

TRADITIO

STUDIES IN ANCIENT AND MEDIEVAL
HISTORY, THOUGHT, AND RELIGION

Editors

R. E. KASKE CHARLES H. LOHR
ELIZABETH A. R. BROWN BRIAN E. DALEY
JAMES J. O'DONNELL

Editor Emeritus

STEPHAN KUTTNER

VOLUME XLIV



FORDHAM UNIVERSITY PRESS
NEW YORK
1988

FROM ROMAN TO FRANKISH GAUL:
'CENTENARII' AND 'CENTENAE' IN THE
ADMINISTRATION OF THE MEROVINGIAN KINGDOM

BY ALEXANDER CALLANDER MURRAY

Merovingian and Carolingian sources refer to a subordinate official, called a *centenarius*, and his jurisdiction, called a *centena*. In the Carolingian period, the *centenarius* was selected by the count (*comes*) to exercise administrative, police, and judicial functions within the *centena* or hundred, a subdivision of the county (*pagus* or *comitatus*). Other terms for the count's deputies and their jurisdictions are also attested; in the south *vicarii* administered districts called *vicariae*, and in the far west the subdivision of the county bore the name *condita*, a word probably of Celtic origin. For most of the kingdom, however, the principal officials of the count were called *centenarii* and their jurisdictions, *centenae*. In the Merovingian period also, the *centenarius* acted as a subordinate of the count, and like his Carolingian namesake exercised judicial and police duties; the term *centena* is attested in sixth-century Merovingian sources but probably acquired clear territorial significance only in the late Merovingian or early Carolingian periods.¹

Though a minor official in the administrative hierarchy, the *centenarius* has always played a large role in constitutional histories of the Merovingian and Carolingian kingdoms, and even more than his superior, the count, has been treated as the focal point for understanding the fundamental nature of the Frankish state. To the historiography of the nineteenth and much of the present century, for instance, the *centena* or hundred was a primitive, pan-Germanic institution, first and very imperfectly attested in the *centeni comites* and *pedites* of Tacitus' *Germania*.² The hundred was thought to have been

¹ The literature is vast and controversial: see nn. 2-5, 7-10, below. Recent standard accounts proceeding from a Carolingian perspective and available in English are F. L. Ganshof, *Frankish Institutions under Charlemagne*, trans. Bryce and Mary Lyon (New York 1970) 32-33, and Edouard Perroy, 'Carolingian Administration,' in *Early Medieval Society*, ed. Sylvia L. Thrupp (New York 1967) 142-43; both ignore the claims of modern German scholarship. A sound earlier and more detailed account of Carolingian institutions is Helen M. Cam, *Local Government in Francia and England* (Cambridge 1912) 26-31.

² The most comprehensive review of the older literature is Heinrich Dannenbauer, 'Hundertschaft, Centena und Huntari' (see n. 5 below) 155-61. Cf. G. Gudian, 'Centena,' *Handwörterbuch zur deutschen Rechtsgeschichte* 1, edd. Adalbert Erler et al. (Berlin 1971) cols. 603-606.

In Tacitus the *centeni comites* were a group of legal assessors attending the *principes*: 'eliguntur in isdem conciliis et principes qui iura per pagos vicosque reddunt; centeni singulis

introduced into Gaul by the Franks either as a territorial unit or as a warrior association that gradually acquired territorial status. A basic political and judicial unit of the Germanic peoples, the hundred supposedly reflected the popular or democratic underpinnings of the Germanic state; the *centenarius*, therefore, far from being in origin a subordinate royal official, was at first a popular official elected by the hundred as its leader and as president of the hundred court or *mallus*. This stage in the development of the *centenarius* and the *centena* was believed to be still perceptible in sixth-century sources, especially *Lex Salica*, and also, to a lesser extent, in the capitularies of the Merovingian kings. But the same sources, it was thought, also showed the Merovingian monarchy increasing its power by reducing the *centenarius* to a subordinate official of the count, the major representative of royal power in the community. Accordingly the *centenarius* and *centena* surfaced in a new guise in the proliferating sources of the Carolingian period: the *centenarius* as a minor royal official, the *centena* as a sub-district of public administration. As understood by traditional historiography, the passage of the *centenarius* and *centena* from popular, Germanic origins to subordinate, though still public, institutions of monarchy constituted more than a minor chapter in the institutional history of the Frankish kingdom: it encapsulated a very common view of the origin and growth of the state in Northwestern Europe.

Variations on the Germanist view outlined above remained the standard teaching on the *centenarius* to at least the end of World War II at which time a new school of constitutional history quite rapidly laid the tenets of the old theory to rest.³ Even at a much earlier date, however, there were important dissenting voices, though these never received much support. The Romanist point of view, for example, expressed in this case rather succinctly by Fustel

ex plebe comites consilium simul et auctoritas adsunt' (*De Origine et situ Germanorum*, ed. J. G. C. Anderson [Oxford 1938] c. 12). The *centeni pedites* were select infantry assisting the cavalry: 'in universum aestimanti plus penes peditem roboris; eoque mixti proeliantur, apta et congruente ad equestrem pugnam velocitate peditum quos ex omni iuventute delectos ante aciem locant. Definitur et numerus: centeni ex singulis pagis sunt, idque ipsum inter suos vocantur et quod primo numerus fuit iam nomen et honor est' (*ibid.* c. 6). Anderson (pp. LVIII-LXI) discusses the role of these passages in traditional interpretations of the hundred; and cf. Dannenbauer, 'Hundertschaft' 162. The *centeni comites* still have an important place in modern attempts to explain the police institutions of the Merovingian kingdom: see below, pp. 75-76. For a recent interpretation of the *centeni comites* and *pedites* as equivalent to the retinue (*comitatus*) of the *Germania* c. 13, see Anne K. G. Kristensen, *Tacitus' germanische Gefolgschaft* (Copenhagen 1983); and cf. my review in *Scandinavian Studies* 57 no. 2 (1985) 194-95.

³ The old views still appear in Marc Bloch, *Feudal Society*, trans. A. L. Manyon (London 1961; orig. French ed. 1939-40) 363; G. O. Sayles, *The Medieval Foundations of England* (New York 1961; 1st ed. 1948) 183; and even more recently, John Morris, *The Age of Arthur: A History of the British Isles from 350-650* (New York 1973) 491-95.

de Coulanges and with his customary disregard of the scholarly fashions prevailing in his day, argued a very different interpretation.⁴ The *centenarius*, he believed, was not originally a popular Germanic official, but was from the beginning a minor royal functionary whose title, like that of his superior the count (*comes*), went back to the late Roman system of ranks and offices. Probably first appointed in a rather haphazard fashion by the count, he gradually became a regular feature of Frankish administration. As for the *centena*, it was not originally a territorial unit, according to Fustel, but became the term for the subdivision of the county only in the course of the late Merovingian and early Carolingian periods.

In retrospect much of Fustel's interpretation seems fundamentally sound. But it was the ideas of a new school of German social and constitutional history, rather than Fustel's Romanist point of view, that was destined to displace the theory of the Germanic and popular origins of the *centenarius* and *centena*. Proceeding from a fundamental reinterpretation of the nature of early Germanic society, this school, with roots in the scholarship of the 1930s, came to dominate German postwar historiography and successfully set itself against many of the basic assumptions of the older school of legal and constitutional historians.⁵ The idea at the heart of the older teaching that early Germanic society rested on democratic or popular foundations was replaced by the theories of noble lordship and the king's freemen. The so-called popular institutions of the early Germans, the new scholarship claimed, simply reflected the

⁴ N.-D. Fustel de Coulanges, *La Monarchie franque*, 2nd ed. (Histoire des Institutions Politique de l'Ancienne France; Paris 1905) 224-29.

⁵ The fundamental works for the early Middle Ages are: Heinrich Dannenbauer, 'Adel, Burg und Herrschaft bei den Germanen,' *Historisches Jahrbuch* 61 (1941), repr. and expanded in *Herrschaft und Staat im Mittelalter* (Wege der Forschung 2; Darmstadt 1956) 60-134; 'Hundertchaft, Centena und Huntari,' *Historisches Jahrbuch* 62-69 (1949) 155-219; and 'Die Freien im karolingischen Heer,' in *Verfassungs- und Landesgeschichte. Festschrift Theodor Mayer* (Lindau 1954) 1.49-65. Also Theodor Mayer, articles in part repr. in his *Mittelalterliche Studien* (Lindau 1959); and Walter Schlesinger, *Die Entstehung der Landesherrschaft* (1941; but cf. preface to repr., Darmstadt 1964) and 'Herrschaft und Gefolgschaft in der germanisch-deutschen Verfassungsgeschichte,' *Historische Zeitschrift* 176 (1953) 225-75, trans. in part as 'Lord and Follower in Germanic Institutional History,' in *Lordship and Community in Medieval Europe*, ed. F. L. Cheyette (New York 1968) 64-99. The literature is briefly surveyed by Karl Kroeschell, *Deutsche Rechtsgeschichte* (Reinbek 1972) 1.104-106. For a significant critique, see H. K. Schultze, 'Rodungsfreiheit und Königsfreiheit,' *Historische Zeitschrift* 219 (1974) 529-50 and *Die Grafchaftsverfassung der Karolingerzeit in den Gebieten östlich des Rheins* (Schriften zur Verfassungsgeschichte 19; Berlin 1973); see also, among other works, Johannes Schmitt, *Untersuchungen zu den Liberi Homines der Karolingerzeit* (Frankfurt 1977). The most recent discussion seems to be Reinhard Schneider, *Das Frankenreich* (Oldenburg Grundriss der Geschichte 5; Munich 1982) 126-33. An English-language summary of the new history is given by Anne K. G. Kristensen, 'Danelaw Institutions and Danish Society in the Viking Age,' *Mediaeval Scandinavia* 8 (1975) 33-42.

displaced wishful thinking of the nineteenth-century bourgeoisie. Rather, noble lordship, originating in domestic authority over the household, defined the nature of the early Germanic constitution and existed independently of royal and so-called popular institutions. The non-noble element of society was consigned to domestic and servile appendages of the monarchy and nobility. In the new literature, the class of common freemen, the mainstay of the older teaching, virtually ceased to exist, replaced by the king's freemen, whose freedom must be conditional and derivative because it sprang only from military service and settlement on crown land. What the old literature had seen as public law and public administration was now seen largely as the private law arrangements of the monarchy for its dependents.⁶ Though the concept of public administration might be applicable to Romanized areas of Gaul, lordship in its noble or royal form was thought to be far more relevant to the Frankicized areas of the north and east, and of course to the thoroughly Germanic regions on the right bank of the Rhine. As will be seen, although this school integrated into its interpretation of Merovingian institutions a number of ideas long ago espoused by Romanists, its principal interest was still, like the old teaching it replaced, Germanic continuity and the fundamental character of the Germanic constitution — issues which were now focused on the power of the nobility and the nature of freedom. Indeed in the concept of noble lordship over land and people the new history believed it had found the principal constant of the ancient, medieval, and early modern German constitution.

Important steps in the development of this view were the dismantling of the old interpretation of the *centenarius* and *centena*, and the reinterpretation of the Merovingian and Carolingian sources in conformity with the premises of the new understanding of Germanic society. The principal architects of this process, and of much else in the new history, were Heinrich Dannenbauer and Theodor Mayer.⁷ According to Dannenbauer, although the *centena* in the west of the Carolingian Empire was a division of public administration, it was something quite different in origin, namely a unit of crown property or a settlement of peasant military colonists — the so-called king's free — on fiscal land under the command of a fiscal official called a *centenarius*. The model for this type of settlement, he believed, was the late Roman settlement of *laeti*, barbarian communities planted by the state as sources of military recruitment, and the *limitanei*, half-peasant frontier troops organized in a similar fashion in *corpora* on fiscal land. The state property of both these groups fell to the Frankish

⁶ This perception affected interpretations not just of the *centenarius* and *centena* but also of the count and county: see Schultze, *Grafchaftsverfassung*, esp. pp. 1–32.

⁷ Heinrich Dannenbauer, 'Hundertschaft, Centena und Huntari' (above n. 5); Theodor Mayer, 'Staat und Hundertschaft in fränkischer Zeit,' in his *Mittelalterliche Studien* 98–138.

kings who also, in his view, used the Roman model of military colonization as a pattern for the settlement of their own troops in Gaul. The *centena*, first a form of organization on crown property inspired by late Roman precedent, was then employed as a means of internal colonization, with king's free (*liberi, franci homines*) settled under *centenarii* on new land (*Rodung*). Eventually it was also widely used outside Gaul, especially in the Carolingian period, as a tool in the conquest of areas across the Rhine. Dannenbauer's interpretation not only coincided with increasingly prevalent views about the domestic nature of royal power and the foundation of freedom in Germanic regions, but also seemed to solve the vexed and dim question of the principles of the Frankish settlement of Gaul.

Mayer's role was essentially to attempt to refine the basic interpretation of Dannenbauer. For example, Dannenbauer had distinguished between the Latin term *centena* and the Germanic term *huntari*, the latter being in his view an old-style lordship of the nobility; to Mayer the *huntari* was simply a translation of the Latin term and a sign of Frankish influence. Dannenbauer had referred to the *centena* as a unit of royal seigneurial lordship (*Grundherrschaft*), but Mayer attempted to distinguish between crown property in the broad sense and royal seigneurial estates, because only the former, he believed, led to freedom for the settlers. The assumption of a dual administration of fiscal property, derived at first from the dubious notion *Rodung macht frei*, turned out to be a necessary distinction, since it was soon recognized that for much of the Merovingian period administration of crown property was the jurisdiction of a powerful official called the *domesticus*, whereas the *centenarius* appeared as a subordinate of the count.⁸ Of significance for the present discussion is also Mayer's argument that the Merovingian *centenarius*, like his Roman predecessor, was originally not a judge, but only gradually entered legal administration through his involvement in police duties.

Many aspects of this new interpretation of the *centenarius* / *centena* have become widely accepted, usually in conjunction with other premises of the new history, but sometimes by themselves.⁹ In German historiography the *centena*

⁸ Eugen Ewig, 'Das Fortleben römischer Institutionen in Gallien und Germanien,' X. *Congresso Internazionale di Scienze Storice, Relazioni* 6 (Florence 1955); repr. in *Spätantikes und fränkisches Gallien. Gesammelte Schriften* (Munich 1976) 1.412–13. The basic work on the *domesticus* is still Armand Carlot, *Étude sur le domesticus franc* (Bibliothèque de la Faculté de Philosophie et Lettres 13; Paris 1903). His conclusions are largely sound but a re-examination of the *domesticus*' late Roman precedents is needed, as is consideration of the Merovingian evidence in light of recent constitutional theories, distinguishing genuine and spurious characters.

⁹ E.g., Karl Bosl, 'Hundertschaft,' *Sachwörterbuch zur deutschen Geschichte*, edd. Helmuth Rössler and Günther Franz (Munich 1958) 443–44; Eugen Ewig in *Handbuch der europäischen Geschichte*, ed. Theodor Schieffer (Stuttgart 1976) 1.421, 426. Reinhard Schneider, *Das Frankenreich* 45–46; and see Krug (n. 10 below). Cf. also Franz Beyerle, 'Das legislative Werk

as a fiscal institution, the king's free, the distinction between the constitutional forms of Roman and Germanic areas of the Merovingian kingdom, and the influence of Roman institutions on Frankish administration have all become accepted features of modern attempts to describe the Merovingian kingdom, though in some cases not without contention. The degree to which these notions are valid constitutes in part the subject of the following pages. So too does the context of the *centenarius*' activities as they appear in Merovingian sources. The breakdown of the traditional teaching meant that the judicial and police activities of the *centenarius* had to be reinterpreted, with the result that accounts critical of Dannenbauer's theory of the fiscal character of the *centenarius*, as well as those sympathetic to it, have nevertheless attempted to re-evaluate the judicial and security activities of the *centenarius* from premises removed in varying degrees from the old teaching. The results have often been contradictory, but still display a tendency to interpret these activities in Germanist terms despite general acceptance of the Roman derivation of the office. Even this acceptance, however, appears to be by no means complete, and doubts have been raised about the Roman origin of the *centenarius* combined, surprisingly, with acceptance of the far more tenuous notion of the office's fiscal character.¹⁰

The neglect of the Roman sources by modern scholarship in part explains this state of affairs and is closely tied to a fundamental approach of the new history. Dannenbauer and Mayer united a Roman institution with the Germanic order as they conceived it. In chronological terms they began with late Roman and sixth-century Neustrian conditions; methodologically, they actually proceeded from the contentious interpretations of later, peripheral sources and their own conception of a fixed order in Germanic society. The apparent inadequacy of the late Roman record is also partly responsible for the ambivalence towards the Roman background of the *centenarius*; even Fustel's invocation of the Latin origin of the *centenarius* seems uncharacteristically meagre. Yet, as the following discussion seeks to show, the Roman context for the

Chilperichs I.,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Germanistische Abt. 78 (1961) 30–31; this has come to be cited as proof of Neustrian military colonization, but all it offers are questionable interpretations of laws from *Lex Salica*. In English, the new teaching on the *centena* appears in J. M. Wallace-Hadrill, *The Long-Haired Kings* (London 1962) 193 n. 1 and B. Bachrach, *Merovingian Military Organization* (Minneapolis 1972) 32–33; some reservation seems to be expressed in the glossary of *The Settlement of Disputes in Early Medieval Europe*, edd. Wendy Davies and Paul Fouracre (Cambridge 1986), where the *centena* is described as 'possibly derived from the organization of the Roman fisc.' French scholarship, like most English, seems to ignore the question (cf. n. 1 above).

¹⁰ H. J. Krug, 'Untersuchungen zum Amt des "centenarius"—Schultheiss,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Germanistische Abt. 87 (1970) 10, accepting fiscality; and cf. Schultze, *Grafschaftsverfassung* 326 denying it.

centenarius in fact still has more to tell us about his Merovingian namesake and the role of the *centenarius* and *centena* in the administrative system of the Frankish kings.

II

Centenarius, with the meaning 'pertaining to one hundred,' is a word of potentially limitless application in the Latin vocabulary. As a technical term of rank and office, however, it is found in a number of contexts, not all of which would seem to have immediate relevance to the Frankish official of the same name. *Centenarius* and its higher ranking counterpart, *ducenarius*, were for instance salary grades among equestrian offices, the *centenarius* being a 'hundred-man' in the sense that he collected a salary of one hundred thousand sesterces, and the *ducenarius*, a 'two-hundred man' receiving a two hundred thousand sesterce salary. Both terms also indicated ranks in the equestrian order, whether or not these were accompanied by tenure of real offices. As equestrian ranks they are frequently found attached to fiscal and financial officers and continued to be used in this manner at a late date in at least the central bureau of the treasury.¹¹ Such officials, however, have never formed the basis of the modern theory of the fiscality of the Frankish *centenarius*, and indeed a much better source for the origin of the Frankish office can be found in a new system of sub-tribunate military ranks increasingly prevalent from the third century onwards.

In the early and high Empire the military command in the infantry below the rank of the senatorial and equestrian offices lay in the hands of the centurions (*centuriones*), whom we could call the sub-officers or chief NCOs of the Roman army; not counting supernumeraries, about sixty centurions served in the legion, and some six or ten in the lesser units, depending on their size.¹²

¹¹ A. H. M. Jones, *The Later Roman Empire 284-602* (Oxford 1964) 8, 530, 584. On the *procuratores* of the early Empire see A. von Domazewski, *Die Rangordnung des römischen Heeres*, 2nd ed. by Brian Dobson (Cologne 1967) pp. xxxvi-lv: 141-71. Those interested in the military *centenarius* have not been well served by the term's appearance in this great handbook only in a financial context. But cf. Pauly-Wissowa, *RE* 3.2 s.v.

¹² The literature on the centurionate of the Principate is large and on some issues contentious; see Dobson-Domazewski, *Die Rangordnung des römischen Heeres* 80-112. On the army of the Principate in general see G. R. Watson, *The Roman Soldier* (London 1969) and Graham Webster, *The Roman Imperial Army* (London 1969).

Classification of the centurionate in modern terms is a case of neither fish nor fowl, since the usual English-language twofold category of non-commissioned and commissioned officers inadequately expresses the distinctiveness of the centurion's position. Jones (*LRE* 634) groups it with the NCO ranks, a practice I have followed, but other scholars prefer to emphasize its officer character. The centurion's military importance does transcend the modern understanding of the NCO, and the centurionate might be filled by equestrians through direct

The centurionate was by no means undifferentiated internally. Rank and salary distinguished the two legionary *primipili* from the rest of their fellows as they did the centurions of the first cohort, called *primi ordines*, from the centurions of cohorts two to ten; and status and conditions of service also varied among the centurionates of the different classes of regiment: praetorian guards, legions, auxiliaries and ethnic units (*numeri*).¹³ In the third century a new set of ranks appeared and spread as a result of the third- and fourth-century military reforms that reached a culmination of sorts in the reorganization of Constantine.¹⁴ The new system of NCO grades took hold particularly in Units of the field army and palatine regiments, the *vexillationes*, *auxilia*, and *scholae*, which displaced the old legions in prestige. Unfortunately our knowledge of these ranks is very defective, owing in large part to the scarcity of inscriptions from the period, and hardly comparable to the extensively documented centurionate of earlier times. Epigraphic and literary sources, however, do give us enough information to suggest the connections between the old-style centurionate, the new system of ranks, and the *centenarius* of Frankish sources.

The order of the new system is given by Jerome, who mentions each step in the imaginary demotion of a soldier from tribune to recruit, and is confirmed by literary, legal, and epigraphic sources.¹⁵ The NCO ranks from highest to lowest were *primicerius*, *senator*, *ducenarius*, *centenarius*, *biarchus*, and *circitor*.

commission. On the other hand, it largely remained a plebeian post, filled mainly from the ranks, usually, though not always, marking the end of a successful career and not a stepping stone to command. In the high Empire it still needs to be distinguished from the commissioned ranks of the senatorial and equestrian *cursus*, and in the late Empire from the products of the imperial staff (*protectores*) and the unit and regimental commands of tribunes and prefects. On the *protectores*, see Jones, *LRE* 53-54, 129-30, 636-40; R. I. Frank, *Scholae Palatinae: The Palace Guards of the Later Roman Empire*, Papers and Monographs of the American Academy in Rome 23 (Rome 1969); and E.-C. Babut, 'Recherches sur la Garde Imperiale et sur le corps d'officiers de l'armée Romaine au iv et v siècles,' *Revue historique* 114 (1913) 225-60; 116 (1914) 225-93. Babut's view that the old centurions were all promoted to the protectorate in the late Empire is mistaken.

¹³ *Numerus* could be applied to various kinds of unit though it has become a scholarly term for small ethnic or barbarian regiments of the Principate: see M. Speidel, *Roman Army Studies* (Amsterdam 1984) 117-31.

¹⁴ The standard works on the late army are R. Grosse, *Römische Militärgeschichte von Gallienus bis zum Beginn der byzantinischen Themenverfassung* (Berlin 1920); J. Maspero, *Organisation militaire de l'Égypte byzantine* (Paris 1921); D. van Berchem, *L'armée de Diocétien et la réforme constantiniennne* (Paris 1952); Jones, *LRE* 607-86; and D. Hoffmann, *Das spätrömische Bewegungsheer und die Notitia Dignitatum = Epigraphische Studien* 7.1 & 2 (1969). See also works by Babut and Frank (n. 12).

¹⁵ Jerome, *Contra Joannem Hierosolymitanum* 19, PL 23.386-87. The other evidence for the various ranks is considered by Grosse, *Römische Militärgeschichte* 112-24, and Jones *LRE* 1263.

The two bottom ranks entailed supervisory and administrative duties, not command, and corresponded to the sub-centurionate *principales* or NCOs of earlier times. Little can be said with certainty about the functions of the first two except that the *primicerius*, as his name indicates, was the senior NCO in his unit (his position points to analogy with the *primus pilus* of the old centurionate); the term *senator* is puzzling and combined with the ranks of *ducenarius* and *centenarius* might seem to suggest a sequence of military equivalents to the senatorial and equestrian grades of civil society. Whatever were the functions of the *senator* (and one might guess the term implied staff duties or a privileged degree of seniority), it is clear that the *ducenarii* and *centenarii* took their names, not from civilian ranks, but from the nominal size of the companies they commanded, and therefore were 'two-hundred men' and 'one-hundred men' in a sense very different from the salary grades of equestrian offices.

Fortunately we are better informed about the functions of the *ducenarius* and *centenarius* and their relation to the old system of ranks because of the military treatise of Vegetius, probably written in the second quarter of the fifth century.¹⁶ In Book Two he describes the organization of what he calls the *antiqua legio*, but in the process refers explicitly to the terminology and practices of his own time. We know that since the first century the complement of the first cohort of the legion had been approximately twice the size of cohorts two to ten and constituted, in Vegetius' words, a *cohors miliaria* as opposed to the *cohortes quingentariae* of the rest of the legion; as a consequence of this doubling of the first cohort, the commands of its centurions, the *primi ordines*, were augmented. In Vegetius' legion, one of these centurions, called the *primus hastatus*, commanded two centuries numbering two hundred men; 'now,' comments Vegetius, 'he is called *ducenarius*.' The other centurions who led single centuries, he further adds, 'are now called *centenarii*.'¹⁷

Ducenarius, therefore, was simply a high-ranking centurion leading a double century, as his name implies. As an early fourth-century inscription from Arabia shows, the *ducenarius* could also have the rank of *primicerius*, if he was the senior sub-officer in his unit.¹⁸ The ranks from *centenarius* to *primicerius*

¹⁶ Flavius Vegetius Rhenanus, *Epitoma rei militaris*, ed. C. Lang (1885; repr. Stuttgart 1967). The precise date is controversial, the *termini* being 383–450. The case for the reign of Valentinian III, first made by O. Seeck, 'Die Zeit des Vegetius,' *Hermes* 2 (1876) 61–83, has recently fallen on hard times; but now see Walter Goffart, 'The Date and Purpose of Vegetius' *De re militari*,' *Traditio* 33 (1977) 65–100, which is also a striking antidote to the modern tendency to disparage the work as inane antiquarianism.

¹⁷ 'Item primus hastatus duas centurias, id est CC homines, ducebat in acie secunda, quem nunc ducenarium uocant. . . Erant etiam centuriones qui singulas centurias curabant; qui nunc centenarii nominantur' (2.7). And cf. 2.13: 'centuriones . . . qui nunc centenarii uocantur.'

¹⁸ M. Speidel, *Roman Army Studies* 716.

thus corresponded to grades within the old centurionate, with *centenarius* being the new name for the ordinary centurion who normally led a single century.

Vegetius also implies that by his day the name *centenarius* had replaced the old title of *centurio*. Epigraphic evidence does show the new units of the late third, fourth, and fifth centuries, especially elite and field-army regiments, employing the new system of ranks.¹⁹ In some cases the old term *centurio* may have been driven out; in the Antonine Itinerary, for instance, the place name *Ad Centuriones* is replaced in the Peutinger table by the name *Ad Centenarium*.²⁰ Those frontier troops without strong connections to the regimental traditions of the Principate no doubt also employed the new system. The typical frontier fortress, *burgus*, was sometimes called a *centenarium*, a term which might indicate command of it was in the hands of a *centenarius*, though other reasons for the name are possible.²¹ The old term *centurio*, nevertheless, seems to have survived in units with histories going back to the Principate, though increasingly these were in the minority and of second-class frontier status.²² The result was a dual terminology; *centenarius*, the more recent term, existed side by side with *centurio*, which was retained out of traditionalism or antiquarianism. This dualism persisted into the successor kingdoms of the west where the terms *centenarius* and *centurio* are attested for the standard sub-officer in the military and administrative hierarchy.²³

This terminology was Latin. The Greek East had its own equivalents of some antiquity to be added to the vocabulary of the centurionate: *κένταρχος*, and especially *ἐκατόνταρχος*, both meaning, like *centurio* / *κεντυρίων* and *centenarius*, 'leaders of one hundred,' and occasionally *ταξίαρχος*. *Ἐκατόνταρχος*, a word with a very long history in Greek military terminology, was used throughout the imperial and well into the Byzantine periods for centurion, and *ἐκατονταρχία* regularly appears in the Greek tacticians as an equivalent of *centuria*.²⁴

¹⁹ Jones, *LRE* 634, 1263-64.

²⁰ *RE* 3.2, s.vv. 'ad Centuriones.' Cf. Grosse, *Militärgeschichte* 117.

²¹ On the *centenaria*, see van Berchem, *L'Armée de Dioclétien et la réforme constantiniennne* 46-48. In what sense do these forts consist of, or pertain to, 'one-hundred'? A *ballista centenaria* throwing shot of a hundred weight (Lewis and Short, s.v. *centenarius*, with other examples) should remind us of the possibly wide application of the term.

²² Jones, *LRE* 674-75.

²³ For *centurio* see *Lex Alamannorum* 27.4 (and cf. *centenarius* in c. 36), in *Leges Alamannorum*, ed. K. Lehmann, 2nd ed. K. A. Eckhardt, MGH LL 5/1; *Lex Baiwariorum* 2.5, ed. Ernst von Schwind, MGH LL 5/2. And in the Merovingian kingdom, the so-called treatise on offices: *centurio* 'sub qui C' or 'qui super centum est' (Franz Beyerle, 'Das frühmittelalterliche Schulheft vom Ämterwesen,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Germanistische Abt. 69 [1952] 6); for literature, H. Schlosser, 'Ämtertraktat,' *Handwörterbuch zur deutschen Rechtsgeschichte* 1.154-55.

²⁴ See Hugh J. Mason, *Greek Terms for Roman Institutions* (American Studies in Papyrology 13; Toronto 1974) s. vv. And cf. H. G. Liddel and R. Scott, *A Greek-English Lexicon*

Centenarius therefore is not simply a poorly attested military term of the late Empire but part of a wider vocabulary for the ordinary sub-officer of the Roman Empire, the leader of the nominal one-hundred-man unit, or century.²⁵ As we shall see, recognizing this context considerably enlarges the scope for investigating the foundations of the Frankish *centenarius*; we need not rely solely on the small number of Roman epigraphic remains and literary texts that mention the term *centenarius* but can extend our inquiry to the functions officers of this rank performed in the military, administrative, security, and judicial system of the Roman Empire.

The commander of the century, whether called *centurio*, *centenarius*, or ἑκατόνταρχος, also occupied a definite position in a hierarchy of ranks. This hierarchy, despite the jettisoning of much of the antiquated terminology and distinctions of the Principate, can seem complex. Nevertheless a sketch of its main elements may help establish the Roman origin of the Frankish *centenarius* and assist our understanding of his position in the Merovingian military and administrative system. For the Frankish term *centenarius* did not result from an isolated reception, but was part of a general adaptation of late Roman ranks and offices as a system — a perspective frequently overlooked in modern debates over the origin of individual Merovingian offices.

In the late Empire the generic term for general, *dux*, was applied to all regional army commanders; those with an especially elevated rank also bore the title 'military count' (*comes rei militaris*).²⁶ Membership in the order of counts (*comitiva*), which came in three grades, was originally a personal distinction granted by imperial codicil; eventually it came to be associated with certain offices and ranks. The *comites rei militaris*, who were counts of the first grade, outranked *duces* — counts of the second grade in command of border troops; these *duces* in turn might command lesser counts. Unit or regimental commanders were called *tribuni* or *prefecti* though the term *praepositi*, which strictly speaking indicated a function not a rank, was sometimes used as a comprehensive designation. Imperially commissioned junior officers, called

(9th ed.; Oxford 1940) s.vv.; Ferdinand Lot, *L'Art militaire et les armées au moyen âge* (Paris 1946) 45.

²⁵ The one hundred is notional because centuries rarely, if ever, amounted to one hundred men; even in the Principate sixty- to eighty-odd appears to be standard. Troops of cavalry, in which the new ranking system was widespread, were even smaller. Jerome's imaginary unit (n. 15, above) is of cavalry.

²⁶ For the ranks discussed here, see Grosse, *Militärgeschichte* 107–91; Jones, *LRE* 608–10, 633–46. The great central military office of *magister militum* makes no appearance in the Frankish kingdom; the term in the Angers *formulae*, if accurate, refers to a municipal officer, possibly the commander of militia or of the *iuvenes* (*Formulae Merovingici et Karolini aevi*, ed. K. Zeumer, MGH LL, *Formulae*, p. 4). The place of *magister* in the Frankish hierarchy seems to be taken by *patricius*, an honorific created by Constantine and eventually applied in the West to the supreme commander; see Jones, *LRE* 106, 176, 262 and cf. below, n. 83.

protectores or *protectores domestici* in the fourth century and just *domestici* in the fifth, filled out the complement of the officer ranks. Vegetius gives a thumbnail sketch of this hierarchy when he recommends that the general (*dux*) of an army know by name if possible every *comes*, *tribunus*, and *domesticus* under his command.²⁷ Below these officer grades were the standard NCOs in the ranks given above by Jerome, including the hundred-man-unit leaders variously called *centuriones*, *centenarii*, and *ἐκατόνταρχοι*.

Merovingian office holding as a whole combined, as is to be expected, a variety of former Roman military and civil titles, which can often be further distinguished on the basis of their application to the municipal, regional and central administration. These offices were clearly ranked in the sixth-century Merovingian kingdom, and formed a kind of *cursus honorum*, or at least a system of graduated promotion.²⁸ The strong resemblance between Roman and Merovingian ranks is qualified principally by the greater simplicity of the Frankish system, and partly by the Merovingian unification in its regional administration of military and civil functions. The Merovingians were not wholly responsible for combining civil and military functions because the celebrated late imperial division between civil and military office often broke down in the stresses of the Empire's final days and had at the best of times served chiefly to keep civilian noses out of military business and not vice versa. Moreover the early Byzantine state, though maintaining the civil / military distinction, also shows a tendency to territorialize military command and merge military and civil powers.²⁹ The military offices of the Frankish kingdom, which in most cases included civil jurisdiction, formed the following hierarchy: *dux*, *comes*, *tribunus*, *centenarius* — a pattern clearly modeled on the ranks of the late Roman army. The resemblance is not superficial and extends beyond title and rank to the substance of the commands.

The Merovingian *dux*, like his Roman predecessor, held a regional command originally concerned with frontier districts. His duties as an administrator coincided with those of his subordinate, the count (*comes*), but were exercised on a larger scale; a *dux* had several counts under his jurisdiction.³⁰ Some areas

²⁷ Vegetius 3.10. For *protectores* see n. 12, above.

²⁸ Merovingian officeholding has frequently been surveyed in the older literature, sometimes with quite divergent conclusions: cf., e.g., Fustel de Coulanges, *La Monarchie franque* 183–242, and Heinrich Brunner and Cl. Frhr. von Schwerin, *Deutsche Rechtsgeschichte* (2nd ed.; Systematisches Handbuch der deutschen Rechtswissenschaft 2.1; Leipzig, 1928) 2.201–69 (henceforth *DRG*). More recently see Ewig, 'Das Fortleben römischer Institutionen,' 409–13, who generally stresses Roman continuity; and see below, n. 30.

²⁹ Grosse, *Militärsgeschichte* 153–61, and see below p. 85.

³⁰ Continuity in the Merovingian ducal and comital offices has recently been the subject of debate: see Rolf Sprandel, 'Dux und Comes in der Merowingerzeit,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Germanistische Abt. 74 (1957) 41–84; 'Bemerkungen zum frühfränkischen Comitatus,' *ibid.* 82 (1965) 288–91; and Dietrich Claude, 'Untersuchungen zum

of ducal administration seem to have been relatively stable, but Gaul as a whole seems never to have been consistently subdivided into duchies.

The Merovingian *comes* was patterned not on the great military count (*comes rei militaris*) of the Roman system, but on lesser commanders called *comites civitatum*, who appear in the last decades of the Western Empire exercising military and civil functions in the Gallic cities and their territories (*civitates*). His Merovingian counterpart, invested with the same title, functions, and jurisdiction, commanded the forces of his *civitas* when the army was assembled. In southern sources the count was assisted by a lieutenant, called a *vicarius*. Although vicars and *centenarii* in the Carolingian period appear to be indistinguishable from one another, the positions were originally distinct.

The rank of tribune is clearly attested in the Merovingian kingdom though not well enough to convey precisely its role in the military and civil hierarchy. Certain features of the title, however, are clear. Holders of the rank exercised military command and probably civil functions as well; tribunes ranked below counts and above *centenarii*, who might be their subordinates. The title with some frequency is linked to a city (*tribunus civitatis*), a practice with late Roman precedents and paralleled in early Byzantine nomenclature.³¹ It is quite likely that the term was borne by local military and civil officials ranking below counts and also by military commanders of the royal retinue.

The latter context probably explains an interesting grave inscription from Trier, dating from the sixth or early seventh century. The memorial, set up by the deceased's wife, who describes herself as *nobilis*, commemorates a certain Hlodericus who had assumed 'command of a *numerus* with the title of *vicarius*.'³² The Romanized context of the inscription has been denied principally on the grounds that the use of the term *vicarius* does not conform to Roman practice.³³ In fact the terminology is completely Roman and corresponds exactly to late imperial and Byzantine usage. *Numerus* was the old standard word for a military unit of any type and was widely used for the new-style smaller regiments of the late Empire; Byzantine practice contemporary with

frühfränkischen Comitatus,' *ibid.* 81 (1964) 1-79; 'Zu Fragen frühfränkischer Verfassungsgeschichte,' *ibid.* 83 (1966) 273-80. Aspects of the problem of the count are dealt with in my 'The Position of the *Grafio* in the Constitutional History of Merovingian Gaul,' *Speculum* 64/4 (1986) 787-805.

³¹ The Merovingian sources are discussed by Fustel, *Monarchie franque* 222-24 and Brunner-v. Schwerin, *DRG* 2.241-44, with much the same results. For the association of tribunes with cities in the East, see Grosse, *Militärsgeschichte* 148.

³² 'Hic requies data Hloderici membra sepulcherum / qui capus [= caput] in numero vicarii nomine sum[p]sit. / Fuit in pupulo gratus et in suo genere pr[i]mus. / Cui uxor nobilis pro amore tetolum fie[ri] iussit.' *Corpus Inscriptionum Latinarum* XIII, 1/2 (Berlin 1904) no. 3683, p. 596. On the date, see Eugen Ewig, *Trier im Merowingerreich* (Trier 1954) 80 n. 103.

³³ Krug, 'Untersuchungen zum Amt des "centenarius"-Schultheiss,' 6-7.

the inscription used the Greek equivalent ἀριθμός. And the term *vicarius*, far from being peculiar to the Frankish inscription, links it to the same context. *Vicarius* was not a fixed rank but a term meaning 'deputy,' 'lieutenant'; the term therefore appeared at several levels in the Roman hierarchy with the rank of the *vicarius* depending on that of his superior; military vicars, that is, substitutes for unit commanders, are frequently attested in fifth- and sixth-century Roman sources, and were probably of growing importance in the command structure.³⁴ This circumstance not only explains the use of the rank of vicar in the Frankish inscription but also the slight circumlocution: 'caput in numero vicarii nomine.' As a lieutenant-commander Hlodericus was in charge of the unit (*caput in numero*) without the rank of the usual commanding officer. And what would have been the rank of his commander? *Tribuni* and *prefecti*, but especially the former, led the *numeri* of late Roman and Byzantine armies. Hlodericus probably was the resident commander of his unit while his superior, a *tribunus*, attended to loftier matters. In the east, at a date probably not too far removed from that of the inscription, a law of Justinian seems to recognize that tribunes are likely to be absentees.³⁵

Below the tribune in the Merovingian hierarchy was the *centenarius*, a position which corresponded to the major NCO ranks of the Roman system. The simplification of the Roman system appears most severe in the sub-tribunate ranks, for only the leader of the nominally one-hundred-man unit was retained. Although the functions of the *centenarius* will be considered more fully below, it might be noted here that the most poorly attested of his duties are the purely military ones. Yet they certainly existed. In the *vita Corbiniani*, *centenarii* appear as subordinates of a *tribunus*; and the well-attested security functions of *centenarii* in the sixth century also document the military character of their office. Parallel officials with minor military commands appear in neighbouring states: a *centenarius* in the seventh-century *Leges Visigothorum*; and a *centurio*, who commands a division of the comital levy, in the Frankish-influenced *Lex Baiuvariorum* of the early eighth century.³⁶ The lack in the Bavarian law of an office equivalent to tribune probably reflects common Frankish practice. The small scale of local Frankish military forces would often have had little need for high-ranking tribunician commands below the count. The *comes* and his sub-officers, the *centenarii*, would have been suffi-

³⁴ On military vicars see Jones, *LRE* 675, 1279, with sources; Vegetius, 3.4, 3.6 (but cf. 2.4, 2.7, 3.7); and Mauricius, *Strategikon* ed. H. Mihaescu (Bucharest 1970) 12.8.8.

³⁵ *Novellae* 117.11, edd. R. Schoell and G. Kroll (Berlin 1895); and Jones, *LRE* 675, 1279. Ewig, *Trier* 80, sees the vicar of the Frankish inscription as a deputy count; this is possible.

³⁶ *Vita Corbiniani* 1.10, edd. Bruno Krusch and Wilhelm Levison, MGH SRM 6; the tribune and *centenarii* command a troop charged with executing a brigand. Cf. Brunner-v. Schwerin, *DRG* 2.242-43. For security functions see below, pp. 75, 90. *Lex Visigothorum* 9.2, ed. K. Zeumer, MGH LL 1; *Lex Baiuvariorum* 2.5.

cient — a circumstance which accounts for the scarcity of evidence on tribunes and for the frequent ranking in later sources of *centenarii* directly after *comites* and their deputies. Whether the subordinate of a *comes* or *tribunus*, the *centenarius* was the standard sub-officer of the Merovingian administrative and military system, and it is highly improbable that he, unlike his superiors who were royal appointees, was ever directly commissioned by the king.

The term *centenarius* was not an isolated borrowing from the late Empire. The Merovingian hierarchy of *dux*, *comes*, *tribunus*, and *centenarius* was a system of ranks and offices adopted as a whole from the Roman military by the Franks and adapted to the conditions of the Merovingian kingdom in Gaul. This circumstance, and the wide distribution of the *centenarius* in the Roman military system, underscores the difficulty of isolating a particular channel for the adaptation of the *centenarius* by the Franks. The Gallic *laeti* regiments, which appear under prefects in the *Notitia Dignitatum* (an early fifth-century register of the Empire's military forces) no doubt had *centenarii* as NCOs, as did various units of the *limitanei*; but so too did the field-army and palatine troops.³⁷ The conclusion seems unavoidable, as well, that the Roman *comites civitatum*, the model for the Frankish counts, would, like their Merovingian successors, have had *centenarii* as sub-officers. Nothing about the rank suggests a fiscal context or a necessary connection to military settlement; but if Frankish settlement took place in the way the new scholarship suggests, it would not be surprising to find Merovingian *centenarii* as officials on crown property. There need not have been any particular channel through which the *centenarius* entered the Frankish military and administrative system. He was part of a well-established order adopted wholesale by the Franks.

When was that order adopted? One answer might be the late fifth and early sixth century as the Merovingian kings established their hegemony over Gaul. The appeal of the Roman hierarchy would have been overwhelming, one supposes, and the system of ranks would already be in place in the surviving military and political structures of the northern provinces. Well suited to the Roman character of the new administration and recognizable to the Gallic provincials, such a system would also parallel the prevalent forms of the Empire as well as the highly Romanized Visigothic, Burgundian, and Ostrogothic states, confirming the legitimacy of the new regime. By the late sixth century the adaptation would have been complete, giving us the thoroughly Romanized regime which appears in the works of Gregory of Tours and Fortunatus.³⁸

³⁷ *Notitia Dignitatum*, ed. O. Seeck (Berlin 1876) 216–19.

³⁸ Gregory of Tours, *Opera*, edd. Bruno Krusch et al., MGH SRM 1, 2 vols. (Hanover 1937–51, 1885); for references to the officials, see Margarete Weidemann, *Kulturgeschichte der*

Another answer which must be considered is that significant elements of the Roman system were already part of Frankish military organization prior to the conquest. Dannenbauer, for instance, argued this view with regard to the *centenarius*, pointing to the well-known contacts between the Roman military and the Franks since the fourth century. The general proposition of a substantial pre-conquest Romanization is not improbable, and depends in part upon evaluation of the passages mentioning officials in *Lex Salica* — the only basis for arguing the existence of a specifically Frankish regime in the early years of the Merovingian kingdom.³⁹

The widespread supposition that the Frankish conquest was brought about by means of retinues has been raised as a general objection to the idea of early Romanization, as if retinues excluded rank and command structures.⁴⁰ However one conceives of the retinue in a Frankish context, there need not be any contradiction with an organization based on established military lines. The late Roman military itself was permeated with terms suggesting the retinue writ large: for example, *comites* (as officers and regiments of cavalry), *comitatenses* (the field army), *palatini* (troops in attendance on the Emperor), *domestici* and *protectores* (imperial staff officers). Retinues were compatible with the command structures of the day.

The descent of the Frankish office of *centenarius* from the military hierarchy of the late Empire is not really an open question; the links are clear and unequivocal. But solving the problem of the origin of the *centenarius* does not fully explain his constitutional position. In particular his association in early Merovingian sources with local peacekeeping associations, his role as a judge in the early sixth-century collection of Frankish law called *Lex Salica*, the development of the *centena* as a territorial unit and its alleged connection to fiscal organization are aspects of the office needing elucidation. On all of these questions the late Roman sources still have a lot to tell us.

Merowingerzeit nach den Werken Gregors von Tours 1 (Mainz 1982) 24–106. Fortunatus, *Opera poetica*, ed. Friedrich Leo, MGH AA 4/2 (Munich 1881). Fortunatus was for a time at the courts of Sigibert I of Austrasia and Charibert I and Chilperic I of Neustria. He mentions the great posts of *dux*, *rector*, *maior domus*, *domesticus*, *comes*, *referendarius*, and lesser positions such as those of *tribunus* and *defensor*, all of which have Roman military and civil antecedents. For Fortunatus' life, see Brian Brennan, 'The Career of Venantius Fortunatus,' *Traditio* 41 (1985) 49–78. The Roman-based system of the treatise on offices is very difficult to date: see n. 23.

³⁹ For some of the problems with *grafio* and *thunginus* of *Lex Salica*, see my 'Position of the *Grafio*,' 787–805. The other distinctive officials mentioned in *Lex Salca* are *sagibarones*; they invite comparison with the *pueri regis* 'qui multam per pagos exigunt' of *Lex Burgundionum* 49.4, 76, ed. L. R. von Salis, MGH LL 2/1; see Brunner–v. Schwerin, *DRG* 2.207.

⁴⁰ Krug, 'Untersuchungen zum Amt des *centenarius*,' 5.

III

In the *Pactus pro tenore pacis* (A.D. 511–558) of the Merovingian kings Childebert I and Clothar I, the *centenarius* is directed to lead a posse (called a *centena* or *trustis*) in the pursuit of thieves whose activities have gone unchecked owing to the collusion of previously stationed night watches. The *centena*, which appears to have a territorial dimension, is to be held financially responsible for stolen goods and its members subjected to a fine if they fail to act when summoned. Similar rules in the Austrasian *Decretio Childeberti II* (A.D. 596) seem to recognize that security arrangements like those of the *centenae* also exist on the estates of the king's *fideles*.⁴¹

These capitularies have given rise to a number of interpretations. The traditional teaching saw them as marking the introduction into the recently conquered Gallic provinces of the primitive Germanic hundred, either as a territorial unit or as a group. To Dannenbauer and Mayer, who convinced recent scholarship of the Roman origin of the *centenarius*, the Merovingian provisions proved their contention that the hundred had a fiscal character. But acknowledgment of the *centenarius*' Roman background has not displaced Germanist interpretations of the institutional framework of Merovingian security measures. For instance, soon after Dannenbauer's rejection of the old hundred theory became known, Franz Steinbach both accepted the Roman origin of the term *centenarius* and argued that the police troop itself was derived from the so-called Tacitean judicial hundred.⁴²

More recently Steinbach's view has been vigorously developed by Heike Grahn-Hoek. Agreeing with the Roman derivation of the *centenarius*, she recognizes that a connection with the *centeni comites* of Tacitus can no longer be argued on the basis of the similarity of name; the term *trustis*, on the other hand, since it is Franko-Latin, must refer to a Germanic institution, which is to be equated with the judicial hundred-troop of Tacitus. The *trustes*, she believes, were originally the princely troops of the Merovingian *subreguli*, whose role was transferred to the new monarchy established by Clovis; the capitularies reveal this *Grosskönigtum* appointing its own *centenarii* and *iudices* over the retinues of the old petty kings of the Franks.⁴³ This interpretation

⁴¹ Texts below, nn. 56, 61.

⁴² Franz Steinbach, 'Hundertschar, Centena und Zentgericht,' *Rheinische Vierteljahrsblätter* 15/16 (1950/1951) 121–38; repr. in *Collectanea Franz Steinbach* (Bonn 1967) 707–21.

⁴³ Heike Grahn-Hoek, *Die fränkische Oberschicht im 6. Jahrhundert: Studien zu ihrer rechtlichen und politischen Stellung* (Vorträge und Forschungen / Konstanzer Arbeitskreis für mittelalterliche Geschichte, Sonderbd. 21; Sigmaringen 1976) 276–99. She thinks the *centenarius* replaced the *thunginus* of *Lex Salica* as the leader of the *trustis*. This view owes a lot to the dubious interpretation of the *thunginus* as a king by R. Wenskus, 'Bemerkungen zum *thunginus* in der *Lex Salica*,' in *Festschrift P. E. Schramm* (Wiesbaden 1964) 217–36; on which see my 'Position of the *Grafio*,' 795.

strikes one of the common chords of Merovingian history — the assimilation by the new monarchy of old Germanic institutions, a theme adaptable to changing trends in historiography. To the traditional teaching, the old institutions were popular; to the new, they are the dispersed relics of nobility.

Not all interpretations of the Merovingian capitularies emphasize the persistence of ancient Germanic institutions. Wallace-Hadrill, for instance, unites Dannenbauer's interpretation of the fiscal character of the *centenae* with the earlier interpretation of Julius Goebel who stressed the novelty of the provisions of the *Pactus pro tenore pacis*. The provisions constitute 'brave first strokes,' according to Wallace-Hadrill; 'a venturesome step in the direction of state control over one troublous problem of wrongdoing,' according to Goebel. Both believe that a new public duty, based on territorial liability and ultimately on the application of the Roman notion of the infamy of the wrongdoer, was imposed by the *Pactus*, thereby upsetting previous standards of kinship liability and compensation theory. The result, according to Goebel, was almost tantamount to a revolution in criminal law practice.⁴⁴

The interpretations outlined above appear to be incompatible with one another. For example, a *trustis* recruited in a fiscal *centena* from settlers whose free status was ambiguous would have, one might think, a character quite different from that of a *trustis* composed of the retinue of a defunct king. It comes as little surprise then to find proponents of the latter view denying the fiscal character of the *centena*. Likewise the claim for the survival of ancient Germanic judicial associations is ill suited to the alleged revolutionary character of the *Pactus*. As contradictory as these contexts may seem to be, there is nevertheless a common point of departure. Apart from accepting the Roman origin of the *centenarius* or invoking the Roman-law notion of infamy, most scholars still view the capitularies as modifications of Germanic practice: Germanic law and institutions are their starting point.

Yet neither innovation nor hypothetical ancient Germanic institutions are needed to explain the provisions of the *Pactus pro tenore pacis*. Childebert's kingdom, embracing parts of the old province of *Lugdunensis*, and Clothar's, composed largely of *Belgica secunda*, were no strangers to Roman institutions. The frontier between the two realms ran roughly midway between Paris and Soissons; once part of the Gallo-Roman state of Aegidius and Syagrius until its conquest by Clovis, this area never lost its Romance character, no matter the degree of Frankish settlement. The persistence here of provincial institutions under the Merovingian kings should be expected. And indeed the continuity of

⁴⁴ J. M. Wallace-Hadrill, *The Long-Haired Kings* 192–93. Julius Goebel, *Felony and Misdemeanor: A Study in the History of English Criminal Procedure* (New York 1937) 66–73. These views presuppose that feud, compensation, and kin groups were the starting point of primitive Germanic criminal law.

police measures for the suppression of theft seems certain when the role of the *centenarius* and the local associations over which he presided are compared with late Roman provincial practices.

Until fairly recent times most societies have done without permanent and extensive police forces for the prevention and prosecution of criminal acts, relying instead upon private initiative supplemented by local association and military intervention when needed. The Roman Empire was no different. Despite developing elements of a so-called 'bureaucratic' and 'repressive' model of criminal justice, the late Roman Empire remained wedded, wherever possible, to traditional notions of private prosecution and pecuniary sanctions; in matters of policing, it did not anticipate the modern state, but systematized the measures of Antiquity.⁴⁵ The police and security forces of the late Roman Empire operated rather haphazardly at three levels. Municipal or local associations under varying degrees of compulsion bore the burden of public policing, but might be stiffened by the imperial administration, as the need arose, through the intervention of the military or the direction of provincial officials. In addition, policing of the great estates is clearly attested, and not simply in frontier zones or areas subject to large-scale brigandage. These municipal, central, and domainal security forces were long-standing components in Antiquity's efforts to contain crime, and each has a bearing on the interpretation of police measures in sixth-century Merovingian documents.⁴⁶

Municipal or local peacekeeping, like other public functions performed by the townsmen and country dwellers of the Empire, was a compulsory state service, a liturgy. The liturgists, enrolled under oath with specific duties according to a system of rotation, served without pay and could be made liable in their persons or property for the efficiency of their service.⁴⁷ The burden may

⁴⁵ For the contrast between the so-called 'Germanic' restitutive model based on compensation and the Roman, afflictive, state law model in European history, see the otherwise excellent Bruce Lenman and Geoffrey Parker, 'The State, the Community and the Criminal Law in Early Modern Europe,' in *Crime and the Law*, ed. V. A. C. Gattrell (London 1980) 11-48; and cf. in the same volume, Christina Lerner, 'Crimen Exceptum? The Crime of Witchcraft in Europe,' 68. In view of the secondary literature, their conclusion is not surprising, but the distinction is false. Compensation is as Roman as it is Germanic; see Ernst Levy, *Weströmisches Vulgarrecht: Das Obligationenrecht* (Forschungen zum römischen Recht 7; Weimar 1956) 301-50.

⁴⁶ For Roman police measures in general see Ramsay MacMullen, *Soldier and Civilian in the Later Roman Empire* (Cambridge, Mass. 1963) 50-65 and 132-40, and *Enemies of the Roman Order* (Cambridge, Mass. 1966) 255-68; Theodor Mommsen, *Römisches Strafrecht* (Leipzig 1899) 305-22; Otto Hirschfeld, *Kleine Schriften* (Berlin 1913) 576-623; and n. 53, below. And see Jones, *LRE* 725-26, 1298; and for *stationarii*, 521 and 1219.

⁴⁷ In general, see M. Rostovtzeff, *The Social and Economic History of the Roman Empire* (2nd ed.; Oxford 1957) 1.380-91. The old standard work for Egypt, where the evidence is richest, is F. Oertel, *Die Liturgie: Studien zur Ptolemäischen und Kaiserlichen Verwaltung Ägyptens* (Leipzig 1917), but now also see Naphtali Lewis, *The Compulsory Public Services of*

have increased in the late Empire; the names for security officials of one kind or another seem to proliferate in third- and fourth-century sources, and modern authorities have claimed to find a rising incidence of brigandage in the third century and consequently increasing emphasis on the liturgical nature of peacekeeping.⁴⁸

The evidence for these duties comes almost exclusively from the East, principally Egypt and Asia Minor. Modern scholarship agrees, however, that this circumstance reflects the distribution of the sources, not a fundamental distinction in conditions between the eastern and western portions of the Empire. Peacekeeping associations of volunteers and liturgists could be found throughout the Empire, probably recruited in a variety of ways.⁴⁹ A number of terms for local constables are attested in the Eastern sources, usually compounds with the Gk. φύλαξ (pl. φύλακες), guard or watch.⁵⁰ Among the most common are the νυκτοφύλακες, night watches, a term which reflects the common working hours of most urban and rural thieves, especially rustlers, and of the local forces set out to catch them. Such groups of locally recruited police had commanders, still liturgists but drawn from a higher social stratum than the ordinary men of the watch. These commanders, existing at various levels in the local administrative hierarchy, were called by a number of titles; the most common term probably was irenarch, literally 'peace officer.'

It should come as no surprise to find that associations under local peace officers were inefficient or oppressive, although, after all is said and done, still necessary. A constitution of 409 in the *Codex Theodosianus* pretends to do away with the very name of irenarchs, 'this breed so pernicious to the state'; because irenarchs do not permit 'harmonious concord and peace to exist in country districts,' the Praetorian Prefect is to transfer the protection of the

Roman Egypt (Papyrologica Florentina 11; Florence 1982). Classification and origins are briefly discussed by J. David Thomas, 'Compulsory Public Services in Roman Egypt,' *Das römisch-byzantinische Ägypten* (Aegyptica Treverensia 2, edd. G. Grimm, H. Heinen, and E. Winter; Mainz 1983) 35-39.

⁴⁸ Macmullen, *Soldier and Civilian* 51; L. Robert, *Études anatoliennes: Recherches sur les inscriptions grecques de l'Asie Mineure* (Amsterdam 1970) 96; M. Rostovtzeff, *The Social and Economic History of the Roman Empire* 2.739.

⁴⁹ MacMullen, *Soldier and Civilian* 134; Jones, *LRE* 725. Western conditions are discussed by MacMullen 134-38 and an attempt made to link some rather difficult epigraphic evidence to peacekeeping; the main candidates for police recruitment are the guilds and especially the *iuvenes*. But again the best example of the latter is in the East: see Robert, *Études* 106-108.

⁵⁰ In addition to works in n. 46 above, see the inventory in Naphtali Lewis, *The Compulsory Public Services of Roman Egypt*, s.v. φυλακία/φύλαξ, with cross references to numerous compounds; see also ἀρχέφοδος, εἰρήνη/εἰρηγόρχης/εἰρηναρχος, ληστοπιαστής, νυκτοστράτηγος, ἑπάρχος; and Oertel, *Die Liturgie* 263-86. For Antioch, see J. H. W. G. Liebeschuetz, *Antioch: City and Imperial Administration in the Later Roman Empire* (Oxford 1972) 124-25; for Asia Minor, Robert, *Études* 96-110, 323, 339-40; and see n. 53 below.

peace to wealthier men. The very wealthy in fact had their own means for protecting themselves and were not subject to local recruitment; consequently irenarchs continue to appear in the laws after this date, and the version of the same constitution in the *Codex Justinianus* suggests simply that the provincial governors should more closely oversee their selection, and in particular, strive to enroll candidates whose financial resources would guarantee the performance of their duties.⁵¹

As local peacekeeping was not a profession but a liturgy, the State in this instance did not provide security but organized it with, it hoped, as little cost as possible to itself. Liturgists and well-meaning or self-interested volunteers were not enough, however, and the central authorities had to involve themselves directly in regional policing by the stationing of military detachments or instituting supervision by military officers drawn from the local forces or the provincial *officium*, the governor's staff. Apart from deploying troops, these officers might also receive petitions on minor judicial matters, superintend the deployment of civilian police, and investigate their conduct. Important military and civilian officials could always intervene, but normally the military officers serving as police were of fairly low rank — NCOs up to and including members of the centurionate; in our sources, which again are largely Egyptian papyri, by far the most common officers are 'commanders of one-hundred,' *ἑκατόνταρχοι*.⁵² Policing and supervision of local communities in fact appears to be one of the principal duties of the peacetime centurionate.

⁵¹ *Codex Theodosianus* (henceforth CT) 12.14.1, a. 409, ed. Theodor Mommsen (Berlin 1905): 'Irenarcharum vocabula, quae assimilata provincialium tutela quietis ac pacis per singula territoria haud sinunt stare concordiam, radicibus amputanda sunt. Cesset igitur genus perniciosum rei publicae; cesset rescriptorum irenarchas circiter inconvulsa simplicitas, et celsitudinis tuae sedes provinciarum defendenda suscipiat pacis huiusmodi, locupletioribus commissura, praesidia.' = *Codex Justinianus* 10.77, ed. Paul Krueger (Berlin 1915): 'Irenarchae, qui ad provinciarum tutelam quietis ac pacis per singula territoria faciunt stare concordiam, a decurionibus iudicio praesidium provinciarum idonei nominentur.' Irenarchs are mentioned in CT 11.24.6.7, a. 415; 10.1.17, a. 420; 8.7.21, a. 426. CT 12.14.1 did not intend to privatize peacekeeping, as has been claimed (C. Lecrivain, 'Études sur le Bas-Empire,' *Mélanges d'archéologie et d'histoire de l'École française de Rome* 10 [1890] 269–70, and cf. MacMullen, *Soldier and Civilian* 133, 138), but to recruit wealthier liturgists under imperial supervision. Abuses by local police are noted by Robert, *Études* 104; the son of a village irenarch is named in one of the petitions of complaint in the Abinnaeus archive (no. 48), below n. 65.

Minor police officials like irenarchs might exercise rudimentary judicial functions. This no doubt accounts for mention in West Roman sources of an *assertor pacis* — a rough linguistic equivalent of the eastern irenarch — among the *mediocres iudices* of the Visigothic kingdom (*interpretatio* to CT 2.1.8; in the mid-seventh-century *Lex Visigothorum* 2.1.15, the post is a royal appointment).

⁵² MacMullen, *Soldier and Civilian* 52–54; Mommsen, *Strafrecht* 312.

The deployment of liturgists and the military in districts of public administration should not obscure the role, less well attested than the measures of municipal and provincial authorities, of police forces on the great estates. Large domains needed protection, and we would have to assume the existence of watches even if the sources did not testify to their existence under the names of *saltuarii* in the West and *ὄρειοφύλακες* in the East.⁵³ One of the most interesting testaments to the nature of these arrangements comes from Egypt where a contract of the Byzantine period between a watch commander (*πρωτοφύλαξ*) and Flavius Apion has been preserved; in it the commander promises to pay his employer a twenty-four *solidi* penalty if he abuses his position by committing theft or concealing thieves. The existence of a prison might complete the great estate's security arrangements.⁵⁴

This brief outline of Roman security is a good starting point for considering policing in the Frankish kingdom, for sixth-century Gallic sources, in particular the previously mentioned *Pactus pro tenore pacis* of Childebert I and Clothar I, reveal measures comparable to those of the Roman provinces. The *Pactus* as we now have it is composed of three distinct but related parts: a series of laws about theft issued by Childebert I, similar provisions issued by Clothar I, and a third set of regulations that appear to constitute a joint declaration.⁵⁵ The last shows that the principal purpose of the agreement between the kings was to ease tensions on the frontier by permitting posses to pass from one kingdom to the other in the pursuit of thieves (*fures, latrones*) and by compelling cooperation between the security forces on both sides of the common border. The provisions issued by each king overlap to a considerable extent, with some notable exceptions; in particular the police regulations appear only in the Clothar section and the joint statement. Whether the document was ever issued precisely in the form we have it is open to doubt, and it may very well descend from a private compilation. The absence from Childebert's section of the police provisions may mean that his southern kingdom was the source of the detailed regulations issued by Clothar, but, in light of the condition of the text

⁵³ M. Rostovtzeff, 'Die Domänenpolizei in dem römischen Kaiserreiche,' *Philologus* 64 (1905) 297-307.

⁵⁴ Germaine Rouillard, *L'Administration civile de l'Égypte byzantine* (2nd ed.; Paris 1928) 167, 190.

⁵⁵ The text, which is in some disarray, can best be seen in J. H. Hessels, *Lex Salica: The Ten Texts with Glosses and the Lex Emendata* (London 1880) 415-19. There are critical editions by A. Boretius, *Capitularia regum Francorum*, MGH Capitularia 1.3-7; and K. A. Eckhardt, *Pactus Legis Salicae II.2: Kapitulierer und 70 Titel-Text* (Germanenrechte, N.F.; Göttingen 1956) 394-408 (henceforth GR). The GR text, without apparatus, appears in Eckhardt's *Pactus Legis Salicae*, MGH LL 4/1.250-52. MS numeration and paragraphing can be ignored. The text as found in n. 56 below is based on Boretius and Eckhardt and corresponds to Boretius cc. 9, 16-18, and Eckhardt cc. 84, 91-93.

as we have it and its obscure history, the wisest course is to draw no conclusions *ex silentio*. The joint statement simply shows that similar security arrangements were present on both sides of the border.

The following clauses from the section attributed to Clothar and from the joint statement relate to the disposition of local police associations:

[*Decree of King Clothar*] Whereas the stationed night watches do not catch thieves, because in many places they conduct their watch in collusion with those whose crimes they overlook, it is decreed that *centenae* shall be appointed.

Let him who has lost any property receive its value (*capitale*) in the *centena* [of the *centenarius*] where the property was lost. And let the brigand be pursued, and let him be arrested even if he appears in the *centena* of another; and if anyone summoned to this pursuit is negligent, let him be condemned to pay five *solidi*. However [if pursuit extends outside the *centena* where the property was originally lost], let him who lost the property receive its value without question from that *centena* [into which the brigand fled] — that is, from the second or third.

If the trail of the brigand is confirmed, however, he must be punished either now or in the future. And if he who lost property catches the brigand by himself, let him receive the entire compensation. But if the brigand is found by the posse (*trustis*), let it acquire one-half the compensation and exact the value of the stolen property from him

[*Joint Statement*] For the preservation of the peace we order that *centenarii*, through whose faith and attention the aforesaid peace may be observed, are to be detached and placed in the posse (*trustis*).

And since, by God's grace, brotherly love maintains an unbroken bond between us, let the *centenarii* have permission to pursue brigands and follow the tracks they leave within our adjoining provinces; and, as was said, let the suit against the thief remain the responsibility of the posse (*trustis*) that fails, so that — provided it searches diligently for the brigand — it may hasten immediately to restore to him who lost it the value of the stolen property.

If the posse (*trustis*) manages to catch the brigand, let it claim one-half the compensation and let the damages accruing from the brigand's removal of the property (*dilatatura*), if any are due, be paid from his property to him who suffered loss. And if, in pursuit, he who lost property has taken the brigand, he shall claim for himself full compensation and, along with it, damages (*solutio*) or whatever expenses (*dispendium*) there are; let the fine (*fredus*), however, be reserved for the judge of the brigand's province.

If anyone summoned to follow a brigand's trail chooses not to come, let him be condemned by the judge to pay five *solidi*.

And what we have established in the name of God for the maintenance of peace, we wish to preserve forever. Thus any judge who presumes to violate this decree should be aware he does so at the risk of his life.⁵⁶

⁵⁶ [*Decree of King Clothar.*] Decretum est ut qui ad vigiliis constitutas nocturnas fures non caperent eo quod per diversa intercedente concludio, scelera sua praetermissa, custodias exercerent, centenas fierent.

In cuius centena aliquid perierit, capitale qui eum perdiderit recipiat. Et latro insequatur uel, si in alterius centena appareat, deduxerit et ad hoc admonitus, si neglexerit, quinos

In the section of the *Pactus* ascribed to Clothar, the collusion of the previously posted night watches (*vigilia nocturna*) with the thieves they are meant to suppress has spurred the king to decree the establishment of *centenae*: 'centenas fierent.' This phrase, rather opaque if complete, is explained in the joint statement where, in a comparable instruction, picked *centenarii* are placed in command of the *trustis*.⁵⁷ The members of the *trustis* are clearly a posse since they may not already be on duty like the night watches but are summoned and fined if they fail to respond.⁵⁸ Like the English term posse, *trustis* appears to have a broad and narrow meaning, referring to both those subject to a summons for posse duty and the pursuing band itself. Since *centena* and *trustis* are used as synonyms, it is evident that the *centena* is in part the *trustis* led by a *centenarius*; it is a *centenarius*' command.⁵⁹ This command also has a territorial dimension because property can be lost in a *centena* and a thief can move from one *centena* to another; but the command is mobile when the members of the *trustis* are summoned and pursue the thief and drive him into the jurisdiction (*centena*) of another *centenarius*.

Certain financial liabilities apply to members of the *centena* or *trustis*, for they must restore to the victim of theft the value of the property stolen in their

solidos condemnetur. Capitale, tamen, qui perdiderat a centena illa accipiat absque dubio, hoc est de secunda vel tertia.

Si vestigijs conprobatur latronis tamen praesentia aut longe multandus. Et si persequens latronem suum comprehenderit, integram sibi compositionem recipiat. Quod si per truste inuenitur, medietatem compositionis trustis adquirat et capitalem exigat ad latronem . . .

[*Joint Statement*] Pro tenore pacis iubemus et in truste electi centenarii ponantur per quorum fidem atque sollicitudinem pax praedicta obseruetur.

Et quia, propiciante Deo, inter nos germanitatis caritas indisruptum uinculum custoditur, centenarii inter communes prouintias licentiam habeant latrones persequere uel uestigia adsignata minare, et in truste qua defecerit, sicut dictum est, causa remaneat, ita ut continuo capitalem ei, qui perdiderit, reformare festinet, ita tamen ut latronem perquirat.

Quem si in truste per(in)uenerit, medietatem sibi uindicet, uel dilatura, si fuerit, de facultate latronis ei qui damnum pertulit sarciatur. Nam si persequens latronem coeperit, integram sibi compositionem simul et solutionem, uel quicquid dispendii fuerit, reuocabit; fredus, tamen, iudici in cuius prouintia est latro reseruetur.

Si quis ad uestigium uel latronem persequendum admonitus uenire noluerit, v solidos iudice condemnetur.

Et quae in Dei nomine pro pacis tenore constituimus, in perpetuum uolumus custodire, hoc statuentes, ut si quis ex iudicibus hunc decretum uiolare praesumpserit, uitae periculum se subiaccere cognoscat.' For *dispendium* = *dilatura* cf. Brunner-v. Schwerin, DRG 2.809-12.

⁵⁷ 'Decretum est . . . centenas fierent' = 'iubemus ut in truste electi centenarii ponantur.'

⁵⁸ 'et ad hoc admonitus, si neglexerit, quintos solidos condemnetur' = 'Si quis ad uestigium uel latronem persequendum admonitus uenire noluerit, V solidos iudice condemnetur.' And cf. *Decretio Childeberti II* 3 § 2 (below n. 61).

⁵⁹ Cf.: 'Capitale . . . a centena illa accipiat' and 'in truste . . . causa remaneat, ita ut continuo capitalem ei qui perdiderit reformare festinet.' Cf also n. 57, and 'centenarii . . . licentiam habere latrones persequere . . . et in truste . . . causa remaneat.'

territory. The object of all this attention we must assume to be largely cattle; and established procedures for proving theft of this kind to local authorities are clearly taken for granted.⁶⁰ If the thief can be shown to have passed into other *centenae*, then the last *centena* known to have received him is liable for the value of the theft if it cannot produce the culprit. Posses under the command of *centenarii* may, by the terms of the agreement between the kings, pass from one kingdom to the other, transferring the liability for the value of the stolen property to the next *centena* receiving the thief. Along with the risk of financial penalties, the *centenae* are also furnished with a positive incentive. A *trustis* that in response to a complaint succeeds in tracking down the thief is entitled to one-half the penal compensation for theft.

In 596 the *Decretio* of the Austrasian king, Childebert II, laid down regulations very similar to those of the *Pactus pro tenore pacis*:

§ 2: If anyone refuses to assist a *centenarius*, or any judge, in the pursuit of a malefactor, he must be condemned to a penalty of 60 *solidi*

§ 4. Similarly, it is agreed that, if theft occurs, let the *centena* restore the value at once, and let the *centenarius* along with the *centena* lay claim to the action for theft and let it redound to their benefit.

§ 5. Likewise, it is agreed that if a *centena*, hot on a trail, follows it into another *centena* or among our *fideles*, and [the second *centena*] cannot at all drive the thief out into another *centena*, either let it return the convicted brigand or else let it immediately restore the value of the stolen property and exonerate itself from [the suspicion of complicity in] this matter with the oath of twelve persons.⁶¹

In Childebert's decree the penalty for failure to assist the *centenarius* or any judge has been raised to sixty *solidi*, the fine for disobeying the comital ban. The successful *centena*, including its *centenarius*, is entitled to the whole penal compensation, not the one-half assigned to the *trustis* in the *Pactus pro tenore*

⁶⁰ Cf. 'Si vestigijs conprobatur' and 'vestigia adsignata.'

⁶¹ There are editions of the *Decretio* by Boretius, *Capitularia*, pp. 15-17 and Eckhardt in the GR series, pp. 440-49 = MGH, pp. 267-69 (see n. 55, above), and *Lex Salica*, MGH LL 4/2.174-89. The following is based on the GR text:

'§ 2: Si quis centenarium aut cuilibet iudice noluerit ad malefactorem perseguendo adiuuare, LX solidos omnis modis condempnetur

§ 4. Similiter conuenit, ut si furtus fuerit, capitalem de praesenti centena restituat, et causa centenariu(s) cum centena requirat, eorum usibus proficiscat.

§ 5. Pari conditione conuenit, ut si centena, posita in uestigio, in alia centena aut quos fidelium nostrorum ipsum uestigium miserit, et eum in alia centena minime expellere potuerit, aut conuinctum reddat latronem aut capitalem de praesenti restituat et XII personas se ex hoc sacramentis exuat innocentem.'

Se in § 5 is from ms A 17. The variant of 'centena . . . miserit' § 5 in the E redaction ('si una centena in alia centena uestigium secuta fuerit et inuenerit uel in quibuscumque fidelium nostrorum terminos uestigium miserit') is not of independent value but is an attempt to resolve the present text.

pacis. Apart from these stiffer penalties and increased incentives, however, the framework of the security system of the *Decretio Childeberti* on the whole conforms to that of the *Pactus*. Regular supervision by *centenarii* seems to be taken for granted in the *Decretio* to such an extent that the term *centena* has apparently rendered the need for *trustis* superfluous. *Centenae* restoring the value of stolen property, rather than producing the thief, are also explicitly required to purge themselves of complicity by oath. Some such condition is probably implied in the stipulation of the *Pactus* that restoration of the value of the theft is acceptable provided a proper search for the thief has also been made; in any case, as we shall see, this procedure is unlikely to be a sixth-century Merovingian innovation. Finally, the *Decretio* takes into account that the king's *fideles* have great estates and assumes that they have security arrangements of their own which work in conjunction with those of the *centenae* of the public administration.

The measures revealed by the *Pactus pro tenore pacis* and the *Decretio Childeberti* coincide to a remarkable degree with the lineaments of Roman security as discussed above: (1) local associations of liturgists with the principal responsibility of peacekeeping; (2) supervision by military officers, especially those of centurion rank; (3) separate arrangements on the great estates. Each of these features, clearly reflected in the Merovingian sources, is a convenient guidepost for exploring further the connections between Frankish and late imperial institutions as well as for considering more fully the terminology of the Merovingian provisions.

(1) In the *Pactus pro tenore pacis* the local forces are the night watches stationed at strategic locations, probably the roads, and the *trustis*. The term *vigilia nocturna* is the linguistic equivalent of *νυκτοφύλακες*, the night watches of Eastern sources. The meaning of *trustis* will be discussed below, but it is obviously of broader application, referring to those stationed at their posts, like the night watches, and others who can be summoned to join a posse, and who are fined if recalcitrant. Many of the details of Roman security measures are obscure to us, but clearly the duty to pursue thieves when summoned rested upon a broader class than those actually on duty. By virtue of his coercive power, the Roman magistrate could always compel assistance from the population if the need arose. Thus, in Ostrogothic Italy, at a date very close to that of the *Pactus pro tenore pacis*, Cassiodorus instructed the governor of Bruttium to raise a posse of landowners (*possessores*) and chief tenants (*conductores*) to protect the fair at Squillace; a general obligation on local landholders to serve when summoned is presupposed.⁶² Egyptian sources of an earlier period also shows us a class of liturgists called *ληστοπιασταί*, robber-

⁶² *Variae* 8.33, ed. Theodor Mommsen, MGH AA 12.

hunters (Gk. *λησστής* = *latro*), who could be summoned to assist the local police and punished if they failed to do so.⁶³

The liturgical character of police duty is also apparent in the Merovingian regulations. The financial responsibility of liturgists for their failures explains the Merovingian insistence that the *centena* or *trustis* be responsible for the value of stolen property, just as it explains the property requirements of Roman compulsory service and the efforts to enroll wealthier irenarchs; the Frankish regulations also sound the well-worn theme of local failure and corruption to justify the application of harder measures. The discretion of authorities no doubt always played a role in attributing culpability to those subject to public burdens. In the Merovingian instance, abuses to the peace engendered by the presence of a readily accessible frontier,⁶⁴ the need to maintain good relations on the border between the two kingdoms, and the known failure and collusion of the watches have likely all contributed to a stringent application of the principle of financial responsibility, though it is still contingent upon the victim's ability to demonstrate a clear trail to be followed. The responsibility of liturgists could also be personal since the *centena* failing to produce the thief must clear itself by oath from the suspicion of collusion.

Very similar procedures are attested once again in Egyptian documents. The Abinnaeus archive, the mid-fourth-century papers of a unit commander stationed in the Fayyum, contains two petitions illustrating assumptions about the nature of local obligations similar to those pertaining to the Gallic *centenae*. The wording of the petitions is standardized, an indication we are dealing with relatively common workaday procedures. Both petitioners complain of theft and ask the military commander to apprehend the local village officials and compel them to produce the guilty parties. Among these officials were the local police — one petition explicitly mentions the irenarch. Both petitions also request that the *dux*, the military commander of the region, be informed of their requests.⁶⁵ These documents show that not only the local constabulary but village notables could be held liable for thefts committed in their locality; their conduct could be investigated by the military, which had a supervisory role over the community and, we must suppose, penalties could be imposed if the village representatives failed to satisfy the authorities as to their

⁶³ Rostovtzeff, *Social and Economic History* 488, 745; Hirschfeld, *Kleine Schriften* 614; Oertel, *Liturgie* 270.

⁶⁴ Goebel's argument (*Felony and Misdemeanor* 67 n. 5) that *pax* in the *Pactus* means international, not domestic peace, derives from his apparent need to deny the old Germanist 'peace theory.' The term in fact is part of the Roman vocabulary of public order (cf., e.g., in n. 51 above, *tutela quietis ac pacis*, and the etymology of irenarch).

⁶⁵ *The Abinnaeus Archive: Papers of a Roman Officer in the Reign of Constantius II*, edd. H. I. Bell, V. Martin, E. G. Turner, D. van Berchem (Oxford 1962) nos. 45, 47.

conduct. It is likely that oaths played a large role in such proceedings: for instance, we know from roughly the same period of a village police chief (called an ἀρχέφοδος) having to swear to municipal irenarchs that 'four men of another village whom the administration were looking for were not hiding in his village.'⁶⁶

The inquest procedure presumed in the Abinnaeus documents and in the Merovingian regulations of the *Pactus* and *Decretio* to settle matters of culpability is reflected elsewhere in early Frankish law. According to a law appended to *Lex Salica*, when a body is found between two *villae*, the local count is to summon the residents and compel them to clear themselves by oath of culpability or knowledge of the deed; the purpose of the procedure is to determine which *villa* is liable and to force the residents, as in the Abinnaeus documents, to produce the culprit if they are aware of his identity.⁶⁷ Again the Frankish state is seen employing the ancient combination of community responsibility and central supervision.

In the *Pactus pro tenore pacis* the term for the liturgists bound to police duties is *trustis*, a word of Frankish origin. Merovingian sources use the term in two distinct contexts. In the *Pactus* and in an addition to *Lex Salica*, *trustis* refers to those bound to pursue thieves and the pursuing band itself. In the modified form, *trustis dominica*, it is applied to the central forces and officials of the king.⁶⁸ The latter usage and the Germanic derivation of the term have sometimes suggested the general translation 'retinue,' a word that may be appropriate if understood in a broad sense rather than as a catch-word for primitive Germanic military institutions.⁶⁹ But the significance of a Frankish word in this context is problematic. The use of local terminology for common institutions is widespread, for instance, in Eastern sources where terms of Greek and Latin origin, but similar meaning, jostle one another with great frequency and in themselves may tell us little about the origin of particular institutions. The term *trustis* has in fact strong etymological associations with Latin terms used in Merovingian sources and with the conceptual framework of late Antiquity.

The Latin equivalents of *trustis* are *solacium* or *auxilium*, concepts which fit easily with its original meaning of something firm, trusty, strengthening, or

⁶⁶ Rostovtzeff, *Social and Economic History* 488, 745.

⁶⁷ *Pactus legis Salicae*, MGH LL 4/1 (henceforth LS) c. 102.

⁶⁸ *Trustis*: 'Si quis trustee dum uestigio minant detenere aut battere praesumpserit . . .' (LS 94). *Trustis dominica*: LS 41.5, 42.1 & 2, 63.1 & 2; *trustis regis*: *Lex Ribuariorum* 11.1, edd. Franz Beyerle and Rudolf Buchner, MGH LL 3/2.

⁶⁹ Cf. Eckhardt's 'Glossar' s.v. 'Gefolgschaft'; and Brunner-v. Schwerin, *DRG* 2.134-36, who accept a connection with *protectores*, an institution believed by them to be influenced by the Germanic *comitatus*; and cf. Niermeyer s.v. 3.

comforting.⁷⁰ All these terms had obvious applications to bands of armed men of various descriptions, and more broadly to those in service, whether strictly military or not.⁷¹ The closest approximation of *solacium* to *trustis* in the sense in which it appears in the *Pactus pro tenore pacis* occurs in the royal capitularies. In the *Decretio* of Childebert abductors are to be pursued as enemies of God; the judge in whose *pagus* the abduction took place — namely, the count — is to summon armed support (*solacium*) and kill the abductor. *Solacium* here is merely the *trustis* under another name, called upon to vary its standard prey and instructed to forgo the usual procedural limits to its activities.⁷² In the *Edict of Paris* A.D. 614 officials of bishops and of the powerful (*potentes*) are forbidden to summon armed support (*solacium*) in order to distrain property.⁷³ In this context the *solacium* would be the security force of the episcopal immunist and great secular lord — a troop of liturgists obligated to serve their lord, and counterpart to the *centena* of the royal administration.

An interesting parallel to the Merovingian use of *trustis* / *solacium* appears in Egyptian sources of the late Empire, where the Greek term *βοήθεια* has a very similar meaning and application. As noted, *trustis dominica* was the term for the royal retinue, the central military and civil officials of the Merovingian kingdom; *trustis*, unmodified, was used to describe the regional constabulary and liturgists liable to police duties. *Βοήθεια* has the same basic meaning as *trustis*: help, assistance, in Latin *auxilium*, *adjutorium*, or *solacium*; and like *trustis* it is applied to the central military and local police forces. The *πολιτικὴ βοήθεια*, the 'civil auxiliary,' was a contingent of regional police, liturgists liable for public service who, if need be, could be commanded by central offi-

⁷⁰ On *trustis* the old work by Maximin Deloche, *La Trustis et l'antrustion royal sous les deux premières races* (Paris 1873), still has value and surveys early scholarship. Modern scholars are agreed the word is a Latinized Frankish term, in OHG *trost*, meaning *auxilium*, *solatium*. Fritz Kern, 'Notes on the Frankish Words in *Lex Salica*,' in Hessels, *Lex Salica*, § 215 cols. 527–28; Uwe Eckhart, *Untersuchungen zu Form und Funktion der Treueidleistung im merowingischen Frankenreich* (Marburg 1976) 36. The late gloss *adjutorium* for *trustis* in *Lex Ribuarica* (MGH LL [folio series] 5.277) is correct. A rather one-sided account of the word is given by D. H. Green, *The Carolingian Lord* (Cambridge 1965) 126–40, 191–96.

⁷¹ Gregory of Tours describes the troops leading Merovech into exile at the command of his father as a small *solacium* (*Historiae* 5.14); and Gundovald's troops investing Comminges as a large *solacium* (*Historiae* 7.34); neither context fits the meaning 'retinue' in the institutional sense of modern historiography or the local police troops of the *Pactus pro tenore pacis*.

⁷² II § 2: '... ille iudex collectum solacium ipsum raptorem occidat.' On *solacium* = *trustis* see also Boretius, *Capitularia* p. 16 n. 8. *Centena* is used in another set of provisions issued the same year by Childebert for the troop under the command of the *centenarius* (n. 61, above).

⁷³ 'Agentes igitur episcoporum aut potentum per potestatem nullius res, collecta solacia, nec auferant nec cuiuscumque contemptum per se facere praesumant.' Boretius, *Capitularia*, c. 20, p. 23; cf. p. 16 n. 8.

cials; *στρατιωτικὴ βοήθεια* was the term applied to a force of the imperial army.⁷⁴

The significance of this coincidence of linguistic usage between Gaul and Egypt is difficult to evaluate. The likely explanation seems to be that the provinces of the eastern and western portions of the Empire shared fundamental notions about the character of central and local power. Underneath the coincidence appears to be the Latin conception of *auxilium*, adapted to the regional speech and institutions of the provinces. Like *auxilium*, the term *trustis* can mean assistance offered and assistance owed. The word can signify an armed troop and the abstract notion of service. As Kern noted, it is a bond as well as a band.⁷⁵ Combining such notions, the term *trustis* was well suited to the liturgical nature of local peacekeeping associations whose members were bound by oath to perform state service.

(2) The command of these associations by the *centenarius* is another feature of the Merovingian regulations closely paralleling imperial practices, particularly the use of military officers — among whom commanders of one hundred are prominent — for purposes of internal security and supervision of local communities. The edicts of the Frankish kings in this respect clearly introduce no novelty. The *Pactus* attempts to regularize the appointment of *centenarii* as the best means of guaranteeing the agreement between the kings; political requirements have contributed to stricter provisions for domestic order. The *centenarii* in question are *electi*, 'chosen, select,' a term I would interpret as meaning 'detached from their regular posts.' These posts are most likely part of the comital *officia*. In the *Decretio* the regular employment of *centenarii* in police duties is taken for granted, though other judges might also lead posses, and the monetary penalty for failure to lend assistance is raised to the amount exacted for breaking the comital ban.

The name for the command of the *centenarius* is *centena*. Such a command when exercised over local police associations obviously has a territorial dimension to it, but the word itself does not mean at this stage a territorial unit, neither a primitive judicial division as the old scholarship tended to believe nor a crown settlement as recent interpretations maintain. In the *Pactus* the establishment of *centenae* is equivalent to the appointment of *centenarii*; and the mobile troop, *trustis*, can be called a *centena* when under the *centenarius*. The range of meanings here seems clearly to require that the concepts 'command,' 'office,' even 'jurisdiction' of a *centenarius* should be fundamental. The same meaning appears in the Roman sources. *Centena* is the name for the office or rank of the equestrian *centenarius*, and had the same significance in

⁷⁴ Rouillard, *L'Administration civile de l'Égypte byzantine* 52, 164 n. 10, 165 nn. 3, 6.

⁷⁵ Kern, 'Notes on the Frankish Words in Lex Salica,' col. 528.

the armed forces; as noted in Lewis and Short, *centena* is the linguistic equivalent of *centurionatus*, the office of a centurion.⁷⁶

In the eighth century *centena* appears for the first time as a division of the county, a usage which is probably of relatively recent vintage. The better-documented term *comitatus*, we know, experienced a similar evolution as the one suggested here for *centena*, and indeed, the two terms should be regarded as undergoing parallel developments. In sixth-century sources *comitatus* does not yet mean the territorial division under a count, the 'county,' the usual meaning it has from the Carolingian period onwards, but rather the office or command of a count, and the rights and powers, the jurisdiction, of that office; the usual terms for the district under the count is *civitas* or *pagus*. Like *centena*, only in the eighth century does the term *comitatus* take on a distinctly territorial meaning, and become the standard designation of the county.⁷⁷ With both *centena* and *comitatus* we see an evolution from the abstract, malleable concept of office, command, and jurisdiction, to the stricter notion of the territorial unit in which those powers are exercised. Early *centenarii* no doubt exercised their police commands over territorial districts of some sort, probably various kinds of long-standing divisions of the *civitas* or *pagus*, but so far as we can tell the term *centena*, the hundred, as a territorial designation emerged only in the eighth century.

(3) The final parallel between the imperial security arrangements and those of sixth-century Merovingian Gaul concerns police forces on the great estates. These institutions tend to be poorly attested in Antiquity, and the same condition prevails in the Merovingian period, but their presence in both is undoubted. Their existence is taken for granted in the *Pactus* and mentioned explicitly in the *Decretio Childeberti* and the early seventh-century *Edict of Paris* where the term *solacium*, a Latin equivalent of *trustis*, appears to describe the constabulary of episcopal immunists and *potentes*. What is worth noting about the Merovingian references, especially in light of modern theories about the independent nature of Germanic lordship, is that, as in Antiquity, although these arrangements may fall outside public administration, they do not fall outside public law. The *solacia* are regulated by the *Edict of Paris*; and the police arrangements of the *fideles* in the *Decretio Childeberti* are subject to the same regulations as the *centenae* under royal *centenarii*. It is possible to doubt the degree of practical control exercised by the public authority over domainal

⁷⁶ CT 8.4.3; 10.20.1; 12.1.5: *perfectissimatus vel ducenae vel centenae vel egregiatus dignitas*. The sequence of military ranks was used in the *agentes in rebus*, where *centena* means office or rank: 'ad ducenam etiam et centenam et biarchiam nemo suffragio sed per laborem unusquisque perveniat' (CT 1.9.1 a. 359 = CJ 1.29.1).

⁷⁷ The meanings of *comitatus* with examples are outlined by Niermeyer, s.v.; for discussion see Fustel, *La Monarchie* 200–201.

police at any time; but the Merovingian sources attest no new principle defining the theoretical position of the great estates within the public framework of the Frankish state in Gaul.

The explanation for the remarkable congruence between late Roman and sixth-century Frankish security measures seems obvious. The Merovingian kings exploited the traditional institutions of the Roman provinces over which they now ruled, and attempted to exercise their authority in a manner similar to that of the central authorities of the old regime — doubtless with no more, but possibly with no less success than their predecessors. Thievery, rustling, and robbery were among the staple activities of early European society. These problems were not new in the sixth century, nor were the means of suppression — liturgies, local responsibility, and central supervision. A Roman provincial origin of such measures removes the need for elaborate theories on the introduction of hypothetical Germanic institutions and princely retinues or for the supposition that the Merovingians created a revolution in procedures against thieves. However, because of the limited character of the Roman and Merovingian evidence for security, one is naturally tempted to speculate that the fundamental pattern of policing as laid down in Antiquity may have been affected by the introduction of distinctively Frankish components or by the addition of novel but minor alterations. The tendency to treat Roman models of Merovingian institutions in terms of development and Frankish modification is often justifiable, but whether necessary in this instance is unclear. Apart from the increasing institutionalization of the *centenarius* as a security official under the Merovingians, what we know of imperial practices is sufficient in itself to account for Gallic police measures under the early Frankish kings. Merovingian security seems to fall easily within the compass of Roman provincial practice.

One other interpretation of the *centenae* in the *Pactus pro tenore pacis* and *Decretio Childeberti* remains to be considered — the common notion of modern historiography that the *centenae* were from the beginning units, not of public administration, but of royal lordship. This view springs more from a general theory of the domestic nature of royal authority than a rigorous examination of the Merovingian evidence, and rests to a considerable extent on the questionable interpretation of much later evidence. Yet it is important for this theory that the earliest Frankish *centena* should be a fiscal *centena*, because the *centenae* of the Merovingian period are the critical link between the allegedly fiscal character of the hundred in Carolingian times and the supposed origin of the institution in late Roman military settlements. The case for the fiscal character of the Merovingian *centenae* was made by Dannenbauer, but the argument he proposed, despite wide acceptance, proves on examination to be based upon a distorted interpretation of a corrupt passage in the *Pactus pro tenore pacis* and, very likely, upon a faulty reconstruction of the original text.

In the surviving manuscripts of the *Pactus*, the text between the provisions of Clothar and the joint declaration of the two kings is considerably disturbed. The two final clauses of Clothar concern fugitive *servi* and their right to church sanctuary, and are immediately followed by the statement of the two kings, repeating in slightly different language the police regulations which survive in Clothar's section of the text. The archetype of the surviving manuscripts clearly introduced the joint declaration with the sentence, *De fiscalibus ut omnium domin(or)um (or domibus) censuimus*. But the position of this statement has long been recognized as problematic. Its natural connection seems to be with the previous regulations (to which it is directly subjoined) on sanctuary and fugitive slaves: the provisions of the regulations on fugitives are to apply not only to the slaves of private owners but also to *fiscalini*. Boretius, who seems at first to have regarded its association with the joint statement as nonsensical, nevertheless eventually let the connection stand in his edition of the capitularies in the MGH, an edition which remained standard until very recently. The new editions of K. A. Eckhardt, rightly in my view, print the sentence as part of the laws on fugitive slaves.⁷⁸

De fiscalibus ut omnium dominorum / domibus censuimus constitutes the basis for arguing that the *centena* was a fiscal institution limited to the domestic sphere of crown property, and that the *centenarius* was a fiscal official.⁷⁹ That the contentious passage in fact belongs with preceding regulations on *servi* — and therefore has nothing to do with *centenae*, *centenarii*, and the *trustis* — seems to me the most convincing resolution of the problems with the text as we have it.

On any reading of the passage, however, it still seems difficult to draw the conclusion that *centenae* were settlements on crown land. Whether attached to

⁷⁸ It would be translated: 'We have decreed this with regard to fiscal slaves (or estates) as well as those of all private lords.' The statement is a complete sentence and is not grammatically connected to the passage of the joint statement beginning 'Pro tenore pacis iubemus' (see n. 56 above). Boretius, *Capitularia* p. 7 reads *domibus*; Eckhardt, GR p. 404 (with apparatus) = MGH p. 252 reads *dominorum*. On Boretius' earlier view, see Eckhardt, GR p. 404 and Hessels, *Lex Salica* p. 418. For discussion of the textual problems and arguments rejecting its association with the joint statement, see Grahn-Hoek, *Die fränkische Oberschicht im 6. Jahrhundert* 289–91.

⁷⁹ Dannenbauer did not follow Boretius' edition; without comment about the variety of text forms, he gave the following version: 'De fiscalibus vel omnium domos censuimus pro tenore pacis (ut) in truste electi centenarii ponantur' and quoted the rubric 'ut fiscales in trustem eant.' Both text and rubric come from Hessels, cod. 3 (= Eckhardt A 3; Boretius, cod. 4) and belong clearly to a late reworking undertaken to rationalize the disturbed transition between the clauses on fugitive slaves and the joint statement; *ut* is supplied by Dannenbauer from other mss. Eckhardt prints the peculiarities of cod. 3 as secondary additions in the GR edition and as apparatus in the MGH; Boretius, even though he accepted the connection between the *De fiscalibus* text and the joint statement, rightly consigned cod. 3 to the apparatus.

the provision on sanctuary for fugitive slaves or the joint declaration, the statement *De fiscalibus . . . censuimus* applies to *both* the fiscal *and* private sphere. The power of fiscal officials to subvert the law is an old story and is the likely context (be it *servi* or *centenae*) for the Merovingian rule; kings, like emperors, might have to include explicitly the fisc in regulations designed with general application to their subjects.⁸⁰ While in Roman practice the fisc stood apart from the obligations of local communities, it was still supposed to be subject ultimately to general law and public officials. When Cassiodorus instructed *posses* to be raised for the protection of the fair at Squillace, he stipulated the inclusion of fiscal tenants as well as private landholders.⁸¹

Dannenbauer of course had to recognize that the *Pactus pro tenore pacis* referred to more than fiscal property. He resolved the obvious problems presented by the text by claiming that reference to the fisc proved that the *centena* was in origin an institution on crown property; the non-fiscal sphere envisaged by the text he limited to the great seigneurial estates to which *centena*-style organization was now extended. Areas of public administration were not included in the regulation. Could the crown, he asks, have obligated the inhabitants of public districts to the burdens of nightwatch? The answer envisaged by the question is that only seigneurial lordship, whether royal or private, could maintain such a regulation. The answer suggested by the late Roman evidence is, as we have just seen, quite different: enforced security associations and night watches were a standard component in the public life of the provinces; their continuation under the administration of the Merovingian kings is the obvious explanation for the rules of the *Pactus pro tenore pacis*. Indeed it is difficult to understand what circumstance could prevent areas of public administration as a whole from being included in the regulations if there was to be hope of an effective agreement between the kings. Moreover, if the kings could draw the great estates into a security system that penalized defaulting associations, then surely compliance could be imposed on the smaller lords and landholders. The non-fiscal component of *De fiscalibus . . . censuimus* cannot simply be the estates of the magnates. Dannenbauer's other claim that the phrase shows an extension of the *centena* organization outside its originally fiscal context is likewise not confirmed by a reading of the text. Just because officials such as *centenarii* were given security functions in public districts and fiscal estates, it does not follow that their office was limited originally to crown property.

⁸⁰ CT 2.1.11 = LRV 2.1.11; *interpretatio*: 'Si quis in domibus dominicis crimosus potuerit inveniri, provinciae iudex praesentiam non expectet actoris sed mox reum comprehensum, ne aliquo colludio effugiat, subdi iubeat publicae disciplinae'; and CT 1.11.2.

⁸¹ For the immunity of fiscal officials from municipal liturgies: CT 10.4.2 = LRV 10.3.2. For Cassiodorus, above, p. 84 and n. 62.

The *Pactus pro tenore pacis* is thus a poor basis for arguing the fiscal character of the Frankish *centena*; and so is the *Decretio Childeberti*, which recognizes only *centenae* under public officials and the security arrangements on the great estates of the king's *fideles*. So too are all the West Frankish sources. Even Dannenbauer recognized that the districts called *centenae* as they begin to appear in the West Frankish evidence from the late Merovingian period onwards are part of the public administration. In the late eighth-century *Formulae Salicae Merkelianae*, for example, *centenae* appear frequently as subdivisions of the *pagus*: property in these *centenae* is sold, donated, exchanged, and granted as *precaria* without reference to any restrictions that might indicate its fiscal character.⁸² To Dannenbauer, these West Frankish *centenae* were aberrations. Yet there is nothing aberrant about them at all: the earliest evidence for the Frankish *centena*, the *Pactus pro tenore pacis*, is itself a West Frankish source and shows the *centenarius* and his charge, the *centena*, to be institutions of the public administration not restricted to fiscal properties, as does the next earliest, the Austrasian *Decretio Childeberti*. When *centena* appears in eighth-century sources as a term for a subdivision of the county, it is still applied to districts of public administration. The notion of the fiscal character of the early Frankish *centena* clearly comes from a theory about the nature of lordship and freedom among the Germanic peoples, not the evidence of Frankish Gaul.

IV

In addition to his role in peace keeping, the Frankish *centenarius* acted as a judge, *iudex*, a function he exercised on behalf of his superior, the count. In the late Merovingian and Carolingian periods his jurisdiction consisted of the *centena*, the subdivision of the county. His judicial competence, if not the territory to which it applied, is attested early in Frankish sources: in the early seventh-century *Lex Ribuarica*, the *centenarius* is the most junior of the judges to be found in the Frankish court (*mallus*), ranked below the *comes* and the great officers of state; and in the late sixth-century *Decretio Childeberti* the *centenarius* seems to be classed as a *iudex*, a term frequently applied to the count and his deputies. The *centenarius* also has a judicial role in the early sixth-century *Lex Salica*, which shows him convoking extraordinary sessions of the *mallus* and presiding over certain kinds of judicial proceedings.⁸³ On the

⁸² *Formulae Merovingici et Karolini aevi* 241–55.

⁸³ *Lex Ribuarica* 50.1: 'Si quis testis ad mallo ante *centenario* vel comite seu ante duce, patricio vel regi necesse habuerit ut donent testimonium' For the *Decretio Childeberti* see n. 61: the ambiguity of *aut* also permits an interpretation separating *centenarii* from *iudi-*

face of it, the evidence taken as a whole would seem to suggest that the *centenarius* in the Merovingian kingdom was from the beginning a subordinate of the count with a minor judicial role. In *Lex Salica*, however, the precise role of the *centenarius*' office is very indistinct and has always been the subject of dispute. The ambiguous evidence of the code has permitted scholars to come to quite different conclusions about the original character of the *centenarius*' office based upon their views of the development of the Merovingian state.

The old teaching, which viewed the *centenarius* in the beginning as a popularly elected leader of the hundred, not a royal official, accepted his judicial duties as original to the office; his subordination to the count, it was believed, occurred only in the course of the sixth century as a consequence of the growth of royal power. Modern scholarship, on the other hand, has now accepted the royal character of the office, since it is rooted in the Roman system of military ranks, but significant voices reject the long-standing view that judicial functions were original. Theodor Mayer has argued that in the beginning the *centenarius* had no judicial powers; he gradually acquired them as a result of his involvement in the pursuit of thieves as established by the *Pactus pro tenore pacis*: the police powers of the *centenarius* under the Merovingians begat judicial powers only under the Carolingians.⁸⁴

Mayer's argument for the development of the office of *centenarius* has two significant components. He claimed first that references in *Lex Salica* to the *centenarius*' presiding over the *mallus* did not form part of the original early sixth-century redaction but were late revisions, undertaken only when the *centenarius* had acquired judicial powers in the mid-eighth century. Second, the Frankish *centenarius* stemmed from the Roman commander of the same name, who, though involved in police duties, was not a judge; the judicial duties of the Frankish official were additions to his original role as commander of military settlers on crown property.⁸⁵

Some aspects of Mayer's argument regarding the text of *Lex Salica* are easily disposed of. There are no signs of so late a systematic revision of the Merovingian text classes as he imagines, and as a result his supposition has received no support among *Lex Salica* scholars.⁸⁶ The conclusion does not necessarily follow, however, that the earliest redaction must therefore reproduce unaltered

ces. For the *Lex Salica* texts, see below n. 87. The *centena* as a judicial unit and the *centenarius* as a judge also appear in *Lex Alamannorum* 36, dated 722–730.

⁸⁴ See also Bosl, 'Hundertschaft' 443.

⁸⁵ Much of Mayer's argument is based on the silence of Merovingian texts, a hazardous expedient given the paucity and distribution of charter and formulae evidence. References to *centenarii* in *Lex Ribvaria* and *Lex Alamannorum* are also explained as Carolingian interpolations. Early *centenae*, he suggests, refer to police, not judicial districts.

⁸⁶ For a survey of the text classes, with literature, see Ruth Schmidt-Wiegand, 'Lex Salica,' *Handwörterbuch zur deutschen Rechtsgeschichte* 2 cols. 1949–62.

the original text as it was drawn up in the early sixth century. Additions and emendations may conceivably have entered the text at an early stage and been passed on to the surviving Merovingian and Carolingian text classes. And so Mayer's argument, in a considerably modified form, may still have validity, if there are textual grounds for supposing *centenarius* an interpolation.

The grounds are far from conclusive. In the text as we have it, the term *centenarius* is normally paired in judicial contexts with the term *thunginus*; sometimes, however, only *thunginus* is used.⁸⁷ Mayer argued that *thunginus*, a title attested only in *Lex Salica*, was the term for an earlier judicial official distinct from the *centenarius* and that the latter's name was interpolated in the text, not always consistently, at a later date. The relationship between the terms *thunginus* and *centenarius* addressed by Mayer's interpretation is one of the puzzles that have long bedeviled *Lex Salica* scholarship, and no sure solution is ever likely to be found. Mayer's suggestion, with a radically modified chronology, is nevertheless a possibility — but it needs support from outside *Lex Salica* before it can be seriously maintained.

There is in fact no such support; the suggestion that early Frankish *centenarii* were not judges because this function was unknown to their Roman counterparts cannot bear scrutiny of the Roman evidence. Though the sparse Roman testimony on *centenarii*, under that precise name, fails to show judicial activities, there is still considerable evidence in Roman sources for the judicial activity of commanders of one hundred — *centuriones* and *ἐκατόνταρχοι*.

Roman sources show two principal contexts for judicial activity on the part of commanders of one hundred.⁸⁸ First, centurions might act as *iudices dati*, that is judges delegated for specific cases by high authorities with the appropriate jurisdiction. Although the character of cases submitted to military officers depended upon the competence and discretion of the superior judge, not the military status of the delegate, it nevertheless seems likely that centurions figured as *iudices dati* most frequently in cases in which the litigants were soldiers or soldiers and civilians.⁸⁹ Second, Egyptian papyri show military officers, and especially commanders of one hundred, exercising a widespread jurisdiction over the civilian population, mainly with respect to minor criminal

⁸⁷ LS 44, 46, 54 (only *thunginus*), 60 (*centenarius* only in C redaction).

⁸⁸ Mommsen, *Strafrecht* 313–15; MacMullen, *Soldier and Civilian* 54, 59, 62; and esp. J. B. Campbell, *The Emperor and the Roman Army 31 B.C.–A.D. 235* (Oxford 1984) 256–57, 262–63, 431–35.

⁸⁹ Juvenal (16.7–34) gives an imaginary example in which a centurion, appointed *iudex*, hears a case brought by a civilian against a soldier in the military camp with other soldiers as his *consilium*. A real example from a first-century Egyptian papyrus in which a centurion is appointed to adjudicate the disputed inheritance of a deceased soldier is printed in *Fontes Iuris Romani Antejustiniani*, ed. V. Ariangio-Ruiz (Florence 1943) 3.190–91. Cf. Campbell, *The Emperor and the Roman Army* 256, 431.

and civil matters. It is worth pointing out again that we owe our knowledge of this activity to the peculiar richness of Egyptian sources, which document everyday life, and that there is no reason to think such jurisdictions limited to Egypt. The role of the commanders of one hundred closely resembles that of petty judges in the provinces, including a class of delegated judges called *iudices pedanei*, who appear in late Roman constitutions as representatives of governors and other high officials; *iudices pedanei* were appointed to deal with minor matters (*negotia humiliora*) not requiring the attention of the provincial governor. Despite the resemblance, however, modern scholarship tends to view the jurisdiction of army officers over civilians as de facto and, though widespread, technically in violation of imperial statute.⁹⁰

The jurisdiction of commanders of one hundred, therefore, as befitted their rank, was a minor one. As officially delegated overseers of military cases or as judges in the countryside, they operated, like municipal magistrates and petty judges, at a low level of judicial competence and would have been concerned largely with soldiers and civilians of relatively humble status.

One other judicial context, if not judicial role, of officials with centurionate rank deserves to be noted. At the head of the judicial side of the *officium* of high civil and military officers was a *princeps*, who traditionally bore the rank of centurion; likewise, the new system of ranks when applied to military *officia* in Justinian's time employed officials ranked as *ducenarii* and *centenarii* under the chief of the bureau (*primicerius*).⁹¹ Such officials did not of course exercise a real jurisdiction but they controlled access to their superior as *iudex* and were responsible for the administration of his court.

This Roman evidence has some bearing on the rather imperfect outline of the *centenarius* in *Lex Salica*. It will not in itself solve the problems of the text, but at least it shows that the judicial role of the *centenarius* in early Frankish law is not incongruous. By the early sixth century there were long-standing precedents for the involvement of sub-officers in the judicial affairs of soldiers and civilians alike; even without *Lex Salica* the Roman sources would suggest that the *centenarius* exercised from the beginning minor judicial functions under the count. The judicial competence of the *centenarius* was not in itself a

⁹⁰ For *iudices pedanei* see CT 1.16.8; 11.31.3; 13.4.4 (a grant of immunity from petty judges), CJ 3.3; and cf CT 2.1.8 with *mediocres iudices* in the *interpretatio*, and 1.29.2. The possibility that military jurisdictions over civilians were delegated seems to be excluded by the strictures of the edict of the Prefect Statian A.D. 367–370: *Oxyrynchus Papyri*, ed. A. S. Hunt (London 1911) 8 no. 1101; also translated in A. C. Johnson et al., *Ancient Roman Statutes* (Austin 1961) 250.

⁹¹ For ranks in various *officia* see the appropriate entries in the *Notitia Dignitatum* (above, n. 37); *centuriones* as apparitors are mentioned in CT 1.16.7, a. 331. For the new ranks in Justinian's African offices, see CJ 1.27.2.20–34, a. 534. And cf. Jones, *LRE* 563–601, who stresses that, despite the terminology, apparitors were civil servants, not soldiers.

development of the Frankish kingdom but was implicit in the nature of the office. Despite the possibility of later interpolation, references to the judicial functions of *centenarii* in *Lex Salica* are therefore best regarded as part of the original, early sixth-century redaction. The *centenarius* was the judicial subordinate of the count from the beginning of the Merovingian kingdom in Gaul.

This conclusion still leaves unresolved the problem of the relation of the *centenarius* to the *thunginus*, a title with which that of the *centenarius* is frequently paired. If the terms are not complementary Frankish and Latin designations of the same official, but, as some believe, the titles of separate officials, the *thunginus* is probably best interpreted as a 'civil' counterpart to the military *centenarius*, exercising a minor jurisdiction perhaps like that of the municipal *curia* of the Gallic provincials: the functions of the *thunginus*' jurisdiction in *Lex Salica* and those of municipal magistrates of the Frankish period closely resemble one another.⁹² A number of public petty judges — municipal, imperial, and military — operated in late Roman society and a similar situation prevailed in Frankish Gaul. Indeed, use of the *centenarius*' jurisdiction may often have been at the discretion of the petitioners, which would also account for its insertion in the text of *Lex Salica*. The availability and standing of *centenarii* could have encouraged the growth of the minor jurisdictions of the comital court.

Problems also remain as to the exact extent of the *centenarius*' jurisdiction in *Lex Salica*. That the judicial competence of the commander of one hundred was minor, as in the Empire, seems clear, but a more precise definition founders on the inadequate evidence of the Salic law. Elsewhere I have argued on the basis of the internal evidence of *Lex Salica* that the judicial scope of the *thunginus* / *centenarius* as he appears in the text was not that of the principal judge of Frankish law, as the old scholarship believed, but was rather consistent with a secondary judicial official with a restricted competence.⁹³ In general terms, such judicial limitation corresponds to the minor nature of Roman centurionate jurisdiction; yet the specific relation to imperial practice is difficult to establish. In *Lex Salica* the *centenarius* never appears as a judge in disputes; rather he presides over procedures requiring publicity and the attestation of a judicial forum. Two possible explanations for this circumstance suggest themselves. Since so few texts mention judicial activity, it might seem that the severely limited nature of the *centenarius*' jurisdiction is simply apparent; for instance, if he is mentioned in the text as an alternative forum to the *thunginus*, the implied limitations may pertain principally to the latter. I would suggest, however, that the *centenarius* did not originally have a coercive

⁹² Murray, 'Position of the *Grafio*' 796–97.

⁹³ *Ibid.* 792–98.

jurisdiction. Support for this contention comes from the *Pactus pro tenore pacis* and the *Decretio Childeberti*, where the *iudex* with power to impose penalties seems to be distinct from the *centenarius*.⁹⁴ The limited nature of the *centenarius*' jurisdiction in the sixth-century law texts was probably dependent on the peculiar status of the ethnic Franks in the early Merovingian kingdom and their right to bring important matters before the count or the king. In effect, like the privileged classes of the late Empire, they had immunity from the adjudications of petty judges, though the courts of such officials served to publicize and initiate judicial acts. Powers similar to those of minor Roman military judges may have been exercised over non-Franks and inferior members of society, but in general the Frankish *centenarius* did not at first possess a coercive jurisdiction.

V

The *centenarius* has played a central role in modern discussions of the Merovingian constitution in part because his role touched upon so many areas of the administration of the kingdom. The military, administrative, judicial, and security spheres all seem to have fallen within his competence; to many scholars the *centenarius* and *centena* have seemed to be the keys which would unlock the fundamental character of the Merovingian state. One cannot help but believe, as well, that the sometimes indistinct outline of the *centenarius*' role in sixth-century sources has also helped establish his importance; the sixth-century legal sources do not always yield their meaning easily, and time and the vicissitudes of transmission have often obscured and corrupted what chance has preserved. Such a circumstance has allowed fundamental suppositions about the nature of the Frankish state to govern detailed explanations of the development of the centenariate in the administration of the Merovingian kings; in turn, interpretations of the *centenarius* have acquired a value for proving the essential character of that constitution far exceeding the warrant of the source material and the restricted nature of his office in the structure of the Frankish state.

The constitutional frameworks of the old and of the newer history may each seem to proceed from fundamentally different perspectives on the Frankish state. But the discussion has been guided by a common characteristic; they both start from the notion of a distinctive Germanic order. Traditional scholarship saw the *centenarius* springing directly from the egalitarian institutional structure of the early Germanic state; recent history, which emphasizes the

⁹⁴ Cf. pp. 81–83.

dispersed despotisms of kings and nobles, regards his office as an adaptation of a Roman institution to the domestic character of Germanic lordship. Yet for one who approaches Merovingian sources without espousing either of these constructs, it is very difficult to recognize easily in the Frankish *centenarius* of the sixth century the primitive popular official of traditional historiography, or the royal official commanding the king's freemen settled on crown land, as maintained by the newer history. The discussion in the preceding pages has been guided by the premise that our understanding of the sixth-century *centenarius*, and the institutional structure in which he operated, ought to begin with the world in which his office arose. Although Merovingian legal sources rarely speak unequivocally, they show clearly enough that the Frankish *centenarius* owes more to the military and administrative life of the Roman provinces taken over by the Merovingian kings than he does to an unattested primitive Germanic order.

Centenarius was in origin a rank in the late Roman army and part of the diversified nomenclature for the commander of one hundred or century. The rank was taken up by the Frankish kings as part of an adaptation of the offices of the Roman army and was employed in the combined military and civil administration of the new kingdom. The Roman model served not only for the title and position of the *centenarius* in the Merovingian hierarchy but also, as was true of the other major offices of the Frankish system, for the functions carried out on behalf of the new state. As part of a wholesale reception of Roman ranks, *centenarii* may have originally been found in various roles in the central and regional administration of Merovingian Gaul. What our sources attest is chiefly their position as local subordinates of the count with supervisory, security, and judicial functions similar to those of their imperial antecedents.

Like the Roman commanders of one hundred, Frankish *centenarii* were directed to oversee local police associations, and by the end of the sixth century the duty appears to have crystallized into a permanent duty for comital subordinates with centenariate rank. The security system itself was also clearly derived from the provincial system of the late Empire. Scholarship has treated the local police troops of the Merovingian kingdom as Germanic institutions or as innovations; in fact, they thoroughly resemble associations of liturgists of the Roman period, bound by oath to compulsory service and subject to financial penalties if negligent. The varied role of Roman commanders of one hundred as judges helps confirm in addition that judicial duties were original to the Frankish *centenarius*, although the precise character of his judicial office in the early sixth century is difficult to delineate. Judicial powers appear to have been at first non-coercive, and it is possible that an enhanced role in the judicial administration was encouraged by petitioners seeking the authority and standing of a comital subordinate and royal official.

Like *centenarius*, the term *centena* is also rooted in Antiquity. The equivalent of *centurionatus*, it was the name of a *centenarius*' command, a meaning it still possessed in sixth-century sources. As such *centena* could be applied to the local police troop when led by the *centenarius* and to the corresponding territorial jurisdiction, based probably on long-standing divisions of the *pagus* or *civitas*. By the eighth century, as a consequence of an evolution parallel to that of the term *comitatus*, it appeared as a specialized designation for the judicial and administrative subdivision of the county under the authority of the *centenarius*. From this point on the 'hundred' entered the European vocabulary as a common name for the small territorial subdivisions of medieval states.

Seen in this light, the *centenarius* and the *centena* do not provide us with access to a primitive Frankish constitution or a Germanic order, however conceived. They do afford a better understanding of the sub-Roman nature of the Merovingian state and permit us to see something of the fascinating passage from Roman to Frankish Gaul.

University of Toronto