

Barbarian Laws and ethnic identity: returning to the manuscripts

Since modern times, the laws published by the kings of the Early Middle Ages have been the subject of a passionate interest dominated by European nationalisms. The ideological bias governing the interpretation of these legal texts is clearly visible in their publication in separate volumes according to the ethnic identities in which burgeoning nations recognized their ancestors.

These different laws, of the Alamanni, the Franks and the Lombards, etc., were systematically transmitted jointly in the manuscript tradition. Therefore, it is not only a matter of starting from manuscript collections to re-evaluate the meaning and use of these texts in the Early Middle Ages, but also of reviewing how these manuscripts have been classified in different ways since medieval libraries until contemporary editions, in order to grasp the different stages by which they were progressively used for the construction of a national identity and its projection into the past.

The birth of European Nations

“For me, the history of France begins with **Clovis**, elected as king of France by the tribe of the Franks who gave their name to France. Before Clovis, we have Gallo-Roman and Gaulish prehistory. The decisive element, for me, is that Clovis was the first king to have been baptized a Christian”¹.

Charles de Gaulle was fully aware that with these words, he was speaking in the true spirit of the republican tradition of the “History of France”, which he wanted to combine with his Christian beliefs. He would have been extremely surprised at how much his vision of the Franks as a separate “tribe”, with their own internal political system enabling them to freely choose their king, and to give birth to the French **nation**, was based on the works of the 19th-century German researchers which inspired **Nazism**. The idea that the Franks were free to choose their king, in particular, is based on the emphasis put on a “short prologue” of the *lex salica* which does not exist in any source dating from the early Middle Ages, but which was made up during the 19th and 20th centuries: the last manipulation was carried out by K. A. Eckhardt, Nazi researcher and last editor of the Salic Law in 1962, who presented it as the Franks’ “**Stammesrecht**”.

What is a nation? How can a nation make decisions? Are these decisions based on traditions or innovations? On all of these questions, Europe benefits from a shared cultural heritage, which is the result of the progressive construction of national identities since the end of the Roman Empire. The present research project considers this heritage in the long-standing history of **nationalism** in Europe through decisive moments in history: the **barbarian laws** of the early Middle Ages, Carolingian domination in Western Europe and interpretations of nationalism since the **Renaissance**.

To do this, the creation of national and local identities must be considered as a whole, as I did in my first book², notably through the study of French and German historical works, that for many years were written in opposition to each other. Furthermore, particular attention must be given to the

¹ E. Pognon, *De Gaulle et l'histoire de France, trente ans éclairés par vingt siècles*, Paris, 1970, p. 30.

² M. Coumert *Origines des peuples. Les récits du haut Moyen Age occidental*, Paris, 2007.

period between Late Antiquity and the early Middle Ages – an era that since modern times has been considered to mark the **birth of European contemporary nations**³.

The manuscript tradition of the barbarian laws and their interpretation are a key to understanding contemporary **searches for identity**: their representations have long been dominated by **ideological** and anachronistic biases, which can be removed by innovative research at the European level: a necessary step to envisage a future of nations free from nationalistic struggles.

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Editing the Barbarian laws

In the 19th century, the quest for identity in different European countries accompanied the birth of history as a scientific discipline. In 1819, the *Gesellschaft für ältere deutsche Geschichtskunde* (the learned society dedicated to the enhancement of **national memory**) was thus founded to edit the historical sources of the German Middle Ages. This patriotic and scientific mission is exemplified by the society's motto "*Sanctus amor patriae dat animum*" (The Sacred Love of the Fatherland Inspires). The first volume of documents was edited in 1826 and the *Monumenta Germaniae Historica* (MGH) series has continued to the present day, holding an unrivalled place among collections of sources on the Western Early Middle Ages.

The volumes of documents edited by the MGH are inextricably linked to the **identity and political quest of 19th- and 20th-century German peoples**. The length of its undertaking has written it into the vicissitudes of German history: Prussia's dominance was strengthened when its central government moved to Berlin in 1842, and its president became part of the imperial civil service in 1875. In 1935, the society was taken over by the Nazi State, before it was "denazified" in the wake of the Second World War. The remarkable editing work carried out by German scholars was based on an identity project: providing the new German nation with the tools to gain a more in-depth knowledge of its past and unite in the aftermath of the war. In this perspective, numerous **methodological biases** were introduced, even though the supposedly objective and rigorous criteria of the scientific editing of a Medieval text had been established.

MGH collaborators focussed exclusively on the peoples they considered to fall into the same category as their ancestors. Only peoples regarded as **Germanic** were retained in the editorial project. A people were considered "Germanic" as soon as it could be attributed with a language of this type and also a relationship with the contemporary German territory. From then on, it was considered as a part of the Germanic peoples who, from the Roman Germania described by **Tacite** at the end of the 1st century AD up to the modern Germany which emerged in the 19th century, were supposed to have kept enough common characteristics to be able to form one nation.

Beyond the MGH collection, the texts of the Barbarian laws have been studied along the same principles, with focus placed on a **single ethnic identity**. Thus, the laws of the Anglo-Saxons and the Lombards are collected⁴. Even when a legal text had been published according to a different logic, it was reduced to a specific ethnic identity. Thus, in 1963, Ludwig Bieler was to edit the *Irish*

³ P. Geary, *The Myth of Nations: the Medieval Origins of Europe*, Princeton 2002.

⁴ For example, F. Liebermann, *Die Gesetze der Angelsachsen*, Berlin, 1903, or more recently, Cl. Azzara and S. Gasparri, *Le leggi dei Longobardi. Storia, memoria e diritto di un popolo germanico*, Milan, 1992.

penitentials in the collection *Scriptores latini Hiberniae*⁵, by including the legal texts present in the same manuscripts, such as the so called “*Canones Wallici*” text. Even though the text presents a collection of laws for an non-defined rural community, the editor likens this text to the **Bretons** of Armorica and Léon Fleuriot appropriated this interpretation, by designating them as the “*Armorican Breton laws*”⁶, as opposed to the title supplied by the manuscripts: *Excerpta de libris Romanorum et Francorum*.

New perspectives

Classification by separate ethnic identity and **linguistic regroupings**, according to the **Celtic** or **Germanic** distinction, underpin all of the MGH work, even though such notions appeared to be **anachronistic** for the Early Middle Ages, where language is never directly used as a strong argument since texts involving an authority are mainly written in Latin. Furthermore, editions of the different volumes were separated from the Roman law codes and organized by ethnic identity, according to the belief that in the Early Middle Ages, each individual used to refer to its own ethnic right and that this was defined by **oral traditions**. This notion of a people with its own traditions explains the edition in volumes, separated from the rights attributed to each people, by creating an **artificial break with Antiquity**. As such, the Breviary of Alaric, an annotated collection of Roman law enacted by Alaric II, King of the Visigoths, in 506, is not published in the volume that brings together Visigothic Laws. Therefore, the search for an authentic ethnic tradition guided the choices made in the very establishment of the text, by trying to refer to a unique original and a supposedly pristine version of the laws.

Since the 19th century, the study of Barbarian laws from the Frankish world has been conditioned by the editions proposed by the MGH or depending on their model and, therefore, presents a distorted perspective on numerous levels:

- **Neglecting the manuscript tradition through an editorial rationale seeking to reconstruct the text closest to its supposed initial state**

Most of the manuscripts are very late in relation to the likely redaction date of the Law of the Franks, but the **variants** that they suggest are so far removed from each other that it becomes impossible to propose a single benchmark text. This lack of single text must be studied in itself, as it is significant. G Halsall highlights this in a recent manual:

“The idea that there is a text of a particular source is, furthermore, a modern notion. If one is interested in the medieval function of a text or in the medieval reception and transmission of the ideas in our sources, one has to abandon the idea of a single authentic text. To be understood in medieval context it must be recognised that a source could exist in a variety of forms, all regarded by contemporaries as authentic”.⁷

⁵ L. Bieler, *The Irish penitentials*, p. 136-159, Dublin, *Scriptores latini Hiberniae* V, 1^{ère} édition 1963, 2^e éd. 1975.

⁶ L. Fleuriot, “Un fragment en latin des très anciennes lois bretonnes armoricaines du VI^e siècle”, *Annales de Bretagne*, 78, 1971, p. 601-660, here p. 607.

⁷ G. Halsall, « Ch. 3 : The sources and their interpretation », *The New Cambridge Medieval History* I, c. 500-c. 700, P. Fouracre dir., Cambridge, 2005, p. 56-90, ici p. 62.

It is within this perspective that I propose to launch a new specific study on Salic Law in the Carolingian era, which would fit into in a group programme on the Barbarian laws of the Frankish world.

- **Disconnecting Late Antiquity and the Early Middle Ages**

The Western Barbarian kingdoms were not just the inheritors of the Roman Empire, they lived together with Western empire until 476, then for some of them, they continued to recognize the authority of the Eastern emperor, as is shown by the letters written by Avitus of Vienne for the Burgundy Kings. The disconnection between the study of **Roman law** and that of **Barbarian law** has thus created an artificial gap which must be closed by organizing joint works between historians of Antiquity and of the Early Middle Ages, and also between historians and law historians.

- **Assimilation of ethnic groups with different peoples since the origins**

Recent studies on ethnic identities, particularly those guided by the works of the “Vienna School”⁸, underline the **malleability of ethnic identities** and their political uses. This new perspective enables to no longer consider the personality of the laws as an inherited proof, but to study the transformation of legal systems since Antiquity that led up to this principle as it is attested in the Carolingian era. Similarly, the formation of kingdoms based on a single ethnic identity may be studied in parallel with the construction of different law codes and their various uses. The study of the manuscript tradition of the Salic Law will, as such, fall in line with my previous works on ethnic identities and will follow the very active historiographic debates on these questions⁹.

- **Assimilation of linguistic groups with groups of separate cultures, then with contemporary nations**

In the manuscript tradition, the glosses on the contrary demonstrate the circulation and the various uses of the legal texts. Therefore, a comparative study needs to be carried out on the glosses in the Celtic as well as Germanic **vernacular languages**, and on their relationships with the Latin texts of the Barbarian laws. This involves reformulating the diversity of the culture of the Early Middle Ages, which therefore implies multilingualism. In order to do this, a collaboration between all disciplines involved in Medieval languages and cultures would be extremely worthwhile.

Furthermore, confusion between ethnic groups of the Early Middle Ages and **contemporary nations** fuels several historiographic biases. These have been highlighted in the German and French cases¹⁰, but their link with regional quests for identity remains to be studied, especially regarding the **Bretons** from Armorica. I wish, therefore, to continue to study, with Celtic World specialists, the particular use of certain Medieval texts, especially legal ones, within an identity perspective, and the fact that some of these texts resist such an analysis.

Salic Law in the Carolingian era

⁸ W. Pohl, “Aux origines d’une Europe ethnique. Transformations d’identités entre Antiquité et Moyen Âge”, *Annales. Histoire, Sciences Sociales*, n°60, 1, 2005, p. 183-208.

⁹ From the publication of the controversial work directed by A. Gillett, *On barbarian identity: critical approaches to ethnicity in the early middle ages*, Turnhout, 2002.

¹⁰ A. Graceffa, *Les historiens et la question franque*, Turnhout, 2009.

In the wake of the Second World War, the edition of the Salic Law proposed by K. A. Eckhardt seemed to put an end to a period of passionate debate and study on *leges barbarorum*, the laws published by the Barbarian Kings in the West. By comparison, for half a century, the number of works dedicated to them was considerably reduced. As such, the Barbarian laws seemed relatively peripheral in the calling into question of tradition theories on ethnic identity, particularly embodied by **ethnogenesis** theories, as well as the perspectives of “the transformation of the Roman World”, that underlined the **transition** and not the shift between Christian Antiquity and the Early Middle Ages. Nevertheless, they enable a new interpretation of these laws, as linked to an ethnic identity that is more constructed than inherited and as an instrument of affirming the royal authority, in the lineage of Roman power.

The shift away from classic theories of the *Rechtsschule* opens new avenues of reflection, free from research on the founding of contemporary nations. When they no longer necessarily appear as a **fixed ethnic inheritance**, the calling into question of the forming and the writing of these normative texts seems feasible; the specificities of their manuscript tradition; their meaning and use within societies of the Early Middle Ages, beyond proof of their application; and their evolution, adaptation or abandonment during this same period.

Furthermore, in relation to **Salic Law**, researchers were hindered in their efforts to establish a benchmark text by the lack of any manuscript dating from before the last quarter of the 8th Century. Therefore, discussions mainly focused on determining the oldest supposed version, or on the impossibility of its reconstruction. They neglected the manuscript tradition itself, judged to be too late to be instructive. Nevertheless, 72 **manuscripts** including Salic Law seem to have been **copied before the year 1000** and beyond the issue of establishing the text, their characteristics provide us with decisive data on the meaning and the use of the Salic Law in the Frankish world in the Carolingian era.

Corpus

The basis of this research will be composed of the Carolingian manuscripts conserved that include the Salic Law. The list of more than 80 manuscripts and fragments has, in the large part, been established since the 19th century and the edition of a benchmark text for the Salic Law was at the heart of the editorial and nationalist plan of the *Monumenta Germaniae Historica* society. The edition was postponed on numerous occasions during the 19th century and was a **complete failure** during the First World War¹¹. K. A. Eckhardt took up the dossier again before the ensuing conflict, but his edition could not be published during the Second World War and his **Nazi** commitments – he had been a member of the SA since 1931 – excluded him from the MGH. Therefore, it is as an external collaborator that, in 1962, he produced the edition of the Salic Law that had been long-awaited since the society’s beginnings. This two-volume edition is insufficient in itself, as he presents the justifications of his editorial choices differently in the books edited¹². But the presentation of the text of some manuscripts, given the impossibility of reconstructing an initial version, makes it very unlikely that the edited material was not manipulated.

¹¹ B. Krusch, “Der Umsturz der kritischen Grundlagen der *Lex Salica*. Eine textkritische Studie aus der alten Schule”, *Neues Archiv der Gesellschaft für Ältere Deutsche Geschichtskunde*, XL, 1915-1916, p. 498-579. See S. Stein’s interpretation, “Lex Salica I”, art. cit., and that of K. A. Eckhardt, *Pactus legis salicae*, p. XXXV-XXXVIII.

¹² K. A. Eckhardt, *Pactus legis salicae. I Einführung und 80 Titel-Text*, “Germanenrechte Neue Folge”, Göttingen, Musterschmidt, 1954.

Nevertheless, the prevailing **ideological reconstruction** of this edition of Salic Law is impressive, as shown by my research on the Salic Law prologues¹³. The “short prologue” evokes only ethnic tradition as the foundation of the law, and a draft of the law written **outside the royal authority**. However, contrary to the presentation made by Eckhardt, the “short prologue” never appears isolated, but only with the law followed by the “long prologue”, or in the case of manuscript 17¹⁴, in the form of a summary introduced by the “epilogue” of the Salic Law.

Therefore, the meaning of the text greatly changes, because ethnic traditions are always evoked after the reminder of the legislative role of the King. In order to evoke ethnic traditions independently of the King, it was thus necessary to **arbitrarily** isolate a part of the text from its preceding and proceeding parts in the manuscript tradition. Reference to an ethnic tradition independent from the King seems to be the product of questionable editorial choices: it does not exist in any manuscript. One can very well see the **ideological biases** that led to create this text in the glory of “**Stammesrecht**” by isolating its manuscript context, following the convictions of the Nazi scholar on the **historic role of races** and peoples. Other unjustifiable modifications undoubtedly appear, such as acceptance of the term “**wergeld**” in the body of the Salic Law text¹⁵.

For a better appreciation of K. A. Eckhardt’s work, all of the manuscripts that should have served as his working basis must also be reviewed. This set of manuscripts distinguishes 8 different versions of the Salic Law text, which he links to different eras. The oldest ensured date would appear to be that of a Carolingian version, because a prologue is often a reminder in the manuscripts of the revision of the Law demanded by Charlemagne in 802. But whilst the Carolingian version of the Salic Law represents 69 manuscripts out of the 84 that include the Salic Law, only 8 of them have been directed consulted by the editor and half of them were definitely not used¹⁶. Carolingian use of the Salic Law seems to bear little importance to K. A. Eckhardt, even though it is the only available manuscript base, indispensable to understand both **the variations of the text and its use** in the Early Middle Ages.

The Salic Law manuscripts from a coherent whole, as no manuscript dates from before 770 and 72 of them seem to have been copied before the year 1000. Nevertheless, these manuscripts have still not been studied in series, systematically, except once in a brief study by Rosamond McKitterick, in 1989¹⁷. I believe that they enable a **concrete approach** to be adopted towards the role of Salic Law in the Carolingian era. For the first time, this research shed light on the changing perspective that made possible the study of the collection of manuscripts including the Salic Law. Obsessed by the issue of establishing a text to edit, experts have all but ignored the issue of the composition of the manuscript as a whole. Yet, 18 manuscripts out of 84 include other laws of the Barbarian Kingdoms.

¹³ M. Coumert, “Les premiers temps des Francs suivant les copistes carolingiens”, *32^e Journées Internationales d’Archéologie Mérovingienne*, November 2011, B. Dumézil and P. Périn dir., à paraître.

¹⁴ Leiden, Bibliotheek der Rijksuniversiteit, Voss. lat. Q 119.

¹⁵ C. Camby, *Wergeld ou UUeregildus. Le rachat pécuniaire de l’offense entre continuités romaines et innovation germanique*, thesis work on the history of law, 26 May 2010, p. 69-73.

¹⁶ R. McKitterick, *The Carolingians and the written world*, Cambridge, 1989, Cambridge University Press, p. 40-43.

¹⁷ *Ibid.*, p. 27-60.

Conversely, only one of them seems to offer a collection composed around the past of the Frankish people¹⁸.

Methodology

It seems that the time has come to focus on the study of the manuscripts as such rather than just trying to establish a text of reference or a *stemma codicum*, yet with a view to studying the meaning of that law within the **Carolingian culture**. I propose, therefore, to study firstly these collections of manuscripts pertaining to the Salic Law, in their material aspect and their content, so as to try and foreground a **typology** that enables their classification. It will be a major task to gather the studies already dedicated to these different manuscripts, because most of them have already been identified and studied, but within other surveys on the written culture of the Carolingian era.

For example, manuscript 17 is studied for its capitularies, especially for Aquitaine, more than for the collection of laws that were first copied into it. Yet it is the whole manuscript including the epilogue and the summary of the “short prologue” of the Salic Law¹⁹ that constituted the “‘toolbox’ of a person in charge of the implementation of the policies of the Charlemagne government in the South-West”²⁰, probably a layman.

My purpose, therefore, is to collect and complement previous studies, in order to obtain descriptions of all of the manuscripts at the codicological level, but also as regards their precise content. It will then be necessary to exploit the data thus gathered, to determine if there is a link between the external aspect and the content of the manuscript, which could correspond to a particular use or to a chronological shift, corresponding to the introduction of the great *scriptoria* and the withdrawal of central power. Are there any traces, following R. McKitterick’s hypothesis, of a **workshop dedicated to copying laws**? Of specific networks of circulation? My aim is also to study what makes sense in the composition of a collection that includes parts of the Salic Law. What is the law copied with? **What readership** was envisaged for the copied text, and therefore, what circumstances? **What use** could correspond to the annotations and glosses added to the text?

Following the hypotheses formulated by R. McKitterick, I intend to determine whether there was a common use, perhaps as a reference to a case, or a scholastic use. What is the place of the Salic Law in the **training of the elites**? Is it possible to identify centres of interest that are more religious than lay? The subsequent results should be compared with those manuscripts that include different Barbarian laws, with the exception of Salic Law, or other legal texts from the Frankish world, such as the *formularies*²¹, the canonical collections or the *capitularie*²², to see what place Salic Law occupies within the Carolingian culture.

Expected results

¹⁸ Bonn, Universitätsbibliothek, S. 402.

¹⁹ Leiden, Bibliothek der Rijksuniversiteit, Voss. lat. Q 119, fol 88 v°.

²⁰ M. Gravel, « De la crise du règne de Louis le Pieux. Essai d'historiographie », *Revue historique* 2/2011 357-389. Here § 17.

²¹ A. Rio, *Legal practice and the written word in the early Middle Ages: Frankish formulae, c. 500-1000*, Cambridge, 2009.

²² H. Mordek, *Bibliotheca capitularium regum Francorum manuscripta. Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse*, Munich, 1995.

The comprehensive and systematic analysis of **Carolingian manuscripts** of the Salic Law should firstly provide us with information on the meaning that the text was given in the Carolingian era. The compilations of different laws inherited from the Frankish world illustrates firstly that these laws were read, understood and used in relation to one another. The associations of the different texts and their possible meanings within the Frankish world must also be studied. It seems to me that taking a different view from the MGH project and focussing in the final analysis on the very content of the Salic Law, it will be possible to propose new perspectives on the role played by the Salic Law in the training and affirmation of the Carolingian **elites**. The symposiums of 2016 and 2017 would help to place them in a broader context. Our study would thus complement recent studies dedicated to the elites of the Frankish World²³, as well as to the specific issue of the training of laymen²⁴. In the Carolingian world, the reorganization of knowledge is linked to the affirmation of an imperial aristocracy. What is needed, within the context of this reorganization of the world, is a new insight into the role of the Salic Law, and of the many manuscripts where it is mentioned, in the global effort of **re-ordering the world**.

On the conclusion of this work, new answers could therefore be brought to the recurring issue of the **origins of the Salic Law**. The debate has recently resurfaced through the hypothesis formulated by Jean-Pierre Poly in 1993, which holds that the Salic Law was written under Roman authority for the Franks of the 4th century²⁵. Despite the innovative aspect of such an early dating, under Roman authority, for the Salic Law, such a presentation reflects an ancient historiography, by supposing that the ethnic groups existed as autonomous entities, with no contact except of a diplomatic nature with the outside world. Such a hypothesis makes it possible to uphold the hypothesis of independent Frankish traditions, whilst still recognizing the contribution of Roman legislation to the Salic Law, which would thus have been the receptacle of two totally different traditions, i.e. tribal law and Roman law.

As stated by O. Guillot²⁶ and I. Wood²⁷, such a hypothesis seems untenable, because it neglects all of the Salic Law chapters, including the first forty-four, which include legislation for the Romans, even outside of their relationships with the Barbarians²⁸. Studying the manuscript tradition should enable us to determine whether or not a hypothesis, other than that of the chronological succession is possible, which could explain the coexistence of several versions of the text in the Carolingian era. Could these versions correspond to different **uses**? To different types of **collections**? This is what the serial study of the manuscripts should allow to determine. It will not, of course, indicate the redaction date of the Salic Law, but it will provide indications on the way in which this text was **transformed** and treated in Carolingian times.

²³ F. Bougard, R. Le Jan, R. McKitterick éd., *La culture du haut moyen âge, une question d'élites ?*, Turnhout, 2009.

²⁴ J. Nelson and P. Wormald éd., *Lay intellectuals in the carolingian World*, Cambridge, 2007.

²⁵ J.-P. Poly, "La corde au cou. Les Francs, la France et la Loi Salique", *Genèse de l'Etat moderne en Méditerranée. Approches historiques et anthropologiques des pratiques et des représentations*, Paris, 1993, p. 287-320.

²⁶ O. Guillot, "La justice dans le royaume franc à l'époque mérovingienne", *La giustizia nell'alto medioevo (secoli V-VIII)*, Spolète, 1995, p. 653-731, notamment à la note 76.

²⁷ I. Wood, "Roman law in the barbarian kingdoms", *Rome and the North*, A. Ellegård et G. Åkerström-Hougen dir., Jonsered, 1996, p. 5-14.

²⁸ *Pactus legis salicae*, XVI, 5 ; XXXIX, 5 ; XLI, 8-10 et XLII 4, éd. K. A. Eckhardt, MGH, LL nat. germ. IV, 1.