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*Chapter 1*

# THE MINOR *LEGES* PART 1. PROBLEMS, BACKGROUND, *LEX RIBUARIA*, *EWA AD AMOREM*

## 1.1 INTRODUCTION

The starting point and central theme of the next two chapters is the relationship between ethnic identity and the *leges*. The view that the possession of *leges* gave a sense of civilisation to *gentes* can be found in classical and late antique histories available to the Carolingians.[1] For Wormald, such a link was crucial also to understanding the *leges* in the early Middle Ages: the *leges* had a role in reinforcing feelings of ethnic identity, so 'The *lex* of the Franks was *more* than Frankish law. It was the Frankish past. It was Frankish identity'.[2] But ethnogenesis theorists have taught us to worry about what such statements might ever mean. We are constantly reminded that ethnic identity was malleable, and that we must be aware of the specific political context of each use of ethnic terminology. The production of each text encoded an argument, and each text might subsequently be used for different arguments in different contexts. As Pohl put it, texts 'can only be understood properly if we do not see them as evidence for the natural existence of ethnic communities, but as part of strategies to give shape to these communities'. Ethnic identity must also always be 'constituted through social contact', so the nature of that social contact needs to be central to any investigation of the meaning of the terminology.[3]

[1] Take for example Ammianus Marcellinus, *Ammiani Marcellini Rerum gestarum libri qui supersunt* ed. W. Seyfarth (Leipzig, 1978) Vol. I pp. 8–9 and 12. Translations taken or adapted from Ammianus Marcellinus, *Rerum gestarum libri* ed. and trans. J. Rolfe (Cambridge, MA, 1963–4), Loeb Classical Library Vol. I pp. 26–7 and 36–7: XIV, 4, 1: The Saracens, whom 'we have never found ... desirable either as friends or as enemies' pointedly have no laws. XIV, 6, 5: laws are 'the everlasting foundations and moorings of liberty' that the Romans set up before entrusting the management of their inheritance to the Caesars.

[2] Wormald (1999), *The making*, p. 49.

[3] W. Pohl, 'Telling the difference: signs of ethnic identity' in: W. Pohl and H. Reimitz (eds.), *Strategies of distinction: the construction of ethnic communities, 300–800* (Leiden, 1998), The Transformation of the Roman World 2, p. 21. This approach is argued as useful for the *leges* directly in W. Pohl, 'Probleme einer Sinngeschichte ethnischer Gemeinschaften. Identität und Tradition' in: G. Dilcher (ed.), *Leges - Gentes - Regna* (Berlin, 2006), pp. 51–67.



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## *The minor* leges *part 1*

Although we now have sophisticated accounts of the meaning and purpose of ethnic terminology in some of the earliest *leges barbarorum*, they have been geared towards the period in which the *leges* were composed.[4] In this period, the emergence of ethnic kingdoms and an ethnic discourse has been seen as a fundamental development in the transformation of the Roman world.[5] The possible use Wormald suggested, that *leges* continued in the Carolingian period to be relevant to questions of ethnicity, has not been considered in detail. Indeed, ethnicity, and ethnic processes in general, have been studied in less detail in the Carolingian period than in the previous period.

In the studies we have, the use of Frankish terminology in both Merovingian and Carolingian periods has emerged as uniquely slippery.[6] The term 'Frank' is apparently sometimes used as a term denoting free status, sometimes it is an ethnic term, and when it is, it overlaps with, is qualified by, or contrasts with a large variety of alternative identities or sub-identities, especially in connection with the division between East and West Franks. Sometimes it seems more to represent a sense of trans-ethnic political identity. One must be especially alert with the Franks to the possibility of very rapid shifts in the use of ethnic

4 Two of the most stimulating are on the rich Burgundian material: P. Amory, 'The meaning and purpose of ethnic terminology in the Burgundian laws' *EME*, *2* (1993), pp. 1–28 and Innes (2006), 'Land, freedom', pp. 37–74.

5 The bibliography is now colossal and ever-expanding. One might note the rarity of papers on ethnicity after 750 in such major collections as Pohl and Reimitz (1998), *Strategies of distinction*; A. Smyth (ed.), *Medieval Europeans. Studies in ethnic identity and national perspectives in medieval Europe* (London, 1998); A. Gillett (ed.), *On Barbarian Identity: Critical approaches to Ethnicity in the Early Middle Ages* (Turnhout, 2002); H. Wolfram and W. Pohl (eds.), *Typen der Ethnogenese unter besonderer Berücksichtigung der Bayern* (Vienna, 1990); F. Curta (ed.), *Borders, barriers, and ethnogenesis. Frontiers in late Antiquity and the Middle Ages* (Turnhout, 2006). A partial exception is the literature on Rhaetia, in which law indeed plays a role, but one that cannot be considered here. See H. Wolfram, 'Ethnogenesen im frühmittelalterlichen Donau- und Ostalpenraum (6.-10. Jahrhundert)' in: H. Beaumann and W. Schröder (eds.), *Frühmittelalterliche Ethnogenesen im Alpenraum* (Sigmaringen, 1985), Nationes: historische und philologische Untersuchungen zur Entstehung der europäischen Nationen im Mittelalter 5, pp. 97–151. More general exceptions are W. Pohl, 'Zur Bedeutung ethnischer Unterscheidungen in der frühen Karolingerzeit' in: H.-J. Hässler, J., Jarnut and M. Wemhoff (eds.), *Sachsen und Franken in Westfalen: zur Komplexität der ethnischen Deutung und Abgrenzung zweier frühmittelalterlicher Stämme* (Isensee, 1999), Studien zur Sachsenforschung 12, pp. 193–208; before that E. Ewig, 'Volkstum und Volksbewußtsein im Frankenreich des 7. Jahrhunderts' in: E. Ewig, *Spätantikes und Fränkisches Gallien: gesammelte Schriften 1952–73* Volume 1, (Munich, 1976), pp. 246–55.

6 For the Merovingian period see above all I. Wood, 'Defining the Franks' in: S. Forde, L. Johnson and A. Murray (eds.), *Concepts of nationality and national identity in the Middle Ages* (Leeds, 1995), pp. 47–57; Carolingians in J. L. Nelson, 'Frankish identity in Charlemagne's empire' in: P. Geary and Garipzanov, *Franks, Northmen, and Slavs* (Turnhout, 2008), pp. 71–83 as well as H. Reimitz, 'Omnes Franci: identification and identities of the Early Medieval Franks' in: Geary and Garipzanov (2008), *Franks, Northmen, and Slavs*, pp. 51–68. See also Pohl (1999), 'Bedeutung ethnischer Unterscheidungen', pp. 195f. and G. Halsall, *Settlement and social organization: the Merovingian region of Metz* (Cambridge, 1995), pp. 26–32.



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terminology, and must look very hard at specific contexts to make a convincing argument about the link between *lex* and *gens*.[7]

The few published views on the relationship between ethnic identities and what I call the 'minor *leges*' – the group of ninth-century *leges* for Saxons, Thuringians, Frisians, and Chamavians – in the Carolingian period are too simple to swallow. Collins describes the *Lex Saxonum* as simply Charlemagne's will imposed on his new subjects, but given ethnic wrapping, whose purpose was the articulation of a characteristically Frankish obsession with defining the *gens* of all newly subjugated peoples, while simultaneously refining the sense of a Frankish *gens*.[8] But much more specific work is needed to make his suggestion convincing. Not only is the dating of the *Lex* problematic, but Collins's view of the role of ethnicity under the earlier Carolingians was somewhat narrow.[9] He placed great weight on his observation that *Aquitani* appear in Aquitaine as a symptom of 'ethnicisation' of territorial terminology. But he did not take account of a central result of Ewig's work in the 1960s, that the opposite tendency was most prevalent, that there was a widespread territorialisation of 'ethnic' terminology, and that this was a process with lasting significance.[10] Non-Frankish *gentes* in the ninth century can also be seen developing an internally focused self-awareness very much bound up with the history of the Franks, nowhere more clearly than in the Saxon case.[11] So several processes, the complexity of which we need to appreciate, were operating simultaneously in the same period. The history of the *lex* needs to be traced in all of this complexity.

Bound up in the connection between *gentes* and *leges* is the 'personality principle', under which each man was entitled to use and be judged under his own 'ethnic law'. This was considered a central feature of Germanic law by the scholars of the *Historische Rechtsschule*, and has since been the subject of some welcome revisionist attention. Amory most clearly suggested that the principle was not something imported

7 Brilliantly demonstrated in Reimitz (2008), 'Omnes Franci', pp. 51–68.

8 R. Collins, *Early medieval Europe (300–1000)* (Basingstoke, 1991), pp. 297f.: 'it does seem as if under Charles the Franks were trying to define their own identity against those of all surrounding groups, who were forced by their Frankish conquerors or political masters into accepting far more rigid and formal definitions of their customs, history and ethnicity, that were in many respects anachronistic. At the same time the older divisions within the Frankish body politic, notably the division between Neustrian and Austrasian kingdoms, virtually disappear'. For a conscious qualification of this view on the point of the Saxon *lex* see H. Mayr-Harting, 'Charlemagne, the Saxons and the imperial coronation of 800' *EHR*, *111* (1996), pp. 1129–30. See also R. Collins, 'Law and ethnic identity in the Western Kingdoms in the fifth and sixth centuries' in: Smyth (1998), *Medieval Europeans*, pp. 1–23.

9 For a discussion on dating, see Chapter 2, section 2.4.2

10 Ewig (1976), 'Volkstum und Volksbewußtsein', pp. 246–55; Pohl (1999), 'Bedeutung ethnischer Unterscheidungen', pp. 193–208.

11 See the work on *Selbstbewußtsein* esp. in M. Becher, *Rex, Dux und Gens* (Husum, 1996). This idea is used repeatedly in Chapter 2 below.



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into Europe with the Germanic peoples, but developed as a consequence of the expansion of the Carolingian empire. He argued explicitly against Guterman, the author of the most recent studies focused on personality, and before him Stouff, who saw personal law being supplanted by territorial law only in the Carolingian period.[12] Amory suggested that the expansion of the Carolingian empire in fact led to a new, distinctive sense of ethnicity, in which 'law was not so much a result as a major determining factor'.[13]

It is difficult to find evidence in charters for the operation of personal law in the ninth century, and the majority of references in Carolingian legal texts to the need to preserve the *lex* of each individual can be read as guaranteeing to each individual a bundle of general rights, rather than the use of an ethnic *lex*.[14] Guterman's most recent work appeared in 1990, but he hardly cites a work more recent than 1900, and his perspective is that of a legal historian trying to uncover the system which is assumed to be there, not of an early medievalist who worries about system. In fact, clear *professiones iuris* – statements of the personal law of an individual – are restricted to Italy, and very occasionally Burgundy, in the Carolingian period, and do not reach their heyday anywhere until some time after.[15] Pohl-Resl even thought that the presence of a *professio*

[12] Amory (1993), 'Meaning and purpose', pp. 1–28; S. L. Guterman, *The principle of the personality of law in the Germanic kingdoms of western Europe from the fifth to the eleventh century* (New York, 1990); L. Stouff, 'Étude sur le principe de la personalité des lois depuis les invasions barbares jusqu'au XIIe siècle' *Revue bourguignonne* (1894), pp. 1–65, 273–310. For a conscious decision to ignore Amory's critique, and for bibliography on the Italian and Spanish territoriality-personality debates, see N. Everett, 'How territorial was Lombard Law?' in: W. Pohl and P. Erhart (eds.), *Die Langobarden* (Vienna, 2005), Forschungen zur Geschichte des Mittelalters 9, pp. 345–60.

[13] Amory (1993), 'Meaning and purpose', p. 23. Cf. Pohl and Reimitz (1998), 'Strategies of distinction', pp. 17–18.

[14] For this sense of 'law' see for example J. L. Nelson, 'Dispute settlement in Carolingian West Francia' in: Davies and Fouracre (1986), *Settlement of disputes*, p. 50, and J. L. Nelson, 'Kings with justice, kings without justice: an early medieval paradox' in: *La Giustizia nell'Alto Medioevo (secoli V–VIII)* (Spoleto, 1995), Settimane 42, p. 806. Capitularies: take for example MGH Capit. I p. 67 no. 25 c.5: *voluntas domni regis est, ut unusquisque homo suam legem pleniter habeat conservata…* A catalogue of such references in normative texts can be found in Guterman (1990), *Principle*, pp. 107f.; Wormald (1999), *The making*, p. 31: the principle is 'rather easier to find in textbooks than in evidence'. Amory (1993), 'Meaning and purpose', p. 21: 'These [tenth- and eleventh-century] examples are far-flung, but they show to what lengths scholars will go in pursuit of personality of the law'. Cf. anxiety about personality already in Nelson (1986), 'Dispute settlement', p. 60. Lupoi, working in a different tradition altogether, is also sceptical, although it is difficult to understand his arguments: M. Lupoi, *The origins of the European legal order* trans. A. Belton (Cambridge, 2000), pp. 388f. And see the heroic understatement in Guterman (1990), *Principle*, p. 113: 'Many documents, it is true, lack *professiones*'.

[15] Italian *professiones* can be found in *I placiti del "Regnum Italiae"* ed. C. Manaresi Volume 1, (Rome, 1955). See for a splendid example pp. 533–47 no. 142 from Regio in 944. Note the restriction of references to the *leges* as a possession to post-900 charters in the teaching volume, whose texts were selected specifically for their demonstration of territoriality and personality: *Textes relatifs aux institutions privées et publiques aux époques mérovingienne et carolingienne* ed. M. Thévenin (Paris, 1887). Wormald (1999), *The making*, pp. 78–9 for *Lex Salica* as a possession in documents from Autun; p. 81 for the only two non-Italian ninth-century explicit *professiones*.



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*iuris* in Italian charters of the tenth century was a good sign that they had been forged in the eleventh century.[16]

A new, comprehensive study is needed tracing the personality principle through the Carolingian period and into the eleventh century, and I shall only offer some fragmentary suggestions arising from texts from my regions. But I shall suggest that, here, both territoriality and personality are concepts too rigid to fit much of the Carolingian evidence. We need to extend to our understanding of the use of the *leges* the emphasis on negotiation and consensus, which has informed so much recent work on society and disputing.

The minor *leges*, the *Leges Saxonum, Thuringorum, Frisionum*, and the enigmatic *Ewa ad Amorem* are obviously crucial sources for the reading of *lex* in the Carolingian period, because they are the only representatives of the genre actually composed in that period. The next two chapters investigate the production and use of two of them, the *Lex Saxonum* and the *Ewa ad Amorem*. The *Lex Salica* and especially *Lex Ribuaria* are first examined briefly, to provide some context.

## 1.2 THE FRANKISH BACKGROUND. HISTORY AND ETHNICITY IN THE *LEX SALICA* AND *LEX RIBUARIA*

### *1.2.1 Lex Salica*

The *Lex Salica* is the most famous and most widely studied of all the *leges barbarorum*. It is reasonably confidently dated to before 511, and associated with King Clovis, so has naturally played a central role in discussions of all aspects of early Frankish society, government and culture. But its fifty-five extant Carolingian manuscripts suggest that it was also the most widely circulated legal text in the Carolingian period, which brings it to attention for these purposes.[17] Unfortunately, little can be said here about the link between the reading of the *Lex Salica* and the maintenance of ethnic identities in the Carolingian period, beyond what has already been printed, but a survey of some literature is worthwhile.

The first question is with what ethnic identity we should be concerned. The traditional view of the *Lex Salica* is that it represented the *Volksrecht* – the 'tribal law' – of the Western branch of the Franks, the 'Salian Franks', while the eastern Franks, the 'Ripuarian Franks' used the *Lex Ribuaria*. Already in the early twentieth century, however,

[16] B. Pohl-Resl, 'Ethnische Bezeichnungen und Rechtsbekentisse in langobardischen Urkunden' in: K. Brunner and B. Merta (eds.), *Ethnogenese und Überlieferung: angewandte Methoden der Frühmittelalterforschung* (Vienna, 1994), pp. 163–71; B. Pohl-Resl, 'Legal practice and ethnic identity in Lombard Italy' in: Pohl and Reimitz (1998), *Strategies of distinction*, pp. 205–19. The Burgundian context is important for reading Agobard's famous account *Adversum Gundobardum*, translated in Guterman (1990), *Principle*, pp. 242f.

[17] Fifty-five is the figure for complete manuscripts. There are also three fragments.



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it was noticed that in almost all contexts, while the Alemannic and Bavarian laws tend to be styled in their manuscripts with a genitive plural, *leges Alemennorum* and *Baiuwariorum*, the *Salica* and *Ribuaria* are plain adjectives. It was already clear that the term *terra salica*, found in ninth-century charters and *formulae*, made little sense as 'land of the Salian Franks', so it was argued instead to relate to a particular kind of landholding, a *Herrenhof* administered directly by its lord.[18] Stein first suggested that the term *Salica* even in the context of the *Lex Salica* had nothing to do with a *gens*, and instead denoted something along the lines of the Latin term *dominica*, associated with lordship. More recently, it has also been argued that, in addition to the sense proposed by Stein, *Salica* is also possibly related to proto-Germanic ⋆*saljon*, whose clearest modern Germanic cognate is the term Ge-*selle*. The word implied something along the lines of 'common', 'communal', 'shared'. In Springer's most recent opinion, the term *Salica* shifted in meaning from 'common' to Stein's 'lordly' throughout the Merovingian period. Most radically, he argued that the 'Salian Franks' never existed at all.[19] The term *Salioi* and similar terms do appear in late antique texts, but there have been convoluted arguments as to its meaning and significance, revolving around Julian's use of the term, and other Latin sources' dependence on his work.[20] It seems that either 'Salians' never existed outside Julian's work and those who followed him, or a group identifying as 'Salians' was crushed by the Romans in the third century, never to appear again.

It is not possible here to treat the arguments concerning the migration period or the etymology in detail. It is, however, quite clear that there is no evidence that the *Lex Salica* was ever understood in the ninth century as 'law of the Salians' or 'law of the Salian Franks'. On the rare occasions in which a *Salicus* appears in a charter or a narrative, it is always in a narrowly legalistic context, as 'a user of *Lex Salica*'. There is no sense in our sources that there was ever a 'Salic' region.

The *gens* we should be concerned about in relation to the *Lex Salica* is, straightforwardly, the Franks. This is certainly the assumption of both of the extant prologues to the *Lex*. The first 'short' text, accompanying the

[18] For a concise account of attitudes to *terra salica* in the historiography see H. Tiefenbach, *Studien zu Wörtern volkssprachiger Herkunft in karolingischen Königsurkunden. Ein Beitrag zum Wortschatz der Diplome Lothars I. und Lothars II* (Munich, 1973), Münstersche Mittelalter-Schriften 15, pp. 105–8.

[19] M. Springer, 'Gab es ein Volk der Salier?' in: D. Geuenich, W., Haubrichs and J. Jarnut (eds.), *Nomen et gens: zur historischen Aussagekraft frümittelalterlicher Personennamen* (Berlin, 1997), pp. 58–83 and the shorter version M. Springer, 'Salier und salisches Recht – Beobachtungen zu den Worten Salii und Salicus' in: A. Wieczorek (ed.), *Die Franken, Wegbereiter Europas. Vor 1500 Jahren, König Chlodwig und seine Erben* (Mainz, 1996), pp. 485–7.

[20] The clearest account is in M. Becher, *Chlodwig I. Der Aufstieg der Merowinger und das Ende der antiken Welt* (Munich, 2011), pp. 55–60.



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## 1.2 Lex Salica *and* Lex Ribuaria

A redaction, is Merovingian, the 'long', attached to the D redaction, is likely a product of Pippin's chancery. Both do indeed tell a story about the Franks and their kings. The 'long' prologue in particular lauds Frankish achievements at length, displaying what has been described as 'anthemic arrogance'. This prologue offers the best evidence that the *lex* of the Franks was ever held up as an achievement, an attribute of a powerful, respectable people. Attempts to establish a role for the *Lex Salica* as a kind of ethnography, crystalising Frankish identity, have made much of this prologue, but otherwise have rested largely on negative arguments. Only because it is so difficult to see traces of the text in operation in a legal sense was it necessary or possible to forge an argument about alternative roles the text could fulfil. Once again, the central difficulties are that the *Lex Salica* was never directly cited, and that its revisions centred more on Latinity than substance. We do have reference to the *Lex Salica* in charters and *formulae*, but they never point explicitly to a passage in the text as we have it.[21] So if the written *lex* was not obviously and clearly cited or used as law, then the material in the prologues pointed to an alternative way of reading them.

What we lack is more direct evidence for the connections between the *Lex Salica* and feelings of ethnic identity. We get nowhere examining patterns in terminology in our sources, as we do with 'Ribuarians' and the *Lex Ribuaria*, and find very little helpful mention of Frankish law in historiography or hagiography, as we do for the Saxons.[22] Neither the 'long prologue' itself, nor other works on Frankish ethnography or history have left a considerable record in the surviving manuscripts of *Lex Salica*, while other texts of law are almost always copied with it. So the *Lex Salica* may well have been read in the context of Frankish ethnic identity, but the terminology surrounding the text is used too vaguely in other contexts for us to be able to see such a use clearly, and in any case such a use would not rule out other, more 'legal' uses. Later I advance an argument from a Carolingian text that the *Lex Salica* was at least sometimes read as law, in a certain, qualified sense. For the time being, however, to investigate further the connection between *lex* and *gens* in the Carolingian period, we must turn to other texts.

[21] See the examination of the term *lex salica* in the charters in G. Köbler, *Das Recht im frühen Mittelalter. Untersuchungen zu Herkunft und Inhalt frühmittelalterlicher Rechtsbegriffe im deutschen Sprachgebiet* (Cologne, 1971), Forschungen zur deutschen Rechtsgeschichte 7, pp. 96–8.

[22] A notable exception is the *Passio Leudegarii*, discussed in section 1.2.3 below. Another is the *Liber Historiae Francorum* on which see, for a recent discussion, R. McKitterick, *History and memory in the Carolingian world* (Cambridge, 2004), p. 12.



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### *1.2.2 Ribuarian* Lex *and the Ribuarians in the Carolingian period*

The *Lex Ribuaria* is generally understood in recent English historiography as a seventh-century text produced under a king in the eastern, Austrasian, Merovingian subkingdom.[23] The text has been associated with an early East Frankish group of 'Ripuarian Franks', sometimes referred to in German work as 'Rheinfranken'.[24] But almost every aspect of the text is problematic. There has been a vigorous German debate over its dating.[25] There were anxieties already in the nineteenth century about its status as *Volksrecht*, since extensive parts of the text were shown to consist of revised material from *Lex Salica*.[26] Thus the extant text was sometimes interpreted more as a species of *Königsrecht*, applicable nonetheless to *Ribuarii*, and incorporating material from older Ribuarian *Volksrecht*.[27] But there has been no German consensus on precisely what

[23] Most clearly stated and influential is I. Wood, *The Merovingian Kingdoms 450–751* (Harlow, 1994), pp. 115–17. Also Wormald (1999), *The making*, p. 35; McKitterick (1989), *Written word*, p. 70. This was also Eckhardt's view of the text in its extant form: see *Lex Ribuaria. Austrasisches Recht in 7. Jahrhundert* ed. K. A. Eckhardt (Göttingen, 1959), Germanenrechte neue Folge. Westgermanisches Recht I, pp. 142–4 for his final conclusions. This section summarises and develops some of the conclusions of my Mphil thesis, T. Faulkner, 'Lex Ribuaria' (2005), unpublished M.phil dissertation, University of Cambridge. Although my views have changed, and the points have been developed further, more detail, and more exhaustive references than there is space for here can still, in some cases, be found there. The best edition is *Lex Ribuaria* ed. F. Beyerle and R. Buchner (Hannover, 1951), MGH Leges nationum Germanicarum III, 2, to which all references hereafter to *Lex Ribuaria* point. All numberings for chapters of the text are those used in this edition.

[24] For the historiography in German see M. Springer, 'Riparii – Ribuarier – Rheinfranken nebst einigen Bemerkungen zum Geographen von Ravenna' in: *Die Franken und die Alemannen bis zur "Schlacht bei Zülpich"* (Berlin, 1998), pp. 200–3. See the introduction to *Laws of the Salian and Ripuarian Franks* trans. T. J. Rivers (New York, 1986) pp. 7–11. Even Ian Wood refers to a 'king of the Ripuarian Franks' in Wood (1994), *Merovingian Kingdoms*, p. 40. For some older, text-book examples in English work of projection of 'Ripuarian Franks', see for example J. M. Wallace-Hadrill, *The barbarian West, 400–1000* revised edition (Oxford, 1996), pp. 151–68. 'Ripuarian Franks' are sometimes supplied misleadingly in translations of Latin texts that do not mention them, for example in Gregory of Tours, *History of the Franks* trans. L. Thorpe (London, 1974), pp. 153, 209, 213. I have preferred a spelling with a 'b' rather than a 'p' because it represents more accurately the form found in the bulk of the manuscripts of the *lex*, and minimises any hint of continuity with the modern German Ripuarian dialect.

[25] Arguments for an eighth-century dating include B. Krusch, *Neue Forschungen über die drei oberdeutschen Leges: Bajuvariorum, Alamannorum, Ribuariorum* (Berlin, 1927), Abhandlungen der Akademie der Wissenschaften in Göttingen. Philologisch-Historische Klasse XX, 1, pp. 147f.; arguments for a seventh-century dating include F. Beyerle, 'Zum Kleinreich Sigiberts III. und zur Datierung der Lex Ribuaria' *Rheinische Vierteljahrsblätter*, *21* (1956), pp. 357–62, R. Buchner, *Die Rechtsquellen* (Weimar, 1953), Deutschlands Geschichtsquellen im Mittelalter: Vorzeit und Karolinger, pp. 21–5, but the debate was much more extensive.

[26] See already Brunner (1906), *Deutsche Rechtsgeschichte*, pp. 303–8, and then F. Beyerle, 'Das Gesetzbuch Ribuariens. Volksrechtliche Studien III' *ZRG GA*, *55* (1935), pp. 1–80; Beyerle (1956), 'Kleinreich Sigiberts', pp. 357–62; C. Schott, 'Der Stand der Leges-Forschung' *Frühmittelalterliche Studien*, *13* (1979), p. 38.

[27] So summarising the debate, R. Schmidt-Wiegand, 'Lex Ribuaria' in: J. Hoops and H. Jankuhn (eds.), *Reallexikon der germanischen Altertumskunde* Volume 18, (Berlin, 2001), p. 320 writes that '[*Lex Ribuaria*] mehr als die anderen Leges den Charakter eines Gesetzgebungswerkes hat'. On royal edicts in the text see also I. Wood, 'The Code in Merovingian Gaul' in: I. Wood and



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## 1.2 Lex Salica *and* Lex Ribuaria

Table 1.1 *Chronological distribution of manuscripts of* leges Salica, Ribuaria, Baiuwarorium, *and* Alemannorum

| | *Sal* | *Bav* | *Rib* | *Al* |
|---|---|---|---|---|
| 750–900 | 58 (66%) | 13 (39%) | 31 (83%) | 39 (75%) |
| 900–1100 | 15 (17%) | 9 (27%) | 4 (10%) | 10 (19%) |
| 1100– | 14 (16%) | 11 (33%) | 2 (5%) | 3 (5%) |
| | 87 | 33 | 37 | 52 |

kind of kingdom, or region, the text referred to.[28] Springer's rejection of the notion of 'Salian Franks' involved a rejection of the notion of a division of the Franks into two groups. He pointed out that there was simply no evidence for 'Ripuarian Franks' in the Merovingian period.[29] So we cannot take Ribuarians or Ribuarian Franks for granted, and need to investigate what the use of Ribuarian terminology might mean wherever it appears.

The Carolingians were clearly very interested in the *Lex*. Some thirty-six manuscripts survive, of which thirty-one are from the Carolingian period. Table 1.1 shows the numbers of manuscripts of four *leges* by period.

Again, references to particular laws in Carolingian charters and other texts are notoriously rare, but such references as have been found do not give the impression that the *Lex Ribuaria* was restricted in applicability in the ninth century to any eastern Frankish region for which it is understood to have been written in the seventh or eighth century, nor restricted to use by those who held the law to be their own 'ethnic law'.

One of the few references is a passage from the Le Mans forgeries, composed in the 860s:

> But what these monks say, that [the monastery of St Calais in the diocese of Le Mans] is your [Louis the Pious's] property, the aforementioned witnesses of Bishop Aldric affirm not to be. They also say that, if it were your property, the possessions of the same monastery would be defended according to *Lex Salica* or *Lex Ribuaria*, just as other

J. Harries (eds.), *The Theodosian Code: studies in the imperial law of late antiquity* (London, 1993), p. 169; Wood (1992), 'Administration, law and culture', p. 66. For the clearest summary of the various views about the origins of different layers of the text, see *Lex Ribuaria. Austrasisches Recht in 7. Jahrhundert* ed. K. A. Eckhardt (Göttingen, 1959), Germanenrechte neue Folge. Westgermanisches Recht I, pp. 34–8.

[28] See section 1.2.3 below.

[29] Springer (1998), 'Ribuarier', pp. 200–69; Springer (1997), 'Volk der Salier', pp. 58–83; Springer (1996), 'Salier und salisches Recht', pp. 485–7. For some early scepticism on the 'Salian Franks' as a people, see S. Stein, 'Lex und Capitula' *Mitteilungen des Instituts für Österreichische Geschichtsforschung*, *41* (1926), pp. 296f., and for early anxiety about Ribuarians see Beyerle (1935), 'Gesetzbuch Ribuariens', pp. 2–3.



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places and possessions do that are your property; and the slaves' [from different estates] children would not be divided [between those estates], as is the *consuetudo* to do in that region for other places and possessions that are your property.[30]

Although this was a forgery, it clearly shows that *Lex Ribuaria* could be argued broadly as attaching to land near Le Mans, on the other side of the Frankish kingdoms from Cologne. This attachment could conceivably be explained by some kind of use of a personality principle, but the explanation would need to be convoluted: the association here is strongly between royal property and two particular laws, not the law of a particular individual and his land.[31] It may be, instead, that the passage envisages the two *leges* as interchangeable alternatives. We shall see later a similar combination of *Lex Salica* and *Ribuaria* at the opposite end of the Frankish realm, in the Netherlands.[32]

It is also clear that the mainstream Carolingian idea of what and where 'Ribuaria' was was very far removed from an understanding of it having corresponded with a large Merovingian subkingdom in the east. The Ribuarians and Ribuaria are mentioned very rarely in Carolingian annals and histories, despite the popularity of the *Lex Ribuaria*, although we do sometimes find Ribuarian terminology in charters. In both historiographical sources and charters the formulation is usually *in pago Riboariense*, or something very similar.[33] Although there was clearly a great deal of variation in the use of the term, there were somewhere between two hundred and six hundred *pagi* in the ninth-century empire, and sixty-six in the Rhineland alone.[34] Certainly the term suggests a smaller territory than those used for other regions inhabited by *gentes*

[30] Translation from W. Goffart, *The Le Mans forgeries: a chapter from the history of church property in the ninth century.* (Cambridge, MA, 1966), p. 144. *Concilia Aevi Karolini II* ed. A. Werminghoff (Hannover, 1908), MGH Concilia, Legum Sectio III, p. 838: *Sed et hoc, quod isti monachi dicunt, quod vestrum proprium sit, praedicti testes Aldrici episcopi per eorum auctoritates et per vestros vassallos et alios veridicos et bonos homines affirmant non esse. Dicunt etiam, quod, si vestrum proprium esset, res ipsius monasterii secundum legem Salicam aut Ribuariam tuerentur, sicut alia loca et res, quae de vestro sunt proprio, faciunt, et mancipia non partirentur, sicut de aliis locis et rebus, quae de vestro sunt proprio, in illa regione est consuetudo facere.*

[31] So Goffart implies that some kind of law on personality was invoked by citing MGH Capit. I no. 145 p. 297: *ut ecclesiarum defensores res suas contra suos adpetitores eadem lege defendant, qua ipsi vixerunt qui easdem res ecclesiis condonaverunt…* but its precise relevance to royal lands is not clear. Goffart (1966), *Le Mans forgeries*, p. 144. Cf. brief consideration of the Church and Roman law in Chapter 5, section 5.3 below.

[32] See section 1.4.3 below.

[33] Although his attempt to find a system was perhaps unsuccessful, the most comprehensive list of references in print is in E. Ewig, 'Die Civitas Ubiorum, die Francia Rinensis und das Land Ribuarien' in: Ewig (1976), *Spätantikes und Fränkisches Gallien 1*, pp. 492f .

[34] For *pagus*, see Innes (2000), *State and society*, p. 118 with comprehensive references; F. L. Ganshof; B. Lyon and M. Lyon (eds.), *Frankish institutions under Charlemagne* (Providence, RI, 1968), pp. 27–32; for the Rhineland *pagi* see T. Bauer, 'Die mittelalterlichen Gaue' in: F. Irsigler (ed.), *Geschichtlicher Atlas der Rheinlande* (Cologne, 1982–) map IV, 9.



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