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From subordination to integration: Romans in Frankish law

1 Introduction

The study of Romanness is a test case for how an established and prestigious social identity can acquire many different shades of meaning, which, depending on the sources that we consult, may be classed alternately as civic, ethnic, legal and the like.¹ It is important to note that there is considerable variation in the usage of Romanness that is causing frustration among modern historians. If Romanness was used to make up for a bishop’s humble origin in Gallic episcopal lives, it must have had a positive connotation among an educated audience in Southern Gaul.² Yet, if we take the Lex Salica at face value, Romanness presented a certain legal disadvantage for anyone living under Salic law north of the Loire.³ Apparently, confessions of Romanness could boost one’s reputation as much as it could turn an individual into a second-class citizen. In the light of such ambiguity, any attempt to generalize early medieval concepts of Romanness is an arduous task. Legal sources, however, and the leges barbarorum in particular, may serve as an adequate point of departure because, if anything, generalization was their main purpose.

Legal historians refer to the laws of the Goths, Franks and Burgundians, as well as those of the Lombards, Anglo-Saxons and the various groups under Frankish dominion as leges barbarorum.⁴ The leges have often been treated as if they constituted a cohesive corpus of cognate texts defined by common ancestry in Germanic custom

¹ I owe three quarters of this first sentence to the conference flyer, which I take as a starting point. I would like to express my gratitude to Walter Pohl and Cinzia Grifoni for the very kind invitation to participate in this venture. I also want to thank Stefan Esders, Andreas Fischer and Laury Sarti for their valuable critique of earlier versions. Similarly, I am indebted to Anna Gehler for her continuous support during the manuscript preparation. I would like to thank the German Science Foundation DFG for funding the SFB 700 ‘Governance in Areas of Limited Statehood’ in which context this paper accrued. Last but not least I would like to thank my friend Alex Hargreaves for helping me to make the language flow a bit more naturally.
² Cf. Jamie Kreiner’s contribution to this volume.
³ Pactus legis Salicae 41: De homicidiiis ingenuorum, ed. Eckhardt, 154 – 161. The geographical appraisal reckons with Pactus legis Salicae 47: De filiortus, ed. Eckhardt, 182 – 185, where the river Ligere (i.e. Loire) is given as the Southern boundary of the law code’s area of application. South of the Loire Roman law would remain the prevalent legal culture throughout the Frankish period; cf. Stefan Esders’ contribution to this volume.
⁴ The contemptuous term is not liked much by German scholars who cling to the equally misleading terms Volks- or Stammesrecht. For a well-founded critique of the terminology see Ubl 2014a, 423 – 425.
or Roman vulgar law.\footnote{Cf. Wormald 2003, favouring strong Germanic influx, and Collins 1998, stressing the influence of Roman vulgar law; cf. also I. Wood 1986.} This umbrella approach has been rightly challenged and it seems more appropriate to analyse each of these law codes in its own right.\footnote{Most emphatically Ubl 2014a and Siems 2009; cf. Wormald 2003, 23, acknowledging chronological and geographic variation, but sticking to the explanatory factors of ‘sub-Roman provincial routine’ and ‘customs imported by the West’s new masters.’} This is not to say that there are no common features within early medieval legislation. Lisi Oliver has shown how many parallels existed among these codes regarding the evaluation of limbs and wounds.\footnote{Oliver 2011.} The objection is thus rather a precaution in order to withstand the temptation to explain similarities through reference to common roots, thereby risking overlooking important differences.

As Detlef Liebs points out, one such major difference between Visigoths and Burgundians on the one hand, and Franks on the other, is that the latter showed no interest in legislating separately for the Roman population under their rule.\footnote{Liebs 2017, esp. 76–83.} When the Visigothic king Alaric II made preparations for the looming war with Clovis’ Franks in 506, he promulgated the breviary version of the \textit{Codex Theodosianus}, which came to bear his name (\textit{Breviarium Alarici}) and is otherwise referred to as the \textit{Lex Romana Visigothorum}.\footnote{\textit{Lex Romana Visigothorum}, ed. Haenel.} Following suit were the Burgundians who promulgated a \textit{Lex Romana Burgundionum}.\footnote{\textit{Lex Romana sive forma et expositio legum Romanarum}, in: \textit{Leges Burgundionum}, ed. von Salis, 123–170.} The latter was not as comprehensive as the former, but nonetheless a collection of Roman law by which the Roman population of the Burgundian kingdom continued to live.\footnote{Cf. Amory 1993.} Both collections of Roman law accompanied contemporary legislation by Visigothic and Burgundian kings respectively. The Franks, however, did not produce anything similar in addition to their major compilations: the \textit{Lex Salica} and the \textit{Lex Riburaria}.\footnote{\textit{Lex Riburaria}, ed. Beyerle/Buchner; title numbers refer to this edition, Sohm’s are given in brackets. The \textit{Lex Riburaria} is the best example for legal development in the Frankish kingdoms, yet this development did not affect the existing body of Roman law.}

The \textit{Lex Salica} is the only extant piece of Frankish legislation originating from before the mid-sixth century. Whether we can reasonably attribute the \textit{Lex Salica} to Clovis himself or not is still undecided, but it has been suggested time and again that some of its provisions must indeed be older.\footnote{Cf. Waitz 1846, 75–92; Beyerle 1924; Poly 1993; Geary 1996, 124–126; Charles-Edwards 2001; Ubl 2009; Renard 2009; Ubl 2014a and most emphatically now Ubl 2017, 92–97.} Given that hints of royal authorship are rare in the \textit{Lex Salica}, Étienne Renard argues that some of its clauses were perhaps drafted in the time of Childeric’s alleged exile among the Thuringians.
in the 460s.¹ Karl Ubl has recently noted that the early dating of some of the text’s clauses is plausible but has stuck to ‘around 500’ as a working hypothesis, subsequently explaining the king’s absence from the law code as a deliberate disguise of a royal penal agenda.¹ The notion of a fifth-century rather than a sixth-century origin is supported by Philipp Grierson and Mark Blackburn’s remark on the strange silver:gold ratio of forty denarii making up one solidus, apparently referring to the siliqua of Honorius (393–423) and his immediate successors.¹ Taking up this argument, Thomas Charles-Edwards interprets both the Visigothic Codex Euricianus and the Frankish Lex Salica as regional responses to the great Roman legal code, the Codex Theodosianus.¹ Be that as it may, neither at the time of codification nor later did the Franks see a need to promulgate Roman law themselves.¹ Instead, they subjugated the Roman population under the rule of Salic law.¹ However, compensations for wrongdoing against Romans were halved. Including the Roman population in the Frankish wergild scheme ultimately meant that they were to solve their disputes along the lines of revenge and compensation, which, as Patrick Wormald dryly assessed, ‘had not been Roman law’s approach to social discord since the time of the Twelve Tables.’²

Adding to the implied backslide in legal development is the separation of Romans and Franks manifest in the law code’s wergild catalogue.²¹ There is, however, a contradiction. While the wergild ratio suggests that Romans fell victim to legal discrimination, Gregory of Tours’ Histories do not suggest that Romans were discriminated

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¹ Renard 2009, 348–349; cf. Gregory of Tours, Decem libri historiarum 2, 12, ed. Krusch/Levison, 61–62; Renard considers Childeric’s exile as but one among other possible contexts for the initial codification of the Lex Salica. Following Beyerle 1924, Renard suggests that the bulk of Lex Salica’s provisions must originate from a time prior to the beginning of Clovis’ reign in 481/482, most probably from his father Childeric’s lifetime.

¹ Ubl 2014a, 425–427, 444; but cf. now Ubl 2017, 96, arguing for 475–486/7 as the most plausible date of origin.


¹ Charles-Edwards 2000, 274; a similar point is made by I. Wood 1993, stressing the relevance of the Burgundian Liber Constitutionum, the Lex Salica as well as the various Merovingian edicts for the reception of the Theodosian Code in Gaul.

¹ Later on Charlemagne did make sure that Roman law was available; in a now lost manuscript containing the Visigothic Breviary (Codex Ranconeti), Alaric’s recognition clause was followed by a reference to a reissue in the twentieth regnal year of Charlemagne (787/88): Et iterum anno XX, regnante Karolo rege Francorum et Longobardorum, et patricio Romanorum; Cf. Lex Romana Visigothorum, ed. Haenel 1849, XXII–XXIII and 4; approving Conrat 1891, 44; for a comment in relation to Charlemagne’s leges-reform see Ubl 2014b, 84–85 n. 33; further evidence is added by Liebs 2017, 79–83.

¹ Pactus legis Salicae 14, 2–3; 16, 5; 39, 5; 41, 8–10; 42, 4, ed. Eckhardt, 64; 74; 144–145; 156–157; 164–165.

¹ Wormald 2003, 30.

¹ Pactus legis Salicae 41: De homicidiis ingenuorum 1, 5, 8–10, ed. Eckhardt, 154–157.
against on a large scale. This essay aims to cushion this contradiction by reappraising the legal sources. In defining the legal status of Romans, the legal sources’ approach to Romanness is of course rather prescriptive, whereas Gregory uses it in a descriptive manner. Nonetheless, this reappraisal is a fruitful exercise that helps us better understand how Romanness was gradually transformed from an ethnic or rather civic identity into a legal category.

2 Legal sources, social stratification, and social practice

The study of legal sources allows us to get an idea of the complexity of early medieval society. The picture we get is rather idealized because we look through the eyes of people trying to fix all kinds of wrongs. Casuistry and legal consequences are sometimes disconcerting. We must not describe these rules in too positivistic a way. On the other hand, as historians trained in source criticism are well aware, fear of citing wishful thinking should not lead to pointblank disregard of these sources. Ploughing the field of dispute settlement therefore requires on the part of the scholar particular awareness of the sources’ limitations.\(^{22}\) Sure enough, most arguments brought forward against the historical significance of the *Lex Salica* as a source of Frankish legal and social history have a claim to validity.\(^{23}\) But, making a virtue out of necessity, we can still make sense of these texts if we look at the intention that governed them. Of course, this requires a certain readiness to accept intentionality in lieu of preexistent traditions.\(^{24}\) Whatever other function the *leges* might have had, when they were originally set up someone had an idea of how society should be ordered. The notorious wergild tariffs can thus tell us a great deal about social stratification in the Frankish kingdoms.

There are three criteria that determine legal status in Frankish law: the first combines gender, age, marital and social status; the second is ethnic affiliation; the third is functional status.\(^{25}\) The first category is rather simple, as any person would be either male or female, young or old, (un-)married or widowed, free or unfree. The sec-

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\(^{22}\) On source-determined research outcome in the study of early medieval conflict solution see W. Brown 2007, 323–327; for the particularities of the early Merovingian period see I. Wood 1986.

\(^{23}\) To name but a few: ‘in reality’ the *Lex Salica* was never enacted as it was nothing but *imitatio Romana*; conflict settlement on the ground was a matter of oral customs rather than written law; the body of Salic law comprised much more than the few titles contained in the *lex scripta* (Salic law vs Salic Law); in general the *leges* are without relevance for the early days of Frankish history because manuscript tradition is not traceable before the end of the eighth century.

\(^{24}\) Cf. Ubl 2014a, 445.

\(^{25}\) The classification is arbitrary only in so far as the first factor can be further subdivided but the second and third criteria have a positive or negative influence independent from which boxes are ticked in the first.
ond is trickier because, contrary to our expectation, ethnic affiliation appears as something disputable but decisive for one’s wergild. The third category is again rather clear-cut: independent from the first two categories, function or office in public and above all royal service increased anyone’s legal status substantially. All this can be gleaned from the *Lex Salica’s* basic wergilds in title 41 *De homicidiis ingenuorum*:

1. But if anyone kills a free Frank or any barbarian who is living in accordance with the Salic law, and it can be proven that he did this, let him be held liable for 8000 *denarii*, which make 200 *solidi* known in the *malberg as leodi*. [...]  
5. But if anyone kills him who is in the king’s trust or a free woman let him be held liable for 24,000 *denarii*, which make 600 *solidi* known in the *malberg as leodi*. [...]  
8. But if he kills a Roman man, a table companion of the king, and it can be proven, let him be held liable for 12,000 *denarii* which make 300 *solidi*, known in the *malberg as leodi*.  
9. But if a Roman landholder who has not been a table companion of the king is killed, let him who is proved to have killed him be liable for 4000 *denarii* which make 100 *solidi*, known in the *malberg as uualaleodi*.  
10. But if anyone should kill a Roman tributary and it can be proven let him be held liable for 2500 *denarii* which make sixty-two and a half *solidi*, known in the *malberg as uualaleodi*.

Assuming that this was close to historical reality, *Romani* were obviously eligible for the highest positions at court while at the same time they were discriminated against in terms of personal honour and social prestige, assessed in the lower wergilds. We still, however, have to address the obvious discrepancy between the law envisaged by legislators and social practice, which we can see in Gregory’s *Histories*, where *Romanness* never appears as a major shortcoming. Firstly, there is no reason why a piece of literature should be any more trustworthy than a legal text. It should be noted once again that law codes aimed to generalize specific rules for larger groups. In contrast to Gregory’s *Histories* we thus do not encounter any individual Romans in the Frankish law codes. It is important, therefore, to explore the principles under which Frankish legislators awarded Roman legal status to certain groups of people.

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26 E.g. as a count: *Pactus legis Salicae* 54: *De grafione occiso*, ed. Eckhardt, 203-204: *Si quis grafione occiderit, XXIVM denarios qui faciunt solidos DC culpabilis iudicetur.*  
28 Cf. Stein 1929, 1 with further references, probably the most compact presentation of the problem.
3 The subordination of Romans in the *Lex Salica*

As previously stated, contrary to their Visigothic and Burgundian neighbours the Franks did not revise Roman law in any way. Instead, they incorporated their Roman subjects into their own Salic law, albeit not on equal terms. Quoted above, chapter 41 of the *Lex Salica*, concerning the homicide of freemen, reveals a straightforward rule: under the alleged precondition of social equality *Romanness* leads to reduced legal protection.³ Wergild-wise any *Romanus* was clearly inferior to a socially coordinate *Francus*. Killing a *homo Romanus conviva regis* – a Roman table companion of the king – called for a wergild of 300 *solidi* which is equivalent to 50% of the 600 *solidi* due for killing an *ingenuus Francum qui in truste dominica est* – a Frank who is in the king’s trust or retinue.³¹ We have to think here of very high ranking people with similar political influence and possibly military functions, who are separated only by ethnic affiliation. Both members of the king’s trust and royal table companions are protected by a higher wergild because of their importance as functional elites.³² They stand out from what constitutes perhaps the majority of the Frankish population or at least the main addressees of the law, the *ingenui* or *Franci* – freeborn Franks whose Roman equivalents seem to be the *hombres Romani possessores*.³³ Again a Roman’s wergild of 100 *solidi* accounts for half that of a Frank. According to the title’s heading all these are understood to be freemen. Among them we find a third group of tribute rendering Romans – the *Romani tributarii* — whose wergild varies substantially among manuscripts from 45 to 70 *solidi*.³⁴ In the logic of *Lex Salica*’s ethnic dualism they would be equivalent to *liti*, but the latter were omitted from this chapter because they did not count as *ingenui*. However, two major problems arise from this tariff. First of all, who are these Romans and second, why are they valued less than their Frankish counterparts?

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30 *Pactus legis Salicae* 41, 1, 5, 8, 9, ed. Eckhardt, 203 – 204.
32 Terminology leaves no doubt that their higher status is derived from royal service or proximity to the king (*Königsnähe*) as opposed to ancient Germanic nobility or senatorial rank. If anything, noble ancestry may have helped to get in touch with the king. The debate around the origins of the Frankish nobility is summed up by Becher 2009, 175 – 187.
33 *Possessor* is in fact a legal term directly taken from Roman constitutional law, where it denoted freeholders serving in the local administration (*curia*), who were liable to the land tax but exempt from the Roman poll tax, the *plebeia capitatio*, cf. Savigny 1828a, 327 – 329.
34 This is striking because the other wergilds remain stable throughout the manuscripts.
Who are the possessores and tributarii?

The *homo Romanus conviva regis* must be excluded from the debate because his enhanced status is derived from affiliation to the royal dining community, i.e., the court. It is thus proximity to the king (Königsnähe) rather than inherent nobility that defines his social prestige. Therefore, we must focus on the composition of the two other categories: the *Romanus homo possessor* and the *Romanus tributarius*. The terminology is at the same time telling and tempting. There is a very long tradition, beginning with Savigny, of identifying these two groups with different types of Roman taxpayers. The *Romani possessores* have been identified as free proprietors liable to the Roman land tax, whereas the *Romani tributarii* have been identified as unpropertied freemen, liable to the head tax. Savigny asserted that after most of the urban plebes had gradually been exempted from paying tax during the course of Late Antiquity, rural *coloni* were the only significant group who remained under its liability. The *tributarii* were thus to be identified with the class of rural tenants about whose status so much ink has been spilled. The proposition is alluring, but not necessarily true. Although there are a few laws in the Theodosian and Justinian Codes which use the term *tributarius* for *colonus*, there is no direct equation of the two terms. Debate evolved about the correct interpretation of the eponymous *tributum* as a head tax owed to the state or as ground rent owed to the landlord. With regard to the *Lex Salica’s* rubric, *de homicidiis ingenuorum*, the free status of *coloni* and *tributarii* as *ingenui* was disputed too. In a purely legal perspective, however, late Roman *coloni* and *tributarii* were indeed of free status.

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36 Savigny 1828a, 369 – 371; Waitz 1846, 101. See also Dannenbauer 1941, 60 – 61 with n. 31 and 32; Goffart 1982a, 10, 19.
37 Savigny 1828a, 327 – 29 and 369 – 371; for a rather unorthodox view see Durliat 1990, 65 – 69, 157 – 159; to Durliat the possessores were essentially the state’s local agents, who featured as both taxpayers and tax collectors.
38 Cf. Savigny 1828a, 369 – 70.
39 Most recently Schipp 2009; a major, clarifying contribution to the debate was made by Sirks 1993; cf. also Sirks 2008, focusing on developments in the East.
40 Cf. Schipp 2009, 373 – 374 and 381 who identifies the *Lex Salica’s* *Romani tributarii* with *coloni*.
41 Cf. A.H.M. Jones 1958, 2 n. 21 and 8 n. 51 referring to *CTh* 10, 12, 2, 2 and to *CTh* 11, 7, 2 respectively; for a specific treatment of the *tributarius* in the Roman codices see Eibach 1977, 219 – 232; Krause 1987, 88 – 155.
42 Cf. Savigny 1828b, 302 – 303; Waitz 1846, 101; Gaupp 1855, 47 – 48; summing up: Roth 1850, 83 – 93; the debate was taken up by Durliat 1990, 85 – 93, 175 – 185, who takes *coloni* and *mancipia* for free owners who paid taxes to the state through the *dominus* or *possessor*.
43 Cf. Waitz 1846, 101; Roth 1850, 84; but see also Fustel de Coulanges 1875, 547 – 572, ignoring the rubric when declaring both possessores and tributarii were essentially freedmen.
44 Cf. Brunner 1906, 365, calling the free status of Roman *coloni* a fiction of Roman law which was intended to prohibit their emancipation proper. Mommsen was convinced that the whole institution
**Romani and leti/liti**

Whether we speak of non-landowning Romans or *coloni* does not change the notion that the *tributarii* occupied a rather low position among the Roman subjects of the *Lex Salica* and that they were somehow obliged to render a *tributum*. Gregory of Tours uses *tributum* in an unspecific way and it seems to denote taxes and other duties alike.⁴⁵ Contrary to their sub-grouping among the *ingenui*, the *Romani tributarii* were even less well protected than the semi-free *leti/liti* in the *Lex Salica*, although their wergilds were aligned in later additions.⁴⁶ The issue is further complicated by Wormald’s identification of Salic *letus* with *laetus*, “the late Roman term for a barbarian settler-soldier” whereby ‘the “free” (Frank?) is being marked out from those barbarians previously settled on Roman soil.”⁴⁷ If this were so it would fit the idea of conquerors setting themselves above the conquered, but the equation might as well be discarded on the grounds of *Lex Salica* 41, 1, which unequivocally puts Franks and other barbarians who live under Salic law on the same level.⁴⁸ Whatever became of the *laeti* of earlier days, in the Frankish context *letus/litus* merely refers to the intermediate class of the semi-free (*Minderfreie*), basically freedmen who remained under some sort of patronage.⁴⁹ With regard to Romans, however, we must assume that it is the *possessores* with whom the *Lex Salica*’s authors were mainly concerned. This follows from title 42, 4 of the *Lex Salica*, which suggests that *Romani* and *liti* were generally social equals, both being valued at 100 *solidi*.⁵₀ It is indirectly confirmed by the way in which later redactors no longer understood the division between *possessores* and *tributarii*. When Charlemagne had the *Lex Salica* revised in

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⁴⁸ *Pactus legis Salicae* 41, 1, ed. Eckhardt, 154.  
⁵₀ *Pactus legis Salicae* 42, 4 *De homicidiis a contuberniis factis*, ed. Eckhardt, 164; *De romanis uero vel letis et pueris haec lex superius conpraehensa ex meditato soluantur*. There is serious confusion about these two groups. The manuscripts record varying wergilds for the *tributarius*, but, apart from that, imply equality of *Romanus* and *litus*. The *Lex Ribuaria* however takes the 100 *solidi* wergild of the *Romanus* for granted, but introduces a *servus* manumitted to the status of *tributarius vel litus* in chapter 62 whom it assigns a surprisingly low wergild of 36 *solidi*. As this is strangely incompatible with all Salic and Ribuanian regulations, it must remain a mystery; cf. *Lex Ribuaria* 65 (62) *[De homine qui servum tributarium facit]*, ed. Beyerle/Buchner, 117.
802/03, the Roman proprietor was further specified as *Romanus homo possessor id est qui res in pago ubi commanet proprias possidet*, but no similar clarification was made for the *homo tributarius.*

The intra-ethnic division into social ranks based on proximity to the king, land ownership, and tax obligations remains dubious. The *Romani* with whom the *Lex Salica* are chiefly concerned are the so-called *Romani possessores*, who were put on equal terms with the semi-free *liti*. The privileged group of the *Romani convivae regis* form a functional elite whose members gradually merged with the Frankish *antrustiones*. The nature and whereabouts of the *tributarii* are particularly obscure as there are hints to both their alignment with the *possessores* as well as to their decline into servitude. It is therefore reasonable to concentrate on the *Romani possessores*, who were Roman by birth and owned property recorded on the tax roll, whatever that meant in the sixth century. Though freeborn and propertied, they were valued as second-class citizens. The general rule that Romans counted less than Franks is un-disputable. It is hard to escape the *Lex Salica*'s dual structure within which legal category and ethnic affiliation overlap: *antrustiones* – *convivae regis*; *ingenui* – *possessores*; *liti* – *tributarii*. The three layers of society respectively appear to conform to the same principle, although in wergild terms this perceived equality leaves much to be desired. While within the scope of this dual structure the criteria which identified someone as a *Romanus* are not wholly obvious, it must have been quite clear in local communities where people tended to know each other.

4 The scholarly debate

The question as to why Romans were reduced to the status of *liti* in the *Lex Salica* is much debated yet unresolved. While the debate cannot be recounted in full, the major arguments must be briefly sketched. The traditional view shared by both German and French scholars in the nineteenth century is somewhat ambiguous. On the one hand, it was fed on the idea that the conquerors subordinated the conquered, hence the difference in wergild. On the other hand, it was postulated that apart from their reduced honour, Romans shared the same rights and duties as Franks and were thus equal subjects of the Merovingian kings. Paul Roth for example claimed that the introduction of wergilds for Romans only revealed information on Roman class relations, not on the relationship between Franks and Romans. For Roth those wergilds were merely a legal measure provided for the inevitable collision of Roman and Germanic law. The adjustment, he argued, of the Roman social order

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54 Cf. Stutz 1934, 5–15, providing a good overview of the earlier French and German scholarship.
to the much simpler Frankish scheme of free and unfree was a necessary precondi-
tion to the integrative rule over both nations.⁵⁵

Even today the notion that victorious Frankish warriors would have claimed a
higher wergild by merit remains consistent. Of course this explanation would only
be viable if we had any certainty about the _Lex Salica_’s origin in the postconquest
situation – which we do not.⁵⁶ But if the whole wergild scheme was actually a system
based on reward, would we not find criteria which qualified people for the reward?⁵⁷
And would this not amount to a perceived difference in status? Either way, matching
equal rights with legal inequality remains a challenge.⁵⁸

In 1875 Numa Fustel de Coulanges spiced up the debate when he argued that the
term _Romanus_ transported no ethnic meaning at all but merely denoted persons of
inferior legal status. For Fustel de Coulanges _Romanus_ referred to freedmen alone,
becoming increasingly separate from the _Franci_, who formed a very restricted elite
of freemen.⁵⁹ Julien Havet, among others, immediately refuted this thesis and de-
clared that _Romanus_ referred to both freedmen and any other national Romans,⁶⁰
provoking a clarification by Fustel de Coulanges in the same year.⁶¹ He had merely
meant to say that in the _Lex Salica_ the term _Romanus_ could possibly denote freedmen
or Gallo-Romans, but in any case persons assigned only half wergilds, who are basi-
cally treated like freedmen in other _leges_, especially in the _Lex Ribuaria_. Fustel de
Coulanges also maintained his general conviction that wergilds depended on social
conditions rather than ‘race’.⁶² Heinrich Brunner, a declared antagonist of Fustel de
Coulanges, noted that the Roman counted for less than the Frank, which, he postu-
lated, was the result of a social levelling that the barbarians had provided for Gallo-
Roman society.⁶³ In the revised second edition of his celebrated ‘Deutsche Rechtsges-
chichte’ Brunner skipped this passage and presented a new theory based on kinship
structure, which seemed to solve all problems at once. According to the _Lex Salica_,
wergilds were shared among direct heirs, the relations up to the third degree and

⁵⁵ Roth 1850, 93–96.
⁵⁶ Cf. Waitz 1846, 101–103; Waitz makes a contrary argument. The wergild difference had to be root-
ed in the time before Clovis integrated larger parts of the Roman provincial population and thus re-
fects the fifth century situation in the Franks’ Northern homelands; now approving Ubl 2017, 93.
lebt”).’ Living under Salic law seems to be a distinction mark but does not appear as a state attain-
able by others.
⁵⁸ Cf. Becher 2009, 186, taking a conciliatory position in arguing that the _Franci_ in Gregory of Tours
were in fact on equal terms with the members of the Roman upper classes because they exercised
‘Herrschaft’ over their dependents and were thus not comparable to the ordinary Roman freemen.
On the other hand Roman landowners must have exercised ‘Herrschaft’ over their households, too.
⁵⁹ Fustel de Coulanges 1875, 547–572.
⁶⁰ Havet 1876, 120 – 136.
⁶¹ Fustel de Coulanges 1876.
⁶² Fustel de Coulanges 1876, 486.
⁶³ Brunner 1887, 224, 227, 229.
the *fiscus*, each party acquiring a third respectively.⁶⁴ The inherent idea that the wider kin could be held responsible for the deeds of an individual member, so ran Brunner’s argument, was alien to Romans, and the kin would thus not profit from wergild payouts either. But when the family’s share could be halved, the *fredus* (i.e. the fiscal share) would have to be halved too. In the result 100 *solidi* was the natural wergild for the free Roman.⁶⁵ This explanation was initially accepted among German scholars but eventually rejected.⁶⁶

Another peak in the debate resulted from Simon Stein’s fervently advanced belief that the *Romani* of the *leges* and other Frankish sources were in fact peasants and rustics.⁶⁷ In a determined effort to silence Stein and everyone else, Ulrich Stutz reinforced Brunner’s theory and declared it to be the only valid explanation.⁶⁸ In an article posthumously published after the Second World War, Marc Bloch rejected Brunner’s thesis on the grounds that it was inconsistently argued. Why would the sons of a slain Roman have the right to compensation but not his brothers?⁶⁹ Bloch discarded the whole debate as ‘un pseudo-problème’ and returned to the original notion that the Romans had been deliberately reduced to the status of *liti* as a result of the Frankish invasion.⁷⁰ The German occupation of France and his subsequent execution as a member of the *Résistance* had prevented Bloch from an earlier publication. In the Third Reich, however, the debate had not paused.

In an article published in 1941, Heinrich Dannenbauer rejected the idea that the Gallo-Roman majority should have been turned into second-class citizens by a ruling ‘Herrenvolk’.⁷¹ Ironically, this objection came from a scholar who himself had joined the NSDAP as early as 1932, but his argument deserves attention nonetheless. According to Dannenbauer, Stutz and Brunner had made a fundamental mistake in refusing to notice the already deteriorated status of Roman *curiales* in Late Antiquity. In fact, he argued, the Franks did not change anything at all when they graded Roman *possessores* (i.e. legally free taxpayers) at a lower level than free Franks who – like the Roman senatorial elite – were not obliged to pay any tax whatsoever.⁷² For him, the *tributarii* were of course *coloni*, and senators were not even mentioned in the *Lex Salica*, either because there were none in Northern Gaul or because they were too powerful to be subjected to the law.⁷³ This general take on the stability of the Roman classes is plausible and Dannenbauer’s remarks on senators’ absence from the *Lex

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⁶⁵ Brunner 1906, 335 – 336; already sketched in Brunner 1892, 614, n. 7.

⁶⁶ Cf. Beyerle 1915, 394 n. 36.

⁶⁷ Stein 1929.

⁶⁸ Stutz 1934, 1 – 48.

⁶⁹ Bloch 1946/47, esp. 5 – 6.

⁷⁰ Bloch 1946/47, 9 – 10; cf. now also Ubl 2017, 74 – 76 esp. 75.

⁷¹ Dannenbauer 1941, esp. 55.

⁷² Dannenbauer 1941, generally approving is Goffart 1982a, 10, n. 29 and 19, n. 65.

⁷³ Dannenbauer 1941, 60 – 69.
Salica are equally convincing. Any estimate of senatorial rank under Frankish rule is an argumentum ex silentio in the face of the selective sample of rules contained in the Lex Salica.⁷⁴

The debate had been moving in circles for almost a century. The lamentable fate of legally subdued Romani in the sources was either blamed on German(ic) cruelty or argued away by disallowing it any importance. Not to accept the equation of Romanus with Gallo-Roman provincial or former imperial subject amounted to bending the sources, although it had become obvious that purely ethnic explanations were too short-sighted. Savigny’s early and Dannenbauer’s renewed emphasis on continuity of tax obligations was for the time being the easiest to digest, but the debate was never taken up again with the same intensity, as the scholarship took a different turn thereafter.⁷⁵

While the adherents of die-hard constitutional history steadily lost ground, new questions began to be raised. In 1983, Patrick Geary suggested that one should ‘not examine primarily why specific individuals were labeled in the way they were, but rather consider why they were labeled at all’.⁷⁶ That is to say one ought to look into the intended purpose as well as the functionality of ethnic labeling in different circumstances. Spurred on by the idea of the situational constructs of ethnic identity, Patrick Wormald offered a completely different interpretation of the old puzzle. To Wormald, the legal disadvantage could be read as an invitation to Roman provincials to re-identify themselves with the Franks: ‘The upshot is that anyone not already laying claim to Frankish ethnicity would find that his (or her) legal position became up to twice as secure if they proceeded to do so.’⁷⁷ Wormald’s idea of ‘ethnic engineering’, however, can hardly be imagined in terms of a hands-on guide to social practice because it presupposes the opportunity to freely pick and choose ethnic identities, which was most probably not the case.

One way of making sense of this is to look at possible routes to assimilation. Raymond Van Dam suggests that since the notion of “Frank” gradually became associated more with freedom from taxation than with ethnic origins, the acquisition of tax immunities became one method of assimilation with the Franks.⁷⁸ Van Dam’s argument reconciles Wormald’s ethnic engineering model with Dannenbauer’s division of

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⁷⁴ The Lex Salica is equally nondescript of king, church, and nobility; especially in comparison to the more comprehensive leges of the Southern regna; cf. Siems 2009, 269.
⁷⁵ For an overview of successive debates over royal and aristocratic ‘Herrschaft’ see Becher 2009, 163–188.
⁷⁷ Wormald 2003, 32.
⁷⁸ Van Dam 2005, 211; indicating two episodes from Gregory of Tours in support of this notion. In book 3, 36 Gregory justifies the man hunt of the patricius Parthenius with the Franks bitter hatred because it was him, who had levied taxes under Theudebert’s reign. In book 7, 15 Gregory again justifies violent revenge against Audo, who had, ‘in the time of King Childebert, exacted taxes from many Franks who had been free men [ingenui’]; cf. Gregory of Tours, Decem libri historiarum 3, 36, and 7, 15, ed. Krusch/Levison, 131 and 337; trans. Thorpe, 399.
taxpaying Romani and tax-exempted ingenuii in the Lex Salica. On the one hand, the idea is so alluring that it is hard not to succumb to it. On the other hand, one clearly risks comparing apples with oranges, because the association of ‘Frankishness’ with tax immunity that Van Dam and other authors state, is a development of the late seventh century, rather than the late fifth or early sixth century, when the wergild difference was most probably recorded in the Lex Salica.79 Furthermore, quite contrary to the supposed connection, tax immunity initially enjoyed by both churches and individuals ‘was not a matter of personal status and nationality’ but rather ‘limited to a set quantity of property.’80 Moreover, the Merovingians’ increasing reluctance to exact taxes seems to cover both the Northern Frankish regions as well as the civitates in the Loire valley or in Burgundy, and can thus hardly be linked to Frankish attempts to squeeze out revenue. After all, source evidence for Merovingian taxation is too selective to base an argument upon it.81 A simple division of Merovingian subjects into taxpaying Romans and tax-exempted Franks is therefore untenable. Notwithstanding the unsolved tax issue, the modern-seeming idea of a negative incentive to encourage assimilation with the Franks provides ample food for thought.82

5 Romans in the Lex Ribuaria83

The second and in many respects much more interesting Frankish law book is the Lex Ribuaria. The current consensus is that the Lex Ribuaria can be dated to the year 633 and was intended originally for the Rhineland region between Cologne and Metz that was given to the three-year-old Sigibert III as a subkingdom.84 The so-called pagus Ribuarius itself was most probably not the ancient homeland of

79 Cf. Wickham 2005a, 106 as well as Goffart 1982a, 21.
80 Goffart 1982a, 13; it is important to note that clerics got exempted from the head tax from the fourth century onwards; for the primarily judicial aspect of Merovingian immunities see Murray 1994.
81 For a short overview on the (decline of) taxation in Merovingian Gaul see: Wickham 2005a, 105–115; see also R. Kaiser 1979 and Goffart 1982a; the standard work remains Lot 1928; arguing for a more holistic approach is Esders 2009, esp. 190–191, taking the whole system of public duties, goods and services into account rather than singling out taxes.
82 Military service may have been another possible route to assimilation; Lex Ribuaria 68 (65) [De eo qui bannum non adimplet], ed. Beyerle/Buchner, 119, implying that Romans were liable to render such service; cf. Goffart 2008a, 188.
83 English translations and editions prefer Ripuaria, which is also attested in the manuscripts but is ascribed to the Carolingian reform of Latin; cf. Springer 1998, 204–212; I stick to Ribuaria for convenience.
84 Cf. Beyerle 1928, 319–356, esp. 345–354; Ewig 1969, 462–471; details of the dating have been contested but Beyerle and Ewig agreed upon 633 as the Law book’s ‘historische Stunde’; for a handy discussion of rival dating see Esders (in press a) and Esders 2010, 50–51 n. 148 as well as Ubl 2008, 186–188, tending to 623 as the more plausible date. In any case, the Lex Ribuaria is related to the establishment of Austrasian subkingdoms, either in the reign of Chlothar II in 623, or in that of his son Dagobert I in 633.
the alleged Rhineland Franks, but rather a duchy-turned-kingdom to bolster the Austrasian frontier after Dagobert’s infamous defeat by Samo in the battle of the Wogastisburg. The exact etymology of the word ribuarius has been contested, but it seems likely that it is derived from Latin riparii/rip(ari)enses which denoted a late Roman unit of soldiers, originally stationed to guard a riverbank. Although this suggests substantial continuity in place and group names, there are no sources indicating Ribuarians specifically in or around Cologne before the middle Frankish period. Independent from the lex, the word ribuarius is first attested in the Liber Historiae Francorum, completed by its anonymous author in 726/727, but referring to events taking place in the year 612, i.e. historically fairly close to the two successive establishments of Austrasian subkingdoms by Chlothar II and Dagobert I in 623 and 633. It is therefore quite reasonable to assume that, whatever its Latin lingual or Roman military roots, ribuarius was a seventh-century coinage rather than an ancient ethnonym. However, if we consider that the Austrasian subkingdom’s prime task was to guard the Eastern frontier, the term ribuarius may well have been chosen as a deliberate reminiscence of the riparii of old.

Although the concrete circumstances of its compilation remain in the dark, the Lex Ribuaria was clearly intended to foster a regional identity and therefore had to deal with existing identities. With regard to Lex Salica’s dual structure of Franks and Barbarians in opposition to Romans, the Ribuarian law book draws a different picture. Here, Ribuarians feature as the dominant group and main addressees of the law. The compilers routinely substituted Francus with Ribuarius throughout the text, most importantly in the definition of a 200 solidi wergild for the ingenuus Ribuarius. However, in title 61 (58), 1 the legal subject is specified as francus Ribu- 

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85 The text itself is inconsistent in this respect, using pagus Ribuarius (Lex Ribuaria 35 (31), ed. Beyerle/Buchner, 87); ducato (Lex Ribuaria, 33 (30); 37 (33); 75 (72), ed. Beyerle/Buchner, 86, 89, 126); and regno (Lex Ribuaria 37 (33), ed. Beyerle/Buchner, 89); historically the strongest links hint at Dagobert’s elevation of his son Sigibert as king of an Austrasian subkingdom; cf. Marculfi Formulae 1, 40, in: Formulae Merovingici et Karolini aevi, ed. Zeumer, 68; cf. also Hoppenbrouwers 2013, 252 for vacant regna called ducatus in the Carolingian Empire; the boundaries of Dagobert’s and Sigibert’s subkingdoms are discussed by Beyerle 1956, 357–361 and Ewig 1969, 462–471; summarizing: Ubl 2008, 186–187.

89 Fredegar, Chronicae 4, 47 and 75, ed. Krusch, 144 and 158–159.
92 Lex Ribuaria 35 (31) [De homine ingenuo repraesentando] and 60 (57) [De libertis a domino ante regem dimissis], ed. Beyerle/Buchner, 87 and 107–108; both titles shine a light on two possible ways to enlarge the number of Ribuarians, either through second generation naturalisation or through enfranchisement of the freedmen.
93 Lex Ribuaria 7 [De homicidio], ed. Beyerle/Buchner 77; cf. the introduction by Beyerle and Buchner, ibid., 23–24.
ius, whereas in title 35 (31), 3 and 40 (36), 1 Francus is used in opposition to Ribuar-ius. Both titles refer to other Barbarians too, but unlike the Lex Salica they specify their names. While there are Ribuanian and other Franks in the Lex Ribuaria there are also varying types of the homo Romanus, but in contexts entirely different to those in the Lex Salica. The varying types of the homo Romanus are not gathered together in one central title or passage, like they were in Lex Salica’s homicide title. They feature in distinct parts of the Lex Ribuaria, and we can assume that different concepts of Romanness are veiled in each mention. Basically, there are specific and unspecific usages of the homo Romanus. In what follows, the specific usages are discussed first, before the more general ones are examined.

**Advena Romanus – the Roman foreigner**

The first group of titles 1–35 (31) does not make any ethnic divisions at all. The basic wergild catalogue in titles 7–16 divides free from unfree, with a couple of titles reserved for a newly introduced status group of homines regii and ecclesiastici. Contrary to the general absence of ethnic terminology, there is one noteworthy exception at the very end of the first part of the Lex, which was identified by the editors as a remnant of a royal decree. The most relevant title 35 (31), which is labelled De homine ingenuo repraesentando, states that ‘within the territory of the Ribuarians, whether Franks, Burgundians, Alamans or of whatever nation one dwells in, let one respond, when summoned to court, according to the law of the place in which one was born. If he is condemned, let him sustain the loss according to his own law, not according to Ribuanian law.’

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95 Lex Ribuaria 40 (36); 61 (58), 8, 10, 11; 64 (61); 68 (65); 69 (66) and 90 (87), ed. Beyerle/Buchner, 92, 111–112, 117, 119, 133.
96 The second part consists of titles 36–57 (32–56) and 66–67 (63–64), with remains of royal legislation (60–65 [57–62]) inserted, and followed by a passage on public institutions (68–82 [65–79]) and another passage modelled on the Salic (and Burgundian) code (83–91 [80–89]).
97 Lex Ribuaria 9–10, ed. Beyerle/Buchner, 77: Si quis regium hominem interfecterit, 100 solid. culpabilis iudicetur aut cum 12 iuret. Si quis hominem ecclesiasticum interfecterit, 100 sol. culpabilis iudicetur aut cum 12 iuret. – The novelty is in the terminology rather than in the status; the puer regius features already in the Lex Salica 13, 7 and 54, 2 and is commonly understood to be a freedman under royal patronage. Obviously, in the Lex Ribuaria it is all about the equal treatment of royal and church property, dependents included.
99 Lex Ribuaria 35 (31) [De homine ingenuo repraesentando], 3–4, ed. Beyerle/Buchner, 87: Hoc autem constituius, ut infra pago Ribavario tam Franci, Burgundiones, Alamanni seu de quacumque natione commoratus fuerit, in iudicio interpellatus sicut lex loci content, ubi natus fuerit, sic respondeat. 4. Quod si damnatus fuerit, secundum legem propriam, non secundum Ribaviam damnum sustineat.
This spells out the so called principle of the personality of law in the Frankish kingdoms.\textsuperscript{100} It is centred on the defendant’s perspective in affirming him the right to be tried under his own law rather than the law of the plaintiff or judge. Parallel to this, title 40 (36) \textit{De diversis interfectionibus} introduces wergilds for foreigners or migrants as well as for clerics, who were not considered in the original Riburian wergild catalogue in titles 7 – 14.\textsuperscript{101} Here, the perspective is turned around, establishing the worth of foreigners killed by Riburians.\textsuperscript{102} The 200 \textit{solidi} wergild of a foreign Frank equals that of a native Riburian. All other foreigners are valued at a lower rate of 160 \textit{solidi} which equals the wergilds of the lowest classes of Burgundian, Alamman and Bavarian freemen respectively in their \textit{leges} (with Saxons and Frisians most probably being interpolations).\textsuperscript{103} Brunner believed that these wergilds were essentially the same, and that the difference resulted from different modes of \textit{fredus} payment.\textsuperscript{104} Against the background of title 35 (31), it seems appropriate that the Riburian law should apply ethnic or rather regional wergild standards for migrants. A conspicuous exception, however, is the \textit{advena Romanus} who is valued at only 100 \textit{solidi}. Most scholars suggest that this refers to migrants from Aquitaine, because from the seventh century onwards \textit{Romanus} is frequently used in historiography to denote people from South of the Loire.\textsuperscript{105} Since there were no wergilds at hand in Roman law, this wergild was of course borrowed from Salic law, in which the \textit{Romani} were demonstrably incorporated.\textsuperscript{106} The introduction of wergilds for subjects from

\hspace{1cm} ¹\textsuperscript{0} The introduction of clerics’ wergilds is a topic on its own and cannot be considered here; cf. Siems 2009, 270 – 271; Brunner speculated that in the early days all clerics must have been Romans because the \textit{clericus ingenuus} was valued at 100 \textit{solidi} in the A manuscripts; while in the B manuscripts he would be compensated according to his birth status (\textit{iuxta quod nativitas fuerit ita conponatur}); cf. Brunner 1906, 336 n. 17.
\hspace{1cm} ³ Cf. \textit{Lex Burgundionum} 2, 2, ed. von Salis, 42; \textit{Pactus legis Alamannorum} 14, 6 and \textit{Lex Alamanno- rum} 60, 1, in: \textit{Leges Alamannorum}, ed. Lehmann/Eckhardt, 24 and 129, as well as \textit{Lex Baiuvariorum} 4, 29, ed. von Schwind, 334.
\hspace{1cm} ⁴ Brunner 1906, 333 – 334; while Franks and Riburians included the \textit{fredus} in the wergild, Alamanni and Bavarians would pay an extra fee of 40 \textit{solidi} on top of the 160 \textit{solidi} wergild, thus adding up to 200 \textit{solidi}.
\hspace{1cm} ⁵ Cf. for instance Hoppenbrouwers 2013, 268 – 269; but see Fustel de Coulanges 1876, 474 – 475, being much more skeptical; cf. also Geary 1996, 156.
\hspace{1cm} ⁶ Although it has been suggested that large parts of the barbarian codes must indeed be considered as stemming from Roman vulgar law, wergild did most probably not; cf. Collins 1998, 3, 9 for Roman vulgar law descent, but see Wormald 2003, 30 for the incompatibility of feud and compensation with Roman law.
other subkingdoms (Teilreiche) and regions certainly helped solving conflicts among the mobile elites of the Frankish kingdoms.

The key point here is that the personality principle only refers to people born in other places.¹⁰⁷ Anybody born within Ribuaria could rightfully lay claim to Ribuarian legal status, which can indeed be described as ethnic engineering. This ethnic engineering represents a migration policy that aimed at strengthening the layer of Ribuarians fit for military service, thus marking them out from the rest. No matter how diverse the influx of migrants was, in the second generation everyone would become a Ribuarian by birth and would thus profit from the enhanced legal status – but from the perspective of the local Roman population, this remained an empty promise.

**Civis Romanus – the Roman freedman**

Apart from foreign Romans, the Romani of the Ribuarian law are socially and economically determined and the second specific usage has to do with manumission. In the passage dealing with manumission practices and the precedence of cartulary evidence in legal transactions (cc. 60 – 65 [57 – 62]), royal influence is writ large. With title 61 (58), 1 – 8 De tabulariis it includes a royal decree by Chlothar II.¹⁰⁸ The homo Romanus in this passage did not acquire his status by birth but by manumission. There are three ways to manumit slaves and other dependents in the Lex Riburaria:

1) manumission by penny-throw in front of the king, which would grant the libertus full freedom;
2) manumission in churches, which puts the tabularius under this same church’s guardianship or patrocinium; and
3) manumission according to Roman law, which guarantees a freedman freedom of movement (portas apertas) and bestows Roman citizenship on him.¹⁰⁹ This last option is described in title 64 (61) De libertis secundum legem Romanam:

1. If anyone makes his slave a freedman and openly bestows Roman citizenship and liberty upon him, and if he dies without heirs, let none other than the fiscus have his inheritance.
2. If he commits a crime, let him be judged according to Roman law. And let him who kills him be fined 100 solidi.

¹⁰⁷ I. Wood 1990, 55 n. 24 stresses Lex Riburia’i s emphasis on territorial origin (vs. ancestry) as a clue on the non-relevance of Burgundian ethnicity in the seventh century.


¹⁰⁹ For the sake of completeness a fourth option is given in Lex Riburaria 65 (62) [De homine qui servum tributarium facit], ed. Beyerle/Buchner, 117, but as the resulting status of tributarius (worth 36 solidi, just like a slave) is neither plain nor comparable to the other freedmen, it has been omitted from this survey.
3. If his master wishes to manumit him by penny-throw before the king, let him have permission.\footnote{110}

This first paragraph is particularly puzzling because it highlights the complexity of post-Roman continuity. Obviously people continued to share an idea of Roman citizenship by the early seventh century. This was most certainly not the citizenship concept of the \textit{Constitutio Antoniniana}, which had extended Roman citizenship to virtually all freemen within the Roman Empire. Quite to the contrary, the \textit{civis Romanus} is reminiscent of the threefold subdivision of \textit{liberti} contained in the \textit{Gai Epitome}, an abridged version of the \textit{Institutiones} written by the second-century jurist Gaius, which was part of the \textit{Breviarum Alarici}.\footnote{111}

A recently discovered set of glosses in the ninth-century manuscript \textit{Paris BN lat. 4416} necessitates a reassessment of the coexistence of Frankish and Roman law in the Carolingian period.\footnote{112} On folio 50 verso, the manuscript presents the \textit{Gai Epitome} 1, 1, a text which divides \textit{ingenui} from \textit{servi} before introducing three kinds of \textit{liberti}\footnote{113}, namely \textit{cives Romani}, \textit{latini}, and \textit{dediticii}. They constitute a hierarchy in which becoming a \textit{civis Romanus} is the most desirable option.\footnote{114} This text is important in itself because it may have influenced the various types of manumission contained in the \textit{Lex Ribuaria}.\footnote{115} Particularly thought-provoking are the four marginal glosses that give as wergilds for a \textit{Romanus possessor} (himself not in the text) 100 \textit{solidi}, for a \textit{civis Romanus} 40 \textit{solidi}, for \textit{latini homines} 35 \textit{solidi}, and for \textit{dediticii} 20 \textit{solidi}. Is this proving the eventual adaptation of wergild to Roman law? Why did the Carolingians assign wergilds to these bygone categories? The implications of this discovery are as yet unclear.

However, as the second paragraph of the Ribuarian title 64 (61) reveals, for the freedman in question Roman citizenship translated into being judged under Roman law in the future. The enfranchised person should then be compensated with a wergild of 100 \textit{solidi}, just like the \textit{advena Romanus} of title 40 (36) or the \textit{Romanus homo}

\footnote{110} \textit{Lex Ribuaria} \textit{64} (61) [\textit{De libertis secundum legem Romanam}], ed. Beyerle/Buchner, 117: 1. \textit{Si quis servum suum libertum fecerit et civem Romanum portasque apertas conscriberit, si sine liberis discesserit, non alium quam fiscum habeat heredem.} 2. \textit{Quod si aliquid criminis amiserit, secundum legem Romanam iudicetur. Et qui eum interfecerit, centum solidos multetur.} 3. \textit{Quod si dominus eius eum ante regem dinarii voluerit, licentiam habeat.}

\footnote{111} \textit{Lex Romana Visigothorum, Liber Gai} I, 1, ed. Haenel, 314–316.

\footnote{112} Ubl 2014c, referring to the manuscript Paris, Bibliothèque Nationale, Latin 4416f. 50v. \url{http://gallica.bnf.fr/ark:/12148/btv1b85287653/f110.zoom.r=4416%20.langDE} (seen 25.4.2017).

\footnote{113} Legal historians differentiate between \textit{liberti} and \textit{libertini}; while \textit{libertus} referred to a freedman in relation to his patron, \textit{libertinus} referred to freedmen in relation to their societal status.

\footnote{114} \textit{Lex Romana Visigothorum, Liber Gai} I, 1, ed. Haenel, 314–316.

possessor in Salic law.¹¹⁶ There is no legal caveat against the possibility to raise a civis Romanus to full Ribuarian freedom. Additionally to the foreign Romanus, who most certainly gained his legal status by birth, the civis Romanus of title 64 is a Roman by manumission. The act of manumission can thus be seen as a kind of rebirth, similar but not equal to manumission by penny-throw (denaratio) in front of the king. According to title 60 (57) De libertis a domino ante regem dimissis this practice would turn any freedman into a Ribuarian freeman:

If anyone manumits his freedman according to Ribuarian law by his own or by another’s hand in the presence of the king and throws a denarius, and the freedman receives a charter of manumission, we shall not permit him in any way to fall back into slavery. Indeed, let him remain free as the other Ribuarians.¹¹⁷

The mechanism described here is important because the Ribuarian law assumes the proximity and approachability of the king, who guarantees for the newly-won freedom.¹¹⁸ It was the king and the king only who was able to raise a former slave into the category of Ribuarius and thus enlarge the happy few. In full awareness of the concept’s questionable nature one could reasonably call people elevated in such way Königsfreie.¹¹⁹ Royal authority ultimately defined who was protected by the 200 solidi wergild. Yet the king did not grant freedom or liberate people himself. He merely recognized the correct act of manumission and guaranteed a person’s free status against possible attempts of re-enslavement (revocatio).

The apparently least desirable third option is manumissio in ecclesia. It stands in sharp contrast to the other two and resulted in limited freedom for the manumitted:

This we also command so that any free Ribuarian of whatever sort who wishes to free his own slave for the salvation of his soul or for his price in accordance with Roman law shall hand him over with charters in a church in the presence of priests and deacons, or let him hand over the slave into the hand of the bishop before all the clergy and the laity. And let the bishop command

¹¹⁷ Lex Ribuaria 60 (57) [De libertis a domino ante regem dimissis], ed. Beyerle/Buchner, 107, 1: Si quis libertum suum per manum propriam seu per alienam in presentia regis secundum legem Ribvarium ingenuum dimiserit et dinarium iactaverit, et eiusdem rei cartam acciperit, nullatenus permittimus eum in servicio inclinari; sed sicut religii Ribvari liber permaneat. – N.B.: the text differentiates between the original status of persons subject to each manumission procedure. While manumissions to the status of civis Romanus or tabularius applied to servi, the practice of manumission through penny-throw presupposes that the subject of manumission is already a libertus. In theory it was impossible to be directly elevated from slave to Ribuarian.
¹¹⁸ The title is modelled on Pactus legis Salicae 26, where the denaratio takes place ante regem, too. The context is somewhat different, because it is limited to manumissio in hoste where the king is more likely to be at hand (not in the A redaction though); cf. Pactus legis Salicae 26: De libertis dimissis, ed. Eckhardt, 96 – 97.
the archdeacon to compose charters for him in accordance with Roman law under which the church lives. And let one and all descendants of him remain free and be under the church’s protection, and let the entire income of [their social] position remain with the church. And let no one presume to manumit [a man who became] a church freedman by penny-throw before the king. If he does [this], let him be held liable for 200 solidi. Nevertheless, let the church freedman and his descendants remain freedman, and let the entire income of [their social position] remain with the church. And let them hold court nowhere else than at the church where they were freed.¹²⁰

As Stefan Esders has shown in his book *Die Formierung der Zensualität*, the eastern Frankish practice of manumission in churches stood in the tradition of late antique developments in Roman law, namely the general tightening of *patrocinia*¹²¹ over freedmen and Constantine’s acknowledgment of *manumissio in ecclesia*¹²² as a legal way to obtain Roman citizenship in particular.¹²³ In the *Lex Ribuaria* this practice was intentionally reframed to the end that it no longer brought about Roman citizenship but instead aimed at the extension of ecclesiastical *patrocinia* over the manumitted.¹²⁴ People manumitted in churches were called *tabularii* as their former masters were meant to present them to the bishop *cum tabula*. *Tabularii* and their descendants were to remain under the guardianship and jurisdiction of the same church in which they were manumitted. Interestingly, the Church itself was understood to live under Roman law (*secundum legem Romanam, quam ecclesia vivit*). But did this apply to its clients, too? Last but not least it should be stressed that the *Lex Ribuaria* prohibited raising *tabularii* to full Ribuarian freedom through penny-throw, which was penalized by a fine twice as high as their 100 solidi wergild, attributed to them in the act of manumission. Obviously this fine served as a safeguard against the alienation of church property. If someone dared to manumit a *tabularius* by penny-throw, the church would lose a dependent with all the expectable dues (*et omnis reditus status eorum*), including his potential wergild. Whilst the sta-

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tus of civis Romanus could serve as a way station on the road to Ribuarian freedom, that of tabularius appears to be a dead end for the person in question and for his descendants. Hence Esders argues that Lex Ribuaria 61 (58) is a decisive text because the two manumission practices resulting in Roman citizenship and ecclesiastical dependency respectively were put on different tracks for good.¹²

In the Lex Ribuaria, Romanness is much more explicitly linked to living under the jurisdiction of Roman law than in the Lex Salica. One could thus half expect that tabularii counted as Romani, because the church itself lived under Roman law. The Lex Ribuaria is however quite clear in dividing tabularii from cives Romani. In the tenth and eleventh paragraph of title 61 (58) tabularius and Romanus homo or tabularia and Romana femina are named separately but are subject to the same rule, i.e. the ‘principle of the lower hand’,¹² which claims that in marriages between persons of unequal status, if not husband and wife themselves, then the children shall descend to the lower status:

61, 10 If a church freedman takes a Ribuarian maid servant in matrimony, let not him, but his offspring serve. Similarly if a church freedwoman or a royal or a Roman woman takes a Ribuarian slave in matrimony, let not her, but her offspring serve.
61, 11 If a churchman, a Roman or a king’s man takes a Ribuarian freewoman in matrimony, or if a Roman woman or a king’s or a church freedwoman takes a Ribuarian freeman, let their descendants always descend to the lower status.¹²

Technically, this shows that tabularii were not equal to cives Romani, but as they were both former servi with the same 100 solidi wergild (just like the homines regii and ecclesiastici), they were taken for members of the same estate, at least when it comes to intermarriage. What is more, due to ecclesiastical patronage, ecclesiasticus/ecclesiastica and tabularius/tabularia are interchangeable in those clauses. These are only two of many regulatory statutes which are attached to the title on manumissio in ecclesia. Some regulate the status of tabularii in particular; others deal with how individuals from different social groups relate to one another. The very fact that such statutes were included hints at the permeability of social boundaries, despite the rigidity perceived on the surface. In their striving to create a Ribuarian identity, legislators opened the door to migrants, while they equally sought to leave the non-privileged at that very door.

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¹² Esders 2010, 50 – 60, esp. 57.
¹² Esders argues that certain practices resulted in different social statuses.
¹² Lex Ribuaria 61 (58) [De tabulariis], 10 – 11, ed. Beyerle/Buchner, 112: 10. Si autem tabularius ancillam Ribvariam acciperit, non ipse, sed generatio eius serviat. Similiter et tabularia vel regia aut Romanus homo, si servum Ribvarium acciperit, non ipsa, sed generatio eius servat. 11. Si ecclesiasticus, Romanus vel regius homo ingenuam Ribvariam acciperit, aut si Romana vel regia seu tabularia ingenuum Ribvarium in matrimonium acciperit, generatio eorum semper ad inferiorem declinentur; – the same array is found in Lex Ribuaria 61, 8, ibid. 111, on unauthorised manumission, but the editors assume an interpolation, cf. Lex Ribuaria, Sachkommentar zu 61 §§ 8, 9, 10/11, 14–16 and 18, ibid., 162–163.
Other uses of the *homo Romanus*

Examples discussed so far have dealt with the rather specific treatment of Roman foreigners, the acquisition of Roman legal status through manumission and the interrelated marriage regulations. In a final step, some more general implications of individual *Romanness* shall be addressed. The remaining titles which mention a *homo Romanus* deal with public institutions. Apart from the foreign *Romanus* in title 40 (36) and the *civis Romanus* in title 64 (61), the *Romanus* in the Ribuarian law was always matched with the *hominès regii* and *hominès ecclesiastici*, usually identified as ecclesiastic *coloni* or royal *fiscalini*. They, like the *civis Romanus*, are *de iure* free but not *de facto* free of bonds, which is why they are always treated as a group with equal rights and duties. Referring to these people’s *auctor*, title 68 (65) spells out their dependent status. The first paragraph penalizes a Ribuarian’s non-compliance to conscription or other royal service with a fine of sixty *solidi*, i.e. the *heriban*, the standard fine for failing to render military service when ordered. The second paragraph decrees: ‘If, however, a Roman, a king’s man or a church man does this, let his patron (*auctorem suum*) be held liable for thirty *solidi*.’

Again this confirms that the *Romanus* of the Ribuarian law must be understood as a recently manumitted freedman standing under the extended authority of his *auctor*. The principle according to which freedmen remained under the *patrocinium* of their former owners was derived from Roman tradition. It was handed down to the Franks via the Theodosian Code and its Visigothic Breviary. What is really new in the *Lex Ribuaria*, however, is the notion that in case of the *tabularii* these rights of patronage were conveyed to the church as the place of manumission. In case of *Lex Ribuaria 68 (65)* we will have to reckon with three different *auctores*: king and church for *homo regius* and *homo ecclesiasticus* and whoever was the former owner for the *Romanus*. But what we can learn from this title is that, like Ri-

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129 Obviously this has to do with being bound to *patrocinia* and, in the case of *fiscalini* and *coloni*, to the soil, too. This seems to be a major difference; there is no hint to *Romani* being bound to the soil.

130 *Lex Ribuaria 68 (65) [De eo qui bannum non adimplet]*, ed. Beyerle/Buchner, 119: 1. *Si quis legibus in utilitatem regis sive in hoste seu in reliquam utilitatem bannis fuerit et minime adimpleverit, si egreditudo eum non detenuerit, sexaginta solidos multetur. 2. Si autem Romanus aut regius seu ecclesiasticus homo hoc fecerit, unusquisque contra auctorem suum 30 solidos culpabilis iudicetur.*

131 Cf. Andersen 1974, 5–149 for the emergence of patronage in Rome and 150–185 for early medieval continuity in the *leges*; on page 183 Anderson claims ‘freedom could be experienced not wholly, but partially. A man could be free, an *ingenuus*, and at the same time under the patronage and protection of someone else.’

132 Andersen 1974, 150–185; see also Esders 2010, 30–32.

133 Esders 2010, 60.

134 Cf. Goffart 2008a, 188 n. 74; Goffart names king or church as the respective *auctor*, which is convincing for *hominès regii* and *hominès ecclesiastici*, but not for *Romani*. 
buarians, the group consisting of socially equal Romani, coloni and fiscalini were obliged to render military and other royal services. The implication here is that in spite of their dependent status, there was an interest to count these persons as pseudofreemen in order to have them at hand for military duties. Since there are no hints at any native Romans in the Ribuanarian law, the law has to refer to the cives Romani discussed above, unless Roman foreigners were also subject to military recruitment. Once again this may be attributed to the Lex Ribuanaria’s special character as a sort of frontier law.

This and the similar title 90 (87) De homine forbannito make clear that Romanness had been transformed into nothing more than a label to denote an intermediate legal status group, compensable by only half a wergild. On the one hand, its members were legally free and had to render public service. On the other hand, fines owed for disrespecting the public ban were also halved. In other words, Romans were valued less, but proportional to this evaluation they were granted a discount on public fines. This proportionality, the most striking feature of a monetized penal system, seals the deal. While Romanness developed from a category of ethnic to one of legal affiliation, the legislative approach changed from subordination to integration. This shift from Salic discrimination to Ribuanarian proportionality is becoming clear in comparison to the Lex Salica, in which any discount on behalf of the discriminated Romans is unheard of. Under Salic law, Franks paid less for wrongs committed against Romans, but Romans had to compensate Franks in full.

### 6 Conclusion

Although it is not possible to determine the intrinsic motivation for earlier discrimination against Romans in the Lex Salica, it is quite evident that the suppression of Romans to the status of dependent liti led to the subsequent alignment of both groups, not solely in wergild terms. This is not to say that freeborn Roman proprietors were drawn into some kind of French press in the course of the sixth century, only for their descendants to emerge as semi-free dregs in the early seventh. Nothing can be said about the fate of specific individuals, but recalling Geary’s caveat to consider the intention behind any ethnic labeling, we rather have to explain how this conceptual

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137 Lex Ribuanaria 90 (87) [De homine forbannito], ed. Beyerle/Buchner, 133: Si quis hominem, qui furbanitus est, in domo recipere praesumpebit, si Ribvarius est, 60 sol., si regius, Romanus vel ecclesiasticus, 30 sol. culpabilis iudicetur.
138 Unfortunately there is no comparable public fine which differentiates between Franks and Romans in Salic law, but laws on personal offenses show that Romans were liable to compensate the full amount; cf. Pactus legis Salicae 14, 1–3 and 32, 1–3, ed. Eckhardt, 64–65 and 122–123.
change came about. Patrick Amory laid bare how in the Burgundian kingdom the ‘consistent linking of ethnic distinctions with legal roles deriving from the political process of settlement [suggested] that the social and political roles played by members of the different groups may have been determinants of membership rather than consequences of it.’\textsuperscript{139} As far as the Frankish material is concerned, this is too much of a stretch. Amory’s argument rests on a perceived change in the usage of ‘\textit{barbarus} and \textit{populus noster} in conjunction with and in opposition to the national labels and territorial terms’, which he interpreted as legislators’ reactions to reality.\textsuperscript{140} The Frankish \textit{leges}, with their very sparse hints at royal objectives, are not as telling in this respect as the laws and edicts convened in the Burgundian \textit{Liber Constitutionum}. One plausible explanation that can indeed be gained from the Frankish \textit{leges}, however, is that the reduced value of Roman status in the \textit{Lex Salica}, as seen through its wergild prescriptions, rubbed off on the label itself.\textsuperscript{141} After all, this highlights the self-regulatory power of the wergild system. The almost complete monetization of the Frankish penal system produced a coordinate system that entailed a certain solidification of social stratification. In that coordinate system a single spot was shared by all subjects who had in common the halved wergild of 100 \textit{solidi}. In (re-) defining this intermediate level, the Ribuanarian law surpassed the alleged dichotomy of free and unfree. The 100 \textit{solidi} wergild can be seen as a threshold isolating its members up and downwards alike. A more elevated spot priced at 200 \textit{solidi} was shared by all freemen fit to bear arms. This may have included other groups from within the kingdoms, but Ribuanarian status itself was only attainable by birth or by \textit{denaratio}. It certainly excluded \textit{Romani}, even though this term had developed into a mere legal category attached to the 100 \textit{solidi} threshold.

\textsuperscript{139} Amory 1993, 26; see also Innes 2006.
\textsuperscript{140} Amory 1993, 26.
\textsuperscript{141} A notion already charily expressed by Beyerle 1915, 394 n. 36.