

CONTRIBUTIONS TO THE
CRITICISM AND INTERPRETA-
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T. Rivers, 1973

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CONTRIBUTIONS TO THE CRITICISM AND INTERPRETATION OF THE
LEX BAIUVARIORUM:
A COMPARATIVE STUDY OF THE ALAMANNIC AND BAVARIAN CODES

BY

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DISSERTATION

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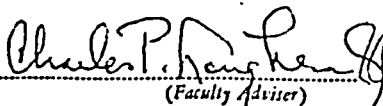
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ABBREVIATIONS

I. Sources

- Beyerle-Buchner = Franz Beyerle and Rudolf Buchner. eds.
Lex Ribuaria. MGH: Legum sectio I. Vol. III, pt. 2. Hanover, 1954.
- Bluhme = Friedrich Bluhme. ed. Edictus Langobardorum in MGH: Legum (in folio). Vol. IV. Hanover, 1868, pp. 1-225.
- Cod.Eur. = Codex Euricianus.
- CTh. = Codex Theodosianus.
- De Salis = Ludwig Rudolf De Salis. ed. Leges Burgundionum. MGH: Legum sectio I. Vol. II, pt. 1. Hanover, 1892.
- Eckhardt = Karl August Eckhardt. ed. Lex Salica. MGH: Legum sectio I. Vol. IV, pt. 2. Hanover, 1969.
- Eckhardt, Pactus = Karl August Eckhardt. ed. Pactus legis Salicae. MGH: Legum sectio I. Vol. IV, pt. 1. Hanover, 1962.
- Ed.Roth. = Edictus Rothari.
- Haenel = Gustav Haenel. ed. Lex Romana Visigothorum. Leipzig, 1849.
- L.Alam. = Lex Alamannorum.
- L.Baiu. = Lex Baiuvariorum.
- L.Burg. = Lex Burgundionum.
- Lehmann = Karl Lehmann. ed. Leges Alamannorum. rev. ed. Karl August Eckhardt. MGH: Legum sectio I. Vol. V, pt. 1. Hanover, 1966.
- Liutor. = Liutprandi Leges.
- L.Rib. = Lex Ribuaria.
- L.R. Visig. = Lex Romana Visigothorum.
- L.Sal. = Lex Salica.
- L.Visig. = Lex Visigothorum.

MGH = Monumenta Germaniae Historica.

Mommsen-Meyer = Theodor Mommsen and Paul M. Meyer. eds.
Theodosiani Libri XVI cum Constitutionibus Sirmondianis. 2 vols. in 3. 2nd ed. Paul Krueger.
Berlin, 1954.

Pact.Alam. = Pactus legis Alamannorum.

Pact.Sal. = Pactus legis Salicae.

Schwind = Ernst von Schwind. ed. Lex Baiwariorum. MGH:
Legum sectio I. Vol. V, pt. 2. Hanover, 1926.

Zeumer = Karl Zeumer. ed. Leges Visigothorum. MGH: Legum
sectio I. Vol. I. Hanover, 1902.

II. Periodicals

NA = Neues Archiv der Gesellschaft für Ältere deutsche
Geschichtskunde.

ZSRG = Zeitschrift der Savigny-Stiftung für Rechtsges-
chichte, Germanistische Abteilung.

CHAPTER I

Introduction

Many questions regarding early Germanic law have gone unasked, even several years after the appearance of the vast production of the Leges in folio and Leges sectio of the Monumenta Germaniae Historica (MGH). One such question concerns the alleged similarity between the Lex Alamannorum (Alamannic code) and the Lex Baiuvariorum (Bavarian code). Although it is assumed that these codes are similar, the extent to which they are similar is still unknown. I propose in this paper to show that a strong similarity exists, and that this research is essential as a critical supplement to the editions of the Alamannic and Bavarian codes. Legal similarity is highly useful in understanding how the legal framework of one Germanic tribe is related to the framework of another tribe. To know that legal concepts are exchanged among several Germanic tribes is to observe the development of societal acculturation.

Because the Lex Baiuvariorum contains no date or event to pinpoint it historically, other evidence must be used. Most of this evidence is drawn from the code itself, a device leading ultimately to controversy. Nevertheless,

most German legal historians uphold the view that the Lex Baiuvariorum was promulgated within the second quarter of the eighth century.¹ In addition, they hold that several other Germanic codes influenced the Lex Baiuvariorum, and these are four in number: the Lex Visigothorum (partially through the influence of the Codex Euricianus), Pactus legis Salicae, Lex Ribuaria, and Lex Alamannorum.² Of

¹In general, see Rudolf Buchner, Die Rechtsquellen (Beiheft) in W. Wattenbach and Wilhelm Levison, Deutschlands Geschichtsquellen im Mittelalter, Vorzeit und Karolinger (Weimar, 1953), pp. 26-29, and Heinrich Brunner, Deutsche Rechtsgeschichte, 2nd ed. (Leipzig, 1906), I, pp. 454-464. Some putative dates for the promulgation of the Lex Baiuvariorum are: (1) 725-728: Schwind, p. 181. Schwind's edition of the Bavarian code as well as all other early Germanic codes used in this study are cited simply by the author's name. See the list of abbreviations above. (2) 728-737: Ernst Mayer, Die oberdeutschen Volksrechte (Leipzig, 1929), p. 141. (3) 728-739: Bruno Krusch, "Neue Forschungen über die drei oberdeutschen Leges: Bajuvariorum, Alamannorum, Ribuariorum," Abhandlungen der Gesellschaft der Wissenschaften zu Göttingen, philologisch-historischen Klasse, neue Folge, XX (1927), nr. 1, 197. (4) 741-744: Hans Planitz, Deutsche Rechtsgeschichte, 3rd ed. Karl August Eckhardt (Graz and Cologne, 1971), p. 75. This agrees substantially with Claudius Freiherr von Schwerin, Grundzüge der deutschen Rechtsgeschichte (Munich and Leipzig, 1934), p. 50, who believes the Lex Baiuvariorum should be dated 741-743. (5) 743-744: Hermann Conrad, Deutsche Rechtsgeschichte, 2nd ed. (Karlsruhe, 1962), I, p. 312. (6) 744-746: Brunner, Deutsche Rechtsgeschichte, I, p. 462. (7) 614: Franz Beyerle, "Die süd-deutschen Leges und die merowingische Gesetzgebung. Volksrechtliche Studien II," ZSRG, XLIX (1929), 372; surprisingly, this is the only proposal that the Lex Baiuvariorum was produced in the seventh century.

²See Karl August Eckhardt, Die Lex Baiuvariorum. Eine textkritische Studie (Untersuchungen zur deutschen Staats- und Rechtsgeschichte, CXXXVIII; Breslau, 1927), pp. 29-42.

these, the Lex Alamannorum shows a higher degree of similarity than do the other three. This should be evident because of the geographical proximity of the Alamanni and Bavarians whose duchies were adjacent to each other from the fifth and sixth centuries.

There are three basic reasons why the Alamannic and Bavarian codes are similar. The first reason is that the codes were promulgated almost simultaneously; the Lex Alamannorum was promulgated before 725, perhaps as early as 712, but certainly within the first quarter of the eighth century.³ Secondly, the internal divisions of both codes are similar, since laws pertaining to the Church are found at the beginning of both codes, followed immediately by laws which concern the duke; the third and last section of both codes contains laws which apply to the people. Hence, the first part of the codes deal with ecclesiastical law, the second part with public law, and the third with private law.⁴ Thirdly, a substantial number of laws in both codes

³See Conrad, Deutsche Rechtsgeschichte, I, p. 133. Cf. Brunner, Deutsche Rechtsgeschichte, I, pp. 448-454, and Buchner, Rechtscquellen, pp. 29-33.

⁴The bulk of both the Alamannic and Bavarian codes deals with private law. The three divisions of the Lex Baiuvariorum are titles I, II-III, and IV-XXII. The corresponding sections of the Lex Alamannorum are titles I-XXII, XXIII-XLIII, and XLIV-XCVIII. Technically, this last section of the Lex Alamannorum ends with title XCI, but XCII-XCVIII also concern private law and for this reason are included with the last section. Titles XCII-XCVIII of the Alamannic code are later reproductions of part of the earlier Pactus legis Alamannorum.

are closely similar. This last reason is by far the most significant of these three. Yet, no extensive comparison of the Lex Baiuvariorum has been made with the Lex Alamannorum. The absence of such a study is surprising, for without it the evolution of south Germanic law can never be ascertained. Although many competent works have appeared which help to illustrate this similarity, none of them criticize in depth all the Alamannic and Bavarian laws which are similar to each other. The only studies which attempt this are three articles by Ernst von Schwind⁵ and two articles by Franz Beyerle.⁶ Although Schwind's research is related to mine, it is far too limited to serve as a satisfactory explication of similarities between the Alamannic and Bavarian codes. This is true as well for the research of Beyerle. In many cases, Schwind never explicitly designates which Alamannic laws he believes show real similarity with the Lex Baiuvariorum. Consequently, many of his conclusions are questionable. There is a real need to illustrate in as many ways as possible

⁵"Kritische Studien zur Lex Baiuvariorum," NA, XXXI (1906), 399-453; XXXIII (1908), 605-694; and XXXVII (1912), 415-451. Many of the conclusions reached in these articles are also evident in Schwind's edition of the Lex Baiuvariorum, the edition which I use in this study.

⁶"Die süddeutschen Leges und die merowingische Gesetzgebung. Volksrechtliche Studien II," ZSRG, XLIX (1929), 264-432, and "Die beiden süddeutschen Stammesrechte," ibid., LXXIII (1956), 84-140.

how certain Alamannic laws are similar to the later Lex Baiuvariorum. This study attempts to do just that.

Not all of the Bavarian laws analyzed in this study resemble the Lex Alamannorum to precisely the same degree. There are Bavarian laws, for example, which are extremely similar to the Alamannic code, such as L.Baiu. VII,1-3⁷ which are simply verbatim texts of L.Alam. XXXIX,⁸ whereas there are other Bavarian laws which are only slightly similar to the Alamannic code, such as L.Baiu. I,5, partially similar to L.Alam. VII. All Bavarian laws which show similarity with the Lex Alamannorum to whatever degree are included in the present study.⁹ Of the 270 laws in the Lex Baiuvariorum, 98 are similar to 91 laws of the Alamannic code.¹⁰ (Schwind counts fourteen more Bavarian laws than I which he believes similar to the Lex Alamannorum; I contest

⁷When individual laws are cited, abbreviations are used. See the list of abbreviations above. The only exception to this is the initial citations of individual Alamannic and Bavarian laws when they are introduced for discussion.

⁸All references to the Alamannic code are taken from the revised edition of Karl Lehmann, cited simply as Lehmann. See the list of abbreviations above. Because there are essentially two slightly different Alamannic codes, I have used the earlier Lantfridana (Lanfridana), named as Codex A of Lehmann's edition, in place of the later Hlotharii (Hlodharii), named as Codex B of the same edition. I refer to two laws in Codex B (V,2 and 3) in the discussion of L.Baiu. I,3 below because the concepts of these laws do not appear in Codex A.

⁹In general, see appendices I-II.

¹⁰These 91 Alamannic laws represent 34 per cent of the total laws in the Lex Alamannorum.

his claim.¹¹⁾ Further significance may lie in the fact that both codes possess exactly the same number of laws: 270. This similarity is remarkable since no other code contains the same number of laws: the Pactus legis Salicae contains 453 laws, and the Lex Ribuaria, 223. Also included in this study are three Bavarian laws (already included among the ninety-eight laws) which were not previously considered similar to the Alamannic code, and these are L.Baiu. XIII, 4-5, and XIX, 3. The ninety-eight Bavarian laws which are similar to the Alamannic code are drawn from nineteen titles of the Lex Baiuvariorum, which comprises a total of twenty-two titles. Hence, there are three titles of the Bavarian code which show no similarity with the Lex Alamannorum, and these are titles III, XVIII, and XXII. There is more similarity with the first eight titles of the Lex Baiuvariorum than with the remaining fourteen titles. Of these first eight titles, all contain several laws which are similar to the Alamannic code, except title III which shows no similarity. In short, the bulk of the similarity between the Lex Alamannorum and Lex Baiuvariorum appears within the first third of the latter, and this is especially true for titles IV-VI, which concern personal injuries.

¹¹One of these fourteen laws is similar to the Alamannic code, but the Alamannic law I propose is different from Schwind's. See L.Baiu. I, 4 below.

Titles V and VI of the Lex Baiuvariorum, like title IV, deal with personal injury, but titles V and VI concern freedmen and slaves respectively, and title IV concerns freemen.¹² As a result, many of the arguments used for title IV must also be repeated for titles V and VI. Nevertheless, many of the laws of titles V and VI present the laws of title IV from slightly different points of view. The fact that all of the nine laws contained in title V as well as all of the twelve laws of title VI show similarity with the Lex Alamannorum reinforces the view that both of these titles are directly patterned upon the Alamannic code. Though the Lex Alamannorum applies especially to freemen, indicating explicitly when freedmen and slaves are meant, yet the concepts of titles V and VI cannot be overlooked when they are compared with the Lex Alamannorum. For this reason, what class differences there may be between the freemen of the Lex Alamannorum on one hand, and the freedmen and slaves of the Lex Baiuvariorum on the other, must be ignored. Since caste is far less important than is the underlying principle or concept of the laws, a law which concerns slaves and another which concerns freemen may be similar if they both concern the same

¹²See appendix III which illustrates the relationship of the laws contained in titles IV-VI. In addition, there is greater similarity between titles IV and VI of the Lex Baiuvariorum than between titles IV and V. For this reason, not all of the injuries of the head and face contained in title IV are also evident in title V.

offense.¹³

The laws in this study are analyzed from three points of view, indicated simply as (a), (b), and (c). The first criterion (a) analyzes and compares the concepts of each individual Alamannic and Bavarian law which are similar to each other. This comparison begins with the first Bavarian law analyzed in this study (I,1) and proceeds to the last (XXI,2). Each Bavarian law is identified by its manuscript number and Latin designation.¹⁴ Normally, the Alamannic laws which show similarity with particular Bavarian laws are discussed individually, and they are analyzed in this study in the same order as they appear in the Lex Alamannorum. However, the only exception to this is when a particular Bavarian law is similar to five or more Alamannic laws. In this case, these Alamannic laws are grouped together and discussed jointly. This pertains to L.Baiu. IV,11 and 15, V,7, and VI,7 and 9. Not only are individual Alamannic laws compared to the Lex Baiuvariorum, but other codes of the corpus legum barbarorum as well are also compared. These are notably the Lex Visigothorum, Pactus legis Salicae, Lex Ribuaris, Lex Burgundionum, and Edictus Rothari. Although there are other Germanic codes used in

¹³This pertains especially to L.Baiu. VI,1-12, and XIX,3.

¹⁴The only exceptions to this are L.Baiu. XX,1 and 9, where no title appears. In addition, L.Baiu. XX,5,7-8,10, and XXI,2 have a very simple title: Item alia, and XX,2 only Alia.

this study, these are the essential ones.¹⁵ Since this study deals with a comparison of the Alamannic and Bavarian codes, those subsequent bodies of law which are influenced by these are excluded from this analysis. Hence, no mention is made of the Lex Frisionum, Lex Saxonum, Lex Thuringorum (Lex Angliorum et Werinorum), or Lex Francorum Chamavorum. Section (a) also contains the quotations of the laws, cited either in whole or part. The texts themselves are not modified in any way, except for rendering complete spellings of words which often appear in abbreviated form, such as solidus for sold. This pertains especially to Schwind's edition of the Lex Baiuvariorum.

The second criterion (b) shows the philological similarity between individual Alamannic and Bavarian laws. This similarity is divided between two languages: medieval Latin and Old High German.¹⁶ The bulk of the laws, of course, are in Latin, but special terms in Old High German also supplement the concepts conveyed by the laws. Not only are Latin and German terms compared linguistically in this section, but there is also a mathematical comparison expressed in a percentage for all corresponding words

¹⁵All of these codes are given in the list of abbreviations above.

¹⁶When used as an adjective, Old High German is hereafter cited as OHG. For an introduction to Old High German itself, see Stefan Sonderegger, "Althochdeutsche Sprache," in Kurzer Grundriss der germanischen Philologie bis 1500, ed. Ludwig Erich Schmitt (Berlin, 1970), I, pp. 288-346.

evident in similar Alamannic and Bavarian laws. This percentage illustrates how these Alamannic and Bavarian laws are similar in language. A Bavarian law with a high percentage of its terms derived from only a few words in an Alamannic law is more significant, of course, than a Bavarian law in which only a few terms are derived from a high percentage of its Alamannic counterpart. For example, 20 per cent of the terms of L.Alam. A which appear as 60 per cent of the terms of L.Baiu. B are more significant than 60 per cent of the terms of L.Alam. A which appear as 20 per cent of the terms of L.Baiu. B. This is naturally due to the fact that the Bavarian code is a later body of law. In this percentage-comparison, all words are counted equally, and numerals are also equated as words because they form separate units as words do. A word inferred from an earlier law in the same code (Alamannic to a greater extent and Bavarian to a lesser extent) is included in the percentages.¹⁷ An example: "sword" must be inferred as the last word in the phrase "the long sword and the short." If there is no significant philological similarity between the laws, "no agreement" is indicated. Because of the frequent use of aliquis and alius, quis and qui, and vocare and dicere, these terms are equated

¹⁷Laws with inferred words used in this study are: L.Baiu. IV,11; V,7; VI,7,9,10; XX,2,5,8; and XXI,2. L.Alam. XIV; LVII,12,19,23,42,45,48,51; and XCIV,2.

as the same when considering the philological similarity between respective laws.

The third and last criterion (c) compares the monetary punishment for diverse crimes and abuses of similar Alamannic and Bavarian laws. This monetary punishment is expressed by two different penalties: (1) wergeld (man-price) or monetary compensation, and (2) fredus. Wergeld is that punishment payable in coin or kind to a victimized person (or to the victim's relatives if the victim is killed) with the intent to prevent revenge. It is owing to the fear of a bloodfeud that wergeld is paid. Wergeld pertains only to injury of people. Harm to livestock or damage to land, buildings, and other property is rendered in this paper not by the term wergeld, but by monetary compensation. The payment of wergeld and monetary compensation is the same, payable either in coin or kind. The full wergeld, that is, the full value of a man's life, in both the Alamannic and Bavarian codes is 160 solidi.¹⁸ The other monetary punishment is the fredus, and this is simply an additional payment rendered to the public treasury. For the Alamanni and Bavarians, this means the duke (and in some cases, a church) receives a fee for particular crimes, although other officials, such as counts, centenarii, and judges could also receive a share.

¹⁸The solidus is a gold coin of high denomination whose present-day worth is impossible to compute. See the discussion of L.Baiu. I,3 below.

Not all crimes are protected by wergeld or monetary compensation and a fredus. Only those offenses which endanger a church or the ducal office receive both. Since many crimes in the Alamannic and Bavarian codes are compensated similarly, this is another illustration of how both codes are related. In only four laws does wergeld or monetary compensation not apply, and these are L.Baiu. I,1, II,14 (§§ 1 and 3), VII,1, and XVI,16. No wergeld similarity, however, can be expected from the laws of titles V and VI when they are compared with those Alamannic laws already showing similarity with title IV, since various classes (free, freed, and slave) are compensated differently in the leges barbarorum.¹⁹ Nevertheless, the wergeld relationship of the three classes within the Lex Baiuvariorum shows that freedmen receive one-half and slaves one-quarter the wergeld freemen receive.²⁰

¹⁹The only exception to this wergeld dissimilarity is L.Baiu. VI,10, which requires the same wergeld of three solidi as does L.Alam. LVII,22, a law with which it is similar.

²⁰This ratio of $1\frac{1}{2}:1$ is maintained to a reasonably accurate degree by all those laws of titles IV-VI which manifest similarity with each other. There are, however, six exceptions to this ratio, two in title V, and four in title VI. In the following table, the number of solidi in parentheses is what the wergeld should be; the wergeld without parentheses is what the respective laws says it is:

Freemen	Freedmen	Slaves
IV,9--40 sol. (eye torn out, hand and foot cut off)	V,6--10 sol. (20 sol.)	VI,6--5 sol. (10 sol.)

Although this analysis does not pretend to be the last word in legal textual criticism of the Alamannic and Bavarian codes, it is the first attempt to investigate how individual laws of these codes are similar. This type of criticism, in truth, must be done for all of the Germanic codes before the complete nature of the corpus legum barbarorum can be known.

----- IV, 14, §2--20 sol. (ear cut off)	-----	VI, 11--1 $\frac{1}{2}$ sol. (5 sol.)
IV, 14, §3--40 sol. (deafness)	-----	VI, 11--4 sol. (10 sol.)
IV, 29--160 sol. (murder)	V, 9--40 sol. (80 sol.)	VI, 12--20 sol. (40 sol.)

CHAPTER II

Title I

Title I

Incipiunt capitula de libris legis institutione, quae ad clerum pertinent seu ad ecclesiastica iura.

Lex Baiuvariorum I,1

Ut si quis liber Baiuvarius vel quicumque alodem suam ad ecclesiam vel quamcumque rem donare voluerit, liberam habeat potestatem.

Lex Alamannorum I,1

(a) The bestowal of property upon a church is exemplified by only three laws from three Germanic codes: L.Visig. IV,5,1, L.Alam. I,1, and L.Baiu. I,1.¹ Although there are additional laws which assure the inheritance of one's own children in the estate of their parents, they do not specify that a church may also be a recipient, since these laws are primarily concerned that children receive a portion of their parents' estate, thereby assuring their own well-being. Of the three laws which do bestow property upon a church,

¹In general, see Émile Lesne, Histoire de la propriété ecclésiastique en France (Lille and Paris), 1910, I, pp. 167-169, and 433-436.

L.Visig. IV,5,1 is the least intense, since the greater part of this law concerns the legitimate right of children to a share of their parents' estate.² That the church is also included in L.Visig. IV,5,1 appears to be a mere appendix to the text: ". . . Sane si filios sive nepotes habentes ecclesiis vel libertis aut quibus elegerint de facultate sua largiendi voluntatem habuerint, extra illam tertiam portionem, que superius dicta est, quinta interum pars separabitur. . . ."³ The third part contained by this law, of course, pertains to one's own heirs. The remaining two laws which also bestow property on a church are closely related. Although they are similar in a general sense to L.Visig. IV,5,1, they are more related to each other, indicating that the later L.Baiu. I,1 is derived primarily from the earlier L.Alam. I,1. This is evident from the laws themselves. L.Baiu. I,1 says:

Ut si quis liber persona voluerit et dederit res suas ad ecclesiam pro redemptione animae suae, licentiam habeat de portione sua, postquam cum filiis suis partivit. Nullus eum prohibeat; non

²In addition to L.Visig. IV,5,1, L.Burg. I,1 and LI,1 are also similar. Attention should also be focused on L.Burg. XXIV,5: "Si quis Burgundio filios habet, tradita filiis portione, de eo, quod sibi reservavit, donare aut vendere cui voluerit habeat liberam potestatem." De Salis, p. 63. See the comments on these Burgundian laws in Alfred von Halban, Das römische Recht in den germanischen Volksstaaten. Eine Beitrag zur deutschen Rechtsgeschichte (Untersuchungen zur deutschen Staats- und Rechtsgeschichte, LVI; Breslau, 1899), pp. 301-302.

³Zeumer, p. 197. Closely related to this law is L.Visig. IV,5,2 which prohibits women from bestowing more than a fourth part of their property on a church.

rex, non dux nec ulla persona habeat potestatem prohibendi ei.

Et quicquid donaverit, villas, terram, mancipia, vel aliquam pecuniam, omnia quaecumque donaverit pro redemptione animae suae, hoc per epistolam confirmet propria manu sua ipse et testes adhibeat VI vel amplius, si voluerit, inponant manus suas in epistula [sic] et nomina eorum notent ibi, quem ipse rogaverit. Et tunc ipsam epistulam [sic] ponat super altare et sic tradat ipsam pecuniam coram sacerdote qui ibi deservit.

Et post haec nullam habeat potestatem exinde nec ipse nec posteri eius, nisi defensor ecclesiae ipsius per beneficium praestare voluerit ei; sed apud episcopum defendantur res ecclesiae, quicquid a Christianis ad ecclesiam Dei datum fuerit.⁴

Much like L.Visig. IV,5,1, this Bavarian law is initially concerned that one's heirs are not disinherited.⁵ Once this is assured, there is complete authority to dispose of property as will. Before discussing the concepts of this Bavarian law, it is compared to the corresponding L.Alam. I,1:

Ut, si quis liber res suas vel semet ipsum ad ecclesiam tradere voluerit, nullus habeat licentiam contradicere ei, non dux, non comes nec ulla persona, sed spontanea voluntate liceat christiano homine Deo servire et de proprias res suas semet ipsum redimere. Et qui voluerit hoc facere, per cartam de rebus suis ad ecclesiam, ubi dare voluerit, firmitatem faciat et testes sex vel septem adhibeat, et nomina eorum ipsa carta contineat, et coram sacerdote, qui ad ecclesiam deservit, super altare ponat, et proprietates de ipsas res ad illam ecclesiam in perpetuo permaneat.⁶

⁴Schwind, pp. 268-269. There are no commas between villas and vel aliquam pecuniam in Schwind's text; they are inserted here. Also see Felix Dahn, Die Könige der Germanen (Leipzig, 1905), IX, pt. 2, p. 300.

⁵See J. Declareuil, Histoire générale du droit français des origines à 1789 (Paris, 1925), p. 163.

⁶Lehmann, pp. 63-64.

Like L.Baiu. I,1, L.Alam. I,1 naturally stresses that only free born persons can give property to a church.⁷ Likewise, both laws emphasize that the duke (to which L.Baiu. I,1 adds the king and L.Alam. I,1 adds the count) has no jurisdiction over persons who freely bestow their property upon a church. Only L.Baiu. I,1 specifies what this property may comprise, that is, villas, land, slaves, or money. The similarity of these laws is also illustrated by the religious context of both, since they indicate that property given to a church is given for the redemption of one's soul. In order to bestow property upon a church, the laws require written confirmation, either in the form of a letter (epistola) in L.Baiu. I,1 or a charter (carta) in L.Alam. I,1, both of which are placed upon the altar of the church which receives the property. Apart from the difference between a letter and a charter, both terms denote the same concept of written confirmation.⁸ In addition, the laws are also similar since witnesses are needed in order to validate the confirmation, and this is attested by six or more witnesses in L.Baiu. I,1 and by six or seven witnesses in L.Alam. I,1. Nor does the similarity between the laws stop here: both laws insist that property given to a

⁷This view is discussed by Karl Theodor von Inama-Sternegg, Deutsche Wirtschaftsgeschichte bis zum Schluss der Karolingerperiode, 2nd ed. (Leipzig, 1909), I, p. 141.

⁸Heinrich Brunner, Zur Rechtsgeschichte der römischen und germanischen Urkunde (Berlin, 1880), p. 249.

church remain in its possession permanently.⁹

(b) Moreover, the laws are also similar philologically, although this pertains especially to the first two paragraphs of L.Baiu. I,1. Here, 39 per cent of the terms of L.Alam. I,1 constitute 34 per cent of the words of L.Baiu. I,1,§1 and §2.

(c) Not applicable.

* * * * *

Lex Baiuvariorum I,2

De his qui contra legem ecclesiam fraudare voluerint.

Lex Alamannorum I,2

(a) L.Baiu. I,2 and L.Alam. I,2 concern persons or their heirs who, after giving property to a church, attempt to reclaim it. For this reason, these laws directly follow and are logical outgrowths of the previously discussed laws, L.Baiu. I,1 and L.Alam. I,1. The concepts expounded by the two laws discussed here are not evident in any other Germanic code. Concerning those who wish to steal property from a church, L.Baiu. I,2 says:

Si quis aliqua persona contra res ecclesiae iniuste agere voluerit vel de rebus ecclesiae abstractere voluerit sive ille qui dedit vel de hereditibus eius aut qualiscumque homo praesumpserit, inprimis incurrat Dei iudicium et offensionem sanctae ecclesiae, et iudici terreno persolvat auri uncias III et illas res ecclesiae reddat et alias similes addat

⁹Cf. L.Baiu. I,2 below. Also see the general remarks in A. Emmein, Cours élémentaire d'histoire du droit français, 15 th ed. R. Genestal (Paris, 1925), pp. 154-155.

rege coegente vel principe qui in illa regione iudex est.¹⁰

Similarly, L.Alam. I,2 gives:

Et si aliqua persona aut ipse, qui dedit, vel aliquis de heredibus eius post haec de ipsas res de illa ecclesia abstrahere voluerit, vel aliquis homo, qualiscumque persona hoc praesumpserit facere, [In-
currat in Dei iudicio (sic) et excommunicationem
(sic) sanctae ecclesiae et/¹¹ affectum [sic], quod
inchoavit, non obteneat et multa illa, quae carta
contenit, prosolvat et res illas ex integro reddat.
et fredo [sic] in publico solvat, sicut lex habet.¹²

Both laws punish the thief with two kinds of punishment, ecclesiastical and temporal, although both punishments are closely intertwined. Ecclesiastical censure is inflicted on the thief by punishing him with God's judgment for his crime and either with the added penalty of excommunication from the Church (L.Alam. I,2) or with the disapproval of the Church (L.Baiu. I,2). Stolen property must be restored to the church under both laws. Temporal punishment for this crime in L.Alam. I,2 is unclear, but the context seems to mean that the thief must pay the value of the stolen property which was originally bestowed by charter (carta) to the church in L.Alam. I,1 besides restoring the stolen property already discussed. In addition, a fredus must also be paid to the public treasury. L.Baiu. I,2 makes no mention of the thief's paying for the value of the

¹⁰Schwind, p. 270.

¹¹This addition is already included in Lehmann's edition.

¹²Lehmann, pp. 64-65.

stolen property, but does add that besides replacing the property, the thief must render to the church another object or other objects similar to the one(s) he arrogated. Since this additional payment is regulated by the king or duke, this is comparable, at least indirectly, to a *fredus*, though the church, not the public treasury, benefits from this payment. The laws may also be similar in one other feature, although this may be impossible to prove conclusively.

L.Baiu. I,2 says the thief must pay three ounces¹³ of gold to the judge¹⁴ for whatever property he has taken from the possession of the church. L.Alam. I,2 specifies the thief must pay the amount which the charter prescribes. Does this amount required by L.Alam. I,2 approximate the three ounces of gold included in L.Baiu. I,2?¹⁵ Even without evidence, these payments show that both laws require one more compensation for stealing church property.

¹³The only authority I have found discussing the equivalency of the ounce into *solidi* is Garabed Artin · Davoud-Oghlou, *Histoire de la Législation des anciens Germains* (Berlin, 1845), I, p. 223, who says it is equal to $1 \frac{2}{3}$ *solidi*. He supplies no mathematics.

¹⁴Judges play a prominent role in the Bavarian code, although studies of this role are rare. See Brunner, *Deutsche Rechtsgeschichte*, I, pp. 204-205. Also see the introductory studies of Johannes Merkel, "Der *Judex* im bairischen Volksrechte, ein Beitrag zur bairischen Rechtsgeschichte," *Zeitschrift für Rechtsgeschichte*, I (1861), 131-167, and G. Beseler, "Der *Judex* im bairischen Volksrechte," *ibid.*, IX (1870), 244-261. There has been no study comparable to these two articles on the Bavarian judge within the last century. This is true for the Alamannic code as well.

¹⁵Beyerle, *ZSRG*, XLIX (1929), 310 believes so also.

(b) Philological similarity between the laws is very close. As a consequence, 41 per cent of the terminology of L.Alam. I,2 constitutes 44 per cent of the terms of L.Baiu. I,2. The laws indicate that L.Baiu. I,2 is closely patterned upon L.Alam. I,2.

(c) Both laws appear to require a fredus of some kind, to be paid either to the public treasury (L.Alam. I,2) or to the church (L.Baiu. I,2). Likewise, the laws may require an additional payment, that last discussed under heading (a) above.

* * * * *

Lex Baiuvariorum I,3

De furtis ecclesiae, quomodo componantur.

Lex Alamannorum VI

(a) L.Baiu. I,3, which deals with theft of church property, extends the concepts expounded by the previous Bavarian law, I,2. No other law in the corpus legum barbarorum is parallel to L.Baiu. I,3 except L.Alam. VI. There is a substantial difference in compensating for theft of church property between these two laws and the previously discussed L.Baiu. I,2 and L.Alam. I,2. The laws themselves easily indicate this point. L.Baiu. I,3 follows:

Si quis res ecclesiae furaverit, et exinde probatus fuerit, unamquamque rem niungeldo¹⁶ solvat, id est .

¹⁶See Dietrick von Kralik, "Die deutschen Bestandteile der Lex Baiuvariorum," NA, XXXVIII (1913), 41-42.

novem capita restituat. Et si negare voluerit, secundum qualitatem pecuniae iuret in altare de qua ecclesia furaverit.

De una saiga solus iuret. De duabus siagis vel III et usque ad tremisses cum uno sacramentale iuret; deinde usque ad IIII tremisses cum III sacramentalibus iuret. Et si ampliorem pecuniam furaverit aut caballum aut bovem aut vaccam vel quicquid plus valet quam quattuor tremisses, et negare voluerit, tunc cum VI sacramentales iuret, et ipse sit septimus, in altare coram populo et presbitero.

Si autem de ministerio ecclesiae aliquid furaverit, id est calicem aut patenam vel pallam, aut qualemcumque rem de infra ecclesia furaverit et probatus fuerit, triniungeldo solvat, hoc est ter novem restituat. Et si negare voluerit, secundum qualitatem pecuniae iuret cum XII sacramentalibus in ipse altare.¹⁷

L. Alam. VI contains similar concepts:

Si quis res ecclesiae furaverit et convictus fuerit, ut solvatur, unicuique rem, quae furaverit, tres novigildos solvat aut servum aut ancillam aut bovem aut caballum aut qualemcumque animal vel ceteras res, qui ad ecclesiam perteneant. Si post furtum inventus fuerit, ita solvat, ut superius scriptum est. Si autem negare voluerit, secundum qualitatem pecuniae ita iuret cum suis sacramentalibus in ipso altare, cui res furtivas abstulit, coram sacerdote vel ministros eius, quam pastor ecclesiae iusserit audire sacramentum.¹⁸

¹⁷Schwind, pp. 270-272. The relationship of the saiga to the solidus and tremissis is: 1 solidus = 3 tremisses = 12 saigas. See Edward Schröder, "Saiga," *Zeitschrift für Numismatik*, XXIV (1904), 341-342, and Maurice Prou, *Catalogue des monnaies françaises de la Bibliothèque Nationale. Les monnaies mérovingiennes* (Paris, 1892), pp. i-xiii. The relationship of the Carolingian denar (denarius) to these coins, and to both the Alamannic and Bavarian codes, is not at all clear; that is, one solidus equals twelve denarii as indicated by L. Alam. VI, 2 (Hlot.) or thirty-six denarii as supplied by L. Baju. IX, 2. If one solidus equals twelve denarii, then a saiga and a denarius are equal in value. See Paul Vinogradoff, "Wergild und Stand," *ZSRG*, XXIII (1902), 145-146. Also reprinted in *The Collected Papers of Paul Vinogradoff* (Oxford, 1928), II, pp. 105-107. Schwind's table in NA, XXXI (1906), 441, showing the relationship of solidi or fractions thereof and the number of oath-takers should be read with caution.

¹⁸Lehmann, p. 74.

The similarity of these laws is attested in three ways. First, the presence of domestic possessions of the church is clearly evident in both laws. L.Baiu. I,3 describes horses, oxen, and cows, whereas L.Alam. VI describes horses, oxen, and slaves (including maidservants). Since horses and oxen are important chattels, they are naturally included in laws which concern theft of church property. The absence of slaves from L.Baiu. I,3 is surprising, since church slaves are as important in Bavaria as they are in Alamannia. Second, if the thief shall wish to deny the alleged theft, he may swear with oathtakers (sacramentales) on the altar of the church from which the property was stolen; this is evident in both laws. For this reason, the laws require the thief to swear according to the quality of the stolen property. The greater the value of the property, the more oathtakers are needed to substantiate one's trust. This is why at the end of L.Baiu. I,3, the large number of twelve oathtakers is needed because of the theft of sacred church objects. The number of oathtakers of L.Baiu. I,3 varies from one to twelve. Although L.Alam. VI also indicates the necessity of oathtakers, it does not specify how many are needed. Third, the accused thief and the oathtakers must swear publicly, either before a priest and the people in L.Baiu. I,3 or before a priest or a deacon (minister) in L.Alam. VI.¹⁹

¹⁹There are three other Alamannic laws which deal with

(b) Linguistically, 33 per cent of the terms of L.Alam. VI reappear as only 18 per cent of L.Baiu. I,3. There is greater philological similarity of the first paragraph of L.Alam. VI to L.Baiu. I,3 than to the remaining two paragraphs of this Bavarian law. The monetary enumeration for the number of cathtakers in paragraph two and the sacred objects described in paragraph three of L.Baiu. I,3 may simply be additions by the Bavarians to the fundamental concepts already put forth by L.Alam. VI (L.Baiu. I,3,§1). Consequently, the same 33 per cent of the terminology used by L.Alam. VI is evident as 63 per cent of L.Baiu. I,3,§1.

(c) One other argument is presented here regarding the similarities between these laws, and this concerns the nature of thrice ninefold monetary payment. The Alamannic and Bavarian codes have the unusual phenomenon of an exorbitant payment of ninefold, twice ninefold, and thrice ninefold the value of an object or of a particular person involved in certain crimes.²⁰ Although thrice ninefold

 ideas akin to L.Baiu. I,3. These are L.Alam. V, V,2 (Hlot.), and V,3 (Hlot.). Schwind has not indicated that these laws may have influenced L.Baiu. I,3. Of these three laws, the one with the strongest influence is L.Alam. V, and the greatest similarity here is with the thrice ninefold payment of this law and L.Baiu. I,3. L.Alam. V to a greater extent and V,2 and V,3 to a lesser extent may have been consulted in the drafting of L.Baiu. I,3, but this is difficult to prove within a reasonable degree.

²⁰Although there are minor differences, these crimes deal principally with: (a) theft of ecclesiastical or ducal property, theft of special livestock owned by the people, or theft by slaves who are deliberately encouraged to steal; (b) murder in unusual and secretive settings;

payment is evident in both L.Alam. VI and L.Baiu. I,3, the property which necessitates this payment is different. The payment in L.Alam. VI is based on secular church property, such as a slave, maidservant, ox, horse, or other livestock. To this law is added "other property which belongs to the church." There is no reason to assume that this additional property could be nonsecular (sacred) vessels or garments of a church as those described by L.Baiu. I,3. If these are sacred objects, they would certainly be explicitly mentioned. The payment in L.Baiu. I,3 stems from theft of sacred property, such as a chalice, paten, or altarcloth. Likewise, this law adds "other property stolen from within a church." This property would exclude objects which normally are not housed within a church. Hence, slaves, oxen, or horses would not be included among these objects, as they are by L.Alam. VI, unless they are definitely named. Certainly, the theft of a sacred object constitutes an offense more serious than, and different from, the stealing of a slave or an ox. For this reason, no monetary compensation can be equated between the laws.

* * * * *

Lex Baiuvariorum I,4

De his qui servum ecclesiae ad fugiendum suaserint.

Lex Alamannorum XX

and (c) exhumation. Ninefold payment is more characteristic of the Alamannic than the Bavarian code. See the discussion of L.Baiu. XIX,2 below.

(a) The property of the church is held in high esteem by both the Alamannic and Bavarian codes. Land and tenements constitute one kind of church property; chattels constitute another. Slaves are one of the most important chattels a church owns. Nevertheless, church slaves are not described by the previous Bavarian law, I,3, which concerns the theft of church property. Three laws in title I of the Lex Baiuvariorum directly concern church slaves: I,4 punishes those who effect the flight of church slaves; I,5 deals with the compensation for the murder of church slaves, and I,13 tells how slaves (and coloni) render tribute to the church. The first of these three laws is discussed here; the others follow below. The first of these laws is L.Baiu. I,4 which encourages slaves to flee from the church.²¹ This law is written from the point of view of those who instigate this crime. It says:

Si quis servum ecclesiae vel ancillam ad fugiendum suaserit et eos foras terminum duxerit et exinde probatus fuerit, revocet eum celeriter et cum XV solidis componat auro adpreciatis pro qua re praesumpsit hoc facere. Et dum illum revocet, alium mittat in loco pro pignus, donec illum reddat, quem in fuga duxit. Et si non poterit invenire illum, tunc alium donet similem illi et XV solidos componat. Ita et de ancilla secundum quod valet, similiter faciat.²²

²¹Encouraging church slaves to flee closely parallels selling them to pagans, a crime attacked vehemently by Church authorities. See Charles Verlindm, L'Esclavage dans l'Europe médiévale (Bruges, 1955), I, p. 707.

²²Schwind, pp. 272-273.

The flight of church slaves is here seen as the result of deliberate persuasion, directly opposed to church policy. The basic principles of this law are also evident in L.Alam. XX, which sees this crime in reverse, that is, it concerns those who receive church slaves once they are persuaded to flee:

Si quis mancipium²³ ecclesiae aut servum aut ancillam fugitivum susciperit et post requisitionem, aut ipse presbiter requirat aut missus eius legitimus, et ille neglexerit reddere et contra legem antesteterit, sicut solet aliis Alamannis componere, ita et tripliciter conponat; et quicquid contra ecclesiam contra legem fecerit, omnia tripliciter conponat, sicut lex habet.²⁴

Both laws demand the return of the church slave, even if the slave is a maidservant. In addition, the laws do not specify that the slaves fled outside the duchy, which is surprising, since the flight of slaves to a distant area would help to assure their freedom. Because the principal intent for both laws is the same, that is, slaves of the church who become fugitives, there is sufficient reason to believe that L.Baiu. I,4 is derived from L.Alam. XX,²⁵ since both laws prevent the very release of slaves from

²³Mancipium is a difficult term to define in medieval Latin. Although it often means a slave (as it does here), it does not in every case. See Henri Dubled, "Mancipium au moyen age," Revue du moyen age latin, V (1949), 52-53.

²⁴Lehmann, p. 82.

²⁵Both laws discussed here may have been influenced by L.Rib. LXI,3: "Nemo servum ecclesiasticum absque vicarium libertum facere presumat." Beyerle-Buchner, p. 110.

the church in the first place.²⁶

(b) No agreement.

(c) No agreement.

* * * * *

Lex Baiuvariorum I,5

De his qui servum ecclesiae sine mortali crimine interemerint.

Lex Alamannorum VII

(a) Slaves are one of the most important properties a church owns, since they, like coloni, help to support the clergy by rendering tribute in kind.²⁷ To kill a church slave is a crime not only against divine law but also against the church for whom the slave works, since the absence of a slave means less tribute for the subsistence of the clergy. Both L.Baiu. I,5 and L.Alam. VII specify the compensation if a church slave is killed. L.Baiu. I,5 says: "Si quis servum ecclesiae sine mortali

²⁶L.Alam. VII concerns not only the killing of church slaves by freemen, but also seizing slaves and selling them outside the borders of the duchy. Schwind believes there is similarity between this Alamannic law and L.Baiu. I,4. There is, however, no evidence to substantiate Schwind's claims. Nor can the assumption be made that since both laws deal with slaves of the church, they are somehow related. Without sufficient evidence, there is little basis for making such an assumption. Persuading a slave to flee (L.Baiu. I,4) is an act entirely distinct from seizing and selling a slave outside the duchy (L.Alam. VII). Hence, L.Alam. VII and L.Baiu. I,4 are not similar, and Schwind's attempt to demonstrate this is untenable.

²⁷See L.Baiu. I,13 below for a discussion of what this tribute comprises.

culpa occiderit, per presumptionem duos similes restituat pro illo quem occidit. Et si negare voluerit, cum XII sacramentalibus iuret in altare in illa ecclesia cuius servum occidit."²⁸ Although the restoration of two slaves for the one killed is not exactly duplicated by L.Alam. VII, nevertheless the restoration of the latter is still quite high (in fact, higher than L.Baiu. I,5). L.Alam. VII follows: "Si quis servum ecclesiae occiderit [sic], in triplum componat; . . ."²⁹ Here, three rather than two slaves must be rendered (a practice, of course, which encourages slavery).³⁰ The remaining portion of L.Alam. VII not quoted here concerns seizing and selling a church slave outside the duchy. Neither law, in fact, elucidates how a church slave is thought guilty of a crime and is killed for it as well. The laws are at best similar only in a general sense.

(b) Philological similarity between the laws is difficult to evaluate since only part of both laws correspond. The greatest similarity between the laws occurs only in the first dependent clause of each; after this,

²⁸Schwind, pp. 273-274.

²⁹Lehmann, pp. 74-75. There should be no doubt that the threefold wergeld required by this law pertains to the slave as a person, and not to his monetary value. This is misconstrued by Davoud-Oghlou, Histoire de la Législation, I, p. 231.

³⁰See Agnes Mathilde Wergeland, Slavery in Germanic Society during the Middle Ages (Chicago, 1916), p. 62.

there is no similarity. As a result, no percentage-comparison is supplied.

(c) No agreement.

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Lex Baiuvariorum I,7

De his qui rei sunt et confugium fecerint ad ecclesiam.

The similarity between L.Baiu. I,7 and L.Alam. III is striking, due not only to similar concepts and phraseology, but also to the very paragraphic divisions of the laws themselves. The following table shows this relationship:

<u>L.Alam.</u>	<u>L.Baiu.</u>
III,1	I,7,§1
III,2	I,7,§1
III,3	I,7,§3

L.Baiu. I,7,§2 consists of a paraphrase from Matthew VI, 14-15; it does not contribute to any of the concepts proposed in either paragraphs 1 or 3, except to amplify the sanctuary a church could give.³¹ An introductory quotation of L.Baiu. I,7 is supplied here:

Si culpabilis aliquis confugium ad ecclesiam fecerit, nullus eum vi abstrahere ausus sit, postquam ianua ecclesiae intraverit, donec interpellat presbyterum ecclesiae vel episcopum, si presbyter responsum dare ausus non fuerit; et si talis culpa est, ut dignus sit disciplina, cum consilio sacerdotis hoc faciat, quia ad ecclesiam confugium fecit.

.

³¹ Schwind finds similarity of L.Baiu. I,7 only with L.Alam. III,1 and 3; he finds no similarity with L.Alam. III,2.

Si quis autem homo contumax et superbus timorem Dei vel reverentiam ecclesiarum sanctarum non habuerit, et fugientem servum suum vel quem persecutus fuerit, de ecclesia vi abstraxerit et Deo honorem non dederit, componat ad ipsam ecclesiam XL solidis iudice coegente³² et profredo ad fiscum XL solidis, ut sit honor Deo et reverentia sanctorum et ecclesia Dei semper invicta sit.³³

Closely related to this law and to L.Alam. III,1-3 below are Ed.Roth. CCLXXII³⁴ and Liutor. CXLIII, and this is especially true for the first of these two Lombard laws.

Lex Alamannorum III,1

(a) To remove a fugitive from the protection of churches³⁵ is viewed as a serious crime by the Alamannic and Bavarian codes. How these codes define this crime is important, since there is very close similarity between L.Bain. I,7,§1 given above and L.Alam. III,1 quoted here. The corresponding L.Alam. III,1 says: "Si quis homo aliquem persequens fugitivum, aut liberum aut servum, et ipse intra ianuas ecclesiae confugiens, nullus habeat potestatem vim

³²See R.E. Latham, Revised Medieval Latin Word-List from British and Irish Sources (London, 1965), p. 92 under coactio.

³³Schwind, pp. 276-278.

³⁴"Si in ecclesiam aut in domum sacerdotis mancipius cuiuscunque confugium fecerit, et episcopus aut sacerdote qui in loco praest, eum reddere in gratia post tertiam contestationem dilataverit, ita decernimus, ut reddat ipsum mancipium, et alium similem de suis propriis rebus, ut supra. . . ." Bluhme, p. 66.

³⁵See Edgar Loening, Geschichte des deutschen Kirchenrechts (Strasbourg, 1878), II, pp. 536-538, and Brunner, Deutsche Rechtsgeschichte, II, pp. 792-793.

abstrahendi de ecclesia . . .³⁶ The laws are similar in three ways. First, both laws concern the same essential idea of flight to a church. The latter stressing freemen and slaves; the former most likely stressing freemen, although slaves could be understood in this meaning as well.³⁷ Second, entrance within the door(s) of the church is significant in both laws, thereby emphasizing the sanctuary of the church if one just begins to seek safety within. The third idea says that it is illegal to remove a fugitive from the church by force. All three ideas reinforce the prestige churches have and enable them as a consequence to protect fugitives.

(b) Philological similarity is slightly evident, since 16 per cent of the terms of L.Alam. III,1 constitute 20 per cent of the terms of L.Baiu. I,7,§1.

(c) No agreement.

Lex Alamannorum III,2

(a) To the three closely related ideas described above between L.Baiu. I,7,§1 and L.Alam. III,1, a fourth must be added. This fourth idea concerns the importance a priest plays in protecting the fugitive from being unjustly punished, and this idea is evident in L.Baiu. I,7,§1 and L.Alam. III,2. The latter says: "Si autem

³⁶Lehmann, p. 68. See Lesne, Histoire de la prôpriété ecclésiastique, I, p. 233.

³⁷L.Baiu. I,7,§3 explicitly mentions a fleeing slave.

presbyter neglexerit reddere aut contradixerit illum servum, aput [sic] se illum conteneat et curam de illo habeat, ut exinde fugitivus non evadat. Et si evaserit, ille presbyter sine ulla dilatione perquirat et dominum [sic] restituat; . . .³⁸ Both laws indicate that the probable reason for the fugitive's flight to the church in the first place is some injustice he may have committed.³⁹ The priest is responsible for the fugitive, protecting him from molestation until he is delivered up to the proper authorities. The laws indicate how this is to be done so that the fugitive may not be unjustly punished and the sanctity of the church not violated.

(b) No agreement.

(c) No agreement.

Lex Alamannorum III,3

(a) Of all the laws which are similar to L.Baiu. I,7, the law illustrating the strongest similarity is L.Alam. III,3. The legal ideas of this law correspond to those ideas presented in the third paragraph of L.Baiu. I,7.

L.Alam. III,3 follows:

Si autem vim abstraxerit et iniuriam ecclesiae fecerit, componat 36 solidos ad ecclesiam et fredo [sic] solvat in fisco 40 solidos, quare contra legem fecit et ecclesiae [sic] honorem non inpendit et Dei

³⁸Lehmann, pp. 68-69.

³⁹This is especially evident in L.Visig. VI,5,16, which concerns how murderers who flee to a church are to be legally delivered up.

reverentiam non habuit, ut et alii cognuscant [sic],
quod sit timor Dei in christianis, et honorem
ecclesiis impendant.⁴⁰

Besides obviously describing the forcible removal of fugitives from churches, the laws also contain certain respectful terms for churches. Here, reverentia and honor bolster the churches' right of sanctuary. L.Baiu. I,7,§3 says that fugitives should not be removed from churches because of reverence for the holy church (ecclesiarum sanctarum reverentia) and honor to God (Deo honor). The same terminology is evident in L.Alam. III,3, but here reverentia and honor apply to the church and to God in reverse, that is, reverence for God (Dei reverentia) and honor to the church (ecclesiae honor). The presence of reverentia and honor in both laws is striking, even when the object of their intent is reversed.

(b) Philologically, both of these laws are similar. As a result, 43 per cent of the words of L.Alam. III,3 constitute 35 per cent of the words of L.Baiu. I,7,§3.

(c) Another similarity between L.Baiu. I,7,§3 and L.Alam. III,3 concerns the monetary compensation if the right of sanctuary is violated. In L.Baiu. I,7,§3, forty solidi are required to be paid to the church if a fugitive is illegally removed from it,⁴¹ and an additional

⁴⁰Lehmann, pp. 69-70.

⁴¹Ed.Roth. CCLXXII requires forty solidi to be paid to the church if the fugitive slave is punished by his master for some guilt. Liutor. CXLIII requires a wergeld to

forty solidi are paid to the duke's treasury as a fredus. In L.Alam. III,3, thirty-six solidi are required to be paid to the church, and forty solidi as a fredus. The difference in the payment destined for the church in both laws is so slight as to be disregarded, especially since the higher fee (forty solidi) is required by the later L.Baiu. I,7,§3. The latter may require a compensation of forty solidi for the church rather than thirty-six so that it equals the fredus required by the State.

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Lex Baiuvariorum I,8

De compositione ministrorum ecclesiae, quomodo componantur. De monachis.

Since L.Baiu. I,8 is similar to three Alamannic laws, it is presented in full in order to introduce discussion:

Si quis ministros ecclesiae, id est subdiaconum, lectorem, exorcistam, acolitum, ostiarium, de istis aliquem iniuriaverit aut percusserit vel plagaverit vel occiderit, componat hos dupliciter, sicut solent componi parentes eius. Illi qui sunt ministri altaris Dei, duplicem compositionem accipiant. Alii autem clerici componantur, sicut parentes eorum.

Monachi autem qui secundum regulam in monasterio vivunt, et illi dupliciter componantur secundum genealogiam⁴² suam, ut reverentia sit Dei et pax

be paid to the church if a slave is dragged from it, but the exact amount is not specified. Cf. Brunner, Deutsche Rechtsgeschichte, II, p. 792, n. 15.

⁴²Meaning lineage or kindred. See J.F. Niermeyer, Mediae latinitatis lexicon minus (Leiden, 1957), V, p. 465. Certainly, genealogia indicates that the clergy are treated separately from others, enabling them to be compen-

eis qui illi deserviunt.⁴³

The Alamannic laws which follow are discussed as they appear in the Lex Alamannorum, and not as they are similar to L.Baiu. I,8. As a result, the second paragraph of L.Baiu. I,8 above is discussed first.

Lex Alamannorum XIV

(a) L.Baiu. I,8,§2 requires a double wergeld for monks if they are harmed in any way. This compensation also applies to those monks described by L.Alam. XIV which says: "Monachus autem, qui sub regula in monasterio conseruatus fuerit et ab aliqui aliquas iniurias, sicut superius diximus, passus fuerit, ita ut diaconus similiter conponat."⁴⁴ According to this law, monks are compensated as if they were deacons. A look at L.Alam. XIII (compared with L.Baiu. I,9 below), which concerns the compensation

sated corporately rather than individually. In this sense, genealogia implies that the wergeld is rendered because of blood ties rather than caste. See Frederick Pollock and Frederic William Maitland, The History of English Law before the Time of Edward I, 2nd ed. (Cambridge, 1898), II, pp. 240-241, and D.A. Bullough, "Early Medieval Social Groupings: The Terminology of Kinship," Past and Present, XLV (1969), 12.

⁴³Schwind, pp. 278-279. Commas between subdiaconum and ostiarium are here inserted. There are no commas separating these words in Schwind's text.

⁴⁴Lehmann, p. 78. Conponat is not included in Lehmann's edition of the Lex Alamannorum, although he does acknowledge this term in his collation. Conponat is also added by Karl August Eckhardt, ed., Leges Alamannorum II: Recensio Lantfridana (Lex) (Germanenrechte Neue Folge, Westgermanisches Recht, VI; Witzzenhausen, 1962), p. 31.

deacons receive if they are in any way assaulted, shows a twofold compensation. Although L.Alam. XIV defines a twofold wergeld for monks, this law does so in a circumventing way. Both L.Baiu. I,8,§2 and L.Alam. XIV explicitly define that this double wergeld applies only to those monks living under a rule in a monastery, thereby excluding those monks who live under a self-imposed rule or no rule at all.

(b) The laws also show philological similarity, since 30 per cent of the terminology of L.Alam. XIV appears as 28 per cent of L.Baiu. I,8,§2.

(c) The wergeld for monks is twofold in both laws.

Lex Alamannorum XV,1

(a) L.Baiu. I,8,§1 explicitly names those ministri ecclesiae who, injured or killed, are compensated by law; they are sub-deacons, lectors, exorcists, acolytes, and doorkeepers. This is not true for L.Alam. XV,1, for this law says in its entirety: "Clerici autem sicut ceteri parentes eorum ita componantur."⁴⁵ There is no explicit mention of ecclesiastical grades in L.Alam. XV,1. Due to the brevity of this law, what similarity it shows with L.Baiu. I,8,§1 would normally be understood only in a general sense if it were not for the twofold wergeld required by both laws for the injury and murder of clergy.⁴⁶ The introductory quotation of L.Baiu. I,8

⁴⁵Lehmann, p. 78.

⁴⁶Two other laws which are similar to L.Baiu. I,8,§1

requires that clergy should receive twice the compensation of their relatives. L.Alam. XV,1 simply says that clergy are compensated exactly as their relatives. Since both laws require clergy and their relatives to be compensated equally, double the compensation must be rendered by L.Alam. XV,1 as L.Baiu. I,8,§1 allows.

(b) Seventy-five per cent of the terms of L.Alam. XV,1 constitute only 13 per cent of the words of the first paragraph of L.Baiu. I,8, and this low percentage is due to the greater length of the latter.

(c) Twofold wergeld is required by both laws.

Lex Alamannorum XV,2

(a) L.Alam. XV,2, like XV,1 above, is similar to L.Baiu. I,8,§1 in much the same way. L.Alam. XV,2 also speaks about the clergy generally rather than in terms of rank, such as sub-deacon, lector, etc:

Si autem clericum, qui in gradu in ecclesia publica lectionem recitat, vel gratalem vel alleluia coram episcopo in publico cantaverit, et aliquis iniuria passus fuerit, sicut superius diximus, componatur, quomodo parentes eius componantur, et tertia pars super haec addatur in compositionem.⁴⁷

and L.Alam. XV,1 are L.Rib. XL,5-6: "XL,5: "Si quis clericum Ingenium interfecerit, bis quinquagenos solidos culpabilis iudicatur." XL,6: "Si quis subdiaconum interfecerit, ducentos solidos multetur." Beyerle-Buchner, p. 93. There is reason to believe that these Ripuarian laws did, in fact, influence the Alamannic and Bavarian laws discussed here. See Franz Beyerle, "Das Gesetzbuch Ribvariens. Volksrechtliche Studien III," ZSRG, LV (1935), 61-62.

⁴⁷Lehmann, pp. 78-79.

Nevertheless, L.Alam. XV,2 describes a few duties of the clergy, such as reciting the liturgy or singing a gradual or a hymn. Such duties would be performed by sub-deacons, lectors, exorcists, and acolytes, and these are most of the ecclesiastical grades⁴⁸ mentioned in L.Baiu. I,8,§1.⁴⁹

(b) What slight philological agreement there is between these laws adds little additional proof of their similarity. Hence, no percentages are supplied.

(c) There is likewise, the same twofold compensation for the clergy described in L.Alam. XV,2 as can already be seen in L.Alam. XV,1 and L.Baiu. I,8. Nevertheless, there appears to be second thoughts about the gravity of injuring or killing the clergy in the Lex Alamannorum, since L.Alam. XV,2 adds an additional third to the normal compensation already reserved for the clergy.

⁴⁸The exorcist does recite his own rituals, and for this reason, he does recite liturgy. See Dictionnaire de Théologie Catholique, ed. A. Vacant and E. Mangenot (Paris, 1913), V, pt. 2, cols. 1785-1786. Although a doorkeeper (ostiarium) is an ecclesiastical grade, he would not normally recite the liturgy or chant the gradual.

⁴⁹In addition to the three Alamannic laws described here, Schwind believes there are two more laws bearing similarity with L.Baiu. I,8. These are L.Alam. XII and XIII. L.Alam. XII concerns injuries inflicted upon a parish priest; L.Alam. XIII treats of injuries suffered by a deacon. Nowhere in L.Baiu. I,8 is there mention of either priests or deacons suffering injuries. Although, it is true, L.Baiu. I,8 does deal with injuries to clerics, it explicitly mentions what clerics are involved: priests and deacons are excluded from this description. L.Alam. XII and XIII, therefore, show no legal similarity to L.Baiu. I,8.

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Lex Baiuvariorum I,9

De presbiteris vel diaconibus, quomodo componantur.

Lex Alamannorum XII

(a) To harm or kill a priest or deacon is a serious offense in the Germanic codes. Both the Alamannic and Bavarian codes contain legislation compensating for these crimes, and these are L.Alam. XII (priests) and XIII (deacons) and L.Baiu. I,9 (priests and deacons).⁵⁰ The Alamannic and Bavarian laws described here are the only laws in the corpus legem barbarorum which discuss both injuring and killing priests and deacons.⁵¹ L.Baiu. I,9 says:

Si quis presbytero vel diacono quem episcopus in parrochia ordinavit vel qualem plebs sibi recepit ad sacerdotem, quem ecclesiastica sedes probatum habet, iniuriam fecerit vel plagaverit, tripliciter eos componat.

Si autem occiderit presbyterum, solvat solidos CCC auro adpretiatus; . . .

Diaconum vero cum CC solidis solvat; . . .⁵²

⁵⁰ See the comments in Krusch, Abhandlungen Göttingen, neue folge, XX (1927), nr. 1, 66-67, and Loening, Kirchenrechts, II, pp. 303-304.

⁵¹ Laws from other codes simply discuss the compensation if one of these clerics is killed. They are, for priests: L.Sal. LXXVIII,1 and L.Rip. XL,8. For deacons: L.Sal. LXXVIII,2 and L.Rip. XL,7. There are no laws in either the Lex Visigothorum or Lex Burgundionum which approach the intent of these laws. See Boyerle-Buchner, p. 27, which indicates the wergeld relationship between L.Alam. XII and these Ripuarian and Salic laws, though neglecting to add L.Baiu. I,9.

⁵² Schwind, pp. 279-281. L.Baiu. I,9 consists of four

L.Alam. XII is more simple in its description of injuries or killing a priest:

Si quis autem presbyterum parochianum iniuriaverit aut fustaverit aut mancaverit vel qualescumque iniuriam fecerit, in triplum componatur; et si eum occiderit, 600 solidos eum componat aut ad ecclesiam, ubi servit, aut ad episcopum, de cui parochia fuit.⁵³

Apart from minor differences, the basic concepts underlying both laws are closely parallel. Although L.Alam. XII does not mention that the priest is chosen by the people or that his office is approved by the ecclesiastical (that is, episcopal) see as does L.Baiu. I,9,§1, both laws add that the priest is placed in his parish under a bishop's direction.⁵⁴ The strongest similarity of these laws is between L.Alam. XII and the first paragraph of L.Baiu. I,9. In addition, the relative pronominal clause (qualem . . . habet) of L.Baiu. I,9,§1 does not distort the obvious similarity between the remaining independent clause and L.Alam. XII. It can be seen, therefore, that L.Baiu. I,9,§1 is essentially an Alamannic law which is extended by a pronominal clause.

(b) That the laws are moderately similar philologically is also evident, since 24 per cent of the words of

 paragraphs. All of the first, and part of the second and third paragraphs are quoted here; the fourth paragraph is not similar to either L.Alam. XII or XIII.

⁵³Lehmann, p. 77.

⁵⁴Cr. Hans Erich Feine, Kirchliche Rechtsgeschichte, 3rd ed. (Weimar, 1955), p. 167.

L.Alam. XII appear as 31 per cent of the terms of L.Baiu. I,9,§1. This similarity is greatly reduced for L.Alam. XII and the second paragraph of L.Baiu. I,9. Here, only 8 per cent of the terminology of L.Alam. XII constitutes 13 per cent of all L.Baiu. I,9,§2 (although the percentage rises to 33 per cent if only the first sentence of this law is considered).

(c) Although the laws agree by requiring threefold compensation if priests are injured, they disagree in the number if priests are killed; that is, L.Alam. XII requires again as much wergeld for killing a priest as L.Baiu. I,9. This difference, however, in the number of solidi is a slight matter by comparison with the basic similarity: threefold monetary compensation.

Lex Alamannorum XIII

(a) L.Alam. XIII within various degrees is similar to L.Baiu. I,9,§1 and §3. L.Alam. XIII compensates for the injury or murder of deacons: "Si quis diaconum, qui euangelium coram episcopum legit et reuestitus ante altare officium fungit, si quis eum aliqua iniuria fecerit vel fustaverit vel placaverit [sic] vel mancaverit, dupliciter eum componatur; et si eum occiderit, 300 solidos componat."⁵⁵ The comparison of L.Alam. XIII with L.Baiu. I,9 also shows, as does L.Alam. XII, that priests and deacons

⁵⁵Lehmann, pp. 77-78.

are viewed as distinctly separate individuals among the Alamanni, since there are separate laws for both of them in the Lex Alamannorum. The Bavarians viewed this differently; they classified deacons and priests under one category in the same law.

(b) A comparison of L.Alam. XIII and L.Baiu. I,9,⁵¹ shows that 25 per cent of the terminology of the former reappears as 31 per cent of the latter. There is little philological similarity between L.Alam. XIII and L.Baiu. I,9,⁵³.

(c) No agreement.

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Lex Baiuvariorum I,10

De solis episcopis et illorum interfecione.

Lex Alamannorum XI

(a) It is not surprising to find that both the Alamannic and Bavarian codes contain legislation compensating for murder of bishops, since they also discuss compensation for the murder of lower clergy.⁵⁶ However, this legislation is similar only in a general way. L.Baiu. I,10 is a much more involved law than L.Alam. XI. Only the first paragraph of L.Baiu. I,10 shows similarity with this Alamannic law. It follows:

Si quis episcopum quem constituit rex vel populus

⁵⁶See Beyerle, ZSRG, XLIX (1929), 302-303.

elegit sibi pontificem,⁵⁷ occiderit, solvat eum regi vel plebi aut parentibus secundum hoc edictum: Fiat tunica plumbea secundum statum eius, et quod ipsa pensaverit, auro tantum donet qui eum occidit. Et si aurum non habet, donet aliam pecuniam, mancipia, terram, villas vel quicquid habet, usque dum impleat debitum. Et si non habet tantum pecuniam, se ipsum et uxorem et filios tradat ad ecclesiam illam in servitium, usque dum se redimere possit.⁵⁸

The seriousness of the crime is obvious, since every possible means of compensating for it is clearly indicated. If the murderer cannot pay for the homicide in gold, he must render slaves, land, or villas. If he cannot pay all of the debt, he must render up his spouse and children to become slaves of that church whose bishop he murdered.

L.Alam. XI is not as explicit in defining how property should be reckoned for the homicide. It simply says:

" . . . et si occisus fuerit, sicut et illum duce[m] ita eum solvat aut rege aut duce aut ad ecclesiam, ubi pastor fuit."⁵⁹ A bishop is compensated equally as a king or

⁵⁷Because of this word, Georg Baesecke, "Die deutschen Worte der germanischen Gesetze," Beiträge zur Geschichte der deutschen Sprache und Literatur, LIX (1935), 14 believes the Lex Bajuvariorum may have been written as late as 772 due to the connection of this term with the reforms of St. Boniface. He does not add, however, that Boniface himself died in 754, or how these reforms may have influenced the Bavarian code. Cf. Hans-Kurt Claussen, "Die Beziehungen der Lex Salica zu den Volkerechten der Alemannen, Bayern und Ribuarier," ZSRG, LVI (1936), 351-352.

⁵⁸Schwind, pp. 281-282. Commas between pecuniam and villas are here inserted. There are no commas separating these words in Schwind's text. The remaining two paragraphs of this law do not show similarity with L.Alam. XI; therefore, they are not quoted here.

⁵⁹Lehmann, p. 77.

duke.⁶⁰ Unfortunately, there is no law in the Alamannic code which explains what rendering to the king, duke, or church means. Ironically, another Bavarian law, III,1,§5, defines the wergeld if the duke is killed: ". . . dux vero cum DCCCLX solidis conponitur parentibus aut regi, si parentes non habuerit. . ."⁶¹ This exorbitant wergeld of 960 solidi may, indeed, be that required by L.Alam. XI. The Alamannic and Bavarian laws here under discussion closely parallel one other law, L.Rib. XL,9 which also compensates for the killing of bishops: "Si quis episcopum interfecerit, ter tricentenus solidos multetur."⁶² Because the concepts of L.Baiu. I,10,§1 and L.Alam. XI are similar, the unusual wergeld of the leaden tunic described by the former law may approximate that payment required by the latter; both of which may be influenced by L.Rib. XL,9. In addition, L.Baiu. I,10,§1 and L.Alam. XI are also similar because they do not explicitly clarify their wergeld payments while simultaneously compensating for the same crime.

(b) No agreement.

(c) No agreement.

⁶⁰See Ulrich Stutz, "Zur Herkunft von Zwing und Bann," ZSRG, LVIII (1937), 350, n.3.

⁶¹Schwind, p. 314. See Loening, Kirchenrechts, II, p. 273.

⁶²Beyerle-Buchner, p. 94. Cf. Jacob Grimm, Deutsche Rechtsalterthümer, 4th ed, Andreas Heusler and Rudolf Hübner (Berlin, 1899), I, p. 382.

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Lex Baiuvariorum I,13

De colonis⁶³ vel servis ecclesiae, qualiter serviant vel qualia tributa reddant.

Lex Alamannorum XXI

(a) The Alamannic and Bavarian codes each contain one law specifying the duties of ecclesiastical slaves,⁶⁴ to which the Bavarian code adds serfs (coloni). The first of these two laws is L.Baiu. I,13, and it is a far more exten-

⁶³That the ecclesiastical coloni are freemen has already been pointed out by Alfons Dopsch, The Economic and Social Foundations of European Civilization, trans. M.G. Beard and Nadine Marshall, 2nd Ger. ed. (New York, 1937), p. 235. Contrary to Walter Goffart "From Roman Taxation to Medieval Seigneurie: Three Notes," Speculum, XLVII (1972), 185, n. 1007, there is little concrete evidence in L.Baiu. I,13 illustrating that the obligations of church slaves and coloni vary, save for §2 which concerns servi ecclesiae. This assumed division of labor for slaves and coloni is also proposed by Robert Latouche, The Birth of Western Economy: Economic Aspects of the Dark Ages, trans. E.M. Wilkinson (New York, 1966), p. 182, whose reasoning (this time to L.Alam. XXII and XXIII of Eckhardt's edition of the Lex Alamannorum) is just as unfounded. For opposing views, see Charles Edmond Perrin, Seigneurie rurale en France et en Allemagne du début du IX^e à la fin du XII^e siècle (Paris, 1906), pp. 229-230 (cf. pp. 85-91), and Heinrich Brunner, Abhandlungen zur Rechtsgeschichte, ed. Karl Rauch (Weimar, 1931), I, pp. 608-609. Also see the general discussion of L.Baiu. I,13 in Fustel de Coulanges, Recherches sur quelques problèmes d'histoire, 4th ed. (Paris, 1923), pp. 155, 161, and 164. Fustel de Coulanges, Histoire des institutions politiques de l'ancienne France: L'alleu et le domaine rural, 3rd ed. (Paris, 1922), p. 357, n. 3, believes the treatment of L.Baiu. I,13 is deliberately divided, giving the last paragraph to church slaves only, but he does not specify what the obligations are for both coloni ecclesiae and servi ecclesiae.

⁶⁴See Georg Waitz, Deutsche Verfassungsgeschichte. Die Verfassung des deutschen Volkes in Alttestar Zeit, 3rd ed. (Berlin, 1882), II, pt. 1, p. 226.

sive law than the second law, L.Alam. XXI. Both laws are similar only in a general sense; they are dissimilar in most particulars. Hence, only part of this Bavarian law is quoted here:

. . . Reddant decimum fascem de lino, de apibus decimum vas, pullos IIII, ova XV reddant. . . .
 Servi autem ecclesiae secundum possessionem suam reddant tributa. Opera vero III dies in ebdomada⁶⁵ in dominico operet, III vero sibi faciat. . . .⁶⁶

Many of these requirements are also evident in L.Alam. XXI, which is quoted in its entirety here:

Servi enim ecclesiae tributa sua legitime reddant: quindecim siclas de cervisa, porco valente tremisso uno, pane modio duo, pullos quinque, ova viginti. Ancillas autem opera inposita sine neglecto faciant. Servi dimidiam partem sibi et dimidiam in dominicum arativum reddant; et si super haec est, sicut servi ecclesiastici ita faciant tres dies sibi et tres in dominico.⁶⁷

Both laws inform us that chickens and eggs must be rendered to the church by its slaves as part of their tribute:

L.Bain. I,13 specifies four chickens and fifteen eggs, and L.Alam. XXI requires five chickens and twenty eggs. The additional tribute of fifteen measures (siclae) of beer, a

⁶⁵Meaning a week. This term dates from at least the seventh century since it can be found in L.Visig. II,1,20. Only the Visigothic and Bavarian codes use this term. Latham, Revised Medieval Latin Word-List, p. 222, incorrectly dates ebdomada from the eighth century, although as he indicates this term does occur frequently thereafter.

⁶⁶Schwind, pp. 288-289. This law consists of a lengthy first paragraph and a short second paragraph in Schwind's edition; both paragraphs are quoted in part.

⁶⁷Lehmann, pp. 82-83.

pig valued at one *tramissis*, and two loaves of bread in L.Alam. XXI do not appear in L.Baiu. I,13.⁶⁸ The closest similarity between both laws concerns the manual duties (*corvée*) of ecclesiastical slaves. Here, both laws stipulate that for every three days' work the slave renders his lord, he may work an equal time for himself.⁶⁹

(b) No agreement.

(c) No agreement.

⁶⁸This tribute is typical as well for many eighth-century manors. See F.L. Ganshof, "Manorial Organization in the Low Countries in the Seventh, Eighth and Ninth Centuries," Transactions of the Royal Historical Society, 4th series, XXXI (1949), 53. Cf. Lesne, Histoire de la propriété ecclesiastique, I, pp. 248-249, and Inama-Sternegg, Deutsche Wirtschaftsgeschichte, I, p. 208. A comparison of all the economic aspects of L.Baiu. I,13 with Merovingian and Carolingian sources can be seen in Wolfgang Metz, "Die hofrechtliche Bestimmungen der Lex Baiuvariorum I,13 und die fränkische Reichsgutverwaltung," Deutsches Archiv für Erforschung des Mittelalters, XII (1956), 167-190. Also see the brilliant study of L.Baiu. I,13 in Charles Edmond Perrin, "Une étape de la seigneurie. L'exploitation de la réserve à Prum, au IX^e siècle," Annales d'histoire économique et sociale, VI (1934), 453-465.

⁶⁹See Philippe Dollinger, L'évolution des classes rurales en Bavière, depuis la fin de l'époque carolingienne jusqu'au milieu du XIII^e siècle (Paris, 1949), p. 153.

CHAPTER III

Titles II-III

Title II

De ducibus et eius causis, quae ad eum pertinent.

Lex Baiuvariorum II,1

Si quis de morte ducis consiliatus fuerit.

Lex Alamannorum XXIII

(a) The Alamannic and Bavarian codes contain legislation condemning plots against the duke's life, which constitutes treason.¹ This is quite natural since both the Alamanni and Bavarians elected a duke, not a king. To plot the death of one's duke was a very serious crime, and thereby shows considerable importance by being listed as the first law under that title (L.Baiu. II, that is, II,1) or those titles (L.Alam. XXIII-XLIII) dealing explicitly with the duke or matters directly pertaining to his office.²

¹See Maxime Lemosse, "La lèse-majesté dans la monarchie franque," Revue du moyen âge latin, II (1946), 10, and Floyd Seyward Lear, Treason in Roman and Germanic Law: Collected Essays (Austin, 1905), pp. 215-216.

²Title II of the Lex Baiuvariorum and titles XXIII-XLIII of the Lex Alamannorum contain laws pertaining to the duke or matters concerning his government, although there is

Other laws, however, present close similarities, especially L.Rib. LXXII,1 and Ed.Roth. I, both of which describe those who are unfaithful to the king and punish such traitors with loss of life.³ L.Baiu. II,1 says:

Si quis contra ducem suum . . . de morte eius consiliatus fuerit et exinde probatus negare non potest, in ducis sit potestate homo ille et vita illius et res eius infiscentur in publico.

. . . Nec sub uno teste, sed sub tribus testibus personis coequalibus sit probatum. . . .

Ut nullus Baiuarius alodem aut vitam sine capitale crimine perdat. Id est, si in necem ducis consiliatus fuerit aut inimicos in provinciam invitaverit, aut civitatem capere ab extraneis machinaverit et exinde probatus inventus fuerit: tunc in ducis sit potestate vita ipsius et omnes res eius in patrimonium.

. . . Si verp non habet, ipse se in servitio deprimat . . .⁴

Plotting the death of the duke is only one of several crimes that could lead to the loss of life. Others are inviting enemies into the duchy (provincia)⁵ or using their aid to overrun cities. L.Alam. XXIII is similar only to the first of these crimes:

doubt whether all twenty-one Alamannic titles included here pertain directly to the ducal office in every way.

³Although questionable, what little Roman legal influence may be evident in L.Baiu. II,1 may come from L.Visig. II,1,7. See Karl Zeumer, "Geschichte der west-Gothischen Gesetzgebung," MA, XXIV (1899), 59-60. The latter is part of an extensive article published in four parts in the same journal (MA): XXIII (1898), 419-516; XXIV (1899), 39-122, 571-630; and XXVI (1901), 91-149. ⁷Lamosse, Revue du Moyen Age latin, II (1946), 14, n. 45, contests the fact.

⁴Schwind, pp. 291-293. This law is divided into four paragraphs, all of which are quoted in whole or part here.

⁵Cr. Ed.Roth. IV.

Si quis aliquis homo in mortem duci consiliatus fuerit et exinde probatus, aut vitam per/det suo aut se redimat, sicut dux aut principes populi iudicaverint; et si iurare voluerit, cum 12 nominatos iuret in ecclesia coram duce aut cui ille miserit.⁶

Capital punishment is not specifically mentioned in either law. The option to redeem oneself in L.Alam. XXIII places less emphasis on the loss of one's life. The fact that one's life is in the power of the duke in L.Baiu. II,1 does not necessarily imply the death penalty,⁷ for L.Baiu. II,1 contains a more merciful substitute for this penalty, enslavement. To be cast into slavery agrees with having one's life completely under the duke's authority described in this Bavarian law.⁸ Both laws do not explicitly state that the convicted criminal would lose his life, knowing that there are other options in both. The laws are evidently more concerned with the power the duke may have over the criminal than the alleged right of capital punishment, and this is also attested by the confiscation of the plotter's property.⁹ The laws also agree by requiring

⁶Lehmann, p. 84. Per is inserted by me.

⁷Cf. Julius Goebel, Jr., Felony and Misdemeanor: A Study in the History of English Criminal Procedure (Research in Legal History, Columbia University School of Law, I; New York, 1937), p. 93.

⁸Heinrich Brunner, Forschungen zur Geschichte des deutschen und französischen Rechtes (Stuttgart, 1894), p. 463.

⁹See Schwind, MA, XXXIII (1908), 655-656. Confiscation of property is also evident in L.Rib. LXXII,1 and Ed.Roth. I and IV noted above. See Fustel de Coulanges, Histoire des institutions politiques de l'ancienne France:

oath-takers to substantiate the integrity of the accused, although they do not agree to the exact number of oath-takers needed. The necessity of twelve oath-takers in L.Alam. XXIII clearly shows the gravity of the crime, yet a mere three in L.Baiu. II,1 does not. It may be concluded with little reservation that the Alamanni see rebellion against their duke as the more serious crime.

(b) What little philological agreement is shown by the laws is nullified by the greater length of L.Baiu. II,1.

(c) The laws present a similar wergeld since the criminal's life is allegedly in the power of the ducal office; that is, the criminal is delivered up to be disposed at will under both laws.

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Lex Baiuvariorum II,4

Si quis in exercitu scandalum excitaverit.

Lex Alamannorum XXV,1

(a) The object of L.Baiu. II,4 and L.Alam. XXV,1 is violence in the army, and especially murder, which may result from a fight. These laws closely parallel L.Rib. LXVI,1,¹⁰ which also discusses the same crime. L.Baiu.

Les origines du système féodal, 6th ed. (Paris, n.d.), p. 51.

¹⁰ "Si quis hominem in oste interfecerit, triplice wergeldum culpabilis iudicetur." Beyerle-Buchner, p. 118. Cf. Pact.Sal. LXIII,1 and L.Visig. VIII,1,3.

II,4 is an extensive law, but only its first paragraph is similar to L.Alam. XXV,1. L.Baiu. II,4,{1 follows:

Si quis in exercitu quem rex ordinavit vel dux de provincia illa scandalum¹¹ excitaverit infra proprium hostem, et ibi homines mortui fuerint, componat in publico DC solidis. . . . Et ille homo qui haec commisit, benignum impetret regem vel ducem suum, si ei vitam concesserint.¹²

To this law is compared the shorter L.Alam. XXV,1:

De his, qui in exercitu litem commiserint, ita ut cum clamore populus concurrat cum armis, et ibi pugna orta fuerit infra propria oste, et aliquis ibi occisi fuerint, ipse homo, qui hoc commisit, aut vitam perdat aut in exilium exeat, et res eius infiscentur in publico.¹³

L.Alam. XXV,1 says that those guilty of dissension within the army would either lose their lives or be exiled. L.Baiu. II,4 presents a stronger cause for capital punishment; it simply says that "that man who committed this [crime] may regard the king or duke liberal if he grants him his life." The assumption may be made here, unlike L.Baiu. II,1 above, that the wergeld in both laws is concerned with more than the ducal punishment of a criminal; it is concerned with

¹¹Scandalum is peculiar to the Lex Baiuvariorum where it means a breach of the peace (in general), and a fight (in particular); it does not appear in the Lex Alamannorum. See Charles du Fresne Du Cange, Glossarium mediae et infimae latinitatis, ed. Léopold Favre (Paris, 1888), VII, p. 333, and Niermeyer, Mediae latinitatis lexicon minus, X, p. 942. Although Ed.Roth. XXXV-XL also describe scandalum, none of these laws concern the army.

¹²Schwind, pp. 295-296. The other two paragraphs of this law are not quoted here.

¹³Lehmann, p. 85. L.Alam. XXVI,1 approaches the intent of this law.

capital punishment itself. Although L.Baiu. II,4 talks of scandal within the army, and L.Alam. XXV,1 is concerned with military dissension, both laws see this as the same concept, and treat it within the same frame of reference. Both laws are concerned that order be maintained within the ranks. L.Alam. XXV,1 is quoted in its entirety above; all of its principles are completely absorbed by L.Baiu. II,4, §1.¹⁴

(b) If L.Alam. XXV,1 is compared to all of L.Baiu. II,4,§1, 26 per cent of the terminology of the former is evident as only 19 per cent of the latter.

(c) The laws do not agree in all requirements for the wergeld, since L.Baiu. II,4,§1 appears to have double wergeld: not only is the participant in the fight subject to capital punishment, but he is also required to render 600 solidi for the homicide. This additional payment has no parallel in L.Alam. XXV,1.¹⁵

¹⁴The third paragraph of L.Baiu. II,4 concerns instances which may lead to scandalous acts within the army. These instances, and they are two in number, concern fire wood for the soldiers and fodder for their horses. The law is unfortunately contradictory for it allows anyone to take as much wood or fodder as he needs. As a result, this law never definitely presents a case for theft, and with a contradiction within the law itself, the case for theft must be assumed invalid. Nevertheless, Schwind assumes that L.Baiu. II,4,§3 is similar to L.Alam. XXVI,1 and 2, which also concern theft within the army. L.Alam. XXVI, however, treats theft only in very general terms, terms too broad to use as concrete evidence. L.Alam. XXVI,1 is slightly similar to the first paragraph of L.Baiu. II,4 as already indicated.

¹⁵See Brunner, Deutsche Rechtsgeschichte, II, pp. 759-60

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Lex Baiuvariorum II,6

Si quis in exercitu aliquid furaverit.

Lex Alamannorum XXVI,1

(a) No other Germanic law prohibits thievery within the army, except L.Baiu. II,6 and L.Alam. XXVI,1. The greater length of L.Baiu. II,6 prevents an extensive analysis of this law's similarity with L.Alam. XXVI,1. This is due principally to the lack of information in the latter. Laws in the Alamannic code often appear purposely vague in order that they have a more universal application. Contrary to L.Alam. XXVI,1, L.Baiu. II,6 clearly specifies what individuals are guilty of thievery in the army, that is, slaves and freemen:

Si quis in exercitu aliquid furaverit pastoriam, capistrum, frenum, feltrum vel quaecumque involaverit et probatus fuerit, si servus est, perdat manus suas; dominus vero eius ipsam rem si habet aut similem reddat.

Si autem liber homo hoc fecerit, cum XL solidis redimat manus suas et quod tulit, reddat.¹⁶

All of the objects described by this law pertain to one's horse: hobbles, halters, bridles, and blankets. Surprisingly, no mention is made of weapons, although this may be covered by the addition of quaecumque (anything whatever). L.Alam. XXVI,1 is much more simple. It merely

¹⁶Schwind, pp. 299-300. The commas between pastoriam and feltrum are here inserted. There are no commas separating these words in Schwind's edition.

says: "De his, qui in exercitu, ubi rex ordinaverit exercitum, si aliquis furtum fecerit, novem vicibus novigildos solvat, quidquid inviolatus fuerit."¹⁷ The assumption may be safely made that the Alamanni also possessed hobbles, halters, bridles, and blankets for their horses as were carefully described in L.Baiu. II,6. In addition, the use of those (his) by L.Alam. XXVI,1 could apply to any person no matter what his class, be he freeman, freedman, or slave, and if this is true, there is no substantial difference between the classes described by either law.

(b) No agreement.

(c) No agreement.

* * * * *

Lex Baiuvariorum II,9

De filiis ducum, si protervi fuerint.

Lex Alamannorum XXXV,1

(a) Rebellion of the duke's son against ducal authority is described by L.Baiu. II,9 (§§ 1-2) and L.Alam. XXXV,1 and 2. The first paragraph of L.Baiu. II,9 is similar to L.Alam. XXXV,1 as the second paragraph of this same law is similar to L.Alam. XXXV,2. L.Baiu. II,9,§1 says:

Si quis filius ducis tam superbus vel stultus fuerit, ut patrem suum dehonostare voluerit per consilium malignorum vel per fortiam et regnum eius

¹⁷Lehmann, p. 86.

aufferre ab eo, dum adhuc pater eius potest iudicio contendere, in exercitu ambulare, populum iudicare, equum viriliter ascendere, arma sua vivaciter baiulare¹⁸; non est surcus nec cecus, in omnibus iussionem regis potest implere: sciat se ille filius contra legem fecisse et de hereditate patris sui esse delectum et nihil amplius ad eum pertinere de facultatibus patris sui, et hoc in potestate regis vel patris sui erit, ut exiliet eum si vult. Nihil aliud habeat in potestatem nisi quod per misericordia rex vel pater eius dare ei voluerint.¹⁹

Before analyzing this law, it is compared to L. Alam. XXXV, 1:

Si quis dux habens filium contumacem et malum, ut revellare [sic] constur contra patrem suum per stultitiam suam vel per consilium malorum hominum, qui volunt dissipare provintiam [sic], et hostiliter surrexerit contra patrem suum, dum adhuc pater eius potens est et utilitatem regis potest facere et exercitum gubernare, equum ascendere, utilitatem regis implere, et filius eius eum vult dishonorare aut per raptum regnum eius possedere, non obteneat quod inchoavit. Et si pater eius eum vicerit et adprehendere potuerit, in sua enim sit potestate, aut exiliet eum de provintia [sic], aut ubicumque voluerit transmittat eum, aut rege domino suo; et de hereditatem paternicam amplius ad eum nihil perteneat, quia inlicitam rem contra patrem suum fecit.²⁰

¹⁸Meaning to carry. This term resembles the Gothic word *bairan*, which also means to carry. See Sigmund Feist, Vergleichendes Wörterbuch der gotischen Sprache, 3rd ed. (Leiden, 1939), p. 75, and Antoine Meillet, General Characteristics of the Germanic Languages, trans. William P. Dismukes, 4th ed. (Miami Linguistics Series, VI; Coral Gables, 1970), p. 59. Also see August Fick, Vergleichen-des Wörterbuch der indogermanischen Sprachen, 4th ed. (Göttingen, 1909), III, p. 250. Cf. E. Prokosch, A Comparative Germanic Grammar (Philadelphia, 1939), pp. 101 and 130.

¹⁹Schwind, pp. 302-303.

²⁰Lehmann, pp. 92-93.

Three characteristics are evident in both laws. The first of these concerns the state of affairs before the son's rebellion.²¹ Insurrection is especially acute if the ruler (in this case, the duke) is still capable of performing important functions of his office; and among the Germans, heading the army (often in person) and mounting (and riding) one's horse bear special meaning.²² To this characteristic L. Baiu, II,9, 1 adds those traits deemed worthy of a capable ruler. The second of these characteristics informs us of the immediate results of the rebellion's suppression. Both laws present a strong case in point if the rebellious son is captured by his father, the duke. If the rebellious son is apprehended, he may be exiled, and in addition, the king has the power to send the rebel wherever he pleases.²³ The third and last characteristic concerns the abrupt disinheritance of the rebellious son. The duke's son is hardly in a position to expect any portion of his father's inheritance once he

²¹Lear, Treason in Roman and Germanic Law, p. 208 does not see the rebellion of the duke's son as an example of maiestas.

²²These ideas fit in very well with the nature of kingship. Cf. D.H. Green, The Carolingian Lord. Semantic Studies on Four Old High German Words: Balder, Fr8, Trun- tin, and H8rro (Cambridge, 1965), p. 226, and J.M. Wallace-Hadrill, Early Germanic Kingship in England and on the Continent (Oxford, 1971), pp. 13-20.

²³This is done, of course, to maintain the peace. See Gerd Tellenbach, Die Entstehung des deutschen Reiches von der Entwicklung des fränkischen und deutschen Staates im neunten und zehnten Jahrhundert (Munich, 1943), pp. 22-3.

has attempted to seize it by force. Both laws stipulate very frankly that the rebel would receive no part of the father's estate. There is sufficient resemblance between both laws to illustrate beyond question that the concepts of L.Alam. XXXV,1 influenced those of L.Baiu. II,9,11.

(b) The philological similarity between both laws is likewise close, since 31 per cent of the terminology of L.Alam. XXXV,1 appears as the same percentage of the terms of L.Baiu. II,9,11, and much of this terminology concerns the three characteristics expressed by the laws.

(c) No agreement.²⁴

Lex Alamannorum XXXV,2

(a) There are two characteristics in L.Baiu. II,9,12 which show similarity to L.Alam. XXXV,2. These characteristics supplement those three already presented above under L.Alam. XXXV,1. L.Baiu. II,9,12 says:

Et si supervixerit patrem suum et alios fratres habuerit, non dent ei portionem, quia contra legem peccavit in patrem suum; et si ille solus de heredibus eius supervixerit patrem suum, in regis exit potestate cui vult, donet aut ille aut alteri.²⁵

Again, there is a parallel in L.Alam. XXXV,2:

Et si fratres habuerit, ipsi fratres inter se per

²⁴It is difficult to speak of wergeld or monetary compensation with these laws. There is no explicit price the rebellious son would pay to his father, the duke. The exclusion of the son from his father's inheritance may be seen to be akin to the wergeld, but the payment for an offense in money is quite distinct from complete disinheritance from the father's estate.

²⁵Schwind, pp. 303-304.

voluntatem regis dividant hereditatem patris eorum; ad illum autem, qui revellavit [sic] contra patrem suum, non dent portionem inter ipsos. Et si amplius non fuerint, nisi ille unus, qui revellavit [sic], tunc illa hereditas; quod ille dux habuit, post mortem eius in potestatem regis sit, cui vult donet, aut ad illum filium duci, qui revellavit [sic], si post hoc per servitio hoc ad pedis [sic] regis conquisivit, aut si alium vult dare, in sua enim est potestate.²⁶

The first of these two additional characteristics emphasizes the disinheritance of the rebellious son. Both laws extend this condition by allowing the other sons of the duke legally to exclude their rebellious brother from sharing in any part of the paternal inheritance. The second characteristic linking these laws also concerns inheritance. If the rebellious son is the only heir to the duke's estate, the king has the power to give the inheritance either to the same rebellious son or to whomever he wishes. The king referred to is, of course, the Frankish king, and his authority to execute the ducal inheritance rests on the fact that the Alamannic and Bavarian dukes are the vassals of the Frankish kings, either in right or fact, by the time both laws are promulgated.²⁷ It is evident that

²⁶ Lehmann, p. 93.

²⁷ This is especially true from the time of Dagobert I (629-639), although the prologue of the Lex Baiuvariorum wishes us to believe that the Bavarians were dependent on the Franks at least an additional century from the time of Theodebert I (534-548). See Beyerle, ZSRG, XLIX (1929), 383-384, and ZSRG, LXXIII (1956), 124. Cf. Alvaro d'Ors, "La territorialidad del derecho de los visigodos," in Estudios Visigóticos I (Cuadernos del instituto jurídico español, V; Rome and Madrid, 1956), p. lll. n. 64. For the historical background, see Ludwig Schmidt, Geschichte

the legal concepts of L.Alam. XXXV,2 are used in L.Baiu. II,9,§2 as those of L.Alam. XXXV,1 are used for L.Baiu. II,9,§1.

(b) L.Alam. XXXV,2 and L.Baiu. II,9,§2 are also similar philologically, for 27 per cent of the terminology of the former is evident as 49 per cent of the latter, and these terms often appear in the same order.

(c) No agreement.

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Lex Baiuvariorum II,10

De eo qui scandalum in curte ducis commiserit.

Lex Alamannorum XXXIII

(a) Both the Alamannic and Bavarian codes possess laws protecting the government from insult, such as the following laws (L.Baiu. II,10 and L.Alam. XXXIII) which deem it illegal to riot on the duke's premises.²⁸ L.Baiu.

 der deutschen Stämme bis zum Ausgang der Völkerwanderung, 2nd ed. (Munich, 1958-1941), I: Die Westgermanen, pp. 200-201, and Erich Zöllner, Geschichte der Franken bis zur Mitte des sechsten Jahrhunderts (Munich, 1970), p. 150. Also see Kurt Heindel, "Die politische Entwicklung," in Handbuch der bayerischen Geschichte, ed. Max Spindler (Munich, 1967), I, pp. 114-126. That the Franks initiated the promulgation of the Lex Frisionum (ca. 785), Lex Saxonum (ca. 802), and Lex Thuringorum (Lex Angliorum et Werinorum) (ca. 802) is also well known. See Declareuil, Histoire générale du droit français, p. 80.

²⁸The only other laws which parallel these are Ed.Roth. XXXVI and XXXVII. XXXVI: "Si quis intra palatium regis, ubi rex praesens est, scandalum penetrare praesumpserit, animae suae incurrat periculum, aut redimat anima sua, si optenere potuerit a rege." XXXVII: "Si quis liber homo in eadem civitatem ubi rex praesens est aut tunc

II,10 says:

Si quis in curte ducis scandalum commiserit, ut ibi pugna fiat, per superbiam suam vel per ebrietatem, quicquid ibi factum fuerit, omnia secundum legem componat et propter stultitiam suam in publico componat XL solidos.

Si servus est alicuius qui haec commisit [sic], manus perdat.

Nullus unquam praesumat in curte ducis scandalum committere.²⁹

This law specifies two causes of riot, namely arrogance (superbia) or drunkenness (ebrietas). It is more explicit than L.Alam. XXXIII, to which it is similar, in defining the cause of a fight in the duke's courtyard.³⁰ L.Alam.

XXXIII follows:

Si quis in curte duci pugna comiserit [sic], et ibi clamor orta fuerit, et concursio populi facta fuerit per eius commissum, quicquid ibi factum fuerit per concursum eius, qualiscumque homo neglexerit et aliquid contra legem fecerit, tripliciter componat. Ille autem, per cuius voce opere haec contentie orta fuerit, 60 solidos in publico componat.³¹

invenitur esse, scandalum penetrare praesumpserit, id est si incitaverit et non percusserit, sit culpabiles solidos duodecim in palatium regis. Nam si perfecerit et percusserit, sit culpabiles in palatium regis solidos vinginti et quattuor; excepto plagas aut feritas si fecerit, sicut subter adnexum est, componat." Bluhme, p. 19.

²⁹Schwind, pp. 304-305.

³⁰Courtyard (curtis) generally means one's house and all fenced-in property around it. Niermeyer, Mediae latinitatis lexicon minus, IV, p. 295 (meaning 2). In addition, a courtyard can mean any fenced-in property, even if it is not directly adjacent to a house. See L.Baiu. XI,1 below. For this reason, to riot in the duke's courtyard means to make a breach of the duke's peace no matter where his property may be, and ducal peace is itself the symbol of lawful authority and order for both the Alamanni and Bavarians.

³¹Lehmann, pp. 90-91.

L.Alam. XXXIII simply says that the fight results from one's own undertaking, implying that a fault or transgression on someone's part may lead to a confrontation, and such a fault might be arrogance or drunkenness as stated in L.Baiu. II,10 above. L.Alam. XXXIII appears to be written purposely vague in order to include any shortcoming that might lead to a fight. Slaves receive a more severe punishment (loss of a hand) than freemen in L.Baiu. II,10. There is no class distinction in L.Alam. XXXIII.³²

(b) There is strong reason to believe that L.Alam. XXXIII and L.Baiu. II,10 are directly related. This assumption is based not only on the obvious fact that both laws deal with preventing fights within the duke's courtyard, but also because the same language is used to specify the conditions in both laws. Committere is used by both laws for the act of perpetrating the crime, and both laws as well use pugna to denote a fight, a confrontation between persons or factions. The presence of scandalum in L.Baiu. II,10 is peculiar to the Bavarian code and does not appear in the Lex Alamannorum; it means a breach of the peace and merely intensifies the violent activity described by the laws. The laws also show that 33 per cent of the terms of L.Alam. XXXIII appear as 34 per cent of the words of L.Baiu. II,10. This linguistic similarity concerns those terms which clearly signify the legal

³²See Dollinger, Classes rurales, p. 225.

atmosphere of both laws.

(c) Although both laws specify that a person found guilty of fighting in the duke's courtyard must pay a *fredus* to the public treasury, the monetary value of the *fredus* itself differs; that is, L.Baiu. II,10 stipulates forty *solidi*, and L.Alam. XXXIII, sixty *solidi*.³³ The amounts of the *wergeld* named in the laws, however, do not appear to agree, although there is reason to suspect some monetary agreement between them. L.Baiu. II,10 says one will compound in accordance with the law for whatever offense occurred within the duke's courtyard. This law does not explicitly define what compounding with the law means. L.Alam. XXXIII is more explicit; it says one guilty of such an offense in the duke's courtyard is to make threefold restoration. What relationship, if any, is there between the compensation expressed by both laws? Is the compensation expressed in L.Baiu. II,10 a threefold compensation? Although conclusive evidence is lacking, it does not completely eliminate the possibility for a threefold payment, and if so, would link the laws even closer.

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Lex Baiuvariorum II,12

De his qui in curte ducis aliquid furaverint.

³³Little can be said as well for the slight agreement between the *fredus* required by L.Baiu. II,10 and codex A5 of Lehmann's edition which also requires forty *solidi* as a *fredus* for L.Alam. XXXIII. What can be said, however, is that both laws require a public *fredus* for the same offense.

Lex Alamannorum XXXI

(a) The similarity between L.Baiu. II,12 and L.Alam. XXXI is quite marked, although the greater length of the former appears to distort this similarity somewhat.³⁴ Both laws describe the necessary penalty for anyone who steals the duke's property from within the courtyard. L.Baiu. II,12 indicates that the stolen property need not always be the duke's property, but anyone's property neglectfully discarded on the duke's premises, and subsequently stolen:

Si quis infra curtem ducis aliquid involaverit, quia domus ducis domus publica est, triniungeldo³⁵ conponat, hoc est ter novem donet liber homo; servus vero niungeldo solvat aut manus perdat.

Et si aliquid invenerit in curte ducis quasi pro neglectum iacere et id tulerit et super noctem celaverit, furtum reputetur, in publico XV solidos conponat.³⁶

L.Alam. XXXI is far more simple, for it says:

Si quis res duci, quod ad eum perteneunt, exinde aliquid furatus fuerit, ter novigildus [sic] conponat et ibi frede non reddit, quia res³⁷ dominicas [sic] sunt et tripliciter conponuntur.

Although L.Alam. XXXI does not indicate that the stolen property is other than the duke's or that a slave may be the thief, both laws do contain the same essential concept

³⁴Because the similarity of L.Baiu. II,12 is more evident with L.Alam. XXXI than with L.Alam. XXX (see below), the order of appearance of these two Alamannic laws is here reversed.

³⁵See Kralik, MA, XXXVIII (1913), 41.

³⁶Schwind, p. 306.

³⁷Lehmann, pp. 89-90.

of stealing the duke's property from within his courtyard.

(b) There is little philological similarity. Only 22 per cent of the terminology of L.Alam. XXXI appears as 9 per cent of L.Baiu. II,12. The low percentage of L.Baiu. II,12, of course, is due to its greater length. A comparison of the terminology of L.Alam. XXXI and the first paragraph of L.Baiu. II,12 shows an improved ratio; here the percentage of L.Baiu. II,12 increases to 17 per cent. (Although ter novigildus of L.Alam. XXXI appears as two words, triniungeldo of L.Baiu. II,12 must still be maintained as one word; they cannot both be equated as two terms.)

(c) Both laws inflict thrice ninefold wergeld upon anyone who steals property from within the duke's courtyard. Thrice ninefold wergeld is peculiar to the Lex Alamannorum, and its appearance in the Lex Baiuvariorum is due principally to Alamannic legal influence.

Lex Alamannorum XXX

(a) L.Alam. XXX also concerns stealing property from within a courtyard, but its emphasis is divided between the king's courtyard on the one hand, and the duke's on the other. Our interest in referring to this law obviously concerns the latter, since L.Baiu. II,12 makes no mention of the king's courtyard. The only individual discussed by L.Alam. XXX for stealing from within the duke's courtyard is a slave; no other individual,

either freeman or freedman, is mentioned. Only that portion of L.Alam. XXX which pertains to the slave is quoted here: ". . . Si servus alienus hoc in curte duci fecerit, dominus eius aut redimat, quod valet, aut ipsum reddat."³⁸ Unfortunately, the wergelds of L.Baiu. II,12 and L.Alam. XXX do not agree, since the former requires a ninefold wergeld or the loss of a hand, and the latter requires that the master may obtain the release of his slave either by paying his price to the injured party (the duke) or by rendering him to the injured party for punishment.

(b) There is, like L.Alam. XXXI above, little philological similarity between these laws. Only 24 per cent of the terms of L.Alam. XXX reappear as 14 per cent of the words of L.Baiu. II,12,§1.

(c) No agreement.

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Lex Baiuvariorum II,13

De his qui iussionem duci contempserint.

Lex Alamannorum XXVII,1

(a) Disregard of magisterial orders³⁹ is discussed in only three Germanic codes: Visigothic, Alamannic, and

³⁸Ibid., p. 89.

³⁹Only those orders from the highest offices, those of the king or the duke, are meant here as magisterial. Hence, orders issued by judges who are magistrates in their own right are not included because regal and ducal authority surpasses their jurisdiction.

Bavarian. Of these, L.Visig. II,1,33 concerns disregard of regal orders⁴⁰ whereas L.Baiu. II,13 and L.Alam. XXVII,1 describe disobedience of ducal orders.⁴¹ It is the last two laws which demand our present attention. The following quotations of L.Baiu. II,13 and L.Alam. XXVII,1 indicate their similarity.⁴² L.Baiu. II,13 states:

⁴⁰One other law should be included here, and this is L.Rib. LXVIII,1 which concerns disobeying the bannum of the King. Bannum, which means not only having the authority to issue orders, but also being able to penalize those who disobey them, contains a more intensified concept of authority than the sense of order (iussio, mandatum) used in the discussion below. For this reason, L.Rib. LXVIII,1 is excluded from this discussion. The Alamanni and Bavarians were still able in later Carolingian times to exert their authority over the Franks. See, in general, Gerd Tellenbach, Königtum und Stämme in der Werdenzeit des Deutschen Reiches (Quellen und Studien zur Verfassungsgeschichte des Deutschen Reiches in Mittelalter und Neuzeit, VII,4; Weimar, 1939), esp. pp. 31-38.

⁴¹See L.Alam. XXXVII,1 which prohibits the selling of slaves outside the duchy unless this is done according to the duke's orders.

⁴²Schwind's edition of the Lex Baiuvariorum does not exactly specify how many Alamannic laws are similar to L.Baiu. II,13. In place of naming them all, he uses "and following", that is, L.Alam. XXVII,1 sqq; by this he probably means XXVII,1-3 which can be seen in his cross references quoted from the Lex Alamannorum. See Schwind, p. 307. A look at the Alamannic laws themselves will indicate why Schwind is deliberately arbitrary. These three Alamannic laws all concern disregarding a superior's orders, but only one of them (XXVII,1) indicates that these orders are issued from the duke, which L.Baiu. II,13 also concerns. The other two Alamannic laws regard the orders of the count (XXVII,2) and the centenarius (XXVII,3). Is one correct by assuming similarity between L.Baiu. II,13 and L.Alam. XXVII,2-3 when the issuing officer is different, but when the basic principle of the laws is similar? There are counts and centenarii among the Bavarians as there are among the Alamanni, but the Bavarians did not promulgate a law describing disobedience of the orders of a count or a centenarius as they did for the duke. Although

Si quis iussionem ducis sui contempserit vel signum quale usus fuerit dux transmittere, aut anulum aut sigillum, si neglexerit venire aut facere quod iussum est, XV solidos pro neglecto donet in publico et sic impleat iussionem.⁴³

To this law is compared L.Alam. XXVII,1:

De his, qui sigillum ducis neglexerit aut mandatum vel signum, qualecumque mandaverit, 12 solidos sit culpabilis; et si negare voluerit, quod ad illum nuntius non pervenisset, cum quinque nominatos iuret, si eum sacramentum dominus praebere voluerit.⁴⁴

Although the title of L.Baiu. II,13 stresses ducal orders which are held in contempt, the law itself is primarily concerned with negligent behavior toward the duke's orders or his seal. In this sense, holding authority in contempt means the disregard of that authority, and this principle is also evident in L.Alam. XXVII,1. The laws are concerned not only with orders issued by the duke, but also indifference paid to the duke's seal. Only L.Baiu. II,13 adds as well the duke's signet ring (anulus). To disregard the duke's orders is not viewed as so serious a crime as we would expect, perhaps because the negligent person could be easily discovered and quickly punished. For this reason, the fine, which both laws require, is relatively low. There are also only two slight differences between

the similarity of L.Alam. XXVII,2-3 with L.Baiu. II,13 is possible, it remains unlikely.

⁴³Ibid. For iussio, see Alexander Souter, A Glossary of Later Latin to 600 A.D. (Oxford, 1949), p. 223. Iussio (post-classical Latin) should not be confused with iussum (classical Latin).

⁴⁴Lehmann, pp. 86-87.

the laws. The first of these differences concerns whether or not the orders are issued directly from the duke: L.Baiu. II,13 does not specify this condition at all, and L.Alam. XXVII,1 says the orders are definitely from a messenger as intermediary. The second difference regards another condition in L.Alam. XXVII,1 whereby anyone who disregards an order from the duke may clear himself with five oathtakers. Certainly, L.Alam. XXVII,1 is more explicit for those disobeying ducal orders than L.Baiu. II,13.

(b) Surprisingly, the laws show little philological similarity, except for two key words. Both laws not only use signum as sign (or mark), but they both use sigillum as seal. As can be seen from the above quotations, the laws use a different word for order. L.Baiu. II,13 uses the more recent iussio, and L.Alam. XXVII,1 employs the older mandatum. Iussio and mandatum can only be translated as order from its context, not as command.⁴⁵ Order rather than command is rendered because the authority delegating it is arbitrary, as can be seen in both laws since the order is disregarded. Command would be rendered if the act were executed.

⁴⁵Mandatum is peculiar to the Lex Alamannorum; it does not appear in the Bavarian code. Iussio does appear in the Lex Alamannorum in five other laws, and in a few of these it may be rendered by command rather than by order. Iussio is rendered by command in L.Alam. V,3 (Hlot.) and XL. In L.Alam. XL, command is used in the sense of the commandment of God (iussio Dei).

(c) Both laws require a fredus. Although the fine required by L.Alam. XXVII,1 does not explicitly use the word fredus, it can be assumed that the fee it describes is rendered into the public treasury because the person offended is the duke himself. There is no agreement, however, between the laws for the amount to be paid into the public treasury.

* * * * *

Lex Baiuvariorum II,14

Ut placita fiant per kalendas.

L.Alam. XXXVI,1 and 3 show strong resemblance with L.Baiu. II,14, since both concern the holding of the tribal assembly. The similarity between these laws is due not only to similar legal concepts, but also to the very paragraphic divisions of the laws themselves; that is, the legal concepts of L.Alam. XXXVI,1 and 3 are discussed in precisely the same order as those in L.Baiu. II,14. This paragraphic division is illustrated in the following table:

<u>L.Alam.</u>	<u>L.Baiu.</u>
XXXVI,1	II,14,§1 and §3
XXXVI,3	II,14,§3 and §4

The legal concepts themselves are discussed under the respective Alamannic laws below. L.Alam. XXXVI,2 is an extension of XXXVI,1, and L.Baiu. II,14,§2 expands the concepts given in II,14,§1.

Lex Alamannorum XXXVI,1

(a) The old Germanic tribal assembly, characteristic of the time of Tacitus as well as Caesar, survived through various changes into the Carolingian period.⁴⁶ The Alamanic and Bavarian codes afford ample proof of the survival of the German assembly. Although these two south German peoples maintained the assembly as an integral part of their own institutions, there still are common grounds of similarity between them, linking their laws in question here. L.Baiu. II,14 and L.Alam. XXXVI,1-3 manifest too many similar features to permit denial of the interrelationship between them.⁴⁷ Although other Germanic laws⁴⁸ do possess

⁴⁶Caesar, De Bello Gallico, IV,19. See Friedrich Kraner and W. Dittenberger, eds., C. Iulii Caesaris Commentarii De Bello Gallico, 19th ed. Heinrich Meusel (Berlin, 1961), I, p. 319. Tacitus, Germania, 11-12. See J.G.C. Anderson, ed., Cornelii Taciti, De Origine et situ Germanorum (Oxford, 1938), pp. 11-12 and 83-90. Cf. E.A. Thompson, The Early Germans (Oxford, 1965), pp. 12-15. For the Carolingian period, see, in general, Conrad, Deutsche Rechtsgeschichte, I, pp. 100-101.

⁴⁷Krusch, Abhandlungen Göttingen, neue folge, XX (1927), nr. 1, 81.

⁴⁸The following laws are concerned with only one and the same principle, that is, individuals who refuse to come to court. Since the tribal assembly is also a court of law (see below), these laws are similar to the south Germanic laws discussed here. These laws are L.Sal. I,1 and XCI, 1-2 (as well as Pact.Sal. I,1), L.Rib. XXXVI,1 and L.Visig. II,1,19. Note especially L.Sal. I,1: "Si quis ad mallum legibus dominicis manitus fuerit et non venerit, si eum sunnis non detenverit, . . . solidus XV culpabilis iudicetur." Eckhardt, p. 28. (The same text appears as Pact.Sal. I,1. See Eckhardt, Pactus, p. 18.) The penalty of fifteen solidi is also evident in L.Rib. XXXVI,1: "Si quis legibus ad mallum manitus fuerit et non venerit, si eum sunnis non detenverit, quindecim solidos culpabilis iudice-

similar principles, only the south Germanic laws examined here show the highest degree of similarity. They are, likewise, the only laws in the corpus legum barbarorum which explicitly define requirements for holding the tribal assembly. One point of agreement concerns the time(s) when the tribal assembly meets. L.Baiu. II,14, 1 indicates that the tribal assembly may be held at two distinct times, that is: (1) on the kalends, or (2) every fifteen days. The kalends means, of course, the first day of the month, whereas every fifteen days may be equated to approximately twice a month. The entire L.Baiu. II,14, 1 states: "Ut placita fiant per kalendas aut post XV dies, si necesse est, ad causas inquirendas, ut sit pax in provincia."⁴⁹ This is not true for L.Alam. XXXVI,1, since this law is ambiguous in specifying the time when the tribal assembly is held:

Ut conventus secundum consuetudinem antiquam fiat in omni centena coram comite aut suo misso et coram centenario. Ipse placitus fiat de sabbato in sabbato, aut quale die comis aut centenarius voluerit de septem in septem noctes, quando pax parva est in provintia /sic/; quando autem melior, post 14 noctes fiat conventus in omni centena, sicut superius diximus.⁵⁰

L.Alam. XXXVI,1 gives four conflicting possibilities when tribal assembly is summoned: (1) every Saturday (sabbato

tur. Ille vero, qui alium manit et ipse non venerit, similiter 15 solidos culpabilis iudicetur." Beyerle-Buchner, pp. 87-88. See Declareuil, Histoire générale du droit français, pp. 105-106.

⁴⁹Schwind, p. 307.

⁵⁰Lehmann, p. 94.

in sabbato),⁵¹ (2) any day designated by the count or centenarius, (3) once a week (septem in septem noctes) when there is little peace, or (4) every fourteen days (post 14 noctes) when conditions are more peaceful. Of the four conflicting possibilities in L.Alam. XXXVI,1, only the fourth shows agreement with L.Baiu. II,14,§1.⁵² The fourth possibility says that the tribal assembly is held every fourteen days; L.Baiu. II,14,§1 says every fifteen days. The difference of one day may be overlooked since both laws are in relative agreement that the tribal assembly is held approximately every two weeks.⁵³ This two week period concerns the usual fixed time of the tribal assembly, a time when transactions under peaceful conditions are normally executed. Emergency sessions are called only in imminent causes, as treason, homicide, or in preparation for war. Likewise, both L.Alam. XXXVI,1 and L.Baiu. II,14,§3 indicate where the tribal assembly draws its representation, but unfortunately they disagree from where the representation is summoned. The

⁵¹Sabbato is derived from sabbatorum. See Einar Löfstedt, Late Latin (Instituttet for Sammenlignende Kulturforskning, series A, XXV; Oslo, 1959), p. 135.

⁵²The conflicting times for holding the tribal assembly in L.Alam. XXXVI,1 and L.Baiu. II,14,§1 cannot be equated because the latter gives possible times unequal in number to the former. Likewise, the holding of the assembly on the kalends in L.Baiu. II,14,§1 shows no similarity with any of the possibilities supplied in L.Alam. XXXVI,1. On the general similarity between these laws, see Waitz, Deutsche Verfassungsgeschichte, II, pt. 2, pp. 138, 140-142.

⁵³See the discussion in Rudolph Sohm, Die fränkischen Reichs- und Gerichtsverfassung (Weimar, 1871), pp. 437-439.

quotation of L.Alam. XXXVI,1 above states that the tribal assembly is held within the hundred (centena),⁵⁴ whereas L.Baiu. II,14,§3 says it is summoned within the county (comitatus): "Et nemo sit ausus contemnere venire ad placitum qui infra illum comitatum manent, sive regis vassus sive ducis, omnes ad placitum veniant et qui neglexerit venire, damnatur XV solidos."⁵⁵ There is no similarity between representation from a hundred and a county; nevertheless, there is agreement in so far that the laws specify where the tribal assembly draws its representation.

(b) A mere 9 per cent of the terminology of L.Alam. XXXVI,1 appears as 25 per cent of L.Baiu. II,14,§1. This low percentage of L.Alam. XXXVI,1 is due to its greater length. There is no philological similarity between this Alamannic law and the third paragraph of L.Baiu. II,14.

(c) Not applicable.

Lex Alamannorum XXXVI,3

(a) There are two concepts in paragraphs three and four of L.Baiu. II,14 which show a parallel with L.Alam. XXXVI,3. The first of these concepts concerns those who refuse to come to the tribal assembly. Both L.Baiu.

⁵⁴See Julius Cramer, Die Geschichte der Alamannen als Gaugeschichte (Untersuchungen zur deutschen Staats- und Rechtsgeschichte, LVII; Breslau, 1899), p. 300, and Claudius Freiherr von Schwerin, Die altgermanische Hundertschaft (ibid., XC; Breslau, 1907), pp. 141-143.

⁵⁵Schwind, p. 308.

L.Baiu. II,14,§3 and L.Alam. XXXVI,3 stipulate that if the freemen summoned to the tribal assembly are not present, they must pay a fine. L.Baiu. II,14,§3 quoted above with L.Alam. XXXVI,1, requires a fine of fifteen solidi. L.Alam. XXXVI,3 contains similar legislation:

Si quis autem liber ad ipsum placitum neglexerit venire vel semetipsum non praesentaverit aut comite aut centenario aut ad missura comiti in placito, 12 solidos sit culpabilis. Qualiscumque persona sit, aut vassus duce aut comite aut qualis persona, nemo neglegat ad ipsum placitum venire, ut in ipso placito pauperi conclamant [sic] causas suas. Et quod in uno placito finire non potuerint, in alio finiatur, ut sine ira Dei sit defensa patria, . . .⁵⁶

The fine of twelve solidi required by this law approaches the fifteen solidi required by L.Baiu. II,14,§3 from freemen who refuse to come to the assembly. The second of these concepts concerns an important function of the tribal assembly: both L.Baiu. II,14,§4 and L.Alam. XXXVI,3 show that the assembly has the jurisdiction to act as a court of law. L.Baiu. II,14,§4 says: "Comes vero secum habeat iudicem qui ibi constitutus est iudicare, et librum legis, ut semper rectum iudicium indicent. . . ."⁵⁷ Here, the count is assisted by a judge, who is trained in the law and who renders decisions on all cases put before him in the assembly.⁵⁸ The judicial nature of L.Alam. XXXVI,3,

⁵⁶Lehmann, pp. 95-96.

⁵⁷Schwind, p. 308.

⁵⁸What similarity Beyerle, ZSRG, XLIX (1929), 358 finds for the importance of the judge between L.Baiu. II, 14 and L.Alam. XLI,1 is superficial.

given above, is described from both a human and a divine point of view, for not only are the poor to plead their causes, but by doing so, God's vengeance may not be inflicted upon the land. It is true that L.Alam. XXXVI,3 is more poetic than L.Baiu. II,14,§4 in its description of legal causes, but there can be no doubt that the tribal assembly as depicted by this Alamannic law is also used to serve as a court of law. However, neither law explicitly states what kinds of cases are heard by the assembly since the laws appear deliberately vague in order to include the possibility of both civil and criminal cases.⁵⁹

(b) Furthermore, 17 per cent of the terms of that portion of L.Alam. XXXVI,3 given above constitute 45 per cent of the words of L.Baiu. II,14,§3. There is no philological similarity between this Alamannic law and the fourth paragraph of L.Baiu. II,14.

(c) There is no agreement in the amount required from those who refuse to come to the tribal assembly. As already noted, one point of similarity is that both laws do require a fine.⁶⁰

⁵⁹ Although L.Alam. XXXVI,2 shows no direct legal similarity with L.Baiu. II,14, it strengthens the use of the tribal assembly as a court of law. This is especially evident in its use of mallus to mean a law court.

⁶⁰ Codex Her (Editio Heroldina, that is, Basilius Johannes Herold, ed., Originum ac Germanicarum antiquitatem libri, leges . . ., Basileae, 1557 which now represents a lost MS) of Schwind's edition specifies twelve solidi for the fine described by L.Baiu. II,14, thereby agreeing with the amount of L.Alam. XXXVI,3.

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Lex Baiuvariorum II,16

Qualis iudex fieri debeat.

Lex Alamannorum XLI,1

(a) Several law codes of the leges barbarorum possess legislation requiring judges to maintain personal integrity and encouraging them to avoid bribes.⁶¹ L.Baiu. II,16 and L.Alam. XLI,1 contain similar principles of this judicial integrity. L.Baiu. II,16 specifies that the judge should not be a prejudger nor greedy for money (" . . . personarum acceptor neque cupidus pecuniae . . ."), and that a judge should be appointed who cherishes justice above money (" . . . qui plus diligit iusticiam quam pecuniam . . .").⁶² Likewise, L.Alam. XLI,1 says that the judge should be neither a liar nor a perjurer nor a receiver of gifts (" . . . nec mentiosus nec periurator nec munera acceptor, . . ."), and that he should be one who judges justly (" . . . iustum iudicaverit . . .").⁶³ Although the similarity of these laws is not as strong as we would like, neverthe-

⁶¹Besides appearing in the Alamannic and Bavarian laws discussed here, the concept of judicial integrity appears also in the Visigothic code. These laws are: L.Visig. I,1,3; I,1,7; II,1,21; II,1,24; and II,1,30. See Zeumer, NA, XXIV (1899), 76-77. Moreover, there are other Visigothic laws which approach the intent of these laws. One other law is L.Rib. XCI,1.

⁶²Schwind, p. 310.

⁶³Lehmann, pp. 100-101.

less, they present striking parallels which cannot be ignored.

(b) No agreement.

(c) No agreement.

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Lex Baiuvariorum II,17

Si iudex per mmera iniuste iudicaverit.

Lex Alamannorum XLI,1

(a) The Lex Baiuvariorum contains three laws which define the deficiencies judges are to be free from. Two of these three laws concern the same deficiency, that is, the influence bribery may have on judicial decisions. The first of these two similar Bavarian laws (II,16) is discussed above. The other, L.Baiu. II,17, which is discussed here, is essentially an extension of the concepts expounded in L.Baiu. II,16.⁶⁴ L.Baiu. II,17 illustrates similarity with L.Alam. XLI,1, and it is drawn from the second half of the latter law as L.Baiu. II,16 is drawn from the first half. Both laws discussed here may, in fact, be influenced by L.Visig. II,1,21⁶⁵ and perhaps by Liutpr. XXVIII

⁶⁴The third Bavarian law describing judicial deficiencies is II,18, which concerns judges who render decisions through ignorance: "Si vero nec per gratiam nec per cupiditatem, sed per errorem iniuste iudicavit, iudicium ipsius in quo errasse cognoscitur, non habeat firmitatem, iudex non vocetur ad culpam." Schwind, p. 311.

⁶⁵ . . . Sin autem per ignorantiam iniuste iudicaverit et sacramentis se potuerit excusare, quod non per amicitiam vel cupiditatem aut per commodum quodlibet, sed

(a. 721).⁶⁶ There are no other Germanic laws which have influenced both L.Baiu. II,17 and L.Alam. XLI,1.⁶⁷ L.Baiu. II,17 (§§ 1-2) says:

Iudex si accepta pecunia male iudicaverit, ille qui iniuste aliquid ad eo per sententiam iudicantis abstulerit, ablata restituat.

Nam iudex qui perperam iudicaverit, in duplum ei sui damnum intulerit cogatur exsolvi, . . .⁶⁸

The party favored by the judge must restore what was obtained through bribery. There is no parallel, however, to this compensation in L.Alam. XLI,1. All the attention in

tantundem ignoranter hoc fecerit: quod iudicabit non valet, se ipse iudex non implicetur in culpa." Zeumer, p. 69. Cf. Karl Zeumer, "Ueber zwei neuentdeckte westgothische Gesetze," NA, XXIII (1898), 94. Also see Alvaro d'Ors, Estudios Visigoticos II: El Código de Eurico. Edición, Palingenesia, Indices (Cuadernos del Instituto Jurídico español, XII; Rome and Madrid, 1960), pp. 58-59.

⁶⁶See Nino Tamassia, "Römisches und westgothisches Recht in Grimewalds and Liutprands Gesetzgebung," ZSRG, XVIII (1897), 158.

⁶⁷C. Bontems, "Les dommages et intérêts dans les lois barbares," Revue historique de droit français et étranger, 4th serie, XLVII (1969), 462, believes L.Sal. II,2 (sixty-five titles) shows an influence on L.Alam. XLI,1 (he cites this law incorrectly as XLI,2). He assumes that the expression solidus XV culpabilis iudicetur in L.Sal. II,2 is the origin of 12 solidos sit culpabilis of L.Alam. XLI,1 (see below). He may be correct in his assumption, but under no circumstances does this Salic law show any similarity with L.Baiu. II,17. Although Bontems also makes this assumption (see ibid., n. 63), this is an impossibility, for not only do L.Sal. II,2 and L.Baiu. II,17 possess different concepts, but the expression solidus XV culpabilis iudicetur or any equivalent is completely absent from this Bavarian law. Bontems believes the same Salic law also influenced L.Baiu. II,16 above, and this, too, is unfounded.

⁶⁸Schwind, pp. 310-311.

L.Alam. XLI,1 is focused on the injustice of the judge himself:

. . . Si autem per cupiditatem aut per invidiam alicuius aut per timorem contra legem iudicaverit, cognoscat se deliquisse et 12 solidos sit culpabilis, cui iniuste iudicavit, et quod per illum dampnum passus est iniuste, ille iudex restituat ei.⁶⁹

L.Alam. XLI,1 is also concerned with the moral aspect of the judge's dishonesty, that is, that dishonesty is sinful.

L.Baiu. II,17 is not in the slightest concerned with any other consequence of the judge's dishonesty except rendering justice to the injured party. Nevertheless, both laws clearly concern the corruption of a judge by bribery and both require that the judge compensate the loss suffered by the injured party by rendering monetary compensation.

(b) No agreement.

(c) The laws render monetary compensation to the injured party, but they do not agree in the amount required.

Title III

De genealogiis et eorum compositione.

(No similarity)

⁶⁹Lehmann, p. 101.

CHAPTER IV

Title IV

Title IV

De liberis, quomodo componuntur.

Lex Baiuvariorum IV,1

Si quis liberum percusserit per iram.

Lex Alamannorum LVII,1

(a) The act of striking another in anger is expressed by both L.Baiu. IV,1 and L.Alam. LVII,1. Although several other Germanic codes also concern striking others, only the Alamannic and Bavarian codes qualify the act by giving anger as its cause.¹ L.Baiu. IV,1 says: "Si quis liberum

¹Other similar laws are the following. L.Rib. I may have influenced the laws discussed here: "Si quis ingenuus ingenuum ictu percusserit, uno solido sic culpabilis iudicetur. Si bis, suos solidos, si ter, tres solidos culpabilis iudicetur." Beyerle-Buchner, p. 73. This law, and its manner of compensation, can be seen also in Ed.Roth. XLIII. Cf. L.Sal. XXIII,1. The compensation of one solidus required by both L.Baiu. IV,1 and L.Alam. LVII,1 is also required by L.Burg. V,1: "Si quis ingenuum hominem tali praesumptione percusserit, per singulos ictus singulos solidos solvat, et multam in dominico inferat solidos VI." De Salis, p. 45. The dominicus is the king, and the six solidi are a fredus for the regal treasury. Although L.Visig. VI,4,3 also concerns striking another, it is not the only offense contained by this law.

per iram percusserit, quod pulislac² vocant, I solidus donet."³ Closely related to this law is L.Alam. LVII,1: "Si quis alium per iram percusserit, quod Alamanni pulislac dicunt, cum uno solido componat."⁴ Only L.Baiu. IV,1 defines that the person struck is a freeman,⁵ since the Lex Baiuvariorum has two other titles concerning freed and slave Bavarians who are also compensated for similar offenses, that is, title V for freedmen, and title VI for slaves. There is no comparable division among free, freed, and slave Alamanni in the Lex Alamannorum, except in very few laws. The assumption can safely be made that L.Alam. LVII,1 concerns freemen only and not freedmen or slaves. The inclusion of freedmen or slaves necessitates equating a different wergeld for Alamanni ranking below freemen.⁶

(b) Few laws are as close as these. To quote one serves to quote the other, since 71 per cent of the terminology of L.Alam. LVII,1 appears as 83 per cent of the terms of L.Baiu. IV,1. Philological similarity is

²Kralik, NA, XXXVIII (1913), 589-590. Cf. Brunner, Deutsche Rechtsgeschichte, II, p. 824.

³Schwind, p. 316.

⁴Lehmann, p. 116. The italics are Lehmann's.

⁵All of the laws in title IV of the Lex Baiuvariorum concern freemen or freewomen solely. I have not had access to Hermann Krause, "Die Liberi der Lex Baiuvariorum," in Festschrift für Max Spindler, ed. Dieter Albrecht et al. (Munich, 1969), pp. 41-73.

⁶See the discussion of this in chapter I above.

strengthened by the appearance of the OHG pulislac in both laws, and both laws also supply a definition of this word as well: to strike another in anger.

(c) The laws require the same wergeld of one solidus.

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Lex Baiuvariorum IV,2

Si sanguinem effuderit.

Lex Alamannorum LVII,2

(a) Both L.Baiu. IV,2 and L.Alam. LVII,2 concern the pouring out of blood (in the sense of spilling) from a wound. That they are directly related is obvious from the laws themselves. L.Baiu. IV,2 says: "Si ei sanguinem fuderit, solidum I et semi conponat."⁷ L.Alam. LVII,2, upon which this Bavarian law may be patterned, is precisely the same text with an added adverbial clause, that is: "Si autem sanguinem fuderit, sic ut terra tangat, conponat solido uno et semis."⁸ Both laws also exemplify similarity with L.Rib. II: "Si quis ingenuus ingenuum percusserit, ut sanguis exeat et terram tangat, bis novenos solidos culpabilis iudicetur; aut si negaverit, cum sex iuret."⁹ Both L.Baiu. IV,2 and L.Alam. LVII,2 do not give

⁷Schwind, p. 317.

⁸Lehmann, p. 116.

⁹Beyerle-Buchner, p. 73. Cf. Pact.Sal. XVII,3: "Si quis hominem plagaverit Ita, ut sanguis ad terram cadat, . . . solidos XV culpabilis iudicetur." Eckhardt, Pactus, p. 76. Ita is inserted by Eckhardt.

the option, as the Lex Ribuaría often does, of swearing with oath-takers for him who denies the charge.

(b) The laws are also close philologically: 62 per cent of the terms of L.Alam. LVII,2 appear as 89 per cent of the words of L.Baiu. IV,2. Both laws employ funderere rather than effunderere denoting to pour out. Although the title of L.Baiu. IV,2 uses effunderere, it does not do so in the law itself.

(c) The laws require the same wergeld of one and one-half solidi if blood pours from a wound.

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Lex Baiuvariorum IV,3

Si manum iniecerit.

Lex Alamannorum LVIII

(a) L.Baiu. IV,3, which concerns laying one's hand illegally on another, may be modelled upon L.Alam. LVIII. L.Baiu. IV,3 says: "Si in eum contra legem manus iniecerit, quod infanc¹⁰ dicunt, III solidos donet."¹¹ To lay one's hand on another means essentially to impose yourself on another by temporarily detaining him. L.Alam. LVIII expresses the same concept, but extends it by adding in via: "Si quis liber liberum in via manus iniecerit contra lege [sic] et eum via contradixerit aut aliquid ei tollere

¹⁰Kralik, NA, XXXVIII (1913), 447-448.

¹¹Schwind, p. 317.

voluerit, cum sex solidis conponat."¹² To lay one's hand in the way of another is simply a more elaborate form of the idea expounded in L.Baiu. IV,3.

(c) Linguistic similarity of the laws should not be overlooked, even apart from the greater length of L.Alam. LVIII. The similarity of the laws indicates that 26 per cent of the terminology of L.Alam. LVIII appears as 46 per cent of L.Baiu. IV,3.

(c) No agreement.¹³

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Lex Baiuvariorum IV,4

Si venam percusserit.

Three injuries are described in L.Baiu. IV,4 to which three Alamannic laws show considerable resemblance. Because discussion of these injuries would be greatly facilitated with an introductory quotation of L.Baiu. IV,4, it is here presented in full:

Si in eo venam percusserit, ut sine igne sanguinem stagnare non possit, quod adargrati¹⁴ dicunt, vel in capite testa appareat quod kepolsceini¹⁵ vocant, et

¹²Lehmann, p. 129.

¹³Little can be said for the slight agreement between L.Alam. LVIII (in codex A8 of Lehmann's edition), which requires the same wergeld of three solidi, and L.Baiu. IV,3.

¹⁴Kralik, NA, XXXVIII (1913), 405-406. Cf. Oskar Schade, Altdeutsches Wörterbuch, 2nd ed. (Halle, 1872-1882), I, p. 37.

¹⁵Kralik, NA, XXXVIII (1913), 448-449. Also see Baesecke, Geschichte der deutschen Sprache, LIX (1935), 19,

si os fregerit et pellem non fregit quod palcprust¹⁶
dicunt, et si talis plaga ei fuerit, quod tumens
sit: si aliquid de istis contigerit, cum VI solidis
conponat.¹⁷

The fourth injury, which concerns swelling, is not discussed
by any law in the Lex Alamannorum.¹⁸

Lex Alamannorum LVII,3

(a) Both the third injury of L.Baiu. IV,4 and L.Alam.
LVII,3 concern rendering compensation for a blow to the
head when the skull is exposed. L.Alam. LVII,3 in its
entirety says: "Si enim percusserit eum, ut testa appareat
et radatur, cum 3 solidis conponat."¹⁹ Although L.Baiu.
IV,4 above does not add as does L.Alam. LVII,3 that the
skull is also scraped, this may be inferred if the skin is
removed from the head by force, such as by a blow. It is
rare that only two Germanic codes have laws concerning the
exposure of the skull because of a blow to the head, unless,
of course, they are somehow related.²⁰ This is true as

¹⁶Kralik, HA, XXXVIII (1913), 584-587.

¹⁷Schwind, p. 318.

¹⁸There is one other Bavarian law which describes
swelling: L.Baiu. VI,3. See this law below.

¹⁹Lehmann, p. 116.

²⁰Eckhardt, Leges Alamannorum II, p. 48, mistakenly
assumes that Fact.Sal. XVII,4 is similar to L.Alam. LVII,3.
He apparently has confused cervella (brain) with testa
(skull). However, he corrects himself in his index where
he equates cervella with Gehirn (brain) and testa with
Hirnschale (skull or cranium). Ibid., pp. 72 and 84.
Fact.Sal. XVII,4 is similar to L.Alam. LVII,6 (see L.Baiu.
IV,6 below).

well for the other injuries discussed by the rest of L.Baiu. IV,4 and the other Alamannic laws to which it is also similar.

(b) Sixty-two per cent of the terms of L.Alam. LVII,3 are present as only 15 per cent of the terms of L.Baiu. IV,4. The percentage of L.Baiu. IV,4 derived from this and the following Alamannic laws is naturally low because the former is a long law describing not one, but four injuries. Although the OHG kepolsceini (meaning an exposed or uncovered skull) does not appear in L.Alam. LVII,3, the root of the term, kepol (kebul), does appear in L.Alam. LVII,6 where it serves as the equivalent of testa, skull.²¹ There is no doubt, therefore, that kepol is used by both the Alamanni and Bavarians, and that the word's modifier, sceini, could just as easily be understood by the Alamanni as it is by the Bavarians.

(c) No agreement.

Lex Alamannorum LVII,34

(a) L.Alam. LVII,34 is parallel to the first injury described by L.Baiu. IV,4, which concerns cutting through a vein. L.Alam. LVII,34 says: "Si autem ferrum calidum intraverit ad stagnandum sanguinem, cum 3 solidis compon-

²¹Codex B9 of Lehmann's edition says: "Si autem testa id est kebul . . ." Lehmann, p. 117; the italics are Lehmann's.

at.²² The hot iron discussed in L.Alam. LVII,34 is comparable to the igne sanguinem stagnare of L.Baiu. IV,4. Whether fire would be directly applied to the wound is unlikely, but a heated iron would be used in order to adhere the flesh thereby preventing the loss of blood. The absence of ferrum from L.Baiu. IV,4 does not obscure the meaning of this law.

(b) Fifty per cent of the terminology of L.Alam. LVII,34 appear as a mere 12 per cent of L.Baiu. IV,4.

(c) No agreement.

Lex Alamannorum LVII,35

(a) The concepts of the third injury of L.Baiu. IV,4 and L.Alam. LVII,35 are likewise comparable, since both concern breaking a bone without also breaking the skin. L.Alam. LVII,35 states: "Si enim brachium fregerit, ita ut pellem non rumpit, quod Alamanni balcbrust ante cubitum dicunt, cum 3 solidis componat."²³ The broken bone discussed in L.Baiu. IV,4 above may not necessarily be that of an arm as is obviously the case in L.Alam. LVII, 35. Nevertheless, the qualifying remarks within both laws illustrate that they are closely related, since the laws mention breaking a bone (L.Baiu. IV,4) or an arm bone

²²Ibid., p. 123.

²³Ibid. The italics are Lehmann's.

(L.Alam. LVII,35) in which the skin does not break.

Certainly, this is a special condition for any law, thereby directly linking the laws in question.

(b) Philologically, the laws are also close, since both include the term palcorust or balcbrust meaning to break a bone without breaking the skin. Likewise, 53 per cent of the terms of L.Alam. LVII,35 appear as 19 per cent of L.Baiu. IV,4.

(c) No agreement.²⁴

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Lex Baiuvariorum IV,5

Si ossa tulerit.

Lex Alamannorum LVII,4

(a) Breaking a bone of the head is a common injury in Germanic law, as it is in the Alamannic and Bavarian codes. Yet, the similarity between the present Bavarian law (IV,5) and L.Alam. LVII,4 can be illustrated without difficulty. L.Baiu. IV,5 concerns breaking bones from two parts of the body, the head and the upper arm: "Si

²⁴Although the wergeld of L.Baiu. IV,4 and these three Alamannic laws do not agree, it should be noted that the wergeld of all three Alamannic laws themselves coincide, that is, three solidi. Attention should also be focused on the following codices: (1) Codex A5 of Lehmann's edition of the Lex Alamannorum renders six solidi for the wergeld of L.Alam. LVII,35, thereby agreeing with the wergeld of L.Baiu. IV,4. (2) Codex Alt of Schwind's edition of the Lex Baiuvariorum requires three solidi as the wergeld of L.Baiu. IV,4, likewise conforming with the wergeld supplied by all three Alamannic laws quoted here.

os tulerit de plaga de capite vel de brachio supra cubitum, cum VI solidis componat."²⁵ The bone is broken by a blow, probably with the use of a weapon. L.Alam. LVII,4 solely concerns the fracture of a bone of the head, and it is broken by a blow as well: "Si autem de capite ossum fractum de plaga tulerit [sic], ita ut super publica via lata 24 pedis in scuto sonaverit ille ossus, cum 6 solidis componat."²⁶ That both laws are similar is apparent not only from the characteristics they share in common, but from what they do not share with other Germanic laws. Of the two laws discussed here, only L.Baiu. IV,5 is similar to L.Rib. III and LXXI,1 and L.Burg. XLVIII,1, all of which describe broken arm bones. L.Alam. LVII,4 is likewise similar to the same L.Rib. LXXI,1 and Ed.Roth. XLVII, both of which not only concern broken head bones, but also describe how compensation is rendered by judging the sound the bone makes when thrown against a shield twelve feet (L.Rib. LXXI,1) or twenty-four feet (Ed.Roth. XLVII) away. The link between L.Baiu. IV,5 and L.Alam. LVII,4 is L.Rib. LXXI,1 which says: "Si quis in caput vel in quacumque libet membro placatus fuerit, et ossum inde exierit, qui super viam duodecim pedorum in scuto sonaverit, 30 et 6 solidos

²⁵Schwind, p. 319.

²⁶Lehmann, p. 116.

factors culpabilis iudicetur."²⁷ L.Rib. LXXI,1 evidently influenced L.Alam. LVII,4, and the latter in conjunction with this Riparian law also influenced L.Baiu. IV,5.²⁸ L.Alam. LVII,4 is essentially the same law as L.Baiu. IV,5, but it is made slightly longer by an adverbial clause extending the basic conditions of the injury it describes. Apart from the adverbial clause (ita . . . ossus) of L.Alam. LVII,4, the laws are identical except for the added concern of L.Baiu. IV,5 with a broken bone from the upper arm.²⁹

(c) Moreover, both laws require a wergeld of six solidi.

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Lex Baiuvariorum IV,6

Si cervella appareat.

²⁷Beyerle-Buchner, p. 122. This closely parallels Pact.Sal. XVII,4-5.

²⁸L.Visig. VI,4,1, which also concerns injuries to the head, is far too general to be discussed here.

²⁹Schwind assumes that L.Alam. LVII,31 shows legal similarity with L.Baiu. IV,5. L.Alam. LVII,31 says: "Si quis alium brachium super cubitum transpunerit, cum 6 solidis componat." Lehmann, p. 122. Nowhere in L.Baiu. IV,5 is there mention of piercing someone's arm either above or below the elbow, since piercing through the arm (transpungere) is entirely distinct from breaking a bone of the arm (plagam ferre). The question must be asked, however, whether there is legal similarity between laws where the object of the laws is the same, but where the verbs are different. If the reference to L.Alam. LVII,31 is accurate, it would explain where injury to the upper arm in L.Baiu. IV,5 comes from. Although many of the terms of L.Alam. LVII,31 shows similarity with those of L.Baiu. IV,5 (especially brachium super cubitum), nevertheless, the verbs do not agree. Furthermore, because the legal intents of the laws themselves disagree, any other agreements, such as the wergeld of six solidi in both laws, must be disregarded.

Lex Alamannorum LVII,6

(a) Both L.Baiu. IV,6 and L.Alam. LVII,6 concern the exposure of the brain (cervella), due as indicated by previous laws in the Alamannic and Bavarian codes, to the breaking away of a bone from the head. Both of these laws apparently are based upon Pact.Sal. XVII,4 which says in part: "Si quis alterum in caput ita plagaverit, ut cerebrum appareat . . . solidos XV culpabilis iudicetur."³⁰ The exposure of the brain is clearly evident in only two other Germanic laws, and both of these are the south Germanic laws discussed here. L.Baiu. IV,6 says: "Si cervella in capite appareant vel interiora membra plagata fuerint, quod hrevant³¹ dicunt, cum XII solidis componat."³² It may be inferred that in order for the brain to be exposed a bone of the head has to be broken away. As a result, the first injury contained by this law is similar to L.Alam. LVII,6, which follows: "Si autem testa trescapulata³³ [sic] fuerit, ita ut cervella appareant, ut medicus cum pinna aut cum

³⁰Eckhardt, Pactus, pp. 76-77. The italics are Eckhardt's.

³¹Kralik, NA, XXXVIII (1913), 445-446. Cf. Baesecke, Geschichte der deutschen Sprache, LIX (1935), 18.

³²Schwind, pp. 319-320.

³³Transcapulare or transcapulatum esse (to cut through) do not appear in any other Germanic code besides the Lex Alamannorum, except Pact.Sal. XXIX,17 and the addition Septem Casus V,5. For these laws, see Eckhardt, Pactus, pp. 117 and 271.

fanone³⁴ cervella tetigit, cum 12 solidis componat."³⁵

Cutting through the skull (L.Alam. LVII,6) exposes the brain as does breaking away a bone of the head (L.Baiu. IV,6).

(b) Thirty-two per cent of the terminology of L.Alam. LVII,6 appears as 41 per cent of L.Baiu. IV,6.

(c) Legal similarity is also attested by an identical wergeld of twelve solidi.

Lex Alamannorum LVII,55

(a) Injury to the internal organs is compensated by both L.Baiu. IV,6 and L.Alam. LVII,55, although no other Germanic law discusses this injury.³⁶ A comparison of the former quoted above and L.Alam. LVII,55 quoted here clearly illustrates this point.³⁷ L.Alam. LVII,55 follows: "Si autem interiora membra vulneratus fuerit, quod hrevovunt

³⁴Panone means pannus, a piece of cloth or a rag. See Schade, Altd deutsches Wörterbuch, I, p. 160, and Niermeyer, Mediae Latinitatis Lexicon minus, V, p. 410.

³⁵Lehmann, p. 117.

³⁶Pact.Sal. XVII,6 compensates for injury to the ribs and belly (stomach). This law may be the basis of the south Germanic laws analyzed here.

³⁷The generality of L.Rib. IV does not warrant easy comparison with L.Alam. LVII,55, although Beyarle-Buchner, p. 74 believe the comparison can be made. L.Rib. IV says: "Si quis ingenuus alterum transpuxerit aut infra costas plagaverit, 36 solidos culpabilis iudicetur aut cum 6 iuret." Ibid. Under no circumstances, however, can this alleged similarity apply to L.Baiu. IV,6.

dicunt, cum 12 solidis componat."³⁸ Additional similarity between these laws is discussed under headings (b) and (c).

(b) The laws show a marked degree of philological similarity, since 92 per cent of the terminology of L.Alam. LVII,55 constitutes 71 per cent of L.Baiu. IV,6. The verb plagatum esse (L.Baiu. IV,6) is essentially the same as vulneratum esse (L.Alam. LVII,55): both of them mean to strike or to wound. The means by which the action of the verb is executed (as by a sword) is not specified in either law. Although plagatus and vulneratus are not identical terms, they signify the same action in both laws.³⁹ The laws are also similar since both possess the OHG hrevavunt, meaning to strike the internal organs.

(c) The laws both require a wergeld of twelve solidi.

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Lex Baiuvariorum IV,9

Si oculus eruerit.

Lex Alanannorum LVII,14

(a) The loss of sight is compensated by L.Baiu. IV,9 and L.Alam. LVII,14, although the latter explicitly mentions it and the former describes a physical injury

³⁸Lehmann, p. 126. The italics are Lehmann's. Hrevovunt in this law is the same term as hrevavunt in L.Baiu. IV,6.

³⁹See Dag Norberg, Beiträge zur spätlateinischen Syntax (Uppsala, 1944), pp. 9-10.

which produces it. However, these laws are not the only Germanic laws which discuss the loss of sight, since Pact. Sal. XXIX,1, L.Rib. V,3, L.Visig. VI,4,3, and Ed.Roth. XLVIII also describe the loss of sight, and all of these mention that the eye is knocked out. The similarity, therefore, between L.Baiu. IV,9 and L.Alam. LVII,14 can be discussed only in a general sense, although the basis of most of the laws mentioned above may well be Pact.Sal. XXIX,1;⁴⁰ and this, like L.Baiu. IV,9, concerns not only the loss of sight, but also the mutilation of a hand or foot.⁴¹ L.Baiu. IV,9 states: "Si quis libero oculum eruerit vel manum vel pedem tulerit, cum XL solidis componat."⁴² Unlike the other Germanic laws given above, L.Baiu. IV,9 does not describe that the eye is knocked out, since it is torn out. Consequently, L.Baiu. IV,9 is entirely different in its description of this injury. L.Alam. LVII,14 is concerned simply with the destruction of sight:

⁴⁰"Si quis alterum manum [vel] pedem [debilitaverit] aut oculum eiecerit [aut excusserit] . . . solidos C culpabilis iudicatur." Eckhardt, Pactus, p. 112. Words enclosed within brackets are already included in Eckhardt's edition. Additional similarity among this law and L.Rib. V,3 and L.Visig. VI,4,3 is evident since all of these laws require a wergeld of 100 solidi for the loss of an eye. Although Pact.Sal. XXIX,1 also compensate for the loss of the nose and ear, these parts of the face will be discussed respectively under L.Baiu. IV,13 and IV,14 below. Cf. Pact.Sal. XXIX,12.

⁴¹The mutilation of the foot contained in L.Baiu. IV,9 is discussed with L.Alam. LVII,66 below. There is no Alamannic law which describes the mutilation of the hand. See n. ⁴⁵ below.

⁴²Schwind, p. 321.

"Si autem ipse visus foris exit et melus, 40 solidis conponat."⁴³ The destruction of sight in this Alamannic law may contain the idea of tearing out the eye of L.Baiu. IV,9, since the latter may be no more than a redefinition of L.Alam. LVII,14.⁴⁴

(b) Unfortunately, the laws show little philological similarity, since no appreciably significant terms connect the laws. As a result, a percentage-comparison between the laws is of little value.

(c) Both laws require an identical wergeld of forty solidi for the loss of sight.

Lex Alamannorum LVII,66

(a) Only one of the remaining two injuries of L.Baiu. IV,9 is similar to the Alamannic code. Both L.Baiu. IV,9 and L.Alam. LVII,66 compensates for severing a foot from the body.⁴⁵ The latter says: "Si totum pedem

⁴³Lehmann, p. 119.

⁴⁴L.Alam. LVII,13 concerns a physical condition of the eye in which it appears glassy: "Si enim visus tactus fuerit de oculo, ita ut quasi vitro remaneat, 20 solidos conponat." Ibid. A glassy appearance of the eye does not entail the loss of sight; nevertheless, Schwind finds similarity between this law and L.Baiu. IV,9. The laws themselves, however, do not supply any evidence to substantiate his claim.

⁴⁵Of the three parts of the body discussed in L.Baiu. IV,9, two of them illustrate similarity with laws in the Lex Alamannorum, that is, L.Alam. LVII,14 and 66. The third and remaining part of the body described in L.Baiu. is the hand. Finding an equivalent Alamannic law to this part is impossible, since the Alamannic code discusses not hands, but arms. Schwind, however, alleges legal similar-

absiderit, cum 40 solidis componat."⁴⁶ The similarity of this law with L.Baiu. IV,9 is clearly evident since pedem ferre of the latter is comparable to pedem abscondere of L.Alam. LVII,66. The basis of both of these laws may be Pact.Sal. XXIX,1 quoted above.⁴⁷

(b) That the laws are similar philologically is also evident, since 75 per cent of the terms of L.Alam. LVII,66 appear as 43 per cent of the terms of L.Baiu. IV,9. The relative equivalency of pedem abscondere and pedem ferre also links the laws as well.

(c) A wergeld of forty solidi is required by both

ity between L.Alam. LVII,39, which concerns the loss of an arm, and L.Baiu. IV,9. The former says: "Si autem /Brachium/ a cubito absiderit, 40 solidis componat." Ibid., p. 124 (arm is understood by the previous law L.Alam. LVII,38). L.Baiu. IV,9 quoted above does not discuss severing an arm from the body. Most would maintain that the word arm does not include the hand in its designation. In addition, if there is a difference between a hand and an arm, there must be a difference between a foot and a leg. Yet, L.Alam. LVII,67 which concerns cutting off the leg at the knee is overlooked by Schwind. L.Alam. LVII,67 says: "Si /pedem/ a genuculo abscondus fuerit, cum 50 solidis componat." Ibid., p. 128 (foot is understood by the previous law L.Alam. LVII,66). Certainly, if Schwind can see any similarity between a hand and an arm up to the elbow, why has he ignored the similarity between a foot (also discussed in L.Baiu. IV,9) and the leg up to the knee? To find similarity between L.Baiu. IV,9 and L.Alam. LVII,39 would also include the similarity between this Bavarian law and L.Alam. LVII,67. Although both L.Baiu. IV,9 and L.Alam. LVII,39 require a wergeld of forty solidi, can there be any real agreement between them when the only similarity is the wergeld payment?

⁴⁶Ibid.

⁴⁷See L.Rib. V,8 and Pact.Sal. XXIX,10-11, all of which concern cutting off a foot, and L.Visig. VI,4,3, which concerns cutting off a hand.

laws if the foot is severed from the body.

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Lex Baiuvariorum IV,10

Si mancauerit.

Lex Alamannorum LVII,38

(a) Both L.Baiu. IV,10 and L.Alam. LVII,38 specify that a person may be crippled if he suffers an injury. The laws, however, are similar only a general sense, since there is no agreement between them for that part of the body crippled. L.Baiu. IV,10 is very general. It simply says: "Et si talis plaga vel fractura fuerit, ut exinde mancus sit, cum XX solidis componat."⁴⁸ To this we compare L.Alam. LVII,38 which is more explicit. It follows: "Si enim totus brachius mancus fuerit, ut nihil ex eo facere possit, componat eum cum 20 solidis."⁴⁹ The generality of L.Baiu. IV,10 could include a hand, an arm, a foot, or a leg. L.Alam. LVII,38, of course, solely mentions an arm. Both of these laws may be influenced by L.Rib. V,6, which, surprisingly, is as general as L.Baiu. IV,10. L.Rib. V,6 says: "Sic in omnes mancationem, si membrum mancum pependerit, medietatem componat quam componi debuerat, si ipsum membrum abscisum fuisset."⁵⁰ The similarity between

⁴⁸Schwind, p. 322.

⁴⁹Lehmann, pp. 123-124.

⁵⁰Beyerle-Buchner, p. 75. Also see, in general, L. Rib. V,4-5 and 8. Pact.Sal. XXIX,2 and L.Visig. VI,4,3

L.Baiu. IV,10 and L.Alam. LVII,38 ends here except for heading (c) below.

(b) There is little philological agreement between the laws.

(c) Similarity is strengthened since both laws require a wergeld of twenty solidi.

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Lex Baiuvariorum IV,11

De pollice [sic] et ceteris digitis, quomodo componantur.

Because six Alamannic laws (LVII,42,45,48,51-53) are needed in the discussion of L.Baiu. IV,11, they are grouped under one heading below and are analyzed jointly with L.Baiu. IV,11. This Bavarian law itself is divided into five paragraphs; all but the last paragraph show legal similarity with the Lex Alamannorum. The law says:

Si quis alicuius pollicem absciderit, cum XII solidis componat.

Et si proximum a pollice vel minimum [digitum] absciderit, cum VIII solidis componat, unum sic et alium sic.

Illos medianos duos digitos cum X solidis componat, unum cum V solidis et alium cum V.

Et si non fuerint abscisi, et est mancus stat rectus, ut non possit plicare, hoc impedimentum est ad arma baiolare:⁵¹ malor est compositio quam de absciso, tertiam partem supra addet. Ad XII adde

compensate for a crippled hand. Cf. Schwind, NA, XXXIII (1908), 625.

⁵¹Meaning to carry. See Feist, Vergleichendes Wörterbuch, p. 75, and Meillet, General Characteristics, p. 59. MSS Ald and Jlz of Schwind's edition use portare in place of baiolare. See Schwind, p. 323.

IIII, fiunt XVI; ad VIIII adde III, fiunt XII; ad V adde II et tremisse, fiunt VII solidis et tremisse. Sic enim debes iudicare et sic componere.⁵²

All of the Alamannic laws which resemble L.Baiu. IV,11 show their similarity in precisely the same order as they appear in the Lex Alamannorum, with the exception of L.Alam. LVII, 52. The following table shows this relationship:

<u>L.Alam.</u>	<u>L.Baiu.</u>
LVII,42	IV,11,§1
LVII,45 and 52	IV,11,§2
LVII,48 and 51	IV,11,§3
LVII,53	IV,11,§4

Is it correct to conclude that L.Baiu. IV,11 was written by reading through the Lex Alamannorum and literally selecting those laws in order of appearance from the first (LVII,42) to the last (LVII,53) which pertain to injury of the thumb and fingers? Such appears to be the case. The displacement of L.Alam. LVII,52 noted above may be nothing more than an afterthought: it was probably appended with L.Alam. LVII,45 to L.Baiu. IV,11,§2.⁵³ The Alamannic and Bavarian laws discussed here may be based upon Pact.Sal.

⁵²Ibid., pp. 322-324. Digitum is inferred in paragraph two.

⁵³Because of the proximity of L.Alam. LVII,52 with LVII,45, the former is discussed out of its normal order in the Lex Alamannorum (that is, between LVII,51 and 53), and appended to the discussion of L.Alam. LVII,45.

XXIX,4,6-7.⁵⁴ The following table illustrates this relationship to which is also appended two similar Ripuarian laws:

<u>L.Alam.</u>	<u>Pact.Sal.</u>	<u>L.Rib.</u>
LVII,42	XXIX,4	V,5
LVII,45(52)	XXIX,6(7)	V,7
LVII,48(51)	XXIX,7	---
LVII,53	---	---

Lex Alamannorum LVII,42,45,48,51-53

(a) L.Alam. LVII,42, which concerns cutting off the thumb, appears to be the basis for L.Baiu. IV,11,§1. It says: "Si autem totum pollice absciderit, cum 12 solidis componat."⁵⁵ The similarity of this law and L.Baiu. IV, 11,§1 is clearly evident;⁵⁶ this is especially true for the additional monetary evidence supplied under heading (c) below. L.Baiu. IV,11,§2 concerns cutting off the fore-finger (proximum a pollice) and the little finger. This law is parallel to L.Alam. LVII,45 and 52. L.Alam. LVII,

⁵⁴L.Visig. VI,4,3 also compensates for cutting off the thumb and all fingers. Cf. Schwind, NA, XXXIII (1908), 626-627.

⁵⁵Lehmann, p. 124. Pollice absciderit and solidis componat are understood from the previous law of the Lex Alamannorum, LVII,41.

⁵⁶Schwind refers to L.Alam. LVII,41 as a cross reference to L.Baiu. IV,11. L.Alam. LVII,41 concerns cutting off the top of the thumb, clearly not discussed in any section of L.Baiu. IV,11: "Si enim summitatem pollice sic absciderit, cum 6 solidis componat." Ibid. Cutting off part of the thumb is no cause to assume it bears similarity with L.Baiu. IV,11,§1.

45 concerns severing the entire forefinger from the palm: "Si totum [proximo pollice] absciderit a palma, cum 10 solidis componat."⁵⁷ L.Alam. LVII,52 likewise is concerned with the second digit discussed in L.Baiu. IV,11,§2, the little finger: "Illo minimo digito ita solvatur ut pollex [sic]."⁵⁸ L.Baiu. IV,11,§3 discusses cutting the two middle fingers from the palm. Likewise, there is a parallel in the Lex Alamannorum. L.Alam. LVII,48 also discusses cutting the whole finger from the palm: "Si totus [longissimus digitus] a palma abscisus fuerit, cum 6 solidis componat."⁵⁹ The ring finger is included as one of the two middle fingers discussed in L.Baiu. IV,11,§3. In the Lex Alamannorum, however, the ring finger is not discussed as a middle finger, but as a separate digit with its own name, anillaris digitus. The corresponding law, L.Alam. LVII,51 gives: "Si

⁵⁷Ibid., p. 125. Proximo pollice is understood from the previous law, LVII,43. The cross reference Schwind makes to L.Alam. LVII,43 and 44 does not pertain directly to L.Baiu. IV,11. It is true that both of these Alamannic laws concern injury to the forefinger, but they deal with only part of it; that is, LVII,43 is concerned with the forefinger severed at the first joint, and LVII,44 is concerned with the same finger severed at the second joint. L.Baiu. IV,11,§2 is merely concerned with the entire forefinger; it says nothing about parts of that finger cut from the palm.

⁵⁸Ibid.

⁵⁹Ibid. Longissimus digitus is understood from the previous law, LVII,46. Like other Alamannic laws above, there is no parallel between L.Alam. LVII,46 and 47 and L.Baiu. IV,11,§3 as Schwind believes. L.Alam. LVII,46 concerns cutting the middle finger at the first joint; LVII,47 deals with cutting that finger at the second joint. These two laws are not discussed in the Lex Baiu.

totum anillaris digitus, cum 8 solidis componat.⁶⁰
 Both L.Baiu. IV,14,§4 and L.Alam. LVII,53 concern a finger which may be crippled (although not severed from the hand). L.Baiu. IV,14,§4 requires a larger wergeld for a crippled finger than for one severed because a crippled finger would be a hindrance to bearing arms. L.Alam. LVII,53 also is concerned with a crippled finger, but it explicitly mentions that it is the middle finger: "Si quis autem longissimum digitum sic placaverit sic, ut exinde mancus sit, ita ut complicare non possit aut soutum prendere aut arma in terra propter illum recipere, 12 solidos componat."⁶¹ Like L.Baiu. IV,11,§4, L.Alam. LVII,53 concerns the inability of a crippled finger to grasp weapons, that is, the incapability of grasping a shield or recovering arms from the ground. No Bavarian law discussed so far shows as much similarity with the Lex Alamannorum as L.Baiu. IV,11.

(b) The philological similarity between these laws cannot be analyzed easily; the difficulty is due to the great number of words which must be inferred in the various

⁶⁰Ibid. Anillaris digitus and cum solidis componat are understood from the previous law, LVII,49. Although Schwind believes L.Alam. LVII,49 and 50 show similarity with L.Baiu. IV,11, there is no concrete evidence to substantiate his assumption. L.Alam. LVII,49 which concerns cutting off the ring finger at the first joint, and LVII, 50 which concerns cutting off that finger at the second joint are not evident in L.Baiu. IV,11.

⁶¹Ibid., p. 126.

Alamannic laws discussed above, especially L.Alam. LVII,42, 45,48, and 51.⁶² There is no difficulty in calculating what little philological similarity there may be between L.Baiu. IV,11,12 and 14 and L.Alam. LVII,52 and 53 respectively, since, for all practical purposes, there is no or very little philological similarity between these two laws. What similarity there may be between L.Alam. LVII,42 and L.Baiu. IV,11,11 is based on only three words in both laws; that is, three of five words (60 per cent) in L.Alam. LVII,42 reappear as three of nine words (33 per cent) in L.Baiu. IV,11,11. Unfortunately, this similarity is of little consequence, since this 60 per cent of L.Alam. LVII,42 is not based on a single noun or verb, but on the conjunction si, the preposition cum, and the adjective duodecim. However, if the words which are inferred in L.Alam. LVII,42 are included in this comparison, the validity of this philological similarity is greatly enhanced. As a result, 78 per cent of the terms of L.Alam. LVII,42 reappear as exactly the same percentage of these terms in L.Baiu. IV,11,11. The philological similarity between L.Alam. LVII,45 and L.Baiu. IV,11,12 is valid even without including the inferred words. Without the inferred words, 29 per cent of the terms of L.Baiu. IV,11,12 are

⁶²Eckhardt, Leges Alamannorum II, p. 52 is willing to add only a few inferred words to these laws.

also used by L.Alam. LVII,45; with the inferred terms, the percentage increases to 41 per cent. The addition of the inferred words for L.Alam. LVII,48 increases the percentage only slightly as is true for L.Alam. LVII,51 as well. The philological similarity of all four Alamannic laws discussed here is stronger for the Alamannic laws early in the table (above) as it is for the first two paragraphs of L.Baiu. IV,11. The latter Alamannic laws as well as the last two paragraphs of L.Baiu. IV,11 exemplify little or no concrete philological similarity.

(c) The above quotations illustrate that L.Baiu. IV,11,§1 and L.Alam. LVII,42 require a wergeld of twelve solidi. The wergeld required in the other Alamannic laws only approximates the payment rendered in L.Baiu. IV,11.

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Lex Baiuvariorum IV,12

De brachiis transpunctis.

Lex Alamannorum LVII,31

(a) L.Baiu. IV,12 compensates for piercing the arm above and below the elbow: "Si quis alicui brachium supra cubitum transpunxerit, cum VI solidis componat; si ante cubitum transpunxerit, cum III solidis componat."⁶³ To these injuries, two Alamannic laws are parallel, LVII,31 and 32. The first of these is L.Alam. LVII,31 which solely

⁶³Schwind, p. 324.

concerns the compensation for piercing the upper arm: "Si quis alium brachium super cubitum transpuxerit, cum 6 solidis conponat."⁶⁴ The similarity of the first injury described by L.Baiu. IV,12 and this Alamannic law are striking: the concepts and the language of both laws are identical. Likewise, there are no other Germanic laws which are similar to these laws, and this is true as well for L.Alam. LVII,32 discussed below.

(b) All of the terms of L.Alam. LVII,31 are absorbed by the first half of L.Baiu. IV,12.

(c) Both laws require a wergeld of six solidi.

Lex Alamannorum LVII,32

(a) The second and last injury compensated by L.Baiu. IV,12 concerns piercing the arm before the elbow, and this injury is also expressed by L.Alam. LVII,32. The latter says: "Si ante⁶⁵ cubitum transpuxerit, cum 3 solidis conponat."⁶⁶ Like L.Alam. LVII,31 above, L.Alam. LVII,32 contains the same concepts and the identical language as the second half of L.Baiu. IV,12.

(b) All of the terms of L.Alam. LVII,32 are absorbed

⁶⁴Lehmann, p. 122.

⁶⁵Schwind corrects autem in his cross reference of L.Alam. LVII,32 to ante which agrees with L.Baiu. IV,12. The correction is based on the rendering of subtus in Pact. Alam. II,6 (VII,2 of Eckhardt's revised edition). Lehmann supplies ante in his collation. Ibid.

⁶⁶Ibid.

by the second half of L.Baiu. IV,12.

(c) In addition, three solidi are required by both laws.

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Lex Baiuvariorum IV,13

De naso.

Lex Alamannorum LVII,15

(a) Compensation for piercing through another's nose is evident only in two laws, one each from the Alamannic and Bavarian codes. The first of these laws is L.Baiu. IV,13 which says: "Si quis alicui nasum transpuxerit, cum VIII solidis componat."⁶⁷ The concepts of this law is also evident in L.Alam. LVII,15, which says: "Si enim nasus transpunctus fuerit, cum 6 solidis componat."⁶⁸ Brevity, in addition to parallel concepts, is a like element of these laws.⁶⁹

⁶⁷Schwind, p. 325.

⁶⁸Lehmann, p. 119.

⁶⁹Schwind believes there is legal similarity between L.Baiu. IV,13 and two other Alamannic laws, LVII,16 and 17. Both of these Alamannic laws are not concerned with piercing the nose, but with severing part of all of the nose from the face. Likewise, Schwind's citation of L.Sal. XXIX,1 and 14 (that is, Pact.Sal. XXIX,1 and 13) as well as L.Rib. V,2 is also incorrect. Pact.Sal. XXIX,1 concerns, among other injuries, cutting off the nose (nasum amputare), and this is duplicated by Pact.Sal. XXIX,13 and L.Rib. V,2 (nasum exoutere). Eckhardt, Leges Alamannorum II, p. 49, also incorrectly cites L.Rib. V,2 as a cross reference to L.Alam. LVII,15. It should be evident that these Salic and Ripuarian laws are similar to L.Alam. LVII,16 and 17, but that they show no similarity with the Bavarian code.

(b) The similarity between the laws is quite high philologically, since 76 per cent of the terminology of L.Alam. LVII,15 appears as 66 per cent of the terminology of L.Baiu. IV,13. In this calculation, transpungere of L.Baiu. IV,13 is equated with transpunctum esse of L.Alam. LVII,15, although the latter is still counted as two words.

(c) No agreement.

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Lex Baiuvariorum IV,14

De auro.

L.Baiu. IV,14 is divided into four paragraphs. The first paragraph of this law shows no similarity with any law in the Lex Alamannorum. The three remaining paragraphs are similar to L.Alam. LVII,8-10, and these paragraphs are in exactly the same order as their corresponding Alamannic laws appear in the Lex Alamannorum. The following table shows this relationship:

<u>L.Alam.</u>	<u>L.Baiu.</u>
LVII,8	IV,14,§2
LVII,9	IV,14,§3
LVII,10	IV,14,§4

Lex Alamannorum LVII,8

(a) L.Alam. LVII,8 and the two Alamannic laws which follow concern injuries of the ear as does the entire L.Baiu. IV,14, although only L.Alam. LVII,8 and L.Baiu.

IV,14,§2 concern the compensation required if the entire ear is cut from the head. These laws are apparently based upon Pact.Sal. XXIX,1 and L.Rib. V,1.⁷⁰ L.Baiu. IV,14,§2 says: "Si aurem alicui absciderit, cum XX solidis componat."⁷¹ A comparison of this law with L.Alam. LVII,8 shows obvious degrees of similarity. L.Alam. LVII,8 states: "Si quis aliquis aurem alterius absciderit et non exsurdaverit, 12 solidis componat."⁷² L.Baiu. IV,14,§2 and L.Alam. LVII,8 concern the ear completely severed from the head. In addition, L.Alam. LVII,8 states and L.Baiu. IV,14,§2 implies that the victim can still hear from that side of the head which lost an ear. Although L.Baiu. IV,14,§2 does not state that the ear is not deafened (non exsurdare), this may be concluded from the third paragraph of L.Baiu. IV,14, discussed with L.Alam. LVII,9 below. Hence, both L.Baiu. IV,14,§2 and L.Alam. LVII,8 are solely concerned if the ear is severed from the head, but the victim is not struck deaf.

(b) Forty-two per cent of the terms of L.Alam. LVII,8 appear as 63 per cent of the terms of L.Baiu. IV,14,§2.

(c) No agreement.⁷³

⁷⁰Cr. L.Visig. VI,4,3.

⁷¹Schwind, p. 325.

⁷²Lehmann, p. 118.

⁷³Pact.Alam. II,3 (VI,1 of Eckhardt's revised edition) also concerns severing the ear from the head, and it requires twenty solidi as a wergeld, thereby agreeing with

Lex Alamannorum LVII,9

(a) If the cut of the victim's ear is deep enough, deafness results. Both L.Baiu. IV,14,§3 and L.Alam. LVII,9 discuss this physical condition. L.Baiu. IV,14,§3 says: "Si eum sic plagaverit, ut inde surdus fiat, cum XL solidis componat."⁷⁴ Likewise, L.Alam. LVII,9 says in comparison: "Si autem sic absciderit profundo et eum exsurdaverit, 40 solidos componat."⁷⁵ Little explanation is necessary since the laws themselves clearly manifest identical concepts. These laws are moderately similar to Pact.Sal. XXIX,14.

(b) Sixty-four per cent of the terms of L.Alam. LVII,9 reappear as 66 per cent of the words of L.Baiu. IV,14,§3. Exsurdare of L.Alam. LVII,9 is equated as one word, since it is basically the same as surdum esse of L.Baiu. IV,14,§3.

(c) The laws require a wergeld of forty solidi if deafness results.

Lex Alamannorum LVII,10

(a) To strike the ear of another and to leave it partly cut draws special attention from both the Alamannic

the payment rendered by L.Baiu. IV,14,§2. Pact.Alam. II,3 says: "Et qui auriculam simaverit, solvat solidos 20." Ibid., p. 22. Lehmann's edition uses the abbreviation sol. for solidos; it is spelled out here.

⁷⁴Schwind, p. 326.

⁷⁵Lehmann, p. 118.

and Bavarian codes. Furthermore, this injury is discussed by no other Germanic law. The fourth and last paragraph of L.Baiu. IV,14 describes the required wergeld for a person who is victimized by this injury: "Si aurem maculaverit, ut exinde turpis appareat, quod lidiscarti⁷⁶ vocant, cum VI solidis componat."⁷⁷ L.Alam. LVII,10 presents a strong parallel: "Si enim medietatem aurem absciderit, quod scardi⁷⁸ Alamanni dicunt, cum sex solidis componat."⁷⁹

(b) Sixty-nine per cent of the words of L.Alam. LVII,10 reappear as 64 per cent of the words of L.Baiu. IV,14,§4. The use of scardi by L.Alam. LVII,10 and lidiscarti by L.Baiu. IV,14,§4, both meaning to mangle the ear, also links the laws as well.

(c) Both laws require a wergeld of six solidi.

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Lex Baiuvariorum IV,15

De labiis.

The title of L.Baiu. IV,15 is ambiguous, for it

⁷⁶See Kralik, NA, XXXVIII (1913), 449, although he incorrectly cites L.Alam. LVIII as a cross reference to lidiscarti. The reference should be to L.Alam. LVII,10. This reference is cited accurately by Baesecke, Geschichte der deutschen Sprache, LIX (1935), 18.

⁷⁷Schwind, p. 326.

⁷⁸Meaning an incision or cut. See Schade, Altdeutsches Wörterbuch, I, p. 554. Cf. Brunner, Deutsche Rechtsgeschichte, II, p. 822.

⁷⁹Lehmann, p. 118. The italics are Lehmann's.

contains not only compensation for lips, but eyelids as well. The law follows:

Labium subterius similiter componat et palpebram subteriolem simili modo. Si sic plagaverit, ut lacrimam continere non possint, vel subterius labium salivam non continet, tunc cum VI solidis componat.

Superiorem vero palpebram vel superius labium si maculaverit, cum III solidis componat.

Si quis alicui linguam absciderit, cum XL solidis componat. Si autem alius intelligit, X solidos componat.⁸⁰

L.Baiu. IV,15 is divided into two paragraphs, and not three as is indicated above. This so-called third paragraph is an addition taken from MS Alt of Schwind's edition of the Lex Baiuvariorum. It is included here solely because it shows similarity with L.Alam. LVII,26. Furthermore, this addition of MS Alt described not lips or eyelids, but injury to the tongue. The Lex Alamannorum contains laws which are parallel to all five facial parts described by the Lex Baiuvariorum as well as many of the conditions resulting from the injury of these parts. Since five Alamannic laws (LVII,11-12, 18-19,26)⁸¹ are similar with L.Baiu. IV,15 as well as among themselves, they are grouped under the same heading and discussed jointly with this Bavarian law. No other Germanic code compensates for injury to these parts, except Pact.Sal. XXIX,15 which compensates for the loss of the tongue, and L.Visig. VI,4,3, which compensates

⁸⁰Schwind, pp. 326-327.

⁸¹These laws are not similar to L.Baiu. IV,15 in order of their appearance within the Alamannic code.

for damaging the lips.

Lex Alamannorum LVII,11-12,18-19,26

(a) L.Alam. LVII,11 concerns disfiguring the upper eyelid: "Si enim superior palpebris maculata fuerit, ut cludere non possit, cum sex solidis componat."⁸² This idea is also evident in L.Baiu. IV,15,§2 quoted above, but the latter does not stipulate the physical condition as L.Alam. LVII,11 does that the eyelid cannot be closed. L.Alam. LVII,12 concerns disfiguring the lower eyelid, but it requires twice the wergeld enacted for injury to the upper eyelid. The law says: "Si enim subterior palpebris maculata fuerit, ut lacrimae continere non possit, cum 12 solidis componat."⁸³ L.Baiu. IV,15,§1 expresses a similar idea, and both laws add that due to this injury the lower eyelid cannot hold tears. Likewise, L.Alam. LVII,18 concerns injury to the upper lip, as a result of which the teeth are exposed: "Si enim labium superiorem alicuius maculaverit, ita ut dentes appareant, cum 6 solidis componat."⁸⁴ L.Baiu. IV,15,§2 contains this same idea, but does not add that the teeth may appear. L.Alam.

⁸²Lehmann, p. 118.

⁸³Ibid. Palpebris is understood from the previous law, LVII,II.

⁸⁴Ibid., p. 120.

LVII,19 describes injury to the lower lip whereby it is unable to hold saliva: "Et labium subteriore, ut salivam continere non possit, cum 12 solidis componat."⁸⁵ Likewise, there is a parallel of this law with L.Baiu. IV,15,§1, which also adds that the lower lip cannot contain saliva if it suffers this injury. The last Alamannic law which is similar with L.Baiu. IV,15 is L.Alam. LVII,26, which concerns the loss of a different part of the face not yet discussed, the tongue: "Si autem lingua tota abscisa fuerit, 40 solidos componat. Si autem media, ut aliquid intellegat, quod loquitur, cum 20 solidis componat."⁸⁶ The addition to L.Baiu. IV,15 in MS Alt of Schwind's edition of the Lex Baiuvariorum presents a strong parallel to this law as does Pact.Sal. XXIX,15.

(b) All of the Alamannic laws discussed here manifest linguistic similarity with L.Baiu. IV,15. In the following calculations, maculatum esse of L.Alam. LVII,11 and 12 is equated with maculare of L.Baiu. IV,15,§2, but maculatum esse is still counted as two words. Similarly, abscisum esse of L.Alam. LVII,26 is equated with abscidere of L.Baiu. IV,15 (addition), but abscisum esse is also counted as two separate words. The meaning of maculare varies when it is applied to different parts of the body:

⁸⁵Ibid. Labium is understood from the previous law, LVII,18.

⁸⁶Ibid., p. 121.

it means to disfigure or mangle when it pertains to the eye or lip.⁸⁷ The laws show that 57 per cent of the terminology of L.Alam. LVII,11 constitutes 58 per cent of L.Baiu. IV,15,§2. Likewise, 73 per cent of L.Alam. LVII,12 constitute only 39 per cent of L.Baiu. IV,15,§1, and this sharp reduction in percentage should be obvious since L.Baiu. IV,15,§1 describes both lips and eyelids. The inferred word palpebris is included in the percentage for L.Alam. LVII,12. (If palpebris is excluded, 71 per cent of L.Alam. LVII,12 reappears as 36 per cent of L.Baiu. IV,15,§1.) Fifty per cent of the terms of L.Alam. LVII,18 reappear as 58 per cent of L.Baiu. IV,15,§2. Sixty-six per cent of L.Alam. LVII,19 reappear as 29 per cent of L.Baiu. IV,15,§1. Like L.Alam. LVII,12 above, this reduced percentage is due to the more inclusive nature (and therefore to the greater length) of L.Baiu. IV,15,§1. Labium, which is inferred from L.Alam. LVII,18, is included in the calculation of L.Alam. LVII,19. (If labium is excluded, 64 per cent of L.Alam. LVII,19 reappears as 25 per cent of L.Baiu. IV,15,§1.) Lastly, 57 per cent of L.Alam. LVII,26 consists of 69 per cent of L.Baiu. IV,15 (addition).

(c) There is no wergeld agreement among any of

⁸⁷Niermeyer, Mediae latinitatis lexicon minus, VII, p. 624 defines maculare in very general terms: to maim. One example of the use of maculare in a general sense is L.Alam. LVII,57: "Si autem intestinis maculatus fuerit, . . ." Lehmann, p. 126.

these laws except the forty solidi required by both L.Baiu. IV,15 (addition) and L.Alam. LVII,26 to compensate for the loss of the entire tongue. Nevertheless, there is a curious phenomenon exhibited by the laws: the Alamannic laws described above require in every case (except the first part of LVII,26) twice the wergeld for all the injuries of L.Baiu. IV,15. Where L.Baiu. IV,15,⁸¹ requires six solidi for the lower lip and the lower eyelid, L.Alam. LVII,12 and 19 require twelve solidi; where L.Baiu. IV,15,⁸² requires three solidi⁸⁸ for the upper lip and the upper eyelid, L.Alam. LVII,11 and 18 require six solidi. Even the second part of L.Baiu. IV,15 (addition) and L.Alam. LVII,26 conform to this schema: the second part of L.Baiu. IV,15 (addition) requires ten solidi if speech is partially impaired, and the second part of L.Alam. LVII,26 requires twenty solidi for the same condition.

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Lex Baiuvaruorum IV,16

De dentibus.

Compensation for knocking out teeth is rendered by L.Baiu. IV,16, and it says:

Si quis alicui sentem maxillarem, quem marchzand⁸⁹

⁸⁸MS sp of Schwind's edition requires six solidi for L.Baiu. IV,15,⁸².

⁸⁹Kralik, MA, XXXVIII (1913), 584.

vocant, excusserit, cum XII solidis componat.

Alios vero dentes si excusserit, unumquemque cum VI solidis componat.

Si quis aliquem castraverit, cum XX solidis componat.⁹⁰

Like L.Baiu. IV,15, the present Bavarian law is also divided into two and not three paragraphs. This seemingly third paragraph is actually an addition derived from MS Alt of Schwind's edition of the Lex Baiuvariorum, and it is included here only because it is similar to the Lex Alamannorum. The following table shows the relationship of the laws in question:

<u>L.Alam.</u>	<u>L.Baiu.</u>
LVII,22	IV,16,§1
LVII,23	IV,16,§2
LVII,59	addition

The order of these injuries exactly parallels two laws in the Pactus legis Salicæ, that is, XXIX,16 and 17, which compensate for injury to the teeth and for castration respectively. It is for this reason that L.Baiu. IV,16 (including the addition) to a greater extent and L.Alam. LVII,22-23, and 59 to a lesser extent are patterned upon these Salic laws.

Lex Alamannorum LVII,22

(a) The first paragraph of L.Baiu. IV,16 and L.Alam. LVII,22 are parallel, since both of these laws concern knocking out a maxillary tooth, and the maxillary teeth

⁹⁰Schwind, pp. 327-328.

are, of course, the upper teeth. L.Alam. LVII,22 states:
 "Si autem dentem absciderit, quod marczan dicunt Alamanni,
 cum 3 solidis componat."⁹¹ Schwind believes a marchzand
 is a canine tooth,⁹² whereas Lexer says it is a molar.⁹³
 Indeed, there would be greater difficulty in knocking out
 a molar since it is located along the sides of the mouth.
 For this reason, this special maxillary tooth may be located
 in the front of the mouth where it is easily exposed to
 injury. Owing to the influence of L.Alam. LVII,23 (which
 follows below) on L.Baiu. IV,16, the incisors (front teeth)
 could not be maxillary teeth, and so the canine most
 probably is the special maxillary tooth described here.

⁹¹ Lehmann, p. 120. The italics are Lehmann's.

⁹² Schwind, p. 327, n. 2. Davoud-Oghlou, Histoire de la Législation, I, p. 325 also believes the marczan is a canine (dent oeilère), although even he is not always consistent since he also calls the marczan a molar (ibid., p. 234). J. Andreas Schmeller, Bayerisches Wörterbuch, ed. G. Karl Frommann (Munich, 1872), I, col. 1647 also says it is a canine (Hundszahn).

⁹³ Matthias Lexer, Mittelhochdeutsches Taschenwörterbuch, 4th ed. (Leipzig, 1891), p. 156. Krallik, MA, XXXVIII (1913), 584 also believes this tooth to be a molar as does Baesecke, Geschichte der deutschen Sprache, LIX (1935), 18. E.G. Graff, Althochdeutscher Sprachschatz oder Wörterbuch der althochdeutschen Sprache (Berlin, 1840), V, col. 684 chooses not to translate a dens maxillaris into modern terms. The useful study of Tornild W. Arnoldson, Parts of the Body in Older Germanic and Scandinavian (Linguistic Studies in Germanic, University of Chicago, II; Chicago, 1915), pp. 34-36 does not include maxillary teeth as a classification. That there is more than one maxillary tooth is evident from Ed.Roth. LII: "Si quis alii dentem maxillarem unum aut plures excusserit, per unum dentem componat solidos octo." Bluhme, p. 21.

Although neither law clearly defines what the maxillary tooth is, both laws single out this tooth (teeth) as something demanding particular attention, even apart from the remaining Alamannic and Bavarian laws which discuss injury to other teeth.⁹⁴

(b) Although L.Alam. LVII,22 does not explicitly define what marczan is, the term is obviously another way of spelling marchzand described by L.Baiu. IV,16,§1. In addition, 66 per cent of the terms of L.Alam. LVII,22 constitute 62 per cent of the words of L.Baiu. IV,16,§1.

(c) No agreement.

Lex Alamannorum LVII,23

(a) The second paragraph of L.Baiu. IV,16 and L.Alam. LVII,23 are also similar, but their similarity is not as evident as that between L.Baiu. IV,16,§1 and L.Alam. LVII,22. This is due to the greater number of Alamannic laws and the lesser number of Bavarian laws which concern the injury of the teeth. Since L.Baiu. IV,16,§1 concerns the maxillary teeth, it would seem the description of L.Baiu.

⁹⁴There are five laws in the Lex Alamannorum which concern injury of the teeth: L.Alam. LVII,20-24. L.Alam. LVII,23 is discussed below with L.Baiu. IV,16,§2. The remaining Alamannic laws (LVII,20-21,24) show no similarity with the Lex Baiuvariorum, and all of these are concerned solely with compensation of either the upper or lower teeth (although the upper teeth are in a general sense maxillary teeth, too). See n. 98 below. The only other Bavarian law concerning teeth is VI,10 (see below), which may be directly patterned upon L.Baiu. IV,16.

IV,16,§2 pertains to all mandibular teeth (that is, all the teeth of the lower jaw), including those lower front teeth which should receive particular attention all their own. If L.Baiu. IV,16,§2 describes all the teeth from the lower jaw, the front teeth and molars, for example, would be compensated equally, making this a rare phenomenon for the leges barbarorum. Since a missing front tooth is more apparent for appearance and more necessary for eating than a missing molar,⁹⁵ the former would normally receive a larger compensation than the latter. For this reason, the Bavarians must have compensated for the other teeth by oral laws which were themselves never promulgated as ius scriptum.⁹⁶ There is a striking parallel to L.Baiu. IV,16,§2 in L.Alam. LVII,32, and the latter says: "De alias [dentibus] vero de quaecumque excusserit, unaquemque cum solido uno componat."⁹⁷ Certainly, L.Baiu. IV,16,§2 and this Alamannic law are similar, but the latter does not compensate for all the remaining teeth the victim may lose. Although L.Alam. LVII,20-21, and 24 are not parallel to L.Baiu. IV,16, they explain that the front teeth, either upper or lower, must also be compensated if injured.⁹⁸ For this reason, L.Alam.

⁹⁵This view is conveyed to me by Dr. Bernard M. Flatt, D.D.S.

⁹⁶Cf. Pact.Sal. XXIX,6, L.Burg. XXVI,2, and L.Visig. VI,4,3.

⁹⁷Lehmann, pp. 120-121. Dentibus is understood from the previous law, LVII,22.

⁹⁸L.Alam. LVII,20: "Si enim aliquis alium uno hictu

LVII,23 must describe only those teeth other than the maxillary teeth discussed by L.Alam. LVII,22 and the front teeth discussed by L.Alam. LVII,20-21,24. Since the similarity between L.Baiu. IV,16,§2 and L.Alam. LVII,23 cannot be questioned, the former must also pertain to all other teeth excluding the maxillary teeth and the front teeth, that is, molars and premolars.

(b) Sixty-six per cent of the terminology (with the inferred word dentibus) of L.Alam. LVII,23 reappears as 80 per cent of L.Baiu. IV,16,§2.

(c) No agreement.

Lex Alamannorum LVII,59

(a) The addition to L.Baiu. IV,16 taken from MS Alt of Schwind's edition shows agreement with L.Alam. LVII,59, since both of these laws concern the compensation exacted for castration. Yet, the inclusion of this injury does not appear out of place with rendering for the loss of teeth, since the order of injuries described by L.Baiu. IV,16 (including the addition) conforms precisely with the same contained by Pact.Sal. XXIX,16 and 17.⁹⁹ L.Alam.

 duos dentes superiores primas excusserit, cum 6 solidis componat." LVII,21: "Et si vis una de ipsas duas excusserit, et sic cum 6 solidis componat." LVII,24: "De subterioribus vero duabus primas alicui excusserit, cum 12 solidis, sicut uno lecto fecerit." Ibid.

⁹⁹Cr. L.Rib. VI.

LVII,59 says: "Si autem castraverit, ita ut virilia non tollat, cum 20 solidis conponat."¹⁰⁰ The similarity of the laws is obvious.¹⁰¹

(b) Fifty per cent of the terms of L.Alam. LVII,59 are evident in the addition to L.Baiu. IV,16 as 75 per cent of its total terminology.

(c) Both laws require a wergeld of twenty solidi.

* * * * *

Lex Baiuvariorum IV,18

De ab equo proiectis.

Lex Alamannorum LIX,1

(a) Forcefully knocking a freeman from his horse is a crime described by three Germanic laws: Ed.Roth. XXX, L.Baiu. IV,18, and L.Alam. LIX,1. Although only L.Alam. LIX,1 says that the freeman is knocked off his horse in order to steal the animal, this may also be the reason for the other two laws. Of the two south Germanic laws discussed here, L.Baiu. IV,18 is shorter, and it follows: "Si quis aliquem de equo suo deposuerit, quod marachfalli"¹⁰²

¹⁰⁰Lehmann, p. 127.

¹⁰¹Schwind believes that L.Alam. LVII,58 and the addition to L.Baiu. IV,16 are similar. There are no grounds for making this assumption, since L.Alam. LVII,58 concerns cutting off the entire genitalia. There is no law in the Lex Baiuvariorum which concerns this offense.

¹⁰²Kralik, NA, XXXVIII (1913), 583, and Brunner, Deutsche Rechtsgeschichte, II, p. 825.

vocant, cum VI solidis componat."¹⁰³ The greater length of L.Alam. LIX,1 makes it somewhat more difficult to compare with L.Baiu. IV,18. L.Alam. LIX,1 states: "Si quis liber liberum in via de caballo iectaverit et eum tolluerit [sic] de statim reddit in loco, addat ei consimilem et 12 solidos."¹⁰⁴ That the laws are basically the same is evident from the texts themselves, although L.Baiu. IV,18 does not add that an additional horse must be rendered to the victim. It is possible that Ed.Roth. XXX¹⁰⁵ is the basis of the south Germanic laws discussed here, since the OHG marahworfin of this Lombardic law is similar to marachfalli of L.Baiu. IV,18, and that much of the terminology of this law is also expressed by L.Alam. LIX,1.

(b) No agreement.

(c) No agreement.

¹⁰³Schwind, p. 329.

¹⁰⁴Lehmann, p. 129. L.Alam. LIX,1 explicitly defines that a freeman is the victim of this crime, just as L.Alam. LIX,2 (not included in this discussion) concerns the same crime with a freewoman as the victim. There is no parallel between L.Baiu. IV,18 and L.Alam. LIX,2, since the former makes no mention of women. It should be noted, however, that freewomen receive double the compensation freemen receive for this crime.

¹⁰⁵"De marahworfin. Si quis hominem liberum de caballo in terra iectaverit per quolibet ingenio iniquo animo, octuginta solidos ei componat; et si aliquam lesionem ei fecerit, sicut in hoc edictum adnexum est, componat." Bluhme, p. 18; the italics are his. Cf. Ed.Roth. CCCLXXIII which pertains to a slave guilty of this offense.

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Lex Baiuvariorum IV,28

De plaga claudicationis.

Lex Alamannorum LVII,62

(a) The similarity of L.Baiu. IV,28 and L.Alam. LVII, 62 is especially close, since they not only contain the same concept of compensating for lameness, but also use the same Latin idiom. L.Baiu. IV,28 states: "Si quis aliquem plagaverit, ut exinde claudus fiat, sic ut pes eius ros tangat, quod tautragil¹⁰⁶ vocant, cum XII solidis componat."¹⁰⁷ To this law, L.Alam. LVII,62 is similar. The latter says: "Si quis autem alium in genuculo placaverit [sic], ita ut claudus permaneat, ut pes eius ros tangat, quod Alamanni tautragil dicunt, cum 12 solidis componat."¹⁰⁸ The expression pes eius ros tangere is curious since rendering "to touch his foot on the dew" makes little sense. In the consideration that dew appears on the ground or on low-lying plants, the phrase probably means to touch (in the sense of dragging) one's foot on the ground.¹⁰⁹ In

¹⁰⁶See Kralik, NA, XXXVIII (1913), 601-603, although his reference to L.Baiu. IV,27 should be corrected to IV,28. Cf. Baesecke, Geschichte der deutschen Sprache, LIX (1935), 19, and Schmeller, Bayerisches Wörterbuch, II, col. 69.

¹⁰⁷Schwind, p. 334.

¹⁰⁸Lehmann, p. 127. The italics are Lehmann's.

¹⁰⁹See Grimm, Deutsche Rechtsalterthümer, I, p. 131.

this way both laws are clearly describing lameness of the foot.

(b) As the laws show, both possess the OHG tautragil with no difference in spelling which has usually been the case in other laws discussed thus far, and both laws as well contain the Latin idiom discussed under heading (a) which precedes and defines tautragil. In addition, 75 per cent of the words of L.Alam. LVII,62 reappear as 86 per cent of the terms of L.Baiu. IV,28.

(c) The laws also express additional agreement since both require the same wergeld of twelve solidi.

* * * * *

Lex Baiuvariorum IV,29

De interfectione liberi hominis.

Lex Alamannorum LX,1

(a) Both the Lex Alamannorum and Lex Baiuvariorum contain similar legislation compensating for the murder of freemen. Laws from both codes, L.Baiu. IV,29 and L.Alam. LX,1, explicitly stipulate that payment will be made whether or not the slain freeman has relatives. Although there are laws from several other Germanic codes which also compensate for the murder of freemen, they make no mention of relatives. It is for this reason that the similarity between L.Baiu. IV,29 and L.Alam. LX,1 is greatly increased. Nevertheless, the basis for these laws

may very well be Pact.Sal. XLI,1¹¹⁰ and L.Rib. VII.¹¹¹ Of the two south Germanic laws discussed here, L.Baiu. IV,29 is less complex than L.Alam. LX,1, and it follows: "Si quis liberum hominem occiderit, solvat parentibus suis, si habet, si autem non habet, solvat duci vel cui commendatus fuit, dum vixit, bis LXXX solidos, hoc sunt CLX."¹¹² The payment of 160 solidi is made if the slain freeman dies with or without relatives. This wergeld is also evident in L.Alam. LX,1 with slight modifications. The law follows: "Si quis autem liber liberum occiderit, componat eum bis octuaginta solidis ad filios suos. Si autem filios non reliquit nec heredes habuit, solvat eum 200 solidis."¹¹³ This payment of 200 solidi is only slightly different from that payment required by L.Baiu. IV,29. We may assume that 160 solidi is the full wergeld to which is added a fredus of 40 solidi.¹¹⁴ Although L.Alam. LX,1 contains a fredus in

¹¹⁰"Si quis [Vero] ingenuum Francum aut barbarum, qui lege Salica vivit, occiderit, cui fuerit adprobatum, mallobergo leodi sunt, VIIIIM denarios qui faciunt solidos CC culpabilis iudicetur." Eckhardt, Pactus, p. 154. Vero is given within brackets in Eckhardt's edition.

¹¹¹"Si quis hominem ingenuum Ribvarium interfecerit, 200 solidos culpabilis iudicetur; aut si negaverit, cum 12 iuret." Beyerle-Buchner, p. 77. The same wergeld is evident in L.Burg. II,2.

¹¹²Schwind, p. 334.

¹¹³Lehmann, pp. 129-130.

¹¹⁴See ibid., p. 106, n. 3. This two fold payment of the full wergeld plus forty solidi as a fredus is also evident in L.Alam. XLV. Two Bavarian laws which are similar to L.Alam. XLV are also discussed in this paper. See L.Baiu.

addition to the entire wergeld, both laws do agree by requiring the full price of a man's life if one is murdered by another.

(b) The laws are also close philologically. As a result, 50 per cent of the terminology of L.Alam. LX,1 constitute 46 per cent of all the terms of L.Baiu. IV,29.

(c) Both laws require the full wergeld of 160 solidi to which L.Alam. LX,1 adds a fredus of 40 solidi.¹¹⁵

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Lex Baiuvariorum IV,30

De sorum feminis.

Lex Alamannorum LX,2

(a) Just as L.Baiu. IV,29 and L.Alam. LX,1 compensate for the murder of freemen, L.Baiu. IV,30 and L.Alam. LX,2 compensate for freewomen. The two laws analyzed in this

IX,4 and XVI,5 below.

¹¹⁵L.Alam. LX,1 is not modified by L.Alam. LX,3 which says: "Medius vero Alamannus si occisus fuerit, 200 solidis solvat eum parentibus." Ibid., p. 130. L.Alam. LX,3 is the only Alamannic law which mentions an ordinary Alamannus (medius Alamannus). Edgar Holmes McNeal, Minores and Mediocres in the Germanic Tribal Laws (Columbus, 1905), p. 59, indicates that medius Alamannus means no more than a liber Alamannus, that the ordinary Alamannus is a free Alamannus. Cf. Richard Schröder, Lehrbuch der deutschen Rechtsgeschichte, 4th ed. (Leipzig, 1902), p. 216, and Eberhard F. Otto, Adel und Freiheit im deutschen Staat des frühen Mittelalters. Studien über 'Nobiles' und Ministerialen (Neue Deutsche Forschungen, Abteilung Mittelalterliche Geschichte, II; Berlin, 1937), p. 150.

paper contain unusual compensation for freewomen; for various crimes and abuses, freewomen receive double the wergeld freemen receive,¹¹⁶ and this is true for murder as well. This unusual compensation for women is also evident in Pact. Sal. XXIV,8¹¹⁷ and L.Rib. XII,1, but these laws require a triple wergeld if freewomen are killed. No Alamannic or Bavarian law discussed in this paper indicates why freewomen receive double compensation, except for that Bavarian law which draws our present attention, IV,30. Besides describing the crime of murder to which freewomen may fall victim, L.Baiu. IV,30 also says that women receive double compensation because they cannot defend themselves with weapons.¹¹⁸

This law says:

De feminis vero eorum, si aliquid de istis actis contigerit, omnia dupliciter componantur. Et quia femina cum arma defendere se nequiverit, duplicem compositionem accipiat.

Si autem pugnare voluerit per audaciam cordis sui sicut vir, non erit duplex compositio eius, sed sicut fratres eius ita et ipsa recipiat.¹¹⁹

¹¹⁶See Davoud-Oghlou, Histoire de la Législation, I, pp. 238 and 332.

¹¹⁷"Si quis feminam ingenuam, postquam coeperit infantes habere, occiderit [cui fuerit adprobatum], mallobergo leodinia sunt, XXIVM denarios qui faciunt solidos DC culpabilis iudicatur." Eckhardt, Pactus, p. 92. The brackets are inserted by Eckhardt.

¹¹⁸This view is also expressed by Ed.Roth. CCLXXVIII. See Brunner, Deutsche Rechtsgeschichte, II, p. 797.

¹¹⁹Schwind, p. 335. There is no similarity as Schwind alleges between this law and L.Alam. LXVIII. Although the latter also concerns murdering a freewoman (as well as a freeman), it adds that this is done in secret. The secrecy of the crime described by L.Alam. XLVIII is crucial to the

This law states that if a freewoman wishes to defend her rights by force of arms, she will be compensated as if she were a man, that is, she receives single compensation. It is by being defendless in her own right that a woman receives double compensation. L.Alam. LX,2 says that women also receive double compensation, but does not add why this is so. This law is very brief since it simply says: "Feminas autem eorum semper in duplum."¹²⁰ The double wergeld of both laws is similar, but no comment can be made for the situation governing double compensation, since L.Alam. LX,2 does not indicate why freewomen receive a double wergeld.

(b) No agreement.

(c) The laws are also similar since both require double compensation for freewomen.

law itself, since if this happens, freewomen are to be compensated by the extraordinary payment of eighteenfold wergeld (freemen receive ninefold wergeld for the same crime). See Lehmann, p. 108.

¹²⁰Ibid., p. 130.

CHAPTER V
Titles V-VI

Title V

De liberis qui per manum dimissi sunt liberi, quod frilatz¹
vocant.

Lex Baiuvariorum V,1

Si quis libertum percusserit.

Lex Alamannorum LVII,1

(a) Striking another is not class-bound, since freedmen and slaves as well as freemen could be the victim of this offense. For this reason, L.Baiu. V,1 which concerns striking a freedman manifests similarity with L.Alam. LVII,1, and it is also similar to L.Burg. V,2.² L.Baiu. V,1 says: "Si quis eum percussit [sic], quod

¹Kralik, NA, XXXVIII (1913), 430, and Brunner, Deutsche Rechtsgeschichte, I, p. 142, n. 40.

²"Qui libertum alienum percusserit, per singulos ictus singulos semisses solvat, multae autem nomine solidos IIII." De Salis, p. 45. Cf. L.Visig. VI,4,3, Ed.Roth. XLIII, and L.Sal. XXIII,1.

*pulislac*³ vocant, cum medio solidis componat."⁴ The same crime is evident in L.Alam. LVII,1 which says: "Si quis alium per iram percusserit, quod Alamanni pulislac dicunt, cum uno solido componat."⁵ L.Baiu. V,1 does not add as does L.Baiu. IV,1 above or VI,1 below that this offense is committed in the fit of anger. The similarity of this law with these two Bavarian laws cannot be mistaken, indicating that L.Baiu. V,1 also concerns striking another in anger. This assumption is substantiated by the presence of pulislac in L.Baiu. V,1 which means, of course, to strike another in anger.

(b) The laws contain the OHG pulislac as does L.Baiu. IV,1 above. In addition, 64 per cent of the terms of L.Alam. LVII,1 reappear as 82 per cent of the terms of L.Baiu. V,1.⁶

(c) No agreement.

* * * * *

Lex Baiuvariorum V,2

Si sanguinem effuderit.

³Kralik, HA, XXXVIII (1913), 589-590. Cf. Brunner, Deutsche Rechtsgeschichte, II, p. 824.

⁴Schwind, p. 338.

⁵Lehmann, p. 116. The italics are Lehmann's.

⁶Fifty-eight per cent of the terminology of L.Baiu. IV,1 also appears as 64 per cent of the terms of L.Baiu. V,1.

Lex Alamannorum LVII,2

(a) If a wound is opened by striking another and blood comes forth, L.Baiu. V,2 says that a freeman (understood) is to receive eighth and one-half saigas (saicas), which is equal to two tremisses, as the wergeld: "Si ei sanguinem perfuderit, cum VIII saicas et semi conponat."⁷ L.Alam. LVII,2 is likewise similar since it says: "Si sitem sanguinem fuderit, sic ut terra tangat, conponat solido uno et semis."⁸ The laws are obviously similar as heading (c) below also shows.

(b) Linguistically, 46 per cent of the terms of L.Alam. LVII,2 constitute 60 per cent of the words of L.Baiu. V,2. In this calculation, fundera of L.Alam. LVII,2 is equated with perfundera of L.Baiu. V,2. Only L.Baiu. V,1 employs perfundera, whereas L.Alam. LVII,2, L.Baiu. IV,2 above, and L.Baiu. VI,2 below all use fundera. The use of effundera in the title of L.Baiu. V,2 need not distort the use of perfundera in the law itself.⁹

(c) No agreement.

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Lex Baiuvariorum V,3

⁷Schwind, p. 338. For the saiga, see Schröder, Zeitschrift für Numismatik, XXIV (1904), 341-342.

⁸Lehmann, p. 116.

⁹Seventy per cent of the words of L.Baiu. IV,2 reappear as the same percentage of the terms of L.Baiu. V,2.

Si manus iniecerit et ita plagaverit, ut medicum inquirat, vel si venam percusserit.

Lex Alamannorum LVII,3

(a) *L.Baiu.* V,3 contains four offenses freedmen are compensated for, but only two of these are similar to the *Lex Alamannorum*.¹⁰ The first Alamannic law showing similarity with *L.Baiu.* V,3 is *L.Alam.* LVII,3, but it is similar to the third offense (exposure of the skull) described by *L.Baiu.* V,3. This offense is also compensated by *L.Baiu.* IV,4. Of the two Alamannic laws (LVII,3 and LVIII) which are similar to *L.Baiu.* V,3, the third offense is discussed first solely because *L.Alam.* LVII,3 appears before LVIII in the Alamannic code. All of *L.Baiu.* V,3 is quoted here to assist the discussion of the present and subsequent Alamannic laws. The law follows: "Si in eum contra legem manus iniecerit, quod infanc¹¹ dicunt, vel si eum plagaverit, ut propter hoc medium inquirat, vel sic ut in capite testa appareat vel vena percussa fuerit, cum solido et semi conponat."¹² The third offense of *L.Baiu.* V,3 describes compensating for the skull which is exposed, and this exposure is probably caused by a blow such as that

¹⁰Of the remaining two offenses which show no similarity with the *Lex Alamannorum*, the fourth and last offense (which concerns compensating for a severed vein) is similar to *L.Baiu.* IV,4 and VI,3.

¹¹Kralik, *NA*, XXXVIII (1913), 447-448.

¹²Schwind, p. 339.

described above by L.Baiu. V,1. Clearly, this law is similar to L.Alam. LVII,3 which says: "Si enim percusserit eum, ut testa appareat et radatur, cum 3 solidis componat."¹³ Although L.Baiu. V,3 does not include as does L.Alam LVII,3 that the skull is scraped, it may be assumed that this applies to L.Baiu. V,3 as well, since the skin of the head is removed in a violent way such as by a blow. No other Germanic code contains this injury.¹⁴

(b) Fifty-four per cent of the terminology of L.Alam. LVII,3 reappears as 20 per cent of the terms of L.Baiu. V,3. The low percentage of L.Baiu. V,3 is explainable since this law is three times the length of L.Alam. LVII,3.

(c) No agreement.

Lex Alamannorum LVIII

(a) Like L.Baiu. IV,3 above, L.Alam. LVIII is also similar to L.Baiu. V,3. Both of these laws concern laying a hand in the way of another thereby obstructing his path. It is the first offense of L.Baiu. V,3 quoted above that concerns obstructing the path of another. The similarity of this law with L.Alam. LVIII is evident. The latter states: "Si quis liber liberum in via manus iniserit contra lege [sic] et eum via contradixerit aut aliquid ei

¹³Lehmann, p. 116.

¹⁴There is no similarity between L.Alam. LVII,3 and Pact.Sal. XVII,4 as Eckhardt, Leges Alamannorum II, p. 48 believes. See p. 87, n. 20 above.

tollere voluerit, cum sex solidis componat."¹⁵ The addition of in via to L.Alam. LVIII does not distort the basic similarity of this law with L.Baiu. V,3. The two laws discussed here as well as L.Baiu. IV,3 emphasize the illegality of blocking another's path.¹⁶

(b) Likewise, 35 per cent of the terms of L.Alam. LVIII constitute 23 per cent of the words of L.Baiu. V,3.¹⁷

(c) No agreement.

* * * * *

Lex Baiuvariorum V,4

Si ossa tulerit.

Lex Alamannorum LVII,4

(a) If a bone of the head is broken by a blow, L.Baiu. V,4 requires a wergeld of three solidi for freedmen: "Si in eum talem plagam fecerit, ut exinde os tollatur de capite vel de brachio supra cubitum, cum III solidis componat."¹⁸ This law also compensates for a broken upper arm. Only the first of these injuries can be found in the Lex Alamannorum, and this in L.Alam. LVII,4. The latter says: "Si autem de capite ossum fractum de plaga tulerit [sic], ita ut super

¹⁵Lehmann, p. 129.

¹⁶This is true as well for L.Baiu. VI,3 below.

¹⁷Eighty-five per cent of the terminology of L.Baiu. IV,3 and 23 per cent of L.Baiu. IV,4 appear as 31 and 34 per cent respectively of the words of L.Baiu. V,3.

¹⁸Schwind, p. 339.

publica via lata 24 pedis in scuto sonaverit ille ossus, cum 6 solidis componat."¹⁹ The similarity between these two laws is also expressed by L.Baiu. IV,5 described above.²⁰ As a result, all other laws which are similar to L.Baiu. IV,5 are similar to L.Baiu. V,4, except that the latter deals with injuring freedmen. These other laws are notably: L.Rib. LXXI,1, Ed.Roth. XLVII, and Pact.Sal. XVII,4-5.

(b) Thirty-five per cent of the terms of L.Alam. LVII, 4 appear as 43 per cent of L.Baiu. V,4.²¹

(c) No agreement.

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Lex Baiuvariorum V,5

Si cervella adparuerit.

Lex Alamannorum LVII,6

(a) Of the three conditions contained in L.Baiu. V,5, two show similarity with the Lex Alamannorum. The third condition, which concerns illegally binding another (and it may be assumed with rope),²² has no similarity

¹⁹Lehmann, p. 116.

²⁰However, there is no similarity between L.Baiu. V,4 and L.Alam. LVII,31 as Schwind assumes. For a refutation of Schwind's views, see p. 92, n. 29.

²¹Eighty-eight per cent of the terms of L.Baiu. IV,5 appear as 66 per cent of the words of L.Baiu. V,5.

²²Illegally binding another with rope is also expressed by L.Baiu. IV,7: "Si quis eum funibus ligaverit contra legem, XII solidos componat." Schwind, p. 320. However, there is no similarity between L.Baiu. IV,7 and the Alamannic code.

with any law of the Alamannic code. The first of these two conditions expressing similarity with the Lex Alamannorum is similar with L.Alam. LVII,6, since both of them concern the wergeld required if the brain is exposed. The basis of the south Germanic laws compared here is Pact.Sal. XVII,4 which clearly describes the exposure of the brain due to a blow to the head. L.Baiu. V,5 states: "Si quis eum percusserit, ut cervella eius appareant, vel in interiora membra vulneraverit, quod brevavunt²³ dicunt, vel eum ligaverit contra legem, cum VI solidis componat."²⁴ The exposure of the brain is the result of a blow to the head, such as that described by L.Baiu. V,4. L.Alam. LVII,6 which is similar says: "Si autem testa transcapulata [sic] fuerit, ita ut cervella appareant, ut medicus cum pinna aut cum fanone cervella tetigit, cum 12 solidis componat."²⁵ This law as well describes the exposure of the brain, although it clearly says that the brain appears because the skull is cut through (transcapulatum esse). L.Baiu. V,5 describes this injury in more general terms by saying that the skull is struck (vulnerare).

(b) Thirty-two per cent of the terminology of L.Alam.

²³Kralik, NA, XXXVIII (1913), 445-446.

²⁴Schwind, pp. 339-340.

²⁵Lehmann, p. 117. For transcapulatum esse and fanone, see pp. 93-94, nn. 33 and 34 above.

LVII,6 constitutes 28 per cent of the terms of L.Baiu. V,5.

(c) No agreement.

Lex Alamannorum LVII,55

(a) The second condition described by L.Baiu. V,5 concerns payment for injury to the internal organs. The description of this injury is also evident in L.Alam. LVII, 55. The latter says: "Si autem interiora membra vulneratus fuerit, quod hrevovunt dicunt, cum 12 solidis componat."²⁶ No other Germanic law discusses this injury.²⁷

(b) Not only do both laws contain the OHG hrevavunt, but they also show Latin philological similarity. Here, 85 per cent of the total terminology of L.Alam. LVII,55 is evident as 40 per cent of the terms of L.Baiu. V,5.²⁸ In this calculation, vulneratum esse of L.Alam. LVII,55 is equated with vulnerare of L.Baiu. V,5, although the former is still counted as two words.

(c) No agreement.

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Lex Baiuvariorum V,6

Si eum mancaverit.

²⁶Ibid., p. 126. The italics are Lehmann's. Hrevovunt of L.Alam. LVII,55 is the same word as hrevavunt of L.Baiu. V,5.

²⁷Cf. Pact.Sal. XVII,6.

²⁸A comparison of L.Baiu. IV,6 and V,5 shows that 71 per cent of the terms of the former reappear as 48 per cent of the terms of the latter.

Lex Alamannorum LVII,14

(a) Like L.Baiu. IV,9 above, L.Baiu. V,6 is also similar to two Alamannic laws, LVII,14 and 66. Although L.Alam. LVII,14 is more descriptive than explanatory, it still shows legal similarity with L.Baiu. V,6, shows both laws discuss the wergeld for the loss of sight. L.Baiu. V,6 says: "Si quis ei oculum vel manum vel pedem excusserit, cum X solidis componat."²⁹ This law describes in what manner sight is lost: by tearing out the eyes. L.Alam. LVII,14 does not indicate how sight is lost; it merely says so without qualifying its description: "Si autem ipse visus exit et melus, 40 solidos componat."³⁰ Putting out one's eye(s) described by L.Baiu. V,6 may also be understood by the general description of the loss of sight in L.Alam. LVII,14, although the latter does not describe how this is done.³¹ Besides other Germanic laws already compared with L.Baiu. IV,9 above, Pact.Sal. XXIX,1 may be the basis of the present Bavarian law, V,6, as well.³²

(b) There are no noteworthy terms in either laws illustrating how one is philologically similar to the other. For this reason, no percentage is supplied.

²⁹Schwind, p. 340.

³⁰Lehmann, p. 119.

³¹Contrary to Schwind, there is no agreement between L.Baiu. V,6 and L.Alam. LVII,13. See p. 97, n. 44 above for a refutation of Schwind's views.

³²Cf. Pact.Sal. XXIX,12.

(c) No agreement.

Lex Alamannorum LVII,66

(a) Both L.Baiu. V,6 and L.Alam. LVII,66 specify the wergeld if a foot is severed from the body. The latter says: "Si totum pedem absciderit, cum 40 solidis componat."³³ Nevertheless, there is no mention of compensating for the loss of a hand in L.Alam. LVII,66 as there is in L.Baiu. V,6. Although this has already been discussed under L.Baiu. IV,9 above, repeating the main points could only supplement the present discussion. Nowhere in the Lex Alamannorum are there laws describing the loss of a hand, since arms and not hands are discussed by the Alamannic code. For this reason, there is no parallel with any Alamannic law for severing the hand from the body described by L.Baiu. V,6.³⁴ The similarity between L.Baiu. V,6 and L.Alam. LVII,66 is clearly apparent for the loss of a foot, both

³³Lehmann, p. 128.

³⁴There is not (as Schwind assumes) a similarity between L.Alam. LVII,39, which concerns the compensation for the loss of the lower arm, and L.Baiu. V,6. See pp. 97-98, n. 45 above for a refutation of Schwind's arguments. Likewise, there is no agreement between L.Baiu. V,6 and L.Baiu. IV,10, although Schwind (p. 340, n. 2) believes there is. L.Baiu. IV,10 concerns crippling another, either by rendering a blow with disables, or by permanently breaking a bone. In addition, L.Baiu. IV,10 does not specify which part of the body is crippled. Although severing a hand or foot from the body disables a person, L.Baiu. IV,10 is too general a law to apply in conjunction with the more explicit L.Baiu. V,6. See L.Baiu. IV,10 discussed under its own heading above.

of which may be drawn from Pact.Sal. XXIX,1.³⁵

(b) Philologically, 63 per cent of the terms of L.Alam LVII,66 reappear as 38 per cent of the words of L.Baiu. V,6.³⁶

(c) No agreement.

* * * * *

Lex Baiuvariorum V,7

De pollice et caeteris digitis, quomodo componantur.

Injury to individual fingers receives particular attention by both the Alamannic and Bavarian codes, as is already evident above in the discussion of L.Baiu. IV,11. The present Bavarian law, V,7, also concerns compensation for the fingers, and it says:

Si quis alicui pollicem absciderit, cum VI solidis componat.

At proximum a pollice et minimum digitum [absciderit,] cum tribus solidis componat.

Et medios duos [digitos] cum duobus solidis componat.³⁷

To L.Baiu. V,7, five Alamannic laws are similar. And like L.Baiu. IV,11 above, these Alamannic laws are similar to L.Baiu. V,7 in exactly the same order as they appear in the

³⁵Cf. Pact.Sal. XXIX,10-11.

³⁶A comparison of L.Baiu. IV,9 with L.Baiu. V,6 shows that 71 per cent of the terminology of the former constitutes 77 per cent of the terms of the latter.

³⁷Schwind, p. 340. The additions of absciderit to the second paragraph and digitos to the third paragraph are understood from L.Baiu. IV,11,§2 and §3 respectively.

Lex Alamannorum, with the exception of L.Alam. LVII,52.

This relationship is expressed in the following table:

<u>L.Alam.</u>	<u>L.Baiu.</u>
LVII,42	V,7,§1
LVII,45 and 52	V,7,§2
LVII,48 and 51	V,7,§3

There is no essential difference between L.Baiu. V,7 and IV,11, except that the latter is similar to one other Alamannic law, LVII,53. There is also no difference between L.Baiu. V,7 and VI,7, which is discussed under its own heading below. The basis of these Alamannic laws, and subsequently of L.Baiu. V,7, is in all likelihood, Pact. Sal. XXIX,4,6-7.³⁸ Because five Alamannic laws are similar with L.Baiu. V,7, all five laws are discussed jointly.

Lex Alamannorum LVII,42,45,48,51-52

(a) L.Baiu. V,7,§1 concerns cutting off another's thumb, and it is similar with L.Alam. LVII,42 which says: "Si autem totum [pollice absciderit], cum 12 [solidis conponat]."³⁹ Likewise, two other Alamannic laws, LVII, 45 and 52, are similar to the second paragraph of L.Baiu.

³⁸The relationship between these Salic laws and the laws analyzed here is illustrated in a chart and included in the discussion of L.Baiu. IV,11 above.

³⁹Lohmann, p. 124. Pollice absciderit and solidis conponat are understood from the previous law of the Lex Alamannorum, LVII,41. There is no similarity between L.Alam. LVII,41 and L.Baiu. V,7,§1 as Schwind assumes. See p. 102, n. 56 above.

V,7, which concerns the compensation for severing the entire forefinger and little finger from the hand. L.Alam. LVII, 45 concerns the compensation for severing the forefinger: "Si totum [proximo pollice] absciderit a palma, cum 10 solidis conponat."⁴⁰ L.Alam. LVII,52 may have been added to L.Baiu. V,7,§2 following the influence of L.Alam. LVII,45, since all the Alamannic laws which are similar to L.Baiu. V,7 are taken from the Lex Alamannorum in order of their appearance within that code. L.Alam. LVII,52⁴¹ compensates for cutting off the little finger: "Illo minimo digito ita solvatur ut polex [sic]."⁴² It, too, is similar to L.Baiu. V,7,§2 quoted above. The last two Alamannic laws, LVII,48 and 51, are similar to L.Baiu. V,7,§3, which concerns compensating for the loss of the two middle fingers. L.Alam. LVII,48 likewise concerns the loss of that finger simply called the middle finger. This law says: "Si totus [longissimus digitus] a palma abscisus fuerit, cum 6 solidis conponat."⁴³ The other middle finger compensated by L.Baiu.

⁴⁰Ibid., p. 125. Proximo pollice is understood from the previous law, LVII,43. For a refutation of Schwind's contention that L.Alam. LVII,43 and 44 are similar to L.Baiu. V,7,§2, see p. 103, n. 57 above where these Alamannic laws are discussed with L.Baiu. IV,11,§2.

⁴¹L.Alam. LVII,52 is discussed out of order because of its similarity with L.Alam. LVII,45.

⁴²Ibid.

⁴³Ibid. Longissimus digitus is understood from the previous law, LVII,46. See p. 103, n. 59 above for a refutation of Schwind's views that L.Alam. LVII,46 and 47 show similarity with L.Baiu. V,7,§3.

V,7,§3 is the ring finger, and this is also discussed by L.Alam. LVII,51. The latter says: "Si totum Anillaris digitus, cum 8 solidis conponat."⁴⁴ There are in total five Alamannic laws showing similarity with all three paragraphs of L.Baiu. V,7. The proximity of the legal technique of L.Baiu. V,7 and IV,11 will also be evident below in the discussion of L.Baiu. VI,7.

(b) The philological similarity between L.Baiu. V,7 and these five Alamannic laws is difficult to calculate, as it is for L.Baiu. IV,11 above. This is due to the large number of words which must be inferred in four of the five Alamannic laws discussed here. Nevertheless, the following percentages result. Sixty-six per cent of the terminology of L.Alam. LVII,42 appears as the same percentage of L.Baiu. V,7,§1. Likewise, 55 per cent of the terms of L.Alam. LVII,45 reappear as 50 per cent of L.Baiu. V,7,§2, although only 29 per cent of the terms of L.Alam. LVII,52 (which contains no inferred words) constitute a mere 18 per cent of L.Baiu. V,7,§2. The last two Alamannic laws, LVII,48 and 51, manifest little philological similarity with L.Baiu. V,7,§3, since the latter contains a general term of the two middle fingers (mediani duo digiti) and L.Alam. LVII,

⁴⁴Ibid. Anillaris digitus and cum solidis conponat are understood from the previous law, LVII,49. There is no similarity between L.Alam. LVII,49 and 50 and L.Baiu. V,7,§3 as Schwind believes. See p. 104, n. 60 above for a refutation of Schwind's views.

48 and 51 explicitly describe the middle fingers as the longest finger (longissimus digitus) in the former and the ring finger (anillaris digitus) in the latter.⁴⁵ Both L.Baiu. V,7 and all of the Alamannic laws discussed here containing verbs employ abscidere or abscisum esse. They do not use the alternate form abscindere or precidere.⁴⁶

(c) No agreement.

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Lex Baiuvariorum V,8

De plaga claudicationis.

Lex Alamannorum LVII,62

(a) Freedmen also receive compensation if they are lamed by another as is described by L.Baiu. V,8. For this reason, this law is similar with L.Alam. LVII,62. L.Baiu. V,8, which is closely parallel to L.Baiu. IV,28, says: "Si quis eum plagaverit, ut exinde claudus permaneat, sic ut pes eius ros tangat, cum VI solidis componat."⁴⁷ L.Baiu.

⁴⁵Fifty per cent of the terms of the first three paragraphs of L.Baiu. IV,11 are evident as 75 per cent of the words of L.Baiu. V,7. There is no similarity between the last two paragraphs of L.Baiu. IV,11 and L.Baiu. V,7.

⁴⁶The use of precidere in the Lex Baiuvariorum is evident from only one Bavarian law, I,13, where it means to separate. See Schwind, p. 288. Although abscidere would normally be used before precidere, the latter should not be ruled out as a verb infrequently used, since MS Bb of Schwind's edition of the Lex Baiuvariorum uses praescidere, a simple combination of precidere and abscidere.

⁴⁷Ibid., p. 341.

V,8 does not specify in what part of the leg the injury occurred, since a lamed leg may be caused by injury to the thigh, lower leg, or knee. That the physical condition described by this law is the result of mayhem is evident by its comparison to L.Alam. LVII,62, which presents a strong case in point. L.Alam. LVII,62 states: "Si quis aitem alium in genuculo placaverit [sic], ita ut claudus permaneat, ut pes eius ros tangat, quod Alamanni tautragil dicunt, cum 12 solidis componat."⁴⁸ Although the OHG tautragil supplied by L.Alam. LVII,62 and L.Baiu. IV,28 is not contained in L.Baiu. V,8, the injury described by the latter is unmistakably the same as that described by L.Alam. LVII, 62. This is especially evident in the Latin idiom pes eius ros tangere which means to drag one's foot on the ground, that is, to be lame.⁴⁹ Tautragil may be excluded from L.Baiu. V,8 simply because this law is so very similar to the former L.Baiu. IV,28; hence, to know one is to know the other. L.Baiu. VI,11 (discussed below), which compensates for lameness to slaves, does employ the OHG tautragil.

(b) Fifty-eight per cent of the words of L.Alam. LVII,62 constitute 78 per cent of the terms of L.Baiu.

⁴⁸Lehmann, p. 127. The italics are Lehmann's.

⁴⁹See the explanation of this idiom in the discussion of L.Baiu. IV,28 above. Cf. Grimm, Deutsche Rechtsalterthümer, I, p. 131.

V,8.⁵⁰

(c) No agreement.

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Lex Baiuvariorum V,9

De interfectione liberti hominis.

Lex Alamannorum LX,1

(a) L.Baiu. V,9 concerns the compensation for killing a freedman. It says: "Si eum occiderit, conponat eum domino suo sum XL solidis."⁵¹ The inclusion of this law into title V completes the offenses to which freedmen could fall victim. This law is an apparent addition to the Lex Baiuvariorum, knowing the nature of the other offenses to which freedmen may suffer, and it is also parallel to L.Alam. LX,1, which has already been discussed with L.Baiu. IV,29 above. Although L.Alam. LX,1 concerns the killing of another, the victim it describes is a freeman: "Si quis autem liber liberum occiderit, conponat eum bis octuaginta solidis ad filios suos. Si autem filios non reliquit nec heredes habuit, solvat eum 200 solidis."⁵² Unlike L.Alam. LX,1, L.Baiu. V,9 does not specify the compensation for the slain freedman who has no relatives. Such an inclusion

⁵⁰Likewise, 71 per cent of the terminology of L.Baiu. IV,28 reappears as 83 per cent of L.Baiu. V,8.

⁵¹Schwind, p. 341.

⁵²Lehmann, pp. 129-130.

would be ordinarily understood by referring to L.Baiu. IV,29 to which the present Bavarian law is similar. Nevertheless, the similarity of L.Baiu. V,9 and L.Alam. LX,1 cannot be mistaken, although there is an obvious class distinction between the freedman of the former and the freeman of the latter.

(b) Philologically, only 18 per cent of the terms of L.Alam. LX,1 are evident as 50 per cent of L.Baiu. V,9.⁵³

(c) No agreement.⁵⁴

⁵³However, only 11 per cent of the words of L.Baiu. IV,29 reappear as 30 per cent of the words of L.Baiu. V,9.

⁵⁴As would be expected, there is no wergeld agreement between L.Baiu. V,9 and L.Alam. LX,1. However, attention should be focused on another wergeld relationship: this one is between L.Baiu. V,9 and L.Baiu. IV,29, and it presents a problem. As stated in the introduction, freedmen receive one-half the wergeld freemen receive. This is not evident, however, in L.Baiu. V,9. A comparison of the wergeld required by the present Bavarian law which concerns freedmen and L.Baiu. IV,29 which concerns freemen and to which L.Baiu. V,9 is similar shows that the former requires not one-half the wergeld of the latter, but one-quarter. This apparent discrepancy may be explained if we consider the person to whom the wergeld is paid when a freedman is killed. The law says that forty solidi are paid to the freedman's master, and not to his relatives. That the master of the freedman (and we must prefix the word "former" to master) is compensated rather than the freedman's relatives indicates that the bonds of servitude of the previous master-slave relationship is not completely severed once the slave is manumitted. This view is also upheld by Dollinger, Classes rurales, p. 238. Nevertheless, this does not legislate against relatives who would normally be compensated for a slain freedman. For this reason, it may be assumed that the forty solidi paid to the former master represents only half of the total wergeld. The other half, thereby making a total of eighty solidi, is paid to the freedman's relatives. Dahn, Könige, IX, 2, p. 156, and Davoud-Oghlou, Histoire de la Legislation, I, p. 229 surprisingly accept this inequality without question. Fustel de Coulanges, "De l'inégalité du wergeld dans les

Title VI

De servis, quomodo componantur.

Lex Baiuvariorum VI,1

Si quis servum percusserit.

Lex Alamannorum LVII,1

(a) Title VI of the Lex Baiuvariorum is introduced by a law which compensates for a slave struck by another in the fit of anger, just as the first laws of titles IV and

 lois franques," Revue historique, II (1876), 479 is the only authority I have found which correctly gives the ratio of 1 (160 solidi, freeman): $\frac{1}{2}$ (80 solidi, freedman): $\frac{1}{4}$ (40 solidi, slave). Cf. Brunner, Deutsche Rechtsgeschichte, I, p. 359. Without the additional compensation to the freedman's relatives, it would have to be concluded that for freedmen the former master-slave relationship is a far more inherent characteristic for their class than is the bloodfeud. Without the bloodfeud and the necessity of rendering wergeld for offenses, there would be little need to promulgate laws, since the leges barbarorum are essentially wergeld laws explicitly designed with the sole intent of compensating for the bloodfeud in a peaceful manner. The leges barbarorum are not written to eliminate the sense of vendetta the relatives of a victim would ordinarily feel, but to prevent the bloodfeud from perpetuating injustice to another victim. There would be no guarantee that the relatives of a freedman would refrain from avenging murder unless the wergeld was also rendered to them to compensate for his loss. See J.M. Wallace-Hadrill, The Long-Haired Kings and other studies in Frankish history (London, 1962), p. 129. L.Alan. XVI does require eighty solidi for the death of a freedman. See Lehmann, p. 79. This apparent discrepancy is also true for the wergeld required if a slave is killed. For this, see L.Baiu. VI,12 below. Here, too, the wergeld should be twice the payment specified by this law, and this is especially valid since the victim described by L.Baiu. VI,12 is a slave, thereby under the direct jurisdiction of his master.

and V compensate for freemen and freedmen respectively if they are also similarly struck. L.Baiu. V,1 says: "Si quis servum alienum per iram percusserit, cum tremisse componat."⁵⁵ L.Baiu. VI,1 is parallel to L.Alam. LVII,1, although this Bavarian law shows considerable similarity with L.Rib. XX,1,⁵⁶ L.Burg. V,3,⁵⁷ and Ed.Roth. LXXVII. L.Alam. LVII,1 states: "Si quis alium per iram percusserit, quod Alamanni pulislac dicunt, cum uno solido componat."⁵⁸ The OHG pulislac, evident in this Alamannic law, need not be added to L.Baiu. VI,1 since this law closely parallels two former Bavarian laws, IV,1 and V,1. The conditions of both L.Baiu. VI,1 and L.Alam. LVII,1 are similar, even without the addition of pulislac.

(b) In addition, 57 per cent of the terms of L.Alam. LVII,1 reappear as 80 per cent of the words of L.Baiu. VI,1.⁵⁹

(c) No agreement.

⁵⁵Schwind, p. 342.

⁵⁶"Si ingenuus servo ictu percusserit, ut sanguis non exeat, usque ternos colpos singulos solidus componat; aut si negaverit, cum 6 iuret." Beyerle-Buchner, p. 82. Cf. L.Rib. XXIV, and L.Visig. VI,4,1.

⁵⁷"Qui servum alienum percusserit, per singulos ictus singulos tremisses solvat, multae autem nomine solidos III." De Salis, p. 45.

⁵⁸Lehmann, p. 116. The italics are Lehmann's.

⁵⁹Forty-two per cent of the terminology of L.Baiu. IV,1 reoccurs as 50 per cent of L.Baiu. VI,1.

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Lex Baiuvariorum VI,2

Si sanguinem fuderit.

Lex Alamannorum LVII,2

(a) The present Bavarian law (VI,2) describes a wound which spills blood, and this injury may be the result of that offense contained in L.Baiu. VI,1. L.Baiu. VI,2 simply says: "Si sanguinem fuderit, medium solidus donet."⁶⁰ To this law L.Alam. LVII,2 is similar: "Si autem sanguinem fuderit, sic ut terra tangat, componat solido uno et semis."⁶¹ The obvious similarity of both laws discussed here is not distorted by the added description on the part of L.Alam. LVII,2 of blood dripping on the ground. The legal technique of both laws could hardly be any closer. The basis of these laws, and particularly of L.Baiu. VI,2, may well be L.Rib. XXI,2 and XXV.⁶²

(b) The philological similarity of the laws indicates that 38 per cent of the terms of L.Alam. LVII,2 constitute 83 per cent of those terms of L.Baiu. VI,2.⁶³ In this comparison, medius of L.Baiu. VI,2 and semis of

⁶⁰Schwind, p. 342.

⁶¹Lehmann, p. 116.

⁶²Cf. Pact.Sal. XVII,3.

⁶³A comparison of L.Baiu. IV,2 and VI,2 shows that 56 per cent of the terms of the former appear as 83 per cent of the latter.

L.Alam. LVII,2 are equated as the same term.

(c) No agreement.

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Lex Baiuvariorum VI,3

Si manum iniocerit.

Lex Alamannorum LVII,3

(a) Of the four offenses described by L.Baiu. VI,3, only the first and the second in order of appearance are similar to the Lex Alamannorum. For this reason, L.Baiu. VI,3 parallels L.Baiu. V,3 which also describes four offenses, and of which two (the first and third) are similar with the Alamannic code. The second offense of L.Baiu. VI,3 is discussed first because the Alamannic law to which it is similar (LVII,3) precedes the appearance of the other Alamannic law in the Lex Alamannorum (LVIII) which also is similar with this Bavarian law. The entire L.Baiu. VI,3 is presented here: "Si in eo contra legem infanc⁶⁴ fecerit vel in capite plagam, ut testa appareat vel vena percussa vel plaga tumens fuerit, cum I solido componat."⁶⁵ The second offense of L.Baiu. VI,3 concerns a blow delivered to the head resulting in the exposure of the skull. This condition is similar to L.Alam. LVII,3, which states: "Si enim percusserit eum, ut testa appareat et radatur, cum 3

⁶⁴Kralik, NA, XXXVIII (1913), 447-448.

⁶⁵Schwind, p. 343.

solidis componat."⁶⁶ L.Alam. LVII,3 also is similar with L.Baiu. IV,4 and V,3 below, but neither of these Bavarian laws nor the present one specifies that the skull is scraped by a blow. As is already indicated in the discussion with L.Baiu. IV,4 and V,3 above, scraping the skull is possible since the blow delivered to the head was rendered violently, perhaps removing part of the flesh and thereby resulting in the exposure of the skull.⁶⁷

(b) The philological similarity between the laws would be greater if L.Baiu. VI,3 described only one injury instead of four. Nevertheless, 46 per cent of the terms of L.Alam. LVII,3 reappear as 24 per cent of L.Baiu. VI,3.

(c) No agreement.

Lex Alamannorum LVIII

(a) L.Alam. LVIII is essentially concerned with forcibly obstructing the passage of another: "Si quis liber liberum in via manus iniecerit contra lege [sic] et eum via contradixerit aut aliquid ei tollere voluerit, cum sex solidis componat."⁶⁸ Although taking the property of another which is also contained in this law is not described

⁶⁶ Lehmann, p. 116.

⁶⁷ Kenolaceini of L.Baiu. IV,4 which is the equivalent of the exposure of the skull in Old High German does not appear in the present Bavarian law. Cf. Kralik, NA, XXXVIII (1913), 448-449.

⁶⁸ Lehmann, p. 129.

by L.Baiu. VI,3, the basic concepts of L.Alam. LVIII and the first offense of L.Baiu. VI,3 closely resemble each other. L.Baiu. VI,3 does not clearly specify what committing infanc means, but a comparison of this term with L.Baiu. IV,3 and V,3 above (which employ infanc) indicate that it means to lay one's hand in the way of another, thereby obstructing passage. This same idea is evident in the title of L.Baiu. VI,3: Si manus iniecerit. The use of infanc in place of the Latin equivalent is an indication that this law is closely patterned upon previous Bavarian laws, IV,3 and V,3.

(b) The laws indicate little concrete philological similarity because of the greater length of L.Alam. LVIII.⁶⁹

(c) No agreement.

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Lex Baiuvariorum VI,4

Si ossa tulerit.

Lex Alamannorum LVII,4

(a) Both L.Baiu. IV,5 and V,4 describe the required wergeld for breaking a bone of the head and of the upper arm. Although L.Baiu. VI,4 does not specify what part of the body suffers a broken bone, the head is obviously meant by comparing this law with the laws which precede and follow it in title VI, laws which are primarily concerned with the head. In this respect, the present Bavarian law, VI,4,

⁶⁹However, 54 per cent of the terms of L.Baiu. IV,3 reappear as 28 per cent of the terms of L.Baiu. VI,3.

differs from L.Baiu. IV,5 and V,4 because it makes no mention of a bone broken from the upper arm.⁷⁰ L.Baiu. VI,4 says: "Si in eo talem plagam fecerit, ut exinde fracturas ossum [sic] tollat, cum solido et semi componat."⁷¹ L.Alam. LVII,4 is similar to L.Baiu. VI,4, and it says: "Si autem de capite ossum fractum de plaga tulerit [sic], ita ut super publica via lata 24 pedis in scuto sonaverit ille ossus, cum 6 solidis componat."⁷² Although L.Alam. LVII,4 intensifies the injury it describes by an elaborate measurement of the size of the broken bone, it contains essentially the same concept as that expressed by L.Baiu. VI,4. There are few laws which are similar to these laws in other Germanic codes, with the exception of L.Rib. XXII and XXVI which compensate if a freeman (the former) or a slave (the latter) break a bone of a slave.⁷³

⁷⁰It is the contention of Schwind that L.Baiu. VI,4 compensates for the upper arm. He indicates this by citing L.Alam. LVII,31 as a cross reference to this Bavarian law. It has already been indicated why Schwind's reference to L.Alam. LVII,31 is untenable for L.Baiu. IV,5 and V,4, but it is more unconvincing for L.Baiu. VI,4. Schwind's reference to L.Alam. LVII,31 is unconvincing for two reasons: (1) there is no reason to assume in the first place that a bone of the upper arm is broken (although a bone of the head can be assumed), and (2) as is already indicated in the discussion of L.Baiu. IV,5 above, L.Alam. LVII,31 concerns piercing through the arm, quite different from simply breaking a bone of the arm.

⁷¹Schwind, p. 343.

⁷²Lehmann, p. 116.

⁷³Other laws which are similar to the corresponding L.Baiu. IV,5 and V,4 are slightly similar to L.Baiu. VI,4. Cf. Ed.Roth. LXXVIII-LXXIX and L.Visig. VI,4,1.

(b) Twenty-seven per cent of the words of L.Alam. LVII,4 are evident as 44 per cent of the terms of L.Baiu. VI,4.⁷⁴

(c) No agreement.

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Lex Baiuvariorum VI,5

Si cervella adparuerit.

Lex Alamannorum LVII,6

(a) L.Baiu. VI,5 describes three injuries, but only the first two of these are similar to the Lex Alamannorum. The first injury compensates for a blow which results in the appearance of the brain, and in order for the brain to be exposed, a bone of the head has to be broken away. As a result, this law is an extension of the previous Bavarian law, VI,4. All of L.Baiu. VI,5 is quoted here: "Si eum plagaverit, ut cervella appareant vel in interiora membra vulneraverit, quod hrevavunt⁷⁵ vocant, et si eum tantum cederit et turnaverit, usque dum eum semivivum relinquit, hoc cum III solidis componat."⁷⁶ This first injury of L.Baiu. VI,5 is also contained in L.Baiu. IV,6 and V,5,

⁷⁴A comparison of L.Baiu. IV,5 and VI,4 indicates that 38 per cent of the terms of the former appear as the same percentage of the latter.

⁷⁵See Kralik, NA, XXXVIII (1913), 445, although he mistakenly refers to L.Baiu. VI,6 in place of VI,5, when describing hrevavunt.

⁷⁶Schwind, pp. 343-344.

both of which show similarity with L.Alam. LVII,6, and all of these laws are based on Pact.Sal. XVII,4. This is true as well for L.Baiu. VI,5. L.Alam. LVII,6 follows: "Si autem testa trescapulata [sic] fuerit, ita ut cervella appareant, ut medicus cum pinna aut cum fanone cervella tetigit, cum 12 solidis componat."⁷⁷ As the discussion of L.Baiu. IV,6 above indicates, cutting through the skull exposes the brain as does breaking away a bone of the head by a blow. For this reason, both laws describe the same injury in slightly different ways.⁷⁸

(b) The laws are relatively close philologically, since 32 per cent of the terms of L.Alam. LVII,6 reappear as 23 per cent of those terms of L.Baiu. VI,5. The percentage for L.Baiu. VI,5 would be greater if this law described only one injury instead of three.

(c) No agreement.

Lex Alamannorum LVII,55

(a) The second injury of L.Baiu. VI,5, which is similar to L.Alam. LVII,55, compensates for wounding the

⁷⁷Lehmann, p. 117. For transcapulatum esse and fanone, see pp. 93-94, nn. 33 and 34 above.

⁷⁸Schwind believes L.Baiu. VI,5 is similar to L.Alam. LVII,4, which compensates for a broken bone of the head. Unfortunately, L.Alam. LVII,4 says nothing about the appearance of the brain, so evident in L.Baiu. VI,5. Although the broken head bone described by L.Alam. LVII,4 may expose the brain, no explicit evidence is given by L.Baiu. VI,5 itself to prove this.

internal organs. The similarity of L.Baiu. VI,5 and L.Alam. LVII,55 parallels the similarity between this Alamannic law and L.Baiu. IV,6 and V,5. L.Alam. LVII,55 says: "Si autem interiora membra vulneratus fuerit, quod hrevovunt dicunt, cum 12 solidis componat."⁷⁹ There are no other laws which approach the intent of these.⁸⁰

(b) Both laws employ the OHG hrevavunt, meaning a blow to the internal organs. In addition, 85 per cent of the words of L.Alam. LVII,55 constitute 32 per cent of the terms of L.Baiu. VI,6.⁸¹ Although vulneratum esse of L.Alam. LVII,55 is counted as two words, it is equated with vulnerare of L.Baiu. VI,5.

(c) No agreement.

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Lex Baiuvariorum VI,6

Si oculus vel manus tulerit.

Lex Alamannorum LVII,14

(a) Compensation for the loss of an eye, a hand, or a foot if rendered to slaves by L.Baiu. VI,6: "Si ei oculus

⁷⁹Lohmann, p. 126. The italics are Lohmann's.

⁸⁰Cf. Pact.Sal. XVII,6.

⁸¹In addition, the similarity between L.Baiu. IV,6 and VI,5 is evident since 76 per cent of the terms of the former appear as 39 per cent of the terms of the latter. In this calculation, plagatum esse of L.Baiu. IV,6 is equated with vulnerare of L.Baiu. VI,5.

vel manum vel pedem absciderit, cum V solidis componat."⁸² Like L.Baiu. V,6 above, this law is similar to two Alamannic laws, LVII,14 and 66. L.Alam. LVII,14 corresponds to the first injury of L.Baiu. VI,6 by compensating for the loss of sight: "Si autem ipse visus foris exit et molus, 40 solidos componat."⁸³ Although the latter does not define how sight is lost, its effect is very much the same as tearing out one's eye described by L.Baiu. VI,6. The injury described by L.Baiu. VI,6, much like L.Baiu. IV,9 and V,6, may be later redefinitions of the earlier L.Alam. LVII, 14,⁸⁴ and all may be based upon Pact.Sal. XXIX,1.⁸⁵ L.Baiu. VI,6 also shows similarity with L.Rib. XXVII⁸⁶ and Ed.Roth. LXXXI and CV.

(b) There is no substantial philological similarity between L.Baiu. VI,6 and L.Alam. LVII,14, although the former is almost a verbatim text of L.Baiu. V,6. Here, 77 per cent of the terminology of L.Baiu. V,6 reappears as 83 per cent of the words of L.Baiu. VI,6.

⁸²Schwind, p. 344.

⁸³Lehmann, p. 119.

⁸⁴There is no similarity between L.Baiu. VI,6 and L.Alam. LVII,13 as Schwind believes. See p. 97, n. 44 above for a refutation of his arguments.

⁸⁵Cr. Pact.Sal. XXIX,12.

⁸⁶"Quod si oculum, auricular, nasum, manum, pedem excusserit, bis novenos solidos dominus eius culpabilis iudicetur." Beyerle-Buchner, p. 84.

(c) No agreement.

Lex Alamannorum LVII,66

(a) Another injury described by L.Baiu. VI,6 is the loss of the foot. L.Alam. LVII,66 is the Alamannic law to which it is similar, and it says: "Si totum pedem absciderit, cum 40 solidis componat."⁸⁷ Both of these laws closely parallel Pact.Sal. XXIX,1, and 10-11. L.Baiu. VI,6 is also similar to Ed.Roth. XCV and CXIX. As is indicated in the discussion of L.Baiu. IV,9 above, there is no Alamannic law which compensates for the loss of the hand; hence, there is no parallel between the second injury described by L.Baiu. VI,6 and the Lex Alamannorum.⁸⁸

(b) In addition, 75 per cent of the terms of L.Alam. LVII,66 reappear as 50 per cent of the words of L.Baiu. VI,6.⁸⁹

(c) No agreement.

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Lex Baiuvariorum VI,7

Si pollicem vel caeteros digitos absciderit.

⁸⁷Lehmann, p. 128.

⁸⁸For this reason, there is no evidence to support Schwind's view that L.Baiu. VI,6 and L.Alam. LVII,39 are similar. L.Alam. LVII,39 compensates for the arm, not the hand. See pp. 97-98, n. 45 above. Likewise, see p. 141, n. 34 above for a refutation of Schwind's view that L.Baiu. VI,6 and IV,10 are also similar.

⁸⁹Likewise, 64 per cent of the terms of L.Baiu. IV,9 constitute 75 per cent of the words of L.Baiu. VI,6.

Slaves are compensated for the loss of fingers by L.Baiu. VI,7. This law is parallel to two previous Bavarian laws, IV,11 and V,7. L.Baiu. VI,7 follows in full:

Si pollicem ei absciderit, cum III solidis componat.

Et proximum a pollice et minimum $\overline{\text{digitus}}$ absciderit/ cum II solidis componat, et medianos $\overline{\text{duos digitos}}$ cum I solidus componat.⁹⁰

Of the two paragraphs of L.Baiu. VI,7, five Alamannic laws are similar as the following table indicates:

<u>L.Alam.</u>	<u>L.Baiu.</u>
LVII,42	VI,7,§1
LVII,45 and 52, 48 and 51	VI,7,§2

There is no difference between the Alamannic laws showing similarity with L.Baiu. IV,11 (only §§ 1-3), V,7, and VI,7, except for L.Alam. LVII,53 which is similar only to L.Baiu. IV,11. In addition, the remaining four Alamannic laws which are similar to L.Baiu. VI,7,§2, are similar in precisely the same order for this law as they are for L.Baiu. IV,11 and V,7. The present Bavarian law, VI,7, is essentially an abbreviated version of L.Baiu. V,7 as both are of L.Baiu. IV,11. All five Alamannic laws are discussed jointly below. These Alamannic laws as well as L.Baiu. VI,7 apparently are based on Pact.Sal. XXIX,4,

⁹⁰ Schwind, p. 344. Digitum absciderit and duos digitos are understood from L.Baiu. V,7,§2 and §3 respectively.

6-7.⁹¹

Lex Alamannorum LVII,42,45,48,51-52

(a) The first paragraph of L.Baiu. VI,7 concerns injury to the thumb, to which L.Alam. LVII,42 is similar. The latter says: "Si autem totum [pollice absciderit], cum 12 [solidis conponat]."⁹² Both of these laws, even in their brevity, closely parallel each other. This is true as well for the four Alamannic laws whose concepts resemble those of L.Baiu. VI,7,42. Compensation for all of the fingers (minus the thumb) is rendered by the second paragraph of L.Baiu. VI,7. L.Alam. LVII,45 compensates for a severed forefinger: "Si totum [proximo pollice] absciderit a palma, cum 10 solidis conponat."⁹³ Similarly, L.Alam. LVII,52⁹⁴ concerns the compensation for cutting off the little finger: "Illo minimo digito ita solvatur ut polex

⁹¹For the relationship between these Alamannic and Salic laws, see the chart included with L.Baiu. IV,11 above. Cf. Ed.Roth. LXXXIX-XCIII, and CXIV-CXVIII.

⁹²Lehmann, p. 124. Pollice absciderit and solidis conponat are understood from the previous Alamannic law, LVII,41. There is, in addition, no parallel between L.Baiu. VI,7,41 and L.Alam. LVII,41 as Schwind believes. See p. 102, n. 56 above.

⁹³Ibid., p. 125. Proximo pollice is understood from the previous law, LVII,43. See p. 103, n. 57 above for arguments refuting Schwind's view that L.Alam. LVII,43 and 44 are also similar to L.Baiu. VI,7,42.

⁹⁴L.Alam. LVII,52 is discussed out of order within the Alamannic code because of its proximity to L.Alam. LVII,45.

[sic].⁹⁵ The last two fingers described by L.Baiu. VI,7,§2 are the middle finger and the ring finger (also called a middle finger), and compensation for the loss of these fingers is also expressed by L.Alam. LVII,48 and 51 respectively. L.Alam. LVII,48 compensates for the loss of the middle finger, and it says: "Si totus [longissimus digitus] a palma abscisus fuerit, cum 6 solidis conponat."⁹⁶ The remaining Alamannic law, LVII,51, compensates for the loss of the ring finger: "Si totum [anillaris digitus, cum] 8 [solidis conponat]."⁹⁷ No digit is excluded by L.Baiu. VI,7 and all digits are discussed in exactly the same order by this Bavarian law as they are by L.Baiu. IV,11 and V,7.

(b) The addition of inferred terms to both L.Baiu. VI,7 and to four of the five Alamannic laws included here increase the validity of a philological study. Consequently, 66 per cent of the terms of L.Alam. LVII,42 reappear as 75 per cent of the words of L.Baiu. VI,7,§1; 64 per cent of the terms of L.Alam. LVII,45 and 42 per cent

⁹⁵Ibid.

⁹⁶Ibid. Longissimus digitus is understood from the previous law, LVII,48. Also see p. 103, n. 59 above for arguments refuting Schwind's belief that L.Baiu. VI,7,§2 and L.Alam. LVII,46 and 47 are similar.

⁹⁷Ibid. Anillaris digitus and cum solidis conponat are understood from the previous law, LVII,49. See p. 104, n. 60 for a refutation of Schwind's views that L.Baiu. VI,7,§1 and L.Alam. LVII,49 and 50 are similar.

of those of LVII,48 appear as 35 per cent and 25 per cent respectively of L.Baiu. VI,7,§2. There is little concrete philological similarity between L.Alam. LVII,51 and 52 and L.Baiu. VI,7,§2.⁹⁸

(c) No agreement.

* * * * *

Lex Baiuvariorum VI,8

Si nasum transpunxerit.

Lex Alamannorum LVII,15

(a) Freeman receive compensation for a pierced nose by L.Baiu. IV,13. Likewise, slaves also are compensated for this injury by L.Baiu. VI,8: "Si ei nasum transpunxerit, cum II solidis et semi conponat."⁹⁹ However, there is no compensation for freedmen in the Lex Baiuvariorum if they fall victim to this injury. Only one Alamannic law resembles the idea expounded by L.Baiu. VI,8. This law is L.Alam. LVII,15: "Si enim nasus transpunctus fuerit, cum 6 solidis conponat."¹⁰⁰ The clarity of the laws is self-

⁹⁸Likewise, a philological comparison of L.Baiu. IV,11 (only §§ 1-3) and VI,7 indicate that 51 per cent of the terms of the former reappear as 79 per cent of the latter. There is no similarity between the fourth paragraph of L.Baiu. IV,11 and VI,7 as there is none between any other Bavarian or Alamannic law and the fifth (and last) paragraph of L.Baiu. IV,11.

⁹⁹Schwind, p. 345.

¹⁰⁰Lehmann, p. 119.

evident.¹⁰¹

(b) In addition, 78 per cent of the words of L.Alam. LVII,15 are evident as 60 per cent of the terms of L.Baiu. VI,8.¹⁰² Although transpunctum esse of L.Alam. LVII,15 is counted as two words, it is still equated with transpungere of L.Baiu. VI,8.

(c) No agreement.

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Lex Baiuvariorum VI,9

De labiis maculatis.

There are five injuries discussed by L.Baiu. VI,9 to which five Alamannic laws are similar. An introductory quotation of L.Baiu. VI,9 is supplied here in order to facilitate the following discussion.

Si labia subteriora maculaverit vel aurem vel palpebram subteriozem maculaverit, cum solido et semi conponat.
Superiores /palpebrae vel superiores labia si maculaverit/ vero cum uno solido conponat.¹⁰³

The five Alamannic laws are grouped together and discussed

¹⁰¹ Like L.Baiu. IV,13 above, Schwind believes two other Alamannic laws are similar to L.Baiu. VI,8, that is, L.Alam. LVII,16 and 17. These Alamannic laws are concerned with severing part or all of the nose from the face, not with piercing the nose. See p. 108, n. 69 above.

¹⁰² Similarly, 66 per cent of the terminology of L.Baiu. IV,13 constitutes 60 per cent of the terms of L.Baiu. VI,8.

¹⁰³ Schwind, p. 345. Palpebrae vel superiores labia si maculaverit is understood from L.Baiu. IV,15, to which the present Bavarian law is similar.

under the same heading below.¹⁰⁴ In addition, L.Baiu. VI,9 finds no parallel to any other Germanic code, except to the Lex Alamannorum.¹⁰⁵

Lex Alamannorum LVII,10-12,18-19

(a) An injury described by the first paragraph of L.Baiu. VI,9 is the mutilation of the ear.¹⁰⁶ L.Alam. LVII, 10 contains a similar injury whereby the ear is partly cut off: "Si enim medietatem aurem absciderit, quod scardi¹⁰⁷ Alamanni dicunt, cum sex solidis componat."¹⁰⁸ An ear half or partly cut off is similar to the mutilated ear described by L.Baiu. VI,9,§1, since to mutilate means not only to disfigure or maim an organ, but also to cut off or remove all or part of that organ. For this reason, L.Baiu. VI,9,§1 and L.Alam. LVII,10 show similar concepts.¹⁰⁹ This

¹⁰⁴These laws are not similar to L.Baiu. VI,9 in order of their appearance within the Alamannic code.

¹⁰⁵L.Visig. VI,4,3 which compensates for damaging the lips is only one of several injuries contained in this law. Its universality prevents a more definite application. This is true as well for L.Baiu. IV,15 above.

¹⁰⁶This injury is not described by L.Baiu. IV,15, which is similar to most injuries discussed by L.Baiu. VI,9. The mutilation of the ear, however, is evident from L.Baiu. IV,14,§4.

¹⁰⁷See Schade, Altd deutsches Wörterbuch, I, p. 554.

¹⁰⁸Lehmann, p. 118. The italics are Lehmann's.

¹⁰⁹Schwind believes there is similarity between the injury to the ear contained by L.Baiu. VI,9,§1 and two other Alamannic laws, LVII,8 and 9. This view is possible, but unlikely. L.Alam. LVII,8 concerns severing the entire ear from the head although the victim can still hear: "Si

is also evident since only the Alamannic and Bavarian codes compensate for a mutilated ear. The second Alamannic law which is similar to L.Baiu. VI,9 is LVII,11, and it is similar to the first injury described by L.Baiu. VI,9,§2, mutilation of the upper eyelid. L.Alam. LVII,11 describes the compensation and effects of a mangled upper eyelid: "Si enim superior palpebris maculata fuerit, ut cludere non possit, cum sex solidis componat."¹¹⁰ L.Baiu. VI,9,§2 is similar to this law, although it does not specify that the eyelid cannot be closed. The last injury described by L.Baiu. VI,9,§1 concerns the disfigurement of the lower eyelid. Likewise, there is a parallel in L.Alam. LVII,12: "Si enim subterior [palpebris] maculata fuerit, ut lacrimae continere non possit, cum 12 solidis componat."¹¹¹ The similarity of the injury to the lower eyelid described by L.Baiu. VI,9,§1 does not add as does L.Alam. LVII,12 that

 quis aliquis aurem alterius absciderit et non exsurdaverit, 12 solidos componat." Ibid. The emphasis of this law is not directly concerned with mutilating the ear, but whether or not the victim is struck deaf as a result of this injury. Similarly, L.Alam. LVII,9 compensates if total deafness results from cutting the ear from the head: "Si autem sic absciderit profundo et eum exsurdaverit, 40 solidos componat." Ibid. It is true that severing all or part of an organ from the body is mutilation, but these two Alamannic laws are not primarily concerned that the victim is disfigured, but simply with the result (deafness) of that disfigurement. For this reason, there is no direct similarity between the mutilated ear of L.Baiu. VI,9,§1 and these two Alamannic laws.

¹¹⁰ Ibid.

¹¹¹ Ibid. Palpebris is understood from the previous law, LVII,11.

tears cannot be contained as a result of this injury.¹¹² The second injury described by L.Baiu. VI,9,§2 concerns mutilating the upper lip. L.Alam. LVII,18 shows similarity with this injury, and it says: "Si enim labium superiorem alicuius maculaverit, ita ut dentes appareant, cum 6 solidis conponat."¹¹³ Again, L.Baiu. VI,9,§2 does not add as does L.Alam. LVII,18 that the teeth appear as a result of this injury.¹¹⁴ The last Alamannic law which is similar to L.Baiu. VI,9,§1 is LVII,19, and it describes the mutilation of the lower lip: "Et [labium] subteriore[m], ut salivam continere non possit, cum 12 solidis conponat."¹¹⁵ The inability of the lower lip to hold saliva indicates the lip is somehow disfigured, and this idea may be inferred as well for the lower lip described by L.Baiu. VI,9,§1.

(b) The philological similarity of the five Alamannic laws discussed here are presented in the same order as

¹¹²There is no reason for Schwind to content that L.Alam. LVII,13 and L.Baiu. VI,9,§1 are similar. The former is not concerned with injury to the lower or upper eyelids, but with obstructing sight affected because of a glassy eye: "Si enim visus tactus fuerit de oculo, ita ut quasi vitro remaneat, 20 solidos conponat." Ibid., p. 119. There is no reason to assume that sight is directly affected if the eyelids are disfigured.

¹¹³Ibid., p. 120.

¹¹⁴Damaging the lip of a slave so that the teeth appear is also compensated by Ed.Roth. LXXXIV.

¹¹⁵Ibid. Labium is understood from the previous law, LVII,18.

they appear under heading (a) above.¹¹⁶ Thirty-eight per cent of the words of L.Alam. LVII,10 constitute 33 per cent of the terms of L.Baiu. VI,9,§1. This is the lowest percentage for any of the Alamannic laws compared with L.Baiu. VI,9. Although still counted as two words, maculatum esse of L.Alam. LVII,11 is equated with maculare of L.Baiu. VI,9,§2. Here, 50 per cent of the terminology of L.Alam. LVII,11 is evident as 53 per cent of L.Baiu. VI,9,§2. Similarly, 53 per cent of L.Alam. LVII,12 (with the verb maculatum esse) reappear as 47 per cent of L.Baiu. VI,9,§1 (with maculare), and the percentage for L.Alam. LVII,12 includes the inferred word palpebris. The highest percentage is drawn from L.Alam. LVII,18 where 50 per cent of its terms are evident as 64 per cent of L.Baiu. VI,9,§2. The last Alamannic law, LVII,19, shows that 42 per cent of its terminology reappears as 45 per cent of L.Baiu. VI,9,§1. The inferred word labium is included in the calculation for L.Alam. LVII,19. The percentage of all five Alamannic laws would be considerably higher if they did not also add effects of the injuries they describe.¹¹⁷

¹¹⁶The inferred words for L.Alam. LVII,12 and 19 as well as those for L.Baiu. VI,9,§2 are included in the calculations for philological similarity.

¹¹⁷A comparison of L.Baiu. IV,14 and VI,9 indicates that 43 per cent of the terminology of the former is evident as 40 per cent of the latter. Likewise, a comparison of L.Baiu. IV,15 (excluding the addition taken from MS Alt of Schwind's edition) and the present Bavarian law also indicate that 66 per cent of the terms of the former constitute 45 per cent of the latter.

(c) No agreement.

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Lex Baiuvariorum VI,10

De dentibus excussis.

Lex Alamannorum LVII,22

(a) L.Baiu. VI,10, which compensates slaves for injury to the teeth, resembles L.Baiu. IV,16, but there is no parallel to either of these laws in title V, which concerns freedmen. L.Baiu. VI,10 is divided into two paragraphs, both of which are quoted here:

Si ei dentem maxillarem excusserit, quem march-
zand¹¹⁸ vocant, cum III solidis componat.
Alios [dentes] vero cum solido et semi componat.¹¹⁹

The first paragraph of this law describes the compensation rendered for knocking out a maxillary tooth. L.Alam. LVII, 22 is similar to this injury, and it says: "Si autem dentem absciderit, quod marczan dicunt Alamanni, cum 3 solidis componat."¹²⁰ As the discussion of L.Baiu. IV,16 above concluded, a marchzand (marczan) is in all probability a canine tooth.¹²¹ The basis of these laws could very well be Pact.Sal. XXIX,16. L.Baiu. VI,10 itself is similar to

¹¹⁸Kralik, NA, XXXVIII (1913), 584.

¹¹⁹Schwind, p. 345. Dentes is inferred from L.Baiu. IV,16.

¹²⁰Lehmann, p. 120. The italics are Lehmann's.

¹²¹That there are more than one maxillary tooth is evident from Ed.Roth. LII. See p. 119, n. 93 above. That the marchzand is a canine tooth agrees with Schwind. See Schwind, p. 327, n. 2.

Ed.Roth. LXXXV-LXXXVI and CIX, and L.Burg. XXVI,5.

(b) There is strong philological similarity between these laws. Both laws employ the OHG marchzand. Furthermore, 75 per cent of the terms of L.Alam. LVII,22 are evident as the same percentage of L.Baiu. VI,10,§1.

(c) The laws require the same wergeld of three solidi. This agreement is exceptional since no other law from either title V or VI requires the same wergeld as those Alamannic laws with which they are similar. There is, in addition, no agreement between L.Baiu. VI,10 and L.Alam. LVII,23 discussed below.

Lex Alamannorum LVII,23

(a) The second paragraph of L.Baiu. VI,10 compensates for injury to all other teeth not covered by the first paragraph of the same law. It is similar to L.Alam. LVII,23, which states: "De alias [dentibus] vero de quacunque excusserit, unaquemque cum solido uno componat."¹²² Both laws compensate for the same teeth excluding the particular maxillary teeth described by L.Baiu. VI,10,§1.¹²³

(b) Philological similarity shows that 50 per cent of the terms of L.Alam. LVII,23 reappear as 75 per cent of

¹²²Lehmann, pp. 120-121. Dentibus is understood from the previous law, LVII,22.

¹²³The discussion of L.Baiu. IV,16 and L.Alam. LVII,23 indicates what these other teeth may be. See pp. 120-122 above.

the words of L.Baiu. VI,10,§2.¹²⁴

(c) No agreement.

* * * * *

Lex Baiuvariorum VI,11

Si autem absciderit et eum in aquam impinxerit.

Although L.Baiu. VI,11 is similar to two laws from title IV (IV,14 and 28) and one law from title V (V,8), it is the only Bavarian law which combines the ideas of all these laws under one heading. L.Baiu. VI,11 concerns the compensation for severing or piercing the ear, for deafness, lameness, and throwing another into water. The law follows:

Si aurem eius absciderit, cum solido et semi conponat.

Si aurem eius transpunxerit, cum I solido conponat.

Si eum surdaverit vel sic eum plagaverit, ut claudus permaneat, quod tautragil¹²⁵ vocant, ei si in aquam impinxerit de ripa vel de ponte, in istis causis semper IIIII solidos conponat.¹²⁶

The second paragraph of this law is not similar to any Alamannic law; it is included here simply to clarify the ideas expounded by the first paragraph. There is, likewise, no Alamannic law which is similar to the idea of throwing another in water. L.Baiu. VI,11 is similar to three Alamannic laws (LVII,8-9,62), and the following table

¹²⁴Similarly, 70 per cent of the terms of L.Baiu. IV,16 (excluding the addition taken from MS Alt) are evident as 80 per cent of L.Baiu. VI,10.

¹²⁵Kralik, KA, XXXVIII (1913), 601-603, and Schmeller Bayerisches Wörterbuch, II, col. 69.

¹²⁶Schwind, p. 346.

illustrates the relationship of the laws in question:

<u>L.Alam.</u>	<u>L.Baiu.</u>
LVII,8	VI,11,§1
LVII,9 and 62	VI,11,§3

Lex Alamannorum LVII,8

(a) Both L.Baiu. VI,11,§1 and L.Alam. LVII,8 are concerned with cutting off the ear of another. Although unlike this Bavarian law, the latter specifies that as a result of this condition, the victim is not struck deaf. L.Alam. LVII,8 says: "Si quis aliquis aurem alterius absciderit et non exsurdaverit, 12 solidos componat."¹²⁷ Since the third paragraph of L.Baiu. VI,11 explicitly concerns deafness (among other injuries), and the first paragraph does not, the inference may be made that L.Baiu. VI,11,§1 solely concerned with compensating for an injury of the ear which does not leave the victim deaf.¹²⁸ For this reason, the similarity of the laws discussed here is apparent. Both of these laws may be based upon Pact.Sal. XXIX,1 and L.Rib. V,1 and XXVII.¹²⁹

¹²⁷Lehmann, p. 118.

¹²⁸There is no similarity between L.Baiu. VI,11,§1 and L.Alam. LVII,10 as Schwind contends. L.Alam. LVII,10 concerns cutting off not the whole ear, but only part of it. Partially severing the ear from the head cannot be implied by the present Bavarian law. In the face of this evidence, there is no similarity between these laws. The only law in title VI to which L.Alam. LVII,10 is similar is L.Baiu. VI,9. See the latter above.

¹²⁹Cf. L.Visig. VI,4,3.

(b) Forty-two per cent of the terminology of L.Alam. LVII,8 is evident as 56 per cent of the terminology of L.Baiu. VI,11,§1.

(c) No agreement.

Lex Alamannorum LVII,9

(a) The first of three injuries described by the third paragraph of L.Baiu. VI,11 is deafness, and this injury is also compensated by L.Alam. LVII,9. The latter says: "Si autem sic absciderit profundo et eum exsurdaverit, 40 solidos componat."¹³⁰ There is no parallel to this injury in any law in title V. Similarly, there are no other Germanic laws which compensate for deafness, although Pact.Sal. XXIX,4 is slightly similar to this concept.

(b) There is no appreciable philological similarity between these laws, since L.Baiu. VI,11,§3 is considerably longer, and concerns not one injury, but three.

(c) No agreement.

Lex Alamannorum LVII,62

(a) The last injury contained by L.Baiu. VI,11,§3 manifesting similarity with the Lex Alamannorum is lameness (of the foot). Similarity between this law and L.Alam. LVII,62 is evident, since the laws not only contain identical concepts, but also describe this injury by the same OHG term, tautragil. L.Alam. LVII,62 says: "Si quis

¹³⁰Ibid.

autem alium in genuculo placaverit [sic], ita ut claudus permaneat, ut pes eius ros tangat, quod Alamanni tautragil dicunt, cum 12 solidis componat."¹³¹ Although L.Baiu. VI,11,§3 does not explain the disability of the knee as does L.Alam. LVII,62, which is seen as the cause of lameness, the resultant condition of both laws is identical. L.Baiu. VI,11 closely parallels Ed.Roth. CXXVI which also compensates for lameness of the foot (as well as the hand). Lameness is also compensated by L.Baiu. IV,28 and V,8 above.

(b) As already noted, both laws employ the OHG tautragil, and they spell this term in the same way. Furthermore, 42 per cent of the terms of L.Alam. LVII,62 constitute 33 per cent of the words of L.Baiu. VI,11,§3.¹³²

(c) No agreement.

* * * * *

Lex Baiuvariorum VI,12

Si eum occiderit.

Lex Alamannorum IX,1

(a) Compensation for killing a slave, the last offense contained by title VI, is fixed by L.Baiu. VI,12,

¹³¹Ibid., p. 127. The italics are Lehmann's.

¹³²If L.Baiu. VI,11 is compared with other Bavarian laws with which it is similar, it is evident that 75 per cent of the terminology of L.Baiu. IV,14,§2 reappears as 66 per cent of the terms of L.Baiu. VI,11,§1, and that 43 per cent of the words of L.Baiu. IV,28 appear as 30 per cent of L.Baiu. VI,11,§3. There is no similarity between L.Baiu. VI,11,§2 and any other Bavarian law.

which says: "Si eum occiderit, solvat eum domino suo cum XX solidis."¹³³ Although the similarity between this law and L.Alam. LX,1 is apparent, there is an obvious class distinction between the slave described by L.Baiu. VI,12 and the freeman mentioned by the corresponding Alamannic law, LX,1. The latter says: "Si quis autem liber liberum occiderit, componat eum bis octuaginta solidis ad filios suos. Si autem filios non reliquit nec heredes habuit, solvat eum 200 solidis."¹³⁴ Although the individual victims of these laws are from different classes, the fundamental principle of one person killing another is similar. L.Rib. VIII closely parallels the Bavarian law discussed here.¹³⁵ Besides this, there is little additional similarity.

(b) No agreement.¹³⁶

(c) No agreement.¹³⁷

¹³³Schwind, p. 346.

¹³⁴Lehmann, pp. 129-130.

¹³⁵L.Rib. VIII says: "Si quis servum interfecerit, 36 solidos culpabilis iudicetur, aut cum sex iuret quod hoc non fecisset." Beyerle-Buchner, p. 77. Cf. Pact.Sal. X,1. The Burgundian and Visigothic codes contain few laws which compensate for the killing of ordinary slaves, that is, slaves other than special domestic servants. For this reason, L.Burg. X,1 and L.Visig. VI,5,9 add little to this discussion. Cf. Ed.Roth. CXX and CXXIV.

¹³⁶Moreover, there is little philological similarity between L.Baiu. IV,29 and VI,12.

¹³⁷The twenty solidi required by L.Baiu. VI,12 constitute only one-half the proper wergeld. See pp. 149-150, n. 54 above for an explanation of this discrepancy. Cf. Brunner, Deutsche Rechtsgeschichte, I, p. 359, n. 30. The wergeld required by L.Rib. VIII above approaches the forty

solidi that should be rendered by L. Baiu. VI, 12. See Edwin Mayer-Homberg, Die fränkischen Volksrechte im Mittelalter. Eine rechtsgeschichtliche Untersuchung (Weimar, 1912), p. 93.

CHAPTER VI
Titles VII-XII

Title VII

De nuptiis et operationibus die dominico illicitis
prohibendis.

Lex Baiuvariorum VII,1

De nuptiis incestis prohibendis.

Lex Alamannorum XXXIX

(a) The Alamannic and Bavarian codes emphasize the illegality of incestuous marriages. Whereas there are three Bavarian laws (VII,1-3) which concern this crime, there is only one Alamannic law (XXXIX). The similarity of these laws is remarkable, since L.Baiu. VII,1-3 correspond respectively to three portions of L.Alam. XXXIX, and these three Bavarian laws are verbatim texts of L.Alam. XXXIX. The first law of title VII of the Lex Baiuvariorum is similar to the first half of L.Alam. XXXIX. To quote one law is to quote the other; hence, only one text is supplied here: "Nuptias prohibemus incestas. Itaque uxorem habere non liceat socrum, nurum, privignam, novercam, filiam fratris, filiam sororis, fratris uxorem, uxoris sororem.

Filii fratrum, filii sororum inter se nulla praesumptione iungantur."¹ This text specifies those relatives, eight in all, one must not marry, and they are: mother-in-law, daughter-in-law, step-daughter, step-mother, brother's daughter, sister's daughter, brother's wife, or wife's sister. There is, moreover, remarkable similarity between these two laws and L.Visig. III,5,1,² a law which apparently influenced L.Alam. XXXIX which in turn was used as the later L.Baiu. VII,1.³

¹Schwind, pp. 347-348. Also Lehmann, pp. 98-99. Also see Schwind, NA, XXXI (1906), 432-438.

²"Nullus presumat de genere patris vel matris, avi quoque vel avie seu parentum uxoris, patris etiam disponsatam aut viduam vel propinquorum suorum relictam sibi in matrimonio copulare vel adulterio polluere; . . ." Zeumer, p. 159. See Zeumer, MA, XCIII (1898), 104 and 110, and ibid., XXIV (1899), 613-614. Cf. Krusch, Abhandlungen Göttingen, neue folge, XX (1927), nr. 1, 98. See Beyorle, ZSRG, XLIX (1929), 331, and especially the chart of p. 332 which compares L.Baiu. VII,1-3 with other sources, and notably with canons of sixth and seventh century Merovingian Church councils. Cf. CTh III,12,3: ". . . Si quis incestis posthac consobrinae suas vel sororis aut fratris filiae exorsive eius postremo, . . ." Mommsen-Meyer, I, pt. 2, p. 151. CTh III,12,1 adds a daughter of a brother or sister. Ibid., p. 150. Cf. L.R.Visig. III,12,1; Haenel, p. 88.

³D'Ors, Codigo de Eurico, p. 52 believes L.Baiu. VII,1-3 are later additions, but he does not discuss possible Alamannic legal influence. This may be due in part to the lack of suitable studies illustrating Visigothic legal influence on the Lex Alamannorum. This is true as well for Roman legal influence on the Alamannic code, so obviously absent from Ernst Levy, West Roman Vulgar Law: The Law of Property (Memoirs of the American Philosophical Society, XXIX; Philadelphia, 1951). Max Conrat, Geschichte der Quellen und Literatur des römischen Rechts im frühen Mittelalter (Leipzig, 1891), p. 2, n. 8 does admit Roman legal influence on the Lex Alamannorum, although he adds that it is untraceable. There is no

(b) The complete text of L.Baiu. VII,1 is taken from L.Alam. XXXIX.

(c) Not applicable.

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Lex Baiuvariorum VII,2

Si contra hoc quis gesserit.

Lex Alamannorum XXXIX

(a) The remaining half of L.Alam. XXXIX not used by L.Baiu. VII,1 is equally divided between L.Baiu. VII,2 and 3. That portion of L.Alam. XXXIX which corresponds to L.Baiu. VII,2 is a text verbatim with the latter law. For this reason, only one text is presented here: "Si quis contra haec fecerit, a loci iudiciis separentur et omnes facultates amittat, quas fiscus adquirat."⁴ The law specifies loss of property and forcible separation if one contracts an incestuous marriage.⁵ This, too, is a logical consequence knowing the Christian attitude which promulgated

reason to believe that L.Visig. III,5,1 influenced both L.Alam. XXXIX and L.Baiu. VII,1 simultaneously, nor is there evidence to support the claim that what Visigothic legal influence there may be with the Alamannic code came from the Lex Baiuvariorum. However, this contention is upheld by Rafael de Ureña y Smenjaud, La Legislación gótico-hispana (Leges Antiquiores--Liber Iudiciorum) (Madrid, 1905), pp. 415-417.

⁴Schwind, p. 348. Also Lehmann, p. 99.

⁵See Goebel, Felony and Misdemeanor, p. 109.

these codes in the first place.⁶ Although there are other laws which discuss this same crime, particularly L.Visig. III,5,1 and L.Rib. LXXII,2, these emphasize exile in addition to confiscation of property. L.Baiu. VII,2 and L.Alam. XXXIX only discuss confiscation; they make no mention of exile.⁷

(b) All of the terminology of L.Baiu. VII,2 is derived from L.Alam. XXXIX.

(c) The laws specify loss of all property which may indirectly be defined as a wergeld.

* * * * *

Lex Baiuvariorum VII,3

De minoribus personis.

Lex Alamannorum XXXIX

(a) L.Baiu. VII,3 is the third and last Bavarian law to be derived completely from L.Alam. XXXIX. The penalty imposed by L.Baiu. VII,3 is more severe than VII,2 because incest among minores personae, with which this law deals, is seen as a more hideous crime. Again, because the laws described here are identical, only one text is provided, and it says: "Si minores personae sunt

⁶See the general comments in Beyerle, ZSRG, XLIX (1929), 331-344.

⁷See Rudolf Buchner, "Kleine Untersuchungen zu den fränkischen Stammesrechten I mit einem Beitrag von Franz Beyerle," Deutsches Archiv für Erforschung des Mittelalters, IX (1952), 100.

quae se illicita coniunctione polluerunt, careant libertate, servis fiscalibus adgregentur."⁸ The text clearly proscribes deprivation of liberty, and servitude. Therefore, they belong to the public treasury.⁹ It should be noted that enslavement is not mentioned by either L.Baiu. VII,1-2 or by the two other laws previously discussed with these: L.Visig. III,5,1 or L.Rib. LXXII,2. Enslavement is contained only in L.Baiu. VII,3 and the last portion of L.Alam. XXXIX. The severity of punishment of the minores personae is due perhaps to the fact that they could not pay their fine because of their poverty.¹⁰ The laws also show that in a caste system different classes receive different degrees of punishment for the same crime, rendering the greatest severity to individuals from the lowest class.

(b) That the laws are identical philologically is also evident, since all of the terms of L.Baiu. VII,3 are derived from L.Alam. XXXIX.

(c) The laws agree in the deprivation of freedom as a vergild.

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Lex Baiuvariorum VII,4

De diebus dominicis.

⁸Schwind, p. 348. Also Lehmann, p. 99.

⁹Brunner, Forschungen, p. 470.

¹⁰McNeal, Minores and Mediocres, p. 119.

Lex Alamannorum XXXVIII

(a) There is considerable agreement between L.Baiu. VII,4 and L.Alam. XXXVIII on the prohibition of servile work¹¹ performed on Sundays (dies Dominicus). Both laws indicate various degrees of punishment for Sunday work. L.Baiu. VII,4 is far more explicit in the type of work discouraged from performance on Sundays, such as fencing in land, cutting and collecting hay or a harvest, or just traveling in a cart or ship:

Si quis die dominico operam servilem fecerit liber homo, id est si bovem iunxerit et cum carro ambulaverit, dextrum bovem perdat; si autem secaverit foenum vel colligerit aut messem secaverit aut colligerit vel aliquod opus servile fecerit die dominico, corripitur semel vel bis et si non emendaverit, rumpatur dorsus eius L percussionibus. Et si iterum praesumpserit operare die dominico, auferatur de rebus eius tertia pars et si nec sic cessaverit, tunc perdat libertatem suam et sit servus qui noluit in die sancto esse liber.

Servus autem pro tali crimine vapuletur. . . .

Et hoc vetandum est in die dominico; et quamvis in itinere positus cum carra vel cum nave, pauset die dominico usque in secundum feriam. . . . Et qui hoc in itinere vel ubicumque observare neglexerit, XII solidos condemnetur; et si frequens hoc fecerit, superiori sententiae subiaceat.¹²

L.Alam. XXXVIII is more simple in its approach to prohibiting Sunday work, while containing at the same time similar

¹¹Servile work is depicted as opera servilia; this is distinct from labor. Labor originally meant "work in the fields", but eventually denoted "tilled fields", and even grain. See Einar Lofstedt, "Some Changes of Sense in Late and Medieval Latin," Eranos, XLIV (1946), 347-350. For what constitutes servile work, see Carl Stephenson, Medieval Institutions: Selected Essays, ed. Bryce D. Lyon (Ithaca, 1954), p. 281, n. 62.

¹²Schwind, pp. 349-351.

concepts:

Ut die Dominico nemo opera servile praesumat facere, quia hoc lex prohibuit, et sacra scriptura in omnibus testavit. Si quis servus in hoc vitio inventus fuerit, vapuletur fustibus. Liber autem corripiatur usque ad tertium. Si autem post tertiam correptionem in hoc vitio inventus fuerit et Deo vacare die Dominico neglexerit et opera servile fecerit, tunc tertiam partem de hereditatem suam perdat. Si autem super haec inventus fuerit, ut die Dominico honorem non inpendat et opera servile fecerit, tunc coactus et probatus coram comite, ubi tunc dux ordinaverit, in servitio tradatur et, qui noluit Deo vacare, in sempiternum servus permaneat.¹³

Only agricultural activities are specified by the laws.

Work performed in non-rural areas is not included. L.Alam.

XXXVIII specifies that a person may be caught four times on Sundays, but that if he is apprehended a fifth time, he will lose his freedom. Likewise, L.Baiu. VII,4 also punishes the fifth time with enslavement. Nevertheless, the exact application of punishment in L.Baiu. VII,4 appears arbitrary. The general prohibition of Sunday work in L.Baiu. VII,4 is defined by a fine of twelve solidi. But how many times may this fine be applied? The law does not specify, since it says this practice may happen frequently. As we have already noted, there may be five transgressions of this law, the fifth ending in loss of freedom. If the monetary payment of twelve solidi is included in the number of transgressions, there may be greater tolerance shown by L.Baiu. VII,4 than by L.Alam. XXXVIII. But such does not appear to be the case, since

¹³Lehmann, p. 98.

the general prohibition in L.Baiu. VII,4 concludes the law, and may be an added deterrent, whereas the corresponding prohibition in L.Alam. XXXVIII introduces the law and contains no monetary punishment. Apart from the monetary penalty, both laws are in general agreement.¹⁴ What disagreement they show concerns the first three times a person is caught doing Sunday work. L.Baiu. VII,4 says a person may be corrected once or twice for doing Sunday work. The third time is not explicitly indicated by the law, but it can be inferred from the context, and this inference is based on the punishment of being whipped fifty times. L.Alam. XXXVIII simplifies all of this by requiring the arrest of the offender up to the third time. If a person is apprehended a fourth time, L.Alam. XXXVIII stipulates the loss of one-third of the offender's property (hereditas).¹⁵ L.Baiu. VII,4 requires the same punishment expressed with the same concepts, but with a different word (res). If caught a fifth time, L.Alam. XXXVIII specifies that one will be handed over into servitude, and L.Baiu. VII,4 mentions one will lose his freedom. Because of the nature of the punishments, we may infer that both laws

¹⁴See Brunner, Abhandlungen, I, p. 588, and his Forschungen, p. 471.

¹⁵See Niermeyer, Mediae Latinitatis Lexicon Minus, VI, p. 486. Dopsch, Economic and Social Foundations, p. 115, incorrectly assigns the loss of one-third of hereditas to the third infraction, rather than to the fourth.

apply only to those who do servile work.¹⁶ Consequently, the laws do not pertain to the clergy or nobility.¹⁷ So far the discussion has been concerned only with freemen, though both laws show added similarity by defining how slaves are punished if they perform work on Sundays. Apart from minor differences, slaves will suffer beatings under both laws. No other Germanic code concerns the prohibition of servile work on Sundays.

(b) What little philological similarity the laws manifest is weakened by the greater length of L.Baiu. VII,4.

(c) The laws show corresponding punishments, and these may in a sense be equated as wergeld payments.

Title VIII

De uxoris et causis, quae saepe contingunt.

Lex Baiuvariorum VIII,3

Si propter libidinem manum iniecerit.

Lex Alamannorum LVI,1

(a) L.Baiu. VIII,3 and L.Alam. LVI,1 protect women

¹⁶Werner Wittich, "Die Frage der Freibauern. Untersuchungen über die soziale Gliederung des deutschen Volkes in altgermanischer und frühkarolingischer Zeit," ZSRG, XXII (1901), 33.

¹⁷Karl Bosl, "On Social Mobility in Medieval Society: Service, Freedom, and Freedom of Movement as Means of Social Ascent," in Early Medieval Society, ed. Sylvia Thrupp (New York, 1967), p. 97.

from sexual abuse, yet the former is more explicit in expressing the marital position of women included under the law. L.Baiu. VIII,3 protects freewomen from molestation in general whether they are wives or virgins;¹⁸ the law says: "Si quis propter libidinem liberae manum iniecerit aut virgini seu uxori alterius, quod Baiuuarii horcraft¹⁹ vocant, cum VI solidis componat."²⁰ L.Alam. LVI,1, from which this Bavarian law may be derived, is only concerned with protecting free virgin women: "Si quis libera femina virgo vadit itinere suo inter duas villas, et obviavit eam aliquis, per raptum denudat caput eius, cum sex solidis componat. . . ."²¹ General protection from sexual abuse for married women in the Lex Alamannorum is covered under L.Alam. LVI,2²² in which adult women receive twice the compensation virgins receive. The relative similarity of the laws is evident, but is there any disagreement between them apart from what has already been said? Because both

¹⁸This abuse is also included in Pact.Sal. XX,1-4, although these laws are not as explicit as L.Baiu. VIII,3, or L.Alam. LVI,1. Cf. Pact.Sal. XIII,4.

¹⁹Kralik, NA, XXXVIII (1913), 440, and Brunner, Deutsche Rechtsgeschichte, II, p. 737.

²⁰Schwind, p. 355.

²¹Lehmann, p. 115. This law is similar to two other Bavarian laws, VIII,4 and 8. See these laws below.

²²"Si autem muliere [sic] haec contingerit, omnia dupliciter componat [sic], sicut antea diximus de virgine." Ibid., p. 116. See Richard Schröder, Geschichte des ehelichen Güterrecht in Deutschland (Stettin, 1863), I, p. 17.

laws describe assaults which may eventually result in rape or fornication, any difference which may appear between manum inicere (L.Baiu. VIII,3) and caput denudare (L.Alam. LVI,1) must be excused. The laws indicate that they are primarily concerned with prohibiting the very embrace of women other than one's own spouse. Exposing the head of a woman (by removing her veil) in L.Alam. LVI,1 is seen as the first step in eventually disrobing her completely in order to molest her. Laying one's hand on a woman, as depicted in L.Baiu. VIII,3 concerns the same initiative leading to sexual abuse. L.Baiu. VIII,4 discussed below reinforces what is said here.

(b) Thirty-three per cent of the terms from the first sentence of L.Alam. LVI,1 appear as 40 per cent of all of L.Baiu. VIII,3.

(c) The laws also agree by requiring an additional wergeld of six solidi.

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Lex Baiuvariorum VIII,4

Si indumenta super genicula elevaverit.

Lex Alamannorum LVI,1

(a) L.Alam. LVI,1 also shows similarity with L.Baiu. VIII,4. As L.Baiu. VIII,3 is based on the first sentence of L.Alam. LVI,1, L.Baiu. VIII,4 is drawn from the second. This is especially evident since no other Germanic code contains similar legislation. Both laws discussed here

concern raising the garments of a woman. L.Baiu. VIII,4 prohibits raising the undergarments above the knee: "Si indumenta super genacula elevaverit, quod himilzorum²³ vocant, cum XII solidis componat."²⁴ L.Alam. LVI,1 concerns raising a woman's garments (undergarments cannot be rendered from context) to the knee: ". . . Et si eius vestimenta levaverit, usque ad genacula denudet [sic], cum sex solidis componat. . . ."²⁵ Apart from what garments are raised, and how far they are raised, the laws contain parallel concepts from raising a woman's clothing in order to molest here. The laws are similar, therefore, in a general sense.

(b) In addition, 46 per cent of the terms in the second sentence of L.Alam. LVI,1 are found as 50 per cent of L.Baiu. VIII,4. In this calculation, levare of L.Alam. LVI,1 is equated with elevare of L.Baiu. VIII,4, since both verbs mean to raise or lift up.

(c) No agreement.

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Lex Baiuvariorum VIII,6

De raptu virginum.

²³Kralik, NA, XXXVIII (1913), 439-440, and Brunner, Deutsche Rechtsgeschichte, II, p. 737.

²⁴Schwind, p. 355.

²⁵Lehmann, p. 115. See the comments in Dag Norberg, Syntaktische Forschungen auf dem Gebiete des spätlateins und des frühen Mittelalters (Uppsala Universitets Arskrift, IX; Uppsala, 1943), p. 249.

Lex Alamannorum LIIII,1

(a) The seizure of young unwed women is a common feature of several Germanic codes.²⁶ For this reason, the similarity between L.Baiu. VIII,6 and L.Alam. LIIII,1 is difficult to prove, since L.Visig. III,3,1,²⁷ L.Burg. XII,1,²⁸ L.Sal. XIV,1,²⁹ and L.Rib. XXXVIII,1³⁰ prohibit the same practice. The principles of these six laws are interconnected, and all may have been influenced originally by Roman law, especially by CTh IX,24,1.³¹ L.Baiu. VIII,6 which concerns virgins who are forcibly abducted says: "Si quis virginem rapuerit contra ipsius voluntatem et parentum eius, cum XL solidis componat, et alios XL cogatur in

²⁶See Mayer-Homberg, Die fränkischen Volksrechte, pp. 301-341.

²⁷The title of this law is indicative of those laws which follow. The title says: "Si ingenuus ingenuam rapiat mulierem, licet illa virginitatem redat, iste tamen illi coniungi non valeat." Zeumer, p. 139. Cf. Zeumer, NA, XXIV (1899), 600-602.

²⁸"Si quis puellam rapuerit, pretium, quod pro puella daturus erat, in novigildo cogatur exsolvere, et multae nomine solidos XII." De Salis, p. 51. See Katherine Fischer Drew, "The Germanic Family of the Leges Burgundionum," Medievalia et Humanistica, XV (1963), 13.

²⁹"Si quis tres hominis ingenua puella . . . rapuerint, . . . solidus XXX culpabilis iudicetur." Eckhardt, p. 52. Cf. Pact.Sal. XIII,1; Eckhardt, Pactus, p. 59. Even if three men abduct the girl, the crime remains the same. This is true as well for L.Rib. XXXVIII,1.

³⁰"Si quis ingenuus ingenuam rapuerit, bis centenos solidos noximus iudicetur. Quod si tres ingenui cum ipso fuerint, unusquisque eorum bis trigenos solidos noxii iudicetur. . . ." Beyerle-Buchner, p. 90. Cf. L.Rib. XXXIX,2.

³¹This law also appears as L.R.Visig. IX,9,1.

fisco."³² The addition of contra parentum eius is curious implying that there may have been young women who would willingly be abducted by a man perhaps by eloping. Although L.Alam. LIII,1 does not mention virgins explicitly, they are certainly included under its discussion of filia non sponsata. The law states: "Si quis filiam alterius non sponsatam acciperit sibi ad uxorem, si pater eius eam requirit, reddat eam et cum 40 solidis eam componat."³³ The abduction of unwed women described in L.Alam. LIII,1 can be seen as a simple means of obtaining a wife.³⁴ This law, as well as L.Baiu. VIII,6, is obviously drafted to protect a woman from being forcibly seized and coerced into an unwarranted marriage, and as an added precaution to prevent daughters from willingly contracting marriages without a mundium and without society's approval. The similarity between L.Baiu. VIII,6 and L.Alam. LIII,1 should not be exaggerated, since there are twice as many other Germanic laws which approach the principles expressed by these laws.

(b) No agreement.

(c) Under both laws, the abductor is required to pay forty solidi for forcibly seizing a woman. Only L.Baiu. VIII,6 adds an additional fine, also of forty solidi, to

³²Schwind, p. 356.

³³Lehmann, p. 111.

³⁴See Lothar von Dargun, Mutterrecht und Raubehe und ihre Reste in germanischen Recht und Leben (Untersuchungen zur deutschen Staats- und Rechtsgeschichte, XVI; Breslau)p.36.

be paid to the public treasury as a *fredus*.

* * * * *

Lex Baiuvariorum VIII,8

De fornicatione cum libera.

Lex Alamannorum LVI,1

(a) One difficulty of the *Lex Alamannorum* is its ambiguity. Whereas the distinction between free, freed, and unfreed (enslaved) individuals is a common feature of the *Lex Baiuvariorum*, such distinction is lacking in the *Lex Alamannorum*. The general absence of class distinctions in the latter code has a direct bearing on the criticism of *L.Baiu. VIII,8*. Although there are six laws concerning fornication in the *Lex Baiuvariorum*,³⁵ only *VIII,8* shows any similarity with the *Lex Alamannorum*, and this similarity is only partially valid. The similarity of *L.Alam. LVI,1* with *L.Baiu. VIII,8* is not strong. The major difference between these two laws is centered on consent, that is, whether the woman involved in fornication willingly allows herself to be seduced. *L.Baiu. VIII,8* is that law, for it says: "Si quis cum libera per consensum ipsius fornicaverit et nolet eam in coniugium

³⁵*L.Baiu. VIII,8-13. L.Baiu. VIII,9-13* are entitled: *VIII,9: Si servus cum libera fornicaverit; VIII,10: Si cum libera manumissa fornicaverit; VIII,11: Si cum virgine, quae per manum libera missa est; VIII,12: Si cum ancilla alterius; and VIII,13: Si cum ancilla virgine.*

sociare: cum XII solidis componat, quia nondum sponsata nec a parentibus sociata sed in sua libidine maculata."³⁶

L.Alam. LVI,1 specifies that the woman was forced against her will: ". . . Si autem ab ea fornicaverit contra voluntate eius, 40 solidis componat."³⁷ What was said above under L.Baiu. VIII,3 applies here as well, since the woman included in L.Alam. LVI,1 is a virgin, that is, an unmarried woman. Consequently, what similarity there may be between the present laws is not weakened by the difference of libera (L.Baiu. VIII,8) and virgo (L.Alam. LVI,1). The woman discussed in L.Alam. LVI,1 is clearly a freewoman, a libera.³⁸ Certainly, L.Alam. LVI,1 is a much more universal law than L.Baiu. VIII,8, and it may have influenced L.Baiu. VIII,9-13 as well.

(b) Except for a few words, there is little real philological similarity between the laws.

(c) No agreement.

* * * * *

Lex Baiuvariorum VIII,15

Si desponsatam non acceperit.

Lex Alamannorum LII

³⁶Schwind, p. 357.

³⁷Lehmann, p. 115.

³⁸Adult women are included under L.Alam. LVI,2. See the discussion under L.Baiu. VIII,3 above.

(a) Betrothal (sponsalia) directly affects the individual rights of freewomen in the Lex Alamannorum, and it is no surprise to find this concept duplicated by the Bavarian code. Both L.Baiu. VIII,15 and L.Alam. LII protect the individual rights of women once they have been betrothed.³⁹ Although other Germanic codes also discuss the rights of betrothal, most of these are more concerned with protecting the rights of engaged freemen than safeguarding the rights of freewomen.⁴⁰ For this reason, L.Baiu. VIII,15 and L.Alam. LII are unique since they are more concerned with freewomen. L.Baiu. VIII,15 says:

Si quis liber, postquam sponsaverit alicuius filiam liberam legitime, sicut lex est, et eam dimiserit et contra legem aliam duxerit, cum XXVIII solidis conponat parentibus et cum XII sacramentalibus iuret de suo genere nominatos, ut non per invidiam parentum eius nec per ullum crimen eam dimisisset, sed propter amorem alterius alteram duxerit, et sit finitum inter illos et postea

³⁹See Conrad, Deutsche Rechtsgeschichte, I, p. 153.

⁴⁰This is especially true in L.Visig. III,1,2; III, 3,3; and III,4,2. The Lex Burgundionum does not discuss violated rights of betrothal, except LII,3-4, which show, like these Visigothic laws, how the rights of engaged freemen are protected. The only exceptions to this are L.Sal. XCVII and Ed.Roth. CLXXVIII, both of which protect engaged women. They follow. L.Sal. XCVII: "Si quis filiam alienam sponsaverit /sic/ et se retraxerit et eam noluerit prendere, . . . solidis /sic/ LXII semi culpabilis iudicetur." Eckhardt, p. 168. Ed.Roth. CLXXVIII: "Si quis sponsaverit puellam liberam aut mulierem, et post sponsalias factas et fabola firmata duo annus sponsus neclexerit /sic/ eam tollere, et dilataverit nuptias exequi: post transactum biennium potestatem habeat pater aut frater, vel qui mundium eius potestatem habet, distringere fideiussorem, quatinus adimpleat metam illam, quae in die sponsaliorum promisit: postea leciat eos ad marito alii dare, libero tamen. . . ." Bluhme, p. 41.

filiam suam donet cui vult.⁴¹

Clearly, the engagement is seen as a contract between the fiancé and the woman, although the underlying principle for protecting the rights of the woman may very well be the mundium.⁴² The corresponding L.Alam. LII states:

Si quis filiam alienam disponsatam dimiserit et aliam duxerit, conponat eam, quod disponsavit et dimisit, cum 40 solidis et cum 12 sacramentalis iuret, cum quinque nominatos et sex advocatus, ut per nullo vitio nec temptatem eam habuisset nec vitium in illa invenisset, sed amor de alia eum adduxit, ut illam dimisisset et aliam habuisset uxorem.⁴³

Although the laws differ in their wergeld, which both clearly require, there is considerable agreement otherwise. The sincerity of the fiancé's claims in terminating the engagement appears to be of principal significance in both laws, since he assures his betrothed of his respect for her by swearing with twelve oathtakers. So large a number of oathtakers would not normally be necessary unless a serious crime might be imputed to him, and breaking an engagement might be charged as such a crime.⁴⁴ Both laws clearly stipulate that it be due solely to the affection of another

⁴¹Schwind, pp. 359-360.

⁴²See Karl Lehmann, "Zur Textkritik und Entstehungsgeschichte des alamannischen Volksrechtes," NA, X (1885), 496. Yet, this does not hold true for all crimes victimizing women. See L.Baiu. IV,30 above.

⁴³Lehmann, pp. 110-111.

⁴⁴The gravity of this crime is also especially evident in the Visigothic laws cited in n. 40 above.

woman that the fiancé wishes to break the engagement, and not to any dislike or crime (L.Baiu. VIII,15) or any vice or temptation (L.Alam. LII). The innocence of the betrothed woman is upheld by the laws.

(b) The laws are close philologically, since 42 per cent of the terminology of L.Alam. LII reappears as 36 per cent of L.Baiu. VIII,15. Ducere and adducere as well as sponsare and disponsare are counted equally in this calculation.

(c) No agreement.

* * * * *

Lex Baiuvariorum VIII,16

Si alterius sponsam rapuerit.

Lex Alamannorum LI

(a) L.Baiu. VIII,16 is an extension of the previous Bavarian law, VIII,15, since the former concerns betrothed women abducted by men other than their fiancés. This, of course, constitutes a most serious crime since the sanctity of betrothal (so evident in L.Baiu. VIII,15 above) is seriously jeopardized. The abduction of a woman is merely a simple and inexpensive means of obtaining a wife as is already noted above under L.Baiu. VIII,6. The similarity of L.Baiu. VIII,16 and the law from which it is drawn, L.Alam. LI, is obvious.⁴⁵ L.Baiu. VIII,16 says: "Si quis

⁴⁵Closely parallel to the two laws discussed here is Ed.Roth. CXCI: "Si quis puellam aut viduam spunsata [sic]

sponsam alterius rapuerit, vel per suasionem sibi eam duxerit uxorem, ipsam reddat et componat bis LXXX solidis, hoc est CLX.ⁿ⁴⁶ L.Alam. LI says: "Si quis sponsatam alterius contra legem acciperit, reddat eam et cum 200 solidis componat. . . ."ⁿ⁴⁷ Both laws require the return of the woman with payment of the full wergeld of 160 solidi, to which L.Alam. LI adds an additional payment of 40 solidi, thereby making the total of 200 solidi. In all likelihood, this additional payment may be a fredus. That marriage is the motive for the abduction is evident in L.Baiu. VIII,16; the case for L.Alam. LI is not so clear from the law itself. Nevertheless, the position of L.Alam. LI seen from within the entire Alamannic code indicates that marriage is its underlying purpose, that is, L.Alam. L,1 through LIII,2 all deal with abducting women, whatever their marital status, for cohabitation.

(b) Linguistically, 57 per cent of the terms from the first part of L.Alam. LI (quoted above) constitute 41 per cent of the total L.Baiu. VIII,16. If all of L.Alam. LI is considered, 28 per cent of the terms of this law reappear in L.Baiu. VIII,16.

(c) Apart from the fredus required only by L.Alam. LI, the full wergeld of 160 solidi is required by both laws.

alterius rapuerit, sit culpabiles parentibus puelle [sic],
. . . .ⁿ Bluhme, p. 46. Cf. L.Sal. XIV,8.

⁴⁶Schwind, p. 360.

⁴⁷Lehmann, p. 110.

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Lex Baiuvariorum VIII,19

Vario modo dicit de avorso.

Lex Alamannorum LXX

(a) There are three laws in the Lex Alamannorum which concern causing abortions in women, that is, L.Alam. LXX, and LXXXVIII,1 and 2. Only the first of these three laws has any direct bearing on L.Baiu. VIII,19 which also concerns various cases of abortion. Both of the south Germanic laws discussed here may be based upon Pact.Sal. XXIV,6⁴⁸ and L.Rib. XL,10.⁴⁹ There is no other law besides these Salic and Ripuarian laws which appears to have exerted its influence on L.Baiu. VIII,19 and L.Alam. LXX.⁵⁰ However, L.Baiu. VIII,19 is not completely clear since it contains conflicting concepts. The law says:

Si quis mulieri ictu quolibet avorsum fecerit, si mulier mortua fuerit, tanquam homicida tenetur. Si autem tantum partus extinguitur, si adhuc partus vivus non fuit, XX solidis componat.

Si autem iam vivens fuit, weregeldum persolvat L

⁴⁸"si [quis] vero infantem in ventre matris suae occiderit aut ante quod nomen habeat infra novem noctibus . . . solidos C culpabilis iudicetur." Eckhardt, Pactus, p. 91. Italics and brackets are Eckhardt's.

⁴⁹"Si quis partem in feminam interfecerit seu natam, priusquam nomen habeat, bis quinquagenos solidos culpabilis iudicetur. . . ." Beyerle-Buchner, p. 94.

⁵⁰Attention should be focused on L.Visig. VI,3,2-3 which approaches all the laws mentioned here. See d'Ors, Codigo de Eurico, p. 123.

et III solidis et tremisse.⁵¹

Certainly, a crime is still committed even if the child lives, and this is why the person guilty of an attempted abortion must still render wergeld. The law indicates a compensation based on the condition of the fetus (living or dead) before the abortive blow. L.Alam. LXX is not as explicit in its description of the crime of abortion:

Si qua mulier gravida fuerit, et per factum alterum infans natus mortuus fuerit, aut si vivus natus fuerit et novem noctes non vivit, cui reputatum fuerit, 40 solidos solvat aut cum 12 medios electos iuret.⁵²

How the abortion is caused is not explained in this law as it is in L.Baiu. VIII,19 above. L.Alam. LXX is concerned primarily with the death of the child, since the child's demise before the ninth night is hardly a guarantee that death was caused by an attempted abortion. There is no question that the laws are similar if only in a general sense.⁵³

⁵¹Schwind, pp. 362-363. The Alamannic and Bavarian codes use different words for abortion. The Lex Baiuvariorum merely employs the term avorsus (VIII,19), whereas the Lex Alamannorum uses the alternate spelling of aborsus (LXXXVIII,1) as well as abortio (LXXXVIII, title). L.Alam. LXX uses none of these terms, but speaks generally about killing the fetus of a pregnant woman.

⁵²Lehmann, p. 137. This law is a verbatim text of Pact.Alam. II,30 (XII of Eckhardt's revised edition).

⁵³Contrary to Schwind, there is no agreement between the two remaining Alamannic laws (LXXXVIII,1 and 2), which also concern abortion, and L.Baiu. VIII,19. These two additional laws are chiefly concerned with the sex of the aborted fetus, not simply with the fact that an abortion has been caused. L.Alam. LXXXVIII,1 and 2 emphasize that women receive a considerably better wergeld in the Alamannic

(b) Linguistically, 20 per cent of the terms of L.Alam. LXX appear as 17 per cent of the words of L.Baiu. VIII,19.

(c) The laws indicate no agreement in the wergeld payment; nevertheless, there is an alternate payment supplied by several MSS of L.Baiu. VIII,19. Codices Ad, Ald, Alt, B, Ep, Gr, H, Jlz, L, and T2 of Schwind's edition all render forty solidi if the child is stillborn, thereby agreeing with the payment rendered by L.Alam. LXX.

Title IX

De furto.

Lex Baiuvariorum IX,2

Si in ecclesia furaverit.

Lex Alamannorum VI

(a) There are two Alamannic laws which are similar to L.Baiu. IX,2, although the first of these, L.Alam. VI, shows greater similarity than the second, L.Alam. XXXI. The first of these Alamannic laws is taken from that group of laws dealing explicitly with the rights of the Church;

code than in other leges barbarorum: in these laws, the parents of an aborted fetus receive twice the wergeld (twenty-four solidi) for a girl as for a boy (twelve solidi). Beyerle, ZSRG, XLIX (1929), 286-287 also believes L.Alam. LXXXVIII and L.Baiu. VIII,19 are similar.

the second is taken from those laws dealing solely with the ducal office. L.Baiu. IX,2 concerns more than stealing from a church as its title indicates above; it also prohibits theft from the duke's courtyard, workshop, and mill. All of these places fit in logically under one law because all are public places.⁵⁴ L.Baiu. IX,2 is divided into four paragraphs, of which all four are quoted in whole or part below. The law follows:

Et si in ecclesia vel infra curtem ducis vel in fabrica vel in mulino⁵⁵ [sic] aliquid furaverit, triniungeldo⁵⁶ componat, hoc est ter novam reddat, quia iste IIIII domus casae publicae sunt et semper patentes.

Et si negare voluerit, secundum qualitatem pecuniae iuret. . . .

Et si amplius quam solidum sive III danarios vel plus usque quinque solidis furaverit, cum sacramentalibus sex iuret.

Si bovem domitum vel vaccam mulsam, id est lactantem, furaverit, cum VI sacramentalibus iuret, . . .⁵⁷

Although not all of the conditions in L.Baiu. IX,2 are evident in L.Alam. VI, many of them are in one form or another.

Furthermore, L.Alam. VI as well as XXXI does not mention

⁵⁴Gerhard Seeliger, "Handwerk und Hofrecht," Historisches Vierteljahrschrift, XVI (1913), 483. Cf. Carl Köhne, Das Recht der Mühlen bis zum Ende der Karolingerzeit (Untersuchungen zur deutschen Staats- und Rechtsgeschichte, LXXI; Breslau, 1904), pp. 22-23.

⁵⁵Mill should be rendered by molina or molinus, rather than by mulinum. Molinus also appears in L.Alam. LXXX. Cf. Niermeyer, Mediae Latinitatis lexicon minus, VIII, p. 700, and Paul Aebischer, "Les dénominations du moulin dans les chartes italiennes du moyen âge." Archivum Latinitatis Medii Aevi, VII (1932), 49.

⁵⁶See Krzlik, NA, XXXVIII (1913), 41.

⁵⁷Schwind, pp. 367-369.

workshops or mills.⁵⁸ L.Alam. VI states:

Si quis res ecclesiae furaverit et convictus fuerit, ut solvatur, unicuique rem, quae furaverit, tres novigildos solvat aut servum aut ancillam aut bovem aut caballum aut quaecumque animal vel ceteras res, qui ad ecclesiam pertineunt. . . . Si autem negare voluerit, secundum qualitatem pecuniae ita iuret cum suis sacramentalibus in ipso altare, cui res furtivas abstulit, . . .⁵⁹

Both laws prohibit theft of church property, and both indicate to various degrees what that property may be. In this respect, L.Alam. VI is more specific, for it prohibits the theft of slaves (male and female), oxen, and horses. L.Baiu. IX,2 explicitly mentions but one possession, cattle, be they bulls (domitus boves) or cows (mulxae vaccae).⁶⁰ Reference to Bavarian laws already discussed in this study, such as L.Baiu. I,3-4, indicates that the movable property described in L.Alam. VI could also be included under L.Baiu. IX,2, especially when a church is involved. Slaves, oxen, and horses owned by a church and described in L.Baiu. I,3-4 could be included and probably are implicated in L.Baiu. IX,2. Therefore, the properties described by L.Baiu. IX,2 and L.Alam. VI are similar as far as a church is concerned. The influence of L.Alam. XXXI, which concerns the ducal property covered in L.Baiu. IX,2 is discussed below under

⁵⁸See Pact.Sal. XXII,1-3, and L.Visig. VII,2,12.

⁵⁹Lehmann, p. 74.

⁶⁰Stealing cows is also evident in Pact.Sal. III,6 and Ed.Roth. CCL (to which the latter adds horses and oxen), and these animals are not owned by a church.

its own heading. If one wishes to deny the charge of theft, he may swear with oathtakers under both laws. However, there is no agreement in the number of required oathtakers, since L.Alam. VI does not explain how many oathtakers must be present, nor can this be solved by drawing upon the information supplied in the corresponding L.Alam. (Hiet.) VI,3 which concerns the conditions under which persons are chosen as oathtakers.⁶¹ Nevertheless, there is agreement in so far that both laws maintain the validity of an oath in cases of theft.

(b) No agreement.

(c) Both laws require the unusual payment of thrice ninefold compensation.

Lex Alamannorum XXXI

(a) L.Alam. XXXI, which is also parallel to another Bavarian law (II,12) discussed previously, is too concise to show definite proof of legal influence; nevertheless, it still manifests concrete similarities with L.Baiu. IX,2. A brief passage of L.Alam. XXXI will unquestionably illustrate this similarity: "Si quis res duci, quod ad eum perteneunt, exinde aliquid furatus fuerit, ter novigildus [sic] componat . . ." ⁶² L.Alam. XXXI does not define what

⁶¹The Alamannic and Bavarian codes appear to have reached the number of oathtakers independently of each other. This view is upheld by Schwind, NA, XXXI (1906), 441.

⁶²Lehmann, p. 89.

ducal property is stolen or where it is stolen. Such definitions, so evident in L.Baiu. IX,2, are not necessary in this law, since L.Alam. XXXI universally applies to all ducal property, thereby protecting the duke's position no matter what may be stolen.

(b) No agreement.

(c) Another point of similarity is the thrice nine-fold compensation. The fact that both laws contain this payment strengthens the dependence L.Baiu. IX,2 has on the earlier L.Alam. XXXI.

* * * * *

Lex Baiuvariorum IX,4

Si liberum hominem furaverit.

Lex Alamannorum XLV

(a) Since very early times, the Germans have traded in slaves, but most of these were prisoners of war.⁶³ That slavemongering included selling one's own tribesmen into bondage is evident from the laws in the Alamannic and Bavarian codes,⁶⁴ but the laws themselves differ in one aspect: where the slaves are sold, that is, within or outside the duchy. The Lex Alamannorum supplies one law (XLV) which concerns selling freemen outside the duchy

⁶³Tacitus, Germania, 25. See Anderson, Cornelii Taciti, pp. 18 and 123. Cf. E.A. Thompson, "Slavery in Early Germany," Herrathena, LXXXIX (1957), 19-20.

⁶⁴This practice is also evident in L.Burg. LVI,1.

(provincia).⁶⁵ The Lex Baiuvariorum contains two laws (IX,4 and XVI,5), but only IX,4 concerns freemen solely. L.Baiu. XVI,5, which is discussed below, concerns selling freemen and freewomen into bondage. If women were included in L.Baiu. IX,4, there is no doubt that they would be explicitly mentioned. The basis of all these laws is undoubtedly Pact.Sal. XXXIX,3-4 and L.Rib. XVII.⁶⁶ L.Baiu. IX,4 states:

Si quis liber liberum hominem furaverit et vendiderit et exinde probatus fuerit, reducat eum et libertati restituat et cum LXXX solidis componat eum. In publico vero XL solidos solvat propter praesumptionem quam fecit.

Et si eum revocare non potuerit, tunc ipse fur perdat libertatem suam pro eo, quod conlibertum⁶⁷ suum servitio tradidit, si solvere non valet wergelt⁶⁸ [sic] parentibus, et amplius non requiratur.⁶⁹

⁶⁵Provincia clearly indicates that Alamannia is viewed as an arm of the Franks. The absence of provincia from the Lex Baiuvariorum is therefore striking. See Cramer, Geschichte der Alamannen, p. 297.

⁶⁶Note L.Rib. XVII especially: "Si quis ingenuus ingenuum Ribvarium extra solum vindiderit et eum iterum ad solum non potuerit reducere, sexcentos solidos culpabilis iudicetur, aut cum 70 duobus iuret; et si eum in solum reduxerit, ducentos solidos culpabilis iudicetur. Quod et de femina ingenua similiter convenit observare." Beyerle-Buchner, p. 80.

⁶⁷There is much confusion whether the conliberti (colliberti) are truly free. That they may be slightly below the freeborn is likely. See Marc Bloch, "Les colliberti," Revue historique, CLVII (1928), 227. Also see Joseph Balon, "Le statut juridique des colliberts du Val de Loire," Revue benédicte, LXXVII (1967), 300-301, and Hans Werle, "Conliberti," Archiv für Diplomatik, XIV (1968), 197.

⁶⁸Wergelt is a misspelling of wergeld; see Kralik, NA, XXXVIII (1913), 42.

⁶⁹Schwind, pp. 370-371.

The law does not indicate where a freeman is sold, that is, either within or outside the duchy. If the enslaved freeman is found, he must be freed from servitude and compensated by the thief. The thief loses his own freedom if the enslaved victim cannot be found and if he cannot pay the wergeld.⁷⁰ L.Alam. XLV presents a striking parallel; it, too, is concerned only with freemen, and freemen sold outside the duchy (provincia):

Si quis liber liberum extra terminos vendiderit, revocat eum infra provinciam /sic/ et restituat eum libertatem et cum 40 solidis componat. Si autem eum revocare non potest, cum virigildum eum parentibus solvat, id est bis octuaginta solidos; si heredem reliquit; si autem heredem non reliquit, cum 200 solidis componat.⁷¹

⁷⁰L.Visig. VII,3,3 is the only law in the Visigothic code which approaches the two laws discussed here. This Visigothic law is similar in a most general sense since it concerns selling freeborn children into slavery. Although L.Baiu. IX,4 and L.Alam. XLV do not specify that the victim is not an adult, these laws are only concerned with enslaved freeborn persons. Individuals who are freed or enslaved are not discussed by either L.Baiu. IX,4 or L.Alam. XLV. Because L.Visig. VII,3,3 is the only Visigothic law which concerns freeborn individuals selling others of their class into bondage, it is similar to the laws discussed here. L.Visig. VII,3,3 says: "Qui filium aut filiam alicuius ingenui vel ingenue plagiaverit aut sollicitaverit et in populo nostro vel in alias regiones transferri fecerit, huius isceleris autor patri aut matri fratribusque, si fuerint, sive proximis parentibus in potestatem tradatur; ut illi occidendi aut vendendi eum habeant potestatem, aut, si voluerint, compositionem homicidii ab ipso plagiatore consequantur, id est solidos CCC; quia parentibus venditi aut plagiati non levius esse potest, quam si homicidium fuisset admissum. Quod si eum ex peregrinis ad propria potuerit revocare, plagiator CL solidis, hoc est medietatem homicidii, exolvat, aut si non habuerit, unde componat, ipse subiaceat servituti." Zeumer, pp. 298-299. This law clearly indicates that the wergeld will be reduced by half if the victim is returned and restored to freedom.

⁷¹Lehmann, pp. 105-106.

All of the ideas evident in L.Baiu. IX,4 are contained by this law with one exception: there is no explicit mention of the enslavement of the thief if he cannot recall the enslaved freeman, but the inability, of any, of the thief to pay the wergeld would ultimately result in his enslavement to the injured party. In addition, selling freemen into servitude is most profitable if the individuals are sold at a distance from their homeland. For this reason, selling freemen outside the duchy carries greater assurance that the enslaved person would not be freed easily. The inference may be made, therefore, that L.Baiu. IX,4 most likely concerns selling freemen outside the borders of the duchy, and thereby agrees with L.Alam. XLV. The compensation for selling freemen into bondage inside the duchy would be considerably less as L.Alam. XLVII indicates: "Si enim liber liberum infra provintiam vindiderit [sic], revocat eum in pristinam libertatem et cum 12 solidis componat. . . ."⁷² Naturally, both L.Baiu. IX,4 and L.Alam. XLV stipulate that the enslaved freeman is to be restored to liberty.

(b) The laws are also close philologically, since 46 per cent of the terms of L.Alam. XLV constitute 36 per cent of all the words used by L.Baiu. IX,4.

(c) L.Alam. XLV says if there is no heir to the enslaved freeman, compensation will be made at 200 solidi.

⁷²Ibid., p. 107.

Lehmann has correctly indicated that this high wergeld is the full wergeld of 160 solidi plus 40 solidi rendered to the public treasury as a fredus.⁷³ Likewise, there is a parallel in L.Baiu. IX,4 which requires only half of the full wergeld (eighty solidi) as well as forty solidi as a fredus. Although the amount of the required wergeld and fredus do not agree, there is general agreement since the laws do require double compensation.

Title X

De incendio domorum et eorum compositione.

Lex Baiuvariorum X,1

De immissione ignis per noctem.

Lex Alamannorum LXXVI,1

(a) Arson is a serious crime among the south Germans. This is especially true if the arsonist attempts to burn another's house under cover of darkness. The first law contained in title X (which concerns arson) of the Lex Baiuvariorum prohibits setting fires by night. This law is L.Baiu. X,1, and it says:

Si quis super aliquem in nocte ignem inposuerit et incenderit liberi vel servi domum, inprimis secundum qualitatem personae omnia aedificia conponat atque restituat et quicquid ibi arserit,

⁷³Ibid., p. 106, n. 3.

restituat unaquaeque suppellectilia.

Et quanti liberi nudi evaserint de ipso incendio, unumquemque cum sua hresuauunti⁷⁴ componat. De feminis vero dupletur. Tunc domus culmen cum XL solidis componat.⁷⁵

The gravity of this law is shown by the inclusion of the houses of slaves as well as those of freemen. Although there are Bavarian laws which discuss freemen and slaves together, there are few laws which join them in the same sentence as the law above. Nevertheless, the damage to one's house is restored according to the status of the person who owns it, that is, a freeborn person receives greater compensation than a slave.⁷⁶ The damage to the roof (culmen) also receives special attention; not only is the roof discussed separately at the end of the law, but it is compensated by a relatively high amount of forty solidi. L.Alam. LXXVI,1 shows many parallels to the above law: "Si quis aliquem foso in nocte miserit, ut domus incendat seu et sala sua, et inventus et probatus fuerit, omnia, quid ibidem arsit, similem restituat et super haec 40 solidos componat."⁷⁷ L.Alam. LXXVI,1 as well as L.Baiu. X,1 stresses the danger of houses set on fire at night. Although no class distinctions are mentioned in L.Alam. LXXVI,1, the law clearly agrees with L.Baiu. X,1 by

⁷⁴See Kralik, NA, XXXVIII (1913), 446-447.

⁷⁵Schwind, pp. 384-385.

⁷⁶Cf. L.Visig. VIII,2,1.

⁷⁷Lehmann, p. 140.

requiring full restitution of all damages caused by the fire. L.Alam. LXXVI,1, in addition, requires a payment of forty solidi. What could this additional payment be for except to pay for the roof? Certainly, the attention devoted to the roof in L.Baiu. X,1 would not be overlooked by the Alamanni. It may be safely inferred that the compensation of forty solidi in L.Alam. LXXVI,1 is the source of the same payment so clearly described in L.Baiu. X,1. Although Pact.Sal. XVI,1⁷⁸ and L.Rib. XVIII⁷⁹ also concern arson, they do not deal with that particular crime of setting another's house on fire at night. They show only general similarity with L.Baiu. X,1 and L.Alam. LXXVI,1. The greatest similarity of these four laws is evident by those two laws from the Alamannic and Bavarian codes.

(b) The terminology of both laws is close, since 52 per cent of the terms of L.Alam. LXXVI,1 appear as 30 per cent of those terms of L.Baiu. X,1.

(c) Both laws require restoration of all damages plus forty solidi for the roof.

⁷⁸"Si quis casam [alienam] quamlibet super homines dormientes incenderit . . ." Eckhardt, *Pactus*, p. 71. Alienam is included within brackets in Eckhardt's edition.

⁷⁹"Si quis hominem per noctem latenter incenderit, sexcentos solidos culpabilis iudicetur, et insuper damno et dilatura restituat; aut si negaverit, cum 72 iuret." Beyerle-Buchner, p. 81. Part of this text appears to be missing since the restoration of damages which it describes could hardly pertain to a human being. It must pertain to the damaging of the man's house rather than his person.

* * * * *

Lex Baiuvariorum X,2

De scuria liberi.

Lex Alamannorum LXXVI,2

(a) The Alamannic and Bavarian codes are similar in another crime concerning arson. Both L.Baiu. X,2 and L.Alam LXXVI,2 describe the compensation exacted if the storehouses of freemen are burned.⁸⁰ Only one other law, Pact. Sal. XVI,3⁸¹ also concerns burning the storehouses of others, and this may be the basis of the two south Germanic laws discussed here. Of the five paragraphs of L.Baiu. X,2 in Schwind's edition, only the first paragraph is similar to L.Alam. LXXVI,2. L.Baiu. X,2, 1 says: "De scuria⁸² vero liberi, si conclusa parietibus et pessulis cum clave munita fuerit, cum XII solidis culmen componat."⁸³ This law stresses that the storehouses are enclosed by laws, thereby making them separate buildings in themselves. That this idea is also expressed, although in

⁸⁰See Karl Siegfried Bader, Das mittelalterliche Dorf als Friedens- und Rechtsbereich (Weimar, 1957), pp. 81-82 and 92.

⁸¹"Si quis spicarium aut machalum cum anona incendit. . . ." Eckhardt, Pactus, p. 73.

⁸²Besides storehouse, scuria may also be rendered by barn. See Du Cange, Glossarium mediae et infimae latinitatis, VII, p. 377, and Hieronymus, Mediae latinitatis lexicon minus, X, p. 949. Cf. Kralik, IA, XXXVIII (1913), 36, and Brunner, Deutsche Rechtsgeschichte, II, p. 846, n. 4.

⁸³Swind, p. 385.

greater detail, by L.Alam. LXXVI,2 can be seen from the law itself. L.Alam. LXXVI,2 says: "Si enim domus infra curte insenderit aut scuria aut granica vel cellaria, omnia similiter restituat et cum 12 solidis componat."⁸⁴ In addition to a storehouse, L.Alam. LXXVI,2 adds a granary and another storehouse (cellarium), and it clearly describes these structures as buildings. It may be assumed, therefore, that these buildings have walls of their own, thereby agreeing with those characteristics given in L.Baiu. X,2,§1. The latter does not require that the damaged buildings be restored, although the last paragraph of this law (§5) clearly requires this. If L.Baiu. X,1 requires restitution of buildings, L.Baiu. X,2 should as well. L.Alam. LXXVI,2 also requires restitution. In the discussion of L.Baiu. X,1 above, the roof receives special attention; this is also true for L.Baiu. X,2,§1 where roofs of storehouses are to be compensated by twelve solidi. Again, there is a parallel in L.Alam. LXXVI,2 which also requires an additional compensation of twelve solidi. What would this compensation be for except for the loss of the roof?

(b) Although 25 per cent of the terms of L.Alam. LXXVI,2 constitute 28 per cent of the terms of L.Baiu. X,2,§1, no significant terms concur in either law except scuria.

(c) The laws require restitution for all damages

⁸⁴Lehmann, p. 141.

plus twelve solidi for the roof.

Title XI

De violentia.

Lex Baiuvariorum XI,1

De curte.

Lex Alamannorum XCIV,2

(a) Of the four laws contained under title XI of the Lex Baiuvariorum, only one (XI,1) shows any degree of similarity with the Lex Alamannorum. L.Baiu. XI,1 states: "Si quis in curtam alterius per vim contra legem intraverit, cum III solidis componat."⁸⁵ It is parallel to the second half of L.Alam. XCIV,2. However, all of L.Alam. XCIV,2 is presented here, since the second half of this law is based on the concepts established in the first half. The law follows: "Et si intus [buricas] per furore intrat et de suo nihil invenit, 6 solidos componat. Et si in curte aliena ingressus fuerit, simili modo."⁸⁶ It may be inferred that the anger defined in the first half of L.Alam. XCIV,2

⁸⁵Schwind, p. 396.

⁸⁶Lehmann, p. 154. Buricas is understood from the previous law, XCIV,1. Buricas may be enclosures for animals in the forest. See Charles Parain, "The Evolution of Agricultural Technique," in The Cambridge Economic History of Europe, ed. M.H. Postan et al., 2nd ed. (Cambridge, 1966), I, p. 172.

applies to the second half. Certainly, a person who enters a courtyard⁸⁷ in the state of anger may do so forcibly. If the person's entry is met with some form of opposition, such as a locked gate, he can overcome this if he climbs over the obstacle, thereby committing forcible entry. I believe we may infer this from L.Alam. XCIV,2, thereby linking this law with L.Baiu. XI,1. The laws, however, express no other agreement.

(b) No agreement.

(c) No agreement.

Title XII

De terminis ruptis.

Lex Baiuvariorum XII,8

De signis non evidentibus.

Lex Alamannorum LXXXI

(a) Land was a precious commodity in early medieval society since it was the basis of all subsequent wealth. Proving where one's land ends and another's begins was not easy if there were no natural boundary markers, and the absence of markers gave a land-greedy person the opportunity to violate the property rights of others at the others'

⁸⁷Courtyard can mean any fenced-in property, even if it is not adjoining a domicile. See L.Baiu. II,10 above.

expense. The south Germans saw the necessity of promulgating legislation to handle boundary disputes which might arise. Of the eleven laws contained in title XII of the Lex Baiuvariorum, eight of them concern boundary markers, and seven of these (XII,1-7) are directly influenced by L.Visig. X,3,2-5.⁸⁸ The remaining law (XII,8) shows influence not from Visigothic law, but from L.Alam. LXXXI.⁸⁹ Although the Visigoths also drafted written laws concerning boundary markers, only the Alamanni and Bavarians are concerned, in addition, with settling the disputes which may arise if the markers are not easily recognizable. The legal concepts of L.Baiu. XII,8 and L.Alam. LXXXI are especially similar since the laws settle disputes between two opposing parties⁹⁰ in the same way, by wager of battle.⁹¹ The Lex

⁸⁸ L.Visig. X,3,5 is derived from Cod.Eur. CCLXXVI. See Felix Schiller, "Das erste Fragment des Codex Euricianus," ZSRG, XXX (1909), 18-36, and Zeumer, NA, XXIII (1898), 434. Cf. Max Easer, Das römische Privatrecht (Handbuch der Altertumswissenschaft, X,3,3; Munich, 1959), II, p. 37, n. 39. Also see L.Burg. LV,5-6.

⁸⁹ D'Ors, Codice de Eurico, p. 193 supports the view expressed here. Franz Beyerle, "Zur Frühgeschichte der westgotischen Gesetzgebung. Volksrechtliche Studien IV," ZSRG, LXVII (1950), 10-11 contends there is Visigothic legal influence on L.Baiu. XII,8, but his arguments are based largely on assumptions, and little on fact.

⁹⁰ There is no guarantee that the opposing parties are necessarily aristocratic families. Nevertheless, this view is maintained by Parain, Cambridge Economic History, I, p. 36. That they are families, however, is certain. See the discussion below.

⁹¹ See A. Esmein, A History of Continental Criminal Procedure, trans. John Simpson (Continental Legal History Series, V; Boston, 1913), pp. 34-35 who discusses how free-

Visigothorum settles land disputes by judicial proceedings rather than by force of arms. The wager of battle described by L.Baiu. XII,8 can only have come from L.Alam. LXXXI, and this holds true as well for the other points of similarity between these laws.⁹² L.Baiu. XII,8 follows:

Quotiens de comarcanis⁹³ contentio nascitur, ubi evidentiâ signa non apparent, in arboribus aut in montibus nec in fluminibus, et iste dicit: 'hucusque antecessores mei tenuerunt et in alodem mihi reliquerunt' et ostendit secundum proprium arbitrium locum; alter vero nihilominus in istius partem ingreditur, alium ostendit locum secundum prioris verba, suum et suorum antecessorum semper fuisse usque in praesens asseritur; et si alia probatio nusquam inveniri dinoscitur, nec utriusque invasionem compensare voluerint: tunc spondeant invicem uuehadino,⁹⁴ quod dicimus, et in campiones non sortiantur, sed cui Deus fortiozem dederit et victorian, ad ipsius partem designata pars, ut quaerit, pertineat.⁹⁵

This law indicates that boundary markers are placed by one's ancestors, and since ancestors represent generations,⁹⁶ land is thought of in terms of families rather -----
men can easily initiate claims for wager of battle.

⁹²L.Alam. LXXXI is also similar to L.Baiu. XIV,17. See this law below.

⁹³Meaning a common boundary between two different parties. See Kralik, NA, XXXVIII (1913), 44-45, and Brunner, Deutsche Rechtsgeschichte, I, p. 284.

⁹⁴Meaning wager of battle. Kralik, NA, XXXVIII (1913), 619-621. Cf. Schade, Altdeutsches Wörterbuch, II, p. 1112, Brunner, Deutsche Rechtsgeschichte, II, p. 555, and Schmeller, Bayerisches Wörterbuch, II, col. 880.

⁹⁵Schwind, pp. 402-403.

⁹⁶See Fustel de Coulanges, Histoire des institutions politiques: L'allou et le domaine rural, pp. 106-109.

than of individuals. Consequently, the strife between the two opposing parties is the result of blood ties, and this principle is also evident to a greater degree in L.Alam.

LXXXI.⁹⁷ L.Bain. XII,8 also indicates that the land it describes is held in full ownership (alodis, allodium).⁹⁸

A comparison of this law with L.Alam. LXXXI shows striking similarities. L.Alam. LXXXI says:

Si quis contentio orta fuerit inter duas genealogias de termino terrae eorum, unus dicit: 'Hic est noster terminus', alius rovatit in alium locum et dicit: 'Hic est noster terminus', ibi de praesente sit comis de plebe illa, ponat signum, ubi isti voluerint, et ubi alii voluerint terminos, et girent ipsam contentionem. Postquam girata fuerit, veniant in medium et de praesenti comite tollant de ipsa terra, quod Alamanni corfo⁹⁹ dicunt, . . . Tunc spondeant inter se pugna duorum. Quando parati sunt ad pugnam, tunc ponat ipsa terra in medio et tangant ipsa terra cum spatas suas, quos pugnare habebunt, et testificent Deum creatorem, ut, cui sit iustitia,

⁹⁷See Bullough, Past and Present, XLV (1969), 12. Cf. Paul Vinogradoff, Outlines of Historical Jurisprudence (Oxford, 1920), I, p. 335, and his Custom and Right (Instituttet for Sammenlignende Kulturforskning, series A, III; Oslo, 1925), p. 60.

⁹⁸P.W.A. Imrink, At the Roots of Medieval Society (Instituttet for Sammenlignende Kulturforskning, series A, XXIV; Oslo, 1958), p. 64, supports the idea that "allodium was essentially a right belonging to the family." The association of allodium with the family also agrees with L.Bain. I,1. See especially the title of this law above. Also see Inama-Sternegg, Deutsche Wirtschaftsgeschichte, I, p. 141, and Fustel de Coulanges, "Recherches sur cette question: Les Germains connaissaient-ils la propriété des terres?" Séances et travaux de l'Académie des sciences morales et politiques, nouvelle série, XXIV (1885), 51-52.

⁹⁹Meaning earth in general. See Baesecke, Geschichte der deutschen Sprache, LX (1935), 29, and Graff, Althochdeutscher Sprachschatz, V, col. 706.

illi donet Deus victoriam, et pugnent. . . ."100

Like L.Baiu. XII,8, L.Alam. LXXXI also associates land disputes with families (genealogiae) rather than with individuals.¹⁰¹ Although only this Alamannic law specifies that the count as an authority is required from L.Baiu. XII,8. Certainly, the Bavarians would not allow land disputes to be settled without the intervention of a neutral authority, such as the count. The resemblance is striking; even the dialogues of the opposing parties in both laws are similarly stereotyped. In addition, the laws specify that the victor will be he who is favored by God; that God will not allow the person with the rightful claim to lose a feat of arms. Such a reference is surprising, since this would naturally be understood by the people themselves, and no law is necessary to buttress such an obvious custom of Germanic society. The fact that both laws do describe the participation of God in the contest links the laws closely. This divine participation and what has already been said above concerning the absence of Visigothic legal influence on L.Baiu. XII,8 affirms the conclusion that L.Alam. LXXXI directly influenced the writing of L.Baiu. XII,8.

(b) Why do both laws use contentio¹⁰² as dispute or

¹⁰⁰Lehmann, pp. 145-146. The italics are Lehmann's.

¹⁰¹Fustel de Coulanges, Recherches, pp. 300-301.

¹⁰²See Niermeyer, Mediae latinitatis lexicon minus, III, p. 263.

strife in the sense of competition between two parties? Likewise, why do these laws use signum as sign or marker in place of nota? (Nota is used by L.Baiu. XII,1 and 4¹⁰³ where it must be rendered in context as marker.) The fact that L.Baiu. XII,8 uses signum (in place of nota or signum et nota) as well as L.Alam. LXXXI shows influence of the latter on the former. This argument is not weakened by the use of the OHG uuehadine by L.Baiu. XII,8, meaning wager of battle, whereas pugna is used by L.Alam. LXXXI. No significant philological percentage is evident in the laws.

(e) No agreement.

¹⁰³L.Baiu. XII,1 and 4 follow. XII,1: "Si quis limites complanaverit aut terminos fixos fuerit ausus evellare, si ingenuus est, per singula signa vel notas VI solidos componat." Schwind, p. 398. XII,4: ". . . Si haec signa defuerint, tunc in arboribus notas quas decoreas vocant convenit observare, sed illas quae antiquitus probantur incisae. . . ." Ibid., p. 400.

CHAPTER VII
Titles XIII-XXII

Title XIII
De pignoribus.

Lex Baiuvariorum XIII,4

Si porcus ad pignus tulerit.

Lex Alamannorum XCIV,4

(a) To pledge chattels and especially livestock as a liability for a debt is an old Germanic custom.¹ One such animal pledged by both the Alamannic and Bavarian codes is the pig. Although the two laws discussed here, L.Baiu. XIII,4 and L.Alm. XCIV,4, both concern offering pigs as pledges,² the former does not explain under what circumstances pigs may be illegally pledged. L.Baiu.

¹See Rudolf Huebner, A History of Germanic Private Law, trans. Francis S. Philbrick (Continental Legal History Series, IV; Boston, 1918), pp. 440-444 for the law of chattel pledges.

²L.Baiu. XIII,4 as well as XIII,5 have not previously been thought similar to the Alamannic code. For this reason, no legal similarity is evident in Schwind's edition of the Lex Baiuvariorum. Also see Schwind, NA, XXXIII (1908), 635.

XIII,4 states: "Si quis contra legem porcos ad pignus tulerit, unumquemque cum II saigis componat."³ The generality of this law agrees in part with L.Alam. XCIV,4, but the latter is more explicit in defining what other animals may also be offered as a pledge: "Si quis gregem de porcus aut de iumenta aut de vacaricia [sic] vel de verveices in pignus tulerit, 40 solidos sit culpabilis."⁴ Among the Alamanni, horses are a more popular chattel for pledges than any other livestock.⁵ This law, however, deviates from this norm, and adds three other animals: pigs, cattle, and sheep. Both L.Baiu. XIII,4 and L.Alam. XCIV,4 clearly describe offering pigs as pledges. Furthermore, L.Baiu. XIII,5 below also describes that sheep could be offered as pledges, but again stresses the illegality of the pledges. There are, unfortunately, no Bavarian laws which concern offering horses (iumenta)⁶ or cattle (vaccaricia) as pledges as does

³Schwind, p. 409. Two paragraphs make up L.Baiu. XIII,4, the first of which is quoted here. L.Baiu. XIII, 4, §2 says: "Illam ductricem cum tremisse componat." Ibid. For the saiga, see Schröder, Zeitschrift für Numismatik, XXIV (1904), 341-342.

⁴Lehmann, p. 154. For the meaning of vaccaricia, see Niermeyer, Mediae latinitatis lexicon minus, XI, p. 1056.

⁵Attention should be focused on two other Alamannic laws, both of which concern offering horses as pledges. LXVII,1: "Si quis gregem iumentorum ad pignus tulerit et incluserit contra legem, cum 12 solidis componat. . . ." LXXXIII,1: "Si quis pignus tulerit [sic] contra legem aut servum aut equum, . . ." Lehmann, pp. 134 and 147.

⁶For iumentum (beast of burden), see Niermeyer, Mediae latinitatis lexicon minus, VI, p. 566, although

L.Alam. XCIV,4.

(b) That the laws are philologically similar is also evident, since 24 per cent of the terms of L.Alam. XCIV,4 reappear as 38 per cent of the words of L.Baiu. XIII,4.⁷ The principal word for both laws is porcus.

(c) No agreement.

* * * * *

Lex Baiuvariorum XIII,5

Si oves tulerit in pignus.

Lex Alamannorum XCIV,4

(a) L.Baiu. XIII,5, which concerns offering sheep as pledges, is also similar to L.Alam. XCIV,4 as the latter is similar to L.Baiu. XIII,4. L.Baiu. XIII,5 says in part: "Si quis oves in pignus contra legem tulerit, taceat de causa pro qua pignus tulit, et cum solide componat. . . ."⁸

 Hiermeyer is extremely value in defining this term as horse in Alamannic law. Cf. A. Ernout and A. Meillet, Dictionnaire etymologique de la langue latine. Histoire des mots, 4th ed. (Paris, 1959), p. 327. There are in all eight Alamannic laws which use this term, and in all of them horse, and not ox, must be rendered from context. Besides L.Alam. XCIV,4 described here, the remaining seven Alamannic laws are LXII,2; LXIII,3; LXV,1 and 2; LXVI; and LXVII,1 and 2. The best example of iumentum as horse in these laws can be seen in L.Alam. LXVI: "SI quis autem aliquis homo iesto ferierit prignum iumentum, et ipsa abortivum fecerit, iectans ipsum puletrum [sic] mortuum, unum solidum componat." Lehmann, p. 134. Poledrus (puletrus) can only be translated as foal or colt, and a colt is the young of a horse.

⁷If paragraph two of L.Baiu. XIII,4 is used in this calculation, the percentage for this law drops to 28 per cent.

⁸Schwind, p. 409.

This law does not add why offering sheep as pledges is unlawful, although it does not appear to be an extremely serious offense especially when the pledger (debtor) is encouraged to remain silent. A look at L.Alam. XCIV,4 quoted with L.Baiu. XCIV,4 above attests to the relative similarity between the laws discussed here.⁹

(b) There is also philological similarity between the laws. Here, 29 per cent of the terminology of L.Alam. XCIV,4 is evident as 32 per cent of the terms of that portion of L.Baiu. XIII,5 quoted above. If the remaining portion of the latter is quoted, the percentage drops to a mere 13. The laws use two different words for sheep; L.Baiu. XIII,5 uses ovis, whereas L.Alam. XCIV,4 uses the less desirable vervex. Although the terms are different, both of them denote the same animal.

(c) No agreement.

Title XIV

De vitiatibus animalibus et eorum compositione.

Lex Baiuvariorum XIV,17

Ut minime praesumat animal occidere alienum.

Lex Alamannorum LXVII,2

(a) Straying farm animals are often discussed in the

⁹See pp. 207-208 above.

leges barbarorum. The damage they might cause to meadows and crops drew special attention from several Germanic codes: Visigothic, Burgundian, Salic, Ripuarian, Bavarian, and Alamannic. Our immediate interest, however, concerns two laws in the last two codes, L.Baiu. XIV,17 and L.Alam. LXVII,2. These laws are unlike the remaining laws in the other codes for several reasons. To begin with, the Lex Alamannorum and Lex Baiuvariorum both possess but one law legislating how the owner of farm land will be compensated for damages caused by wandering animals; the other codes each contain several laws concerning different kinds of animals doing damage in slightly different circumstances.¹⁰ Although few laws concerning stray animals exactly agree as to the type of animal found, L.Baiu. XIV,17 is general enough to include that particular animal discussed in L.Alam. LXVII,2, draft horses (iumenta). In order to facilitate the present discussion, both laws are quoted here in full. L.Baiu. XIV,17 says:

Ut nemo praesumat alienum animal occidere neque porcum, quamvis in damnum eum invenerit. Sed reclaudat eum, donec domino eius ostendat damnum. Et aliquid de vicinis eorum videat hoc et designent locum qui lesus est, et alia quae intacta sunt usque ad maturitatem et collegat cuius messis est, et quantum minus invenerit in laesione illa, contra haec aequalitatem integram ille reddat, cuius animalia fuerunt et damnum fecerunt.

¹⁰See L.Visig. VIII,3,10-15 and VIII,5,1-8; L.Burg. XXIII,1-5, XLIX,1-4, and LXXIX,1-4; Pact.Sal. IX,1-9; and L.Rib. XLVIII,1-2, and LXXXV,2.

Ita et de vinea et de prato faciat, sicut aestimatores arbitraverunt, et componat.¹¹

The corresponding law, L.Alam. LXVII,2, says:

Si autem ipsa grex iumentorum damnum fecerit aut in Prado aut in messe, foris mina et die domino eius, ut veniat videre, quale damnum fecit; et quantum aestimaverint arbitrii, aut tu firmare ausus fueris, quod tantum damnum fecissent, tantum dominus iumentorum restituat.¹²

The first sentence of L.Baiu. XIV,17 above clearly applies to almost any farm animal, even if it be as small as a pig. The inference may be made that if the size of a pig is stressed, then the law would normally apply to larger animals, such as sheep, cattle, oxen, or horses. And, of course, the herd of draft animals (grex iumentorum) described in L.Alam. LXVII,2 applies to horses as beasts of burden, and not to oxen.¹³ Therefore, the animal described by L.Alam. LXVII,2 is in all likelihood contained by L.Baiu. XIV,17. Both laws as well stress the necessity of summoning the owner of the stray animal in order that he may be informed of any damage his animal may

¹¹Schwind, pp. 419-420.

¹²Lehmann, pp. 134-135.

¹³If the horses described by L.Alam. LXVII,2 are used to draw plows, there may have been an abundance of horses in Alamannia, since oxen were the typical beasts of burden, at least up to the tenth century when the horse collar was invented. See Parain, Cambridge Economic History, I, p. 142. The application of the horse collar by the tenth century is also upheld by Lynn White, Jr., Medieval Technology and Social Change (Oxford, 1962), p. 61, although even he is willing to admit that its application may date as early as 800. Also see the discussion of iumentum under L.Baiu. XIII,4 above.

have caused. Another feature of the laws, and an extension of that feature just described, requires that the owner must compensate damages if his animal is responsible for them. One would expect little else from the laws if they are concerned with rudimentary procedures of assessing damages and compensating for them. Although there are other features stressed by L. Bain. XIV,17 (such as enclosing the animal so it will be prohibited from doing more damage) which are not included by L. Alam. LXVII,2, these are merely stressing the obvious, since prohibiting the animal from doing further damage would naturally be assumed by anyone victimized by it.

(b) No agreement.

(c) There is agreement between the laws in so far that the owner must compensate for whatever damage his straying animal(s) may have caused.

Title XV

De commendatis et commodatis.

Lex Baiuvariorum XV,9

De divisione inter fratres.

Lex Alamannorum LXXXV

(a) One characteristic of early Germanic society is the right of a father, be he a king or a colonus, to divide

his inheritance equally among his sons. Both the Alamannic and Bavarian codes require this policy to be applied in their respective areas. L.Baiu. XV,9 states:

Ut fratres hereditatem patris aequaliter dividant. Quanvis multas mulieres habuisset et totae liberae fuissent de genealogia¹⁴ sua quanvis non aequaliter divites, unusquisque hereditatem matris suae possideat, res autem paternas aequaliter dividant.¹⁵

In addition to the paternal inheritance, this law stresses that each son will receive the inheritance of his mother. The maternal inheritance, however, may unbalance the equality of the sons' inheritance from their father, especially if the father had several wives, all of whom may have children by him. The law does not explain whether the maternal inheritance must be equally divided. L.Alam. LXXXV also concerns equal division of the paternal inheritance among the sons, but says nothing about maternal inheritance: "Si qui fratres post mortem patris eorum aliquanti fuerint, dividant portionem patris eorum. Dum haec non fuerit factum, nullus rem suam dissipare faciat, usque dum aequaliter partiant."¹⁶ This law also adds that the father's property must not be apprehended before it is divided. Both of these laws shows some influence from L.Visig. IV,5,4 which also concerns dividing the late

¹⁴Meaning lineage or kindred. Niermeyer, Mediae latinitatis lexicon minus, V, p. 465.

¹⁵Schwind, p. 428. This law consists of two paragraphs. Only the first paragraph is quoted in full here.

¹⁶Lehmann, p. 149.

father's estate equally, but adds that only those children who have the same father may inherit an equal portion of their father's property.¹⁷ Unlike L.Baiu. XV,9, those children having the same mother but a different father may not inherit the latter's estate.

(b) No agreement.

(c) No agreement.

Title XVI

De venditionibus.

Lex Baiuvariorum XVI,5

Si ingenuus hominem vendiderit.

Lex Alamannorum XLV

(a) Enslaving others is a common feature of early Germanic society. The Bavarians, however, capitalized on this, since the Lex Baiuvariorum prohibited this crime by two laws, both under different titles of the code. The selling of free Bavarians into bondage is discussed by L.Baiu. IX,4 of title IX which concerns laws of theft (furtum), and L.Baiu. XVI,5 of title XVI which concerns law of sales (venditio). The discussion of L.Baiu. IX,4 above indicates how this law is similar to L.Alam. XLV.¹⁸

¹⁷Cf. L.Burg. I,2.

¹⁸For L.Baiu. IX,4, see pp. 205-209.

The discussion that follows indicates how this same Alamannic law is similar to L.Baiu. XVI,5. Like L.Baiu. IX,4 above, Pact.Sal. XXXIX,3-4 and L.Rib. XVII are the basis of the laws discussed here. L.Baiu. XVI,5 states:

Si quis ingenuum vendiderit, cum ille suam probaverit libertatem, is qui eum vendidit [sic] reducat eum in locum suum et restituat ei libertatem sicut prius habuit, et componat ei cum XL solidis excepto quod emptori in duplum pretium quod accepit, cogatur exsolvere.

Similis ratio dupliciter de feminis servetur.

Et si eum vel illam foris provincia vendiderit et iterum reducere non potuerit, tunc cum weregeldo componat, hoc est CLX solidos solvat parentibus.¹⁹

The similarity of this law and L.Alam. XLV is striking. Although L.Alam. XLV was quoted under L.Baiu. IX,4, it is again quoted here to facilitate the present discussion.

L.Alam. XLV says:

Si quis liber liberum extra terminos vendiderit, revocet eum infra provinciam [sic] et restituat eum libertatem et cum 40 solidis componat. Si autem eum revocare non potest, cum virgildum eum parentibus solvat, id est bis octuaginta solidos, si heredem reliquit; si autem heredem non reliquit, cum 200 solidis componat.²⁰

The laws are parallel in many respects, but L.Alam. XLV does not discuss selling freewomen into bondage as does L.Baiu. XVI,5,§2. L.Alam. XLVI, which is presented under its own heading below, is the Alamannic law to which L.Baiu. XVI,5,§2 is parallel. Both L.Baiu. XVI,5 and

¹⁹Schwind, pp. 434-435. Schwind's text uses the abbreviation sol. It is here spelled out to solidis (with cum) and solidos (with hoc est).

²⁰Lehmann, pp. 105-106.

L. Alam. XLV clearly indicate that if a freeman is sold into bondage, he must have his liberty restored. Likewise, both laws stipulate that the freeman is sold outside the duchy, thereby making the crime more serious than if he is enslaved within the duchy. If a freeman is enslaved, he must be rendered forty solidi in both laws. However, if the enslaved freeman cannot be restored to freedom because he cannot be found, the full wergeld of 160 solidi must be compounded in both laws.

The leges barbarorum often present problems because they do not completely explain all of the conditions contained in their laws, although the laws of the same code rarely conflict, especially in rendering wergeld. An exception to this are the two Bavarian laws described here, IX,4 and XVI,5. Whereas IX,4 requires eighty solidi to be paid to the freeman who is enslaved, XVI,5 only requires half as much; whereas IX,4 stipulates that forty solidi be paid as a fredus in addition to the wergeld, XVI,5 ignores this completely, and requires instead that the thief-enslaver pay twice the price to the buyer (emptor) who originally bought the freeman. Hence, for L. Baiu. XVI,5, there is a threefold payment by the thief: the required wergeld and the double payment rendered to the buyer.²¹ The laws would not conflict unless one of them were written

²¹See Ernst Levy, Weströmisches Vulgarrecht das Obligationenrecht (Forschungen zum römischen Recht, ed. Max Kaser et al., VII; Weimar, 1956), p. 221, n. 320.

earlier than the other, and this indeed appears to be the case, since L.Baiu. XVI,5 shows Visigothic legal influence.²² This influence is lacking in L.Baiu. IX,4.

(b) The similarity of the laws is also attested philologically: 42 per cent of the terms of L.Alam. XLV appear as 28 per cent of the terms of all three paragraphs of L.Baiu. XVI,5, and as 31 per cent of the first and third paragraphs of the same Bavarian law. In these calculations, revocare (to recall) of L.Alam. XLV is equated with reducere (to bring back home) of L.Baiu. XVI,5.

(c) The enslaved freeman must be freed and compensated with forty solidi in both laws. Likewise, if the freeman cannot be found, the laws require the full wergeld of 160 solidi.

Lex Alamannorum XLVI

(a) L.Alam. XLVI is also similar to L.Baiu. XVI,5, and this applies especially to the second paragraph of this Bavarian law. L.Alam. XLVI says: "De feminis autem liberis,

²²This Visigothic influence is drawn from Cod.Eur. CCLXL: "Si quis ingenuum vendiderit cu/m ille/ suam probaverit libertatem, serv/um aut/ praetium servi ab illo, qui vendedit, [acc]ipiat ille sibi, quem vinditum fuisse [con]stat/terit, excepto quod emptori in dup/lum praef/tium, quod accepit, cogatur exsolve/re. Haec/ et de muliereibus forma servetur." Zeumer, p. 15. Textual additions are Zeumer's. Cod.Eur. CCLXL is the basis of the later law, L.Visig. V,4,11. See Rudolf Köstler, "Raub-, Kauf- und Friedelehe bei den Germanen," ZSRG, LXIII (1943), 119, n. 124. Cf. Zeumer, HA, XXIII (1896), 107, and d'Ors, Codigo de Eurico, pp. 224-225.

si extra marcha vendita fuerit, revocet eam ad pristinam libertatem et cum 80 solidis componat. Si autem revocare non potest, cum 400 solidis componat."²³ If the wergeld rendered by L.Alam. XLV is compared with that of L.Alam. XLVI, one finds that the Lex Alamannorum requires twice the compensation for freewomen as for freemen if the former be sold into bondage outside the duchy, that is, freewomen receive eighty solidi under both Alamannic laws. This also applies to the Lex Bajuvariorum. As quoted above, L.Baiu. XVI,5,⁴² simply says: "Similarly, a double ratio is to be observed concerning women," that is, freewomen receive twice the monetary compensation as freemen, and this is already indicated in L.Alam. XLVI. Likewise, both L.Baiu. XVI,5 and L.Alam. XLVI require that the freewoman have her freedom restored. If the freewoman is not found and restored to liberty, compensation is made at 400 solidi, which is also double the compensation required for freemen given in L.Alam. XLV. Although L.Alam. XLVI does not specify if the enslaved freewoman is survived by relatives as L.Alam. XLV does, it may be inferred that since L.Alam. XLVI follows XLV directly in the Alamannic code, the concepts expressed in L.Alam. XLV would apply to XLVI as well. This is true except for the added feature of double compensation for freewomen. If this inference can be made, and I believe it can, then the 400 solidi required in L.Alam

²³Lehmann, p. 106.

XLVI are rendered if the freewoman cannot be restored to liberty and has no relatives. Would 320 solidi (twice the full wergeld of 160 solidi required for a freeman in L.Alam. XLV) be required if the enslaved freewoman has relatives? The law does not say. It could very well be that 400 solidi would be required no matter if the enslaved freewoman has relatives or not. A comparison of the immediate discussion with L.Baiu. XVI,5 is not as difficult as it seems. Although paragraph three of L.Baiu. XVI,5 indicates that both a freeman (is) and a freewoman (illa) are compounded equally if they cannot be recalled into the duchy, this does not negate the double compensation freewomen would normally receive, since the Lex Baiuvariorum, like the Lex Alamannorum, requires twice the compensation freemen receive for many other crimes and abuses.²⁴

(b) No agreement.

(c) As already discussed, both L.Baiu. XVI,5 and L.Alam. XLVI require restoration of the freewoman plus payment of eighty solidi. If the freewoman cannot be restored, twice the payment freemen receive is rendered for freewomen, although the payment in solidi is not identical in both L.Baiu. XVI,5 and L.Alam. XLVI.

* * * * *

Lex Baiuvariorum XVI,16

²⁴See Davoud-Oghlou, Histoire de la Législation, I, pp. 238 and 332.

De pactis vel placitis.

Lex Alamannorum XLII,2

(a) The Lex Bajuvariorum stipulates that written contracts and agreements have the day and year clearly indicated, or they will be declared invalid. This idea is contained in L.Baiu. XVI,16, a law obviously influenced by L.Visig. II,5,2.²⁵ L.Baiu. XVI,16 simply says: "Pacta vel placita, quae per scripturam quacumque facta sunt vel per testes denominatos tres vel amplius, dummodo in his dies et annus sit evidenter expressus, immutare nulla ratione permittimus."²⁶ This law's similarity with L.Visig. II,5,2 is striking. The latter says: "Pacta vel placita, que per scripturam iustissime hac legitime facta sunt, dummodo in his dies vel annus sit evidenter expressus, nullatenus immutari permittimus."²⁷ The laws are obviously related from three points of view: (1) contracts as well as agreements are explicitly defined, (2) all contracts and agreements must be in written form, and (3) the year and day must be clearly expressed if the written document is to be valid. The similarity between these laws applies to L.Alam. XLII,2 as well, although the concepts of the latter show less similarity with L.Baiu. XVI,16 than does

²⁵See Levy, West Roman Vulgar Law, p. 157.

²⁶Schwind, p. 442.

²⁷Zeumer, p. 107. Cf. L.Visig. II,5,1.

L.Visig. II,5,2. L.Alam. XLII,2 does not mention the terms pacta or placita, although the law does say that a document must be in written form, and that it cannot be valid unless the year and day are clearly shown: "Scriptura non valeat, nisi in quam [sic] annus et dies evidentiter ostenditur."²⁸ Where did the Lex Alamannorum obtain this legal concept, if not from Roman vulgar law? How these Roman concepts were received by the Alamannic code is difficult to explain, since this code does not lend itself easily to scrutiny from Visigothic or Roman legal sources. There is no evidence, however, to show that the similarity between L.Alam. XLII,2 and L.Visig. II,5,2 came from L.Baiu. XVI,16.²⁹ This is an impossibility since the Alamannic code predated the Lex Baiuvariorum. The basis of L.Alam. XLII,2 may be L.R.Visig. (CTh.) I,1,1,³⁰ and this Visigothic law along with the later L.Visig. II,5,2 may have influenced L.Baiu. XVI,16.

(b) Linguistically, 45 per cent of the terms of L.Alam. XLII,2 constitute 22 per cent of the terms of L.Baiu. XVI,16.

²⁸Lehmann, p. 103.

²⁹Zeumer, p. 107, n. 1, and d'Ors, Código de Eurico, p. 68.

³⁰"Si qua posthac edicta sive constitutiones sine die et consule fuerint deprehensa, auctoritate careant." Haenel, p. 16. Zeumer, MA, XXIV (1899), 109, n. 2 disagrees that L.R.Visig. (CTh.) I,1,1 influenced the two south Germanic laws discussed here. Eckhardt, Leges Alamannorum II, p. 42 supports my view that I,1,1 influenced XLII,2.

(c) Not applicable.

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Lex Baiuvariorum XVI,17

De his qui propria alodem vendiderunt.

Lex Alamannorum LXXXI

(a) L.Alam. LXXXI is similar to L.Baiu. XVI,17, as it is to L.Baiu. XII,8 above. Both laws discussed here concern land disputes which may arise between two freeholding neighbors: L.Alam. LXXXI concerns disputes perpetrated because of unmarked boundaries, and L.Baiu. XVI,17 describes the illegal selling of another's land as if it were one's own freehold. Although L.Visig. X,3,2-5 are similar to L.Alam. LXXXI, these laws are not similar to L.Baiu. XVI,17.³¹ Both laws themselves are basically the same, although the causes of these land disputes are quite different. Nevertheless, the laws deal with an individual's allodial rights which are seriously challenged by his neighboring freeholder. Substantial portions of the laws are needed in order to illustrate their similarity.

L.Baiu. XVI,17 follows:

De his qui propriam alodem vendunt vel quascumque res et ab emptore alter abstrahere voluerit et sibi sociare in patrimonium. Tunc dicat emptor ad venditorem: 'Terram' aut quaecumque fuerit res, 'abstra-

³¹L.Baiu. XVI,17 is surprisingly absent from Levy, West Roman Vulgar Law, since the principles of ownership are evident in this law as they are in the previous law, L.Baiu. XVI,16; and the latter is included in Levy's book. D'Ors, Código de Eurico also makes no mention of this law.

here mihi vult vicinus meus' aut quis fuerit. Et iste respondit: 'Ego quod tibi donavi cum lege integra et verbis testificatione firmare volo'. Super VII noctes fiat constitutum.

Si dicit cum utrisque utraeque partes conveniunt: 'Cur invadere conaris territorium, quam ego iuste iure hereditatis donavi? Et ille alius contra: 'Cur meum donare debuisti, quod mei antecessores antea tenuerunt.' Iste vero dicit: 'Non ita sed mei antecessores tenuerunt et mihi in alodem reliquerunt, et vestita est illius manu, cui tradidi, et firmare volo cum lege.'

Si statim voluerit, liberam habet potestatem; . . . et cum dextera manu tradat, cum sinistra vero porrigat wadium³² huic, qui de terra ipsa eum mallet per haec verba: 'Ecce wadium tibi do, quod tuam terram alteri non de legem faciendi. Tunc illi alter suscipiat wadium et donet illus vicessoribus istius ad legem faciendam.

Si causa fuerit inter illos pugnae, dicat ille qui wadium suscepit: 'Iniuste territorium meum alteri firmasti, id est farsuuirotos,³³ ipsum mihi debes reddere et cum XII solidis componere.' Tunc spondeat pugna duorum et ad dei sic pertineat iudicium.³⁴

L. Alam. LXXXI presents striking parallels:

Si quis contentio orta fuerit inter duas genealogias³⁵ de termino terrae eorum, unus dicit: 'Hic est noster terminus', alius revadit in alius locum et dicit: 'Hic est noster terminus', ibi de praesente sit comis de plebe illa, ponat signum, ubi isti voluerint, et ubi alii voluerint terminos, et

³²Meaning a pledge, that is, an offering of one's trust. Schade, Altdeutsches Wörterbuch, II, p. 1072. Latham, Revised Medieval Latin Word-List, p. 503, indicates that this term is of frequent occurrence, and that it can be rendered by security and bail as well as pledge.

³³In the sense of confirming (property) unjustly. Grimm, Deutsche Rechtsalterthümer, I, p. 160. Cf. Krašik, NA, XXXVIII (1913), 599-600.

³⁴Schwind, pp. 442-444. L. Baiu. XVI, 17 consists of five paragraphs, the first four of which are presented here.

³⁵Meaning lineage or kindred. Niermayer, Mediae latinitatis lexicon minus, V, p. 465.

girent ipsam contentionem. Postquam girata fuerit, veniant in medium et de praesenti comite tollant de ipsa terra, quod Alamanni corfo³⁶ dicunt, . . . Tunc spondeant inter se pugna duorum. Quando parati sunt ad pugnam, tunc ponat ipsa terra in medio et tangant ipsa terra cum spatas suas, quos pugnare habebunt, et testificent Deum creatorem, ut, cui sit iustitia, illi donet Deus victoriam, et pugnent. Qualis de ipsis vicerit, upse possedeat illa contentione, et illi alii praesumptione, quare proprietate contradixerunt, cum 12 solidis componant.³⁷

The contending parties in both laws forcibly put forth their claims. In L.Alam. LXXXI, the parties are described as genealogiae, emphasizing familial rather than individual participation.³⁸ This is not the case for L.Baiu. XVI,17, where the parties consist of the seller (venditor) and the neighbor (vicinus). The third party in L.Baiu. XVI,17, the buyer (emptor), is not directly involved in the dispute, but serves instead as the catalyst for the contentions of the other two parties. Since the seller is responsible for selling land to the buyer, only the seller is accused of appropriating another's freehold unjustly. Both laws agree, however, that the strife is between two and only two opposing parties. That the laws

³⁶Meaning earth in general. Graff, Althochdeutscher Sprachschatz, V, col. 706; and Grimm, Deutsche Rechtsalterthümer, I, p. 159.

³⁷Lehmann, pp. 145-147. The italics are Lehmann's.

³⁸See Vinogradoff, Historical Jurisprudence, I, p. 335. L.Baiu. XVI,17 places less emphasis on the family and more on the individual when land is disputed. This is also evident in L.Baiu. XII,8 above.

also agree by settling the dispute with wager of battle is not surprising, or that twelve solidi are required as a fine by the guilty party. Land disputes among the Alamanni and Bavarians are settled in much the same way: the just party wins the wager of battle with divine help, and the guilty party is punished with a fine of twelve solidi.

(b) No agreement.

(c) As already indicated, both L.Baiu. XVI,17 and L.Alam. LXXXI require a fine of twelve solidi.

Title XVII

Te [sic] testibus et eorum causis.

Lex Baiuvariorum XVII,1

De testibus.

Lex Alamannorum XCVIII,1

(a) L.Baiu. XVII,1 describes those who illegally enter meadows, plowed lands, or clearings not their own: "Si quis homo pratum vel agrum vel exartum³⁹ alterius contra legem malo ordine invaserit, et dicit suum esse, propter praesumptionem cum VI solidis componat et

³⁹Exartum is a clearing. Du Cange, Glossarium mediae et inferioris latinitatis, III, pp. 339-340, and Latham, Revised Medieval Latin Word-List, p. 180 (see under exartum). This term also appears in L.Burg. XIII, and in modified form in Ed.Roth. CCCLV-CCCLVI.

exact.⁴⁰ The unlawful entry of another's property is probably no more than trespassing in order to steal live-stock, grain, or the like. It does not appear that the land will be illegally appropriated. This is the case, however, in L.Baiu. XVII,2. The punishment of six solidi for this offense does not agree with that penalty rendered by L.Baiu. IX,13 which requires three solidi for entering another's garden.⁴¹ Hence, the intrusion of farm land requires double the compensation for intrusion of a simple garden. Two other laws are similar to L.Baiu. XVII,1, and both of these are drawn from the Alamannic code.⁴² The first of these is L.Alam. XCVIII,1, although this law adds the intrusion of church property as well: "Si quis res alienas aut ecclesiae malo ordine pervaserit, qui facienti violentia repugnaverit, nullum crimen admittat, quia non facit violentia qui repellit, quia sua contradicit."⁴³ This law does not specify what type of land is trespassed, and for this reason, it is similar to L.Baiu. XVII,1 only in general sense. No

⁴⁰Schwind, p. 446.

⁴¹L.Baiu. IX,13 says: "Si quis in ortum [sic] furtive alicuius intraverit, cum III solidis conponat. Et quidquid ibi tulit, secundum legem furtivum conponat. . ."
⁴²Ibid., p. 377.

⁴²Liutpr. CXLVIII approaches the ideas expressed by L.Baiu. XVII,1.

⁴³Lehmann, p. 156. This law is a verbatim text of Pact.Sal. XIX,1 (Eckhardt's revised edition). L.Alam. XCVIII,1 is similar to Ed.Roth. XXIX, and Liutpr. XC.

wergeld can be claimed by the intruder for any injury if the owner of the property offers resistance.

(b) Only 20 per cent of the words of L.Alam. XCVIII,1 reappear as 19 per cent of L.Baiu. XVII,1. Although prevadere means to usurp or seize, in L.Alam. XCVIII,1 this term is used in a most general sense, that is, to overrun for a short period of time. Hence, in the above percentages, prevadere of L.Alam. XCVIII,1 is equated with invadere of L.Baiu. XVII,1.

(c) No agreement.

Lex Alamannorum XCVIII,2

(a) L.Alam. XCVIII,2 is the second law which is similar to L.Baiu. XVII,1, and it shows greater similarity with this Bavarian law than does L.Alam. XCVIII,1. Although the kind of land intruded is still not specified, L.Alam. XCVIII,2 indicates that this is done without any validity, thereby agreeing substantially with L.Baiu. XVII,1. The law follows: "Nullus alienam terram sine auctoritate praesumat; qui hoc fecerit, vindictam se expellendum esse cognoscat, vel habias gadano."⁴⁴ This law like L.Baiu. XVII,1 mentions that the intruder is to be expelled from another's property. Besides this, however, there is no

⁴⁴Ibid., p. 157. This law is a verbatim text of Pact.Alam. XIX,2. Gadano means an enclosure. See Graff, Althochdeutscher Sprachschatz, IV, col. 175, and Schade, Altdeutsches Wörterbuch, I, p. 241 (see under gadum), and Schatz, Altbairische Grammatik, p. 52.

further similarity between the laws.

(b) No agreement.

(c) No agreement.

* * * * *

Lex Baiuvariorum XVII,3

Si testem habuerit per aurem tractum.

Lex Alamannorum XCI

(a) Although several Germanic codes punish those who testify falsely,⁴⁵ only L.Baiu. XVII,3 and L.Alam. XCI define this false testimony as occurring after a case has been decided by the judicial authority. This feature as well as others discussed below connect these two laws closely. L.Baiu. XVII,3 is much longer than L.Alam. XCI, and it is presented almost in its entirety here:

Si quis testem habuerit per aurem tractum de quolibet causa finita ratione, et hoc confirmant per testes: post haec non debet repetere nec inquietare illum a quo finivit rationem suam. Et si voluerit, tunc per testes defendat se; ille testis testificet sicut scit, unde ad testem per aurem tractus fuit et hoc per sacramentum confirmet.

Non debet testam veritatis repellere causaticus eius, nisi (forte) aliquis testem mendacem habere voluerit, potest illum cum lege repellere cum pugna duorum et dicere: 'Non tibi testem de iste causa neque consentio.'

Nisi sup̄ mortuum hominem testare voluerit aliquam causa(m), illum potest contradicere cum duorum pugna et dicere: 'Defendere hoc volo cum campione meo quod dicis, quia et tu mentiris et tuus testes

⁴⁵Notably, L.Visig. II,4,3 and 6; L.Rib. LI,2; Pact. Sal. XLVIII,1 and XLIX,2; and L.Burg. LXXX,2. This is also true for L.Baiu. IX,19.

super mortuum maum.⁴⁶

Before analyzing this law, it is compared to L.Alam. XCI:

Si quis aliquem post finienda causa et emendata eum mallare voluerit post testes tractos et emendationem datam, si hoc praesumpserit temptare, et iste non potest per sacramentum vel per testes defensare vel per pugna duorum se defendat, post hoc ille testatur cum 40 solidis conponat.⁴⁷

There are, in all, four basic similarities among these laws. The first of these concerns the nature of hearsay evidence. L.Baiu. XVII,3 clearly mentions hearsay evidence (evidence which draws the ear, aurem trahere),⁴⁸ that is, statements which may be relevant to a case, but not entered as evidence within a court of law. Although L.Alam. XCI does not explicitly present a case for hearsay evidence, it can easily be understood from the conditions inherent in this law itself; and these conditions are the next two that directly follow in this discussion. The second and third similarities between the laws are closely related and self-explanatory. Both laws stress that this additional evidence is presented after the case is settled and after it is confirmed by witnesses. Both of these conditions label any additional evidence as hearsay. The fourth and last similarity concerns the result of presenting hearsay evi-

⁴⁶Schwind, pp. 449-450. Additions within parentheses are by Schwind. This law comprises four paragraphs; all of the first, second, and fourth are quoted here.

⁴⁷Lehmann, p. 153.

⁴⁸See Grimm, Deutsche Rechtsalterthümer, I, p. 199.

dence. Because of this new evidence, which challenges previous testimony, wager of battle is needed in order to resolve the matter.⁴⁹ L.Alam. XCI is closer in defining this feat of arms, whereas L.Baiu. XVII,3 requires it only if someone does not wish to testify in a case concerning a deceased person. Certainly, wager of battle would not be used only in cases pertaining to the dead when hearsay evidence is concerned, but L.Baiu. XVII,3 supplies no evidence to conclude otherwise. The presentation of hearsay evidence after a decision is rendered may be nothing more than an attempt to invalidate that decision, and this may be used more often for personal gain than to right a wrong. Individuals with little evidence to support themselves in court but with strength and skill in wielding a sword may be likely to present hearsay evidence. What they cannot gain by legal means, they hope to obtain by might.

(b) Due to the greater length of L.Baiu. XVII,3, there is little philological similarity between the laws, since 31 per cent of the terminology of L.Alam. XCI constitutes a mere 11 per cent of L.Baiu. XVII,3.

(c) No agreement.

⁴⁹L.Burg. LXXX,2 concerns those, who swearing falsely, resort to wager of battle to prove the validity of these claims. Apparently, this is done after a judge has given a decision. Hence, the basic conditions of this law agree with those two south Germanic laws.

Title XVIII

De campionibus et causis, qui ad eos pertinent.

(No similarity)

Title XIX

De mortuis et eorum causis.

Lex Bajuvariorum XIX,1

Si mortuum ex monumento eiecerit.

Lex Alamannorum XLIX,1

(a) Both L.Baju. XIX,1 and L.Alam. XLIX,1 punish those who exhume corpses and plunder the graves as a result. These laws are similar to two other Germanic codes: Lex Visigothorum, and Pactus legis Salicae, especially, L.Visig. XI,2,1, and Pact.Sal. XIV,10 and LV,4.⁵⁰ The latter laws may have influenced these two south Germanic laws. L.Baju. XIX,1 is only slightly different from L.Alam. XLIX,1. In this case, the latter is the longer law. One obvious similarity between the laws is that both specify that

⁵⁰Cf. the later L.Sal. XVIII. See Mario Krammer, "Zum Textproblem der Lex Salica. Eine Erwiderung," NA, XLI (1919), 133. There are additional laws which concern exhumation, but these make no mention of thievery. These are L.Rib. LV,2 and LXXXVIII,2, and Ed.Roth. XV. Furthermore, laws concerning the spoliation of a corpse before it is interred (especially Pact.Sal. LV,1 and L.Rib. LV,1 and LXXXVIII,1) should not be confused with the laws discussed here which concern corpses already buried.

freemen are those who are disinterred. This is specified by no other law. L.Baiu. XIX,1 states: "Si quis mortuum liberum de monumento exfodierit [sic], cum XL solidis componat parentibus et ipsum quod ibi tulit, furtivum componat."⁵¹ L.Alam. XLIX,1 is essentially the same law: "Si quis liberum de terra exfodierit [sic], quidquid ibi tulit [sic], novigeldos restituat, et cum 40 solidis componat. Femina autem cum 80 solidis componat, si de terra exfodierit [sic]; res autem, quod tulit [sic], furtiva componat."⁵² Not only are freemen discussed by both laws, but L.Alam. XLIX,1 also adds freewomen as well. This is in keeping with the nature of the Alamannic code which includes freewomen far more frequently than does the Bavarian code when particular crimes and abuses are discussed.⁵³ Both laws also require compensation for robbing graves. L.Alam. XLIX,1 requires the restoration of the stolen property plus the payment of a ninefold wergeld, whereas L.Baiu. XIX,1 does not specify that the stolen property need be returned (although this can logically be assumed), and payment must be made for whatever was stolen secretly. Neither L.Baiu. XIX,1, nor any other Bavarian law, explains

⁵¹Schwind, p. 454.

⁵²Lehmann, p. 108.

⁵³This also pertains to L.Alam. XLIX,2 which compensates the relatives for the disinterment of slaves and maidservants. Contrary to Schwind, however, there is no similarity between L.Alam. XLIX,2 and L.Baiu. XIX,1.

what compensating for stealing secretly means. To equate this payment with the ninefold wergeld of L.Alam. XLIX,1 is speculative, although the argument should be raised. Furthermore, both laws require an additional payment of forty solidi, also destined for the relatives of the deceased freeman. L.Alam. XLIX,1 adds eighty solidi for the relatives of a freewoman, and the compensation of eighteenfold wergeld for stealing from a freewoman's grave. This eighteenfold wergeld is naturally twice the ninefold wergeld paid to the relatives for looting a freeman's grave, although there is no comparable parallel for ninefold or eighteenfold wergeld in L.Baiu. XIX,1.

(b) There is close philological similarity between these laws, since 74 per cent of the terms of L.Alam. XLIX,1 reappear as 44 per cent of the words of L.Baiu. XIX,1. In addition, both laws employ the spelling exfodere for effodere, meaning to exhume.⁵⁴

(c) The laws require a wergeld of forty solidi to be paid to the relatives of a deceased freeman, while perhaps differing in the payment for property from the grave.

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Lex Baiuvariorum XIX,2

Si in flumine proiecerit.

⁵⁴Eckhardt, Leges Alamannorum II, p. 44 also prefers exfodere.

Lex Alamannorum XLVIII

(a) Murdering another secretly is discussed by L.Baiu. XIX,2, which is parallel to L.Alam. XLVIII. This Alamannic law is also similar to L.Baiu. XIX,3-4, both of which follow. Because the similarity between L.Baiu. XIX,2 and L.Alam. XLVIII is not strong and since other Germanic codes also contain comparable legislation,⁵⁵ these laws are similar at best only in a general sense. L.Baiu. XIX,2 follows:

Si quis liberum occiderit furtivo modo et in flumine eiecerit vel in talem locum eiecerit, ut cadaver reddere non quiverit, quod Baiuuarii ⁵⁶murdrida⁵⁶dicunt, inprimis cum XL solidis componat eo quod funus ad dignas obsequias reddere non valet; postea vero cum suo weregeldo componat.⁵⁷

One characteristic of this law is its emphasis that the freeman, murdered secretly, is thrown into a river or other place where the body cannot be recovered. This is more explicit than L.Alam. XLVIII which also concerns murdering another secretly, but does not specify where the body is disposed. Of all the other Germanic laws which show similarity with L.Baiu. XIX,2, Pact.Sal. XLI,2 is by far the closest, since it not only concerns killing others in secret, but also describes hiding them in a well or in

⁵⁵These are especially Pact.Sal. XLI,2 and 4, L.Rib. XVI, and Ed.Roth. XIV.

⁵⁶Kralik, NA, XXXVIII (1913), 584.

⁵⁷Schwind, p. 455. This law comprises two paragraphs in Schwind's edition; only the first paragraph is quoted completely here.

water. L.Alam. XLVIII is not as explicit, since it says:

Si quis hominem occiderit, quod Alamanni mortuod⁵⁸
dicunt, novem virgildis eum solvat et quidquid super
eum arma vel rauba⁵⁹ tullit, omnia furtiva componat.
De feminis autem, si ita contigerit, dupliciter con-
ponat, qualitor illum virum; vestimenta aut quod
super eam tullit furiva componat.⁶⁰

The similarity between these two south Germanic laws is limited to the basic concept of killing another secretly. L.Baiu. XIX,2 does not discuss women nor does it require the ninefold wergeld for this crime which L.Alam. XLVIII requires. As indicated earlier, the Alamannic and Bavarian codes require ninefold wergeld for unusual crimes. Since L.Alam. XLVIII requires this for furtively killing another, this should also be required by the corresponding L.Baiu. XIX,2. It is surprising, therefore, that the latter requires only single wurgeld. Stealing the clothing from the dead described by L.Alam. XLVIII is also discussed by L.Baiu. XIX,4 below.

(b) Philologically, the laws show little similarity, since 19 per cent of the terms of L.Alam. XLVIII constitute 18 per cent of the words of L.Baiu. XIX,2, but only 11 per cent of the latter if all of the latter is used. Murdrida

⁵⁸Graff, Althochdeutscher Sprachschatz, II, col. 856. Cf. Grimm, Deutsche Rechtsalterthümer, II, p. 180.

⁵⁹Meaning a garment. Graff, Althochdeutscher Sprachschatz, II, col. 357. Niermeyer, Mediae latinitatis lexicon minus, X, p. 885, defines this as "clothes taken from an enemy," and he cites L.Alam. XLVIII as his source; nevertheless, the law makes no reference to an enemy.

⁶⁰Lehmann, pp. 107-108.

of L.Baiu. XIX,2 is the same term (although spelled differently) as mortaudus of L.Alam. XLVIII;⁶¹ both terms are equated in these calculations.

(c) No agreement.

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Lex Baiuvariorum XIX,3

Si servus fuerit.

Lex Alamannorum XLVIII

(a) L.Baiu. XIX,3 closely parallels the previous Bavarian law, XIX,2. The only difference between these two laws is caste: L.Baiu. XIX,2 compensates for murdering freemen secretly, and XIX,3 compensates slaves for the same crime. L.Baiu. XIX,3 says: "Si servus furtivo modo supradicto modo occisus fuerit et ita absconsus, quod camurdrit⁶² dicunt, novuplum conponat, id est CLXXX solidos."⁶³ This law is only slightly similar to L.Alam. XLVIII (which is quoted with L.Baiu. XIX,2 above), since this Alamannic law compensates for killing freemen furtively. Nevertheless, it is possible that this Alamannic law did influence L.Baiu. XIX,3. The Bavarians found it more expedient than the Alamanni to promulgate a written law against killing

⁶¹Brunner, Deutsche Rechtsgeschichte, II, p. 813, n.1.

⁶²Kralik, NA, XXXVIII (1913), 425. This term is equivalent to murdrida of L.Baiu. XIX,2 and mortaudus of L.Alam. XLVIII.

⁶³Schwind, p. 456. This law gives twenty solidi as the wergeld of a slave, but this is half of what it should be. See the discussion of L.Baiu. V,9 (n. 54) and VI,12.

slaves secretly, evidently a common practice in Bavaria. Since L.Baiu. XIX,3 appears between two other Bavarian laws which are influenced by L.Alam. XLVIII, this increases the possibility that L.Baiu. XIX,3 is also similarly influenced.

(b) No agreement.

(c) No agreement.

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Lex Baiuvariorum XIX,4

De vestitu mortuorum.

Lex Alamannorum XLVIII

(a) Stealing the clothing of the dead is compensated by L.Baiu. XIX,4, where the relatives of the deceased receive twice the value of the stolen garments. This law is the third and last law which shows similarity with L.Alam. XLVIII, quoted with L.Baiu. XIX,2 above. L.Baiu. XIX,4 says: "De vestitu utrorumque quod walaraupa⁶⁴ dici-
mus, si ipse abstulerit qui hos interfecit, dupliciter componat, si alter et non ipse reus omnia furtivo more componat."⁶⁵ The description of the other victim in the second half of the law, not the individual killed secretly, is an unusual addition, indicating that those killed (although not in a furtive manner) are compensated singly if they are robbed of their clothes.

⁶⁴Kralik, NA, XXXVIII (1913), 615-616.

⁶⁵Schwind, p. 456.

(b) Only 12 per cent of the terminology of L.Alam. XLVIII appears as 21 per cent of the words of L.Baiu. XIX,4. Walaraupa, meaning clothes taken from the dead,⁶⁶ of L.Baiu. XIX,4 is essentially the same term as rauba of L.Alam. XLVIII; hence, both terms are equated here.

(c) No agreement.

Title XX

De canibus et eorum compositione.

Lex Baiuvariorum XX,1

(No title given.)

Lex Alamannorum LXXVIII,1

(a) Of the ten laws in title XX of the Lex Baiuvariorum, which compensate for stealing or killing dogs, seven laws are similar to the Alamannic code. All of these seven Bavarian laws show strong similarity with title LXXVIII of the Lex Alamannorum, which itself comprises six laws, and of these five are similar to title XX of the Bavarian code. The basis of all these laws may be Fact. Sal. VI,1-3. The first of these Bavarian laws is XX,1 which concerns stealing (or killing) hunting dogs (leitihunt): "Si quis canem seucem, quom leitihunt⁶⁷ dicunt,

⁶⁶See Brunner, Deutsche Rechtsgeschichte, II, p. 878, n. 42.

⁶⁷See Kralik, NA, XXXVIII (1913), 449.

furaverit [vel occiderit], aut similem aut ipsum reddat et cum VI solidis componat; et si negare voluerit, cum III sacramentalibus iuret secundum legem suam."⁶⁸ That this hunting dog is a lead dog can be seen in the OHG leitihunt, since the first half of this compound word is still used in the contemporary German leiten, meaning to lead. It is also evident that this leitihunt is, in fact, a bloodhound (canis seucis),⁶⁹ a special dog bred for its unusual sense of smell. Because of this characteristic, the bloodhound leads other dogs or his master, often in tracking game or pursuing fugitives. L.Baiu. XX,1 closely parallels L.Alam. LXXVIII,1, since the latter also compensates for stealing a hunting dog which also leads: "De primo cursale, qui primus currit, qui eum involaverit, 6 solidos componat."⁷⁰ There is no doubt that both of these laws are closely related, and both are also similar to Pact.Sal. VI,1,⁷¹ from which both of them are probably based. The similarity between these two south Germanic laws, however, is

⁶⁸Schwind, p. 460. The brackets are inserted by Schwind.

⁶⁹Niermeyer, Mediae latinitatis lexicon minus, X, p. 954 (see under segusius).

⁷⁰Lehmann, p. 142. Codex B (Hlotharii) of Lehmann's edition begins this law like L.Baiu. XX,1: "Si quis canem sensium, primum cursalem, . . ." Ibid.

⁷¹"Si quis canem segusium magistrum furaverit . . ." Eckhardt, Pactus, p. 36; the italics are Eckhardt's. Cf. Pact.Sal. VI,1a and L.Burg. XCVII. For L.Baiu. XX,1 as well as other laws in title XX, see Ernst Heymann, "Zur Textkritik der Lex Salica," NA, XLI (1918), 466-470, and 512-516, and Schwind, NA, XXXIII (1908), 641-645.

stronger than their similarity with Pact.Sal. VI,1.

(b) The little philological similarity indicated by the laws is not based on any significant terms which convey the idea of the laws. Hence, no percentage is supplied.

(c) The laws require six solidi for stealing a lead dog.

Lex Alamannorum LXXVIII,3

(a) The Alamannic code makes a distinction between the lead dog described by LXXVIII,1 above and a laitihunt (the same term as leitihunt of L.Baiu. XX,1) described by LXXVIII,3. The greatest difference between these two Alamannic laws is the payment of twelve solidi if a laitihunt is stolen. (L.Baiu. XX,1 requires six solidi for the same animal.) L.Alam. LXXVIII,3 says: "Illo doctore, qui hominem ducit, quod laitihunt dicunt, furaverit, cum 12 solidis componat."⁷² This law also describes the type of dog compensated by L.Baiu. XX,1, that is, a bloodhound. Apparently, L.Alam. LXXVIII,1 does not describe a bloodhound, but another dog which also leads. The lead dog of L.Alam. LXXVIII,1 and the bloodhound of LXXVIII,3 are combined into one dog in L.Baiu. XX,1.

(b) In addition, 54 per cent of the terms of L.Alam. LXXVIII,3 constitute 23 per cent of the terms of L.Baiu.

⁷²Lehmann, p. 142. The italics are Lehmann's. See the alternate MSS in Lehmann's collation (ibid.) for the spelling of leitihunt.

XX,1.

(c) No agreement.

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Lex Baiuvariorum XX,2

Alia.

Lex Alamannorum LXXVIII,1

(a) The bloodhound described by L.Baiu. XX,1 is a dog apparently different from that described by XX,2. Both of these animals are dogs with special sensory characteristics, yet there are essential differences between them, notably the difference in compensation if they are stolen. The present Bavarian law, XX,2, says: "Si autem canem seucam ductum quem triphunt⁷³ vocant, furaverit, cum III solidis componat aut cum sacramentale iuret."⁷⁴ The difficulty of identifying the type of dog in L.Baiu. XX,2 obviously has a direct bearing on comparing it with the dog discussed by the Lex Alamannorum. The general characteristic of a dog with a special sense of smell is common in L.Alam. LXXVIII,1, which is given above in the discussion of L.Baiu. XX,1, and this dog is also one which leads the rest of the dogs or his master.⁷⁵ Nonetheless, only in a most general sense are L.Baiu. XX,2 and L.Alam. LXXVIII,1 similar, although they both appear to have been

⁷³Kralik, NA, XXXVIII (1913), 603.

⁷⁴Schwind, p. 461. Canem is understood from the previous Bavarian law, XX,1. It is inserted here.

⁷⁵There is a slight possibility that L.Baiu. XX,2

influenced by the same law, Pact.Sal. VI,1.

(b) No agreement.

(c) No agreement.

Lex Alamannorum LXXVIII,3

(a) The similarity between L.Baiu. XX,2 and L.Alam. LXXVIII,3 is no more concrete than that between this Bavarian law and L.Alam. LXXVIII,1. That special dog described by L.Alam. LXXVIII,3, the laitihunt, which is indeed a bloodhound, could not be the same animal described by L.Baiu. XX,2. The only similarities between the latter law and L.Alam. LXXVIII,3 are: the general characteristic of a dog stolen on account of its exceptional sense of smell, and a philological similarity shown in heading (b).

(b) Linguistically, 54 per cent of the terminology of L.Alam. LXXVIII,3 comprises 41 per cent of the terms of L.Baiu. XX,2.

(c) No agreement.

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Lex Baiuvariorum XX,5

Item alia.

Lex Alamannorum LXXVIII,4

and L.Alam. LXXVIII,2 are related, since the latter concerns a dog which runs second. This dog may in a sense be equated with a lead dog, although not with the animals described by L.Alam. LXXVIII,1 and 2. The theft of the dog described by L.Alam. LXXVIII,2 is compensated by three solidi, which is the same payment required by L.Baiu. XX,2.

(a) Another type of dog domesticated by the Germans is the greyhound, and the loss of it is compensated by L.Baiu. XX,5 and L.Alam. LXXVIII,4. Both of these laws indicate that this dog is not stolen, but killed.⁷⁶ L.Baiu. XX,5 says: "De canibus veltricibus qui leporem non persecutum sed sua velocitate comprehenderit, occiderit, cum simili et III solidos componat."⁷⁷ There is no doubt that a dog capable of great speed is indicated by this law. That this must be a greyhound is evident since few dogs could run as fast as a rabbit and catch it in their mouths. L.Alam. LXXVIII,4 describes two basic types of dogs, one of which is the greyhound. The other dog is trained to catch pigs, bears, or other large animals, and this dog is discussed with L.Baiu. XX,7 below. Only part of L.Alam. LXXVIII,4 is quoted here. It says: ". . . vel si veltrives laborarius probatus eum occiderit, cum 3 solidis componat."⁷⁸ The description of this dog closely parallels that of the greyhound in L.Baiu. XX,5, since L.Alam. LXXVIII,4 also compensates for killing a dog which hunts rabbits. Both of these laws are similar to Pact.Sal. VI,2, which

⁷⁶This observation is based on the implication of occidere in L.Baiu. XX,5, which contains no verb in its independent clause.

⁷⁷Schwind, p. 462. Occiderit appears to be understood from the previous Bavarian law, XX,4, and it is inserted here.

⁷⁸Lehmann, p. 143.

also compensates for a greyhound.⁷⁹

(b) The philological similarity of these laws is relatively close, since 21 per cent of all terms of L.Alam. LXXVIII,4 (55 per cent of the last clause of this law) reappear as 33 per cent of L.Baiu. XX,5.

(c) Both laws require three solidi if a greyhound is killed, to which L.Baiu. XX,5 adds the restitution of another dog like that killed.

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Lex Baiuvariorum XX,7

Item alia.

Lex Alamannorum LXXVIII,4

(a) The second type of dog described by L.Alam. LXXVIII,4 is that animal which is trained to catch pigs and bears, cows and bulls, which is in all likelihood a bulldog. This dog is also described by L.Baiu. XX,7, which closely parallels this Alamannic law. L.Baiu. XX,7 follows: "De his canibus, qui ursis vel bubulis id est maioribus, quod suarzuuild⁸⁰ dicimus, persecuntur, si de his occiderit, cum simile et VI solidis componat."⁸¹ The corresponding portion of L.Alam. LXXVIII,4 also adds

⁷⁹Cf. L.Burg. XCVII which describes greyhounds in a general sense.

⁸⁰Kralik, NA, XXXVIII (1913), 597-598 says this term means Schwarzewild, wild boars (pl). Cf. Graff, Alt-hochdeutscher Sprachschatz, I, col. 806, and VI, col. 899.

⁸¹Schwind, p. 463.

bears and buffalo-like animals: cows and bulls, as well as pigs. L.Alam. LXXVIII,4 says: "Bonus canis porcaritius, ursaritius, vel qui vaccam aut taurum prendit, si occiderit aliquis, cum 3 solidis componat; . . ."82 The only substantial difference between this law and L.Baiu. XX,7 is that of compensation, whereby the latter requires double the compensation (plus restitution of a similar dog) of L.Alam. LXXVIII,4. However, both laws specify that this dog is killed, not merely stolen. No other Germanic code contains a law comparable to these.

(b) Twenty-nine per cent of the terms of L.Alam. LXXVIII,4 (47 per cent if just the first part of this law is included) appear as 33 per cent of the terms of L.Baiu. XX,7.

(c) No agreement.

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Lex Baiuvariorum XX,8

Item alia.

Lex Alamannorum LXXVIII,5

(a) Killing a sheep dog is compensated by L.Baiu. XX,8 and L.Alam. LXXVIII,5. Both of these laws are directly related, and both may be derived in part from Pact.Sal. VI,2 and 4. L.Baiu. XX,8 simply says: "Qui vero [canem] pastoraliam qui lupum mordet, occidit [sic], cum

⁸²Lehmann, pp. 142-143.

III solidis conponat."⁸³ This law emphasizes that the sheep dog is used to kill wolves, the common predators of sheep. Although L.Alam. LXXVIII,5 has more to say, it also emphasizes the threat of wolves: "Si quis canem pastorem, qui lupum mordit et pecus ex ore eius discutit et ad clamorem ad alium vel tertiam villam currit, et cum aliquis occiderit, cum 3 solidis conponat."⁸⁴ The defense sheep dogs give against wolves need not be included in these laws. The fact that both laws do specify the threat of wolves and that these dogs meet that threat links them closely. The similar Pact.Sal. XI,2 and 4 do not mention the threat of wolves. In addition, both L.Baiu. XX,8 and L.Alam. LXXVIII,5 indicate that the sheep dog is killed.

(b) Philologically, the laws are especially close, since 33 per cent of the terms of L.Alam. LXXVIII,5 appear as 83 per cent of the terms of L.Baiu. XX,8.

(c) The laws require three solidi if a sheep dog is killed.

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Lex Baiuvariorum XX,9

(No title given.)

Lex Alamannorum LXXVIII,6

(a) Another type of dog used by the early Germans

⁸³Schwind, p. 463. Canem is understood from the previous Bavarian law, XX,7. It is inserted here.

⁸⁴Lehmann, p. 143.

is the watchdog, which defends houses (and courtyards) from potential thieves and prowlers. Laws which compensate for killing this type of dog are L.Baiu. XX,9 and L.Alam. LXXVIII,6, both of which closely parallel Pact.Sal. VI,3.⁸⁵ L.Baiu. XX,9 is much more descriptive for killing a watchdog than is L.Alam. LXXVIII,6. Similarly, the former contains conditions which the latter does not mention, especially the time of day when the dog is killed. L.Baiu. XX,9 states:

Si autem canem qui curtem domini sui defendit, quam houauart⁸⁶ dicunt, occiderit post occasum solis in nocte, cum III solidis conponat, quia furtivum est.

Si vero sole stante hoc fecerit, similem reddat et cum I solido conponat.⁸⁷

To kill a watchdog at night is considered a more serious offense than to kill the same animal during the day, since the former has greater possibility of being a premeditated crime. Since L.Alam. LXXVIII,6 is similar to two Bavarian laws (the first of which is XX,9), it is presented in part here. The remainder is quoted with L.Baiu. XX,10 below. L.Alam. LXXVIII,6 says: "Si quis canem, qui curte defendit alicuius, occiderit, cum uno solido conponat. . . ."⁸⁸ No time of the day needs to be specified by L.Alam. LXXVIII,6

⁸⁵Cf. Heymann, NA, XLI (1918), 513-514.

⁸⁶See Kralik, NA, XXXVIII (1913), 441.

⁸⁷Schwind, p. 464.

⁸⁸Lehmann, p. 143.

to be similar to L.Baiu. XX,9, since both laws possess the same basic ideas.

(b) The philological similarity of these laws is pertinent, although the greater length of L.Baiu. XX,9 distorts this somewhat. Nevertheless, 83 per cent of the terms of that portion of L.Alam. LXXVIII,6 quoted above are evident as 27 per cent of the words of L.Baiu. XX,9.

(c) Although both laws require one solidus for killing a watchdog, they do so under seemingly different circumstances. Since L.Alam. LXXVIII,6 does not specify that the time a watchdog is killed is significant, the one solidus required by this law may not be the same compensation required by L.Baiu. XX,9. However, this is a possibility. That it is only a possibility is evident, since the latter requires the restitution of a similar dog for the one killed in addition to the fine of one solidus, whereas L.Alam. LXXVIII,6 does not.

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Lex Baiuvariorum XX,10

Item alia.

Lex Alamannorum LXXVIII,6

(a) L.Baiu. XX,10 is the last law of title XX of the Bavarian code, but it does not specify any type of dog, since it pertains generally to all dogs. This law compensates the dog's owner if the dog attacks a person and is subsequently killed in the assault, and it is the longest

of all ten laws in title XX. Its description is especially useful in comparing it with L.Alam. LXXVIII,6, a law upon which it is apparently based. In its entirety, L.Baiu. XX,10 says:

Si autem canis per vestimentum aut per membrum hominem tenuerit et de manu eum percusserit, ut mortiat, similem reddat et amplius non requiratur.

Et dominus canis quod canis fecit, componat medietatem ac si ipse fecisset; si hoc non voluerit, canem non requirat.⁸⁹

Prior to analysis, this law is compared to that portion of L.Alam. LXXVIII,6 which is similar to it: ". . . Et si ipse canis eum per vestimentum adprehenderit, et eum quasi nolens percusserit, et mortuus fuerit, iuret, ut per invidiam non fecisset, nisi ad defendendum, donet alio catello, qui iugo transpassare possit."⁹⁰ The parallels of both laws are especially acute. Both laws explicitly define that the dog seizes the clothing of a man (to which L.Baiu. XX,10 adds limbs) and in the struggle which ensues, the victim delivers to the dog a blow from which it dies. The laws also require the restitution of a comparable dog to the owner for the one killed. Although there are differences between the laws, such as the testimony of the victim in L.Alam. LXXVIII,6 proving that he did not kill the animal spitefully, they show far greater similarity than dissimilarity. This especially evident since no other

⁸⁹Schwind, p. 464.

⁹⁰Lehmann, pp. 143-144.

Germanic code contains a law similar to these. In addition, a number of interesting concepts are supplied by L.Baiu. XX,10 which are not evident in the corresponding L.Alam. LXXVIII,6. These are two in number, and both of them deal with compensating for the slain dog. L.Baiu. XX,10 indicates that the owner of the dog is liable for one-half of the value of that dog which must be restored to him. The dog's owner, therefore, is responsible for the actions of his dog (as he is for his livestock) if the rights of others are jeopardized. The second additional feature evident in L.Baiu. XX,10 and not included in L.Alam. LXXVIII,6 concerns that owner who is not willing to give one-half the value of a new dog. If this occurs, the victimized person is not obligated to supply a similar dog for that killed. This is an important point, since the owner who lost his dog appears to be responsible for one-half of the total compensation for this crime. If this is true, there can be no similarity between both laws in the form of compensation given under heading (c) below. The fact that this alleged similarity is given in heading (c) indicates nothing more than the obligation under both laws to replace the slain dog with one like it.

(b) Philologically, the laws show slight similarity, since 28 per cent of the terminology of that portion of L.Alam. LXXVIII,6 quoted above reappears only as 19 per cent of the terms of L.Baiu. XX,10. In this calculation,

mori of the latter is equated with mortuum esse of the former, although mortuum esse is still counted as two separate words.

(c) Both laws require the restitution of a similar dog for that slain.

Title XXI

De accipitribus.

Lex Baiuvariorum XXI,1

De accipitribus.

Lex Alamannorum XCVI,1

(a) The early Germans trained hawks (as well as falcons) to be used in hunting fowl, and one of the prey which hawks attack is the crane. The Alamannic and Bavarian codes each contain a law which compensates the owner for the killing of his hawk. The first of these laws is L.Baiu. XXI,1, which is more descriptive than L.Alam. XCVI,1, a law with which it is similar. L.Baiu. XXI,1 follows: "Si accipitrem occiderit, quem chrano-hari⁹¹ dicunt, cum VI solidis et simile componat; et cum I sacramentale iuret, ut ad volare et capere similis

⁹¹See Kralik, *NA*, XXXVIII (1913), 429, although his description that this is a sparrow hawk should be questioned. A crane is too large to be successfully attacked by a sparrow hawk.

sit."⁹² That cranes are the prey of this hawk is evident in the OHG chranohari, which is Kranich-Habicht ("crane-hawk") in contemporary German. Since L.Alam. XCVI,1 is similar to two Bavarian laws, the present one and XXI,2, only the second half of this law is quoted here. It is because of this that the terms acceptor and occiderit are not evident in the following quotation, but can be seen in the first half of this law quoted with L.Baiu. XXI,2 below. L.Alam. XCVI,1 says: ". . . Si grue, 6 solidos conponat."⁹³ Although L.Alam. XCVI,1 is less descriptive than L.Baiu. XXI,1, both laws still compensate for the same offense. Both laws, in fact, are parallel to Pact.Sal. VII,2.⁹⁴

(b) No agreement.

(c) The laws require six solidi for the loss of this hawk, to which L.Baiu. XXI,1 adds the restitution of another hawk similar to that killed.

* * * * *

Lex Baiuvariorum XXI,2

Item alia.

Lex Alamannorum XCVI,1

(a) The last law of the Lex Baiuvariorum which is similar to the Alamannic code is XXI,2. This law is

⁹²Schwind, p. 465.

⁹³Lehmann, p. 155. This law is the same as Pact. Alam. III,14 (XXVI,4 of Eckhardt's revised edition).

⁹⁴Cf. L.Burg. XCVIII.

similar to the first half of L.Alam. XCVI,1 as L.Baiu. XXI,1 is similar to the second half. L.Baiu. XXI,2 compensates for that hawk which is trained to capture geese: "De eo qui dicitur canshapuh⁹⁵ qui anseres capit occiderit, cum III solidis componat et similem reddat."⁹⁶ That this law describes a hawk is evident in the OHG canshapuh, which in contemporary German is Gans-Habicht ("goose-hawk"), that is, a goshawk. Although L.Baiu. XXI,2 does not specify that the hawk is killed, this may be assumed from the previous Bavarian law, XXI,1. The description of this law is similar to the first half of L.Alam. XCVI,1, which says: "Si acceptor, qui auca mordit, occiderit, 3 solidos solvat. . . ."⁹⁷ Both L.Baiu. XXI,2 and L.Alam. XCVI,1 indicate that this hawk preys upon geese, and both laws may be based upon Pact.Sal. VII,1-2.

(b) No agreement.

(c) The laws require a payment of three solidi for the loss of a hawk, to which L.Baiu. XXI,2 adds that restitution of another hawk like the one killed.

Title XXII

De pomariis et eorum compositione.

(No similarity)

⁹⁵Kralik, NA, XXXVIII (1913), 425.

⁹⁶Schwind, p. 465. Occiderit is understood from the previous Bavarian law, XXI,1; it is inserted here.

⁹⁷Lehmann, p. 155.

CHAPTER VIII

Conclusion

This essay attempts to illustrate not only what Alamannic and Bavarian laws are similar to each other, but also indicates how they are similar and to what degree. That certain laws show greater similarity than others is obvious. Although no one individual avenue of investigation should be considered singly, all three comparisons: intentional, textual, and reparational, considered jointly, reveal a great deal. This evidence indicates how closely integrated the Alamanni and Bavarians are legally, that Alamannic society closely parallels Bavarian society. The laws, therefore, reinforce one another as reliable historical sources of eighth-century Germanic society.

This essay also lays the groundwork for numerous other studies of Germanic law. Although this paper is nothing more than the first attempt to investigate the similarity between two particular codes; nevertheless, it indicates the feasibility of similar studies in the future. This paper indicates how individual Alamannic and Bavarian laws are similar to each other; it simultaneously indicates how the remaining laws in the Lex Alamannorum and Lex

Baiuvariorum are dissimilar to each other. These remaining laws, 179 from the Alamannic code and 172 from the Bavarian code, need to be compared with the Lex Visigothorum, Pactus legis Salicae, Lex Ribuaria, and Edictus Rothari before South Germanic law can be known in its entirety. There are undoubtedly several laws in the leges barbarorum which while similar, are not at all derived from one another. Not all laws in the leges, however, are mutually independent; investigations such as the present study are greatly needed in order to clarify the possible influence one law may have on another or to show that no influence should be assumed for those laws enacted by two different Germanic tribes at quite different times. Similarly, the problem of Roman legal influence on the Alamannic and Bavarian codes needs to be reopened. This is especially evident for L.Baiu. VII,1-3 which are verbatim texts of L.Alam. XXXIX,¹ both of which show similarity with Roman law and with L.Visig. III,5,1. This point cannot be underemphasized since no satisfactory study has appeared which analyzes Roman law in the light of all relevant laws in the Alamannic and Bavarian codes. The research of Ernst Levy² is only partially accurate, since it does not refer to the Alaman-

¹See pp. 179-183 above.

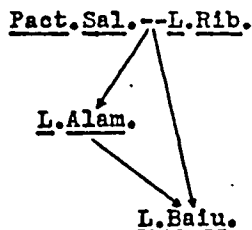
²West Roman Vulgar Law: The Law of Property (Memoirs of the American Philosophical Society, XXX; Philadelphia, 1951), and Weströmisches Vulgarrecht das Obligationenrecht (Forschungen zum römischen Recht, ed. Max Kaser. et al., VII; Weimar, 1956).

nic code, or for that matter, to the Pactus legis Salicae or the Lex Ribuaris.³ The study of Roman legal influence on the Alamannic and Bavarian codes is another possible avenue of research pointed out by this paper.

The Alamannic and Bavarian laws which show the greatest similarity with each other, notably title LVII of the Lex Alamannorum and titles IV-VI of the Lex Baiuvariorum, also are closely similar to the Pactus legis Salicae and the Lex Ribuaris. This is due in large part to the fact that the Salic and Ripuarian codes are in all probability the origin of these later Alamannic and Bavarian codes. However, it cannot be concluded from this evidence that those laws of both the Alamannic and Bavarian codes which are similar to the Salic and Ripuarian codes were influenced simultaneously and in the same way. In fact, it may be concluded from the texts (which needs to be supplemented with first-hand knowledge from the manuscripts) that the evolution of the Lex Baiuvariorum is essentially two-fold. Although the Lex Alamannorum appears to be in large part a direct derivation from the Salic and Ripuarian codes, the Lex Baiuvariorum is essentially both a direct and an indirect derivation. The two-fold evolution of the Lex Baiuvariorum is derived indirectly from the Salic and Ripuarian codes by means of the Lex Alamannorum as an

³A partial comparison of Roman law with the Lex Ribuaris can be found in Beyerle, ZSRG, LV (1935), 15-19.

intermediary, and directly also from the same Salic and Ripuarian codes without any intermediary. The following diagram illustrates this two-fold evolution:



This view thereby challenges the interpretation of Ernst Mayer⁴ and Franz Beyerle⁵ that the Bavarian code originates in the seventh century. The diagram also agrees partly with the view of Schwind⁶ who concluded that there is an unknown law code between the Salic and Ripuarian codes and the Lex Baiuvariorum. This "unknown code" is the Lex Alamannorum.

This study indicates that textual criticism is an essential aspect in the study of Germanic law. Without the added insights of legal textual criticism, the texts themselves may often lead to erroneous interpretations. The validity of legal textual criticism has been pointed out several times in the course of this paper, especially in clarifying those numerous instances in Schwind's edition

⁴Die oberdeutschen Volksrechte, pp. 90-91.

⁵ZSRG, XLIX (1929), 372.

⁶NA, XXXIII (1908), 685.

of the Lex Baiuvariorum which are too broadly analyzed. These instances pertain not only to some fourteen Bavarian laws which Schwind believes are similar to the Lex Alamannorum,⁷ but also to several other Bavarian laws which are only partially similar to the Alamannic laws he cites. I need not elaborate on this point, since one example can easily clarify it. For instance, L.Baiu. IV,11 compensates for severing the thumb and fingers from a freeman's hand. This law is closely parallel to L.Alam. LVII,42,45,48, and 51-53. However, Schwind assumes that seven additional Alamannic laws, which also concern severing the thumb and fingers, are likewise similar to L.Baiu. IV,11. There are no grounds for making this assumption, since these additional Alamannic laws, LVII,41,43,44,46,47,49, and 50, do not concern cutting off the thumb or fingers, but only parts thereof. Since these seven additional Alamannic laws are far more explicit than the general L.Baiu. IV,11, can it be assumed that cutting off part of a finger (and all of these additional Alamannic laws specify the injury either at the first or second joint, with the exception of L.Alam. LVII,41 which concerns the top of the thumb) is equivalent to the whole thumb? Perhaps the only reason Schwind assumes any similarity between L.Baiu. IV,11 and these seven additional Alamannic laws is because the latter

⁷One of these fourteen laws (L.Baiu. I,4) is similar to the Lex Alamannorum, but I propose a different law than Schwind.

appear next to the six Alamannic laws which are similar to L.Baiu. IV,11; that is, L.Alam. LVII,41,43,44,46,47,49, and 50 all appear within the limits of L.Alam. LVII,42,45,48, and 51-53, with the exception of LVII,41 which precedes them all. This example also holds true for the corresponding Bavarian laws, V,7 and VI,7.

That offense is more important than caste is also evident in this study. This pertains particularly to those crimes and abuses described in titles IV-VI of the Lex Baiuvariorum and title LVII of the Lex Alamannorum. Certainly, there are class differences between freemen, freedmen, and slaves, since they fall victim to the same crime, but the offense itself is the same. For this reason, L.Alam. LVII, which concerns the personal injury of freemen and freemen only, is similar legally, not reparationally, to L.Baiu. V (freedmen) and VI (slaves). The agreement of the codes in legal intent, however, does not preclude the difference in the wergeld payment for different classes. This is especially evident in L.Baiu. V,9 and VI,12.⁸ As has already been included, there is a definite ratio of $1:\frac{1}{2}:\frac{1}{4}$ for crimes besetting freemen, freedmen, and slaves respectively. This ratio is not an artificial creation in the Alamannic and Bavarian codes, but a living element of a caste system where every person knew himself in relationship to everyone else. This ratio is also evident

⁸See pp. 148-150, and 176-178 respectively above.

in the Salic and Ripuarian codes as well.

Several aspects of Germanic law would greatly benefit by numismatic investigations. This is especially true for a study of wergeld and the relationship of numismatics to it. Although studies have already appeared between numismatics and the Lex Salica,⁹ there are few comparable studies for the Alamannic and Bavarian codes.¹⁰ The latter codes must be analysed in the light of Merovingian coinage, since the Alamanni and Bavarians minted no coins of their own in the eighth century. Numismatic-legal research would help to understand the nature of the Carolingian pound, a point still largely in debate,¹¹ and a point directly relevant to interpreting the worth of the ounce (uncia) in L. Baiu. I, 2.¹²

⁹In general, see Arnold Luschin von Ebengreuth, "Der Denar der Lex Salica," Sitzungsberichte der kaiserlichen Akademie der Wissenschaften in Wien, philosophisch-historische Klasse, CLXIII (1909), Abhandlung 4, and his "Zur Geschichte der Denars der Lex Salica," in Historische Aufsätze: Karl Zeumer zum 60. Geburtstag von Freunden und Schülern dargebrachten Festgabe (Weimar, 1910), pp. 201-207. Also see Benno Hilliger, "Zur Münzrechnung der Lex Salica," Historische Vierteljahrschrift, XIV (1911), 465-473, and his "Ursprung und Wert des Wergelds im Volkrecht," ibid., XXIX (1935), 681-721.

¹⁰Little has been done on this problem, save for the research of J.B. Kull, "Der Solidus oder Schilling in Bayern," Altbayerische Monatsschrift, VI (1906), 106-108. Also see his "Die ältesten bayerlichen Münzen," ibid., III (1901/02), 181-183, and "Die Münzgewichte mit besonderer Rücklicht auf Bayern," ibid., VII (1907), 45-47.

¹¹See D.M. Metcalf and A. Miskimin, "The Carolingian Pound: A Discussion," Numismatic Circular, LXXXI (1968), 296-298, 333-334.

¹²See pp. 18-21 above.

One other avenue of investigation needs to be discussed in this conclusion: the ambiguity of some Latin terms. This is an important point, since the interpretation of these terms may affect the understanding of a particular law. Two examples are cited here. The first of these pertains to the word curtis. Its use by L.Baiu. II, 10 clearly indicates a courtyard, although it need not be enclosed. It is possible, therefore, that curtis in L.Baiu. II,10 (as well as in L.Baiu. XI,1) means unfenced property pertaining to an individual, and since this property is of a large nature, curtis may be equated with mansus, villa, sala, or fundus, all meaning a landed estate, such as a manor. If curtis is to be defined as estate, then the application of L.Baiu. II,10 is greatly enhanced. Since the latter prohibits fights on the duke's property, this law has a more universal application if it pertains to all the duke's estates, rather than to land, fenced or unfenced, adjacent to his domicile. Another case in point pertains to the word iumentum, meaning beast of burden. Nowhere in the Lex Alamannorum does iumentum mean ox; it is always rendered as horse.¹³ This definition may have far-reaching economic consequences; since if this is true, there may have been an abundance of horses in Alamannia as there definitely were in Merovingian Gaul. The question to ask, however, is whether these horses are used to pull plows,

¹³See p. 222-223, n. 6 above.

since this work is usually done by oxen until the eleventh century. If horses do pull plows in Alamannia, are horse collars used there earlier than elsewhere in western Europe?¹⁴ This seems unlikely, but it still does not explain the use of iumentum in the Alamannic code.

I hope this study will open the way to the pursuit of all these problems, not only for south Germanic law, but for the entire corpus legum barbarorum. It is only then that we will fully comprehend Germanic law.

¹⁴See p. 226, n. 13 above.

APPENDIX I

All those Alamannic laws which are similar to the Lex Baiuvariorum¹ and which are discussed in this study are indicated in the following table:

<u>L.Baiu.</u>	<u>L.Alam.</u>	<u>L.Baiu.</u>	<u>L.Alam.</u>
I,1	I,1	IV,13	LVII,15
2	I,2	14	LVII,8-10
3	VI	15	LVII,11-12,18-19,26
4	XX	16	LVII,22-23,59
5	VII	18	LIX,1
7	III,1-3	28	LVII,62
8	XIV	29	LX,1
9	XV,1-2	30	LX,2
	XII		
	XIII		
10	XI	V,1	LVII,1
13	XXI	2	LVII,2
		3	LVII,3
II,1	XXIII		LVIII
4	XXV,1	4	LVII,4
6	XXVI,1	5	LVII,6,55
9	XXV,1-2	6	LVII,14,66
10	XXIII	7	LVII,42,45,48,51-52
12	XXX	8	LVII,62
	XXXI	9	LX,1
13	XXVII,1		
14	XXXVI,1,3	VI,1	LVII,1
16	XLI,1	2	LVII,2
17	XLI,1	3	LVII,3
IV,1	LVII,1		LVIII
2	LVII,2	4	LVII,4
3	LVIII	5	LVII,6,55
4	LVII,3,34-35	6	LVII,14,66
5	LVII,4	7	LVII,42,45,48,51-52
6	LVII,6,55	8	LVII,15
9	LVII,14,66	9	LVII,10-12,18-19
10	LVII,38	10	LVII,22-23
11	LVII,42,45,48,51-53	11	LVII,8-9,62
12	LVII,31-32		

¹For this reason, titles III, XVIII, and XXII of the Lex Baiuvariorum are excluded from this appendix and appendix II, since they express no similarity with the Alamannic code.

<u>L. Batu.</u>	<u>L. Alam.</u>	<u>L. Batu.</u>	<u>L. Alam.</u>
IV,12	LX,1	XIII,4 5	XCIV,4 XCIV,4
VII,1	XXXIX	XIV,17	LXVII,2
2	XXXIX	XV,9	LXXXV
3	XXXIX	XVI,5	XLV
4	XXXVIII	16	XLVI
VIII,3	LVI,1	17	XLII,2
4	LVI,1	XVII,1	LXXXI
6	LIII,1	3	XCVIII,1-2
8	LVI,1		XCI
15	LII	XIX,1	XLIX,1
16	LI	2	XLVIII
19	LXX	3	XLVIII
IX,2	VI	4	XLVIII
4	XXXI	XX,1	LXXVIII,1,3
X,1	LXXVI,1	2	LXXVIII,1,3
2	LXXVI,2	5	LXXVIII,4
XI,1	XCIV,2	7	LXXVIII,4
XII,8	LXXXI	8	LXXVIII,5
		9	LXXVIII,6
		10	LXXVIII,6
		XII,1	XCVI,1
		2	XCVI,1

APPENDIX II

This table indicates all Bavarian laws proposed by the present study (and by Schwind) showing similarity with the Lex Alamannorum:

I,1-13	1	2	3	4 ¹ / ₄ [*]	5	7	8	9	10	13										
II,1-18	1	2 [*]	3 [*]	4	6	9	10	12	13	14	16	17	18 [*]							
IV,1-32	1	2	3	4	5	6	7 [*]	9	10	11	12	13	14	15	16	18	27 [*]	28	29	30
V,1-9	1	2	3	4	5	6	7	8	9											
VI,1-12	1	2	3	4	5	6	7	8	9	10	11	12								
VII,1-5	1	2	3	4																
VIII,1-23	3	4	6	8	14 [*]	15	16	19	20 [*]											
IX,1-20	1 [*]	2	4	16 [*]																
X,1-23	1	2																		
XI,1-4	1																			
XII,1-11	8																			
XIII,1-9	4 ⁺	5 ⁺																		
XIV,1-17	11 [*]	12 [*]	13 [*]	17																
XV,1-10	9																			

*Bavarian laws which Schwind believes indicate Alamannic legal similarity, and where I disagree.

⁺Bavarian laws expressing Alamannic legal similarity heretofore not included in Schwind's edition of the Lex Bajuvariorum.

¹The Alamannic law proposed here disagrees with that proposed by Schwind.

XVI,1-17	5	16	17
XVII,1-6	1	3	6*
XIX,1-10	1	2	3 ⁺ 4
XX,1-10	1	2	5 7 8 9 10
XXI,1-6	1	2	

APPENDIX III

The following table indicates the relationship between individual laws of titles IV-VI of the Lex Bajuvariorum:

<u>Title IV</u>	<u>Title V</u>	<u>Title VI</u>
1	1	1
2	2	2
3-4	3	3
5	4	4
6-7	5	5
9	6	6
11	7	7
13	---	8
14-15	---	9,11
16	---	10
28	8	11
29	9	12

BIBLIOGRAPHY

I. SOURCES:

- Beyerle, Franz and Rudolf Buchner. eds. Lex Ribuaria.
MGH: Legum sectio I. III. pt. 2. Hanover, 1954.
- Bluhme, Friedrich. ed. Edictus Langobardorum in MGH: Legum.
IV. Hanover, 1868, pp. 1-225.
- De Salis, Ludwig Rudolf. ed. Leges Burgundionum. MGH:
Legum sectio I. II. pt. 1. Hanover, 1892.
- Eckhardt, Karl August. ed. Leges Alamannorum. II: Recensio
Lantfridana (Lex). Germanenrechte Neue Folge, West-
germanisches Recht. VI. Witzzenhausen, 1962.
- ed. Lex Salica. MGH: Legum sectio I. IV. pt. 2.
Hanover, 1959.
- ed. Pactus legis Salicae. MGH: Legum sectio I.
IV. pt. 1. Hanover, 1962.
- Haenel, Gustav. ed. Lex Romana Visigothorum. Leipzig, 1849.
- Lehmann, Karl. ed. Leges Alamannorum. rev. ed. Karl
August Eckhardt. MGH: Legum sectio I. V. pt. 1.
Hanover, 1966.
- Mommsen, Theodor and Paul M. Meyer. eds. Theodosiani Libri
XVI cum Constitutionibus Sirmundianis. 2 vols. in 3.
2nd ed. Paul Krueger. Berlin, 1954.
- Schwind, Ernst von. ed. Lex Baiwariorum. MGH: Legum sectio
I. V. pt. 2. Hanover, 1926.
- Zeumer, Karl. ed. Leges Visigothorum. MGH: Legum sectio I.
I. Hanover, 1902.

II. AUTHORITIES: BOOKS:

- Anderson, J.G.C. ed. Cornelii Taciti: De Origine et situ Germanorum. Oxford, 1938.
- Arnoldson, Torild W. Parts of the Body in Older Germanic and Scandinavian. Linguistic Studies in Germanic, University of Chicago. II. Chicago, 1915.
- Bader, Karl Siegfried. Das mittelalterliche Dorf als Friedens- und Rechtsbereich. Weimar, 1957.
- Brunner, Heinrich. Abhandlungen zur Rechtsgeschichte. ed. Karl Rauch. 2 vols. Weimar, 1931.
- . Deutsche Rechtsgeschichte. 2 vols.. 2nd ed. (vol. II ed. Claudius Freiherr von Schwerin). Leipzig, 1906-1928.
- . Forschungen zur Geschichte des deutschen und französischen Rechtes. Stuttgart, 1894.
- . Zur Rechtsgeschichte der römischen und germanischen Urkunde. Berlin, 1880.
- Buchner, Rudolf. Die Rechtsquellen (Beiheft) in W. Wattenbach and Wilhelm Levison, Deutschlands Geschichtsquellen im Mittelalter, Vorzeit und Karolinger. Weimar, 1953.
- Conrad, Hermann. Deutsche Rechtsgeschichte. 2 vols. Karlsruhe, 1962-1966. Vol. I: 2nd ed. 1962. Vol. II: 1966.
- Conrat, Max. Geschichte der Quellen und Literatur des römischen Rechts im frühen Mittelalter. Leipzig, 1891.
- Cramer, Julius. Die Geschichte der Alamannen als Gaugeschichte. Untersuchungen zur deutschen Staats- und Rechtsgeschichte. LVII. Breslau, 1899.
- Dahn, Felix. Die Könige der Germanen. 13 vols. Munich, Würzburg, and Leipzig, 1861-1911.
- Dargun, Lothar von. Mutterrecht und Raubehe und ihre Reste im germanischen Recht und Leben. Untersuchungen zur deutschen Staats- und Rechtsgeschichte. XVI. Breslau, 1883.

- Davoud-Oghlou, Garabed Artin. Histoire de la Législation des anciens Germains. 2 vols. Berlin, 1845.
- Declareuil, J. Histoire générale du droit français des origines à 1789. Paris, 1925.
- Dictionnaire de Théologie Catholique. ed. A. Vacant, E. Mangenot, and E. Amann. 15 vols. in 30. Paris, 1909-1950.
- Dollinger, Philippe. L'évolution des classes rurales en Bavière, depuis la fin de l'époque carolingienne jusqu'au milieu du XIII^e siècle. Paris, 1949.
- Dopsch, Alfons. The Economic and Social Foundations of European Civilization. trans. M.G. Beard and Nadine Marshall. 2nd ed. New York, 1937.
- Du Cange, Charles du Fresne. Glossarium mediae et infimae latinitatis. 10 vols. ed. Léopold Favre. Paris, 1887-1888.
- Eckhardt, Karl August. Die Lex Baiuvariorum. Eine textkritische Studie. Untersuchungen zur deutschen Staats- und Rechtsgeschichte. CXXXVIII. Breslau, 1927.
- Ernout, A. and A. Meillet. Dictionnaire étymologique de la langue latine. Histoire des mots. 4th ed. Paris, 1959.
- Esmein, A. A History of Continental Criminal Procedure. trans. John Simpson. Continental Legal History Series. V. Boston, 1913.
- Cours élémentaire d'histoire du droit français. 15th ed. R. Genestal. Paris, 1925.
- Feine, Hans Erich. Kirchliche Rechtsgeschichte. 3rd ed. Weimar, 1955.
- Feist, Sigmund. Vergleichendes Wörterbuch der gotischen Sprache. 3rd ed. Leiden, 1939.
- Fick, August. Vergleichendes Wörterbuch der indogermanischen Sprachen. 3 pts. 4th ed. Göttingen, 1890-1909.
- Fustel de Coulanges. Histoire des institutions politiques de l'ancienne France: L'allée et le domaine rural. 3rd ed. Paris, 1922.

- Fustel de Coulanges. Histoire des institutions politiques de l'ancienne France: Les origines du système féodal. 6th ed. Paris, n.d.
- , Recherches sur quelques problèmes d'histoire. 4th ed. Paris, 1923.
- Goebel, Jr., Julius. Felony and Misdemeanor: A Study in the History of English Criminal Procedure. Research in Legal History, Columbia University School of Law. I. New York, 1937.
- Graff, E.G. Althochdeutscher Sprachschatz oder Wörterbuch der althochdeutschen Sprache. 6 vols. Berlin, 1834-1842.
- Green, D.H. The Carolingian Lord. Semantic Studies on Four Old High German Words: Balder, Frö, Truhtin, and Hërro. Cambridge, 1965.
- Grimm, Jacob. Deutsche Rechtsalterthümer. 2 vols. 4th ed. Andreas Heusler and Rudolf Kübner. Berlin, 1899.
- Halban, Alfred von. Das römische Recht in den germanischen Volksstaaten. Ein Beitrag zur deutschen Rechtsgeschichte. Untersuchungen zur deutschen Staats- und Rechtsgeschichte. LVI. LXIV. LXXXIX. Breslau, 1899, 1901, 1907.
- Huebner, Rudolf. A History of Germanic Private Law. trans. Francis S. Philbrick. Continental Legal History Series. IV. Boston, 1918.
- Immink, P.W.A. At the Roots of Medieval Society. Institutet for Sammenlignende Kulturforskning. series A. XXIV. Oslo, 1958.
- Inama-Sternegg, Karl Theodor von. Deutsche Wirtschaftsgeschichte. 3 vols. 1st-2nd ed. Leipzig, 1879-1909. Vol. I: Deutsche Wirtschaftsgeschichte bis zum Schluss der Karolingerperiode. 2nd ed. Leipzig, 1909.
- Kaser, Max. Das römische Privatrecht. Handbuch der Altertumswissenschaft. X. 3. 3. 2 pts. Munich, 1955-1959.
- Koehne, Carl. Das Recht der Mühlen bis zum Ende der Karolingerzeit. Untersuchungen zur deutschen Staats- und Rechtsgeschichte. LXXI. Breslau, 1904.

- Kraner, Friedrich and W. Dittenberger. eds. C. Iulii Caesaris Commentarii De Bello Gallico. 3 vols. 19th ed. Heinrich Neusel. Berlin, 1960-1961.
- Latham, R.E. Revised Medieval Latin Word-List from British and Irish Sources. London, 1965.
- Latouche, Robert. The Birth of Western Economy: Economic Aspects of the Dark Ages. trans. E.M. Wilkinson. New York, 1966.
- Lear, Floyd Seyward. Treason in Roman and Germanic Law: Collected Papers. Austin, 1965.
- Leane, Émile. Histoire de la propriété ecclésiastique en France. 6 vols. Lille and Paris, 1910-1943.
- Levy, Ernst. Weströmisches Vulgarrecht das Obligationenrecht. Forschungen zum römischen Recht. ed. Max Kaser et al. VII. Weimar, 1956.
- West Roman Vulgar Law: The Law of Property. Memoirs of the American Philosophical Society. XXIX. Philadelphia, 1951.
- Lexer, Matthias. Mittelhochdeutsches Taschenwörterbuch. 4th ed. Leipzig, 1891.
- Löffstedt, Einar. Late Latin. Instituttet for Sammenliggende Kulturforskning. series A. XXV. Oslo, 1959.
- Loening, Edgar. Geschichte des deutschen Kirchenrechts. 2 vols. Strasbourg, 1870.
- McNeal, Edgar Holmes. Minores and Mediocres in the Germanic Tribal Laws. Columbus, 1905.
- Mayer, Ernst. Die oberdeutschen Volksrechte. Leipzig, 1929.
- Mayer-Homburg, Edwin. Die fränkischen Volksrechte im Mittelalter. Eine rechtsgeschichtliche Untersuchung. Weimar, 1912.
- Meillet, Antoine. General Characteristics of the Germanic Languages. trans. William P. Dismukes. 4th ed. Miami Linguistics Series. VI, Coral Gables, 1970.
- Niermeyer, J.F. Mediae latinitatis lexicon minus. 11 fasc. Leiden, 1954-1964.

- Norberg, Dag. Beiträge zur spätlateinischen Syntax.
Uppsala, 1944.
- . Syntaktische Forschungen auf dem Gebiete des
spätlateins und des frühen Mittelalters. Uppsala
Universitets Arsskrift. IX. Uppsala, 1943.
- Ors, Alvaro d'. Estudios Visigóticos II: El Código de
Eurico. Edición, Palíngomía, Índices. Cuadernos
del Instituto Jurídico Español. XII. Rome and
Madrid, 1960.
- Otto, Eberhard F. Adel und Freiheit im deutschen Staat des
frühen Mittelalters. Studien über 'Nobiles' und
Ministerialen. Neue Deutsche Forschungen, Abteilung
Mittelalterliche Geschichte. II. Berlin, 1937.
- Perrin, Charles Edmond. Seigneurie rurale en France et en
Allemagne du début du IX^e à la fin du XII^e siècle.
Paris, 1966.
- Planitz, Hans. Deutsche Rechtsgeschichte. 3rd ed. Karl
August Eckhardt. Graz and Cologne, 1971.
- Pollock, Frederick and Frederic William Maitland. The
History of English Law before the Time of Edward I.
2 vols. 2nd ed. Cambridge, 1898.
- Prokosch, E. A Comparative Germanic Grammar. Philadelphia,
1939.
- Prou, Maurice. Catalogue des monnaies françaises de la
Bibliothèque Nationale. Les monnaies mérovingiennes.
Paris, 1892.
- Schade, Oskar. Altd deutsches Wörterbuch. 2 vols. 2nd ed.
Halle, 1872-1882.
- Schatz, Josef. Altbairische Grammatik. Laut- und Flexions-
lehre. Grammatiken der althochdeutschen Dialekte.
I. Göttingen, 1907.
- Schmeller, J. Andreas. Bayerisches Wörterbuch. ed. G. Karl
Frobenius. 2 vols. Munich, 1872-1877.
- Schmidt, Ludwig. Geschichte der deutschen Stämme bis zum
Ausgang der Völkerwanderung. Vol. I: Die Westger-
manen. Vol. II: Die Ostgermanen. 2 vols. 2nd ed.
Munich, 1938-1941.

- Schröder, Richard. Geschichte des ehelichen Güterrecht in Deutschland. 2 pts. Stettin, 1863-1874.
- . Lehrbuch der deutschen Rechtsgeschichte. 4th ed. Leipzig, 1902.
- Schwerin, Claudius Freiherr von. Die altgermanisches Hundertschaft. Untersuchungen zur deutschen Staats- und Rechtsgeschichte. XC. Breslau, 1907.
- . Grundzüge der deutschen Rechtsgeschichte. Munich and Leipzig, 1934.
- Sohm, Rudolph. Die fränkischen Reichs- und Gerichtverfassung. Weimar, 1871.
- Souter, Alexander. A Glossary of Later Latin to 600 A.D. Oxford, 1949.
- Stephenson, Carl. Medieval Institutions: Selected Essays. ed. Bryce D. Lyon. Ithaca, 1954.
- Tellenbach, Gerd. Die Entstehung des deutschen Reiches von der Entwicklung des fränkischen und deutschen Staates im neunten und zehnten Jahrhundert. Munich, n.d. [1943].
- . Königtum und Stämme in der Vorzeit des Deutschen Reiches. Quellen und Studien zur Verfassungsgeschichte des Deutschen Reichs in Mittelalter und Neuzeit. VII. 4. Weimar, 1939.
- Thompson, E.A. The Early Germans. Oxford, 1965.
- Ureña y Smeñaud, Rafael de. La Legislación gótico-hispana (Leges Antiquiores--Liber Iudiciorum). Madrid, 1905.
- Verlinden, Charles. L'Esclavage dans l'Europe médiévale. 2 vols. Bruges, 1955.
- Vinogradoff, Paul. Custom and Right. Instituttet for Sammenlignende Kulturforskning. series A. III. Oslo, 1925.
- . Outlines of Historical Jurisprudence. 2 vols. Oxford, 1920-1922.
- Waltz, Georg. Deutsche Verfassungsgeschichte. Die Verfassung des deutschen Volkes in ältester Zeit. 8 vols. 2nd-3rd ed. Berlin, 1880-1896.

Wallace-Hadrill, J.M. Early Germanic Kingship in England and on the Continent. Oxford, 1971.

----- . The Long-Haired Kings and other studies in Frankish history. London, 1962.

Wergeland, Agnes Mathilde. Slavery in Germanic Society during the Middle Ages. Chicago, 1916.

White, Jr. Lynn. Medieval Technology and Social Change. Oxford, 1962.

Zöllner, Erich. Geschichte der Franken bis zur Mitte des sechsten Jahrhunderts. Munich, 1970.

II. AUTHORITIES: ARTICLES:

Aebischer, Paul. "Les dénominations du moulin dans les chartes italiennes du moyen age," Archivum latinum-tatis medii aevi, VII (1932), 49-109.

Baesecke, Georg. "Die deutschen Worte der germanischen Gesetze," Beiträge zur Geschichte der deutschen Sprache und Literatur, LIX (1935), 1-101.

Balon, Joseph. "Le statut juridique des colliberts du Val de Loire," Revue bénédictine, LXXVII (1967), 298-324.

Beseler, G. "Der Judex im bairischen Volksrechte," Zeitschrift für Rechtsgeschichte, IX (1870), 244-261.

Beyerle, Franz. "Das Gesetzbuch Ribvariens. Volksrechtliche Studien III," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung, LV (1935), 1-80.

----- . "Die beiden süddeutschen Stammesrechte," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung, LXXIII (1956), 84-140.

----- . "Die süddeutschen Leges und die merowingische Gesetzgebung. Volksrechtliche Studien II," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung, XLIX (1929), 264-432.

----- . "Zur Frühgeschichte der westgotischen Gesetzgebung. Volksrechtliche Studien IV," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische

Abteilung, LXVII (1950), 1-33.

- Bloch, Marc. "Les colliberti," Revue historique, CLVII (1928), 1-48, 225-263.
- Bontems, C. "Les dommages et intérêts dans les lois barbares," Revue historique de droit français et étranger, 4th serie, XLVII (1969), 454-473.
- Bosl, Karl. "On Social Mobility in Medieval Society: Service, Freedom, and Freedom of Movement as Means of Social Ascent," in Early Medieval Society, ed. Sylvia L. Thrupp, New York, 1967, pp. 87-102.
- Buchner, Rudolf. "Kleine Untersuchungen zu den fränkischen Stammesrechten I mit einem Beitrag von Franz Beyerle," Deutsches Archiv für Erforschung des Mittelalters, IX (1952), 59-102.
- Bullough, D.A. "Early Medieval Social Groupings: The Terminology of Kinship," Past and Present, XLV (1969), 3-18.
- Claussen, Hans-Kurt. "Die Beziehungen der Lex Salica zu den Volksrechten der Alamannen, Bayern und Ribuarier," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung, LVI (1936), 349-359.
- Drew, Katherine Fischer. "The Germanic Family of the Leges Burgundionum," Medievalia et Humanistica, XV (1963), 5-14.
- Dubled, Henri. "Mancipium au moyen âge," Revue du moyen âge latin, V (1949), 51-56.
- Fustel de Coulanges. "De l'inégalité du wergeld dans les lois franques," Revue historique, II (1876), 460-489.
- "Recherches sur cette question: Les Germains connaissaient-ils la propriété des terres?" Séances et travaux de l'Académie des sciences morales et politiques, nouvelle serie, XXIV (1885), 5-66.
- Ganshof, F.L. "Manorial Organization in the Low Countries in the Seventh, Eighth and Ninth Centuries," Transactions of the Royal Historical Society, 4th series, XXXI (1949), 29-59.

- Goffart, Walter. "From Roman Taxation to Medieval Seigneurie: Three Notes," Speculum, XLVII (1972), 165-187, 373-394.
- Heymann, Ernst. "Zur Textkritik der Lex Salica," Neues Archiv der Gesellschaft für Ältere deutsche Geschichtskunde, XLI (1918), 419-524.
- Hilliger, Benno. "Ursprung und Wert des Wergelds im Volksrecht," Historische Vierteljahrschrift, XXIX (1935), 681-721.
- , "Zur Münzrechnung der Lex Salica," Historische Vierteljahrschrift, XIV (1911), 465-473.
- Köstler, Rudolf. "Raub- Kauf- und Friedeleihe bei den Germanen," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung, LXIII (1943), 92-136.
- Kralik, Dietrich von. "Die deutschen Bestandteile der Lex Baiuvariorum," Neues Archiv der Gesellschaft für Ältere deutsche Geschichtskunde, XXXVIII (1913), 13-55, 401-449, 581-624.
- Krammer, Mario. "Zum Textproblem der Lex Salica. Eine Erwiderung," Neues Archiv der Gesellschaft für Ältere deutsche Geschichtskunde, XLI (1918), 103-156.
- Krause, Hermann. "Die Liberi der Lex Baiuvariorum," in Festschrift für Max Spindler, ed. Dieter Albrecht et al., Munich, 1969, pp. 41-73.
- Krusch, Bruno. "Neue Forschungen über die drei oberdeutschen Leges: Bajuvariorum, Alamannorum, Ribuariorum," Abhandlungen der Gesellschaft der Wissenschaften zu Göttingen, philologisch-historische Klasse, neue Folge, XX (1927), nr. 1 (pp. 1-208).
- Kull, J.B. "Der Solidus oder Schilling in Bayern," Alt-bayerische Monatschrift, VI (1906), 106-108.
- , "Die Ältesten bayerischen Münzen," Alt-bayerische Monatschrift, III (1901/02), 181-183.
- , "Die Münzgewichte mit besonderer Rücklicht auf Bayern," Alt-bayerische Monatschrift, VII (1907), 45-47.
- Lehmann, Karl. "Zur Textkritik und Entstehungsgeschichte des alamannischen Volksrechtes," Neues Archiv der

Gesellschaft für Ältere deutsche Geschichtskunde, X
(1885), 467-505.

- Lemosse, Maximo. "La lèse-majesté dans la monarchie franque," Revue du moyen âge latin, II (1946), 5-24.
- Löffstedt, Einar. "Some Changes of Sense in Late and Medieval Latin," Eranos, XLIX (1946), 340-354.
- Luschin von Ebengreuth, Arnold. "Der Denar der Lex Salica," Sitzungsberichte der kaiserlichen Akademie der Wissenschaften in Wien, philosophisch-historische Klasse, CLXIII (1909), Abhandlung 4.
- "Zur Geschichte des Denars der Lex Salica," in Historische Aufsätze: Karl Zeuner zum 60. Geburtstag von Freunden und Schülern dargebrachten Festgabe, Weimar, 1910, pp. 201-207.
- Merkel, Johannes. "Der judex im bairischen Volksrechte, ein Beitrag zur bairischen Rechtsgeschichte," Zeitschrift für Rechtsgeschichte, I (1861), 131-157.
- Metcalf, D.M. and A. Miskimin. "The Carolingian Pound: A Discussion," Numismatic Circular, LXXVI (1968), 296-298.
- Metz, Wolfgang. "Die hofrechtlichen Bestimmungen der Lex Baiuvariorum I,13 und die fränkische Reichsgutverwaltung," Deutsches Archiv für Erforschung des Mittelalters, XII (1956), 187-196.
- Ors, Alvaro d'. "La territorialidad del derecho de los visigodos," in Estudios Visigóticos I, Cuadernos del instituto jurídico español, XII, Rome and Madrid, 1956, pp. 91-124.
- Parain, Charles. "The Evolution of Agricultural Technique," in The Cambridge Economic History of Europe, ed. M.M. Postan et al., 2nd ed., Cambridge, 1966, I, pp. 125-179.
- Perrin, Charles Edmond. "Une étape de la seigneurie. L'exploitation de la réserve à Prum, au IX^e siècle," Annales d'histoire économique et sociale, VI (1934), 450-466.
- Reindel, Kurt. "Die politische Entwicklung," in Handbuch der bayerischen Geschichte, ed. Max Spindler, Munich, 1967, I, pp. 73-133.

- Schiller, Felix. "Das erste Fragment des Codex Euricianus," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung, XXX (1909), 18-36.
- Schröder, Edward. "Saiga," Zeitschrift für Numismatik, XXIV (1904), 339-346.
- Schwind, Ernst von, "Kritische Studien zur Lex Baiuvariorum," Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde, XXXI (1906), 399-453; XXXIII (1908), 605-694; XXXVII (1912), 415-451.
- Seeliger, Gerhard. "Handwerk und Hofrecht," Historische Vierteljahrschrift, XVI (1913), 472-519.
- Sonderogger, Stefan. "Althochdeutsche Sprache," in Kurzer Grundriss der germanischen Philologie bis 1500, ed. Ludwig Erich Schmitt, Berlin, 1970, I, pp. 288-346.
- Stutz, Ulrich. "Zur Herkunft von Zwing und Bann," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung, LVII (1937), 289-354.
- Tamassia, Nino. "Römisches und westgothisches Recht in Grimwalds und Liutprands Gesetzgebung," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung, XVIII (1897), 148-169.
- Thompson, E.A. "Slavery in Early Germany," Hermathena, LXXXIX (1957), 17-29.
- Vinogradoff, Paul. "Wergild und Stand," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung, XXIII (1902), 123-192. Also reprinted in The Collected Papers of Paul Vinogradoff, Oxford, 1928, II, pp. 84-152.
- Werle, Hans. "Conliberti," Archiv für Diplomatik, XIV (1968), 193-201.
- Wittich, Werner. "Die Frage der Freibauern. Untersuchungen über die soziale Gliederung des deutschen Volkes in altgermanischen und frühkarolingischen Zeit," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung, XXII (1901), 245-353.
- Zeumer, Karl. "Geschichte der westgothischen Gesetzgebung," Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde, XXIII (1898), 419-516; XXIV (1899), 39-122, 571-630; XXVI (1901), 91-149.

Zeumer, Karl. "Ueber zwei neuentdeckte westgothische
Gesetze," Neues Archiv der Gesellschaft für Ältere
deutsche Geschichtskunde, XXIII (1898), 75-112.

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Contributions to the criticism and interpretation of
the Lex Baiuvariorum: A comparative study of the
Alamannic and Bavarian codes

Dissertation directed by Professor Charles P. Loughran, SJ

The eighth-century Bavarian code (Lex Baiuvariorum) is influenced by four earlier Germanic codes: the Lex Visigothorum, Pactus legis Salinae, Lex Ribuariorum, and Lex Alamannorum (Alamannic code). The latter shows a higher degree of similarity with the Lex Baiuvariorum than do the other three codes, yet no completely extensive study has yet been done illustrating this fact. The present study analyzes the similarity between the Alamannic code (dated between 712 and 725) and the Bavarian code (dated between 725 and 748) from three points of view, indicated simply as (a), (b), and (c).

The first criterion (a) analyzes and compares the concepts of all Alamannic and Bavarian laws which are similar to each other, whatever their degree of similarity. Some laws are verbatim texts of each other (such as L.Baiu. VII,1-3 and L.Alam. XXXIX) whereas others are only partially similar (such as L.Baiu. I,5 and L.Alam. VII). In all, 98 Bavarian laws of a total of 270 laws in the Lex Baiuvariorum are compared to 91 Alamannic laws also of a total

of 270 laws in the Lex Alamannorum. In addition, other Germanic codes which are either parallel or have exerted an influence on the Alamannic and Bavarian codes are included under this first criterion. These other law codes are notably the Lex Visigothorum, Pactus legis Salicae, Lex Ribuaria, Lex Burgundionum, and Edictus Rothari. Subsequent bodies of law which may have been influenced by the Alamannic and Bavarian codes are excluded from this study. Hence, no mention is made of the Lex Frisionum, Lex Saxonum, Lex Thuringorum, and Lex Francorum Chamavorum. In this first section, only those portions of Alamannic and Bavarian laws corresponding to one another are quoted (in Latin).

The second criterion (b) shows the philological similarity between individual Alamannic and Bavarian laws. This similarity is divided between two languages: medieval Latin and Old High German. In this philological analysis, a mathematical comparison expressed in a percentage indicates how many terms of an earlier Alamannic law appear in a later Bavarian law. If there is no significant philological similarity between respective laws, "no agreement" is indicated. A Bavarian law with a high percentage of its terms derived from only a few words in an Alamannic law is more significant than a Bavarian law in which only a few terms are derived from a high percentage of its Alamannic counterpart. For example, 30 per cent of the terms of L.Alam. A which appear as 70 per cent of the terms of

L.Baiu. B are more significant than 70 per cent of the terms of L.Alam. A which appear as 30 per cent of the terms of L.Baiu. B. This is obvious since the Bavarian code is a later body of law.

The third and last criterion (c) indicates the agreement, if any, between Alamannic and Bavarian laws in the matter of monetary compensation. Since the Alamannic and Bavarian codes, much like the rest of Germanic law, compensate for various crimes and abuses by a monetary payment rather than by imprisonment, a requirement of the same amount of money by corresponding laws indicates a great deal. If people are injured, the monetary payment is called the wergeld (that is, the price of a person's life). If livestock, land, buildings, and other property are harmed, monetary compensation rather than wergeld is rendered to the injured party.

This study is the first of its kind which attempts to indicate to what degree the Alamannic and Bavarian codes are similar to each other.

Vita

Theodore John Rivers, son of Mary Elizabeth and Gordon Richard Rivers, was born on November 12, 1944 at Rochester, New York. He attended Eastridge High School, graduating with a Regents diploma in June 1963. He received the degree of Bachelor of Arts from Marquette University in June 1967. After studying under Professor R. Dean Ware of the University of Massachusetts (1967-8), he attended Fordham University where he received the degree of Master of Arts in June 1969. He was awarded two annual assistantships in the Department of History at Fordham University for the years 1970-1, 1971-2, and formed part of the teaching staff of Professor Joseph F. O'Callaghan in fulfillment of those awards. In the summer of 1971, he was given a summer study-grant to attend the annual seminar in numismatics at the American Numismatic Society (New York). His unpublished paper ("Analysis and Catalogue of the Merovingian Gold Coinage in the American Numismatic Society Collection") written during the seminar was directed by Messrs. Henry Grunthal and Jeremiah Brady. His doctoral dissertation was directed by Rev. Charles P. Loughran, S.J., Associate professor of History, Fordham University.