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EARLY FRANKISH SOCIETY AS REFLECTED IN CONTEMPORARY SOURCES, SIXTH AND SEVENTH CENTURIES

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EARLY FRANKISH SOCIETY AS REFLECTED IN CONTEMPORARY
SOURCES, SIXTH AND SEVENTH CENTURIES

by

W. MARJOLIJN J. DE BOER AVÉ LALLEMANT

A THESIS SUBMITTED
IN PARTIAL FULFILLMENT OF THE
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DOCTOR OF PHILOSOPHY

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APRIL, 1982
ABSTRACT

EARLY FRANKISH SOCIETY AS REFLECTED IN CONTEMPORARY SOURCES, SIXTH AND SEVENTH CENTURIES

W. Marjolijn J. de Boer Avé Lallemand

Its contemporary sources indicate that early Frankish society of the sixth and seventh centuries was a living and developing new culture—West-European civilization—founded on the customary law principles of the Germanic Frankish peoples, the Gallo-Roman traditions, and the Christian Church. The contemporary sources (the law codes of the Salic and Ripuarian Franks, records of the Concilia Galliae, the Formulae of Marculfus, and Gregory of Tours' The History of the Franks) are few in quantity and not very varied in character, but their quality is such that they provide great insight into the society they represent.

Evidence provided by the law codes indicates a need for order in society and for non-violent remedies for proven criminal acts. The insistence on correct court procedures and on the integrity of court officials that the laws imply is indicative of a society that desires respect for its judicial system. The codes also indicate that individuals were encouraged to settle permanently within a community, so that they could receive the support of that community in case of necessity. Furthermore, the amount of the fines assessed for crimes that threatened the very existence of an individual indicates that society tried to realize an atmosphere conducive to a safe environment for its members.
through its judicial system. The contents of the synodal decrees of the sixth and seventh centuries indicate that the church set regulations for many aspects of community life and thus played an important role in early Frankish society. The church as a property owner and its administrator, the bishop, were part of the secular community, which benefited the community because the church provided many of its social services and benefited the church as an institution because the secular authorities counted on its discipline and thus protected it. It appears probable that the communities enforced their judicial decisions. The increasing importance placed on documentation and on the legality of actions, of which Marculfus' *Formulae* are indicative, provides further evidence that early Frankish society of the sixth and seventh centuries was a new culture, a living synthesis of Frankish and Gallo-Roman components.
To Hans, Alison, and Alexander

To my parents

In memory of my mother-in-law
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CHAPTER 1
HISTORY OF THE EARLY FRANKS

The history of the early Franks before they entered the Roman Empire is largely unknown. Several versions of a mythical origin for the Franks exist, but they are totally unsubstantiated by facts.\(^1\) The Franks were a Germanic people and the Germanic peoples originated probably from the Baltic or Scandinavian area.\(^2\) Cornelius Tacitus described the German peoples in his *Germania* or *De origine et situ Germanorum*,\(^3\) a study of their character, customs, and geography. He mentioned several tribes, but the Franks were not among them. Their name was first mentioned in the middle of the third century in connection with invasions sweeping over Gaul.\(^4\) During the third century they apparently conquered several Germanic tribes or assimilated with them on their migratory voyage to the south and southwest.\(^5\)

During the first half of the fourth century, Roman Gaul was ravaged repeatedly by Frankish tribes, but in the middle of that century the Salic Franks acquired a permanent settlement within the Roman Empire. In 357-358, Julian, the later emperor, encountered several Frankish tribes on Roman territory. He drove the tribe of the Chamavi back over the river Rhine, but granted the Salic Franks, who apparently came from the area west of the river IJssel, the Veluwe, permission to settle in Toxandria, presumably the name of the area between the rivers Meuse and Scheldt.\(^6\) They became *foederati* of the Roman Empire.\(^7\)
Other Frankish tribes, the Ripuarians and the Chattens,\(^8\) settled near
the borders of the Roman Empire, across the river Rhine around Cologne
and south of it, and continued to raid Gaul through the fourth century
and the first part of the fifth.\(^9\)

In the early fifth century, the Salic Franks ceased to recognize
Roman authority and towards the middle of the century, under the leadership of their king Clodion\(^10\)—a *primus inter pares*—they settled deeper
within Gaul, making Tournai their center. The progress in this migration was slow, however, because of their numerical weakness.\(^11\)

During the second half of the fifth century, king Childeric of
the Salic Franks led his people on to the river Loire and at his death
in 481, his son Clovis continued this expansion drive. Clovis and his
sons after him conquered most of Gaul and established a sizeable
Frankish kingdom, often divided between the various branches of the
family descending from Clovis.\(^12\) Strife among these various branches
of the family characterizes much of the sixth and seventh centuries.\(^13\)

Clovis' reign marks a turning point in the history of the early
Franks. It was during his reign that the customary laws of his people
were recorded. Although an exact date for the recording has not been
established, consensus exists that it must have been during Clovis' last years, after his conversion to the Catholic faith. The main
source of knowledge about Clovis' conversion is Gregory of Tours and
his is not a contemporary account. Throughout his history Gregory
used numbers in a symbolic sense in order to indicate divine rule and
order in life. It appears to be that Clovis' life cycle was recorded
in such a manner. Gregory defined three periods of fifteen years for
Clovis. Clovis was fifteen years old when he succeeded his father as leader of part of the Salic Franks. At age thirty he converted to the Catholic faith and was baptized. And, during his final fifteen years, he was the successful Christian leader of his people. Gregory considered him to be a beacon in the Christian world, guiding his people in the true faith and thus to success over the Arians. The divine order of a tripartite life must have inspired Gregory as must have the tradition that Jesus was thirty when he was baptized.

Several scholars have tried to establish a different timetable for Clovis' life, because of the apparent artificiality of Gregory's. A. van de Vijver provided a different timetable to which Sir Francis Oppenheimer suggested a minor change. Both scholars agree that Gregory reported the sequence of Clovis' military feats correctly, but they contend that Gregory predated them about ten years in order to allow his numerical symbolism to pertain. Van de Vijver concludes that Clovis converted to the orthodox faith after his victory over the Alamans in 506 and that his conversion brought him the support of the orthodox Catholic world in his subsequent war against the Visigoths, who adhered to the Arian faith. Oppenheimer reasons differently and concludes that Clovis defeated the Visigoths before he converted to the orthodox faith. After the defeat of the Visigoths, the balance of power between the Arian and the Orthodox faiths was shattered and it became expedient for Clovis to convert to orthodox Catholicism and receive and accept favors from the Byzantine emperor because of it.

Ferdinand Lot disagrees with Van de Vijver's timetable and dates Clovis' victory over the Alamans around 496 and his conversion
to the orthodox faith not much later, definitely before the Visigothic campaign. This opinion, in fact a close acceptance of Gregory of Tours' timetable, has received the widest consensus. 19

Clovis' conversion to the orthodox faith was a very important event. Through this act Clovis proved that he was more than a successful military leader. His choice of the orthodox Catholicism instead of Arianism brought him the insurance of the support of the church in Gaul, which was a powerful body, and it brought him a valuable extra incentive for his people to attack the Arian Visigoths. The victory over the Visigoths made Clovis the most important ruler in Western Europe. 20

By the end of Clovis' reign, the Salic Franks had been living within the Gallo-Roman borders for more than a century and a half. Despite the many battles Clovis and his successors fought to conquer neighboring tribes and peoples, the actual settling of the Franks in the newly acquired regions of Gaul did not seriously disturb the Gallo-Roman population, because sufficient land was available for the newcomers and because of the proximity that the Gallo-Romans and the Franks had experienced over such a long period. This relatively easy migration and settling process of the Franks produced apparently an atmosphere conducive to the recording of the Franks' existing customary law, for it was during the last years of Clovis' reign that the Salic code was presumably first recorded.

The Franks were now established in Gaul and became part of a new and developing society together with the existing Gallo-Roman population. The following chapters will provide evidence that both cultures provided significant foundations for this new and developing society—
the Gallo-Roman culture through its Roman and Christian backgrounds and the Frankish culture through its law codes—, indicating that early Frankish society in Gaul was the beginning of a new West-European civilization.
NOTES


4 Sir Samuel Dill, op.cit., p. 6. Dill notes that the Sicambri tribe is identified with the Franks.

5 Ferdinand Lot, op.cit. (1935), pp. 33-34.

6 Ibid., p. 37; F. von Thudichum, Sala, Sala-Gau. Lex Salica (Tuebingen, Heckenhauer'schen Buch-und Antiquariats-Randlung, 1895), pp. 57-59; see map p. 171.

7 Ferdinand Lot, op.cit. (1935), pp. 78-79.


Ferdinand Lot, *op.cit.* (1935), pp. 127-128. See also N. J. G. Pounds, *An Economic History of Medieval Europe* (London, Longman Group Ltd. and New York, Longman Inc., 1974), pp. 43-44, "It is unlikely that the total number of German settlers in Gaul in the course of the fifth century made up more than three or four percent of the total population, certainly not more than five percent."


Ibid., pp. 36-37; Gregory of Tours, *H.F.*, Book II, chs. 27 (37)-31 (43), and the Prologue to Book III.

Sir Francis Oppenheimer, *op.cit.*, pp. 47-63, which includes a comprehensive representation of Van de Vijver's timetable.

Ibid., pp. 49-51, 59-63.


Gregory of Tours, *H.F.*, Book II, ch. 27 (37).
CHAPTER 2

INTRODUCTION OF THE CONTEMPORARY SOURCES

Contemporary sources can at best provide but an inadequate picture of any society, and this is especially the case when those contemporary sources are neither abundantly available nor greatly varied in origin and character. Much depends on the character and quality of the existing contemporary source material. Early Frankish society of the late fifth, the sixth, and the seventh centuries left only few written traditions behind and these are not of very diverse character.

The main contemporary sources of information that could shed light on early Frankish society are the law codes (Pactus legis salicae and Lex Ribuaria), records of the Concilia Galliae, the Formulae of Marculfus, and Gregory of Tours' History of the Franks.¹ The last is a literary work and more a testimonial for Christianity than a reliable record of its author's lifetime. The other sources are secular and ecclesiastical legal traditions.

**Pactus legis salicae**

The written version of the customary laws of the Salic Franks is the older of the two Frankish codes used in this study. There are no original manuscripts extant of Pactus legis salicae that can be
dated as early as the sixth or seventh century. However, texts that
date from the second half of the eighth and from the ninth century
are available. The varying lengths of these texts could indicate a
detailed original and its compendium, or a concise original with sub-
sequent elaborations.

Editing and textual criticism of the Salic code have been under-
way since the mid-sixteenth century. Several theories about its ori-
gin, contents, and interpretation have been put forth. Hans-Achim
Roll published the most recent (1972) history of these editions,
text-critiques, and interpretations; unfortunately, his study goes
only to 1875. Roll refers to the various editions of either one manu-
script or of collections of manuscripts from 1549 on. He discusses
the political use to which the Salic law was put when it appeared
expedient. He further records the general areas of controversy con-
cerning the places (Germania or Gallia), the manner, and by what people
or king the law originated. During the seventeenth century, analysis
of the law's language became a tool in the search for an answer to the
apparently insoluble question about its origin. During the eighteenth
and nineteenth centuries, German and French scholars put forth theories
based on or at least guided by their own national backgrounds. It is
unfortunate that Roll chose to restrict the scope of his work and did
not include data on work done between 1875 and the present.

A more purpose-oriented pair of articles concerning the history
of the Salic law and the various commentaries of and conclusions drawn
by its editors and scholars was written by Simon Stein in 1947. Stein
gives a synopsis of the problems encountered by editors and commentators
on the Salic law during the nineteenth and twentieth centuries. The most fundamental problem, according to Stein, was how to reconstruct a sixth-century manuscript out of a ninth-century manuscript and this was never solved. Stein concludes that the ninth-century version of the Salic law was a forgery and that no so-called earlier original ever existed. He uses the uncertain date of the prologue of the law, the apparently anachronistic use of monetary values, and the un-translatable Malberg glosses as evidence for this argument. Stein's theory provoked criticism and refutation, but the fact of its appearance indicates that the Salic law, its origin, and interpretation still pose a problem.

The purpose of the present study is not to subject the various sources to a textual criticism but to interpret the contents of the sources in order to see what they can tell us about early Frankish society.

The German scholar Karl August Eckhardt edited various texts of the Salic law. His rendition of the texts of the shortest version of the code (see above, notes 2 and 3), the 65-title text, will be used for this study because it is the most conveniently arranged of the various editions. This text includes a prologue ascribed to the Recensio Gunthramna, 576-596 (see above, note 2), which was not included in the oldest texts. The first paragraph of this prologue has a definite Christian overtone, which is not relevant to the actual contents of the Factus legis salicae. The only provisions in the titles that give evidence of a religious influence are in Title 2, chapters 16 and 17, where fines for theft of a sacrificial swine are provided.
The assessed fines in those cases are identical to fines assessed for theft of a fully mature and producing boar or sow.\textsuperscript{14} This indicates that no special provisions were made to accommodate the Christian community, but that the loss of a sacrificial animal was considered to be as detrimental to its owner, presumably on a spiritual level, as the loss of a domestic animal. In view of the recentness of the Franks’ conversion from paganism to Christianity, it is highly probable that the two chapters are later additions to Title 2. Title 55, chapters 6 and 7, and Title 65b include the word basilica in their texts although the word is ambiguous and does not necessarily refer to a religious structure.\textsuperscript{15}

The first paragraph of the prologue reads as follows:

Placuit auxiliante Domino atque convenit inter Francos atque eorum proceribus, ut pro servandum inter se pacis studium omnia incrementa (virtutum) rixarum resecare deberent, et quia ceteris gentibus iuxta se positis fortitudinis brachio praeerant, ita etiam eos legali auctoritate praecerent, ut iuxta qualitate causarum suerent criminalis actio terminum.

(With God’s help it has been decided among the Franks and their prominent ones, that all germs of violent disputes have to be rooted out in order to maintain the endeavored peace among themselves, and because they have already supremacy over their neighboring tribes through their strong armed forces, that they will also excel over them through the prestige of their laws, namely that they settle criminal cases properly or according to the quality of the cases.)

This passage provides evidence that the Franks and their prominent ones were the originators of the written tradition of the Salic law and that the purpose of this tradition was to maintain peace among themselves and to provide an example of excellence in the field of law for their neighbors. It does not provide evidence, however, of the
origin of the law itself nor the identity of the people that it was meant to serve.

The second paragraph of the prologue describes the actual procedure used by four chosen "judges" to record the law.

Extiterunt igitur inter eos electi de pluribus viri quattuor his nominibus: Wisogastus, Arogastus, Salegastus et Widogastus (in villas que ultra Rhenum sunt: in Bothem, Salehem et Widohem), qui per tres mallos convenientes omnes causarum origines sollicita discutientes de singulis iudicium decreverunt hoc modo:

(Four men were thus chosen out of many, named Wisogastus, Arogastus, Salegastus, and Widogastus (from places across the Rhine named Bothem, Salehem, and Widohem), who con
evered at three public meetings, discussed all origins of the disputes and gave judgments on each of them sepa-
rately in the following manner:)

The names of the chosen compilers are just that, names, and the locations they came from cannot be found on the map. However, this passage indicates that the compilation of the Salic law is based upon judgments following actual court cases.

The Salic law thus-created appears most likely to be the written version of the ancient customs of the original Frankish tribe that settled within the borders of the Roman Empire in A.D. 358. When the tribe became too influential and spread-out to be able to maintain peace and a healthy society without a written law, Pactus legis salicae must have been recorded to consolidate and verbalize existing rules and practices, probably also to prevent the loss of these ancient customs. Contact and integration with the Roman traditions in Gaul must have played a role as well, when the decision was made to record the customary laws of the Frankish people. Clovis' acceptance of the title of consul, bestowed on him by the Emperor Anastasius shortly
after his conversion to the Christian faith, indicates that Roman traditions were accepted and even treasured.\textsuperscript{18}

How valid the unwritten customary law had been cannot be determined. The validity of the written version of this code and its enforceability cannot be determined easily, either. The agent of enforcement in both cases might well have been the community within whose boundaries an offense had been committed. It appears that the validity of the two versions of the Salic code, the unwritten and the written, is not at variance. The Salic code as we know it is not a statutory law, it is largely a list of composition payments to be made for committed and proven crimes. O. M. Dalton stated in the introduction to his translation of Gregory of Tours' \textit{The History of the Franks}\textsuperscript{19} when discussing the enforcement of verdicts based on the Salic law, that the law was impotent in so far as compelling the person who chose to disregard it with impunity, but definitely was not impotent for the ordinary man. Strong ties between the members of each community and each individual's reliance on his relatives and neighbors or friends must have been important aids in the enforcement of the law. And, because part of the assessed fines went to the King's treasury, some form of enforcement of the verdicts might well have come from the King.

The chapters of \textit{Pactus legis salicae} are not organized according to their legal contents. Several titles deal with procedural matters and will thus provide material for a picture of early Frankish society in a later chapter dealing with secular justice. Because the Salic
law was recorded as a compilation of judgments in actual court cases, the majority of its titles deals with crimes. The many titles dealing with theft reveal a great variety of stolen property, which aids significantly in determining what was considered valuable and important in early Frankish society, what people indeed owned and how they lived.

Fines assessed for homicide or man-slaughter, and for infliction of various injuries, arson, rape, and ambush are all part of the legal regulations provided by the Salic law. These will throw light on the problems early Frankish society was dealing with and on the values placed on each individual's life. Some titles deal with relationships within the family or with neighbors. These are very useful for a closer look at the society and its customs.

The fines described in *Pactus legis salicae* are given in two different kinds of coins. These are the *denarius* and the *solidus* and their ratio is forty to one. It is possible that at the time of the first written version of the law the new monetary system had to be explained and specified, because it was a transition period. It is not necessarily unusual that both coins are mentioned in all titles, because all chapters represent separate verdicts in court cases and most likely would be used separately so that the repetition was not superfluous.

In some versions of the text, most titles of the Salic law have one or more insertions in a language of uncertain origin and meaning preceded by the word *mallobergo*. These glosses might be later insertions by clerks who tried to clarify the text for their contemporaries or who tried to preserve the ancient or customary name for certain
crimes. Rudolph Sohm\(^{23}\) explains the Malberg glosses as explanatory words and parts of the text itself. These glosses represent the Frankish judicial language, according to him.\(^{24}\) Franz Beyerle\(^{25}\) notes that the glosses were the "key words" of the contents of that specific title or chapter.\(^{26}\) He reasons that, because Clovis had but recently acquired the lands between the Loire and the Carbonaria forests\(^{27}\) (in 486), there still existed a linguistic duality in his domain. This bilingual situation was not a problem in the court (\textit{mallus}) where a Frankish (Salic?) tongue was used, but when the law was written down, it was recorded in Latin. The glosses had to provide the key words to the various titles to allow for understanding the code by the people.\(^{28}\) Beyerle suggests that the key words were originally marginal during the period that the code was just a collection of loose pages with the titles. Later, when these were bound, the marginal words were included in the text in the most logical location, i.e. preceding the actual punishment for the described crime.\(^{29}\) The originally marginal position of the glosses explains why some of the glosses might have been misplaced in the text in later recordings.\(^{30}\)

Several scholars\(^{31}\) have tried to translate these Malberg glosses, but that has not been an altogether happy or successful undertaking, in my opinion.

**Lex Ribuaria**

The second Frankish code that will be used for this study is the Ripuarian law. The Ripuarian Franks were not successful in their
attempts to settle within the borders of the Roman Empire (near the middle bank of the Rhine) until the second half of the fifth century and their independent kingdom was short-lived because of Clovis' cunning.\textsuperscript{32} The edition of the law in \textit{Monumenta Germaniae Historica} by Franz Beyerle and Rudolph Buchner with their introduction and Karl August Eckhardt's edition in \textit{Gemanenrechte Neue Folge}\textsuperscript{33} are the editions used in this study. James Pierce Barefield's translation into English and his introduction\textsuperscript{34} proved to be valuable as well.

There are no original manuscripts of the \textit{Lex Riburia} extant. With the exception of one manuscript of the late eighth century, the existing copies are from the ninth and tenth centuries.\textsuperscript{35} As no other data concerning the origin of this code are available, a probable date for the original issuance of this law has been determined through textual analysis.

Several scholars\textsuperscript{36} have divided \textit{Lex Riburia} into different sections according to contents and possible origin. The close connection between \textit{Lex Riburia} and \textit{Pactus legis salicae} is beyond dispute when the contents of many titles dealing with certain crimes and the assessed fines upon conviction are studied and compared. Regulations for judicial procedure are part of this section that is closely related to the Salic law as well. These are the Titles 32 through 56. The first thirty-one titles are not related to the Salic code, apparently, and the last thirty-five indicate some connections with that law only. Several titles of royal or ecclesiastical origin are among the last group.

Whether or not \textit{Lex Riburia} was a compilation of the old customary
law of the Ripuarian Franks or a combination of Salic and Ripuarian law with later legislation is not of real importance for the present study. Although a few scholars believe that the Ripuarian law is of Carolingian origin, the consensus is that the original manuscript was written in the seventh century while its unwritten origin probably lay in the sixth. Simon Stein's theory, already mentioned, about the Salic law, which could be argued in the same manner for the Ripuarian law, does not need consideration. For the purpose of the present study, the consensus will suffice.

The contents of the Ripuarian code include many schedules of fines assessed for various crimes. The size of the fines assessed for similar crimes in both the Ripuarian and Salic codes is fairly equal. One difference between the two laws is the fact that many titles of the Ripuarian law give the option of oathhelpers to deny charges, while the Salic law seldom does. It could be that the use of oathhelpers (juratores) was a self-evident procedure and was thus not specifically mentioned each time or that this system of oathhelpers was gradually becoming more organized and thus more elaborately mentioned in the later recorded Lex Ribuaria. Heinrich Brunner has pointed out that oathhelpers were used in Germanic law and that family and/or tribal relationships were the foundation for this procedure. Loyalty and reciprocal reliance were the important traits for an oathhelper, whereas the actual witnessing of evidence was not a prime requirement.

One of the titles of the Ripuarian code provides a rate of exchange for the fines which is helpful and probably applicable to
Pactus legis salicae as well. However, the rate of exchange between solidus and denarius according to the Riparian code is one to twelve, significantly different from the Salic law's one to forty. N. J. G. Pounds discusses the currency of the Merovingians briefly. The gold solidus, first minted by the Emperor Constantine I, and the silver denarius were inherited by the Merovingians from the late Roman Empire. Apparently the use of gold currency gradually declined and the denarius remained. The value of the Salic denarius was one-fortieth of the solidus. Charlemagne introduced a currency reform around 780 according to which the solidus became the equivalent of twelve denarii. François L. Ganshof states that the late Roman solidus was still in use with the Byzantine Emperor's image, but that no gold coins were minted in the west after the beginning of the eighth century. P. Grierson, disagreeing with Ganshof, notes that the gold solidus was solely used as a symbolic payment. Apparently Charlemagne minted the silver denarius only so that the larger denomination solidus did not really circulate. This indicates that the rate of exchange between the solidus and the denarius in the Pactus legis salicae is based on the pre-Carolingian usage whereas the ratio in the Lex Riburiae is based on the Carolingian. Riparian usage of the Carolingian exchange rate might have been the work of the recording clerks in order to record the fines in their contemporary value.

Records of the Concilia Galliae

The Church Councils held in Gaul during the sixth and seventh centuries provide another contemporary source in their records. These
records of the *Concilia Galliae, A.511–A.695*, edited in 1963 by Carolus de Clercq in *Corpus Christianorum, Series Latina*, give extensive information about the problems the early Christian church encountered with its members. Ever since the conversion to Christianity of the various peoples of western Europe, the church was not an institution separate from the state. Because of this close relationship between church and state, it is of interest to investigate what the church received from and contributed to early Frankish society, ecclesiastically as well as secularly.

Charles Joseph Hefele wrote the *History of the Councils of the Church from the Original Documents*. His work provides background information about the reasons certain synods were convoked as well as an approximation of the exact dates they were held and how parochial, provincial, or indeed international they were. The present study will use these data as well as many synodal ordinances to enlighten and broaden the picture of early Frankish society.

The *Formulae* of Marculf

The *Formulae* are models of or guidelines for documents to be consulted and used for specific legal transactions or procedures. Marculf's *Formulae* were edited by Stephanus Baluzius in 1677 in *Capitularia Regum Francorum*. They consist of two volumes and an appendix. A more recent edition based on several manuscripts from the eighth, ninth, and tenth centuries was published by Alf Uddholm. Both editions will be used in this study according to whether one or
the other provides a clearer understanding of the text.

Not much is known about Marculfus even though he reveals a little about himself in the preface to his Formulae. He calls himself "ultimus ac vilissimus omnium monachorum (least and most ignoble of all monks)." About his abilities and qualifications as an author Marculfus is very modest. He wrote that he tried "supra vires meae possibililitatis ... cum fere septuaginta aut amplius annos expleam vivendi; et nec jam tremula ad scribendum manus est apta, nec ad vivendum mihi oculi sufficiunt caligantes, nec ad cogitandum sufficit hebetudo mentis quia ... sensus ... in senibus minuitur. Propterea qui eleganter facere non potui ut volui, feci tamen ordinate ut potui ... (over and above the powers of my possibilities ... because I have lived about seventy or more years; and my already trembling hand is neither able to write, nor are my weakened eyes sufficient to see, nor is my dulled mind sharp enough to think profoundly because ... the capacity of the mind ... diminishes with old age. Therefore I could not write elegantly which I wanted, but I wrote in an ordinary manner which I could)."

Marculfus made his collection of Formulae under instruction of "Papa Landericus," to whom he dedicated his work. Marculfus did not date his work nor did he include dates or names in the various formulae. Landericus is the only name that can be used in an attempt to place the Formulae in time and location. The term "papa" has to be translated as bishop in early Christian times, not as pope. There existed a Landericus, bishop of Paris, who gave the monastery of St. Denis its charter in 654. This would place Marculfus in the early and mid-seventh
century in or near Paris. However, the Formula "Concessio Regis ad hoc privilegium (Royal Authorization of this privilege) "56 was composed most probably after a model of a charter of King Dagobert I in 635 for the monastery Rebais in the diocese of Meaux.57 There are indications that Meaux also had a bishop Landericus towards the end of the seventh or more likely at the beginning of the eighth century. This would place Marculfus in the late seventh and early eighth century in or near Meaux. There existed another bishop Landericus in Metz,58 probably in the later part of the eighth century, but facts about him are even more scanty than the data about the bishops of Paris and Meaux.

The 1677 edition of the Formulae includes a commentary by a certain Hieronymus Bignonius,59 who dates Landericus in the year 660. This author is full of praise for Marculfus' work. He says that no other was a better interpreter of Gregory of Tours or of any other writers and of many different law codes. He remarks that Marculfus was definitely a "utilissimus actor (an extremely useful guide or mentor) " and "à doctis non frustra expetitus (not in vain a gatherer of wisdom)."60 Gregory of Tours will be discussed later in this chapter, but for the present discussion it is important to know that he started his History of the Franks after he had been consecrated as bishop of Tours, which was in 573, and that the last year treated in detail in this work was 591.61

Bruno Krusch62 has discussed the origin of the Formulae most exhaustingly. He noted the various propositions about and objections against Landericus' episcopal location.63 One of these concerning
some formulae that could only be related to the northeastern part of Merovingian Gaul, Austrasia, excluded the bishop of Paris from the possible candidates for Marculfus' Landericus. Meaux, which belonged to Neustria, the northwestern part of Gaul, north of the Loire, became part of Austrasia in 588, according to the Treaty of Andelot between King Guntram and King Childebert II. The map depicting Gaul in 594 by Auguste Longnon shows Meaux indeed in Austrasia.

Krusch was able to discern in a number of the formulae the probable original document that had served Marculfus as a model. Some of these were from the seventh but others from the early eighth century.

The last two formulae of Book I in which a Frankish king expresses his joy about the birth of his son, "de nativitate filii Nostri illius magnum gaudium habere concessit," and subsequently gives him a part of his kingdom to rule are important because the only time during the seventh century when a Frankish king gave his son part of his kingdom was in 634 when King Dagobert I gave Austrasia to his then three-year-old son Sigibert.

Documents from the early eighth century could be compared with some of Marculfus' formulae and in several cases it appeared that Marculfus used these as models. Word usage and textual criticism were Krusch's guidelines. The latest document that Marculfus used, according to Krusch's research, was a confirmation of immunity for the Abbey of St. Bertin dated November 10, 721. Krusch records that a will was made up in January, 722, with the aid of a formula of Marculfus. The earliest known royal document after Marculfus' model dates from 744, while documents of donations date from 728 on.
Based on these data, Krusch concludes that Marculfus finished his collection of formulae in 721 and that he was a monk in the diocese of Meaux who collected his material from the various archives in the diocese. He also suggests that Marculfus traveled as far as Burgundy to obtain certain documents.

Krusch provided a thorough study of the various possibilities in dating Marculfus' work. For the purpose of this study he has provided sufficient evidence that the material Marculfus used as a model for his formulae was representative of the conditions that existed during early Frankish society. The only objection that can be raised is against Krusch's suggestion that Marculfus traveled a considerable distance to collect some of his material. Marculfus' age would argue against it. Monasteries were often used to store copies or originals of documents because of the relative security they provided.

As has been noted above, Marculfus wrote under the instruction of the bishop, but he apparently did more than was asked of him, "multa alia . . . tam praecipuam regales quam chartas pagenses (many other things, royal regulations as well as private documents)," he added. He states that his work was not meant for the most learned men and the most eloquent speakers and experts in teaching (prudentissimos viros et eloquentissimos ac rhetores et ad dictandum peritos), but that he wrote to instruct beginning students in a clear and simple manner (ad exercenda initia puerorum, . . . aperte et simpliciter). Marculfus finishes the preface explaining his sources, "Ego vero hanc, quod apud maiores meos iuxta consuetudinem loci, quo egerimus, didici, vel ex
sensu proprio cogitavi, ut potui, quoacervare unum curavi (I have thus taken care that all that I learned from my elders concerning the customs of the place where we lived and also what I could envision through my own reflections is accumulated here).”

Pierre Riché suggests that Marculfus might have been an old royal notary who retired in a monastery and redacted the formulae for apprentice notaries. 80

The contents of the first book are mainly royal chancery papers, cartae regales. The second book consists of private documents, cartae pagenses. The general legal background of the formulae appears to be Salic law, 81 but Roman legal practices also appear. 82 In the royal documents the king guarantees and legalizes his words by affixing his signature to them. In case of legal disputes he admonishes a bishop or count 84 to see to it that the law is enforced and justice rendered. In case of disobedience, the parties or sometimes representatives of the parties are summoned to his court. 85

Many of the private documents are records of donations, mostly to a church or monastery. Most of these have a final clause initiated with the words, "Si quis vero, quod futurum esse non credimus (If someone should interfere, which we do not believe shall happen)," 86 with a punishment following. The most extreme punishments were anathema 87 for the evil-doer as well as eventual collaborators and expulsion from Christian society and the church. 88 God’s vengeance was invoked in some cases. 89 These punishments were accompanied by fines in gold and silver payable to the wronged party. The fisc was called upon to enforce these payments (cum cogente fisco). 90 How capable of
enforcement the fisc was is impossible to determine, but at least an agent of enforcement is mentioned. When the fisc mentioned as well as the beneficiary of the fine were the church, it appears probable that the regulations and verdicts were enforced.

The documents of donation and records of sale or exchange of property reveal much about the holdings of the rather wealthy. It appears acceptable and logical, however, that only the enterprises of the wealthier part of the population were to be found in the formulae, because the legality of small donations or sales and exchanges would hardly have been challenged.

Gregory of Tours' History of the Franks

The History of the Franks by Gregory of Tours is a totally different category of source material. Here is a known author and the period during which the work was written is defined in the text itself. The ten books that form the history are represented by various manuscripts, some from as early as the seventh century. Not all manuscripts include all ten books. Printed editions have been numerous since the sixteenth century and several translations have been published. For the present study the translation by O. M. Dalton with its excellent and extensive introduction and the translation of Lewis Thorpe with its accompanying brief introduction have been used.

Georgius Florentius was born in 539 in Clermont and took the name Gregorius when he entered the Church. His family was politically and ecclesiastically distinguished. Gregory was elected bishop of
Tours in 573 and served the Church in this position until his death in 594. During these years he decided to record the history of the Franks. In his preface to the history he remarks that the writing of literature had virtually disappeared in Gaul, which made him decide to write in order "to keep alive the memory of those dead and gone, and to bring them to the notice of future generations." He adds an excuse about his style of writing and about the quarrels he has to record.

The first book of the history covers the longest period in history, from the creation of the world, according to the Bible, until the death of St. Martin in A.D. 397. Books II, III, and most of IV cover the period from 397 until Gregory's elevation to the episcopate of Tours. Books V through X deal with the period 575 to 591 and are thus contemporary history, according to Gregory.

Gregory's work is a narrative history, more or less chronological and much more detailed than a mere recording of facts. He apparently consulted all the authorities he had access to. However, he was often inaccurate in his quotations and sequences of events. The leading idea behind Gregory's work was the final triumph of Christianity and the Church. Seen in this light, many of his tales fall into place in the greater order and plan of the Christian world. This also accounts for the irregularities and inaccuracies of the history and for Gregory's seemingly heartless recitation of cruel acts against non-Catholics. Gregory reveals his strong bias in favor of the believers in the true religion. Arians and other heretics and heathens are predestined for damnation, according to him, while really
damnable acts of the true believers are praised.\textsuperscript{103}

However much Gregory colored his history with Christian zeal, many of his historical facts are important sources and even sometimes the only sources of our knowledge of early Frankish history and society, e.g., the Treaty of Andelot.\textsuperscript{104}

At the end of the tenth book Gregory gives a list of all the bishops of Tours with their accomplishments. The summary of his own episcopal work shows how extraordinarily much Gregory accomplished. He also lists his literary works and admonishes his successors to "never permit these books to be destroyed, or to be rewritten, or to be reproduced in part only with sections omitted. . . . Keep them in your possession, intact, with no amendments and just as I have left them to you, . . . do not, I beg you, do violence to my books. You may rewrite them in verse if you wish to, supposing that they find favour in your sight; but keep them intact."\textsuperscript{105}

This passionate plea has been granted and has benefited historians past and present. Harry Elmer Barnes wrote, "Gregory provided the modern reader with the best history of the transition from Roman to medieval culture, and one reason for his success lay in the fact that he was himself so perfect a personal reflection of this transitional age."\textsuperscript{106}
NOTES

1 Gregory of Tours did not name his history, hence I will use the English title History of the Franks. See Lewis Thorpe's translation with an introduction (Penguin Books Ltd., 1974), p. 22.

2 Karl August Eckhardt, Pactus legis salicae: Recensiones merovingicae (Germanenrechte Neue Folge, Goettingen, 1955), pp. 48-73, p. 94: In his introduction, Eckhardt discusses the main manuscript texts, the place where found, and the probable origin of the manuscripts. He records their generally accepted classification into three groups according to date or period during which the initial text of these manuscripts could have originated. The first group is represented by four manuscripts, of which the original text (Recensio Chlodovea) dates from 507-557 and, may be even more precisely dated between 507 and 511. The second group has no known extant manuscripts, but it was used by one of the authors of the first group and by Johannes Herold, who edited an 80-title text in 1557 and indicated the use of manuscripts of Merovingian texts since lost. The accepted dates of origin for the second group are between 511 and 555, or more precisely between 511 and 533, the reign of Theoderic I, whence its name Recensio Theuderica. The third group is represented by four manuscripts. A short prologue ordered by king Guntheram and written by a clerk, Aserludotus, was the means of dating this group between 576 and 596 and accounts for its being named Recensio Gunthramina. The three groups represent three successive generations of Merovingian kings. There exist a prologue and an epilogue that have been ascribed to the Merovingian period as well. Capitularies of Clovis, Childerbert I, Chlotar I, Chilperich, and Childerbert II are also extant, and so are the kings.


5 Vide, pp. 147-150.


8 Ibid., pp. 113-120.

9 Ibid., p. 126.


11 Ibid., pp. 406-415.


13 K. A. Eckhardt, *op. cit.* (1955), pp. 98-356 (hereafter referred to as *PLS* with title number and chapter number as applicable).

14 *PLS* 2, chs. 14 and 15.


16 Vide, *mallus* 1, "folkmoot, judicial assembly."


denarius: silver coin.
solidus: gold coin.


Ibid., p. 171.


Ibid., p. 4.

Ibid., p. 1: Beyerle identifies wrongly the Carbonaria forest with the Ardennes. See enclosed map p.171 for location of both.


Ibid., pp. 5-7.

Ibid., pp. 5-6, and 29. Compare *PLS* 22, ch. 3 and *PLS* 31, ch. 3; both chapters include the gloss, "mallobergo urbis via lacina," but the chapter of Title 22 deals with the destruction of part of a mill and the chapter from Title 31 with obstruction of the road leading to a mill.

32. J. P. Barefield, *op.cit.* (see ch. 1, note 13), pp. 2-4.


34. J. P. Barefield, *op.cit.*


41. *Lex Ribuaria* (hereafter *LR*), 40, ch. 11.

42. *LR* 40, ch. 12.


48 The conversion of Clovis has been discussed in Chapter 1.


51 *Marculfi Formularum libri duo recensuit, franco-galline vertit, adnotatiunculis instruxit*, ed. Alf Uddholm (Collectio scriptorum veterum Upsaliensis), (Upsaliae, Eramos' Förlag, 1962) (hereafter referred to as Udd. with book, chapter, and line numbers if applicable, otherwise as Marculfus followed by book and chapter numbers).

52 Bal. 369 (preface); Udd. preface line 5.

53 Bal. pref. 369-370; Udd. pref. lines 8, 9-12, and 14-15.

54 Bal. pref. 369; Udd. pref. line 4.


57 About 40 km ENE of Paris (see map p. 171).

58 About 275 km ENE of Paris (see map p. 171).


60 Ibid., columns 861-862.


62 Bruno Krusch, op.cit.

63 Ibid., pp. 232-248.

64 See map p. 171.

65 See Gregory of Tours, H.F., IX, ch. 20.

66 Auguste Longnon, op.cit., Plate IX; see map p. 171.


68 B. Krusch, op.cit., pp. 244-246.

69 Ibid., pp. 252-263.


71 B. Krusch, op.cit., p. 264.

72 Ibid., p. 265.

73 Ibid., pp. 265-266.

74 Ibid., p. 263.


78. Bal. Pref. 370; Udd. Pref. lines 24-25.


86. Marculfus, Book II, chs. 3, 4, 6 et al.

87. Marculfus, Book II, chs. 1, 4, 17, 32.

88. Ibid., Book II, chs. 3, 32.

89. Ibid., Book II, chs. 17, 32.

90. Ibid., Book II, chs. 4, 6, 11, 18, 24.

91. E.g., ibid., Book II, chs. 4, 6.

92. E.g., ibid., Book II, chs. 2, 3, 6.
93 Ibid., Book II, chs. 19-22.

94 O. M. Dalton, op. cit. (see ch. 1, note 2).

95 Lewis Thorpe, op. cit. (see ch. 1, note 2).

96 Central France, about 300 km S of Paris, see map p. 171.

97 About 200 km SW of Paris, see map p. 171.


99 Ibid.


CHAPTER 3

THE ROLE OF THE CHURCH IN COMMUNITY LIFE

The most extensive information about the church and its influence on and role in early Frankish society is found in the church ordinances issued by the major synods in Gaul. These canons were normally issued to provide remedies for specific abuses. Their information thus provides a view of those problems in the community that had to be faced on a more or less regular basis in order to account for their inclusion in the synodal declarations. Marculfus' *Formulae* provide a more positive view of the relationship between the church and the people. The scope of their contents is narrower, however, because the *Formulae* represent the upper stratum of society rather than society as a whole. Gregory of Tours' narrative is likewise more representative of the elite, ecclesiastical as well as secular, of his society than of the general public.

That church and state were but different aspects of a unified society and that these aspects were intertwined is demonstrated clearly by the manner in which many synods were convoked. Both a secular ruler and a church leader could convocate a church council. Clovis summoned the first synod at Orleans in 511, he apparently prescribed what should be discussed, and the bishops requested confirmation of their decrees by the king.¹ The second synod at Orleans in 533 was convoked by three
of Clovis’ sons, Childebert I, Chlotar I, and Theodoric I. ² Childebert I called the fifth synod at Orleans in 549 ³ as well as the second at Paris in 550 or 551. ⁴ Chlotar II summoned the largest of all Frankish synods until then, the fifth at Paris in 614. ⁵ Many more church councils of varying size and importance were held, ⁶ but information about them is sometimes meager. Gregory of Tours was called to trial to a synodal gathering at King Chilperic’s villa in Berny, between Paris and Soissons, to defend himself against allegations of slandering the Queen. Gregory’s own records are the only source for this incident. ⁷ Often the secular ruler provided some of the subjects to be discussed and decided upon for the church meeting. ⁸ Royal edicts ⁹ or decrees ¹⁰ concerning ecclesiastical matters confirm the existence of the close connection between church and state as well.

The subjects of the decrees issued by the synods during the sixth and seventh centuries indicate clearly that the church and its provisions were present in all facets of life. Decisions by the synodal members indicate that the ecclesiastical authority ranked above the secular authority although the secular ruler had summoned the synodal gathering. How much did his convocation really mean? Some of the canons that resulted from the synods appear to have been directed against the actions of the king himself. However, it was of great importance to the king to maintain or establish peace and peace enforcement in his realm and through its discipline the church provided him with a great deal of assistance in reaching this goal. The church on the other hand needed the protection of the secular authorities to be secure in its position of property owner, so that cooperation between
the two powers was really advantageous for both. Some royal decrees exist in which the king specifically endorsed certain canons or admonished bishops to perform their duties diligently\textsuperscript{11} or emphasis was placed upon the authority of the secular courts beside the ecclesiastical ones or on the royal confirmation required for canonically elected bishops.\textsuperscript{12} These royal decrees were certainly not disregarded. The extent of the strength of the king's authority in comparison with the authority of the church cannot be derived from the synodal canons, obviously. The fact, however, that synods could be held even during periods of great political unrest provides reason to believe that a successful interaction between the two powers existed.

The subject extensively and recurrently attended to in the canons of the various synods is church property. Much information about the utilization of church property, the actions of the church to protect its property against loss and thus remain a self-sufficient economic entity within the kingdom, and acquisition of new property is available and provides insight into the influence of the church in society as a property owner.

According to the First Synod at Orleans in 511, the fruits and revenues from lands and other gifts granted by the king to the church, which included immunity for both the lands and the clergy\textsuperscript{13}—presumably a tax exemption for the lands and exemption from royal justice and military service for the clergy, although the text of the canon does not elaborate—, were to be used by the priest to repair churches, maintain their clergy and the poor, and redeem prisoners.\textsuperscript{14} Neglect of these
duties by the priest (or bishop)\textsuperscript{15} was to be punished by humiliation
in public of the remiss priest by the bishops of the same province
and exclusion from communion until the culprit had mended his ways.\textsuperscript{16}

Gifts, consisting of lands, vineyards, slaves, and cattle,
bestowed on parishes by members of the faithful came under the control
of the bishop, according to old canonical decrees.\textsuperscript{17} The bishop of the
diocese was the administrator of all its lands.\textsuperscript{18} This administrative
function of the bishop was referred to in canons throughout the period
under study. At the Third Synod at Orleans in 538, it was ordered
that legacies to churches in the city were to be under episcopal author-
ity and that they should be used to repair these churches and main-
tain their clergy.\textsuperscript{19} An exception was made for property given to
parishes or village churches where the customs of each location should
be observed.\textsuperscript{20} Various other canons indicate the administrative powers
of the bishop over all properties of his church and diocese.\textsuperscript{21} Accord-
ing to a decree issued by the Fourth Synod at Orleans in 541, gifts
to abbots, monasteries, or church parishes could not be considered as
personal or local gifts, but should be put under the authority of the
bishop of the diocese they were part of.\textsuperscript{22} Disputes between bishops
concerning lands or other diocesan property had to be solved within a
year, according to another canon issued by the same synod,\textsuperscript{23} which
indicates that dioceses were separate entities within the church,
distinctly autonomous in economic matters.

A canon issued by the Third Synod at Paris, of which the year
is unknown,\textsuperscript{24} addressed the problems of alienated church property
located in another diocese, presumably because of changing boundaries
between the Frankish kingdoms, and of the illegal alienator living in another diocese. The bishops were to cooperate in their attempts to repossess the church property. According to this canon, the church was almost overwhelmed by loss of property and inability to repossess what was taken illegally. The episcopal duty to preserve and defend church property as well as diocesan documents, in these cases most likely deeds and wills, was emphasized. The Fifth Synod at Paris in 614 issued a canon dealing with gifts for the maintenance of a church; these gifts were to be administered by the bishop, priest, or other member of the clergy serving that particular church according to the will of the donor. About ten years later, at the First Synod at Reims, a canon dealt with the non-transferable nature of church property again. The same synod issued a decree that any gift to a bishop is a gift to the church. If, however, a bishop received something in trust, e.g., for a minor possibly, the church could not appropriate this.

The offerings on the altar in a cathedral were to be divided equally between the bishop and his clergy, according to an ordinance of the First Synod at Orleans. The same canon puts a limitation based on the nature of the gifts, emphasizing that all lands remained under the jurisdiction of the bishop. This regulation provides evidence that lands were sometimes an altar offering. Most likely, other offerings would have been products of the land or livestock or home-crafts. Of the offerings on the altar in the parish churches the bishop received only one third. The bishop was expected to provide food and clothing for the poor and the sick, which he might at least partially have done out of these altar offerings.
These various canons, the results of more than a hundred years of Frankish synodal discussions and decision-making, emphasized the duties of the bishop as administrator and proper distributor of the fruits and revenues of the various church possessions. The fact that these ordinances were issued repeatedly may indicate that in general the bishops did not always perform their duties diligently. An alternative explanation of the repetition is that other persons tried to take over the administration of church property or to obtain a voice in the allocation of its fruits and revenues on a more or less continuing basis. In this case, the canons may have been issued to support the bishop against infringement upon his duties and privileges. In 511, the synodal ordinance provided a clause in which it dealt with neglect by the bishop in this matter, whereas later synods did not mention neglect in their canons, so this might indicate that these later regulations were directed against outside interference with the bishop's duties rather than with episcopal neglect.

Throughout the whole period under study, the church protected itself from loss or reduction of property through various canons, thus implying that infringements upon its property were frequently and persistently encountered. The church policy to give land in usufruct to members of the clergy or of the lay population was widespread and is encountered frequently in the synodal decisions. If a bishop had given vineyards and lands in usufruct to a member of his clergy or to a monk, these properties had to be returned without exceptions, so it was decreed in 511. At the Third Synod at Orleans, alienation of
church property and its rendition to uselessness through mortgaging was forbidden. If such abuses had taken place, the church could repossess its properties within a prescriptive period of thirty years.  

Theft or sale of church property received in usufruct appear to be the most common kinds of abuse that were acted against in the canons. A canon of the Fourth Synod at Orleans deals with clerics who legally held church property in usufruct under a verbal or written agreement. They could not sell that property. Anyone who had received from the bishop the usufruct of church property for his lifetime could neither sell its revenues nor let his relatives share in them.

If a member of the clergy abused the church property entrusted to him he had to be disciplined. Distinction was made between the lower and higher ranking clergy in this case. The lower ranking (below the rank of subdeacon) would be chastised and the higher ranking would be considered a murderer of the poor as well, which brought excommunication.

In case a bishop had leased church property to a cleric of another diocese, the property was to be returned to the donor after the death of the cleric. At the Fifth Synod at Orleans in 549, it was decreed furthermore that no bishop or other member of the clergy could take the property of another church. The repetition of this ordinance, this time specifically directed against a bishop, in 624-625 at Reims indicates that the borders between the properties of the various churches needed to be supported against violation.

At the Third Synod at Paris, it was decreed that even if in
former times the king had granted away lands that belonged to the church, the descendants of the original receivers had to return these lands to the church. People holding on to such property were also considered to be murderers of the poor. At Tours in 567, a synodal decision was made forbidding the plunder or confiscation of church property during the fratricidal wars of the Frankish kings. Restitution of the illegally acquired property was of course required and excommunication awaited the one who did not comply. In 614 at the Fifth Synod at Paris, bishops and laymen were admonished not to claim goods of other bishops, churches, or private persons under the pretext of protecting one's kingdom or of a redistribution of the countryside because of political events.

These canons provide evidence that abuse of church property by individuals was not the only problem the church had to solve, but also that the political situation had a definite impact on church policies. The canons show the determination of the synod and its members to keep the church's property intact, protecting the universal institution as well as its various subdivisions.

It was not only the church in its role as benefactor that was protected, however; a cleric who had received a gift from his bishop was protected as well in case the bishop died and his successor was unwilling to continue the benefice. Such a benefice was never to exceed the cleric's lifespan and misconduct would bring immediate deprivation. If, however, a cleric had settled on church property while the bishop's see was vacant, it was left to the discretion of the new bishop whether or not he allowed the cleric to remain.
Claims against the bishop about church or private property could be made in the proper manner and excommunication of the claimant was not a foregone conclusion. 46

In 538 at Orleans, abbots, priests, and other clerics were warned not to take or mortgage church properties unless the bishop gave permission, "absque permissio et subscriptione episcopi." 47 This requirement of an episcopal approval for alienation of church property was stated again at the next synodal gathering at Orleans in 541. 48 These two cases require further examination. Alienation of church property was explicitly forbidden, according to canons of several church councils, 49 and even the bishop was not permitted to sell church possessions. 50 The only exception found in the canons is a case when money was desperately needed to redeem prisoners. Then, the bishop had permission to sell church vessels. 51 Although the Latin verb "alienare" was used in those cases where episcopal permission was required, it might have had a slightly different meaning here; instead of actual alienation, it may refer to the illegal grant of usufruct of church property by someone without the authority to make such a grant.

The church protected itself by numerous canons not only against loss or devaluation of property, but also actually provided itself with means to increase its possessions. Abbots, priests, and all other clerics were exhorted with episcopal approval and commendation to solicit privileges from the king, according to a canon issued by the First Synod at Orleans. 52 This indicates that clerics did solicit and that the church participated through its grant of approval and commendation.
Another rule that led to an increase in church property was the regulation that monks could not acquire private property. If they did, the abbot of their monastery would appropriate it and spend it for the monastery, according to a decree from 511. Similarly, presents to abbots, monasteries, or parishes would become church property, it was decreed in 541. And again, in 624-625, donations to bishops were considered to be church property and not personal property.

Legacies to the church are a frequently encountered subject in the canons during the sixth and seventh centuries. Denial of legacies or revocation of donations to the church were apparently not infrequent, so that the church had to act against them at various synodal meetings. In 541, the need for legal documentation of the legacy was emphasized that donations even without documentation, "etiam absque scriptura," were not to be denied the church. In 614 at Paris, it was stated that donations to the church made by bishops or other clerics in their testament would be valid even if these donations were not properly documented according to secular law procedures. Based upon the last two cases it appears that the church considered itself above and beyond the authority of the secular law in relation to claims on property bequeathed in wills.

According to various decrees, the rights of the bishop to own private property were well established. The bishop was not only a high official in the church hierarchy, but also a high ranking member of the secular community. He maintained his own household and most probably
provided some of the expense incurred in the execution of his episcopal duties out of his own pocket. One part of his duties was the care for the poor and the sick, specifically the lepers. Throughout the period under study there must have been negligence with regard to these episcopal duties because ordinances exhorting the bishop to attend to these duties were repeated. As is mentioned above, the fruits and revenues of donations to the church were to be used partially to care for the poor and the tithe owed to the church by all its faithful was meant to be used in part to aid the poor as well.

If a bishop because of neglect of duty was fined, he would have to rely upon his own means to make the payment. An example is found in a decree of 511, that if a bishop ordained a slave, which was illegal according to ecclesiastical law, without the knowledge of the slave's master, the bishop had to pay twice the value of the slave to his former master. The ordination was not annulled.

In 533, it was decreed that a bishop could not accept gifts for the consecration of a colleague or ordination of other members of the clergy. For burial services rendered to a colleague, the bishop could request only compensation for his expenses. These services were part of his spiritual duties and their inclusion in the canons in connection with the acceptance of gifts suggests abuse by the bishop.

The private property of a bishop appears to have been protected in the same manner as church property. In case of theft of such property excommunication was the punishment until restitution was made, according to canons of the Third Synod at Orleans and the Third Synod at Paris. Furthermore, a bishop could accept personal legacies with
valid documentation. He could not own property outside of his diocesan territory, however.\textsuperscript{68} When a bishop died, special care was to be taken to protect his property against unlawful appropriation. In 533, a decree was issued according to which the bishop who rendered the burial services for a colleague had to enter the deceased bishop’s residence with priests present in order to take an inventory and to appoint a responsible caretaker.\textsuperscript{69} In 614, it was deemed necessary to specify that all private property left by a bishop or other member of the clergy had to be protected and preserved by the archdeacon or another member of the clergy until the instructions of the will were disclosed. Non-compliance with this decree would bring as punishment excommunication on the grounds of murdering the poor.\textsuperscript{70} This ordinance had to be repeated in 624-625,\textsuperscript{71} which indicates abuse.

A decree issued in 541 concerned a bishop who did not bequeath part of his property to the church and who, contrary to canonical law, had mortgaged, sold, or taken away church property. His acts would be annulled and presumably the church reimbursed.\textsuperscript{72} The meaning of this canon is not completely clear, however, because no direct source for the reimbursement is mentioned. It appears reasonable to deduct from the information given about the absence of a legacy to the church by the bishop, that the bishop’s property would be the indicated source for reimbursement. Another conclusion drawn from the same source is that its very inclusion in the canon implied that usually a bishop would leave the church part of his property.

Several canons issued by the Fifth Synod at Paris deal with property of clerics and its disposition by testament.\textsuperscript{73} It appears
that abbots, priests, or other ministers of the church, or even clerics in general could own private property, because they could dispose of it by will. As has been mentioned above, monks could not possess property. This is an indication that monks were not considered to be members of the general clergy. Upon entering the monastic life, a person abandoned the world and with it personal possessions. The abbot of the monastery apparently was not considered to be a member of the monastic order in this respect.

According to these various ordinances that involve church property, the synodal members made certain that the church retained and increased its property by strict rules about its administration and utilization and in several cases by requiring that members of the faithful contribute part of their possessions.

The rules guiding entrance into and advancement in the church hierarchy in the Frankish kingdoms were not specifically described in the canons during the sixth and seventh centuries. Again, it is abuse of the system that is visible in the synodal decisions. Many rules were laid down in the canons prescribing which lay persons could be ordained legally and which manner of ordination was the proper one. According to a synodal decree of 511, a layman needed the king's permission or a judge's approval to enter the ecclesiastical world. In 624–625, it was decreed that census-takers of the state needed special permission from the king or judge to become clerics or monks. Because part of the services of a lay person, especially a census-taker, was actually at the command of his king and because a member
of the clergy was responsible to the church officials only and could not serve a secular master, it is evident that these decrees served a double purpose: protection for the king against loss of necessary secular services and protection for the church against the accusation of misappropriation of part of the king's authority.

According to a canon of 538, a person had to have been converted to the Christian faith for at least a year in order to be ordained and he should be twenty-five years of age in order to become a deacon and thirty in order to become a priest. The period of a year since conversion before ordination was the subject of a canon issued in 549 also, and this canon specified that the period was to be dedicated to instruction in clerical discipline and rules. In order to be ordained as a priest or deacon, a person had to be literate and had to understand the baptismal sacrament, so decreed a canon of the Second Synod at Orleans. As has been mentioned above, the priest and the deacon belonged to the major order of the church, and the bishop was the completion and extension of the priesthood. The bishop was the supreme ecclesiastic ruler of the diocese over which he presided. He was responsible for the spiritual well-being of all the faithful, clergy and laity, and for the government of all ecclesiastical institutions within his diocese. An archbishop or metropolitan was in charge of several dioceses. The deacon was the assistant of the priest with the principal duty to assist at holy services. The archdeacon was the direct assistant to the bishop and he could represent the bishop at councils of the church. He also governed the diocese in the time between the death of the bishop and the election
of a new one. A decree issued in the early seventh century states that a layman could be raised to the archdeaconry in case the church was in dire need of defense only. These ordinances dealing with the requirements for access to the higher ranks in the church hierarchy suggest that the church was trying to maintain a certain level of education and sincerity for the higher ranking members of its clergy.

Ordination of a slave was apparently subject to changing rules during the period studied. An ordinance issued by the First Synod at Orleans deals with a slave who was illegally ordained, because either the bishop acted wrongfully or the witnesses to the ordination were untruthful. Punishment of the culprits was required, but the former slave retained his elevated status. However, at the Third Synod at Orleans, it was stated that neither a slave nor a colonus could be ordained. But annulment of the act was not mentioned if such an ordination had taken place. At the Fifth Synod at Orleans, a canon was issued declaring that a bishop could ordain a slave or freedman only with the permission of his owner or emancipator. Penalties for non-compliance were imposed, but again the new status of the ordained remained unchanged. Apparently, the official ordination brought about such a fundamental change that annulment was almost impossible.

If a deacon or priest had committed a capital crime, he would be deposed, according to a decree of 511 and neglect of ecclesiastical duties brought the same punishment, according to synodal decisions in 533 and 538. Priests who had bought their office were also deposed as were clerics who stole or lied and bishops who took away
property from another diocese.\textsuperscript{89}

Marriage after ordination was another cause of loss of ecclesiastical office.\textsuperscript{90} Return of one's marital partner after ordination must have been a common sin since it was mentioned in several canons over the years under study. Deposition followed such transgression\textsuperscript{91} as was the case with adultery.\textsuperscript{92} Monks who married after entering their order could not occupy an ecclesiastical office.\textsuperscript{93} Men who had been married twice or who had married a widow and men of unsound body or mind could not be ordained and if they had been ordained inadvertently they had to be deposed.\textsuperscript{94} A bigamist or a Jew, illegally ordained, had to be deposed also.\textsuperscript{95} It was considered illegal also if someone had been ordained by the bishop of another diocese. In 538, this meant deposition of the ordained, but in 554, an exception was made if a letter of approval from the bishop of his own diocese was presented.\textsuperscript{96}

These rules concerning the entrance into and advancement in the church hierarchy indicate that the synodal members honored the distinct line that existed between a lay person and a cleric when entrance into the clerical ranks was considered. Secular law was observed, as is indicated by the required royal or judicial permission before entrance into the church ranks could be given. It is also visible in the case concerning the ordination of a slave—the loss of property was taken into account with regards to the former owner, but church property was protected as well, resulting in a compensation paid to the former owner of the slave while the church retained the newly ordained slave. The ordinances dealing with those people who could not be ordained
indicate the church policies towards second marriages, bigamy, and mental and physical health. The attitude of the church towards the Jews will be discussed again later. Within its ranks the church dealt frequently with cases concerning marital relations. Existing marriages of members of the clergy posed a severe problem for the church. They were a threat to the rule of celibacy, but they could not be dissolved to diminish the temptation. Because of this contradiction within the system it is understandable that the church had to act frequently in these matters.

The election of bishops and metropolitans and their ordination or consecration was a frequent subject of the canons. These rules served as protection of the lay as well as the ecclesiastical inhabitants of the diocese and the province. In 533, at the Second Synod at Orleans, it was stated that the proper manner of ordaining a metropolitan had gone out of use and had to be reinstated. He should be elected by the bishops of his province and the clergy and lay population of his own diocese. All bishops of the province should participate in his consecration. 97 In 538, however, it appeared to be preferable that a metropolitan be consecrated by one of his equals in the presence of the bishops of his own province. The electoral process prescribed was slightly different as well in that the actual election was made by the bishops of the province with consent of the clergy and lay. 98

At the same synodal gathering (538), election of a bishop was declared the prerogative of the clergy and citizens of his diocese.
with the consent of the metropolitan.\textsuperscript{99} In 541, it was stated that the location for the consecration of a newly-elected bishop had to be the main church in his diocese.\textsuperscript{100} Some years later, in 549, royal consent after the canonical election process was mentioned and consecration was to be officiated at by the metropolitan or his representative together with the other bishops of the province.\textsuperscript{101} A subsequent canon dealt with the case of a bishop imposed upon a diocese against its will. Such practice was forbidden, of course, and undue influence by the authorities, whether they be secular or ecclesiastical, on the clergy and the laity in such a case was prohibited as well.\textsuperscript{102} The same subject was dealt with even more explicitly in 557. Royal appointments were to be rejected and the metropolitan and bishops of the province were exhorted to act against future offenders or to judge jointly already consecrated offenders.\textsuperscript{103} In 614, the procedure for election of a bishop was repeated with mention of simony as an abuse.\textsuperscript{104} Simony had been mentioned before, in 549.\textsuperscript{105} A bishop furthermore was not allowed to select his own successor nor could the episcopal see be occupied by anyone else but the lawful bishop.\textsuperscript{106} In 615, King Chlothar II issued a decree in which he endorsed the canons of the Fifth Synod at Paris, but he made some additions to several of the canons. One of the canons discussed above received the addition that the canonically elected bishop needed confirmation by the king,\textsuperscript{107} thus reestablishing an older rule and furthering the king's own importance and influence. Shortly thereafter, another synodal gathering confirmed the ordinances of both the Synod of 614 and King Chlothar II of 615.\textsuperscript{108} Later in the seventh century, a number of canons again
stated the electoral procedure, but no mention was made again of the need for royal confirmation.\textsuperscript{109} In 624-625, a canon was issued according to which only a native of the city of a deceased bishop could be chosen to the bishopric.\textsuperscript{110}

It appears that the most persistent subject concerning ordination or election of clerics was the elective process dealing with the bishop. The election of bishops must have been irregular on many occasions. The most common abuse came probably from the secular authority, which is very understandable because of the secular powers the bishop held outside of or because of his ecclesiastical position. The bishop was not only a private property owner, he was also the administrator of a vast and increasing church property and he held an enormous moral weight of authority over the lay population. Any influence that the king could possibly impose upon him would give the king a great advantage. Because of this, the decree of King Chlothar II of 615 and its subsequent reendorsement is of great importance.

The two canons that deal with the location of the consecration ceremonies for a bishop and with the required local origin of the successor of a bishop\textsuperscript{111} indicate the concern of the church to maintain and support the separate entity of each diocese.

The church disciplined its members for misbehavior and this was reflected in various canons. These canons give an insight into the common disciplinary problems the church encountered and the rules it defined to deal with them, among both the clergy and the laity. Negligence of duties by members of the clergy was frequently mentioned, both
administrative duties, ranging from non-charitable behavior to failure to summon a synod, and ecclesiastical ones, including illegal ordination and non-participation in holy services, feasts, or fasts.

Emphasis was placed repeatedly on the episcopal duty to care for the poor and the sick, specifically the lepers, as has been mentioned before. In 585, it was decreed that no dogs could reside in an episcopal residence so that the poor could seek help without fear of an attack. If a bishop neglected to care for the poor, he was to be publicly chastised by the other bishops of the province and if this had no result, he was to be excluded from communion with his equals, it was decreed in 511. Later canons concerning the care for the poor and the sick do not include a remedy or punishment. The mere fact that these episcopal duties were repeatedly mentioned suggests that a certain laxity existed in the bishops' performance of their duties.

Exhortations to obey the canons and to mind old canons as well were frequent during both the sixth and seventh centuries. The bishop was required to inform the parochial clergy of his diocese of the various canons of importance to them, according to a decree of 514. The bishop had to attend the synodal councils and, in 585, it was decreed that these should be held every three years. Provincial councils had to be held annually. The frequent mention of the latter rule suggests that annual gatherings were not the prevailing practice. In 538, the metropolitan who did not summon a provincial council within two years was forbidden to celebrate Mass
for a year and, in 567, absence at a provincial council, except because of illness, brought the bishop exclusion from communion with his equals until the next synodal council. Both punishments should be considered as severe.

Although illegal ordination was the subject of several canons, punishment was not always the same. Double compensation for the former master of an illegally ordained slave has been mentioned. This was decreed in 511. In 538, an offending bishop was forbidden to celebrate Mass for a year in a similar case, but in 549, the period during which celebration of Mass was forbidden was six months.

To ordain someone against his will was to be punished by a year's deprivation of the celebration of Mass and ordination of a bigamist would bring the bishop loss of his church functions for a year. These punishments indicate that offenses against sacred church rules were dealt with through severe spiritual deprivation for the offender.

The question of obedience within the church hierarchy was described in a canon of the First Synod at Orleans. In later canons, rules of subordination were given whenever provision was made that a lower ranking cleric needed to secure permission from his superior for a particular action that he wished to undertake or whenever specific rules and regulations indicated who was responsible for their observance. The following rules of subordination can be extracted from the various canons. The bishop had authority over sons and descendants of clerics. Abbots, priests, and all other clerics and monks owed obedience to him and they needed special permits from the bishop for various undertakings. Monks owed obedience to their abbot as
Convents for women and their abbesses were also under supervision of the bishop. The lower clergy needed episcopal permission to solicit benefits for the church from the secular ruler. A monk was required to have permission from both the bishop and the abbot to settle outside the monastery in a self-constructed cell, a priest needed episcopal permission to live in the secular world, and an abbot needed permission to be absent from his monastery. A bishop could not depose an abbot without consultation with other abbots. If this rule was broken, the cleric could appeal to the synod, according to a similar canon almost half a century later. The bishop had no authority over a cleric from another diocese unless that cleric's bishop gave his approval. This regulation protected the cleric as well as his bishop and prevented an infraction of the episcopal authority in the diocese.

Episcopal permission was needed for the judicial procedures of arrest, trial, or punishment before a secular court in cases involving a layman and a cleric and the presence in court of a superior of the cleric was required. Widows and orphans received the same protection and privileges in court, which underlines the position of the church as protector of the weak. An exception was made for serious criminal cases, i.e. those involving murder, theft, and fraud, as provided in 581 and repeated by King Chlothar II in his Edict of 615 as an addition to an earlier canon. The king declared explicitly that the secular court could act in criminal cases without the foreknowledge of the accused's bishop. Priests and deacons were excepted. Clerics could not be present at judicial condemnations or executions.
of criminals. A cleric could not bring another cleric before a secular judge. In case of transgression of this rule, a low ranking cleric would be punished by whiplashes and a high ranking cleric by imprisonment. A false accusation by a high ranking cleric resulted in his deposition until satisfaction was given to the victim. Appeal to the synod was possible, especially for the lower ranking clergy, to protect them against the arbitrariness of their superiors.

Negligence of duties was probably the most frequent form of misbehavior the church encountered and the canons prescribed some disciplinary actions, but there was almost always a possibility to amend one's ways before serious punishment was apportioned. The canons do show a rather lenient church with many safeguards against abuse for its members.

The synod acted as the ecclesiastical court in many cases. Many canons dealt with specific offenses against the canon law which were to be punished by the synod. In other cases it was the function of a court of appeals that was designed for the synod. In case a dispute over property arose among bishops, they were admonished to solve the problem among themselves or in the presence of elected judges, it was decreed in 541. Several years later, bishops were told to select priests as judges and mediators. Disregard for their judgment would be punished by the synod. About fifty years later, at the Fifth Synod at Paris, it was prescribed that a trial between bishops had to be held before the metropolitan and not before a secular judge. These regulations suggest that the elected judges required
for a court case between bishops were high ranking officials of the church, most likely the bishops' peers and their metropolitan.

In minor cases involving a layman and a bishop, the metropolitan should be the mediator and the judge with or without consulting other bishops; in major cases he should bring the matter before a council.\textsuperscript{158} If the accused bishop did not appear before the metropolitan or if he did not comply with the metropolitan's ruling, he would lose his position in the church until he did obey. If the accusation was unjust, the accuser would be excommunicated for one year. If a bishop had tried twice to receive a hearing of his case from his metropolitan without success, he could bring the case before the synod where his colleagues would hear it and judge.\textsuperscript{159}

In 541, a decree was issued according to which the bishop had to impose a suitable penance on the person who had committed premeditated murder but was freed from punishment by the secular ruler or the victim's kin.\textsuperscript{160} This provides clear evidence that the church was to provide a higher justice than the secular world and that the system of compensation for a crime did not provide a spiritual cleansing as well.

At several synods, decisions were made about accusations against high-ranking clerics or about the removal from office of a member of the higher clergy after a new hearing of the case had been held or the records of the original court case were read. The Second Synod at Paris,\textsuperscript{161} a Council in Brittany in 555,\textsuperscript{162} and the Second Synod at Macon\textsuperscript{163} are examples of the latter and a Council at Paris in 577\textsuperscript{164} and the Council at Berni held between 577 and 581, where Gregory of
Tours was on trial, examples of the former.

In 585–586, a rule was created according to which a priest or a deacon could not personally sue someone before a secular court but a lay representative was to be used instead. During the later part of the seventh century, in 670–671, synodal rules were issued according to which bishops should withdraw from secular involvement and refrain from conducting trials personally, using an advocate instead. This intentional withdrawal of ecclesiastical personnel from the secular judicial courts appears to be an unusual procedure, incongruous with the close relationship between the church and the state. The withdrawal could have been a safeguard for the bishop as both an ecclesiastical and secular personality, and it could indicate a growing professionalism in the judicial process. No actual proof of the latter appears to be available.

Many rules concerning the religious services of the church can be found in the synodal traditions—rules for the clergy conducting the services as well as for the faithful attending them. The lay population was exhorted to attend Mass and other services, not to leave before the end of the service or without the blessing of the bishop if he officiated, and to honor the Sunday in general. It was illegal to carry weapons in church or to wound or to kill someone in the church or on its grounds.

Special instructions provided that every Christian should attend church on Sundays and on special holy days; the free and the slaves alike were to be free from labor on these days. The clergy
had of course no choice but to attend these celebrations and to perform their duties.171 How Mass should be celebrated, was prescribed in several church ordinances. Certain rules about the procedure for the consecration of the bread and wine were set and regulations provided about the proper position the clergy as well as the laity should take in the church during the services.172 The bishop should celebrate Christmas and Easter in his own church, was prescribed in 583173 and in 670–671, he was admonished to be in his city during Christmas, Easter, and Pentecost unless a royal command prevented him.174 The latter prescription contradicts earlier canons according to which only illness would be a valid excuse for not attending church services175 and the canon that prescribed that bishops should refrain from secular involvements, which has been discussed above.176 The date of Easter and the period of Lent were prescribed, sometimes in detail,177 and regulations for monks in regard to fasts were described explicitly.178
Baptismal services should be held on Easter Eve or Easter, according to canons of 585 and 585–586,179 and in the first part of the seventh century, a decree was issued that baptism could not be held in a monastery.180 This might have been an attempt to retain seclusion from the outside world for the monastic community. According to the same canon, burial services could not be held in a monastery. Other regulations concerning burial include burial services for a bishop by one of his peers, which has been mentioned before,181 and two decrees about the place of interment of the body.182

The most frequent areas for exhortation or regulation and punishment were in the fields of matrimony and celibacy. Although
the marriage ceremony was not yet one of the sacraments of the church, the church prescribed very definitely who could not marry and what should be done about incest. Marriage contracts could not be broken \(^{183}\) and a girl's parents needed to give their consent. \(^{184}\)

A man was forbidden to marry the widow of his brother or the sister of his deceased wife \(^{185}\) and one could not wed one's stepmother. \(^{186}\) A second marriage for the widow of a priest or a deacon \(^{187}\) and for the widow of a subdeacon, an exorcist, or an acolyte \(^{188}\) was declared illegal and should be dissolved. Refusal to comply would result in excommunication of both parties in one case and confinement to a nunnery in the other. Monks, nuns, or clerics in general should not marry after their ordination or dedication to the church. Excommunication was the punishment for all illicit marriages of the clergy and the monastic members of the church. \(^{189}\) In 511, it was decreed that a monk who did marry could never obtain an ecclesiastical office \(^{190}\) and in 567, a decree added that the illicit union should be dissolved by a secular judge. \(^{191}\)

Christians should not marry Jews and an existing marriage should be dissolved on pain of excommunication, it was stated in 533 and 538. \(^{192}\)

A list of marriages that the church considered incestuous was provided in a canon of 557. The list included most of the aforementioned relationships with the addition of the widow of an uncle, a daughter-in-law, an aunt, a stepdaughter, and a step-granddaughter. \(^{193}\) A series of canons from the early sixth century through the early seventh concerned incest. It was specifically forbidden in several
canons and in others reference was made to earlier ordinances about incest that should be upheld. All incestuous marriages had to be annulled. An interesting exception was made for the newly baptized who inadvertently entered upon such a marriage—this union was not to be dissolved. A canon of 624–625 ordered the secular authorities to punish those involved in incestuous marriages with loss of office, even military office, and loss of property, but it was usually the church that dealt with the delinquents.

Married members of the clergy provided the church with yet another series of problems. Sons and descendants of clerics were considered to be under the control of the bishop. It can be assumed that this progeny dated from before the ordination of the cleric, because marriage after ordination was forbidden, as has been discussed above, and contact with strange women was illegal as well. Marriages that existed before ordination of a cleric were not to be dissolved but clerics with the rank of subdeacon or higher should abstain from conjugal relations. The number of ordinances dealing with this problem indicates that transgression of the rules was quite common. In order to prevent these transgressions, some regulations were given, such as the requirement of having another cleric accompany a suspected transgressor and separate living quarters for the husband and his male companions and for the wife and her female entourage.

Unmarried clerics were another source of problems for the church. Many regulations were made to determine who could reside with them or even visit them. Female relatives could not be in the house of a cleric at unsuitable hours. Only his mother, sister, or
daughter could manage a clergyman's household, it was decreed in 567. This list was somewhat extended in later years when grandmother and niece were included. A canon sometimes ascribed to the Synod at Nantes in 658 seems not to be in accordance with the earlier ones, because it reversed these rules so that neither mother nor sister nor aunt could live with their clerical relative anymore, while canons of the synods of 660-673 and 670-671 both endorsed the earlier canons allowing certain relatives to reside with clerics. The possibility exists that in 658 action was taken against one specific case of abuse and not against the general rule.

Some specific rules that were created to regulate clerical life include the following: Priests or monks should not sleep in the same bed with another and monks should live in a dormitory, not alone or in pairs in private cells. In the dormitory, two or three monks should stay awake and read in turns while the others sleep. No cleric or layman should enter a nunnery or have a private conversation with a nun unless he were virtuous and of advanced age. No cleric should wear secular clothing, shoes, or weapons, or use a handkerchief. Priests and deacons should not sing or dance at a banquet and they should not go hunting.

Several canons deal with the relationship between Christians and Jews. As mentioned above, a Christian should not marry a Jew and an already existing marriage should be dissolved. Christians were even forbidden to eat with a Jew. In 538 and 581, decrees were issued that Jews should not appear among Christians from Maundy Thursday on through Easter. Access to nunneries was especially
forbidden to Jews. The reflection of fear of contamination that existed can be detected furthermore in canons dealing with conversion to Judaism. Christian slaves of Jews were considered to be especially vulnerable on this account and they received special consideration from the church. If a Christian slave fled from his Jewish master and requested to be bought by a Christian, this should be done, and if a Jewish master tried to convert a Christian slave, he would forfeit all his slaves. A canon was issued in the later part of the sixth century according to which Christians could no longer be slaves of Jews. This canon as well as the ones dealing with conversion to Judaism must have been difficult to enforce. In 614, it was decreed that if a Jew had military or official authority over Christians, which was illegal according to the church, he had to be baptized with his family. This regulation is rather unusual and appears to be the only compulsion of its kind in the church traditions studied. According to a canon issued in 581, a Jew could not be a judge or a tax gatherer over a Christian.

The special relationship between Christians and Jews touched upon the "peculiar" institution of slavery, which will be considered next. In canons of the earlier synods of the sixth century, it is stated that slaves could not be ordained, but if the ordination had been effected, deposition was not possible. By the middle of the sixth century, the ordination of a slave or freedman was allowed provided that his master or former master agreed. The question arises whether a slave could be an ordained member of the church. Although the canons are neither explicit nor conclusive in this matter,
it is impossible to accept that a slave indeed could be ordained when taking into account the position of the ordained in the secular world as a servant of the church and a religious leader of its members.

The church owned slaves and descendants of these church slaves remained legally under the jurisdiction of the church no matter when or where they were discovered, according to a canon of 541. There is no mention of emancipation in this canon. In 557, a canon dealt with descendants of slaves who were charged by their former master with the care of his grave in exchange for their freedom. If the church freed them from these services, they and their descendants had to remain under church protection and pay for this privilege. Other canons that prescribed the church's responsibility of protecting emancipated slaves did not mention a payment by the former slave for his protection. I have not found an explanation for this payment. The church set rules prohibiting slave labor on Sundays and other church holy days in order to give the slaves the opportunity to attend church services.

Marriage between slaves against the will of their masters was to be denied, even when requested in church, it was decreed in 541. This implies that otherwise slaves could marry. According to a canon of 557, however, descendants of slaves were considered to be bastards because slaves could not marry, according to Roman law. It appears likely that this meant that a contract of marriage between slaves was impossible because it had to be the slave's master who contracted a marriage for him. Marriage between a slave and a free woman or a free man and a slave woman did occur but no mention of a contract can be
found, neither in the Salic law nor in Marculfus' *Formulae.*

In 615, a decree was issued that regulated debt slavery so that no man should remain in slavery after paying his debt. A decade later, a decree was issued stating that a free man could not become a slave, while in 511, a canon dealing with rape stated that the rapist should be made a slave or he should pay for his freedom as if he were a slave. The title of the Salic law concerning marriage between a free person and a slave specifies also that such a relationship brought about the loss of status as a free person for the delinquent. Marculfus recorded two documents concerning debt slavery. One case involved a man who had borrowed money and now promised to work for the lender to pay off his debt and to accept even corporal punishment such as slaves would receive in case of laxity. The other case dealt with a person whose life had been saved and for whom compensation for his crimes had been paid by a benefactor to whom he now gave himself in slavery. When regarding these documents, the regulations of 511 and 615, and the Salic code, it appears to be logical to conclude that a free person could become a slave, either out of free will or as the result of a committed crime. The canon of 624-625 that contradicts this must have had bearing on other circumstances.

The church tried to protect its members in many ways, as has been shown above. One particular protection it provided was in serving as a place of refuge for the persecuted. The right of asylum in the church was endorsed repeatedly in the canons during the sixth and seventh centuries. Murderers, adulterers, and thieves who had
sought asylum in the church or at the bishop's residence were granted protection until their persecutors had declared under oath that the criminals would be safe after they had given satisfaction to their victim or his kin. Arapist, however, had to be detained for punishment. It was the explicit task of the bishop to impose penance on a delinquent whether or not he or she had given satisfaction for the crime according to the secular law. It is evident that the church as a place of refuge was at the same time a place of spiritual judgment for its members. Endorsement and support of the secular laws and protection of the members of the church and their spiritual well-being were all parts of the responsibility the church carried in society.

The church issued several regulations concerning women. In 533, it was stated in two canons that a woman could not become a deaconess, according to church regulations, because of the weakness of her sex ("fragilitate"). And according to a canon of 658, no woman could serve at the altar. At private prayer services and at communion women could enter the most holy place of the church, but with a covered head. Women could not enter male monasteries, it was declared on two occasions and they could enter the bishop's chambers only when accompanied by two priests or deacons. A woman who committed adultery with a cleric was to be banished from the city, it was decreed in 538, and a widow who lived piously could remain in her house, otherwise she was to be shut up in a nunnery, a church decision of the late seventh century indicates. A rather peculiar
decree concerned the not yet fully decomposed body of a woman in a grave. The decree was that no male corpse could be placed in the same grave. All these regulations indicate that the church considered that a woman endangered the integrity of the male members of the clergy, though not necessarily through her own fault. However, the church took upon itself to protect widows and orphans against ill treatment by secular judges and the bishop or archdeacon had to take part in trials and judgments involving them. Toward the end of the seventh century, when the presence of ecclesiastical personnel in court was discouraged, representatives of the bishop could have provided the necessary protection in court.

One of the specifically Christian problems the church encountered was the continuing threat of paganism. The canons throughout the period under study reflect that paganism was not dead and that many pagan rites coexisted with the Christian religion. Clerics, monks, and laymen were warned in 511 not to put faith in fortune telling and similar practices on pain of excommunication and these offenses were attacked again in 585–586 and in 624–625. The worship of idols and partaking of offerings to idols were grave sins resulting in excommunication, according to a canon of the Second Synod at Orleans. This canon was repeated only eight years later, which indicates a deep-rooted and maybe ineradicable problem.

Oath-taking in pagan fashion on the head of an animal instead of in the Christian manner on the Bible was another serious offense as well as was the use of incantations. The celebration of certain ancient pagan feasts was very difficult to suppress. Two canons issued
in 567 dealt with the Christian feasts and coinciding pagan festivals at the beginning of January. About two decades later, the pagan rites of welcoming the new year in animal costumes and by special gifts to drive away the demons were prohibited. Special places of heathenish worship, such as certain rocks, trees, thorn bushes, and fountains, retained their high attraction for offerings, according to some canons.

This phenomenon of continuing adherence to the old beliefs is not unexpected or hard to understand. Conversion to Christianity had been compulsory in many or even most cases. This conversion changed a person's status in the secular and ecclesiastical world but did not necessarily change his outlook on life.

When reviewing the information gathered from the various canons of the major synods in Gaul during the sixth and seventh centuries, it is evident that the church and the state were closely intertwined. This close relationship appears to have been voluntary and mutually beneficial. The cooperation between church and state is especially visible in the manner in which several synods were convoked and the agenda of several of them. The contents of the synodal decrees indicate that the church set regulations for many aspects of community life and thus played an important role in society. The church as a property owner whose holdings increased steadily and its position within the secular society because of it made it an authority to be reckoned with and the secular rulers recognized this importance. The community as a whole benefited by the organization of the church and its role as main
or even sole source of social relief for the unfortunates of society. On the other hand, it was very beneficial to the church that its highest-ranking members of the hierarchy were also high-ranking members of the secular society. The church recognized this importance and this recognition can be seen in the prescribed procedure to elect a bishop, according to which laity and clergy together were the electorate. The secular ruler tried to influence this procedure, but, with the exception of a decree of Lothar II who was a powerful king, this infringement upon the rights of the lay and clerical members of the diocese was unsuccessful.

There are indications that the church considered itself above the secular authorities. This is illustrated by the decree according to which property without the proper legal documentation according to secular law was accepted by the church as a valid donation and by the decree according to which the bishop had to impose penance on a delinquent whether or not he or she had given satisfaction for the crime according to the secular law.
NOTES

1C.G. (see ch. 2, note 47), preface to the canons of the First Synod at Orleans in 511; Hefele (see ch. 2, note 49), introduction to the canons of this synod, pp. 87-88.

2C.G., Preface to the records of the Second Synod at Orleans in 533; Hefele, pp. 185-186.

3C.G., Preface to the records of the Fifth Synod at Orleans in 549; Hefele, pp. 366-368.

4C.G., Preface to the records of the Second Synod at Paris, of which the date is questionable. Based on the names of bishops present scholars have placed this synod in the year 551; Hefele, pp. 372-373.

5C.G., Preface to the records of the Fifth Synod at Paris in 614; Hefele, pp. 437-438.

6In 550 by Theodebald, in 567 by Charibert, in 581 and 588 by Guntram; Hefele, pp. 371-372, 388-389, 403, and 415, respectively.

7Gregory of Tours, H.F., Book V, chs. 49 and 50; Hefele, p. 402.

8Clovis at the First Synod at Orleans in 511, Childebert at the Second Synod at Paris, and Chilperic at Berny between 577 and 581; Hefele, pp. 88, 373, and 402, respectively.

9Lothar II in 615.

10Guntram in 585 when he published the decisions of the Second Synod at Macon held earlier that year.

11Guntram in 585; Hefele, p. 409.

12Lothar II in 615.

13C.G., First Synod at Orleans in 511, canon 5; lines 56-57: "ipsorum agrorum vel clericorum immunitate concessa."

15. *Ibid.*, line 61: *sacerdos* is used.


24. Hefele, p. 377: The presence of Bishop Euphranius of Tours, who started his administration in 556, at this synod determines an approximate year for the Third Synod at Paris.


26. Hefele, pp. 444-445: According to several scholars, the First Synod at Reims was held in 624-625.


32. Ibid., canon 23, lines 148-154.

33. C.G., Third Synod at Orleans in 538, canon 13.

34. C.G., Fourth Synod at Orleans in 541, canon 18.

35. Ibid., canon 34.


37. The church recognizes three major orders (priest, deacon, and subdeacon) and four minor orders (acolyte, exorcist, reader, and porter). The rank of bishop is not regarded as a separate order, but as the completion and extension of the priesthood.

38. C.G., Fourth Synod at Orleans in 541, canon 36.


40. C.G., First Synod at Reims in 624-625, canon 21.


42. C.G., Second Synod at Tours in 567, canon 25.

43. Canons 9, 10, and 11.

44. C.G., Third Synod at Orleans in 538, canon 17.

45. C.G., Fourth Synod at Orleans in 541, canon 35.

46. C.G., First Synod at Orleans in 511, canon 6.

47. Canon 26, lines 255-256.

48. Canon 11.

49. C.G., Third Synod at Orleans in 538, canon 25; Fourth Synod at Orleans in 541, canon 9; First Synod at Reims in 624-625, canon 1.

51 Ibid., canon 22.

52 Canon 7, lines 70-74.

53 C.G., First Synod at Orleans in 511, canon 19.

54 C.G., Fourth Synod at Orleans in 541, canon 11.

55 C.G., First Synod at Reims in 624-625, canon 20.

56 C.G., Third Synod at Orleans in 538, canon 25; Fourth Synod at Orleans in 541, canons 14 and 19; Fifth Synod at Orleans in 549, canon 16; First Synod at Macon in 581, canon 4; Fifth Synod at Paris in 614, canons 8, 9, and 10.

57 C.G., Fourth Synod at Orleans in 541, canons 14 and 19 (line 115), respectively.

58 Fifth Synod at Paris in 614, canon 12.

59 C.G., First Synod at Orleans (511), canon 6; Third Synod at Orleans (538), canon 22; Fourth Synod at Orleans (541), canons 9 and 14; Synod at Paris (? 557), canon 2; Fifth Synod at Paris, canons 9 and 11; Synod at Reims (624-625), canon 16; et al.

60 C.G., First Synod at Orleans (511), canon 16; Fifth Synod at Orleans (549), canon 21; Synod at Lyons in 583, canon 6.

61 C.G., First Synod at Orleans (511), canon 5.

62 C.G., Second Synod at Macon in 585, canon 5.

63 C.G., First Synod at Orleans (511), canon 8.

64 C.G., Second Synod at Orleans (533), canon 3.

65 Ibid., canon 5.

66 Canons 25 and 2, respectively.

67 C.G., Fourth Synod at Orleans (541), canon 14.
68 C.G., Synod at Paris (557?), canon 3.
69 C.G., Second Synod at Orleans (533), canon 5.
70 C.G., Fifth Synod at Paris (614), canon 9.
71 C.G., Synod at Reims, canon 16.
72 C.G., Fourth Synod at Orleans (541), canon 9.
73 Canons 9, 10, and 12.
74 C.G., First Synod at Orleans (511), canon 19 (see note 53); A Parisian council, probably held shortly after 615, canon 4 (Hefele, pp. 440-441).
75 C.G., First Synod at Orleans (511), canon 4, lines 48-50: "hisi aut cum regis iussione aut cum iudicis voluntate."
76 C.G., Synod at Reims, canon 6.
77 C.G., Third Synod at Orleans (538), canon 6.
78 C.G., Fifth Synod at Orleans (549), canon 9.
79 Canon 16, lines 62-63: "sine literis vel si baptizandi ordinem nesciret."
80 Note 37.
81 See note 74: Parisian council, canon 11.
82 Canon 8.
83 Canon 29.
84 Canon 6.
85 C.G., First Synod at Orleans, canon 9.
86 C.G., Second Synod at Orleans, canon 14, and Third Synod at Orleans, canon 12, respectively.
87^CG^, Second Synod at Orleans, canon 4.

88^CG^, Third Synod at Orleans, canon 9.

89^CG^, Synod at Reims, canon 21.

90^CG^, Fifth Synod at Orleans, canon 4; Synod at Tours in 567, canon 13.

91^CG^, Fifth Synod at Orleans, canon 4; Synod at Tours, canon 19; First Synod at Macon in 581, canon 11; Council at Auxerre in 585-586, canon 20.

92^CG^, Third Synod at Orleans, canon 8.

93^CG^, First Synod at Orleans, canon 21.

94^CG^, Third Synod at Orleans, canon 6.

95^CG^, Fifth Synod at Orleans, canon 10.

96^CG^, Third Synod at Orleans, canon 16 and Fifth Synod at Arles in 554, canon 7, respectively.

97Canon 7.

98Canon 3.

99^Ibid^.

100^CG^, Fourth Synod at Orleans, canon 5.

101^CG^, Fifth Synod at Orleans, canon 10.

102^Ibid^, canon 11.

103^CG^, Third Synod at Paris, canon 8.

104^CG^, Fifth Synod at Paris, canon 2.

105^CG^, Fifth Synod at Orleans, canon 10.

107. A decree of October 18, 615, canon 2 (Hefele, p. 440).

108. Possibly at Paris of unknown date (Hefele, pp. 440-441).


110. C.G., First Synod at Reims, canon 25.

111. C.G., Fourth Synod at Orleans, canon 5, and First Synod at Reims, canon 25, respectively.

112. C.G., First Synod at Orleans, canon 5.

113. C.G., Third Synod at Orleans, canon 1.

114. C.G., Third Synod at Orleans, canon 6; Fourth Synod at Orleans, canon 10; Fifth Synod at Orleans, canon 6.

115. C.G., First Synod at Orleans, canon 31, Second Synod at Orleans, canons 5 and 14.

116. C.G., First Synod at Orleans, canons 5 and 16; Fifth Synod at Orleans, canons 20 and 21; Third Synod at Lyons (583), canon 6; Second Synod at Macon (585), canon 5.


118. C.G., First Synod at Orleans, canon 5.

119. C.G., Second, Third, Fourth, and Fifth Synods at Orleans, canons 21, 36, 38, 24, respectively; Third Synod at Paris, canon 10; Council at Auxerre, canon 45; Fifth Synod at Paris, canon 1; First Synod at Reims, canon 3; Synod at Chalons (between 644 and 656), canon 2.

120. C.G., Fourth Synod at Orleans, canon 6.

121. C.G., Second Synod at Orleans, canon 1; Synod at Latona (670–671), canon 21.
122 C.G., Second Synod at Macon, canon 20.

123 C.G., Second, Third, Fourth, and Fifth Synods at Orleans, canons 2, 1, 37, and 23, respectively; Synod at Tours, canon 1.

124 C.G., Third Synod at Orleans, canon 1.

125 C.G., Synod at Tours, canon 1.

126 First Synod at Orleans, canon 8; Third Synod at Orleans, canons 7, 16, and 29; Fourth Synod at Orleans, canon 10; Fifth Synod at Orleans, canon 6; Fifth Synod at Arles, canon 7.

127 C.G., Third Synod at Orleans, canon 29.


129 C.G., Third Synod at Orleans, canon 7.

130 C.G., Fourth Synod at Orleans, canon 10.

131 Canon 19.

132 C.G., First Synod at Orleans, canon 28; Second Synod at Orleans, canons 9 and 21; Third Synod at Orleans, canon 2; Fourth Synod at Orleans, canon 26; Fifth Synod at Arles, canons 2-5; Synod at Tours, canon 14; First Synod at Macon (581), canon 10; Council at Auxerre, canons 20 and 23; First Synod at Reims, canon 12; Synod at Chalons, canon 15.

133 C.G., First Synod at Orleans, canon 4.

134 Ibid., canons 7, 19, 22, and 28; Fifth Synod at Arles, canon 3; First Synod at Macon, canon 10; First Synod at Reims, canon 12; Synod at Chalons, canon 15; Synod at Bordeaux (between 660 and 673, Hefele, p. 478), canon 2; Synod at Latona, canons 7 and 19.

135 C.G., First Synod at Orleans, canon 19.

136 C.G., Fifth Synod at Arles, canon 5.

137 C.G., First Synod at Orleans, canon 7.


140. *C.G.*, Fifth Synod at Arles, canon 3.

141. *C.G.*, Synod at Tours, canon 7.


143. *C.G.*, Fourth and Fifth Synods at Orleans, canons 7 and 5, respectively; Fifth Synod at Arles, canon 7; Synod at Chalons, canon 13.

144. *C.G.*, Third and Fourth Synods at Orleans, canons 32 and 20, respectively; First Synod at Reims, canon 18.


146. *C.G.*, Second Synod at Macon, canon 12.

147. *C.G.*, First Synod at Macon, canon 7.


150. *C.G.*, First Synod at Macon, canon 8.


152. *C.G.*, Third and Fifth Synods at Orleans, canons 20 and 17, respectively; First Synod at Reims, canon 5.


156. *C.G.*, Synod at Tours; canon 2.
157 Canon 13.

158 C.G., Second Synod at Macon, canon 9.

159 C.G., Fifth Synod at Orleans, canon 17.

160 C.G., Fourth Synod at Orleans, canon 28.

161 The see of Paris was vacant after its bishop, Sassaric, had been deposed.

162 Unknown location where a bishop had abandoned his see in order to become a secular ruler and to reunite with his wife.

163 See Gregory of Tours, H.F., Book VIII, ch. 20: several bishops were judged.

164 King Chilperic accused the archbishop of Rouen, Praetextatus, of various crimes (see Gregory of Tours, H.F., Books V, ch. 18, and VII, ch. 16).

165 See Gregory of Tours, H.F., Book V, ch. 49.

166 A diocesan council at Auxerre, likely summoned to announce the canons of the Second Synod at Macon in 585 (Hefele, p. 414), canon 41.

167 C.G., Synod at Latona (King Childeric was present), canons 1 and 3, respectively.

168 C.G., First Synod at Orleans, canon 26; Third Synod at Orleans, canons 31 and 32; Second Synod at Macon, canon 1.

169 C.G., Third Synod at Orleans, canon 32; Synod at Chalons, canon 18.

170 C.G., First and Third Synods at Orleans, canons 27 and 31, respectively; Synod at Chalons, canon 18.

171 C.G., First Synod at Orleans, canons 28 and 31; Second Synod at Orleans, canons 1, 5, and 15; Third Synod at Orleans, canons 12 and 22; Synod at Latona, canons 17 and 18; et al.
172 C.C., Fourth Synod at Orleans, canon 4; Synod at Tours, canon 6; Council at Auxerre, canons 8 and 10.

173 C.C., Third Synod at Lyons, canon 5.

174 C.C., Synod at Latona, canon 8.

175 C.C., First Synod at Orleans, canon 31; Synod at Tours, canon 1.

176 C.C., Synod at Latona, canon 1.

177 C.C., Fourth Synod at Orleans, canons 1 and 2; First Synod at Macon, canon 9; Second Synod at Macon, canon 2; Council at Auxerre, canons 2, 6, and 11.

178 C.C., Synod at Tours, canon 17.

179 C.C., Second Synod at Macon, canon 3, and Council at Auxerre, canon 18, respectively.

180 Sometime after 615, probably in Paris (Hefele, pp. 440-441), canon 5.

181 C.C., Second Synod at Orleans, canon 5.

182 C.C., Second Synod at Macon, canon 17; Council at Auxerre, canons 14 and 15.

183 C.C., Second Synod at Orleans, canon 11.

184 C.C., Fourth Synod at Orleans, canon 22.

185 C.C., First Synod at Orleans, canon 18.

186 C.C., Second Synod at Orleans, canon 10.

187 C.C., First Synod at Orleans, canon 13.

188 C.C., Second Synod at Macon, canon 16; Council at Auxerre, canon 22.
189 C.G., Third and Fifth Synods at Orleans, canons 7 and 19, respectively; Synod at Tours, canons 15 and 20; Fifth Synod at Paris, canon 15; Synod at Paris (after 615), canon 12; First Synod at Reims, canon 23.

190 C.G., First Synod at Orleans, canon 21.

191 C.G., Synod at Tours, canon 15.

192 C.G., Second and Third Synods at Orleans, canons 19 and 13, respectively.


194 C.G., Third Synod at Orleans, canon 11; Second Synod at Macon, canon 18; Council at Auxerre, canons 27-32; Fifth Synod at Paris, canon 16; First Synod at Reims, canon 8.

195 C.G., Fourth Synod at Orleans, canon 27; Synod at Tours, canon 22; Third Synod at Lyons, canon 4.

196 C.G., Third Synod at Orleans, canon 11.

197 C.G., First Synod at Reims, canon 8.

198 C.G., First Synod at Orleans, canon 4.

199 C.G., First and Third Synods at Orleans, canons 29 and 4, respectively; First Synod at Macon, canon 1.

200 C.G., Third, Fourth, and Fifth Synods at Orleans, canons 2, 17, and 4, respectively; Synod at Tours, canons 13 and 29; First Synod at Macon, canon 11; Third Synod at Lyons, canon 1; Council at Auxerre, canon 21.

201 C.G., Synod at Tours, canons 13 and 20.

202 C.G., Fifth Synod at Orleans, canon 3.

203 C.G., Synod at Tours, canon 10.

204 C.G., First Synod at Macon, canon 1.
205 C.G., Synod at Nantes (658?, see Hefele, p. 476), canon 3.

206 C.G., Synod at Bordeaux, canon 3, and Synod at Latona, canon 4, respectively.

207 C.G., Synod at Tours, canon 14.

208 C.G., First Synod at Macon, canon 2.

209 Ibid., canon 5; Synod at Bordeaux, canons 1 and 4; Synod at Latona, canon 2.

210 C.G., First Synod at Orleans, canon 20.

211 C.G., Council at Auxerre, canon 40.

212 C.G., Synod at Latona, canon 15.

213 C.G., Third Synod at Orleans, canon 14; First Synod at Macon, canon 15.

214 C.G., Third Synod at Orleans, canon 33; First Synod at Macon, canon 14.

215 C.G., First Synod at Macon, canon 2.

216 C.G., Fourth Synod at Orleans, canon 31; First Synod at Macon, canon 17; First Synod at Reims, canon 11.

217 C.G., Fourth Synod at Orleans, canon 30.

218 C.G., Ibid., canon 31; First Synod at Reims, canon 11.

219 C.G., First Synod at Macon, canon 16.

220 C.G., Fifth Synod at Paris, canon 17.

221 C.G., First Synod at Macon, canon 13.

222 C.G., First and Third Synods at Orleans, canons 8 and 26, respectively.
C.G., First and Fifth Synods at Orleans, canons 8 and 6, respectively.

C.G., Fifth Synod at Orleans, canon 6.

C.G., Fourth Synod at Orleans, canon 32.

C.G., Parisian Synod (557?), canon 9.

C.G., Fifth Synod at Orleans, canon 7; Second Synod at Macon, canon 7; Fifth Synod at Paris, canon 7.

C.G., First and Third Synods at Orleans, canons 27 and 31, respectively; Second Synod at Macon, canon 2; Council at Auxerre, canon 16.

C.G., Fourth Synod at Orleans, canon 24.


PLS, Title 13, chs. 8 and 9.

Marculfus' Formulae, Book II, ch. 29.

C.G., Parisian Synod (?), canon 14.

C.G., First Synod at Reims, canon 17.

C.G., First Synod at Orleans, canon 2.

See note 231.

Formulae, Book II, ch. 27.

Ibid., Book II, ch. 28.

C.G., First, Fourth, and Fifth Synods at Orleans, canons 1-3, 22, and 22, respectively; Second Synod at Macon, canon 8; Parisian Synod (615?), canon 9; First Synod at Reims, canon 7.
240. C.C., First Synod at Orleans, canon 1.

241. Ibid., canon 3; Fifth Synod at Orleans, canon 22.

242. C.C., First Synod at Orleans, canon 2.

243. C.C., Fourth Synod at Orleans, canon 28.

244. C.C., Second Synod at Orleans, canons 17 and 18 (line 71).

245. C.C., Synod at Nantes, canon 3.

246. C.C., Synod at Tours, canon 4.

247. C.C., Council at Auxerre, canon 42.

248. C.C., Synod at Tours, canon 16; Council at Auxerre, canon 26.

249. C.C., First Synod at Macon, canon 3.

250. C.C., Third Synod at Orleans, canon 29.

251. C.C., Synod at Latona, canon 13.

252. C.C., Second Synod at Macon, canon 17.

253. Ibid., canon 12.

254. C.C., First Synod at Orleans, canon 30.

255. C.C., Council at Auxerre, canon 4 and First Synod at Reims, canon 14, respectively.

256. C.C., Second Synod at Orleans, canon 20.

257. C.C., Fourth Synod at Orleans, canon 15.

258. Ibid., canon 16.

259. C.C., Second Synod at Paris (550-551), canon 3.
260 C.G., Synod at Tours, canons 17 and 23.

261 C.G., Council at Auxerre, canon 1.

262 C.G., Synod at Tours, canon 23; Council at Auxerre, canon 3.
CHAPTER 4
THE IMPORTANCE OF THE LAW CODES IN EARLY FRANKISH SOCIETY

The codes of the Salic and Ripuarian Franks do not provide a complete picture of the judicial system. These codes were not recorded as sets of regulations to govern the proceedings of justice but as compilations of remedies for abuse of the general customary regulations. The prologue to the *Pactus legis salicae* bears witness to this when it states that the Franks want to show their excellence in comparison to the neighboring tribes because of their prestigious laws. The chosen compilers of the code attended three public meetings, discussed the disputes, and made judgments on each of them, before recording them.¹

Some data about judicial process can be found in various titles of the codes, although not in a systematic manner. The composition of the court of justice is never explicitly stated but some deductions can be drawn. Various members of the court are mentioned on several occasions and in some cases their duties are pointed out. The people who demanded satisfaction in court and the objects of their demands can be found and the required witnesses and oathhelpers for both parties in a dispute are mentioned as well in several cases. And finally, the punishments upon conviction, in the form primarily of fines, are stated, often in a very detailed manner.
Both the Salic and Ripuarian codes include a title about summons, de manire. Both titles deal with non-appearance in court after the proper summons had been served, applicable to both the summoned and the summoner. In the Salic code "legibus dominicis" was used and in the Ripuarian code "legibus" describing the legal basis upon which the individual was summoned. Both titles make clear that only a real exigency could be an excuse for non-compliance with the summons (sunnis non detenerit). The title of the Ripuarian code includes furthermore two chapters that deal with non-appearance of the summoned after subsequent summonses. The summoner was required to give his oath with three rachinburgii that his case was a legitimate one. If the accused did not appear after he had been summoned seven times, the accuser had to swear an oath before the count or judge with seven rachinburgii that he had summoned legitimately and then the judge in charge of the treasury was required to go to the house of the accused and confiscate the legitimate amount upon which the court case was based and pay the plaintiff forty-five solidi and the seven rachinburgii fifteen solidi each.

The Salic title includes a chapter that describes in what manner the summons should be served. The summoner had to go with witnesses to the house of the party to be summoned and serve him with the summons or, in case of the absence of the person to be summoned, the summoner had to notify the wife or another member of the family so that he could be informed about the summons. An individual in service of the king could not be summoned; however, the individual could be summoned if
he happened to be in the district\textsuperscript{15} on personal business.\textsuperscript{16} One of Marculfus' formulae provides further documentation of the special suspension from judicial responsibilities enjoyed by someone serving the king.\textsuperscript{17} The formula represents a royal regulation in which the king declares that all pending cases concerning his entourage are suspended as long as he is absent.

If the accused wanted to contest the case against him, he had to come to the plaintiff's door with a drawn sword and put this in the entrance or the doorpost. Thereupon, the judge required of him to provide sworn evidence that he would present himself before the king and when there, he had to try to defend himself with his arms against his accuser.\textsuperscript{18}

Another title of the Salic law\textsuperscript{19} describes extensive procedures in cases of contempt of court, either by means of non-appearance or by means of disregard of the judgment and required compensation or fine. The delinquent would be summoned to appear before the king.\textsuperscript{20} There, twelve witnesses were required to testify, three of them to the fact that they witnessed that the accused refused to comply with the judgment of the court,\textsuperscript{21} three others to the fact that they witnessed that the accused received the opportunity to come to court and comply with its decisions forty days later,\textsuperscript{22} and a third group of three witnesses to testify to the fact that the accused was served with summons to appear before the king after a fortnight.\textsuperscript{23} If again the accused did not comply, all nine witnesses should testify as aforementioned.\textsuperscript{24} Another and last opportunity was provided the accused, namely to appear the
next day. Yet another group of three witnesses was required to testify
to the fact that the accused indeed received this opportunity. If the
accused still did not appear, the king would settle the case without
him.\textsuperscript{25} His goods would be confiscated and he should be denied hospital-
ity even by his wife under penalty of a fine.\textsuperscript{26}

Not only were accused people summoned to appear in court, but
witnesses were also served summonses to give testimony. It was the
responsibility of the concerned parties to serve summons to witnesses
needed for their case.\textsuperscript{27} Both the Salic and Ripuarian codes indicate
that witnesses were not always willing to appear. Non-appearance, ex-
cept in case of an emergency, or false testimony when under oath by a
witness carried a fine as punishment.\textsuperscript{28}

The composition of the judicial court, generally named mallus,\textsuperscript{29}
is not precisely known. The presiding official was most often named
thungin\textsuperscript{30} or centenarius.\textsuperscript{31} He must have been a prominent member of
the community in which the mallus was convoked. Very likely, he acted
as the representative of the king in his community in other functions
as well. If a court session was held near the residence of a direct
representative of the king, a grafio,\textsuperscript{32} comes,\textsuperscript{33} or dux,\textsuperscript{34} this eminent
person was most probably the presiding official. A sacebaro\textsuperscript{35} or an
obgrafio\textsuperscript{36} have been named as court officials also, presumably in the
presiding function depending upon the actual location of the court
session or in accordance with its importance or the importance of the
court case. That not more than three sacebarones could be present in
one court district was decreed in the Salic code. A judgment given
and fines set by a sacebaro were declared valid and should not be brought before the grafio.\textsuperscript{37} This is an indication that there existed lower and higher ranking court officials, but also that judgments made by lower ranking officials were as valid as judgments made by their higher ranking colleagues.

Actually, the thunginus or centenarius did not administer justice in many cases; he was rather in charge of the execution of the judgment. In the title of the Salic code that deals with migrants, de migranti-bus,\textsuperscript{38} the grafio is asked to act against and evict a migrant who settled in a community where he was unwanted by one of its inhabitants. In case of a broken vow or pledge, the grafio was the last resort the plaintiff would approach to obtain justice. The grafio, with assistance from other court officials, was required to go and collect on behalf of the plaintiff.\textsuperscript{39} Titles in both law codes deal with abuse of this part of the duties of the grafio. Abuse by the person who requested the services of the grafio to confiscate someone else's property and abuse by the grafio while responding to such a request are mentioned. A heavy fine was imposed on the person who engaged the official in the act of confiscation before the legal proceedings of the case had been fulfilled.\textsuperscript{40} If the grafio confiscated more than he lawfully could in the course of his duties, he would lose his life or pay his wergeld (value placed on their life), according to the Salic law,\textsuperscript{41} whereas the Ripuarian code imposed a fine only.\textsuperscript{42}

There are only a few cases in which the death sentence was imposed, according to the Salic and Ripuarian codes. Most of these cases
involve crimes against the integrity of the legal process. The Salic law includes the abovementioned chapter dealing with a grafio who confiscated more than he legally should and another chapter that deals with a grafio who either refused to attend to his duties as an executor of a legally required confiscation or neglected to send a representative to execute the confiscation. Death or the payment of his wergeld was the punishment for the guilty in these cases. A third crime punishable by death, in this case not with the alleviating option of payment of one’s wergeld, was to take away from the grafio a bound person, i.e., a person who was in the custody of the grafio. The Ripuarian code includes a title in which court officials of all ranks are admonished to adhere to the old tradition and legal custom not to accept gifts offered with the purpose of obtaining a change of verdict under penalty of death.

These few cases provide in my opinion sufficient evidence of a society that valued its judicial system and the integrity of its court officials. Although it is not certain how persistently and how successfully the law was enforced, whether it was enforced at all, the inclusion of these titles in the codes indicates a strong belief in the inviolability of justice by the compilers of the code and, by virtue of their mandate, by the early Frankish society.

The term iudex fiscalis is mentioned in a few titles of the Ripuarian code. In one case the terms grafio, comes, and iudex fiscalis are used as synonyms, and in another case grafio and iudex fiscalis. In a third title both the comes and the iudex fiscalis are mentioned, but in such a manner that two separate officials could be indicated.
In the final title of the Ripuarian code a list of court officials, consisting of a nobleman, \textit{maior domus}, \textit{domesticus}, \textit{comes}, \textit{grafio}, \textit{cancellarius}, or anyone elevated to the ranks of court officials, is mentioned.\textsuperscript{50} In the second chapter of this title, these various officials are not mentioned, but the term \textit{iudex fiscalis} is used instead.\textsuperscript{51} When considering these cases of the usage of the term \textit{iudex fiscalis}, and considering the fact that punishment for proven offenses, which will be discussed later, included in most cases a money payment to atone for breaching the king's peace, and considering that the executor of the punishment was in most cases the court official, it appears probably that the presiding judge in court was the \textit{iudex fiscalis}. Expediency requires that more \textit{iudices fiscales} were used to execute the judicial verdicts and collect payments, especially in the larger districts.

In the Salic law, the \textit{grafio} and the king are both mentioned several times as the higher authority one could turn to in case of dissatisfaction with the outcome of a court session.\textsuperscript{52} This form of appeal was available to both parties of a dispute in court. The \textit{Formulae} of Marculfus also provide evidence that indicates the appellate function of the king. Several documents contain an admonition to a bishop or count to render justice to one of their subjects, who had come to the king with the complaint that he could not receive justice at home.\textsuperscript{53}

One special legal action could be accomplished only before the king. This was the procedure to emancipate a lay slave or half-free person \textit{per denarium}. The \textit{per denarium} procedure consisted of the follow-
ing steps. The master brought his slave or half-free person before
the king, explained his intention to free the individual, and a
denarius, either knocked out of the hand of the unfree, or thrown
over this individual's head, signified the transition from unfree
status to free, while the king became the official guarantor and pro-
tector of the liberty of the newly-emancipated. A formula of Marculfus
(preceptum denariale) indicates that a charter of emancipation would
then be given by the king. The Salic and Ripuarian codes both include
a title indicating regulations about the emancipation of a libertus,
a freedman. The Salic title consists of a chapter that refers to a
letus (half free) who was liberated according to the \textit{per denarium}
procedure but not by his legal master and a chapter referring to a
slave in the same circumstances. The penalty in these cases was a
fine of one hundred \textit{solidi} and restitution of the freed man to his
former master and a fine of thirty-five \textit{solidi} and payment of the
value of the former slave. The first chapter of the Ripuarian title
deals with the emancipation of a freedman \textit{per denarium} by his master
or a representative of his master and his receipt of the emancipation
certificate. His liberty is guaranteed and his new status is that of
a Ripuarian. If the emancipation was disputed later (\textit{inlicito
ordine}) the liberated man should prove his case by sword (a duel) or
provide legal evidence of his freedom through his emancipator. If
the accused former freedman lost his case, his emancipator was respon-
sible for all fines and the payment of compensation for damages.
If he won his case, his challenger was fined heavily, a payment to be
made to the king as well as to the unjustly accused.
The above mentioned chapter of the Ripuarian code describes the emancipation procedure according to Ripuarian law.\textsuperscript{64} Emancipation according to Roman law was also possible,\textsuperscript{65} whereby the newly- liberated man would become a Roman citizen. The chapter in which it is stated that a \textit{servus} (slave) is made a \textit{libertus} and a Roman citizen indicates that the wergeld of a freedman was the same as that of a Roman citizen.\textsuperscript{66}

The new citizenship did not transfer to the ancestors or other relatives of the individual automatically. It appears that his offspring, however, assumed the new status of the father, for it is stated in the same chapter that the treasury should inherit from the newly- liberated Roman citizen in case he died childless.\textsuperscript{67} A subsequent chapter of the Ripuarian code indicates that a slave could be emancipated \textit{per denarium} if his master so wished, but no mention is made of the new status of the emancipated.\textsuperscript{68} However, because the chapter is part of the title that deals with emancipation according to Roman law, it can be deducted that the slave had become a Roman citizen as well.

The following title of the Ripuarian code includes a chapter according to which the \textit{per denarium} emancipation granted the newly- liberated the status of Ripuarian.\textsuperscript{69}

The legal action that emancipated a slave or half-free individual \textit{per denarium} before the king brought about the ultimate change in social status for the liberated. The king's presence at the procedure and his subsequent role as guarantor and protector of the new citizen indicate how important the citizen was in early Frankish society whether living according to Ripuarian or Roman law.

Emancipation of church slaves was outside the king's jurisdiction.
The Ripuarian code has extensive regulations about church slaves. The emancipation procedure was to be carried out according to Roman law in the church. A certificate of emancipation was to be provided. The church took upon itself the guardianship over the newly-emancipated and his descendants. The *per denarium* procedure before the king was forbidden explicitly. Disregard of this regulation carried a heavy fine, two hundred *solidi*, and rescission of the emancipation followed.¹⁰

A number of the most prominent men in the district were court officials, the *rachinburgii*. On occasion they were assistants to the *grafio* when he had to confiscate property or collect fines. After all attempts to receive just payment from an accused following prescribed legal procedures had failed, the plaintiff would engage the *grafio* to act for him with seven trustworthy *rachinburgii*, who would go to the house of the accused and give him the opportunity to choose two of the *rachinburgii* to aid in the evaluation of the right amount of the required payment and to make that payment. The chapter of the Salic law that deals with this procedure includes the formula to be used by the *grafio* addressing the accused. In case the accused does not respond, the *rachinburgii* are in charge of obtaining the right amount owing and the applicable fine and payment for damages.⁷¹ The position of the *rachinburgii* as court assessors is further indicated in the Ripuarian code. That the *rachinburgii* are required to testify to the legitimacy of a court case in the event that an accused failed to appear in court after having been summoned, is stated in two of its chapters.⁷² However, the position of the *rachinburgii* appears to have been more
important than that of an assistant to the *grafio* or court assessor only. The Salic title that deals with contempt of court names the *rachinburgii* as the persons who rendered the actual judgment and the required amends to be made.\(^{73}\)

Both codes contain a title dealing with uncooperative *rachinburgii*. The Salic code provides a formula to be spoken by the plaintiff to the *rachinburgii* gathered in court to initiate the procedure, "Dicite nobis legem salicam (Administer us the Salic law)."\(^{74}\) If the *rachinburgii* refuse to administer the law, the request was to be repeated in a slightly different and more emphatic phrase, "Hic ego vos tangono, ut legem mihi dicatis secundum legem salicam (I urge you to administer the law to me according to the Salic tradition)."\(^{75}\) If the *rachinburgii* persist in their refusal they are fined. There are seven *rachinburgii* mentioned in this case who apparently acted as the quorum of the court and were deemed to administer law as a group, but each one of them was responsible as an individual. This appears evident in a subsequent chapter in which it is stated that a judgment proved to be contrary to the prescriptions of the Salic code resulted in a fine for all seven *rachinburgii* individually (*singillatim*).\(^{76}\) In case the accused did not accept the verdict and falsely claimed that the judgment was not according to Salic law, he had to pay a fine to all *rachinburgii* individually also.\(^{77}\) In the Ripuan title concerning uncooperative *rachinburgii*, similar fines are stated.\(^{78}\)

Based upon the abovementioned data concerning the *rachinburgii*, I make the following observations. The main court officials were the *rachinburgii*. They administered the law according to the existing and
applicable code. Both the verdict and the punishment were theirs to render. They assisted in the execution of the punishment. It appears likely that there were seven rachinburgii in court in general. The unwillingness of rachinburgii to render judgment in some cases can be explained by the fact that they were among the very important men in their district and that cases brought before them must have involved many of their kin and friends or dependents. It is conceivable that in such cases the rachinburgii were reluctant to render judgments since these judgments might have been damaging to them.

A cancellarius (court scribe) was another member of the court, according to the Ripuarian code. Regular court reports were most likely not made, but some records were kept. In case of emancipation of a slave or freedman a record of the action could be made and the charter given to the emancipated as proof of his liberty, as has been discussed above. The Ripuarian title dealing with sales contains a reference to a record of a sale (testamentum venditionis). Such a record should be obtained in court with seven witnesses, in case the sale involved was a small transaction, and with twelve witnesses if it was a major transaction. A dispute about the legitimacy of the record could be solved by these witnesses or by the court scribe with the aid of another group of witnesses. The court scribe would be entitled to a financial compensation, if he were able to prove the document legitimate. If not, however, the court scribe would lose his right thumb—thus his profession—or pay a large fine. Further measures were to be taken in case the plaintiff, the one who disputed the sales-record, would remove the scribe's hand from the altar—
presumably to prevent him from taking an oath—or would place a sword before the entrance of the church. Then, both would be put under the obligation to defend their case in a duel before the king. In case the scribe had died when the dispute arose, both the buyer and the seller or their heirs should prove their case, the former by providing three documents from the hand of the scribe proving that the sales-record was legitimate, and the latter defending his claim. The same procedures were to be followed in the case of a dispute about a recorded gift. When the law had taken its course, the victor would receive the judgment in writing or he would have witnesses to his victory.

The importance of written records is clearly acknowledged and Marculfus' **Formulae** are a testimonial to this acknowledgment. Several of the documents provide the formula to be used as evidence and testimonial for a charter of emancipation. Other formulae concerning exchange of property, its documentation providing a description of the properties involved and a guarantee in case the validity of the exchange would be challenged, and records of donations are present in Marculfus' work. The Ripuarian code contains a chapter that deals with the existence of two royal charters to one piece of property—the earlier document should receive priority. If documents had been lost through fire or through military action, they could be replaced. A petition to the king with witnesses to provide evidence of the legality of the case would result in a new legal document signed by the king, according to one of Marculfus' formulae. The apparent emphasis on written documentation to prove legitimacy suggests that
the scribe was an important official of the court, although his services would be required for cases of major importance rather than for minor ones.

Witnesses were needed in a variety of court cases. They were required to be present for the plaintiff when he served summons to the accused, as has been described above, and when other witnesses who might not otherwise have come to court were officially summoned. The contempt of court procedure described above likewise required witnesses and in case an individual did not repay a loan the plaintiff was to go to the delinquent with witnesses to declare an ultimatum in time for the return of the loan, the first ultimatum would be payment of the loan on the next day and, if the delinquent did not comply, this procedure would be repeated seven days later, the third and last ultimatum would be presented another seven days later.

When an individual recognized his property, be it a male or female slave, a horse, an ox, or a draft animal, in the possession of someone else, the disputed property should be handed to a third party. All people involved in the change of hands of this property from the original owner to the final possessor, whether they sold, exchanged, or used it as payment, were to come to court to resolve the case. When one of these intermediaries refused to appear, the individual who negotiated with him should provide three witnesses that he summoned him and three other witnesses that he negotiated publicly and honestly. Then, his name was vindicated and the absent negotiator was declared guilty.
Another case wherein witnesses were required was when a slave was accused of theft and his master refused to hand him over to be subjected to torture. After the initial request of the plaintiff to hand over the slave and subsequent ultimata had been ignored by the slave's master, the plaintiff was to make another effort, this time with witnesses present.\textsuperscript{101}

Other instances wherein according to the Salic law witnesses were required are the following: If a man was killed by a domestic animal and the owner of the animal was at fault, witnesses were needed to testify to this unfortunate event,\textsuperscript{102} and if an individual opened someone else's gate and drove his cattle into the now-accessible fields out of enmity or boldness, witnesses of the deed were needed in order to find that individual guilty.\textsuperscript{103} In case of a broken promise, witnesses should accompany the plaintiff in his search to receive satisfaction.\textsuperscript{104}

Witnesses were also required for the procedure to adopt a person as one's heir. During a court session convoked for this procedure, three men were asked three questions before an individual could adopt someone who was not related to him by throwing a staff (festuca) in that person's lap. The individual then promised how much of his fortune he would give his adoptee.\textsuperscript{105} Although there is no mention of witnesses per se, it can be assumed that the three men who had to answer the questions were indeed witnesses to the procedure. After the procedure, the adopted heir was to reside with his adoptor and entertain three or more guests and he should be in possession of the promised fortune, all in the presence of witnesses.\textsuperscript{106} The official transfer
of property should be completed before the king or in a legitimate court session within a year of the festuca-throw procedure. A total of nine witnesses was required in case a dispute arose about the adoption procedure, three were required to swear under oath that they were present during the festuca-throw and they had to name the parties to the procedure by name, three others had to testify to the fact that the adoptee resided with his adoptor and entertained the three or more guests, and three more witnesses were to testify to the official transfer of the property.

Finally, a Salic title dealing with witnesses concerns the testimony of a slave. If a slave was kidnapped, brought across the sea, and there found by his rightful master, three witnesses were required to be present to hear the slave’s testimony naming his abductor or abductors in public court. If there were more abductors, up to three of them, the slave had to name them and their place of origin together in his testimonial. Upon his return to his homeland, the slave had to name his abductor or abductors again at two more court sessions with three witnesses present at each session, so that a total of nine witnesses could testify to the slave’s testimonial. It appears that in general the witnesses required in these various cases were witnesses to the legal procedure and not necessarily to the event that brought about the court case. The two exceptions involve animals.

The Ripuarian code contains some cases that required witnesses as well. Testimony to the fact that the individual summoned legally by the defendant in a case of disputed property was indeed the intermediary who had handed over the property to him was needed according
to one provision. 113 According to two titles, witnesses were needed for sales records. One of the titles specifies that seven witnesses were needed for a minor transaction and twelve for a major. Subsequent chapters of this title deal with disputes of the legitimacy of such a record and the procedures to be followed to resolve the dispute. 114 The other title concerns an individual who buys a piece of property and cannot obtain a record. He is to go to the property with witnesses, three, six, or twelve depending upon the magnitude of the sale, to witness the actual sale. 115 An interesting addition to this chapter is that an equal number of boys were to be witnessing the sale. After the sale, the buyer was to box and twist the boys' ears in order to make them give testimony for him. The discrepancy between the numbers in the two titles has to be explained by the fact that in the first title mentioned the buyer was most probably one of the seven witnesses.

For two other legal procedures witnesses were required. To adopt an heir to one's possessions an individual could obtain written documents or he could transfer his possessions to the heir in the presence of witnesses. 116 And if a dispute arose about the chapter of emancipation of a church serf, the witnesses who confirmed the document were asked to testify to it. 117

Finally, two cases concern the actual witnessing of a disputed event. There is the case of a slave who was to be put to the ordeal by fire but escaped from his master before it could be carried out. His master needed three witnesses to testify to the escape and to his blamelessness for it. 118 The other case concerns the death of a disputed slave. The individual in charge of the slave at the time of his
death needed six witnesses to testify to the fact that the slave died of natural causes.\footnote{119} If the dispute was about an animal that had died, witnesses were required to testify to the actual value of the dead animal.\footnote{120}

A different form of witnesses are the oathhelpers (\textit{iuratores}). They act more or less as character witnesses or bondsmen. According to a chapter of the Salic law, a Roman accused of robbing a Salic Frank needed twenty-five oathhelpers to clear his name.\footnote{121} Another chapter indicates that a Frank accused of robbing a Roman needed twenty oathhelpers to clear his name.\footnote{122} According to both chapters and two other chapters that will be discussed later, half of these oathhelpers were to be chosen. However, there is no indication in the texts how and by whom they were to be chosen. A possible solution to these questions can be found in a law of Rothair, king of the Lombards, another Germanic people that invaded and conquered north and central Italy in the second half of the sixth century. Rothair's law explains that six of twelve required oathhelpers were to be selected by the plaintiff and five by the accused, who himself was to be the twelfth oathhelper. In case an odd number of oathhelpers was required---Rothair's law provides information in case three oathhelpers were needed---, both plaintiff and accused were to select an equal number of oathhelpers and the accused would be the one extra.\footnote{123} I am not certain whether or not Rothair's law can be applied to regulations of the Franks, but a similar arrangement in the selection of oathhelpers for both parties to a dispute is plausible.
Two other cases to be found in the Salic code include the requirement of oathhelpers to clear one's name. An individual accused of burglarizing a home needed twenty-five oathhelpers and a Roman accused of committing arson to the property of another Roman needed twenty.

The Ripuarian law indicates the requirement of smaller numbers of oathhelpers. Three of them were required to clear a Ripuarian's name from the accusation of theft of lumber from the public forest, the king's forest, or from someone else's property, and six to clear a person who was accused of harboring a thief in his house. In order to free oneself from guilt if a captured thief escaped, the captor had to swear with six oathhelpers that he had no part in the escape. To deny the accusation of preventing access to a road to a Ripuarian, a Ripuarian required six oathhelpers and the same number was required against the accusation of refusal to contain one's cattle and the damages to someone else's property caused by straying cattle.

In various other cases the necessity of oathhelpers to clear one's name is mentioned. If an individual was not able to obtain oathhelpers, he had to submit himself to an ordeal in order to clear his name. This accentuates the importance of the oathhelper and because of that also the importance of being a part of a community, so that an individual would be acquainted with enough people who would be eligible and willing to take oath for him.

Both law codes provide many regulations for the punishment of
the proven guilty. Usually, compensation for incurred damages and losses was required as well as a fine. A comparison of the assessed amounts of the required payments in the two codes indicates a close relationship between the codes in some cases and in others a definite difference. In cases of proven theft of a herd of domestic animals there is a large difference between the assessed fines. A provision of the Salic code deals with the theft of a herd of pigs consisting of twenty-five animals with no animals remaining after the theft. A fine of sixty-two and one half solidi is assessed and furthermore a compensation to be paid for the value of the animals and a payment for loss accrued during the pre-trial period. If not all animals were taken, the fine would be thirty-five solidi plus the abovementioned compensation and payment for accrued losses. According to the Ripuarian code, however, proven theft of a herd of pigs consisting of six sows and one boar was punished by a fine of six hundred solidi plus compensation for the animals and a payment for loss accrued during the pre-trial period. An equally large amount and thus difference in assessed fines is found in the case of proven theft of a herd of cattle, consisting of twelve heads according to the Salic law and of twelve cows and a bull according to the Ripuarian law. The same sums apply in the case of theft of a herd of horses. A herd consists of up to seven or seven to twelve mares and a stallion, according to the Salic code, and of twelve mares and a stallion, according to the Ripuarian code.

The enormous difference in the amount of the assessed fine between the two codes in these three cases is hard to explain, especially
because in almost all other instances where a comparison between the codes can be made the fines are if not exactly the same at least within a very close range of each other. The Ripuarian code provides an exchange rate for the solidus according to which a horned ox with good vision and health can be exchanged for two solidi, a horned cow with good vision and health one solidus, a stallion with good vision and health seven, and a mare in the same condition three. The equivalent of a sword with sheath were seven solidi and the sword alone three, of an untrained hawk three and a trained one twelve. In view of that rate of exchange and in view of the fact that a man’s wergeld, the value put on his life, was two hundred solidi, the enormity of the fine for proven theft of a herd is clear evidence that an individual’s herd was as important to him, his family, and society as his and his family’s life. A herd represented most likely the sole means of survival for a household in many cases. An extremely high fine for such a crime against a family must have been meant to provide a real deterrence. This still does not explain the enormous difference between the two law codes in the amount of the assessed fine.

Other cases in both codes concerning theft that can be compared do not show great differences in punishment, as the following examples will illustrate. Theft of lumber or wood out of a forest was punishable by a fine of fifteen solidi, according to both codes. Theft while hunting or fishing would cost the thief according to the Salic law forty-five and according to the Ripuarian fifteen solidi. However, if during a hunt someone stole or killed a deer trained for the hunt as a decoy, he would be fined forty-five solidi according to both
codes; if the crime was not committed during a hunt, the fine was thirty *solidi*.\textsuperscript{144} Theft of part of someone's fence incurred a fine of fifteen *solidi*.\textsuperscript{145} The provisions in the codes dealing with this subject are almost identically worded. The importance attached to a fence without which an individual and his property would be vulnerable is further indicated in several chapters of the Salic code. Theft of a piglet from within a first or second enclosure incurred a fine of two *solidi*,\textsuperscript{146} but if the piglet was taken from a third enclosure the assessed fine was fifteen *solidi*\textsuperscript{147} and if it was taken from a locked pigsty the fine would be forty-five *solidi*.\textsuperscript{148} The first and second enclosures must have been fenced-in areas farthest removed from the house, while the third enclosure would have been adjacent to the house. Theft from such a location posed a real threat to the owner and his family, his peace was broken, and thus required a real deterrence.

Violation of a locked area would pose the most imminent threat to an individual, his family and property. Recognition of this is expressed in the fines assessed for violation of a lock. Theft of a hawk was punished by a fine of three *solidi*; if the bird was perched, its thief would receive a fine of fifteen *solidi*; and if the bird was in a locked environment, the fine was forty-five *solidi*.\textsuperscript{149} A bee swarm stolen out of a locked hive would cost the thief a fine of forty-five *solidi*,\textsuperscript{150} while theft of up to six swarms that were not locked-in incurred a fine of fifteen *solidi*.\textsuperscript{151} If an individual stole something worth two *denarii* outside of a house, he was fined fifteen *solidi*, if he broke into a house and stole something worth two *denarii*, he was
fined thirty solidi.\textsuperscript{152} If a lock was broken or a false key used in
the break-in, the fine would be thirty solidi if nothing was stolen
and forty-five if something was taken.\textsuperscript{153} Usage of a boat without the
owner’s permission carried a fine of three solidi, theft of a boat
fifteen, theft of a boat secured by a lock thirty-five, and theft of
a boat secured by a lock and in suspension because of repairwork was
punished with a fine of forty-five solidi.\textsuperscript{154} Forcing an unlocked
weaver’s cabin was punished with a fine of fifteen solidi; was the cabin
locked the fine would be forty-five solidi.\textsuperscript{155} These instances illus-
trate that the closer to its owner a theft was committed and the
greater the audacity of the thief all the more severe the punishment
was.

Assault or ambush and robbery are crimes dealt with in the codes
as well. In general, the fines assessed for such crimes are similar
in both codes. To rob a corpse before it was interred was fined by
one hundred solidi according to both laws, but the Riparian code
assessed a fine of sixty solidi in case the culprit confessed.\textsuperscript{156} If
the corpse had been buried and was exhumed and robbed, the assessed
fine was two hundred solidi.\textsuperscript{157} If a group assaulted and burglarized
a house, each member of the group was fined at the rate of sixty-two
and one half solidi.\textsuperscript{158} If in the course of such an attack doors were
broken, dogs killed, or people wounded, the fine would be two hundred
solidi and each member of the group would receive a fine of sixty-two
and one half solidi.\textsuperscript{159} If a man was killed during the raid, the
assessed fine would be six hundred solidi and accomplices to the crime
would receive heavy fines as well.\textsuperscript{160}
If a free person, a Salic or Ripuarian man or woman, was taken and sold as a slave, two hundred solidi had to be paid by the guilty according to both codes, and the Ripuarian code required a six hundred solidi payment in case the individual could not be retrieved. If the culprit was a slave or litus of the king, he would pay with his life, according to the Salic code; according to the Ripuarian law, he would pay one hundred solidi and a slave of an ordinary individual guilty of this crime would pay with his life.

If a slave was stolen, a fine of thirty-five solidi was assessed for a male slave and of thirty solidi for a female slave and compensation was to be paid for the value of the slave and the loss accrued during the pre-trial period. If the stolen slave was a skilled worker, a domestic servant, swineherd, vineyard keeper, craftsman, wheelwright, or groom, the fine was seventy-two solidi. According to this provision of the Salic code, the value attached to these special skills was apparently twenty-five solidi; another of its provisions, however, provides slightly different or perhaps more explanatory information. This chapter deals with theft or murder of a skilled servant, a praedial or domestic servant, black- or goldsmith, swineherd, vineyard keeper, or groom. Punishment would be a fine of thirty solidi and payment of forty-five solidi for breaking the king's peace and prevention of feud. Compensation to pay for the value of the slave and for the loss accrued during the pre-trial period was also required. The Ripuarian code does not contain a chapter covering similar cases.

Theft by a slave is covered in both codes. The Ripuarian law places the responsibility on the slave's master. He had to pay a fine
of thirty-six solidi and the compensation for the value of the stolen object and the loss accrued during the pre-trial period. A master can present his slave for trial by fire (i.e., the ordeal) in case he is not convinced of the slave's trustworthiness. If the slave fails the test, his master will be held responsible for the required payments, and if the master is unable to hand over his slave for the trial (because the slave ran away without his master's complicity), he is responsible for the slave's misdeed himself. The Salic code is more elaborate in its treatment of theft by a slave. Corporal punishment in the form of lashes or castration is imposed on the guilty slave. An alternative punishment in the form of a payment, to be paid by the slave's master, was possible, though not in every instance. If a slave had stolen something worth two denarii outside of the house, he would receive one hundred twenty lashes or be fined three solidi and the customary compensation for the value of the stolen object and the accrued loss during the pre-trial period. If he had stolen something worth forty denarii—one solidus—he would be castrated or fined six solidi. Theft of something for which a free man would receive a fine of fifteen solidi would cost a slave one hundred twenty lashes. If he confessed to the crime before the torture started, a fine of three solidi was imposed instead of the lashes and his master was to reimburse the value of the stolen object. If the value of the stolen object would cost a free man a fine of thirty-five solidi, the slave had to receive the same number of lashes, one hundred twenty. As has been mentioned above, a master could present his slave for the ordeal in order to test his trustworthiness. The plaintiff in a case
against a slave could subject the accused to torture in order to bring about a confession, even without approval of the slave's master. If, however, the accused did not confess during this torture session, further torture could be given only after the slave's master had received bond for his slave. If the slave confessed during the first infliction of torture, he would be punished by castration or a fine of six solidi and reimbursement for the stolen object by his master. A female slave would receive two hundred forty lashes or a fine of six solidi in a similar case. Theft of an object for which a free man would be fined forty-five solidi, and a confession under torture, would cost the slave his life.

The master of a slave accused of a crime had certain rights concerning the fate of his slave. He had the right to request from the accuser a just punishment for his slave. The accuser had to provide the right size of twigs to be used as whip and a rack. The master could also refuse to hand over his slave for torture. After a master had refused to meet several ultimata, he had to assume responsibility for the offense and eventually the punishment as if he were the culprit in the case.

Several other cases of theft are dealt with in the Salic code, many of which involve farm animals. Information derived from these will be used in the next chapter.

With the exception of the inexplicable, enormous discrepancy between both codes in the fines for theft of herds, the general similarity between the codes in other cases and several cases of theft dealt with in the Salic code provide information about prevalent values
placed on certain facets of life among the early Franks in their community. The theft of wood, whether it was building material or would be used as source of energy, could be a direct threat to an individual's economic survival or in effect an individual's ability to survive literally. The fine of fifteen solidi assessed for such an offense would be the equivalent of a horned ox and thirteen cows, or six mares, or a stallion, two mares and an ox, according to the exchange rate of the Ripuarian code.\textsuperscript{181} Verily a formidable fine. The same fine was assessed for the theft of part of a fence, a piglet out of a pigsty near the owner's house, a perched hawk, or a boat.\textsuperscript{182} The fence formed the direct protection for people and their property against crime, the piglet taken from a location so close to the house emphasized the vulnerability of its inhabitants during the criminal act, and a perched hawk as well as a boat could represent an individual's only livelihood. Theft after violation of a lock was an even more threatening criminal act and the fine assessed to the proven guilty was accordingly much higher, forty-five solidi. Theft of a free person who was thereupon sold into slavery was as grave a crime as murder, which is expressed in the assessed fine for this deed of two hundred solidi, the equivalent of a free man's wergeld. The amount of the fine indicates that society considered its free citizens as extremely valuable individuals. The fines for theft of skilled (seventy-two or seventy-five solidi) or unskilled (thirty-five or thirty solidi, depending upon the gender of the slave) slaves indicate the intention of the law to protect valuable property of the people. Not many people would be able to pay such fines. Whether an extremely high fine served as a real deterrent
obviously cannot be ascertained; however, the inclusion of these measures in the codes might be an indication that severe regulations were indeed needed and might become deterrents in use. It also indicates that the security of the individual was of high importance in early Frankish society.

For cases of proven guilt for infliction of bodily harm or for murder, both the Salic and the Ripuarian codes provide regulations for compensation for the victim or his or her kin. The following examples illustrate that the compensation assessed for an inflicted wound is almost the same in both codes. If a free man strikes another free man, he has to pay three solidi according to the Salic code and one solidus per blow according to the Ripuarian.\(^\text{183}\) If blood flows because of the strike, he has to pay fifteen according to the Salic and eighteen according to the Ripuarian law.\(^\text{184}\) If the strike is between the ribs or below, the Salic code assesses thirty and the Ripuarian thirty-six solidi as compensation.\(^\text{185}\) If a hand or foot was cut off, both codes prescribe a compensation of one hundred solidi.\(^\text{186}\) If the hand or foot was not severed but remained attached to the body although it had become useless, the compensation was sixty-two and one half solidi for the useless hand and forty-five for the foot, according to Salic law,\(^\text{187}\) and fifty for each, according to the Ripuarian.\(^\text{188}\) Loss of a thumb would cost the perpetrator fifty solidi, according to both codes,\(^\text{189}\) and if the digit was not severed but had become useless, the compensation was thirty or twenty-five solidi, respectively, according to the Salic and Ripuarian codes.\(^\text{190}\) The compensation for the loss of the
index finger, the finger needed to use bow and arrow, was set at thirty-five solidi, according to the Salic, and thirty-six, according to the Ripuarian law.\(^1\)

The literal loss of an eye, ear, or nose has to be compensated by one hundred solidi, according to both codes.\(^2\) According to the Ripuarian law, loss of the vision of an eye, loss of the ear but not its hearing, or loss of the nose but not of the ability to blow it brings an assessment of fifty solidi as compensation.\(^3\)

The Ripuarian code contains a series of regulations for wounds afflicted by or on slaves. If a slave strikes a Frank, a royal or church serf, or a half-free man, the compensation would be three solidi; if blood is spilled because of this blow, the compensation would be four and one-half.\(^4\) This last provision also holds in case the injured and the inflictor are of reversed status,\(^5\) but if a free man strikes a slave, he pays a composition of one solidus for three blows and a royal or church serf pays one for each blow.\(^6\) If a slave hits another slave one, two, or three times, it was considered unimportant—"nihil est"—, but for the sake of peace a composition of one-third solidus is assessed.\(^7\) If blood is shed, the composition is set at three and one-half solidi.\(^8\) If a slave breaks the bone of another slave, the required composition is five solidi,\(^9\) and if he breaks a free man's bone, his master is responsible for thirty-six solidi as composition.\(^0\) If a slave's bone is broken by a free man, the compensation is nine solidi.\(^\) According to the Salic code, if a slave is wounded and unable to work for more than forty days, a compensation of one and one-third solidus is assessed.\(^2\) The Ripuarian
code includes furthermore a provision according to which, if a slave
struck out an eye or cut off an ear, nose, hand, or foot, his master
had to pay eighteen solidi.\textsuperscript{203} Although it is not explicitly mentioned
everywhere, payment assessed to slaves was to be paid by the slave's
master.

The regulations concerning compensation for homicide are almost
identical in both codes. To make amends for the killing of a free
Frank a payment of two hundred solidi was required.\textsuperscript{204} If the corpse
was hidden in a well, or under twigs, branches, bark, or skins, the
compensation was trebled\textsuperscript{205} as was the case if the man was killed in-
side his own house\textsuperscript{206} or on the warpath.\textsuperscript{207} If a Roman was killed,
the compensation was one hundred solidi, according to both codes.\textsuperscript{208}
The Ripuarian code includes regulations covering the killings of a
Burgundian, Alaman, Frisian, Bavarian, and Saxon as well. A composi-
tion of one hundred sixty solidi was assessed in those cases.\textsuperscript{209}

The amount of the composition for killing a woman was determined
by her procreative abilities, according to both codes. The killer of a
girl before her child-bearing years had to pay a composition of two
hundred solidi.\textsuperscript{210} If the woman was of child-bearing age when she was
killed, the killer had to pay a composition of three times that amount.\textsuperscript{211}
If the woman was pregnant and both she and her unborn child were killed,
the killer had to pay a composition of seven hundred solidi.\textsuperscript{212} If
the unborn child was the only victim or if a newborn child was killed
before it was named, i.e. before it was nine days old, a composition
of one hundred solidi was assessed.\textsuperscript{213} If the killed woman was beyond
child-bearing age, after her fortieth year according to the Ripuarian
The composition for the crime was set at two hundred solidi.\textsuperscript{214} Homicide of a boy under twelve years of age required a composition payment of six hundred solidi from the killer, according to the Salic code.\textsuperscript{215} The amounts assessed as composition for the killing of a free Frank indicate the importance of each individual for and in their society and also the degree of vulnerability through age or gender attributed to certain members of society. The basic value placed on the life of a free Frank regardless of age or gender was two hundred solidi. The importance of a male child before he reached the age when he was considered to be able to defend himself is evident in the trebling of his wergeld. As will be seen in the next chapter, the male line of succession in early Frankish society was prevalent. The vulnerability of the woman during her child-bearing years and her importance as the bearer of a next generation are emphasized by the trebled composition as well.

Other persons were considered to be of high value for and in society as is reflected in the following cases concerning composition for homicide. If the victim was a free Frank and part of the king's entourage—"in truste dominica"\textsuperscript{216} or "in truste regis"\textsuperscript{217}—, the killer had to pay a composition of six hundred solidi.\textsuperscript{218} The same composition was required for the killing of a grafio, according to both codes,\textsuperscript{219} and of a free sacebaro, according to the Salic code alone.\textsuperscript{220} If the grafio was a servant of the king or a former freedman, the composition for his killing was three hundred solidi, according to the Ripuarian code.\textsuperscript{221} And the same composition was required
for the homicide of a sacebaro or an obgrafio, apparently subordinate positions usually not occupied by a free Frank, according to the Salic code.\textsuperscript{222} If the corpse of a free Frank belonging to the king's entourage was hidden in a well or under twigs or bark\textsuperscript{223} or if this man was killed inside his house\textsuperscript{224} or on the warpath,\textsuperscript{225} the Salic code assessed a composition of eighteen hundred solidi to the killer.

If a slave or a half free person is the killer of a free man, the killer himself will be half the payment for composition and his master will pay the other half, according to the Salic code.\textsuperscript{226} If a slave killed another slave, the Salic code prescribes that both masters should divide the killer between them,\textsuperscript{227} while the Ripuarian code prescribes a payment of thirty-six solidi by the killer's master.\textsuperscript{228} The same payment was required of a free man if he killed a slave.\textsuperscript{229}

The homicide of slaves belonging to or wards of the king or the church is dealt with in the Ripuarian code only. Composition for the killing of such a slave was set at one hundred solidi.\textsuperscript{230} The killing of a woman beyond child-bearing age and a ward of the church required a composition of one hundred solidi as well.\textsuperscript{231} If the woman was of child-bearing age and a ward of the king or of the church the composition assessed for her death was three hundred solidi.\textsuperscript{232}

Church personnel or dignitaries are valued at a higher composition rate than their secular social equals as well. Composition for the killing of a bishop was nine hundred solidi,\textsuperscript{233} of a presbyter six hundred,\textsuperscript{234} of a deacon three hundred,\textsuperscript{235} a subdeacon two hundred,\textsuperscript{236} and a cleric one hundred solidi.\textsuperscript{237} The amount of the composition payment required for the homicide of a member of the church hierarchy
indicates that church personnel and dignitaries were considered to be bound by and living under the regulations of Roman law. The lowest ranking cleric was rated the wergeld of a Roman citizen and his superiors in rank were rated higher in accordance with their rank. The value assessed to the life of a bishop is calculated in a manner that indicates that a bishop was among the highest ranking members of the secular as well as the ecclesiastical society. Indeed, the composition required for his homicide is as high as the composition required for the homicide of a member of the royal entourage who was killed inside his house or on the warpath, or whose corpse was hidden, as is substantiated in chapter four of the forty-second provision of the Salic code, wherein it is stated that the composition required for the homicide of a Roman is half the amount required for the homicide of a free Frank.

After reviewing the various subjects dealt with in this chapter, several suggestions and conclusions can be made in order to come to a partial understanding of early Frankish society. The evidence provided by the judicial codes of the early Franks indicates the need for order in society and for non-violent remedies for proven criminal acts. First and foremost, the insistence on the correct court procedures and on the integrity of the court officials is significant. The practice of the use of witnesses of the actual serving of summonses, the need for oathhelpers to establish one's truthfulness, which encouraged permanent settlement within a community, the many opportunities to appear in court given to the summoned, the consideration allowed the individual
who had to travel a great distance in order to be able to appear in court, and the extensive procedures required in cases of contempt of court are indicative of a society desiring that its judicial court system worked for and was accessible to plaintiff and accused alike, thus creating an atmosphere conducive to a safe environment for its members. This social climate is also reflected in the importance placed in the integrity of the court officials shown by the severe punishments assessed to those who neglected their duties or abused their power and in the existing possibility to appeal a verdict of the court to the king or one of his most powerful representatives. The doubtfulness of the actual execution of the verdicts does not diminish the value of these provisions the law codes provided.

The abovementioned procedural and judicial-ethical provisions in the codes form but one side of their contents. The other side consists of regulations for the compensation for proven crimes. These also illustrate facets of Frankish society. The provisions prescribing compensation for theft show that the severest punishment is given to the perpetrator who committed his crime closest to his victim or by breaking into areas secured by a lock. Cases of actual breach of an individual's peace. Thus the codes protected the individual's possessions and his security. If the stolen article could have represented the actual means of the victim's economic survival, the compensation required from the thief indicates that the compilers of the codes, judges in fact, realized this. Insight is gained, thus, in the actual living conditions of the early Franks during this period.

Regulations for compensation for inflicted wounds show the
importance attached to the senses and the extremities, all of primary interest in a relatively primitive society.

Compensation for homicide belongs to a different category of regulations. Here we are dealing with a payment meant to prevent continuing feuding. The amounts assessed as composition for the killing of an individual, his wergeld, are high and affordable only by the richer elements of society. This indicates that in many cases of homicide the killer would lose his life upon conviction because neither he nor his family could pay the required composition. However, this death would be a legitimate ending of a life and thus could not contribute to the danger of retribution. The amounts assessed as composition for the various members of society give an idea about the social ranks in that society.
NOTES

1Pp. 11 and 12.

2PLS 1, chs. 1-5; LR 36, Chs. 1-4.

3PLS 1, ch. 1; LR 36, ch. 1.

4PLS 1, ch. 2; LR 36, ch. 1.

5PLS 1, ch. 1.

6LR 36, ch. 1.

7PLS 1, ch. 1; LR 36, ch. 1. Nermeyer, sunscreen 1, "legitimate excuse for non-attendance, essoin."

8LR 36, ch. 3 and 4.

9Courtassessors.

10LR 36, ch. 3.

11LR 36, ch. 4 (comes).

12Ibid. (iudex fiscalis).

13PLS 1, ch. 3.

14PLS 1, ch. 4.

15PLS 1, ch. 5 (pagus). Nermeyer, pagus 6. "county."

16PLS 1, ch. 5.

17Book I, ch. XXIII.
18. **LR** 36, ch. 4.


20. **PLS** 56, ch. 1.

21. **PLS** 56, ch. 2.

22. **PLS** 56, ch. 3: "de illa die in XL noctes."

23. **PLS** 56, ch. 4.

24. Ibid.

25. **PLS** 56, ch. 5.

26. **PLS** 56, ch. 6.

27. **PLS** 49, ch. 1; **LR** 51, ch. 1.

28. **PLS** 49, chs. 2-3; **LR** 51, ch. 2.

29. **PLS** 1, ch. 1; 46, chs. 1, 3, 4, and 6; 47, ch. 2; 50, ch. 2; 56, ch. 1; 58, ch. 6; 60, ch. 1; **LR** 36, chs. 1-3; 51, ch. 1; 61, ch. 1; 62, ch. 1.

30. **PLS** 44, ch. 1; 46, chs. 1 and 4; 50, ch. 2; 60, ch. 1.

31. **PLS** 44, ch. 1; 46, chs. 1 and 4; 60, ch. 2; **LR** 51, ch. 1.

32. **PLS** 50, chs. 3 and 4; 51, chs. 1-3; 53, chs. 2, 4, 6, and 8; **LR** 52, chs. 1 and 2; 54, ch. 1; 87; 91, ch. 1.

33. **LR** 36, ch. 3; 51, ch. 1; 54, ch. 1; 91, ch. 1.

34. **LR** 51, ch. 1; 91, ch. 1.

35. **PLS** 54, ch. 4.

36. **PLS** 54, chs. 2 and 4.

37. **PLS** 54, ch. 4.
38 PL 50, ch. 1; LR 36, ch. 3.

39 PL 51, chs. 1 and 2; LR 52, ch. 1; 87.

40 PL 51, ch. 3.

41 LR 52, ch. 2.

42 PL 51, ch. 3.

43 PL 50, ch. 3.

44 PL 52, ch. 5.

45 LR 91, ch. 1.

46 LR 54: Title caption uses grafio and chapter 1 uses both other terms, "iudicem fiscalem, quem comitem vocant."

47 LR 52: Title caption uses grafio and chapters 1 and 2 use iudex fiscale.

48 LR 36, ch. 3, "ante comitem cum 7 rachinburgiis in haraho iurare debet, . . . ; et sic iudex fiscale ad domum illius accedere debet." Niermeyer, haraho "site of a popular court."

49 LR 91, ch. 1: maior domus: in this period the caretaker of an estate, not necessarily the royal estate; domesticus: the king's caretaker and representative at home or in court (Niermeyer, p. 348); comes and grafio: used as separate titles throughout the code; cancellarius: scribe of the court (Niermeyer, p. 125; also mentioned in LR 62, chs. 2-5).

50 LR 91, ch. 2.

51 PL 50, ch. 3; 56, chs. 1, 4, and 5.

52 Book I, chs. XXVI-XXIX.

55 J. P. Barefield, *op. cit.* (see ch. 1, note 13), p. 90.

56 Book I, ch. 22.

57 *FLS* 26; *LR* 60.

58 *FLS* 26, ch. 1.

59 *FLS* 26, ch. 2.

60 *FLS* 26, chs. 1 and 2, respectively.

61 *LR* 60, ch. 1, "et eiusdem rei cartam acciperit, nullatenus permittimus eum in servicio inclinari; sed sicut reliqui Ribvari liber permaneat."

62 *LR* 60, ch. 2.

63 *LR* 60, ch. 3.

64 *LR* 60, ch. 1.

65 *LR* 64, "De libertis secundum legem Romanam."

66 *LR* 64, chs. 1 and 2.

67 *LR* 64, ch. 1.

68 *LR* 64, ch. 3.

69 *LR* 65, ch. 2.

70 *LR* 61, ch. 1.

71 *FLS* 50, ch. 3.

72 *LR* 36, ch. 2, "cum tribus rachinburgiis in haraho coniuraverit," and ch. 3, "ante comitem cum 7 rachinburgiis in haraho iurare debet."
73. PLS 56, ch. 1, "a rachineburgiis iudicatum fuerit," ch. 2, "rachineburgii iudicaverunt," and ch. 3, "rachineburgii iudicaverunt."

74. PLS 57, ch. 1.

75. Ibid.

76. PLS 57, ch. 3.

77. PLS 57, ch. 4.

78. LR 66.


81. LR 62, ch. 1.

82. LR 62, ch. 2.

83. LR 62, ch. 3.

84. LR 62, ch. 4.

85. LR 62, chs. 5 and 6.

86. LR 62, ch. 7.

87. Ibid.

88. Book II, chs. XXXII–XXXIV.

89. Book I, ch. XXX; Book II, ch. XXIII.

90. Book II, chs. I, XV, and XXXVI–XXXVIII.

91. LR 59, ch. 4.

92. Book I, ch. XXXIII.
93 Pp. 90–91 (PLS 1, ch. 3).

94 PLS 49, ch. 1.

95 Pp. 90–91 (PLS 56, chs. 2–4).

96 PLS 52.

97 Ibid., ch. 1.

98 Ibid., ch. 2.

99 Ibid., ch. 3.

100 PLS 47, chs. 1 and 2.

101 PLS 40, chs. 7–10.

102 PLS 36.

103 PLS 9, ch. 9.

104 PLS 50, chs. 1 and 2.

105 PLS 46, ch. 1.

106 PLS 46, ch. 2.

107 PLS 46, ch. 3.

108 PLS 46, ch. 6.

109 PLS 46, ch. 4.

110 PLS 46, ch. 5.

111 PLS 46, ch. 6.

112 PLS 39, ch. 2.
113. LR 37, ch. 2.

114. LR 62, chs. 1 and 2.

115. LR 63.

116. LR 50, ch. 1.

117. LR 61, ch. 5.

118. LR 34a.

119. LR 75, ch. 1.

120. LR 75, ch. 6.

121. PLS 14, ch. 2.

122. PLS 14, ch. 3.


124. PLS 42, ch. 5.

125. PLS 16, ch. 5.

126. LR 79.

127. LR 81.

128. LR 76, ch. 3.

129. LR 83.

130. LR 85, ch. 2.

131. PLS 39, ch. 3; 48, ch. 2; 53, ch. 1; 58, ch. 1; LR 37, ch. 4; 45, ch. 3; 61, ch. 9; 69, ch. 1; 71, chs. 3 and 4; 86, ch. 2.
132. LR 35, ch. 5.

133. PLS 2, ch. 18; ch. 20: If fifty pigs were stolen, but some animals remained, a fine of sixty-two and one-half solidi was assessed.

134. Capitale et dilatura are the terms used. See also Udo Rukser, Der Diebstahl nach der lex Ribuaria (Weimar, Hermann Boehlaus Nachfolger, 1913), pp. 8-14.

135. PLS 2, chs. 19 and 20.

136. LR 19. See also Udo Rukser, op. cit., 36 pp.

137. PLS 3, ch. 12: if all animals were taken, ch. 13: if some animals remained, and ch. 14: if twenty-five were taken, but some remained, the fine would be sixty-two and one-half solidi.

138. LR 19.

139. PLS 38, ch. 6: up to seven animals taken, and ch. 5: seven to twelve animals taken, and LR 19, respectively.

140. LR 40, ch. 11.

141. PLS 27, ch. 3; LR 79.

142. PLS 33, ch. 1 and LR 46, ch. 1; 79, respectively.

143. PLS 33, ch. 2; LR 46, ch. 2.

144. PLS 33, ch. 3; LR 46, ch. 3.

145. PLS 34, ch. 1; 27, ch. 22: to break down a fence carried the same fine; LR 47, ch. 1.

146. PLS 2, ch. 1.

147. PLS 2, ch. 2.

148. PLS 2, ch. 3.
PLS 7, chs. 1, 2, and 3, respectively.

PLS 8, chs. 1, 2, and 4.

PLS 8, ch. 3.

PLS 11, chs. 1 and 3, respectively.

PLS 11, chs. 5 and 6, respectively.

PLS 21, chs. 1, 2, 3, and 4, respectively.

PLS 27, chs. 29 and 30, respectively.

PLS 14, ch. 9; LR 55, ch. 1; 88, ch. 1.

PLS 14, ch. 10; LR 55, ch. 2; 88, ch. 2.

PLS 14, ch. 6.

PLS 14, chs. 7 and 8.

PLS 42, chs. 1, 2, and 3: If three or more wounds killed the victim, three members of the group were fined six hundred solidi each, three other accomplices ninety each, and three more forty-five solidi each; LR 67: The killer was fined six hundred solidi (three times the wergeld of the victim), three other major culprits of the group ninety each, and all members that had shed the victim's blood two hundred solidi each. All other participants in the raid were fined fifteen solidi each.

PLS 39, ch. 5; LR 17; 38, ch. 1.

PLS 13, ch. 7.

LR 38, chs. 2 and 3, respectively.

PLS 10, chs. 1, 3, and 4: a horse or a draft-animal was considered to be in the same category of value as a male or female slave.

PLS 10, ch. 6.
166. PLS 35, ch. 9: *frede et faido.*

167. LR 30: theft without further specification; 19, ch. 2: theft of a herd.

168. LR 32.

169. LR 34a: a slave escaped without his master's complicity.

170. PLS 12, ch. 1.

171. PLS 12, ch. 2.

172. PLS 40, ch. 1.

173. PLS 40, ch. 2.

174. PLS 40, ch. 3.

175. PLS 40, ch. 4.

176. PLS 40, ch. 11.

177. PLS 40, ch. 5.

178. PLS 40, ch. 6.

179. PLS 40, chs. 7-10.

180. PLS 2-8; 10; 23; 27; 38; other items: 22; 27; 61.

181. LR 40, ch. 11.

182. PLS 34, ch. 1; 2, ch. 2; 7, ch. 2; and 21, ch. 2, respectively.

183. PLS 17, ch. 8 and LR 1, respectively.

184. PLS 17, ch. 9 and LR 2, respectively. In the Ripuarian code the amount of an assessed fine or compensation is often calculated in a multiplication, in this case two times nine *solidi,* "bis novenos."
PLS 17, ch. 6 and LR 4, respectively.

Hand: PLS 29, ch. 1; ch. 3 indicates a compensation of sixty-two and one-half solidi; LR 5, ch. 4; 71, ch. 5. Foot: PLS 29, ch. 1; ch. 11 indicates sixty-two and one-half solidi; LR 5, ch. 8; 71, ch. 5.

Hand: PLS 29, ch. 2. Foot: Ibid., ch. 10.


PLS 29, ch. 4; LR 5, ch. 5; 71, ch. 5.

PLS 29, ch. 5; LR 5, ch. 5.

PLS 29, ch. 6 and LR 5, ch. 7; 71, ch. 5, respectively.

Eye: PLS 29, ch. 1; LR 5, ch. 3; 71, ch. 5.
Ear: PLS 29, ch. 1; LR 5, ch. 1; 71, ch. 5.
Nose: PLS 29, ch. 1; LR 5, ch. 2; 71, ch. 5.

Conflicting regulations are provided in PLS 29, ch. 12: composition for the loss of an eye is sixty-two and one-half solidi; 29, ch. 14: for the loss of an ear fifteen solidi; 29, ch. 13: for the loss of a nose forty-five solidi.


LR 20, ch. 3 and 21, ch. 1, respectively.

LR 21, ch. 2.

LR 20, chs. 1 and 2, respectively.

LR 24.

LR 25.

LR 26.

LR 23.

LR 22.
202. PLS 35, ch. 4.

203. LR 27.

204. PLS 15: in order to take a man's wife; 41, ch. 1: a free Frank or a barbarian living according to the Salic law, "ingenuum Francum aut barbarum, qui legem Salicam vivit;" LR 7; 40, ch. 1; ch. 6: castration of a free man incurred the same assessment.

205. PLS 41, ch. 2: in a well; 41, ch. 4: under twigs or bark; LR 16: in a well or under branches or skins.

206. PLS 16, ch. 1; 41, ch. 21; 42, chs. 1 and 2; LR 67.

207. PLS 63, ch. 1: "in hoste" might mean on enemy's territory; LR 66, ch. 1.

208. PLS 41, ch. 9; LR 40, ch. 3.

209. LR 40, ch. 2: Burgundian; 40, ch. 4: the others.

210. PLS 41, ch. 5; LR 13.

211. PLS 24, ch. 8; 41, ch. 16: a nursing mother; LR 12, ch. 1.

212. PLS 24, ch. 5; 41, chs. 19 and 20; LR 40, ch. 10.

213. PLS 24, ch. 6; 41, ch. 20; LR 40, ch. 10.

214. PLS 24, ch. 9; 41, ch. 17; LR 13a.

215. PLS 24, ch. 1.

216. PLS 41, ch. 5.

217. LR 11, ch. 1.

218. PLS 41, ch. 5; LR 11, ch. 1.

219. PLS 54, ch. 1; LR 54, ch. 1.
220. PLS 54, ch. 3.

221. LR 54, ch. 2.

222. PLS 54, ch. 2.

223. PLS 41, chs. 6 and 7, respectively.

224. PLS 42, ch. 1.

225. PLS 63, ch. 2.

226. PLS 35, ch. 8.

227. PLS 35, ch. 1.

228. LR 29.

229. LR, ch. 8. If the killed slave was a skilled person, fines of thirty-five solidi were imposed and compensation for the value of the slave and the loss accrued during the pre-trial period, as was the case for theft of such a slave, according to PLS 35, ch. 9.


231. LR 15.

232. LR 14.

233. LR 40, ch. 9.

234. LR 40, ch. 8.

235. LR 40, ch. 7.

236. LR 40, ch. 6.

237. LR 40, ch. 5.

238. Respectively PLS 42, ch. 1; 63, ch. 2; and 41, ch. 7. See also PLS 42, ch. 1: composition for the homicide of a free man inside his house was six hundred solidi and PLS 42, ch. 4: composition for the homicide of a Roman or a half-free man in the same situation was half that amount.
CHAPTER 5
EARLY FRANKISH SOCIETY—CONCLUSION

The arrival of the Franks in the Gallo-Roman world was not an earth-shattering event. These Germanic peoples had lived on the border of the Roman Empire and among the Gallo-Romans in northeastern Gaul for a considerable period before Clovis and his successors started their conquest to the south. Whether or not the settling of the Franks in northern Gaul created a real change and brought a cultural break in that region has been a point of discussion among some historians. There is one point of view that emphasizes the Germanic influences, usually expressed by scholars of German descent. Ideas from this school of thought will be discussed further on in this chapter in connection with the question of whether or not communal property existed in early Frankish society.

A consensus exists that the gradual mixing of both cultures provided continuity rather than a break and that the change subsequently was only discernible in the ultimate product, West-European civilization. Gabriel Fournier saw the mixture of the two cultures culminating in the eighth-century Carolingian renaissance. Other scholars include a longer period in the development of the new civilization.

The fusion of the two peoples was facilitated by the largely peaceful settling. There was no forceful land sharing and the existing
pattern of land-ownership remained, according to Alfons Dopsch⁴ among others. Numa Denis Fustel de Coulanges⁵ saw practically no change in the division of Gaul in large estates (villaæ) from the fourth to the ninth century. He based his observations on the usage of the words villa and vicus in charters.⁶ Robert Latouche⁷ speaks out against this opinion especially on grounds of Auguste Longnon's geographic studies of Gaul in the sixth century,⁸ according to which vicī existed widespread which Fustel de Coulanges overlooked.

The gradual fusion of the two peoples into a new unit and unity was further aided by the conversion to Christianity of the Franks and the personality of law principle that the then newly-recorded law-codes display, according to Édouard Salin.⁹ Ferdinand Lot credits the church and the royal chanceries with the maintenance of the Latin language¹⁰ and Jacques Ellul considers the church as the mediator between the two cultures.¹¹ The continuing usage of the Latin language is mentioned by several scholars, evidence of which is found in the fact that Gregory of Tours never mentioned interpreters in his History of the Franks.¹² Thus, two very important ingredients that became part of the foundation for the new civilization were the Gallo-Roman contribution of the Latin language and the Frankish contribution of the Germanic laws.¹³

An exception is Charles Lelong's view according to which Merovingian Gaul is a world in decline and barbarized by the Franks rather than Germanized and Latin is a dead language.¹⁴

Although there is no explicit statement preceding or in the Salic and Ripuarian codes about the area of their application, several
reason that the area north of the Loire and west of the Silva Carbonaria was most strongly influenced by these laws. However, a provision of the Salic code wherein a distinction is made between parties to a dispute who live between the Loire and the Silva Carbonaria ("citra Ligere aut Carbonaria") and who live outside of that territory ("trans Ligere aut Carbonaria") because of which different time limits for compliance with a court order are set indicates that the Salic law, at least, was applicable in a much larger area. The fact that the law codes existed, that they are recorded in Latin, and that their contents are pointing towards use by the people in general in the territory of the Franks to organize court procedures and to establish a penal rate for violation of the peace indicate that the fusion of the two still separately identifiable peoples was in progress and that Latin was one tool that aided in this fusing process. The Christianization of the Franks and the fact that Latin was the common church language strengthens this indication and the theory that Latin was a dead language is untenable.

The use of Latin in the Frankish codes and the synodal regulations suggests a knowledge of the language at least among those who recorded them and those in charge of the administration of justice according to these laws and canons. Pierre Riché investigated whether formal education was available in the early Merovingian period and whether Merovingian Gaul was part of a literate culture or not. He found that he had to approach Frankish Gaul as two entities, with the south maintaining its Mediterranean background, of which Gregory of Tours is an example, and the north but slowly adopting the more
literate traditions of the Roman culture.\textsuperscript{20}

Pierre Riché successfully refutes Ferdinand Lot's opinion that Gaul was an entity rather than two culturally as well as socially different regions. F. Lot believed that at the beginning of the seventh century lay society was totally ignorant and that the nobility created through the fusion of Gallo-Roman and Frankish families was an ignorant one and would remain so for ten centuries.\textsuperscript{21} Riché uses epitaphs from northern Gaul to prove that not only the south was literate.\textsuperscript{22} The fact that Clovis and his successors used the existing administrative organization and that the Franks took over certain Roman juridical customs when they adopted the usage of written documentation in the form of wills or acts of sale indicate to Riché that northern Gaul was a society with access to a literate tradition and with an openness toward learning that allowed it to adopt and adapt proven traditions of the civilization they found and joined.\textsuperscript{23}

While Henri Pirenne used Marculfus as an example when he mentioned the existence of lay schools through the seventh century, Riché states that Marculfus' "\textit{pueri}" were no ordinary lay students starting their education with the aid of the \textit{Formulae}. Rather, they were future notaries and clerks and Marculfus' handbook was a tool in a professional school.\textsuperscript{24} Pierre Riché reached this conclusion using evidence from Gregory of Tours that general education for layman and cleric alike was available via the church from the end of the fifth century. The laymen who took advantage of this schooling were most likely not people of high rank, because those were educated at home, privately.\textsuperscript{25} Members of the royal families were educated also. An example is found in
Gregory of Tours' *History of the Franks*, where he noted that king Chilperic wrote poetry and that he introduced four new letters to the Latin alphabet that had to be taught to boys in school.²⁶

The existence of the Frankish codes, information derived from their contents and from Gregory of Tours' narrative, and Marculfus' didactic collection together with Pierre Riché's reasoning and fact-finding lead me to accept the existence of a viable, developing civilization composed of elements of both the old Gallo-Roman and the relatively new Frankish society, wherein much of the old organizational traits of the Roman Empire remained, including the universal language, but wherein also a new legal system was being introduced which guaranteed that the conquered people could retain their identity. The common religion contributed a great deal to the fusion of the two cultures into early Frankish society, a very early stage in a developing West-European civilization.

What kind of society was this newly-developed and still developing civilization? In order to answer this question it is necessary to go beyond the pure juridical and punitive aspects of both the secular and ecclesiastical regulations.

When one studies the contents of the Salic code, it becomes apparent that a large number of its provisions deals with problems encountered in a rural environment. Theft of pigs, cattle, sheep, goats, dogs, birds, bees, horses, and fences are all crimes included in the Salic law as is damage done in a cornfield or enclosure.²⁷ Likewise, several provisions of the Ripuarian code, e.g., theft of herds,
destruction of someone else's crop, refusal to confine one's cattle so that it damages someone else's crop, and the abovementioned rate of exchange for the *solidus*, reveal problems encountered in a rural society.

Marulfus recorded many documents of donation wherein extensive rural properties are mentioned. Landholdings with houses, buildings, farmers, slaves, vineyards, forests, fields, meadows, pastures, streams, or diverted streams are described as well as household goods and furnishings. However, that smaller settlements were probably more common can be derived from information from the codes, where a bull serving three *villa* is mentioned and where six sows and one boar make up a herd of pigs. A weaving cabin where the women of the household would work is mentioned and a house made from wickerwork built adjacent to the main house. Theft of a whole house is the subject of one regulation. These regulations indicate that small settlements were common and the fact that the Salic code includes so many provisions of compensation for theft of only one animal points towards the existence of many small property owners.

Other regulations from both the Salic and the Ripuarian codes that support this probability state that landowners were required to provide free access to the roads. The pertinent provision of the Salic law mentions specifically the road leading to the mill. Grain-mills were used not by the owner and his farmers alone, apparently. There is no indication in the legal regulations that grainmills were owned by groups of small property owners. The Salic code includes a regulation that deals with the fine assessed to a free individual who
had stolen grain and iron tools from someone else's mill. In some of Marculfus' documents of donation grainmills are included.

These data in combination with the regulations that provided open roads provide strong evidence that interaction between the various kinds of settlements, be they large landholdings with owners and their tenants or single dwellings on a small property separately or united in small groups, existed and was guaranteed and protected by the law codes. This interaction and interdependency are the foundations of a vital and viable society.

A controversy exists as to whether or not the early Frankish settlements knew communal property. The opinions are based on disparate interpretations of the same sources and range from total acceptance of the existence of communal property to its denial with various median positions. The importance of the Germanic background of the Franks and what aspects of that background besides the legal tradition became part of the new society are the main points in this discussion.

The main sources upon which these opinions are based are passages of Caius Julius Caesar's De bello gallico, Cornelius Tacitus' Germania, the Salic law, and the Edict of king Chilperic. The Germanic origin of the Franks as reflected in Caesar's and Tacitus' works had to provide the fundamental data for their pattern of life in Gaul. Joseph Kulischer devoted several pages of the medieval volume of his Allgemeine Wirtschaftsgeschichte des Mittelalters und der Neuzeit to this controversy. The following statement is based on his account.

The reliability of Caesar as an author and source for sociological
deductions about the Germanic peoples has been questioned. His De bello gallico was written as an account of military events, but Caesar was thoroughly informed about his topic and its necessary background. Whether that background included the Germanic peoples is a disputed point. Some scholars adhere to the opinion that he was not well informed about the Germanic peoples, that he projected his knowledge of but one tribe, the Suebi, to all Germanic peoples, or that he misinterpreted his information, while others acknowledge Caesar's account as well founded and trustworthy. That political expediency was the main force behind the writing of De bello gallico led others to question Caesar's value as an observer of the customs of the Germanic peoples.

The following passages represent several of Caesar's observations about the Germanic peoples upon which differing opinions about their living pattern have been based.

Agriculturae non student maiorque pars eorum victus in lacte, caseo, carne consistit (they are not engaged in agriculture and the major part of their diet consists of milk, cheese, and meat).

Neque multum frumento, sed maximam partem lacte atque pecore vivunt multumque sunt in venationibus (they consume but little grain; milk and cattle raising are their main stay and they hunt a great deal).

Neque quisquam agri modum certum aut fines habet proprios, sed magistratus ac principes in annos singulis gentibus cognationibusque hominum, qui tum una coierunt, quantum et quo loco visum est agris atribuunt atque anno post alio transire cogunt (nobody owns a specific field outright, but every year the leaders distribute the fields among the families and kin groups, taking into account size and location, and each year everyone is forced to move).

Agriculturae non student has been a basis of the theory that the Germans were a nomadic people with but few and only temporary
settlements. However, the Neque quisquam passage indicates cultivation of fields besides cattle raising and hunting as a means of subsistence. Annual redistribution of fields requires the presupposition that the fields were owned by the tribe. Whether or not the harvests were tribal property, our source does not make clear. However, distribution with consideration for size and location indicates that the temporary owners were probably working for their own harvests. There is no indication whether homesteads needed to be redistributed annually along with the fields. 49

The lands that were redistributed could have been part of the tribe's permanent territory. This could indicate that the redistribution was a means to divide equally among the members the resources of the tribal territory. A more widely accepted theory is that each year new fields were cultivated and exhausted soil was abandoned, so that the Germanic tribes were constantly though slowly migrating when the soil required it. A well-developed agricultural system could hardly exist under these conditions and the many conflicts the tribes were involved in indicate that this theory has the strongest support. 50

These deductions have been made from passages of Caesar's writings and date accordingly to the first century B.C. Cornelius Tacitus' Germania is chronologically our next source. Most scholars have been very positive in their evaluation of Tacitus' work as a source. 51

Tacitus reported that cattle raising, hunting, plant-gathering, and some agriculture provided a livelihood for the Germanic peoples. 52 Barley and wheat were used to make beer, 53 and wheat and other products were required from the non-free to provide for their masters. 54
Redistribution of cultivated lands was mentioned by Tacitus as well.

Agri per numero cultorum ab universis in vices (invicem) recupantur, quia mox inter se secundum dignationem partiuntur. Facilitatem partiendi camporum spatio praestant, arva per annos mutant et superest ager (Depending upon the number of farmworkers available the community as a whole occupies farmland alternately. Then, the land is divided among them according to rank. The quantity of available lands facilitates the distribution; they do not use the same fields each year and an abundance of farmland is available).\textsuperscript{53}

Translation and interpretation of this passage are centered around three parts of it, \textit{ab universis}, \textit{in vices}, and \textit{secundum dignationem}. In translation these are successively "by the community as a whole," "alternately," and "according to rank." Enough land was available apparently and not all was divided. This indicates a change from the gradually migrating pattern of life of the Germanic peoples Caesar described. The community occupied more than enough land for its members, almost one and one-half centuries later.

German scholars have sought to define this community in its territorial unit and named it a \textit{Markgenossenschaft}. The word is derived from \textit{marca} = boundary.\textsuperscript{56} From boundary \textit{marca} became synonymous with the lands that formed the boundary between two settlements. These lands were not cultivated fields, but were rather wasteland which could be used for grazing grounds and forests. Because of their location and quality these lands appeared to have been utilized communally. This communal usage of at least the outlying territory was seen as a community undertaking. The common "mark" became gradually a common interest of all lands of the settlement—more a utilitarian community than a territorial one—marking an intermediate step between nomadism and private landownership.
The cited passage of Tacitus' *Germania* seems to be in agreement with the theory of the existence of communal property among the Germanic peoples. The wastelands or borderlands are not mentioned but the cultivated grounds are. An existing class structure is also apparent because the distribution of land is made according to rank; the basis of this rank is not defined, however. No mention is made of family- or kin-groups as participants in the distribution. Joseph Kulischer draws the conclusion that the community as a whole had taken over the communal property rights from the family and kin-groups.  

The question remains whether the invading or migrating Germanic Franks settled in Gaul and continued to live according to their customary agrarian organization. Two chapters of a provision of the Salic code have been used as main sources to verify or deny this question. The chapters read as follows:

De migrantibus

1. Si quis super alterum in villa migrare voluerit et unus vel alii qui de ipsis, qui in villa consistunt, eum suscipare voluerit, si vel unus extiterit, qui contradicat, migrandi ibidem licentiam non habeat.

4. Si vero quis migraverit et infra XII menses nulius testatus fuerit, ubi admigravit securus sicut et alii vicini maneant.  

(About migrating individuals)

1. In case an individual wanted to move in with someone else in to a *villa* /homestead/ and one or several of those who live together in the *villa* wanted to take him in, and in case one person came forward who disagreed, the individual had no permission to settle there.

4. If, however, an individual moved in and no one protested within twelve months, he is secure where he moved just as the other people of the settlement.)
Translations do not vary much; interpretations, however, do. *Super alterum* can be interpreted as simply moving in with someone, but also as intruding or taking over the property of an absentee.\footnote{59}

The migration could have been onto uncultivated land or into a homestead and cultivated land.\footnote{60} N. D. Fustel de Coulanges, who favored the interpretation of migration as an intruding action, maintained that the *villa* was illegally occupied.\footnote{61}

The two chapters cited above were interpreted according to or in combination with ideas about the pattern of life of the Franks in their original Germanic surroundings. The Germanic *Markgenossen* were identified in the Salic law with the inhabitants of the *vicus*, the *vicini*.\footnote{62}

The *vicinus* of this provision of the Salic law is shown to have the power to prevent infringement on his rights as a member of the *villa* or *vicus* community. This prerogative presupposes an existing right common to all inhabitants of a settlement. This right has been interpreted as the communal right to the land belonging to the *villa* community by several scholars.\footnote{63} The Edict of Chilperic, probably issued during the years 573 to 575, includes a chapter which reinforces this theory in that it curtails the right of the *vicini* to inherit lands in their community that lacked a direct legitimate heir and thus protects and strengthens family interests and ties.\footnote{64}

The apparent right of the *vicini* to inherit vacant land in their community has been interpreted as an important piece of evidence that the territory of the *vicus* was at least partially communally owned and this connected neatly with the *Markgenossenschaft* theory. N. D. Fustel
de Coulanges was most vociferous in his disbelief in this theory. He actually accused other scholars of abuse of source material, which brought him a rebuttal by Karl Lamprecht based on identical accusations.

Fustel de Coulanges translated *vicini* as neighbors and nothing more. The fact that the *vicini* had preference over some stranger or distant relative to acquire part of the settlement's lands that lacked a direct heir, he saw as perfectly logical, a protection for the community. But the *homo migrans* was in reality favored in this provision of the Salic code, because the procedure to evict him was a difficult one and the twelve-months clause was a protection for him. Fustel de Coulanges suggests that the period of the recording of the code was one during which soil cultivation was direly needed and that thus migration was actually encouraged.

Fustel de Coulanges studied Caesar's *De bello gallico* in order to detect whether the inhabitants of Gaul knew communal property or not and he found no reference to it. He calls this silence significant, because Caesar usually wrote about the differences between the Gauls and the Romans. His conclusion is that the Gauls knew private property as the Romans did, because when Caesar compared the Germans with the Gauls, one of his points of difference between the two peoples was the fact that the Germans had no private property.

According to Fustel de Coulanges, thus, communal property did not exist among the Franks. However, he accepts the existence of two kinds of communally utilized land, forest lands shared by several *villae* and, on large estates, parts of land reserved for communal use
by tenants of the landowner. 69

N. P. Grazianskij points out that the migrant settling in a new community could have been an aid for an aged inhabitant without relatives, but because the village community was such a close entity acceptance by everyone would still be needed. In many cases the neighbors could well have been blood relatives. 70 Edward Jenks 71 and Robert Latouche 72 also mention the close daily contact and dependency of the members of small communities, which promotes anxiety for strangers and a feeling of responsibility between the members of the community.

After studying the sources and the reasoning behind the Markgenossenschaft theory it appears to me that adherents to this theory have put undue emphasis on Germanic influences in the new Frankish society. The source material found in the works of Caesar and Tacitus provides some evidence for the existence of tribal landownership in Germania, but no evidence that this phenomenon traveled with the Germanic tribes to their new territory. As has been pointed out before, the Franks did not take over Gaul, but integrated into an existing society over a lengthy period of time. The De migrantibus title of the Salic code indicates that members of a community had some influence upon who joined their community. Collective use of part of the land—remote grazing grounds and forests 73—is not identical with communal property.

As we have seen, early Frankish society was an agricultural society. The law codes give evidence of vegetable gardens where carrots, beans, peas, and lentils are grown, 74 orchards with grafted apple- and
peartrees, and vineyards, more or less near the homestead. These gardens were most likely fenced-in as were grain- and cornfields and some grasslands, probably for hay making. Flax was cultivated as well. Various domestic animals have been mentioned before. Barns for the animals and for storage of the grain were part of the settlement as were other enclosed or fenced-in areas. The fact that theft of animal bells is dealt with in the Salic law indicates that herds probably roamed the outlying fields. Another indication of this is found in the Salic title that deals with domestic animals found in one's grainfield. Although there is mention of a swineherd in the Salic code—skilled slave labor, it appears most likely that herds of cattle, pigs, sheep, goats, and maybe even horses grazed unsupervised on open terrain.

Besides the products of the garden, the fields, and domestic animals, the early Franks relied upon hunting and fishing for their livelihood. Both the Salic and the Ripuarian codes include regulations that deal with theft of the weapons for the hunt or of fishing gear. A trained deer, a hunting dog, and trained birds of prey were used for the hunt and eel pots and various kinds of netting for fishing.

This variety of available victuals as well as animal feed and wool and flax provide for an almost economically self-sufficient community. These relatively favorable living conditions combined with the non-violent nature of the Frankish settlement in Gaul formed a fertile basis for the development of the new civilization. Robert Latouche is even more positive in his evaluation of the new civilization.
He reads in the Salic code that the Franks show a real attachment to individual and family owned land. The De migrantibus title and the titles dealing with animals entering someone else's property\(^89\) and with road obstruction\(^90\) provide him with the evidence that society was interested in protecting property and livelihood and improving agricultural conditions.\(^91\)

Latouche's conclusion leads me to consider whether the codes provide evidence that the Franks valued family ties and property. The De chrenecruda (about the throwing of soil)\(^92\) provision of the Salic code provides information. The procedure of the De chrenecruda action is as follows. If a convicted killer after giving up all his possessions still could not meet the assessed composition price, he had to swear that he had no other possessions, neither above ground nor underground. Then, he had to enter his house, collect soil from its four corners and, standing in the door opening facing inwards, throw the soil with his left hand over his shoulder at his nearest relative. If his nearest relatives, i.e. father, brothers, and sons, had contributed to the fine already, the three nearest kin of mother and father had to take on this responsibility, while the killer had to take a stick in the hand and jump over the fence, dressed in undershirt, unbelted, and barefoot.

From this account it is evident that his direct family is most important for an individual in need of help. The joined responsibility for payment of the composition sum by kin of the father as well as of the mother is questioned by Karl Lamprecht. His opinion is that the father's kin had taken priority over the mother's in the sixth
century. As evidence Lamprecht uses a provision of the Ripuarian code in which it is stated that if the killer was too poor to pay the assessed composition fee his sons, grandsons, and great-grandsons should pay. However, the provision of the Salic code designating who should inherit if someone died without leaving a son includes a chapter according to which the sister of the mother should inherit. This regulation together with the De chrenecruda title indicate that the maternal side of the family was not negligible. And in view of the fact that the composition payments were established in order to provide satisfaction for a crime and to prevent bloodshed, it is my opinion that it is immaterial which side of the family had priority over the other, because it was to the benefit of the wronged as well as of the guilty party that the debt be paid. The fifth chapter of the De chrenecruda title bears witness to this opinion, because its regulation granted the debtor, after he had exhausted the resources of his next-of-kin, the opportunity to find someone else who would vouch for him and his debt during four court sessions.

Several scholars have tried to explain the various parts of the De chrenecruda procedure. Emil Goldmann discusses the theory that the soil-throw was a symbolic transfer by the debtor of his house to his relatives. He opposes this view because of the fact that the debtor had vowed to be unable to meet the required composition payment and thus could not give away something of value. Goldmann comes to the conclusion that the whole De chrenecruda procedure was a magic ceremony. He explains that all the gestures described in the procedure are well known in magic rites and that this specific ritual provided the
confirmation of the killer's oath of insolvency. The soil from the four corners of his house formed the symbolic proof that the offender had nothing hidden. The fact that he jumped the fence was the symbol for the man without peace who could not use the door. He did not belong to society anymore and could not be received by anyone until his debt was paid.

In line with this theory is Goldmann's explanation for the use of the stick that the debtor had to carry. It was to be the tool for his punishment. If the debt was not paid, the debtor would lose his life and his head would be shown publicly on the stick at the roadside as proof of his death. Other explanations for the use of the stick have been brought forth, e.g., Karl von Amira explains it as a symbol of bankruptcy, the stick beggars would carry while roaming the land, while L. VanderKindere saw it as a simple aid for the jump over the fence.

The already discussed procedure of adoption indicates the importance of the legal status of an individual as a family member. The inclusion in the Salic code of a regulation dealing with the severance of family ties is further evidence of the importance the Franks attached to the family as a legal unit. In order to sever one's family ties, an individual had to go to court before the judge, break four sticks of alder over his head, throw the pieces into the four corners of the courtroom, and swear that he severs his family ties, thus avoiding liabilities but at the same time forfeiting inheritance rights.

In my opinion it appears acceptable that these various regulations provide the evidence that the Franks valued family ties and
property and that the Frankish family was a legal entity, cornerstone to a developing society that needed it as a stabilizing force that accepted the responsibility for its members. 

Another kind of severance of family ties that needs to be examined is found in a document of Marculfus' collection. It is a letter of divorce ("Libellum repudii").\textsuperscript{108} Both partners in a marriage that they want to dissolve are to provide a letter explaining that they live in discord ("non caritas secundum Deum sed discordia regnat")\textsuperscript{109} and have decided to a divorce. The letter is a confirmation that each of them is free to enter a monastery to serve God or to remarry.\textsuperscript{110}

This document appears to be highly unusual because, in general, divorce and remarriage were not accepted by the church. No other documents in the Formulae or canonical regulations deal with divorce. Illegally contracted marriages are mentioned frequently in synodal decrees during the period under study and the general rule of the church is to dissolve such a marriage.\textsuperscript{111} Because of the illegality of these marriages their dissolution cannot be considered a divorce. Marriages that existed before one of the partners became an ordained member of the church were not to be dissolved either, according to several synodal decrees,\textsuperscript{112} rather, the partners were admonished to abstain from marital relations.

From Gregory of Tours we know that divorces and remarriages took place, at least within the various royal families, e.g., king Childeric who married Basina, who was king Bisinus' wife,\textsuperscript{113} while according to a canon of the Second Synod at Orleans (533) even a matrimonial contract could not be dismissed at will by the parties involved.\textsuperscript{114}
and according to canons of several synods remarriage of the widows of church officials was against regulations. Also, one of Marculfus' documents, someone's will, includes a passage in which the dying husband addresses his wife, saying, "... if you, my dearest wife, survive me and want to marry another man, what God does not allow you (quod tibi Deus non permittat)."

According to a provision of the Salic code, a widow could remarry after several prescriptive procedures had been followed concerning money to be paid by the suitor to the woman's kin. The Ripuarian code does not include a title dealing with remarriage.

In view of these references and because the marriage ceremony was not yet one of the sacraments of the church, I believe that the "Libellum repudii" might have been a legitimate (because it is included in Marculfus' collection) attempt to establish annulment of an unhappy and thus according to God invalid marriage and not a divorce in our understanding of the word. The attempt is not a request but a form of documentation to prove one's legal status in case it was needed for entrance into a monastic society or into another marriage.

The importance of family ties and the fact that the family was held responsible for its members indicate that protection of and attachment to family property were necessities. The De migrantibus title of the Salic code has shown that a certain degree of protection of property and communal interests existed. Several titles of both the Salic and the Ripuarian codes provide regulations for the order of priority in inheriting property. It is stated that, if there are no sons, father
and mother will inherit and in absence of these, brothers and sisters.\textsuperscript{118}

According to the Salic tradition, the mother's sister is the next in line to inherit and after her the father's sister,\textsuperscript{119} and according to the Ripuarian code, the sisters of both father and mother inherit equally and after these their family up to the fifth generation,\textsuperscript{120} while the Salic code names the nearest of the father's kin only as the next in line to inherit.\textsuperscript{121} However, the Salic code prescribes also that, if a composition payment had to be made to the family of a father who had been killed, half of it would go to the children and half to the nearest kin of the father and mother, but that in absence of these close relatives the fisc would receive the payment.\textsuperscript{122}

The Ripuarian code includes a regulation according to which the difference in value in the inheritances received by a son and a daughter cannot be larger than twelve \textit{solidi}.\textsuperscript{123} This kind of equal treatment of brothers and sisters is not usual. One of Marculfus' documents testifies to this. It is a letter of a father addressed to his daughter in which he makes her a legitimate heir to his estate, equal to his sons.\textsuperscript{124} The father mentions the longlasting but impious custom ("\textit{Diuturna sed impia inter nos consuetudo}")\textsuperscript{125} that sisters do not share with their brothers in their father's estate. The father explains his decision, saying that God gave him son and daughter on an equal basis and that he, accordingly, will divide his estate on an equal basis. That equality of the sexes was the exception rather than the rule can be substantiated by the words used in the various documents preserved by Marculfus by the husband addressing his wife, "\textit{dulcissima coniux}" (sweetest wife)\textsuperscript{126} and by the words used by a wife describing herself,
"ego illa, ancilla tua, domne et iugalis meus ille" (I, your slave, my master and husband).\textsuperscript{127} And a synodal decree of 533, which was mentioned before,\textsuperscript{128} testifies to this inequality in its statement that a woman could not become a deaconess because of the weakness of her sex.

The father's letter to his daughter, declaring her an equal heir with her brothers, includes a list of his estate of which the paternal land (\textit{alodis paterna})\textsuperscript{129} is part. As has been shown above, women could inherit property according to the Frankish codes. However, they could not inherit indiscriminate parts of the estate. Both codes include a provision according to which a specific part of the estate could not be inherited by a woman. The Ripuarian code excludes women from ownership of ancestral property (\textit{aviatica}), as long as a male of the family was alive.\textsuperscript{130} The Salic code includes a chapter that has been controversial. It reads, "De terra vero salica nulla in muliere hereditas est, sed ad virilem sexum, qui fratres fuerint, tota terra pertineant (the real Salic land cannot be inherited by a woman, but all of it goes to the male line)."\textsuperscript{131} This chapter was used in later centuries to establish that succession to the throne of France could only be via the male line. François Hotman, who lived in the second half of the sixteenth century, wrote about this misconception used by Philip of Valois to justify his claim on the throne, when Charles the Fair died in 1326 without a male heir and a daughter was born posthumously.\textsuperscript{132} Hotman argued that \textit{terra salica} was another name for ancestral or allodial land and had nothing to do with royal successions.\textsuperscript{133} Other opinions about the meaning of \textit{terra salica} include Paul Viollet's idea
that there was no distinction between private and public landownership in early Frankish society so that the exclusion from inheriting that land by women had no political background. Richard Schroeder supposes that terra salica was meant to describe a large estate in contrast to small landholdings. Inheritance of the former would be important, while the latter would be of local interest only, in the manner of the abovementioned De migrantibus regulation. Robert Latouche expresses the opinion, held by others, that terra salica was the land attached to the house and not to be detached by inheritance. Later, arable lands were included, which should explain the male only succession rights, because strength was needed for cultivation.

The terra salica chapter is the last chapter of the Salic title "De alodis" that provides the order of priority in inheriting property. The first five chapters of the title are short statements indicating who should inherit the family estate. The sixth and last chapter is different in that it makes a distinction between the alodial land and terra salica. The order of inheriting alodial land was prescribed in the title, but the Salic land was not part of that. Most probably, this land was a later acquisition than the alodial possessions, maybe received as a personal grant which could explain the male only inheritance rights to it.

A review of the material used in this study and the conclusions made based on them reveals a society plagued by many problems. The character of the source material is the cause of this appearance. However, the sources also create a vision of a vital and viable society
because a society that is prepared to deal with its problems through legal procedures is a civilized entity.

The close relationship between church and state is mainly visible in the synodal decrees. That Christianity was one of the cornerstones of early Frankish society is very evident when one studies the position of the bishop and his work in the secular as well as the ecclesiastical world. His is an elected position and, according to the canons, he is elected by layman and cleric alike with royal approval. He is an important member of the lay society because of the fact that he is a property owner, and he is foremost in the local or regional church hierarchy because of his stewardship over the property of the church and the charity work and social services provided by the church. The powers of church and state appear to have been reasonably balanced and points of possible conflict of interest were worked out, as can be seen in the required royal permission the church needed in order to ordain a lay person and in the canonical decision that a bishop should impose penance on a criminal even if that criminal had sought refuge in the church and already had been punished by the secular authorities. The fact that the secular ruler often was instrumental in the convocation of synodal gatherings emphasizes the reality of the intertwining relationship between church and state.

The Frankish codes provide evidence of the need for order in society and non-violent remedies for committed crimes. However, the emphasis placed on correct procedures and on the integrity of court officials are the most important indications that early Frankish society was civilized and alive. Both plaintiff and defendant are
given many and equal opportunities to resolve their dispute in court. The codes reveal a strong family-oriented social structure, wherein the legal procedure of required witnesses and oathhelpers is instrumental in emphasizing the importance of permanent settlements and good relations between the members of each community. Many of the provisions in the codes show that a crime considered to be a direct threat to a person, his family, and his livelihood was among the most severely punished ones. The codes do not provide information about the enforcement of their regulations. However, the contents of the codes indicate that many of the disputes they dealt with were of concern to local communities. Thus it appears probable that the communities provided the enforcement of their judicial decisions.

The importance of documentation is recognized in the codes and several formulae provided by Marculfus underwrite this importance placed on the legality of actions as a safeguard for a society that is developing. The existence of Marculfus' collection indicates that legal procedures became more and more documented which increased the stability of the society. That certain regulations of the older codes, although probably still valid for the most part, could be moderated or even defied without disrupting society, indicates that that society was developing and stable.

Based upon the observations made in the course of this study it is my conclusion, that although the contemporary sources are neither abundantly available nor greatly varied in character the information they provide is essential for the discovery and understanding of early Frankish society. They reveal that the sixth and seventh centuries are
the period during which early Frankish society, a new civilization, emerged, not out of ashes but out of a synthesis of two living components, the Germanic principles of law and the Gallo-Roman organization and Christian church. The nature of a society can be detected most readily in the regulations it imposes on itself. The Frankish codes, synodal decrees, and Marculfus' documents provide these essentials.
NOTES


6 Ibid., pp. 198-220.


16 See map p. 171.

17 PLS 47, chs. 1 and 3, respectively.


26 Gregory of Tours, H.F., Book V, ch. 44.

27 PLS 2, 3, 4, 5, 6, 7, 8, 38, 34, and 9, respectively.

28 LR 19; 47, chs. 1 and 2; 85, ch. 2; 40, ch. 11 (see pp. 106–107).

29 Marulfus, Book I, chs. 13, 14; Book II, ch. 7.

30 Ibid., Book II, chs. 4 and 7.

31 PLS 3, ch. 10.

32 LR 19.

33 PLS 13; 27, chs. 29 and 30.

34 PLS 16, ch. 2.

35 PLS 27, ch. 35.

36 E.g., PLS 2, chs. 1–8; 3, chs. 1–10; 4, chs. 1–2.

37 PLS 31; LR 83.

38 PLS 31, ch. 3.

39 PLS 22, chs. 1 and 2.

40 Marulfus, Book I, ch. 14; Book II, ch. 4.

42 C. Tacitus, op.cit. (see Ch. 1, note 3).


44 C. J. Caesar, op.cit., IV, ch. 1.


46 VI, 22.

47 IV, 1.

48 VI, 22.

49 J. Kulischer, op.cit., pp. 9-11.

50 Ibid., pp. 11-12.

51 Ibid., p. 12.

52 Tacitus, op.cit., chs. 23 and 25.

53 Ibid., ch. 23.

54 Ibid., ch. 25.

55 Ibid., ch. 26; see also J. Kulischer, op.cit., p. 13.


68. Ibid., pp. 100–113.

69. Ibid.


74 PLS 27, ch. 7.

75 PLS 27, ch. 18.

76 PLS 27, ch. 19.

77 PLS 9, ch. 9.

78 PLS 27, ch. 17.

79 PLS 27, ch. 13.

80 PLS 16, chs. 3 and 4; 2.

81 PLS 27, chs. 1-3.

82 PLS 9, chs. 1, 6, and 7.

83 PLS 10, ch. 6.

84 PLS 33, ch. 2.

85 PLS 6, chs. 1 and 2.

86 PLS 7, chs. 1-4.

87 PLS 27, chs. 27 and 28.


89 PLS 9, chs. 1, 6, and 7.

90 PLS 31; LR 83.

92. PLS 58, chs. 1-4.

93. Karl Lamprecht, Zur Sozialgeschichte der deutschen Urzeit (Tübingen, 1889); LR 12, ch. 2.

94. PLS 59, ch. 3.

95. PLS 58, ch. 5.


98. Ibid., p. 107.


100. Ibid., p. 173.


102. Ibid., pp. 139-148.


104. Ibid., p. 15, note 5.

105. See pp. 102-103; PLS 46.

106. PLS 60, chs. 1 and 2.

107. See also Charles Lelong, op.cit., pp. 84-85.


109. Ibid., lines 2 and 3.
Ibid., lines 8 and 9.

C.G. (see ch. 2, note 47), First Synod at Orleans in 511, canon 13; Second Synod at Orleans in 533, canons 17 and 19; Synod at Tours in 567, canon 15; First Synod at Macon in 581, canon 12.

C.G., Third, Fourth, and Fifth Synods at Orleans, canons 2, 17, and 4, respectively; Synod at Tours, canons 13 and 19; First Synod at Macon, canons 11 and 12; Third Synod at Lyon in 583, canon 1; Council at Auxerre in 585-586, canon 21.

Gregory of Tours, H.F., Book II, ch. 12.

Canon 11.

C.G., First Synod at Orleans in 511, canon 13; Second Synod at Macon in 585, canon 16; Council at Auxerre, canon 22.

Book II, ch. 17, lines 61-63.

PLS 44, ch. 12.

PLS 59, chs. 1 and 2; LR 57, chs. 1 and 2.

PLS 59, chs. 3 and 4.

PLS 57, ch. 3.

PLS 59, ch. 5.

PLS 62, chs. 1 and 2.

LR 62, ch. 9.

Marculfus, Book II, ch. 12: Carta, ut filia cum fratres in paterna succedat aedoe.

Ibid., lines 3 and 4.

Book II, ch. 7, lines 11 and 12 et al.

128 C.G., Second Synod at Orleans, canons 17 and 18; see p. 68.

129 Marculfus, Book II, ch. 12, line 11.

130 LR 57, ch. 4.

131 PLS 59, ch. 6.


133 Ibid., pp. 272-273.


137 Ibid., p. 80.
Map of France and adjacent countries with present-day political boundaries. Some geographic locations are from Auguste Longnon, *Géographie de la Gaule au VIe siècle* (Paris, Librairie Hachette et Cie., 1878), Carte de la Gaule après le Traité d'Andelot en 587.
KINGSLIST

Clovis 481-511
Theodebert I, Austrasia 511-534
Theodebert I, Austrasia 534-548
Theodebert I, Austrasia 548-555
Chlodomer, Orleans 511-524
Childebert I, Paris 511-558
Lothar I, Soissons 511-561
(Orleans and Austrasia) 555-561
Sigibert, Austrasia 561-575
Charibert, Paris 561-567
Guntram, Orleans and Burgundy 561-584
Chilperic, Soissons 561-584
(Paris) 567-584
Childebert II, Austrasia 575-595
(Orleans and Burgundy) 593-595
Theodebert II, Austrasia 595-612
Theoderic II, Orleans and Burgundy 595-613
(Orleans and Austrasia) 612-613
Lothar II, Soissons and Paris 584-629
(Orleans, Burgundy, and Austrasia) 613-629
Dagobert 629-639
Clovis II, Neustria and Burgundy 639-657
Lothar III, Neustria 657-673
Chilperic II, Austrasia 663-673
Theoderic III, Neustria 673-690
(Austrasia) 679-690

CHRONOLOGICAL LIST OF CITED CHURCH COUNCILS IN GAUL
DURING THE SIXTH AND SEVENTH CENTURIES
AND THE EDICT OF LOTHAR II

511 - First Synod at Orleans
533 - Second Synod at Orleans
538 - Third Synod at Orleans
541 - Fourth Synod at Orleans
549 - Fifth Synod at Orleans
Ca. 551 - Second Synod at Paris
554 - Fifth Synod at Arles
Ca. 556/557 - Third Synod at Paris
567 - Second Synod at Tours
Ca. 577/581 - Synod at Berny
581 - First Synod at Macon
583 - Synod at Lyons
585 - Second Synod at Macon
585/586 - Council at Auxerre
614 - Fifth Synod at Paris
615 - Edict of Lothar II
After 615 - Synod at Paris
624/625 - First Synod at Reims
Ca. 644/656 - Synod at Chalons
Ca. 658 - Synod at Nantes
Ca. 660/673 - Synod at Bordeaux
Ca. 670/671 - Synod at Latona
Primary Sources:


, ed. Karl August Eckhardt, Germanenrechte Neue Folge, I 2, Systematischer Text (Goettingen, Berlin, Frankfurt, Musterschmidt Verlag, 1957).


Secondary Sources (cited):


Brunner, Heinrich, *Deutsche Rechtsgeschichte* (Lsizig, Von Duncker und Humblot, 1906).


Rukser, Udo, Der Diebstahl nach der lex Ribuaria (Weimar, Hermann Boehlaus Nachfolger, 1913).


Sohm, Rudolph, La procédure de la Lex Salica (Études sur les institutions germaniques), translation and annotation by Marcel Thévenin (Paris, Librairie A. Franck, 1873).


