his

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<sup>254</sup> *ER*, LXXVIII.

<sup>255</sup> *ER*, LXXIX.

<sup>256</sup> *ER*, LXXXI.

<sup>257</sup> *ER*, LXXXII.

<sup>258</sup> *ER*, LXXXIII.

<sup>259</sup> *ER*, LXXXIV.

<sup>260</sup> *ER*, LXXXV.

<sup>261</sup> *ER*, LXXXVI.

<sup>262</sup> *ER*, LXXXVII.

<sup>263</sup> *ER*, LXXXVIII.

job in addition to the doctor's fee.<sup>264</sup> For the second fingers, the punishment is 6 solidi,<sup>265</sup> for the third (middle) fingers<sup>266</sup> and fourth fingers<sup>267</sup> the fine is 2 solidi. For the and fifth fingers it is 4 solidi.<sup>268</sup> If anyone breaks the hip of another's *aldius* or household slave, he shall be liable to pay 3 solidi for he prevented him doing his job in addition to the doctor's fee.<sup>269</sup> If anyone cuts off the foot of him, he should pay half of the victim's wergild.<sup>270</sup> For the first (big) toe,<sup>271</sup> the amount is 4 solidi, for the second<sup>272</sup> and third<sup>273</sup> toes, it is 2 solidi for each, for the fourth<sup>274</sup> and fifth<sup>275</sup> toes the amount of compensation is 1 solidus.

If, however, anyone inflicts a blow against the chest of another's *aldius* or household slave either with a strike or a weapon, he shall be liable to pay 6 solidi along with the damage for he prevented him doing his job in addition to the doctor's fee.<sup>276</sup> If anyone pierces arm or leg of another's *aldius* or household slave, he shall pay 3 solidi, but if he does not pierce it, he should pay 1 solidus.<sup>277</sup>

In case of the field slaves [*servi rusticani*] who are exposed to violence, if anyone strikes another's field slave in the head, he shall be liable to pay 1 solidus.<sup>278</sup> In case of the injuries to the face, the amount shall be paid is 1 solidus,<sup>279</sup> gouging out eyes of another's field slaves eyes costs half of the wergild,<sup>280</sup> cutting off his nose is 4

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<sup>264</sup> *ER*, LXXXIX.

<sup>265</sup> *ER*, XC.

<sup>266</sup> *ER*, XCI.

<sup>267</sup> *ER*, XCII.

<sup>268</sup> *ER*, XCIII.

<sup>269</sup> *ER*, XCIV.

<sup>270</sup> *ER*, XCV.

<sup>271</sup> *ER*, XCVI.

<sup>272</sup> *ER*, XCVII.

<sup>273</sup> *ER*, XCVIII.

<sup>274</sup> *ER*, XCIX.

<sup>275</sup> *ER*, C.

<sup>276</sup> *ER*, CI.

<sup>277</sup> *ER*, CII.

<sup>278</sup> *ER*, CIII.

<sup>279</sup> *ER*, CIV.

<sup>280</sup> *ER*, CV.

solidi,<sup>281</sup> cutting off his ear is 2 solidi,<sup>282</sup> cutting off his lip is 3 solidi,<sup>283</sup> knocking out his teeth is 2 solidi for each,<sup>284</sup> puncturing his arm or leg is 2 solidi,<sup>285</sup> injuring his chest is 3 solidi,<sup>286</sup> breaking his arm, hip or leg is 3 solidi,<sup>287</sup> cutting of his hand costs half of his wergild,<sup>288</sup> cutting off his thumb is 4 solidi,<sup>289</sup> cutting off his index finger is 3 solidi,<sup>290</sup> cutting off his third<sup>291</sup> or fourth<sup>292</sup> finger is 1 solidus, cutting off his fifth finger is 2 solidi,<sup>293</sup> cutting off his foot costs half of his wergild,<sup>294</sup> cutting off his big toe is 2 solidi,<sup>295</sup> second<sup>296</sup> and third<sup>297</sup> toes are 1 solidus each, fourth<sup>298</sup> and fifth<sup>299</sup> toes are 0.5 solidus each. In addition, if anyone beats another's field slave, he shall be liable to pay 2 solidi up to four blows.<sup>300</sup> More than four would not be counted.

Concerning the wergild amounts of the unfree people from various occupations, the *ER* decrees as follows. If anyone murders an *aldius*, he shall be compelled to pay 60 solidi.<sup>301</sup> For a household slave, the compensation amount is 50 solidi.<sup>302</sup> For a household slave who is an understudy, it is 25 solidi.<sup>303</sup> For a tenant slave<sup>304</sup> or an ox

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<sup>281</sup> *ER*, CVI.

<sup>282</sup> *ER*, CVII.

<sup>283</sup> *ER*, CIII.

<sup>284</sup> *ER*, CIX.

<sup>285</sup> *ER*, CX.

<sup>286</sup> *ER*, CXI.

<sup>287</sup> *ER*, CXII.

<sup>288</sup> *ER*, CXIII.

<sup>289</sup> *ER*, CXIV.

<sup>290</sup> *ER*, CXV.

<sup>291</sup> *ER*, CXVI.

<sup>292</sup> *ER*, CXVII.

<sup>293</sup> *ER*, CXVIII.

<sup>294</sup> *ER*, CXIX.

<sup>295</sup> *ER*, CXX.

<sup>296</sup> *ER*, CXXI.

<sup>297</sup> *ER*, CXXII.

<sup>298</sup> *ER*, CXXIII.

<sup>299</sup> *ER*, CXXIV.

<sup>300</sup> *ER*, CXXV.

<sup>301</sup> *ER*, CXXIX.

<sup>302</sup> *ER*, CXXX.

<sup>303</sup> *ER*, CXXXI.

<sup>304</sup> *ER*, CXXXII.



plowman,<sup>305</sup> the amount shall be paid is 20 solidi. For a field slave who is subordinate to a tenant slave, it is 16 solidi.<sup>306</sup> For an ordinary herder, it is 25 solidi, but for a herder who is a master (*magister*) to two or more learners (*discipuli*), it is 50 solidi.<sup>307</sup> For a cattleherd, goatherd or an oxherd, it is 20 solidi.<sup>308</sup> Those who kill the child of a tenant slave shall be penalized in accordance with the child's age and capability.<sup>309</sup>

### **3.7 Aggression and Violence against Unfree Men in the *Lex Alamannorum***

In the laws of the Alamans, the articles relating violence towards the unfree people are combined with the violence towards the freemen in the cases of battery, bodily injury and mutilation. In respect to this, the articles concerning the unfree men who are the victims of violence can be put in the same equation with the articles concerning the freemen. Nonetheless, it is possible to come across certain articles that only deal with compensating related persons. The alternative of swearing an oath is also valid for those who commit an offense in most cases even though the number of oathtakers may depend on one's status. Also, there is a mention of different types of oathtakers in certain cases, which separates the *LA* from its variants.

If anyone kills a man who had been freed through a charter, in other words, if anyone kills a freedman, he shall be liable to pay 80 solidi to the victim's sons.<sup>310</sup> If anyone kills the duke's messenger within the lands of the Alamans, he shall either pay threefold of the victims' wergild or swear an oath with twelve designated men and

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<sup>305</sup> *ER*, CXXXIII.

<sup>306</sup> *ER*, CXXXIV.

<sup>307</sup> *ER*, CXXXV.

<sup>308</sup> *ER*, CXXXVI.

<sup>309</sup> *ER*, CXXXVII.

<sup>310</sup> *LA*, XVI.

twelve chosen men.<sup>311</sup> If anyone kills a woman who is in the service of the duke, he shall pay threefold of an ordinary Alamannic woman's wergild.<sup>312</sup>

### **3.8 Aggression and Violence against Unfree Men in the *Lex Baiuvariorum***

In the case of the *LB*, the articles on violence towards the unfree can be examined in two main sections; violence against the freedmen and violence against the slaves. In terms of the context, however, there seems to be not much of a gap between the sentences given in terms of the amount of penalty.

Concerning the freedmen and the crimes that pertain to them, if anyone hits a freeman (*pulislac*), he shall be compelled to pay 1.5 solidi.<sup>313</sup> If he spills the freedman's blood, he should pay 8 and 1.5 solidi.<sup>314</sup> If he lays a hand on a freedman illegally (*infanc*) or if he wounds him so the freedman needs a physician or his skull appears, or he cuts his vein, then he shall be liable to pay 1.5 solidi.<sup>315</sup> If he breaks his head bone or his upper arm because of such an assault, the offender should pay 3 solidi.<sup>316</sup> If his internal organs or brain appears (*hrevavunt*), the offender should pay 6 solidi.<sup>317</sup> If he knocks out a freedman's eye or cuts off his hand or foot, he should pay 10 solidi.<sup>318</sup> If he cuts off his thumb, the perpetrator shall be compensated with 6 solidi. For an index finger or little finger, the compensation is 1.5 solidi. For a middle finger or ring finger, it is 1 solidus.<sup>319</sup> If anyone cripples a freedman, he should pay 6

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<sup>311</sup> *LA*, XXIX.

<sup>312</sup> *LA*, XXXII.

<sup>313</sup> *LB*, V, 1.

<sup>314</sup> *LB*, V, 2.

<sup>315</sup> *LB*, V, 3.

<sup>316</sup> *LB*, V, 4.

<sup>317</sup> *LB*, V, 5.

<sup>318</sup> *LB*, V, 6.

<sup>319</sup> *LB*, V, 7.

solidi.<sup>320</sup> However, if he kills him, he should pay 40 solidi to the freedman's master.<sup>321</sup>

Regarding the slaves who are subjected to violence, if anyone deals a blow at another's slave, the slave shall be compensated with 1 tremissis.<sup>322</sup> If anyone spills blood of another's slave, he should give the slave 1 solidus.<sup>323</sup> If he commits *infanc* on another's slave or if he wounds him so that the slave needs a physician or his skull appears, or he cuts his vein, then he shall be liable to pay 1 Solidus.<sup>324</sup> If he fractures the slave's bone, he should pay 1.5 solidi.<sup>325</sup> If anyone commits *hrevavunt* towards a slave or he hits him so much that the slave becomes half-dead, he shall be compelled to pay 3 solidi.<sup>326</sup> If he knocks out a slave's eye or cut off his hand or foot, he should pay 5 solidi.<sup>327</sup> If he cuts off his thumb, he shall be compensated with 3 solidi. For an index finger or little finger, the compensation is 2 solidi. For a middle finger or ring finger, it is 1 solidus.<sup>328</sup> Compensation for piercing a slave's nose is 2.5 solidi.<sup>329</sup> If anyone disfigures the lower lip, ear or lower eyelid of a slave, the victim shall be compensated with 1.5 solidi; however, if he disfigures the upper lip or upper eyelid of a slave, he should pay 1 solidus.<sup>330</sup> If anyone knocks out his incisor tooth (*marchzand*), he should pay 3 solidi, for the other teeth, he should pay 1.5 solidi.<sup>331</sup> If he cuts off his ear, the victim shall be compensated with 1.5 solidus, if he pierces it, 1 solidi. If he leaves the slave deaf or cripples him (*taudregil*), the victim shall be

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<sup>320</sup> *LB*, V, 8.

<sup>321</sup> *LB*, V, 9.

<sup>322</sup> *LB*, VI, 1.

<sup>323</sup> *LB*, VI, 2.

<sup>324</sup> *LB*, VI, 3.

<sup>325</sup> *LB*, VI, 4.

<sup>326</sup> *LB*, VI, 5.

<sup>327</sup> *LB*, VI, 6.

<sup>328</sup> *LB*, VI, 7.

<sup>329</sup> *LB*, VI, 8.

<sup>330</sup> *LB*, VI, 9.

<sup>331</sup> *LB*, VI, 10.

compensated with 4 solidi.<sup>332</sup> However if he kills another's slave, he should pay 20 solidi to the freedman's master.<sup>333</sup>

### **3.9 Aggression and Violence against Unfree Men in the *Lex Visigothorum***

According to the laws of the Visigoths, if a freeman strikes another's slave any kind of a blow upon the head, he shall pay 2.5 solidi for a bruise, 5 solidi if the skin is broken, 10 solidi for a wound extending to the bone, and a 50 solidi where a bone is broken. If a slave strikes a blow to another, as above mentioned, he should pay a third part of the above penalties, proportionate to his offence, and should receive fifty lashes. If a slave, however, injures a freeman, he shall be liable to pay the largest sum hereinbefore mentioned, which is exacted from freemen for assaults upon slaves, and should receive seventy lashes. If the owner is not willing to give the punishment for the acts of his slave, he should surrender him on account of his crime.<sup>334</sup>

If a freeman intentionally mutilates another's slave, he shall be liable to give another slave of equal value to the owner; and he should keep the one that was wounded, to be cared for at his expense until he is cured. And if he recovers, the offender should pay such an amount in damages as may seem just to the court. Also, the victim should be restored to his owner, safe and sound, and owner should keep him again as his slave. The offender, on account of his crime, since he did not commit a murder, but only wounded the slave of another, should pay 10 solidi to his master.<sup>335</sup>

If a slave, without the permission of his owner, strikes a freeman, and the victim dies from the effect of the blow, the slave should be punished for homicide; but if the

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<sup>332</sup> *LB*, VI, 11.

<sup>333</sup> *LB*, VI, 12.

<sup>334</sup> *LV*, Liber Sextus, IV, 1.

<sup>335</sup> *LV*, Liber Sextus, IV, 9.

victim does not die at once, the slave should be imprisoned; and if he the victim recovers, the aggressor slave should receive two hundred lashes. If the owner of aggressor slave wish to do so, he may pay in satisfaction of the wound, whatever sum is assessed by the court; and, if he does not wish to do so, his slave should be given to the injured party as compensation for his crime.<sup>336</sup>

If a slave mutilates another, he should get one hundred lashes, in addition to the penalty of fine due for the wound, and if, as a result of that wound, the victim becomes permanently disabled, the judge should calculate how much his value has been diminished as a result. If his owner refuses to receive the calculated sum, as compensation, he should be entitled to acquire the price of the slave who was wounded, or one of equal value, from the offender, and his owner should retain the wounded slave as his own. Also, this law applies to the female slaves.<sup>337</sup>

If a freeman kills a slave accidentally, he shall be liable to pay to the owner of the slave one-half of the amount which has been determined by way of compensation in the case of freemen, under similar circumstances.<sup>338</sup>

If a slave kills a freeman accidentally, he should pay the same sum which the former law has concluded in the case of other freemen. However, if the owner is unwilling to pay the compensation for his slave, the latter should be given up to justice immediately.<sup>339</sup>

If a slave is sentenced of having unintentionally killed another, his owner should pay to the owner of the victim, by way of compensation, one half the amount required by law, under similar conditions, where death happens as the result of an accident. If the

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<sup>336</sup> *LV*, Liber Sextus, IV, 10.

<sup>337</sup> *LV*, Liber Sextus, IV, 11.

<sup>338</sup> *LV*, Liber Sextus, V, 9.

<sup>339</sup> *LV*, Liber Sextus, V, 10.

owner refuses to give compensation as aforesaid, he should give up the slave to the owner of the victim.<sup>340</sup>

### 3.10 Discussion and Conclusion

In the view of such information and data, we can make a considerable amount of inferences and analyses on unfree men who were subjected to *leges barbarorum*. Firstly, with respect to *Lex Gundobada*, the existence of a social class of agricultural servants, *coloni* and *originarii* actually refers to the trend towards a feudal system. Among the Burgundians, it is likely that these unfree people who were bound to soil, have been traditionally regarded as slaves rather than serfs in a medieval fashion. Nevertheless, it is difficult to categorise *coloni* and *originarii*, because of the fact that they had the right to be compensated fully in cases of false accusations made against them. Such a circumstance, in fact, distinguishes them from ordinary slaves mentioned in the other *leges*. As opposed to *coloni* and *originarii*, monetary payments were received by their masters instead of themselves in case of a bodily injury. Moreover, there is a clear distinction between the slave and *colonus* since *colonus* was not beaten; instead they were fined in the case of a criminal act. Thus, it can be claimed that *coloni* and *originarii* were somewhere in between slave and serf since they seem to have enjoyed at least a semi-legal competence.<sup>341</sup>

In the case of *Edictum Theodorici*, however, it is possible to find both *colonus*<sup>342</sup> and *originarius*.<sup>343</sup> While *colonus*, here, could mean either free tenant or owner cultivator as in the late Roman term. However, since the *ET* do not always make a distinction between those, it is difficult to understand whether it meant free tenant or owner

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<sup>340</sup> *LV*, Liber Sextus, V, 20.

<sup>341</sup> Drew, *The Burgundian Code*, 14.

<sup>342</sup> *ET*, *LXIV*.

<sup>343</sup> *ET*, *LXVIII*.

cultivator. Although the fact that they were both taxed might actually indicate they were superior in social rank compared to *servus*, the fact that they were put in the same equation with the *servus* when it comes to punishment and *colonus*, *originarius* and *servi* were all treated equally before the law could mean that there was not a big difference amongst these ranks. In the *ET*, there is always a possibility that both *colonus* and *originarius* indicate an attachment to a specific place of land similar to *servus* and designate that status of ignoble birth.<sup>344</sup>

As exemplified in detail, the *Lex Salica* and *Lex Ribuarica* also make references to people in inferior rank such as freedmen, half-free men and slaves (*lidi*). However, we are able to describe only the slave from all the information provided by the *LS* and *LR*. In other words, the definition of slave is not clear in these codes as well. Most of the laws concerning slaves deal with the slave only insofar as they were property, and injury to slave meant a property loss to their masters. Slaves were valued between 15 and 36 solidi and they were valued in accordance with their specific occupations. What was the status of a freedman is not indicated by either the *LS* or *LR*. Although it is difficult to know their social function, references made to freedmen and *lidi* might indicate that they were still dependant to their masters before the law. By the reason of the fact that the value of a half-free man was the same as that of a Roman freeman and half the value of a Frankish freeman, it can be asserted that both freedmen, half-free men and slaves enjoyed a status about half-way between slave and free as in the case of the *LG*.

In the the *Edictum Rothari*, there are different lower classes in the Lombard Society and *aldii* were one them. In fact, *aldius* referred to a status that is not necessarily coming from a Lombard origin but they were non-Lombard Germans who were

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<sup>344</sup> Lafferty, *Law and Society in the Age of Theodoric the Great*, 99.

superior than the slaves in terms of status and value.<sup>345</sup> Despite their superiority in value, they were not able to enter into transactions in their own name as freemen could. At the same time, *aldii* did not have a right to give and receive compensation and they were legally tied to a freeman [*patronus*] who was often called a lord. In short, the *aldii* basically seems to have served the same purpose as those called serfs in the later periods. As for the slaves in the *ET*, it is known that they were the lowest social class as in the other *leges*. However, there are different types of slaves such as household slaves [*servi ministeriales*] and agricultural slaves [*servi rustici*]. The fact that these slaves were not legally competent might indicate that they were closer to slaves in the Roman context. However, a lot of slaves were especially hard and the high value placed on the life of a trained slave indicates that the slaves held very important position in the Lombard economy.

As it has been elaborated in the particular sections, the *leges* applied legal sanctions on those who inflict any kind of injury, even if it is a minor wound. Obviously, it is possible to make further inferences by comparing the legal topics regarding lesser violence. All in all, the *leges barbarorum* seem to attach a great importance to criminal punishment in any case of violence, even when a lowest rank person is the one subjected to it. Apparently, the king's or duke's slaves were valued more highly than the slaves of others. Yet, all should be compensated in case of an injury regardless of their master's social rank. Nonetheless, this compensation was received by their owners since the death of a slave was regarded as a loss for his owner. Those payments were not made for the actual wounds that are received by slaves but in order to make restitution for the work lost. For instance, the *ET* required an additional payment for the doctor's fee in these cases. It is, in the Germanic societies,

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<sup>345</sup> The value of an *aldius* was 60 solidi. To compare their wergild with other unfree people see the appendix.



one of the important indicators that the slaves were seen and treated as their masters' property. When a slave inflicted an injury on another person, however, they did not have the same rights as the freemen. The slaves were being whipped or flogged when they committed a lesser violence, but they encountered certain death when they killed someone. Also, extenuating circumstances were not applied to them in most cases. Thus, even if the *leges* seem quite concerned with the individual rights of slaves, such concern served the masters, in other words, the freemen. Nonetheless, while examining the unfree people in the Early Middle Ages, one should be aware of the fact that the term "slave" can be quite changeable in the case of barbarian codes as it may refer to different social identities.

## CHAPTER IV

### VIOLENCE AGAINST WOMEN: ABDUCTION, RAPE AND ADULTERY

#### 4.1 Sexual Crimes in the Barbarian *Leges*

According to Ruth Mazo Karras, the argument that medieval sexual life was completely in the control of a repressive Church is inaccurate.<sup>346</sup> Yet, it is inevitable to agree that the Church had a significant influence on views of sexuality, and it is difficult to assert that the medieval Church had a constructive approach toward sexuality and sexual acts. Karras emphasises that during the Middle Ages, the sexual act was seen as an act done by one person to another rather than a mutual act.<sup>347</sup> Under these circumstances, the barbarian *leges* attach great importance to freewomen and freewomen's rights as much as the freemen. This chapter will focus on aggression and violence against both free and unfree women in the barbarian *leges*. As opposed to violence against male individuals, when women are in question, the *leges* deal with a wider range of criminal diversity including sexual crimes such as rape and abduction. Along with these sexual crimes, violent crimes committed against women will also be analysed in this chapter.

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<sup>346</sup> Ruth Mazo Karras, *Sexuality in Medieval Europe: Doing Unto Others* (New York: Routledge, 2005), 1–2.

<sup>347</sup> Karras, *Sexuality in Medieval Europe*, 23.

The legal understanding of rape during the Middle Ages was, in fact, based on the Roman legal concept *raptus* that originally referred to abducting a woman without her guardian's consent. In such a case, sexual intercourse was not necessarily required for the crime. The crime consisted of the act of abducting the woman from her family or guardian.<sup>348</sup> Medieval term *raptus*, on the other hand, could not only mean abduction but also rape despite most of the barbarian *leges* made a differentiation between the two crimes since they were still considered as parts of a fluid continuum.<sup>349</sup> Such conflation of the two criminal acts can be seen also in the barbarian *leges*. James Brundage, however, argues that for Gratian, *raptus* meant either abducting the girl or having sexual intercourse with her. In this case, the crime would be seen as committed against either her or her family. In terms of sexual crimes, the violence against a woman can also be directed against her family but this would not make any difference in the definition of the crime.<sup>350</sup>

A significant portion of the Germanic laws deals with acts of violence against females, as much as males. In the case of freewomen, generally the penalty involved compensation that is a payment of wergild to the victim herself or her family. In addition, in the cases of serious crimes against defenceless women the compensation amounts could reach up to 1,800 Solidi in special circumstances. Nevertheless, there are certain examples of capital punishment in cases of offences against freewomen by the unfree. In Capitulary VI of the *Lex Salica*, for instance, the death penalty was provided in three cases: if a man marries his father's wife he shall be handed over to death (Cap. VI, I, 2); if a man commits rape he is to lose his life (Cap. VI, II, 2); and if a man kills another man/woman without a cause he will be sentenced to death

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<sup>348</sup> James Brundage, "Rape and Marriage in the Medieval Canon Law," in James Brundage, *Sex, Law and Marriage in the Middle Ages* (London: Varorium, 1993), 63.

<sup>349</sup> James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 209, 249.

<sup>350</sup> Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 311.

(Cap. VI, II, 3).<sup>351</sup> As it is seen, offences against women take an important place in the barbarian legal systems. In this chapter, aggression and violence against women will be analysed in the case of particular *leges*.

#### **4.2 Punishment for Abduction and Lesser Violence in the *Lex Gundobada***

Freewomen's rights in the Burgundian Code are protected as well as the rights of freemen. Abduction, for instance, is viewed as one of the serious crimes that can be committed against a girl and her family. In this case, the abductor should pay nine fold of the girl's wergild.<sup>352</sup> If, however, he brings her back uncorrupted, he must compound six times the wergild of the girl.<sup>353</sup> But if the offender cannot afford it, then the girl's family may have the power of doing to him whatever they choose.<sup>354</sup> If the girl unites with him voluntarily, then he should pay three fold of the marriage prices.<sup>355</sup> In case of a Roman girl who marries with a Burgundian without the consent of her parents, she will be disinherited under such a circumstance.<sup>356</sup> Such a picture represents that in the Burgundian society, individuals attach a great importance to a girl's chastity. In case of the *minores personae*, nine fold of her wergild costs the abductor 1,350 Solidi and six fold costs 900 Solidi, which seems hardly affordable even for a nobleman. In other words, it might be estimated that the abductor's fate is in hands of the girl's family in most cases. It is difficult to know what families did with the offender in such a case. Apart from killing him, they might as well choose to put him into slavery. On the other hand, this legal topic is significant in understanding the social position of the Romans in the Burgundian society. While

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<sup>351</sup> Katherine Fischer Drew, *The Laws of the Salian Franks* (Philadelphia: University of Pennsylvania Press, 1991), 50.

<sup>352</sup> *Leges Burgundionum* (hereinafter referred to as LG), ed. L. R. deSalis, *Monumenta Germaniae Historica*, Legum Sectio I, Tomi II, Pars I (Hanover, 1892), XII,1.

<sup>353</sup> LG, XII, 2.

<sup>354</sup> LG, XII, 3.

<sup>355</sup> LG, XII, 4.

<sup>356</sup> LG, XII, 5.

disinheritance is not a case for a Burgundian girl who voluntarily unites herself with her abductor, such a double standard that is applied to Roman individuals does reflect their inferior position in the Kingdom of Burgundy.

Another crime to be emphasized in the *Lex Burgundionum*, is cutting women's hair off. Even though such an offense is not regarded as one of the serious offenses, it is indeed considered something significant with reference to the related legal topics. If any native freeman cuts a native freewoman's hair off without a cause, he should pay 20 Solidi to the victim and 20 Solidi to the treasury.<sup>357</sup> The same applies for the unfree women and the compensation amounts vary in accordance with their social status. As a matter of fact, such an offense is considered as a kind of humiliation regardless of whom it was committed against. However, if the woman whose injury the judges have ordered to be punished is not innocent or if she commits fornication voluntarily, then the offender shall suffer no injury.<sup>358</sup> Thus, women appear to be compensated without considering their social status. However, while this payment is made to the maidservant herself in case of cutting her hair off, when she suffers a bodily injury by a native freeman, the total compensation valued 40 Solidi is divided between her master and the king's treasury.<sup>359</sup> It might be asserted that the laws of the Burgundians allow unfree people to be compensated only to a certain extent.

It is also possible to observe rare cases that do not favour freewomen. For instance, if a free girl unites voluntarily with a slave, both shall be killed.<sup>360</sup> However, if her family wishes to save her from death, the girl should be deprived from her free status and delivered into service of the king.<sup>361</sup> The *Lex Burgundionum* categorically

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<sup>357</sup> *LG*, XXXIII, 1.

<sup>358</sup> *LG*, XXXIII, 5.

<sup>359</sup> *LG*, XXX, 1.

<sup>360</sup> *LG*, XXXV, 1.

<sup>361</sup> *LG*, XXXV, 1.

prohibits native free women from having sexual intercourse with a slave. Nevertheless, there is no legal topic that refers to the prohibition of intercourse with a maidservant, in case of native freemen. Aforementioned double standard that favours people from higher class might have been as well applied to a male-dominant society to a large extent.

#### **4.3 Punishment for Abduction and Adultery in the *Edictum Theodorici***

Compared to the legal titles concerning the abduction of free women in the *Lex Burgundionum*, the *Edictum Theodorici* includes relatively harsher punishments in case of abduction (*raptus*) of a freeborn woman or virgin.<sup>362</sup> The edict decrees that the abductor and his accomplices or assistants shall be executed once his crimes have been proven; if the abducted consents to her abductor, she shall be executed as well.<sup>363</sup> However, if parents or guardian of the abducted girl neglect to take legal measures against the abductor and if they make an agreement concerning this crime, both parties shall be exiled.<sup>364</sup> If a slave finds out that his owners are involved in such crime and reports this to the court, he shall be freed.<sup>365</sup> As in the case with the *Lex Burgundionum*, abduction of a freeborn woman or girl is considered as one of the most serious offenses against free woman by the *Edictum Theodorici*. Additionally, the following title informs that the legal process of such offense is not more than five years:

Let it be permitted for all to make an accusation of abduction (*raptus*) within a period of five years, but after this period let no-one initiate an investigation of this crime, even if it is shown that a legal action could have been brought forward within the period of time prescribed above: particularly since all the children from this marriage [which has been contracted by the crime of abduction] are protected

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<sup>362</sup> Sean D. W. Lafferty, *Law and Society in the Age of Theodoric the Great: A Study of the Edictum Theodorici* (New York: Cambridge University Press, 2013), 140.

<sup>363</sup> *Edictum Theoderici Regis* (hereinafter referred to as ET), ed. Friedrich Bluhme, *Monumenta Germaniae Historica*, Legum, Toms V, (Hannover, 1889), XVII.

<sup>364</sup> ET, XIII.

<sup>365</sup> ET, IXX.

both by the authority and privilege of legitimacy after a period of five years has passed.<sup>366</sup>

The term “*raptus*” here, presumably covers both the abduction and corruption of the abducted woman/girl. Theodoric’s Edict does not tell what kind of a penalty should be imposed on the abductor if he brings the girl back uncorrupted.

Adultery is also considered as a major crime in the Theodoric’s edict. Those who commit adultery, regardless of the gender, shall be handed over to a violent death.<sup>367</sup>

Here, unlike the Burgundian laws in which if the injured party kills the adulterer or adulteress, they should pay his/her wergild,<sup>368</sup> the *Edictum Theodorici*, however, requires no compensation from the injured party upon killing them.

Adulterers were not always imposed the heaviest punishment though. If a nobleman, who is supported by a paternal inheritance, defiles a virgin he shall be compelled to accept her as his wife and should give up to her a fifth of his patrimony as dower. If, however, he is already married, he should give up a third of his patrimony to the girl whom he corrupted.<sup>369</sup> But, if this is done by a slave or *originarius* to a freeborn virgin, he shall be executed.<sup>370</sup> Contrary to the Burgundian laws, the edict clarifies what will happen if anyone corrupts another’s virgin slave woman or *originaria*:

If the owner of the slave woman does not consent, or the corruptor is unwilling to acknowledge this [in the municipal records], then he shall either give the owner two slaves of equal value should he suffer any financial loss as result of this; or, if he is unable to fulfil this, upon being flogged most severely with military rods, he shall be judged by a board of magistrates of the nearest city; the judge of that place, mindful of his written statement, will be obligated to ensure that this is carried out.<sup>371</sup>

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<sup>366</sup> Sean D.W. Lafferty, *The Edictum Theoderici: A Study of a Roman Legal Document from Ostrogothic Italy*, 266.

<sup>367</sup> *ET*, XXVIII.

<sup>368</sup> *LG*, LXVIII, 2.

<sup>369</sup> *ET*, LIX.

<sup>370</sup> *ET*, LXIII.

<sup>371</sup> Lafferty, *The Edictum Theoderici*, 278.

As is seen from the text, the laws have tendency to protect the subjects' property, although the crime is committed by a freeman. Indeed, the point to be emphasised here is the way of punishment. In most of the *leges*, it is difficult to come across flogging in cases of freeman despite it being a common type of punishment for unfree people. Flogging of freemen is in fact quite common and it is applied in cases of the execution of judicial directives, violence by an armed force and purchasing or selling a freeman. Nevertheless, unspecified compensation amounts in such cases makes any comparison relatively difficult.

#### **4.4 Punishment for Abduction and Femicide in the *Lex Salica***

There are various legal cases of abduction of free women in the laws of the Salian Franks. These legal cases, however, do not usually include any case of intercourse with the abducted as we shall see in this section. The Salic laws also focuses on the abductions that committed by a band of men. To exemplify, if three men abduct a girl from her house, they shall be compelled to pay 30 solidi (*ambahtonía*).<sup>372</sup> If there are more than three men involved, each (over three) shall pay 5 solidi.<sup>373</sup> Those who carried arrows shall each pay an additional 3 solidi.<sup>374</sup> The abductor himself shall be liable to pay 62.5 solidi.<sup>375</sup> With reference to the *Lex Burgundionum*, it is possible to state that the Salian Franks have widened the titles of abduction by adding critical cases as in the case of most legal titles. More importantly, Salic laws put higher compensation amounts under such circumstances. Nevertheless, it includes certain similar applications such as if a free girl voluntarily unites herself with a slave she

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<sup>372</sup> *Pactus Legis Salicae* (hereinafter referred to as LS), ed. Karl August Eckhardt, *Monumenta Germaniae Historica*, Legum Sectio I, Tomi IV, Pars I (Hanover, 1862) XIII, 1.

<sup>373</sup> LS, XIII, 2.

<sup>374</sup> LS, XIII, 3.

<sup>375</sup> LS, XIII, 4.



loses her free status<sup>376</sup> as in the case of *LG*, however, whom she shall serve is not specified. Moreover, Salic laws deal with the abduction of unfree girls like the *Edictum Theodorici*.<sup>377</sup> While the Edict decrees that abductor of a slave girl shall lose his free status, Salic laws apply a law of retaliation in that the abductor gives away his female slave to the injured party (*paciatur*).<sup>378</sup> In terms of *fredus*, the Salic laws require such payment only in case of one of the king's servant being abducted contrary to the Burgundian laws that require *fredus* in any case of abduction. As for rape, it is briefly covered in the subtitle of article XIII. If anyone attacks a betrothed girl and forcefully has intercourse with her (*gangichaldo*), he shall be liable to pay 100 solidi, which his equal to half wergild of a free woman/girl.<sup>379</sup>

On aggression towards women, the Salic laws cover almost every age group and attribute a great importance to pregnant women. Penalties for such crimes are generally more severe depending on the victim's age. Specifically, if anyone kills a freewoman who is able to bear children, he shall pay 600 solidi.<sup>380</sup> For a woman who is not able to bear children, the amount is 200 solidi.<sup>381</sup> If anyone kills a pregnant woman, he shall pay 700 solidi.<sup>382</sup> Compared to men's wergild these amounts might seem extraordinary. However, it also represents the significance attached to the continuity of a nation. Such a big gap between the compensation amounts for childbearing women and others may also signify a male-dominant society in large measure. It may also have something to do with the fact that these women, if healthy, can bear and produce more members for the community.

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<sup>376</sup> *LS*, XIII, 8.

<sup>377</sup> *ET*, XXI.

<sup>378</sup> *LS*, XIII, 9.

<sup>379</sup> *LS*, XIII, 14.

<sup>380</sup> *LS*, XXIV, 8.

<sup>381</sup> *LS*, XXIV, 9.

<sup>382</sup> *LS*, XXIV, 5.

Concerning the lesser violence, cutting a woman's hair off is also a serious issue in the Salic laws. For instance, penalty for cutting a free girl's hair off is 45 solidi.<sup>383</sup> Essentially, a similar situation applies for a long haired boy as well.<sup>384</sup> The compensation to be paid is also same. Intensive mention on cutting someone's hair off without his/her consent actually symbolizes that hair meant a lot for the Salic people. After all, Merovingians identified their kings as being war lords with long hair. It was a sign of strength and virility for Frankish men. This picture, on the other hand, shows that hair is also quite significant to the Frankish women as well.

#### **4.5 Punishment for Murder of Churchwomen in the *Lex Ribuaria***

In terms of compensation amounts of the abduction of freewomen, the *LR* is completely identical with *LS* but even though *LR* also resembles *LS* of in terms of compensation amounts for homicide of women, it addresses to a larger mass including the churchwomen. Similarly to *LS*, in *LR*, penalty for killing a woman who is able to bear children is 600 Solidi.<sup>385</sup> For killing others, such as a Ripuarian free girl and Ripuarian woman who is older than forty, the penalty is 200 Solidi.<sup>386</sup> Additionally, if anyone kills a churchwoman who is capable of having children, he shall pay 300 Solidi.<sup>387</sup> However if the victim is a church girl or if she is older than forty, then the compensation to be paid is 100 Solidi.<sup>388</sup> The social status of such women, nonetheless, is unknown. Presumably, they can be viewed in the category of unfree because there is a considerable difference between the wergild amounts of freewomen and churchwomen. Therefore, the churchwomen are placed in the

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<sup>383</sup> *LS*, XXIV, 3.

<sup>384</sup> *LS*, XXIV, 2.

<sup>385</sup> *LR*, XII, 1.

<sup>386</sup> *LR*, XXIII.

<sup>387</sup> *LR*, XXIV.

<sup>388</sup> *LR*, XXV.

category of unfree in the table.<sup>389</sup> Although their compensation amounts are less than the freewomen's, wergild of a church girl is equal to the wergild of a subdeacon and wergild of a fertile churchwoman is equal to a deacon's wergild amount. It appears that the churchwomen are considered as significant as freewomen. Contrary to common belief, emphasis on capability of having children might represent that such thing is not forbidden for the churchwomen by the Ripuarian church. However, it might as well be an indicator of the age of the churchwoman even though such a possibility seems unlikely.

#### **4.6 Punishment for Abduction and Rape in the *Edictum Rothari***

Even though the Edict of Rothair mostly deals with the violent acts committed against freemen, it is possible to find some titles that concern aggression against women. For instance, blocking the way (*wegworin*) of a freewoman or girl is one of the serious crimes. If anyone does that he shall be liable pay 900 Solidi as compensation, half to the victim's guardian and half to the king as *fredus*. However if anyone blocks the road of another's women slave or *aldis*, he shall pay 20 Solidi to her master. The half-free (*aldii*) and household slaves take an important place in the *ER*. If anyone hits another's slave or *aldia* so that an injury appears, he shall pay 1 Solidus for each blow up to four hits. However, if he hit her on the head, he shall pay 2 Solidi for each blow. Also, he should cover the victim's doctor expenses and pay for the work lost. Contrary to the other *leges*, the *ER* seems quite concerned about the work lost and the doctor's fee in case of an injury. Such expression is visible in the titles that focus on injuries and wounds, which can be evaluated as a unique feature of the *ER*. Such a case, in fact, corroborates the idea that both the unfree and half-free were mostly seen as property. Any disruption in their daily works also meant an

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<sup>389</sup> See the appendix

economic damage for the owners. Moreover, in case of killing an *aldia* the perpetrator should pay 60 solidi, which seems relatively high in comparison to other *leges*. This amount, however, was 15 solidi for a household slave, which is also higher in comparison.

As for the violence against freewomen, if anyone forcefully abducts a freewoman, he shall pay 900 solidi, half to the king and half to the victim's relatives. If he kills her, he should pay 1200 solidi, half to the king and half to the victim's relatives.<sup>390</sup> Moreover, the *ET* inflicts harsh punishment on those who rape another's *aldia* and slave. If anyone rapes another man's *aldia*, he should pay 40 solidi,<sup>391</sup> if he rapes another man's slave<sup>392</sup> or freedwoman,<sup>393</sup> he should pay 20 solidi.

As it can be seen, rape and assault are quite serious crimes according to the *ET*. It also attributes great importance to the women's safety and protection. Especially, compensation amounts in such cases are almost equal to the wergild of the victim.

#### **4.7 Punishment for Abduction and Rape in the *Lex Alamannorum***

In the *Lex Alamannorum*, the women who are in the duke's service are superior to other Alamannic women. For instance, if anyone does something contrary to law to women who are under the duke's protection, he should compensate for all things three times what other Alamannic women are compensated.<sup>394</sup>

Interestingly, it was possible for the Alamannic men to have another's wife as long as they paid the price for her. If anyone abducts another's wife, he should return her and pay 80 solidi. However, if he wishes to keep her, he should pay 400 solidi for

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<sup>390</sup> *ER*, CC.

<sup>391</sup> *ER*, CCV.

<sup>392</sup> *ER*, CCVII.

<sup>393</sup> *ER*, CCVI.

<sup>394</sup> *LA*, XXXII.

her. Similarly, if something unexpected happens to the abducted woman and if she dies while her husband is seeking for her, the abductor should pay 400 solidi.<sup>395</sup> In addition, if the abductor and the abducted woman have a child, he/she should belong to the former husband and if the child dies his/her wergild should be paid to the former husband.<sup>396</sup> The same amount of compensation (400 solidi) applies in case of abducting a betrothed woman but if the abductor wishes to return her, he should pay 200 solidi.<sup>397</sup>

Uncovering a woman's head is also considered as a crime according to the *LA*. If any virgin woman's head is uncovered by anyone while she was going on a journey between two estates, he should pay 6 solidi. If he exposes her body so that her genitals appear, he should pay 12 solidi. If he rapes her, then he should pay 40 solidi as compensation. Nonetheless, if anyone commits any of these crimes against an adult woman, he should compensate all things twice.<sup>398</sup>

While aggression against a virgin is penalized more harshly than aggression against an adult woman, the *LA* seems to attach more importance to the adult women. This, in fact, is also visible in abducting another's unbetrothed daughter. If anyone abducts another's unbetrothed daughter, he should pay 40 solidi to the victim's father, instead of 80 solidi.<sup>399</sup>

#### **4.8 Punishment for Abduction and Rape in the *Lex Baiuvariorum***

There are many resemblances between the *Lex Alamannorum* and the *Lex Baiuvariorum* in case of violence against women. For instance, if anyone forcefully has intercourse with another's wife, he should pay the wergild of that wife to the

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<sup>395</sup> *LA*, L.

<sup>396</sup> *LA*, LI.

<sup>397</sup> *LA*, LII.

<sup>398</sup> *LA*, LVI.

<sup>399</sup> *LA*, LIII.

husband.<sup>400</sup> However, if a slave does this to a freewoman, his owner should be penalized for he did not impose discipline on his slave,<sup>401</sup> and the slave should be given to her relatives to be killed.<sup>402</sup>

On other acts of violence, those who lustfully lay a hand on a woman should pay 6 solidi (*horcrif*).<sup>403</sup> If he lifts her garments above the knees, he should pay 20 solidi (*himilzorunga*).<sup>404</sup> Compared to the *LA* some compensation amounts for certain crimes appear to be higher in the *LB*. To exemplify, if anyone takes off a head covering of a woman, he should pay 20 solidi (*walcuurf*).<sup>405</sup> However, main determinant is whether the victim is a virgin or not in most cases. While punishment for abducting a virgin is 40 solidi, it is 80 solidi in cases of widows. All in all, the legal topics on violence against women the *LB* seem to be influenced by the *LA* for the most part.

In the view of the information provided in the *LA* and *LB*, it can be deduced that the value of women in the *LA* and *LB* was considered monetarily, twice that of the men. However, this might not indicate that women were usually more favoured in the society. Such double estimate upon women, in fact, applied only in cases that men were subjected to same circumstances; otherwise women did not have favoured status. Women are compensated in twofold for those crimes of which men could also be the natural victim, such as murder and homicide. For those crimes which women would be only victims such as sexual crimes and abduction, women are not compensated by the double sum. It was applied to the women from all social three ranks; slaves, freedwomen and freewomen. Essentially, the double amount of

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<sup>400</sup> *LB*, VIII, 1.

<sup>401</sup> *LB*, VIII, 2.

<sup>402</sup> *LB*, VIII, 9.

<sup>403</sup> *LB*, VIII, 3.

<sup>404</sup> *LB*, VIII, 4.

<sup>405</sup> *LB*, VIII, 5.

compensation might refer to their relative powerlessness in society since women were incapable of defending themselves with weapons.<sup>406</sup>

#### **4.9 Punishment for Abduction and Rape in the *Lex Visigothorum***

According to the *Lex Visigothorum*, if any freeman abducts a virgin or widow by violence, and if she is rescued before she is deprived of her virginity, half of his property should be given to her. However, if he was able to rape her, if he does not have any children, he should give all his property to the injured party; and in addition, he should get two hundred lashes in public; also, he should be handed out to the victim's parents in order to serve as a slave.

In cases where anyone causes a woman to abort, if anyone causes a freewoman to abort by a blow, or by any other means, and if she dies from the injury, he should be punished for homicide. However, if the woman is not injured in consequence of this act, he should pay 200 solidi.<sup>407</sup> If a freewoman does this, she should be compelled to pay 200 solidi as well.<sup>408</sup> If a freeman does this to a slave, he should pay 20 solidi.<sup>409</sup> If a slave does this he should be delivered to the victim.<sup>410</sup> If a male slave produces abortion upon a female slave, he should pay 10 solidi to her master, and, in addition, shall receive two hundred lashes.

#### **4.10 Discussion and Conclusion**

As a result of the information provided in the *leges barbarorum*, the legal status of women and men in the barbarian codes, depended on their social status as well. In terms of women's relationship with crime, the freewomen is occasionally described

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<sup>406</sup> Theodore John Rivers. "Legal Status of Freewomen in the *Lex Alamannorum*," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 91 (1974): 175-79.

<sup>407</sup> *LV*, Liber Sextus, III, 2.

<sup>408</sup> *LV*, Liber Sextus, III, 3.

<sup>409</sup> *LV*, Liber Sextus, III, 4.

<sup>410</sup> *LV*, Liber Sextus, III, 5.

as part of a household or a family, and her status and role are so restricted that the women in appears to be considered as a man's property. Other cases where women are regarded as individuals who are responsible for their own actions, in fact, created a double standard and ambivalence in the laws. Apparently, it was constituted some sort of a problem for legislators to enact certain laws that make women responsible for their own actions.

On the other hand, since the *leges* are more concerned with violence against women, it would be reasonable to focus on such particular acts. As it has been mentioned, the *leges* give a wide coverage to rape and abduction. The Germanic legal descriptions indicate that that women's consent was not of interest for the most part. Many of the provisions on marriage also include the phrase that a man should not abduct a woman if he wishes to marry her, otherwise it is not possible for them to get married. Especially, the *LV* has quite strict regulations for such a case. A quick analysis of how the crimes were expressed can show that rape and abduction were indeed seen as different. As expected, while lesser punishments were imposed on those who abducted a woman, punishment for rape can be severe. In most cases, convicted rapists had to pay considerable amounts of money sometimes such amounts can be equal to the victim's wergild. When the *fredus* is added to this amount, the penalty can be even harsher as in the cases of the *ET*. Another difference between rape and abduction is that while rape is formulated as directed at the woman herself, abduction is formulated as a crime against her guardian. In addition, there is a fact that the legislators assumed lack of legitimation was shown the woman in provisions that deal with inheritance of children conceived when a woman were "stolen" or "taken with robbery" as the *leges* put it. Moreover, children born in consequence of fornication had a limited right to inherit. On the other hand, children born to women



who was “stolen” or “taken with robbery” had the full right to inheritance in some cases. The main difference here was based on whether the woman has consented or not in such illegal act.

It is difficult to exactly know why the indirect capital punishment was introduced for rape. It might be possibly interpreted as the use of the capital punishment simply indicates that rape was considered a very serious offence in the barbarian laws. During the medieval period, rape was usually seen as a very disturbing crime that the ruler was supposed to suppress by legislating dissuasive laws. Enforcing the death penalty for rape could be part of this medieval tendency. A strong ruler meant a guarantee for the safety of women, and a righteous ruler prevented rapes from occurring and punished rapists heavily. It should also be noted that the punishment, decapitation, was one of the more honourable death penalties even though most of the laws do not cover execution types. Obviously, decapitation was regarded suitable for members of the aristocracy, while hanging was considered suitable for the lowerclassmen. Before concluding, it should also be noted that that rape legislation was also part of an initiative to prevent and limit blood feuds among the upperclassmen even if the formulation of the decrees refer that the *leges barbarorum* predominantly appears to focus on the female victim.

## CHAPTER V

### CONCLUSION

The results of both inferences and assessments in this thesis were given at the end of each related section and chapter. However, we can further discuss punishment for aggression and violence against individuals in the early medieval period. As it has been already stated in the previous chapters, there were various methods of execution in the *leges barbarorum*. However, we do not know exactly if death penalties tended to be based on one's ethnicity or gender. For crimes that required capital punishment, the barbarian codes do not indicate how criminals should be executed. With the exception of Salic Law and Theodoric's Edict that specify certain methods of execution, the *leges* seem to be more interested in the punishment itself rather than its method. Even though many scholars noted that death penalties tended to be gendered in later periods, it is hard to make such inference from the *leges barbarorum*. Nonetheless, we know that unfree people were punished harshly in some cases. Especially in the *ET*, in cases of certain dishonourable crimes such as arson, criminals were burned to death unless they were not able to make restitution. Also, it is known that murder criminals were hanged according to *LS*, however, whether decapitation was prescribed or not is uncertain. Similarly, the *leges* include

whipping and flogging as punishment for lesser violence such as striking and binding someone without reason. Although the *ET* shows that flogging was also inflicted on those who abduct another's slave, this punishment was in fact generally inflicted on slaves and freedmen in the other law codes.

Obviously, the most significant factor that determined the severity of a punishment is the position of the parties in society since social statuses are the expectations associated with various social roles in the Early Middle Ages. Unfree people such as slaves and servants were seen as movable property by early medieval legislators. Violence against a slave meant crime against his/her master. Moreover, a freeman could be enslaved if he was not able to compensate for the damage that he had inflicted. The *leges barbarorum*, for instance, provided for the enslavement of criminals, as when the *LV* prescribed enslavement for those who could not pay the financial penalty for their crime and as a punishment for certain other crimes. Such criminals would become slaves to their victims, often with their property. In the codes, indeed, the old Roman word for slave (*servus*) continued to be applied to people with a status that was later to be called "serf." Therefore, it is difficult to know whether early medieval slaves did have certain rights that distinguish them from Roman slaves. The fact that slaves were being defended by their owners in the barbarian courts can make us think they did not. However, there are some occasions, in which unfree people were actually taken seriously by the court members. It is possible to find such occasions particularly in the *ET* where slaves are expected to inform against those involved in a crime. According to the *ET*, such an action might even result in the emancipation of that particular slave.

Another determinant in punishment for violent crimes is the ethnic origin of the individuals. There are many legal articles that emphasise one's ethnic roots. Even

though the Germanic peoples were mostly viewed as barbarians in the codes, these barbarians are classified according to their particular tribe. Despite such classification, it is apparent that a barbarian was in a superior position than a Roman even in case of unfree people. However the idea that the Romans were gradually wiped out by the barbarians does not match with the *leges barbarorum*. From the first compiled law code to the latest, it is possible to see a Roman influence in the Germanic societies, especially in ecclesiastical meaning.

Finally, gender, with regards to both criminals and victims, matters a great deal in the *leges barbarorum*. Although, it is possible to speak of male dominance throughout the *leges*, women also played a significant role in the barbarian societies. It is obvious that the vast majority of the legal topics deal with incidents which occur between two men or more. Despite the commonness of these articles, the legal topics that determine punishment for violent crimes against women are definitely not few in quantity.

The barbarian legislation deals with a rather wide time period and quite understandably there is a great difference between the Frankish legislation, for example, and that of the Visigoths—a difference that may be accounted for by the differing lengths of time the two peoples had had an established state and had been in contact with things Roman at the time their codes were written down. In general, however, it is not the difference in time that explains the considerable difference in these codes. The greatest factor seems to be Roman influence. The barbarians who were comparatively little influenced by Rome (e.g., the Franks and Burgundians) display a more consistent Germanic and unsophisticated approach to the problem of law than do, for example, the Lombards and Visigoths who settled in the heart of the

old Roman empire and faced non-Germanic problems almost every day of their lives.<sup>411</sup>

The institutions presumably least affected by Roman legal systems were criminal law and family law, and of the two the Germanic concept of criminal law proved substantially more resistant to Roman influence than did family law. With the potential exception of the *ET* and *LV*, all the Germanic societies approached the problem of violent crime from the Germanic perspective: specific offenses caused specific penalties. For this reason, an important part of each of the codes is devoted to the elaboration of a long list of bodily injuries that a perpetrator might inflict upon his victim accompanied by a corresponding list of penalties to be paid in recompense to the injured party either by the perpetrator himself or by the perpetrator in conjunction with his relatives. In accordance with this concept, almost any violent crime (apart from such extraordinary offenses as secret murder and treason) could be compounded for by a monetary payment known as a compensation. Even homicide could be dealt with thus, with the perpetrator paying the victim's wergild to his family; if the compensation fixed by law could not be paid, the perpetrator was subjected to temporary or permanent debt servitude. The reason behind this form of justice is clear: the family that had received compensation for the injuries committed against it had no further excuse for waging a blood feud.<sup>412</sup>

On account of the administration of criminal law, the role of the kin retained strong barbarian overtones. At one time the barbarian family or kin group had almost clearly been the most significant if not the only agency for protecting the lives and property of its members and for obtaining redress for offenses committed against

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<sup>411</sup> Katherine Fischer Drew, "Legal Materials as a Source for Early Medieval Social History," *Rice University Studies* 60 (1974): 34-5.

<sup>412</sup> *Ibid.*, 35.

them: justice rested principally on the concept of blood revenge. Since the state was weak, this “revenge” had to be obtained by the injured family. In such a circumstance the individual alone was rather defenceless; membership in a strong family group was fundamental. One did have “security” only through the group. However, by the 5<sup>th</sup> century the kin group had already lost its role as the only guarantor of peace and security for its particular members. Instead, the state had undertaken this function. This did not mean that the kingship organization had utterly disappeared; even in the administration of justice the role played by the kin remained very significant. Only by membership in a kin group could an individual be assured of sufficient strength to bring his offenders before the judges in order to receive justice; only by membership in a kin group one could be sure of having sufficient oath-takers to support his oath in court; only with the support of a kin group one could be certain of avoiding the burden of that debt servitude which followed inability to pay some of the greater compensation. Therefore, carefully preserving the family bonds and carefully identifying the extent of specific kin obligations and privileges would remain an important part of all Germanic legislation.

In every early Germanic state, there were several families that were not completely free, and this unfree group presumably involved a majority of the population. The laws do not provide exact information on the numerical relationship between a state's free and its unfree population, but the implication seems clear that most free families included in their compensation a number of dependents who were unrelated by blood. However, although the *leges* give no information on the quantities of individuals involved, they do give quite detailed information on the social and legal classes into which society was divided.

This division of society into a number of legal classes existed even for the freemen. In all the barbarian states, some freemen were more valuable than others, or, in any case, some freemen had a higher “blood price” or wergild than others. Occasionally such larger value was determined by birth as, for instance, among the Lombards, where some free families belonged to the group of the “upper” and some to the group of the “lesser” (the wergild of the former group being twofold that of the latter). Since the *leges* indicate that the difference between these two classes depend on the ownership of property or of a certain wealth, probably such status could be obtained during lifetime of an individual as well as obtained by birth. But mainly, legal differences between the freemen were a matter of birth between the Lombards. Among some of the other barbarians’ differences in value were decided by age, for example, between the Ripuarian Franks where individuals, particularly women, were more valuable during their early adulthood (the major child-bearing years) than during infancy, adolescence, or old age. Again, the difference in legal status might be decided by a man's individual situation, those men who were especially close to the ruler such as the *antrustiones* enjoying a higher wergild than other men. And finally, among some of the barbarian peoples (e.g., Ripuarians, Bavarians, and Alamans) a difference in legal status and wergild was introduced by membership in the clergy or dedication to the monastic life.

In addition to the various classes of freemen in the barbarian kingdoms there were a number of unfree classes. The Burgundian and the Lombard societies certainly included a class that was superior to the slaves in legal status but still not legally competent. These individuals seem always to have stayed in different households to families working their own plots of land, but they were not competent at law and in accordance with legal purposes such people were counted among their owner’s

dependents. The owner's relationship to the unfree was basically the same as his relationship to the other members of his own family - his minor children, wards, and even his wife - he represented them before the judges and paid or received their wergild. The semi-free probably had autonomous control over at least a portion of their income, nevertheless, as some of the laws clearly decree that in some situations, it was the semi-freeman who should actually pay or receive compensation.<sup>413</sup>

The lowest class in Germanic society included the slaves, who seem to have been majority of the population. From the economic perspective, there were two main types of slaves, the household slaves and the field slaves. Broadly, the value of the household slaves was quite higher than that of the field slaves, even though it should be born in mind that those field slaves who held positions of special responsibility or which required special training were valued as highly as the household slaves: such specially valuable field slaves included the various herders, for cattle, swine, or sheep.<sup>414</sup>

As the semi-free, slaves also appear to have lived in families, but their lives were much less free than those of the semi-free. A slave's master was juridically responsible for the crimes committed by his slave and in accordance with the master paid compensation for these crimes (or surrendered the perpetrator slave as compensation to the victim party). Moreover, when the slave is the injured party, the master received compensation for injuries to him (since harms to a slave were harms to the master's property). Furthermore, the slave's life was somewhat more valuable than that of the other individuals in society, for his master could punish him at will and the judges of the state could subject him to the ordeal in order to find out his guilt or innocence of a specific crime (on the other hand freemen and often the semi-

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<sup>413</sup> Ibid., 38.

<sup>414</sup> Ibid., 38.



free could ordinarily prove their innocence only by oath). Among some of the barbarian peoples (e.g., the Burgundians and the Visigoths) the slave may be subjected to such corporal punishment as whipping or beating, and among some of the barbarian peoples (particularly the Visigoths), the slave may be tortured to get evidence pertaining his own crimes or those of his master. Nonetheless, even though the situation of the slave could be harsh, if his master were a malicious man, however, he was not completely subject to his master's whim. Marriages between slaves were protected by law, even from the slave's master; masters may not break up slave families by selling off individual members; and harms to slaves are covered in the long list of compensations included in most of the codes for various kinds of bodily injuries. It must have been a gradual improvement in the situation of slaves as time passed. At least the Lombard and the Visigothic codes mention greater safeguards for slaves in their later legislation, an improvement in situation that is presumably attributable to the influence of the church, even though it should be kept in mind that clergy as well as secular master could possess slaves.

There is a final legislation which had an impact on slaves and that is the legislation setting out the procedures to be followed to accomplish manumission. These laws are so detailed that the freeing of slaves must have been a common occurrence in these early Germanic kingdoms.<sup>415</sup>

The conclusions in this chapter represent the diversity of data for social history to be found in the *leges barbarorum*, but they have not covered the full range of material. The interested researcher may also learn about such other aspects of early Germanic lifestyle as the details of military service, the role of the clergy in the judicial and political life of the state, the persistence of a belief in witchcraft, and (especially in

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<sup>415</sup> Ibid., 39.

the Visigothic legislation) treatment of the Jews. A comparative study of the codes may thus be one way to approach the writing of the social history of the Early Middle Ages.

All in all, the *leges barbarorum* contain a large amount of information that can be analysed from many different perspectives. To conclude what has been mentioned in this thesis, exception from its economic history, the early medieval social history, in fact, still remains largely to be written. Obviously, there is a good reason why this topic has attracted so few historians: the early medieval period was mainly an era of social transformation from a well-documented social organization of the Roman Empire, to the less well-documented organization of the Germanic kingdoms and early medieval states. The idea that the barbarian invasions caused a social disaster in Europe and that the former Roman population either disappeared or was enslaved by the Germanic tribes has long since been abandoned. However, the process of transformation during the Middle Ages in which Germanic tribes and Romans gradually intermingled with each other is not fully examined by the scholars. This lack, on a large scale, is because of the nature source material. Since the written sources that left behind by Roman scholars are difficult to analyse in view of the very common Roman bias against the barbarians. Nonetheless, new developments in disciplines interrelating to history, especially sociology, anthropology and archaeology have started to change this condition and to find clearer evidence for the social organization of the early medieval period as well as for the kind of lives lived by the people. A large number of source materials is contained in the *leges barbarorum* that issued by the Germanic barbarian kings and their immediate successors. One should be aware of the fact that, these legal materials provide a considerable amount of information and data. To be able to understand early

medieval social life, the *leges* should be fully examined and analysed as much as the primary documents which were written by contemporary chroniclers.



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## APPENDIX

	<b>Social Status</b>	<b>Wergild</b>
The Free	Nobility ( <i>optimates</i> )	300 Solidi
	Middle class ( <i>mediocres</i> )	200 Solidi
	Lower class ( <i>minores personae</i> )	150 Solidi
The Unfree	A private person's agent (steward)	100 Solidi
	A royal agent (steward)	150 Solidi
	A trained house servant or Messenger (barbarian)	60 Solidi
	A slave goldsmith	200 Solidi
	A slave silversmith	100 Solidi
	A slave blacksmith	50 Solidi
	A slave carpenter	40 Solidi
	An ordinary slave	30 Solidi
	A slave, Roman or barbarian, ploughman or swineherd	30 Solidi

### 1. Wergilds in the *Lex Gundobada*.



	<b>Social Status</b>	<b>Wergild</b>
The Free	The Count	600 Solidi
	A freeman or a freewoman	200 Solidi
	A woman who is able to bear children	600 Solidi
	A pregnant woman	700 Solidi
	A man who is serving in the army	600 Solidi
	A boy under 12 years old	600 Solidi
	A Roman landholder	100 Solidi
	A Roman who is a table companion of the king	300 Solidi
	A Roman soldier	100 Solidi
	A Roman woman	100 Solidi
	A bishop	600 Solidi
	A deacon	300 Solidi
The Unfree	A half-freeman ( <i>lidi</i> ) or a half-free woman ( <i>lidae</i> )	100 Solidi
	A royal retainer	600 Solidi
	A royal retainer who is serving in the army	1800 Solidi
	The Sagibaron (judicial assistant)	600 Solidi
	The Sagibaron	300 Solidi
	A Roman landholder	100 Solidi
	A Roman who is a table companion of the king	300 Solidi
	A Roman soldier	100 Solidi
	A Roman woman	100 Solidi

## 2. Wergilds in the *Lex Salica*.

	<b>Social Status</b>	<b>Wergild</b>
T h e  F r e e	A free Ripuarian	200 Solidi
	A man who is serving in the army	600 Solidi
	A woman who is able to bear children	600 Solidi
	A pregnant woman	700 Solidi
	A Ripuarian girl or a 40 year old woman	200 Solidi
	A newborn baby or a free-born clerk	100 Solidi
	A Frankish foreigner	200 Solidi
	A Roman foreigner	100 Solidi
	A Barbarian foreigner	160 Solidi
	A bishop	900 Solidi
	A free-born priest	600 Solidi
	A deacon	300 Solidi
	A subdeacon	200 Solidi
	T h e  U n f r e e	The king's man ( <i>homo regius</i> )
An ordinary slave		36 Solidi
A judge who has fiscal duties ( <i>grafio</i> )		200 Solidi
Servant of the king		300 Solidi
A man from the king's retinue ( <i>trustis</i> )		600 Solidi
A judge who has fiscal duties ( <i>grafio</i> )		200 Solidi
The king's woman who is able to bear children		300 Solidi
A churchman ( <i>ecclesiasticus</i> )		100 Solidi
A churchwoman who is able to bear children		300 Solidi
A churchwoman who is older than 40		100 Solidi

### 3. Wergilds in the *Lex Ribuaria*.

	<b>Social Status</b>	<b>Wergild</b>
The Free	A landholder	300 Solidi
	A landless freeman	150 Solidi
	A half-freeman ( <i>aldius</i> )	60 Solidi
	A freewoman or a free girl	600 Solidi
The Unfree	The commander of the debts ( <i>sculdahis</i> )	200 Solidi
	A master swineherd	50 Solidi
	A swineherd	25 Solidi
	A household slave ( <i>servus ministerialis</i> )	50 Solidi
	A tenant slave ( <i>servi massarius</i> )	20 Solidi
	A field slave ( <i>massarius</i> )	16 Solidi
	An ox plowman ( <i>bovulci</i> )	20 Solidi
	A master cattleherd, goatherd or an oxherd	20 Solidi
	A cattleherd, goatherd or an oxherd	16 Solidi

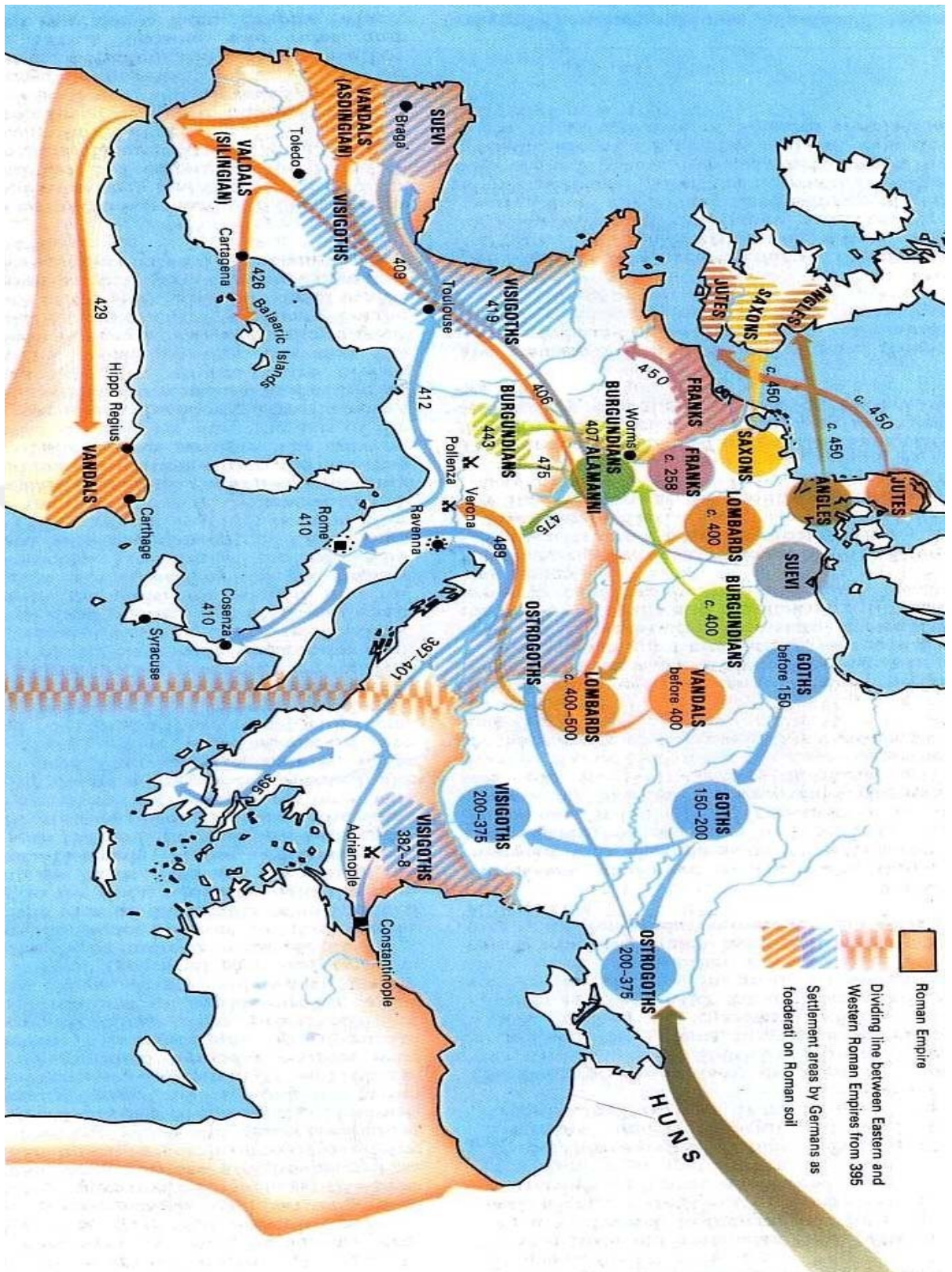
#### 4. Wergilds in the *Edictum Rothari*.

	<b>Social Status</b>	<b>Wergild</b>
<b>The Free</b>	Upper class men	240 Solidi
	Middle class men	200 Solidi
	Lower class men ( <i>minores personae</i> )	160 Solidi
	Upper class women	480 Solidi
	Middle class women	400 Solidi
	Lower class women	320 Solidi
	An ordinary freewoman	80 Solidi
	A freedman	80 Solidi
	A bishop	600 Solidi
	A parish priest	600 Solidi
	A deacon	300 Solidi
	A monk	300 Solidi
<b>The Unfree</b>	A steward or a marshal	40 Solidi
	A swineherd	40 Solidi
	A cook or a baker	40 Solidi
	A blacksmith, a goldsmith or a swordmaker	40 Solidi
	A maidservant	15 Solidi

5. Wergilds in the *Lex Alamannorum*.

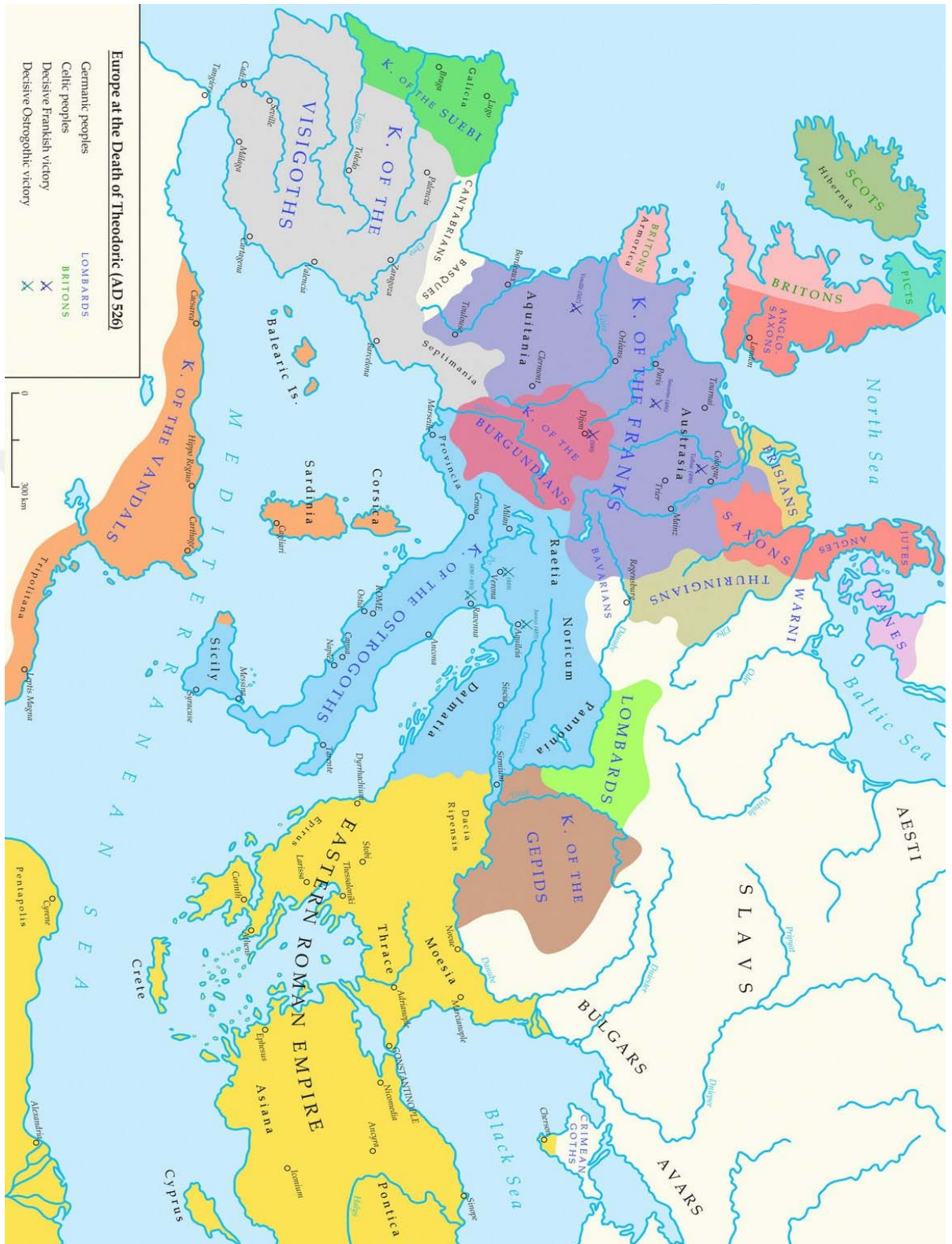
	<b>Social Status</b>	<b>Wergild</b>
The Free	The Duke	960 Solidi
	Relatives of the Duke	640 Solidi
	A freeman	160 Solidi
	A freewoman	320 Solidi
	A freedman	40 Solidi
	A foreigner	100 Solidi
	A man who is serving in the army	600 Solidi
	A champion	20 Solidi
	A bishop	300 Solidi
	A deacon	200 Solidi
The Unfree	A slave	20 Solidi
	A champion	20 Solidi

6. Wergilds in the *Lex Baiwariorum*.



7. Migrations and areas of settlement of Germanic Tribes, 4<sup>th</sup> and 5<sup>th</sup> centuries.<sup>416</sup>

<sup>416</sup> <http://pages.uoregon.edu/maplace/EU/EU19%20-%20Italy/Italy.html>



## 8. Germanic Kingdoms at the Death of Theodoric.<sup>417</sup>

<sup>417</sup> [http://www.wikiwand.com/en/Fall\\_of\\_the\\_Western\\_Roman\\_Empire](http://www.wikiwand.com/en/Fall_of_the_Western_Roman_Empire)