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REMARKS ON EARLY MEDIEVAL ALEMANNIC CODES

The paper deals with the age and the origin of the early medieval Alemannic common law, the fragments of the Pactus Alamannorum and the text of the Lex Alamannorum, which has an exceptionally rich manuscript tradition. After examining the common roots of the regulations and the prologues of the Lex Alamannorum and the Lex Baiuvariorum, and the influence of Frankish capitularia on the Alemannic leges, a possible answer to the question regarding the date and the legislator will be presented.

Key words: *Lex Alamannorum. – Pactus Alamannorum. – Early medieval legal history. – Volksrecht.*

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1. INTRODUCTION

The Alemanni are first mentioned by Roman sources in 213 AD, when Caracalla ordered the repel of the Alemannic invasions in the upper Main region (Brunner 1906, 42). Around 260 AD, the Alemanni broke through the limes and reached Gaul; later Mamertinus's *panegyricus* mentions them in 289 AD in connection with the victories of Maximianus Augustus (Mamertinus, *Panegyricus* 5, 1). Nevertheless, soon after the Romans were repeatedly defeated by the Alemanni, leading to them becoming permanent inhabitants of the Roman Empire, which, however, was advantageous to the Romans in that, as *cohors Alamannorum*, they decided to take part in the protection of the Danube and Rhine limes (Brunner 1906, 42). This area is henceforth referred to in the sources as Alamannia (Steuer 1998, 276). In the 5th century, a part of Alsace was under the rule of the Alemanni, the territory of present-day Switzerland extending to the Alps, Vorarlberg as well as the lands to the east, to the river Lech (Geuenich 1994, 168). After 496 AD (the battle of Zülprich), Chlodwig brought the northern part of the area previously inhabited by the Alemanni under Frankish rule, while the other areas remained under the Eastern Gothic Protectorate, until the death of Theodoric the Great (Zöllner 1970, 56; Schröder 1907, 95). After the death of Charles Martel (714–741 AD), a dispute over the throne erupted between his sons, Pepin and Carloman. Taking advantage of the situation, Theudbald, the son of the Alemannic Prince Lantfrid (709–730 AD), forced into subjection by Charles Martel, tried to regain the independence of the duchy. Carloman broke the tough resistance of the Alemanni, and in 746 AD at Cannstatt he slaughtered part of the Alemannic nobility (*Blutgericht von Cannstatt*), and divided Alemannia into two counties under Warin and Ruthard, thus finally making it part of the Frankish Empire (Riché 1992, 75).

Alemanni popular law survived in two versions: the older version is titled *Pactus Alamannorum*, while the newer version is the *Lex Alamannorum.*

The *Pactus Alamannorum* has survived in a single manuscript, in fragments, and in the fragments scattered throughout the manuscript. It has been preserved due to the inattention of a 9th century scribe who inserted fragments of texts mixed up in the material to be copied into the text of the *Lex Alamannorum* (Schott 2014b, 167). This is how four longer fragments survived, and another *fragmentum* was preserved as the appendix to a manuscript of the *Lex Alamannorum,* and was later identified as being part of the *Pactus* (Schott 1974, 136; Schott 2014a, 862–869). Accordingly, Karl Lehmann's edition divided the *Pactus* into five fragments, regardless in its

editio, while Karl August Eckhardt favoured classification based on content (Lehmann, Eckhardt 1966, 21–32; Eckhardt 1958, 98–148). Later research qualified the latter as foreign to the source despite its clarity.

The *Lex Alamannorum* was preserved in fifty manuscripts that originate from between the 8th and the 12th century, while the existence of another dozen lost manuscripts can be inferred. This means that in addition to the *Lex Salica,* it is one of the *Volksrecht* with the most abundant textual tradition (Schott 2014b, 174). The manuscript tradition does not show any significant variation in content, the differences are predominantly linguistic in nature, except for the introductory part of the law.

2. THE ISSUES OF DATING AND THE LEGISLATOR IN SCHOLARLY LITERATURE

The first sentence of the *Pactus Alamannorum* is the fragmentary '*Ubi fuerunt XXXIII duces et XXXIII episcopi et XLV comites*', which refers to the circumstances and the actors involved in legislation, but does not name the legislator, i.e. the ruler themselves.

Most of the manuscripts of the *Lex Alamannorum* begin with the phrase '*Incipit lex Alamannorum, qui temporibus Chlothario rege una cum proceribus suis, id sunt XXXIII episcopi et XXXIIII duces et LXV comites, vel cetero populo adunatu (constituta est)*', while two (previous) manuscripts start with the phrase '*In Christi nomine incipit textus lex Allamannorum, qui temporibus Lanfrido filio Godofrido renovata est. Incipit textus eiusdem. Convenit enim maioribus nato populo Allamannorum una cum duci eorum Lanfrido vel citerorum populo adunato, ut si quis...'.* The main difference between the two variants is that while the first states that the law was created during the reign of King Clothar at a Frankish imperial diet (held in the presence of thirty-three bishops, thirty-four princes and forty-five counts), according to the second it was created at an Alemannic provincial assembly during the reign of Lantfrid, and was revised under his son, Gotofrid (Schott 2014b, 169).

It should be noted that since several manuscripts of the *Lex Alamannorum* mention *rex Chlotharius* as legislator in the sentence identical or similar to the *Pactus*: '*Incipit lex Alamannorum, qui temporibus Chlothario rege una cum proceribus suis, id sunt XXXIII episcopi et XXXIIII duces et LXV comites, vel cetero populo adunatu (constituta est)*', it may be presumed that the relevant part of the *Pactus* contained the name of this ruler (Schott 2014b,

168). However, there is no consensus in the literature whether this ruler should be identified as Chlothar I (511–561 AD), Chlothar II (584–629 AD), or Chlothar IV (717–719 AD).

August Friedrich Gfrörer considered the *Lex Alemannorum* to be the result of Charles Martel's legislative work, which sought to bring the independent Alemannic principality back under Frankish influence. Gfrörer dated the *Pactus* to the 7th century, and considered the *Lex* its revision, stating that it was not a result of Prince Lantfrid's activity but rather was only created during his reign sometime between 724 AD and 730 AD, and furthermore, it was contrary to his aspirations.

According to Heinrich Brunner, parts of the *Lex Alamannorum* and the first and second titles of the *Lex Baiuvariorum* can both be traced back to a lost Merovingian royal law, however, he did not believe that the original text of the law could be reconstructed (Brunner 1931, 619). He dated the common prototype to the time of Dagobert I's united rule (629–634 AD), and its promulgation to the imperial diet mentioned in the *Pactus.* He places the *Lex Alamannorum* as a later edition, between 717 AD and 719 AD (the *Lex Baiuvariorum* between 744 AD and 748 AD), while the fragmentary *Pactus*, because it mentions Chlothar (IV), was somewhat later, but prior to the king's death in 739 AD. Accordingly, he considers the surviving Alemannic legislation to be a princely law, the re-formulators of which adhered less to the common prototype as the compilers of the *Lex Baiuvariorum* (Brunner 1931, 613; Beyerle 1929, 380).

Bruno Krusch considered Charles Martel to be the creator of the *Lex*, during the figurehead rule of Chlothar IV, around 718 AD; in his opinion Chlothar IV is only mentioned in the introductory part of the law because the *maior domus* did not have and could not have the royal (sacral) legitimacy necessary for legislation (Krusch 1924, 307). In his view, in a later rebellion against the *maior domus*, Prince Lantfrid redrafted the text of the law at an Alemannic provincial assembly in 726 AD (or 727 AD), vindicating the status of the legislator for himself.

Konrad Beyerle's position is that Charles Martel could hardly have needed to include the name of one of the last Merovingian rulers, deprived of his actual influence, for the purpose of legitimacy (Beyerle 1926, LXIV). It is well-known that about a century before the actual Carolingian takeover, the Merovingian rulers were present in the political life only as puppet kings, as the actual control was concentrated in the hands of the *maior domus*, who, from Theuderich IV's death in 737 AD until the death of Charles Martel, i.e. until 741 AD, decided to ignore appearances as well, did not replace the king and ruled the Frankish empire in the absence of a *de iure* ruler (Ewig 1988,

202). Charles Martel's sons, Carloman and Pepin, acclaimed a puppet king from the Merovingian dynasty in 743 AD in the person of Childebert III, but after his death in 751 AD, Pepin crowned himself king.

Sharing Brunner's views, i.e. starting from the history of the origin of the *Prologus* of the *Lex Baiuvariorum*, Franz Beyerle further developed the theory in an attempt to unravel the stratifications of the text (Beyerle 1956, 84). He dated the catalogue of sanctions to the time of Theuderic I (511–532 AD) (for the northern part of Alemannia, as the southern part was under Eastern Gothic rule), the provisions on the church and the prince – to the rule of Theudebert I (532–548 AD), the novellas introduced at the initiative of the church – to the rule of Chlothar II (596–629 AD), mentioned *expressis verbis* in the text, the editing by the four jurists mentioned in the *Prologus* of the *Lex Baiuvariorum* – to the rule of Dagobert I (623–639 AD), the re-editing by the princes between 655 AD and 725 AD, i.e. the time of independence of Alemannia, and the provisions strengthening the prominent position of the church – to the rule of Lantfrid (709–730 AD).

Karl August Eckhardt connected the reference to Chlothar (originally in the *Pactus*, later incorporated in the *Lex*) to Chlothar II (584–629 AD) and, based on historical facts, he dated the creation of the *Pactus* at the earliest to between 613 AD (the conquest of Austrasia) and 623 AD (the independence of Austrasia under Chlothar I's son, Dagobert I) and set its legislative goal to be the integration of Alemannia into the Frankish Empire. On the other hand, he considered the *Lex* to be Lantfrid's work and dated its creation to between 712 AD and 725 AD, the period of loyalty to Frankish authority. In his view, the introductory phrase was changed after Lantfrid's death but before 743 AD, and Chlothar IV's name was introduced at the same time (Lehmann, Eckhardt 1966, 90). Nevertheless, in his opinion, Chlothar IV can be ruled out as legislator as he did not wield sufficient political power to carry out and adopt legislative work (Eckhardt 1934, VII).

Clausdieter Schott considered the author of the *Pactus* to be Chlothar II, emphasising that the language of the law is comparable to that of the *Lex Ribuaria*, as well as the later versions of the *Lex Salica.* On the other hand, he dated the *Lex Alamannorum* to Lantfrid's rule, however he stressed the close connection of the *Lex Alamannorum* to the Monastery of Reichenau, which, according to tradition, was founded by Charles Martel in 724 AD, despite Lantfrid's resistance (Schott 1993, 16). At the same time, the fact that the *Liber confraternitatis* (*Verbrüderungsbuch*) of Reichenau mentions Lantfrid as the founder of the monastery seems to refute the controversy surrounding the founding of the monastery between the *maior domus* and the Alemannic prince. Based on this, the years 724 AD and 725 AD cannot be ruled out as the dates of creation of the *Lex Alamannorum*; however, the text

of the law does not name the prince as legislator, it only identifies Lantfrid as the ruler at the time of the creation of the law. In his view, the ecclesiastic origin of the *Lex* is also supported by the fact that compared to other *Volksrechte*, the Alemannic law conferred the most significant privileges on the church, which does not rule out the theory that the creation of the law was not based on the legislating intention of the ruler/prince, but it is merely the product of the monastery at Reichenau, coming into being during the turbulent times after the death of Lantfrid, between 735 AD and 740 AD (Schott 2014a, 862). If the *Lex* is to be regarded as a forgery worded at the monastery at Reichenau, it is clear that the provincial assembly held by Lantfrid, with the participation of the counts, bishops and of the people, is no more than mere fiction for the purpose of legitimation.

3. POSSIBLE COMMON ROOTS OF ALEMANNIC AND BAVARIAN LAW

The *Prologus* of the *Lex Baiuvariorum* contains a very specific description of the alleged historical process of the drafting of Bavarian and Alemannic laws, based on which this legislative or codifying act was carried out as follows (Nótári 2014, 15). During his stay in Chalons, and after Chlodwig's death in 511 AD, the Frankish king, Theuderich, set up a committee of men versed in the law to record the rights of Franks, Alemanni and Bavarians under his authority, in accordance with the common laws of each nation, and in doing so, to replace the pagan elements with Christian ones. This was followed by the legislative amendments by Childebert and Chlothar at the turn of the 6th and 7th centuries, as well as by the reform carried out by four advisors, Claudius, Chadoind, Magnus, and Agilulf (at Dagobert's request), and the written promulgation of the legislation in force.

In connection with the dating of the Alemannic laws, the literature frequently raises the question of the evaluation of the historicity of the *Prologus* included in the *Lex Baiuvariorum*, as well as the content elements of the first two *titulus* (regulation regarding the church and the prince) in the text of the law. In this respect, two opposing views have emerged, namely the theory of unity *(Einheitstheorie)* and the theory of creation in several steps *(Schichtentheorie)*. The proponents of the latter theory suggest that the surviving versions of the Alemannic (and Bavarian) law presuppose the existence of several layers of text that clearly differ in time. Proponents of the theory of unity trace the creation of the law back to a unified, royal legislative will and to the approval by the people at the Frankish imperial diet (Hohenlohe 1932, 5; Siems 1978, 1887–1901).

Approximately two-thirds of the *Prologus* of the *Lex Baiuvariorum* comes from Isidore's work titled *Origenes seu Etymologiae*, more exactly from its fifth book, which discusses the history of codification of the antiquity and certain mythical elements; at the same time, as an exercise in legal theoretical analysis, it defines the relationships between justice, law and common law (*Lex Baiuvariorum* 5, 1, 1–7; 5, 3, 1–4). In addition, the *Prologus* contains a short account of the legislative activities of the Frankish king, Theuderich, i.e. of the creation of the laws recorded for the Franks, Alemanni and Bavarians, on the king's orders for purposes of legitimacy.

The authenticity of the *Prologus* first became subject of scientific debate in the 17th century: In his work published in 1643, Hermann Conring did not question the veracity of the descriptions contained in it. Mederer was the first to point out in 1793 that the text of the *Lex Baiuvariorum* and the narrative of the history of codification in the *Prologus* contradicted each other in many respects. If the content of the *Prologus* were to be completely valid, the text of the law known to us would have been created in the 7th century, which however is contradicted by the provisions of the Bavarian law, which presuppose the existence of a stable and complex Bavarian church system. Yet, this was established only in the first third of the 8th century. The credibility of the narrative in the *Prologus* has since been questioned by many, e.g. by Gfrörer, who also examined the *Prologus* of the Alemannic law (Gfrörer 1865, 168). Of course, there were also attempts to 'rehabilitate' the *Prologus*, an example of which is Brunner's conception of the narrative on the history of codification as the presentation of the activities of redrafting a Merovingian imperial law. According to this theory, this imperial law was issued by King Dagobert I between 629 AD and 634 AD, with the effect extending over several principalities (Brunner 1906, 453). According to Gengler, based on its genre, the *Prologus* is not a legal code, i.e. it is not a piece of legislation, but a historical narrative, and as such it belongs to the sphere of historiography (he hypothesises that the narration included in the *Prologus* is an extract from a lost, more comprehensive historical work, and accordingly, he dates the final drafting of the Bavarian law to the reign of King Dagobert I, i.e. the period between 623 AD and 639 AD). Roth does not rule out the involvement of King Dagobert and his legal scholars in the drafting of Alemannic and Bavarian laws, but notes that this intervention may have affected only a few *titulus*, and that the surviving text of the other norms reflects the legal perceptions of later editors (Roth 1848, 6; Mederer 1793, 32).

Regarding the time of creation of the *Lex Baiuvariorum*, the first *terminus ante quem* to be considered is the earliest accurately dated Bavarian Council, the Council of Ascheim, during which there was reference to two passages (2, 1; 7, 5) in the *Lex Baiuvariorum*: '*De reliquo promiscuo volgo,*

ut in lege Baiuvariorum consistere debet, ut de eorum hereditate, exceptis capitalibus criminibus, non alienentur'. The Council also mentions Tassilo III's predecessor, which makes it likely that the *Lex Baiuvariorum* was created before the rule of Tassilo, the last independent duke of Bavaria, i.e. before 748 AD: '*De legibus ecclesiarum paterna reverentia conperiemini et nos maxime admoneri oportit, quod tot diffusus orbs oriens occidensque conservat et precessorum vestrorum depicta pactus insinuate*'. On the issue of dating, research has always relied on the introductory *Prologus* which provides general – and in some ways 'legal theoretical' – explanations of the function of the legislator and the legislation, as well as of the concept of *lex* and *consuetudo*, as Isidorus Hispalensis does (Landau 2004, 30). This is followed in the *Prologus* by the presentation of the codification process carried out by Theuderich, Childebert, Chlothar, and Dagobert, aided by the four advisors, Claudius, Chadoind, Magnus, and Agilulf.

Researchers still have not reached a consensus regarding the veracity of the events portrayed in the *Prologus.* For Bruno Krusch, the *Prologus* was nothing more than a tendentious falsification trying to legitimise the legislative power of the Frankish ruler over Alemannia and Bavaria tracing it back until Chlodwig's death (Krusch 1924, 259). Franz Beyerle assumes that the *Prologus* originated before 656 AD, i.e. during King Dagobert I's lifetime, since he was the only one among the listed rulers to receive the epithet *gloriosissimus* (Beyerle 1929, 373). Mayer also believes that the *Prologus* originates from the 7th century and that the narrative passage on Frankish legislation was only later complemented with the ideas from Isidorus on the nature of *lex* and *consuetudo* (Mayer 1886, 133). It should be noted, however, that certain parts of the *Prologus* most likely refer to historical facts, since we know about legislative action that took place both during the reign of Childebert II and Chlothar II: the former can be linked to the *directio* created around 596 AD, and the latter to the *praeceptio* from 584 AD/628 AD and the *edictum* from 614 AD. The *Lex Ribuaria*, based on the Salian Frankish law code, was also created during the reign of Dagobert I, around 633 AD. Two of the royal advisors mentioned in the *Prologus* are historically identifiable: Fredegar writes with utmost appreciation about the wisdom and proficiency in the sciences of Claudius, who held the position of *maior domus* in 605 AD, and also mentions Chadoind as Dagobert I's *referendarius* and military leader (Fredegarius, *Chronicae* 4, 28, 78). In the case of Agilulf, there is a bishop mentioned by Fredegar in connection with the events of the year 642 AD, while in regard to Magnus, there is a bishop of Avignon by that name (Landau 2004, 33). At the same time, we cannot ignore the fact that other sources do not mention Dagobert I's legislative activity expanding over the Bavarian territories, while Theuderic I's Alemannic and Bavarian legislative

role can hardly be more than mere legend, all the more so because the appearance of the Bavarians is first reported by sources only a decade and a half after Theuderich's death in 533 AD.

Regarding the dating of the *Lex Baiuvariorum*, Peter Landau paid particular attention to the introductory *rubricatio* found in most of the manuscripts of the law: '*Hoc decretum est apud regem et principes eius et apud cunctum populum christianum qui infra regnum Mervungorum consistent*'. The Frankish ruler, from whom the legislative initiative originated, is not mentioned here as *regnum Francorum*, but as *regnum Mervungorum*, the emphasis being not on belonging to the Frankish people but on the dynasty. And this emphasis only makes sense if the author of the text wants to support the royal claim of the Merovingians, perhaps precisely because it was threatened (Landau 2004, 34).

It is well known that about a century before the actual takeover by the Carolingians, the rulers from the Merovingian dynasty were present in politics only as puppet kings, as actual control was in the hands of the *maior domus*, and that from the death of Theuderich IV in 737 AD until Charles Martel's death in 741 AD, he did not appoint a king, not even for the sake of appearances, and in the absence of a *de iure* ruler, he ruled the Frankish Empire (Ewig 1988, 202). Charles Martel's sons, Carloman and Pepin, acclaimed a puppet king from the Merovingian dynasty in 743 AD in the person of Childebert III, but after his death in 751 AD, Pepin crowned himself king, having eradicated both the Alemannic and the Bavarian claims of independence (Affeldt 1980, 96).

The date of origin of the Bavarian law, assumed by Heinz Löwe and Peter Landau to be between 737 AD and 743 AD, is supported by the ecclesiastical influence in the *Lex Baiuvariorum*, which goes far beyond Germanic popular law. It is clear from the text of the law that its compiler started with knowledge of canonical rules and a clearly defined ecclesiastical organisation (*Lex Baiuvariorum* 1, 12). It is possible that around 740 AD, by the time the first Bavarian monasteries were established, the compiler of the *Lex Baiuvariorum* was familiar with Isidor's work and could have based the 'legal philosophical' explanations of the *Prologus* on it (Jahn 1991, 192; Bischoff 1966, 171–194). In addition, the fact that the compiler of the *Lex Baiuvariorum* also used the *Lex Alamannorum* in his work also supports the dating between 734 AD and 743 AD. Given the likely very close kinship between Lantfrid, duke of Alemannia, and Odilo, duke of Bavaria, there is a high likelihood that Odilo's ducal program also included the collection of legislative works (Jahn 1991, 123; Landau 2004, 38; Nótári 2014, 29).

Landau raised the issue of whether Odilo's commissioners had been able to use in their work any pre-existing written legislation regarding Bavaria, possibly originating from the Merovingian era, which they could rewrite or complement in order to facilitate their task. Regarding Alemannia, it is certain that the compilation initiated by Lantfrid was indeed a kind of *renovatio*, as they had the *Pactus Alamannorum* at their disposal.

It seems doubtful, however, that the narrative history of the codification contained in the *Prologus* is historically entirely authentic (Landau 2004, 40). The question arises as to what 'prototypes' and sources the editor of the *Lex Baiuvariorum* may have consulted for the part of the *Prologus* that is not based on Isidore's *Origines seu Etymologiae.* Childebert and Chlothart are mentioned as legislators in the manuscript of the *Lex Salica* from Wolfenbüttel (Krammer 1910, 466). Two versions of the *Prologus* of the *Lex Salica*, drafted in the first half of the 8th century, i.e. before the creation of the *Lex Baiuvariorum*, mention four men (*electi de pluribus viris quattuor*) who finalised the text of the Frankish common law in three sessions (Schmidt-Wiegand 1978b, 1951). The narrative of the four-member committee was therefore likely to have been included in the *Lex Baiuvariorum*, under the influence of the *Lex Salica*. The names of Claudius and Chadoind are presumably taken by the author from Fredegar's *Chronica*, Agilulf's name here probably does not mean a historical but a fictitious person referring to the Bavarian ducal family, while there is no consensus regarding the name of the fourth man, Magnus (Beyerle 1926, LXIII; Landau 2004, 41). Konrad Beyerle considers it to be a well-sounding but colourless and unidentifiable name, while Peter Landau associates it with Magnus from Narbonne, a *praefectus praetorio* present around 460 AD at the court of Theuderich II, king of the Visigoths, a legal scholar praised by Sidonius Apollinaris in his *panegyricus* for his outstanding erudition. It cannot be ruled out, therefore, that the mention of the name Magnus is nothing more than a prototype of a legal advisor to Germanic rulers (Beyerle 1926, LXIV; Landau 2004, 41).

Taking all this in consideration, in agreement with Landau, we can conclude that the history of origin suggested by the *Prologus* as the source of Alemannic and Bavarian *lex*es is not entirely correct, nevertheless, it provides much information on the views, education and identity of the compilers of the law in the 8th century.

4. A POSSIBLE RESPONSE TO THE ISSUE OF DATING AND THE LEGISLATOR

As we have seen, there is relative consensus in the literature that the *Pactus Alamannorum* is Chlothar II's work. His identity seems to be supported by the fact that in September 626 AD or 627 AD, forty bishops, an abbot and a deacon (the latter as an emissary) were present at the Council of Clichy, and this number is similar in magnitude to the description found in the *Pactus* (Fastrich-Sutty 2001, 85). The list in the introductory sentence of the *Pactus* obviously refers to a Frankish imperial assembly. The named ruler is most likely Chlothar II (581–629/630 AD), as his position of power among the ones bearing that name allowed only him to hold this significant imperial assembly with such a high number of participants (Schmidt-Wiegand 2001, 201–205). This means that the time of creation of the *Pactus* was most likely between 613 AD and 623 AD. In addition to the introductory sentence, the provisions themselves make it clear that the *Pactus* was drafted specifically for Alemannia, as, for example, the text uses *Alemannus* and *Alemanna* as the names of victims in describing the different forms of battery. As such, the *Pactus* can be understood as both Frankish and Alemannic law, since the creator of the source of the law was a Frankish ruler, and its subjects were the Alemanni (Schott 2014b, 169).

Regarding the *Lex Alamannorum*, due to the manuscripts mentioning *Chlotharius rex*, the possibility has also been formulated in the literature that the law could be traced back to the provisions of Charles Martel, the *maior domus* wielding actual power during the reign of Chlothar IV. Nevertheless, the Alemannic tradition wanted to attribute its creation to Duke Lantfrid in order to legitimise Alemannic independence. There is, however, an opposite approach that focuses on a similar period in terms of dating, according to which the law actually owes its existence to Lantfrid's provisions, and the name of Chlothar IV, the last Merovingian ruler, was inserted into the text only to support Frankish claims to the throne, aiming to compensate the political power of the Carolingian *maior domus* (Schott 1974, 137). The wording referring to Chlothar is the result of subsequent contamination of the *Lex*, thus the version naming Duke Lantfrid as legislator is to be regarded as the original. According to this, Latfrid renewed and completed the text of the *Pactus* during his balanced relationship with the Frankish ruler, i.e. between 712 AD and 724 AD, and Chlothar's name was introduced for political reasons only after Lantfrid's failed rebellion against the *maior domus*, Charles Martel, striking Lantfrid with a form of *damnatio memoriae* (Schott 2014b, 168; Schwab 2017, 26). Nevertheless, it seems to be certain that the Frankish rewriting of the text was carried out before Lantfrid's death, i.e. between 730 AD and 743 AD, since by the time the *Lex Baiuvariorum* was finally drafted (743 AD at the latest), the text of the Alemannic law as we know it had to

be finalised, given the high degree of overlap in their system of *composition* (Schott 1993, 12–17; Fastrich-Sutty 2001, 83). The introduction mentioning the Alemannic duke, Lantfrid, can be considered an earlier version of the *Lex Alamannorum*, while the one mentioning Chlothar is most likely a later reformulation of the law, both clearly indicating the objective – the renewal of *Pactus Alamannorum* (Schott 2014b, 175). The *Lex Alamannorum* was most likely created at the initiative of Duke Lantfrid, sometime between 712 AD and 730 AD (Schott 1974, 135). The ecclesiastical influence originating from Reichenau does not necessarily suggest a monastic forgery behind the text in the law, as Schott assumes. In this respect, Baesecke's position that there may have been closer cooperation between the Reichenau monastery founded by Pirmin in 724 AD and the ducal emissaries, seems more convincing in this respect (Baesecke 1935, 28).

5. THE STRUCTURE AND THE REGULATORY SYSTEM OF THE *PACTUS* AND OF THE *LEX ALAMANNORUM*

In terms of content, the remarks by Byzantine historian Agathias Scholastikos (530–582 AD) can also refer to the period when the *Pactus Alamannorum* was created. In his description, the Alemanni lived according to the laws and customs inherited from their fathers (*nomima kai patria*), but from the point of view of public law (*politeia*) they were subject to Frankish rule. They are predominantly still pagans, but Christianity is spreading among them due to the Frankish influence (Schmidt-Wiegand 2003, 113–124). Agathias's work was written around 580 AD, but in terms of content it reflects the conditions in the mid-6th century. According to this, the Alemanni did have an independent legal system, but their state law was under Frankish influence (Schott 2014b, 170). Regarding its content, the *Pactus*, as indicated by the Latin language of its wording showing strong Frankish influences, is nothing more than a law containing a catalogue of penalties, issued to the Alemanni as a product of Frankish legislation, its primary function being to replace blood feud with the system of *compositio.* According to Schott, the issue of the appearance of *ex asse* Alemannic, i.e. more ancient elements, cannot be clarified in the *Pactus* (Schott 2014b, 167).

From the linguistic point of view, the *Pactus* does not contain Alemannic phrases, the terms of Germanic origin are mostly Latinised Frankish legal terms, such as *wirigildium* ('man money', 'bounty'), *mundum* ('guardianship'), *litus/leta* ('semi-free'), *minofledis* ('small wealth person'), *wegalaugen* ('highway robbery'), and *wadium* ('bond'). This fact suggests that the wording of the *Pactus* took place in a Frankish legal context (Schmidt-Wiegand 1978a, 9–37; Schott 2014b, 171).

The Frankish effect can also be clearly identified in the wording of the facts: the wording and the elements of fact patterns overlap with the *Lex Salica* as well as the *Lex Ribuaria* in more than one case, but they are by no means literal reproductions. For example, mill iron theft is expressed in the *Lex Salica* (22, 2) using the Vulgar Latin word *furare*, while the *Pactus Alamannorum* uses the word *involare.* The legislative phrase *mallobergo antedio* does not appear in the *Pactus*, and is replaced by the Frankish term *taxega*, meaning theft. As regards legal consequence, the *Pactus* orders the payment of a *duplum* and six *solidus*, while the *Lex Salica* includes a limited amount of compensation, forty-five *solidus.* Regarding ear damage, there are also substantial differences between the two Frankish laws and the Alemannic *Pactus*: the *Lex Salica* only mentions the provision regarding ear-cutting, while the *Lex Ribuaria* differentiates between its consequences (injuries resulting in total loss of hearing or not resulting in loss of hearing). The *Pactus* only includes provisions regarding one type of injury, but highlights the occurrence of loss of hearing as a factual element (*Lex Salica* 29, 14; *Lex Ribuaria* 5). In the case of injuries to the skull, the *Lex Salica* only takes the severity of the injury into consideration for sanctioning purposes, while the *Lex Ribuaria* also determines the method of proof (when thrown from twelve feet, the broken bone must make a sound while hitting a shield). The latter can also be found in the *Pactus* with a different wording (*Lex Salica* 17, 4. 5; *Lex Ribuaria* 71, 1). While the two Frankish laws show a fairly close relationship (although the regulations of the *Lex Ribuaria* are more detailed), the wording of the *Pactus* differs significantly from the two. It cannot be ruled out that the Alemannic text could be traced back not to a direct Frankish model, but to a common custom appearing frequently in Germanic common law, which is also contained in the *Edictus Rothari* (46) of 643 AD. It is worth mentioning that the *compositio* in the *Pactus* is lower than the ones found in Frankish laws, which is due on the one hand to the lower level of economic development of the area, and on the other, to the higher level of plasticity of the Alemannic social structure. However, the *Pactus* does not contain any facts or wordings showing *ex asse* independent Alemannic features that do not overlap or relate to Frankish regulations. This is also due to the gaps in the textual tradition (Schott 2014b, 174).

In terms of content, the *Lex Alamannorum* can be divided into three main parts: ecclesiastical affairs (1, 1–23), provisions regarding the duke (1, 24–44), and provisions/legal issues arising among the people (1, 44–3, 104). This division follows the regulatory order of the provincial councils of the era (Schott 1974, 141–143; Schwab 2017, 28). In terms of its structure, it bears a kinship with the *Lex Baiuvariorum* and thus with the *Leges Visigothorum.* At the same time, a double parallelism can be detected in the division (*causae ecclesiasticae – causae saeculares; causae ad principem pertinentes – causae*

ad populum pertinentes); the sharp distinction between the ecclesiastical and the secular is already reflected in the provisions and *capitualre* of the Frankish councils, and there are cases for the triple division features in the *Lex Alamannorum* in the 6th century, for example in the text of the 614 Council of Paris (this system is sometimes broken in the *Lex Alamannorum* which can be attributed to later *Articuli novellaris*).

The provisions regarding the church confer it a privileged position compared to other common laws. They guarantee unlimited donation possibilities to the donors: the *compositio/*blood money of ecclesiastics was set higher than that of free Alemanni, three times higher in the case of *presbyter parochianus* (1, 12) and one and a half times higher for the bishop's deacon and monks (1, 13), the bishop's being set at the same rate as that of the duke (1, 11). The blood money for the ecclesiastical *colonus* was identical to the free ones, although in principle their social status was lower than the latter (1, 8), which may have facilitated the decision in cases when a free man wanted to establish a relationship of dependence with the church (Schott 1974, 145). The abolition of a state of slavery could take place by emancipation, either *in ecclesia* or *per cartam.* The two forms of *manumissio* were included in 321 AD in Constantine the Great's decree, which was transferred to the *Volksrechte* from *Codex Theodosianus* (4, 7, 1) with the mediation of the *Lex Romana Burgundionum* (3, 1). The widespread use of ecclesiastical provisions over freedmen, as well as of the expansion of the *patrocinium*, is demonstrated by the fact that in the case of killing a freedman without an heir, the *compositio* was to be paid to the church (Schott 1974, 146).

The special protection of the church, as well as the provision by which the order of collective property is broken and the right to dispose of property in the case of death is created, i.e. that any free Alemanni could leave their property to the church unrestricted, and in this case neither the family, which otherwise had (exclusive) right of inheritance, nor the duke had a right to veto (1, 2), is unique to the *Volksrechte* (Schott 2014b, 176). The rule had severe consequences and resulted in the displeasure of the family/kinship, and these consequences can be seen also in the fact that those opposing the donation were subject to additional sanctions under contemporary canon law (Schott 1974, 143). The relevant section of the *Lex Baiuvariorum* (1, 1) contains a clearer provision, meaning that a *donatio* covering the entire property may be made to the church only after the obligatory part has been released. By placing the document (*charta*) on the altar, the church has irrefutable presumptive evidence in a possible lawsuit that may be initiated by the heirs, meaning that the heirs would not be in a position to prove their lack of intent to donate with an oath. If the document is destroyed, the burden of proof also falls on them in this case, i.e., their litigation position is

less favourable. In the event of theft, church property must be reimbursed at three times the standard *niungeldo* (i.e. nine times the value), which in Bavarian law applies only to church property (*Lex Alamannorum* 1, 6– *Lex Baiuvariorum* 1,3). The law also provides for a threefold *compositio* for the killing of church servants, who were considered part of church property (*Lex Alamannorum* 1, 7– *Lex Alamannorum* 1, 19). The *Lex* prohibits the sale of ecclesiastical property to members of the clergy, however, exchange is possible. This is in accordance with the provisions of the 7th century Frankish council, but the principle itself was already worded at the (Visigoth) Council of Agde in 506 AD, its origin going back to the Council of Carthage in 401 AD.

The institution of ecclesiastical asylum (*asylum*) appeared at the Council of Orléans in 511 AD (with reference to *Codex Theodosianus* 9, 45, 4) which was adopted in the 6th century *Pactus pro tenore pacis.* Accordingly, the *Lex Alamannorum* also protects ecclesiastical asylum: for the killing of a free man in a church, both the church and the *fiscus* had to be paid in addition to the usual *composition* (1, 4), and the slave who sought refuge in a church could be returned to the owner by the priest only if the lord promised that he would not punish the slave for his deed (1, 3).

The *Lex* also protects the duke, as the embodiment of statehood (the duchy itself appears as *regnum* in the text) with special sanctions and *composition* (1, 35). At the same time, the king is mentioned in the text of the law in several places: for example, in connection with the fact that the blood money of a murdered bishop belongs to the king or the duke (1, 11); in connection with theft in the royal army (1, 26), theft at the royal court (1, 30), the rebellion of the duke's son (1, 35); in connection with the fact that in cases of capital offences, prosecution had to be carried out in front of the king or the duke (1, 43). His 'presence', however, in the text is not very pregnant, the duke is described as the one exercising actual power (Schott 1974, 148). Interestingly, the punishment for killing the duke is not *expressis verbis* mentioned in the *Lex* (1, 11. 34). In the case of attempted murder, however, the duke (or the *principes populi*) could choose between the assassin paying with his life or only paying the *composition* (1, 23). The *Lex* also describes facts of treason punishable with death or exile, as well as instigation to violence in the ducal army (1, 24. 25. 26). The rebellion of the duke's son may refer to a specific but unknown historical event, as the duke, if he manages to put down the rebellion, can exile his son or hand him over to the king; the son loses his inheritance, unless he wins back the grace of the duke in the absence of siblings (1, 35).

Based on ancient common law (*secundum consuetudinem antiquam*), the *Lex* determines the jurisdiction of the *comes* in the name of the duke, as well as that of the *centenarius*, and emphasises that only the people appointed

by the duke are entitled to jurisprudence (1, 41). The legal service was presumably, as a general rule, performed by the *centenarius*, or by the *comes* or his delegate (*missus*) only if they were in the given area of jurisdiction (Schott 1974, 156). The law uses the term *iudex* several times (1, 22. 36. 29. 41. 42. 84), nevertheless, as the context suggests, it is not a *terminus technicus* meaning an independent legal body/person, but it denotes the current provider of legal services.

The impediments of marriage as well as the ban on work on Sunday are not regulated in the part on the church but rather in the part on the duke, as it is the ruler's task to enforce them, and thus it is no coincidence that they resulted in secular sanctions as early as in the case of Guntram's *decretum* of 585 AD and Childebert's *decretum* of 596 AD. Violation of the prohibition is an act against the state, possibly signalling an adherence to paganism (Schott 1974, 147). A servant violating the prohibition must be caned; if a freeman violates the prohibition, he must be warned three times, after which he loses a third of his inheritance, and finally he is enslaved, by order of the duke.

These provisions show a number of overlaps with the *Edictus Rothari* created in the mid-7th century (Schwab 2017, 29). Therefore, it cannot be ruled out that the compilers of the *Lex* used this resource or the joint Merovingian royal law discussed by Franz Beyerle (Schott 2014b, 177; Schott 1974, 149; Beyerle 1956, 122). Regarding the provisions on the church and the duke, it cannot be ruled out that these are in fact based on the provisions issued between 629 AD and 634 AD under Dagobert I, and this can be traced back to the *Codex Euricianus.*

In the third part (*De causis, qui saepe solent contingere in populo*), which refers to the common people and is the most extensive one, expanding the blood money catalogue of the *Pactus Alamannorum*, the *Lex* clearly leans towards the system of *compositio*, clearly trying to repel blood feuds (Schwab 2017, 29). In doing so, it reflects on the church's position that not only murder, but any form of bloodshed, such as the death penalty or blood feud, is not compatible with Christian teaching (Brunner 1928, 789). It should be noted, however, that blood feud as immediate reaction (for example, in cases when the armed relatives of a person murdered in a dispute pursue the perpetrator without delay and execute him) is considered legitimate by law. However, if blood feud is planned, meaning that they ask the neighbours for help and reinforcement, the *compositio* for this deed is identical to that for premeditated murder (Schott 1974, 149).

The *Lex Alamannorum* provides several pieces of information on the stratification of the Alemannic society. It divides the freemen (in the *Pactus*: *ingenui*, in the *Lex*: *liberi*) into nobles (*primi/meliorissimi*), the middle class

(*mediani*), and the inferior common people (*minofleti*), their *compositio* being two hundred and forty, two hundred, and one hundred and sixty *solidus* (Köbler 1978, 38; Schott 1974, 153).

The group of the semi-free (*litus*) and of the servants (*servi, ancillae*) is ranked below the nobles in the *Pactus*. In contrast, the *Lex Alamannorum* mentions only the noble freemen, belonging to the middle class (*medii Alamanni*), and the simple freemen (*liberi*). The blood money for women is in all cases twice as that for men, the semi-free are grouped into one by the law, while the *compositio* of the craftsmen and servants performing responsible work is a quarter of the *compositio* of freemen (Schott 1978, 51–72; Schwab 2017, 29).

The provisions concerning the common people most clearly show the nature of the Alemannic law, for example by the vernacular description of facts.

6. CONCLUSIONS

The following main conclusions can be drawn from the examination of the age and circumstances of the establishment of the two most important sources of Alemannic common law, the fragmentary *Pactus Alamannorum* and the *Lex Alamannorum*, which has an exceptionally rich manuscript tradition, and their relationship to each other. The *Pactus Alamannorum* is clearly the result of the ruling legislative politics of King Chlothar II of the Franks, and was approved at a Frankish imperial diet between 613 AD and 623 AD. As a piece of legislation, it can be understood as both Frankish and Alemannic law, since the creator of the source of the law was a Frankish ruler, and its subjects were the Alemanni. The *Lex Alamannorum* was most likely created at the initiative of Duke Lantfrid, sometime between 712 AD and 730 AD. The fact that the *Prologus* of most manuscripts mentions Chlothar as the legislator is most likely the result of later contamination. Chlothar IV's name was inserted in the text only for political reasons and following Duke Lantfrid's unsuccessful rebellion against Charles Martel. Thus, the introduction mentioning the Alemannic duke, Lantfrid, can be considered an earlier version of the *Lex Alamannorum*, while the one mentioning Chlothar is mostly likely a later reformulation of the law, both clearly showing the objective – the renewal of the *Pactus Alamannorum.* The creation of the *Lex* shows a strong ecclesiastical influence, namely the spiritual influence of the Monastery of Reichenau, which also explains the church's privileges, which are protected by the law and are unique to the *Volksrechte*. The *Pactus Alamannorum* is nothing more than a catalogue of fines, whereas the clear

structure of the *Lex Alamannorum* (ecclesiastical matters, facts concerning the duke, legal issues among the people) shows the influence of the Frankish *capitularia* and represents a uniquely valuable source in terms of both the judiciary system and the contemporary structure of Alemannic society.

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