

Some Remarks on the Relation between the Early Medieval Bavarian and Alemannian *leges*

In the present paper a short analysis of use of sources by the compilers of *Lex Baiuvariorum* and the relation of the Bavarian *lex* to Alemannian laws should be undertaken.

The Alemannian *Volksrecht* was left to us in two versions: the older version is defined by research as *Pactus legis Alamannorum* and the newer one as *Lex Alamannorum*. Although Eckhardt presumed that the *Pactus* is from the 7th and the *lex* from the 8th c., the difference between the two versions in time cannot be or can be hardly clarified with full certainty. The introductory sentence of the *Pactus* refers to king Chlothar from the Merovingian dynasty² as lawmaker, however, opinions in literature are divided as to whether this ruler should be identified with king Chlothar I (511–561) or II (584–629) or IV (717–719). In Schott's opinion Chlothar I as lawmaker cannot be taken into account,³ Eckhardt, on the other hand, excludes Chlothar IV as lawmaker as in his point of view this ruler did not have necessary political power to cause to carry out and accept the lawmaking work, and therefore he considers Chlothar II as the maker of the *Pactus*.⁴ Krusch claims that Charles Martel was the maker of the code, and in his opinion Chlothar IV is referred to in the prologue of the code merely because the *maior domus* did not, could not have the king's (sacred) legitimisation necessary for lawmaking.⁵ On the contrary, Konrad Beyerle takes the stand that Charles Martel was hardly in need of indicating the name of the last Merovingian ruler deprived of his actual influence for legitimisation purposes.⁶ Schott considers Chlothar II being the author of the *Pactus*, and stresses that the wording of this code can be compared with that of *Lex Ribuarica* or the later versions of *Lex Salica*; contrary to that, he traces *Lex Alamannorum* back to Lantfrid's lawmaking activity.⁷ Furthermore, the theory of authorship of Chlothar II seems to be supported by the fact that the Council of Clichy held in September 626 or 627 was attended by forty bishops as well as one abbot and one deacon (the latter as authorised representative), and this number of persons is similar to the data set out in the description in the *Pactus*.⁸

Regarding the final version of the *Lex Baiuvariorum* we can accept Landau's hypothesis that the compiler monks must have been the inhabitants of the St Emmeram monastery located at the duke's seat, Regensburg, and that the date of creation between 737 and 743 is supported by the ecclesiastical impact apparent in *Lex Baiuvariorum*, far exceeding the effect exerted by Bavarian folk laws.⁹ At the same time, we should underline that it is almost impossible to draw any conclusions that are appropriate in every respect as to the authenticity of the *Prologus*; in other words, its content

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² *Lex Alamannorum Prologus, Incipit pactus lex Alamannorum. Et sic convenit ... Domno Chlothario rege ubi fuerunt XXXII duces et XXXIII episcopi et XLV comites.*

³ Schott, Clausdieter: *Lex Alamannorum. Faksimile Ausgabe des Codex Sangallensis 731*, Schwäbische Forschungsgemeinschaft, Augsburg, 1993. 15. p.

⁴ Eckhardt, Karl August: *Germanenrechte*, II/2., Böhlau, Weimar, 1934, VII. p.

⁵ Krusch, Bruno: *Die Lex Baiuvariorum. Textgeschichte, Handschriftenkritik und Entstehung*, Weidmann, Berlin, 1924, 307. p.

⁶ Beyerle, Konrad: *Lex Baiuvariorum. Lichtdruckwiedergabe der Ingolstädter Handschrift*, Hueber, München, 1926, LXIV. p.

⁷ Schott: op. cit. 16. p.

⁸ Fastrich-Sutty, Isabella: *Die Rezeption des westgotischen Rechts in der Lex Baiuvariorum*, Heymanns, Köln, 2001, 85. p.

⁹ Landau, Peter: *Die Lex Baiuvariorum. Entstehungszeit, Entstehungsort und Charakter von Bayerns ältester Rechts- und Geschichtsquelle*. Bayerische Akademie der Wissenschaften, München, 2004. passim

can hardly get us any closer on the merits to accurately dating the code of laws.¹⁰ On the other hand, we can agree with Brunner's hypothesis that certain parts of *Lex Alamannorum* and the first two titles of *Lex Baiuvariorum* go back to a lost Merovingian statute.¹¹ The first two titles of *Lex Baiuvariorum*, on the one hand, constitute an integral whole in terms of their structure, language and the manuscripts left to us, and, on the other hand, these titles and the provisions of *Lex Alamannorum* on the Church and the ruler clearly overlap. Therefore, it can be made probable that at least these titles were integrated as a single unit from the first since the editors of the code could hardly go back to the statutes serving as the sources of the first two titles: *Codex Euricianus* and *Lex Alamannorum* every time the code was revised.¹²

When addressing the nature of the relation between *Lex Alamannorum* and *Lex Baiuvariorum* the very first question that arises is whether the two codes of laws produced mutual effect on each other or this impact was one-way only or they date from a common prefiguration. *Lex Alamannorum* and *Lex Baiuvariorum* show similarities in many respects both in their structure and regulatory system: the first two titles contain provisions on the Church and the duke, a good number of which—paying regard to the similarity of the norms—use similar wordings, which are similar due to the character of the subject of the regulation only, while numerous others reveal literal correspondences as well. In addition to them, it is worth looking at some passages set out in the rest of the titles of *Lex Baiuvariorum* in order to analyse the nature of their relation to *Lex Alamannorum*.¹³

Sanctioning sale of a free man constitutes the subject of two loci in *Lex Baiuvariorum*. *Titulus* nine provides that a person who kidnaps and sells a free man shall reinstate him in his free standing and pay forty *solidi* to the injured party and forty *solidi* to the treasury; however, if he cannot redeem him, then the thief himself will lose his freedom.¹⁴ This provision and *Lex Alamannorum* apparently overlap since the latter stipulates that the seller shall reinstate the sold person in his former *status* and pay him forty *solidi*; however, if he cannot bring him back, then he shall pay twice eighty *solidi* when the sold person had relatives or two hundred *solidi* if he had none.¹⁵

Titulus sixteen of *Lex Baiuvariorum* provides that a person who sold a man born free shall reinstate him in his freedom and pay the injured party forty *solidi* and the buyer the double of the purchase price; if he cannot bring him back, then he shall redeem him by his blood money by paying one hundred and sixty *solidi* to his relatives, and this calculation shall be applied twofold for women.¹⁶ This rule overlaps with *Codex Euricianus*.¹⁷ Furthermore, literal overlaps between two loci of *Lex Baiuvariorum* is striking as both of them addresses the issue of selling a free person capable of proving his freedom subsequently, who shall be brought back to his domicile (*reducere*) and shall

¹⁰ Beyerle, Franz: Die süddeutschen Leges und die merowingische Gesetzgebung, In Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung 1929, 264–432. pp.

¹¹ Brunner, Heinrich: Über ein verschollenes merowingisches Königsgesetz des 7. Jahrhunderts, In: Abhandlungen zur Rechtsgeschichte, I., Böhlaus, Weimar, 1931, 598–621. pp.

¹² Nótári, Tamás: A kora középkori bajor jogrendszer a Lex Baiuvariorum tükrében, Lectum, Szeged, 2014. passim

¹³ Fastrich-Sutty: op. cit. 269. p.

¹⁴ *Lex Baiuvariorum* 9, 4. *Si quis liberum hominem furaverit et vendiderit, et exinde probatus fuerit, reducat eum et in libertatem restituat, et cum XL solidis conponat 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 conlibertum servitio tradidit, si solvere non valet werageld parentibus; et amplius non requiratur*

¹⁵ *Lex Alamannorum* 46. *Si quis liberum ex terminis vindiderit, revocet eum infra provinciam et restituat eum libertati et cum XL solidis conponat. Si autem revocare non potest, cum widrigildo parentibus solvat. Id est bis octuaginta solidos, si heredem reliquit. Si autem heredem non reliquit, cum CC solidis conponat.*

¹⁶ *Lex Baiuvariorum* 16, 5. *Si quis ingenuum vendiderit, cum ille suam haberet libertatem, is qui eum vendiderit, reducat eum in loco suo et restituat ei libertatem, sicut prius habuit, et conponat ei cum XL solidos, excepto quod emptori in duplum pretium, quod accepit, cogatur exolvere. Similis ratio dupliciter de feminis servetur. Et si eum vel illam vendiderit, et illum reducere non poterit, tunc cum werageldo conponat, hoc est CLX solidos solvat parentibus.*

¹⁷ *Codex Euricianus* 290. *Si quis ingenuum vendiderit, cum ille suam probaverit libertatem, servum aut praetium servi ab illo, qui vendidit, accipiat ille sibi, quem vinditum fuisse constiterit, excepto quod emptori in duplum praetium, quod accepit, cogatur exsolvere. Haec et de mulieribus forma servetur*

be reinstated in his former *status (restituere libertatem)* and shall be entitled to *compositio*.

Lex Visigothorum also deals with the state of facts of selling free men: it provides that in case of selling free children the perpetrator shall be delivered to the relatives of the injured party as a slave, who can sell or kill him or can claim the redemption of the sold person from him; however, if the perpetrator can recover the sold child, then he shall pay only half of the *compositio* for homicide, failing which he will become a slave.¹⁸ The structure of the Visigothic norm is the reverse of the Bavarian provision as far as reinstatability of the original *status* is concerned; in accordance with the Gothic norm the subject of commission can be a child only, while in accordance with the Bavarian rule any free man; and the Visigothic rule provides the relatives of the injured party with the option of either killing the perpetrator or making him a slave or compelling him to pay; furthermore, the penalty to be paid to the *fiscus* is missing from the Visigothic rule. Also, at this point, the Bavarian and the Visigothic rules are in harmony to the extent that in case the sold person is recovered the perpetrator shall discharge half of the *compositio* payable for homicide—nevertheless, with respect to this passage the compilers of *Lex Baiuvariorum* used the rule that served as a basis of *Lex Alamannorum* as well as a model, which is justified by philological elements. All this makes it unambiguously clear that these two provisions of the Bavarian *lex* is a mixture of *Lex Alamannorum* and the Visigothic code, which provides an excellent example of use of sources. With respect to the correspondences and borrowings raised by Schwind with regard to the above quoted loci of *Lex Baiuvariorum* and *Lex Alamannorum* and the first two *titles* of *Lex Baiuvariorum*, Fastrich-Sutty takes a stand against them in a well-founded manner since the linguistic identities seem to be justified owing to the subject of the regulation only. With respect to borrowing from *Lex Salica*, Fastrich-Sutty again takes a stand against it—although Schwind wanted to prove direct borrowing here as well. Fastrich-Sutty's view seems to be more well-founded to the extent that identity can be demonstrated merely with respect to certain phrases generally used in Bavarian folk law (*si quis/si aliquis*), however, the state of facts of *Lex Baiuvariorum* is more differentiated than that of *Lex Salica*¹⁹ both in its wording and sanction.

In what follows we look at the overlaps between the first two *titles* of *Lex Baiuvariorum* and *Lex Alamannorum*, first, in an analysis of the *capita* on the Church and the duke.

The Bavarian code provides that a person who wants to donate his goods to the Church for the redemption of his soul will have free right of disposal once he has surrendered their share of inheritance to his sons, and that neither the king, nor the duke, nor anybody else shall forbid him to do so. (This provision distinguishes ordinary estate from estate in fee and free men from nobles, in view of the fact that donation of the feud (estate in fee) required the king's or the duke's authorisation.) He shall confirm by a deed what he has donated and shall use six or more witnesses, who shall put their hands on the deed, and, then, he shall place the deed on the altar²⁰ and shall deliver the property to the priest who serves in the given church. From that time onward this property will be in the ownership of the Church and can be given to any other person only by the *defensor ecclesiae*²¹ as feudal tenure (fief).²² The only differences that can be identified in *Lex Alamannorum*

¹⁸ *Lex Visigothorum* 7, 3, 3. *Qui filium aut filiam alicuius ingenui vel ingenue plgaverit vel sollicitaverit et in populo nostro vel in alias regiones transferri fecerit, huius isceleris auctor patri aut matri fratribusque, si fuerint, sive proximis parentibus in potestate 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 es pergerinis ad propria potuerit revocare, plagiator CL solidos, hoc est medietatem homicidi, exolvat, aut si non habuerit, und conponat, ipse subiaceat servituti.*

¹⁹ Fastrich-Sutty: op. cit. 273. p.

²⁰ Cf. *Regula Sancti Benedicti* 59.

²¹ On *defensor ecclesiae* see *Traditio Frisingensis* Nr. 156. 190. 194. 200. 372. 406. 408. 412. 434. 458. 655. 658. 661.

²² *Lex Baiuvariorum* 1, 1. *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 rex nec ulla persona habeat potestatem prohibendi ei. Et quicquid donaverit, villas terra mancipia vel aliqua pecunia, omnia quaecumque*

compared to *Lex Baiuvariorum* are as follows. If a person wants to deliver his property or himself to the Church, nobody, neither the duke, nor the count shall forbid him to do so. In addition to making the deed, he shall use six or more witnesses, the deed shall be placed on the altar—just as in Bavarian law—and from that time onward this property will be in the ownership of the Church.²³

The next provision of *Lex Baiuvariorum* stipulates that a person (either the donator or his inheritors or anybody else) who wants to bring an action unlawfully against the property of the Church or wants to take something of the property of the Church will have to face doom of God and the punishment of the Church, and shall pay the secular judge three ounces of gold and shall recompense the Church twofold for the property taken.²⁴ With regard to the same state of facts the Alemannian code provides that a person (either the donator or his inheritors or anybody else) who wants to take away Church property will have to face doom of God and (the wording is clearer than in *Lex Baiuvariorum*) *excommunicatio*, and shall pay the penalty set forth in the letter of donation and peace money to the treasury and is obliged to return the property to the Church.²⁵ This reveals that in spite of linguistic identities the compilers of *Lex Baiuvariorum* did not copy the text of *Lex Alamannorum* slavishly since the sanctions are significantly different in the two texts.

In accordance with *Lex Baiuvariorum* a person who steals Church property shall pay *niungeldo*, i.e., ninefold redemption on each thing; and if he denies his act, he shall take an oath on the altar in accordance with the value of the thing: alone due to one *saica*, together with another fellow oath-taker due to two or three *saicas* up to one *tremisse*, and together with three fellow-oath takers from the above to four *tremisses*. When a person steals a greater amount, for example, a horse, ox, cow or any greater value, he shall take an oath together with six fellow oath-takers; when he steals something from the church equipment, he is obliged to pay ninefold *compositio*, i.e., twenty-sevenfold value; and when he denies the act, he shall take an oath together with twelve fellow oath-takers on the altar.²⁶ Certain parts of the relevant provision of *Lex Alamannorum* are strikingly identical with the text of the Bavarian norm in terms of both content and wording. The Alemannian code does not mention theft of lower values; instead, it immediately defines the sanction of misappropriation of assets of higher value owned by the Church (slaves, servants, oxen, horses, etc.),

donaverit pro redemptione animae suae, hoc per epistulam confirmet propria manu sua ipse, et testes adhibeat VI vel amplius si voluerit; inponant manus suas in epistulam, et nomina eorum notent ibi, quem ipse rogaverit. Et tunc ipsam epistulam ponat super altare, et sic tradat ipsam pecuniam coram sacerdote, qui ibidem servit. Et post haec nullam habeat potestatem, nec ipse nec posteri eius, nisi defensor ecclesiae ipsius beneficium praestare voluerit ei; sed apud episcopum defendantur res ecclesiae, quicquid apud Christianos ad ecclesiam Dei datum fuerit.

²³ *Lex Alamannorum* 1, 1. *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 homini Deo servire et de propriis rebus suis 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 eandem ecclesiam deservit, super altare ponat, et proproetas de rebus ipsis ad illam ecclesiam in perpetuum permaneat.*

²⁴ *Lex Baiuvariorum* 1, 2. *Si quis aliqua persona contra res ecclesiae iniuste agere voluerit vel de rebus ecclesiae abstrahere voluerit, sive ille, qui dedit, vel de heredes eius aut qualiscumque homo praesumpserit, imprimis incurrat in Dei iudicio et offensionem sanctae ecclesiae, et iudici terreno persolvat auri uncias III, et illas res ecclesiae reddat et alia similia addat, rege cogente vel principe, qui in illa regione iudex est.*

²⁵ *Lex Alamannorum* 1, 2. *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, quiscumque persona hoc praesumpserit facere, incurrat in Dei iudicio et excommunicationem sanctae ecclesiae et affectum, quod inchoavit, non obteneat et multa illa, quae carta contineat, prosolvat et res illas ex integro reddat et fredo in publico solvat, sicut lex habet.*

²⁶ *Lex Baiuvariorum* 1, 3. *Si quis res ecclesiae furaverit et exinde probatus fuerit, de quaecumque rem 'niungeldo' solvat, id est IX capita restituat. Etsi negare voluerit, secundum qualitatem pecuniae iuret in altare, de qua ecclesia furaverit. De una saica solus iuret de duas saicas vel III et usque ad tremisse cum uno sacramentale iuret; deinde usque ad IV tremisses cum tres sacramentales iuret. Et si amplioem pecuniam furaverit, aut cavallum aut bovem aut vaccam vel quicquid plus valet de IV tremisses, et negare voluerit, tunc cum VI sacramentales iuret et ipse sit semptimus, in altare coram populo et presbitero. Si autem de ministerio ecclesiae aliquid furaverit, id est calicem aut patenam vel pallam aut quaecumque re de infra ecclesia furaverit et probatus fuerit, 'triuniungeldo' solvat, hoc est ter nove restituat. Et si negare voluerit, secundum qualitatem pecuniae iuret cum XII sacramentales in ipso altare.*

but it is the above and not church equipment regarding which it imposes twenty-sevenfold redemption. In case of denying the act, it also stipulates oath to be taken on the altar, together with fellow oath-takers in accordance with the value of the stolen things, however, their number is not specified.²⁷

Lex Baiuvariorum contains several *capita* concerning killing and doing harm to ecclesiastical persons: one on persons belonging to lower ecclesiastical orders (subdeacons, lectors, exorcists, acolytes and hostiarius), one on priests and deacons and one on bishops. A person who abuses, hits, wounds or kills a subdeacon, lector, exorcist, acolyte, hostiarius²⁸ shall pay the double of what the *status* of the injured party would justify if he were not an ecclesiastical person; the same provision applies to monks.²⁹ In accordance with the Bavarian code, a person who injures or wounds a priest or deacon shall pay threefold blood money, a person who kills a deacon or a priest shall pay two hundred and three hundred *solidi* respectively as *conpositio* to the church where the victim served and shall pay forty *solidi* peace money to the treasury.³⁰

In accordance with *Lex Alamannorum*, a person who beats up, mutilates or causes bodily injury otherwise to a parson (*presbyter parochianus*) shall pay threefold of the *conpositio* payable for free persons; a person who kills a parson shall pay six hundred *solidi* to the church where the priest served or the bishop to whom the parish belonged.³¹ A person who causes (bodily) injury to a deacon referred to regarding priests is obliged to pay twofold *conpositio*, and three hundred *solidi* when he kills them.³² The same rule applies to monks.³³ In case of causing injury to the rest of ecclesiastical persons—cantors and lectors as specified in the Alemannian code—the *conpositio* payable for causing injury to or killing other members of their clan and an additional one-third part shall be paid.³⁴

The sanction of killing a bishop is quite unique in *Lex Baiuvariorum*: the perpetrator is obliged to pay the king, the people or the bishop's relatives as much gold as much the dead bishop's clothes cast in lead weights.³⁵ Here the code adopts the rate of *conpositio* customary in case of

²⁷ *Lex Alamannorum* 6. *Si quis res ecclesiae furaverit et convictus fuerit, ut solvatur, unamquamque rem, quam furavit, tres novigeldos volvat aut servum aut ancillam aut bovem aut caballum aut quaecumque animal vel ceteras res, quae ad ecclesiam Dei pertinent. Si post furtum invetus 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 ministro eius, quem pastor ecclesiae iusserit audire sacramentum.*

²⁸ See Isidorus, *Etymologiae* 7, 12. 13.

²⁹ *Lex Baiuvariorum* 1, 8. *Si quis ministros ecclesiae, id est subdiaconum, lectorem, exorcistam, acolitum, hostiarium, de istis aliquem iniuriaverit aut percusserit vel plagaverit vel occiderit, componat hoc dupliciter, sicut solent componere 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 duplici componantur secundum genealogiam suam, ut reverentia sit Dei et pax eis, qui illi deserviunt.*

³⁰ *Lex Bauvariorum* 1, 9. *Si quis presbiterum vel diaconum, quem episcopus in parrochia ordinavit vel qualem pleps sibi recepit ad sacerdotem, quem ecclesiastica sedis probatum habet, illi iniuriam fecerit vel plagaverit, tripliciter eos componat. Si eum occiderit presbiterum, solvat CCC solidos auro adpreciatos; si aurorum non habet, donet alia pecunia mancipia terra vel quicquid habet, usque dum impleat; diaconum vero cum CC solidis solvat; utrisque ad illam ecclesiam, ubi ministri fuerunt, episcopo requirente et duce cogente, qui in illa provincia sunt ordinati. Et pro freto in puplico solvat solidos XLX, ut exinde sit reverentia sacerdotum. Et honor ecclesiasticus non condemnetur neque praesumptio crescat in plebe.*

³¹ *Lex Alamannorum* 13. *Si quis autem presbyterum parochianum iniuriaverit aut fustaverit aut mancaverit vel quaecumque iniuriam fecerit, in triplum componatur; et si eum occiderit, DC solidos eum componat aut ad ecclesiam, ubi servit, aut ad episcopum, de cui parrochia fuit*

³² *Lex Alamannorum* 14. *Si quis diaconum, qui euangelium coram episcopum legit et revestitus ante altare officium fungit, si quis eum aliqua iniuria fecerit vel fustaverit vel placaverit vel mancaverit, dupliciter eum componatur; et si eum occiderit, CCC solidos componat.*

³³ *Lex Baiuvariorum* 1, 8.

³⁴ *Lex Alamannorum* 15. *Clerici autem sicut ceteri parentes eorum ita componantur gradu in ecclesia publica lectionem recitat, vel gratalem vel alleluia coram episcopo in publico cantaverit, et aliqua iniuria passus fuerit, sicut superius diximus, componatur, quomodo parentes eius componantur; et tertia pars super haec addatur in compositionem.*

³⁵ *Lex Baiuvariorum* 1, 9.

homicide in pagan practice, that is, the weight of the victim measured in gold. The Alemannian code punishes *iniuria* caused to, mutilation and beating up of the bishop by threefold of the *conpositio* payable for other members of the bishop's clan, and killing of the bishop by the *conpositio* payable to the king or duke or possibly to the diocese in case of killing the duke—in other words, the code handles the bishop and the duke almost identically as dignitaries.³⁶ It should be noted that the Bavarian code determines the amounts of the *conpositio* payable in case of causing injury to ecclesiastical persons moving from higher to lower dignitaries while the Alemannian code the other way round.

Lex Baiuvariorum sets detailed provisions on the services and taxes to be discharged by serfs and slaves as well: as part of that it specifically regulates payment of tithe, pasture money as well as allowances to be made for flax, honey and poultry and forced labour carried out by transportation of goods, cultivation of land, construction and repair works or lime-burning for a period equal to the hours spent with work done on one's own land, i.e., three days a week.³⁷ Compared to it, the provision of *Lex Alamannorum* is of a much smaller volume and is different in content; they overlap merely to the extent (owing to the subject of the regulation) that work to be performed on Church land takes three days a week.³⁸ Based on that it cannot be made probable that the possibility of borrowing should be positively reckoned with.

Concerning performance of work on Sunday *Lex Baiuvariorum* provides that a free man who performs serf's work (physical work) on Sunday (puts oxen to a carriage, drives a carriage) shall lose the ox on the right-hand side; a person who carries out agricultural or other serf's work on Sunday shall be chastised once or twice. And if he fails to 'improve' even after that, he shall be beaten by a stick fifty times, and if he commits the act thereafter as habitual offender, he shall lose one-third of his property. Should he nevertheless fail to discontinue this conduct, he becomes a slave. If the perpetrator is a slave, he shall be punished by beating on the first occasion and is punished to lose his right hand on the second.³⁹ With respect to the same issue the Alemannian code provides that a free

³⁶ *Lex Alamannorum* 12. *Si quis episcopum aliquam iniuriam fecerit vel placaverit vel fustaverit vel mancaverit, omnia tripliciter conponatur, sicut et ceteri parentes eius conpositionem habebunt. Haec si melius dicamus, sicut et duce ita in omnibus eos conponatur; et si occisus fuerit, sicut et illum duce ita eum solvat aut rege aut duce aut ad ecclesiam, ubi pastor fuit.*

³⁷ *Lex Baiuvariorum* 1, 13. *De colonis vel servis ecclesiae, qualiter serviant vel quale tributa reddant. Hoc est agrario secundo estimationem iudicis; provideat hoc iudex secundum quad habet donet: se XXX modis III modios donet, et pascuaria dissolvat secundum usum provinciae. Andecenas legitimas, hoc est pertica X pedes habentem, IV perticas in transverso, XL in longo, arare, seminare, claudere, colligere, trahere et recondere. A tremisse unusquisque acola ad duo modia sationis excollegere et recondere debent et seminare, collegere; et vineas plantare fodere propaginare, praevidere, vindemiare. Reddant decimum fascem de lino; de apibus X vasa, pullos IV, ova XV reddant. Parafretos donent, aut ipsi vadant ubi eis iniunctum fuerit. Angarias cum carra faciant usque L lewas, amplius non minentur. Ad casas dominicas stabilire, fenile, granica vel tunino recuperanda petituras rationabiles accipiant, et quando necesse fuerit, omnino conponant. Cance furno, ubi prope fuerat, ligna aut petra L homines faciant; ubi longe fuerat, C homines debeant expetiri, et ad civitatem vel ad villam, ubi necesse fuerit, ipsam calcem trahantur. Servi autem ecclesiae secundum possessionem suam reddant tributa. Opera vero III dies in ebdomada in dominico operent, III vero sibi faciant. Si vero dominus eius dederit eis boves aut alias res, quod habet tantum serviant, quantum eis per possibilitatem inpositum fuerit; tames iniuste neminem obprimas.*

³⁸ *Lex Alamannorum* 22. *Servi enim ecclesiae tributa sua legitime reddant: quindecim silcas de cervisa, porcum valentem tremisse uno, panem modia duo, pullos quinque, ova viginti. Ancillae autem opera inposita sine neglecto faciant. Servi dimidium sibi et dimidium in dominico arativum reddant; et si super haec est, sicut servi ecclesiastici ita faciant tres dies sibi et tres in dominico.*

³⁹ *Lex Baiuvariorum* 1, 14. *Si quis dominico operam servilem faecerit liber homo, si bovem iunxerit et cum carro ambulaverit, dextrum bovem perdat; si autem secaverit fenum vel collegerit aut messem secaverit aut collegerit, vel aliquid opus servile fecerit die dominico, corripiatur semel vel bis. Et si non emendaverit, rumpatur dorso eius L percussiones. Et si iterum praesumpsit operare die dominico, auferatur de rebus eius tertiam partem. Et si non cessaverit, tunc perdat libertatem suam et sit servus, qui noluit in die sancto esse liber. Si servus autem, pro tale crimine vapuletur. Et si non emendaverit, manum dexteram perdat, quia talis causa vetenda est, quae Deum ad iracundiam provocat et exinde flagellamur in frugibus et penuria patimur. Et hoc vetandum est in die dominico, et si quis in itinere positus cum carra vel cum nave, pausset die dominico usque in secunda feria. Et si noluerit custodire*

man who dares to perform serf's work on Sunday shall be chastised by beating on three occasions—to be more precise: until the third occasion; after that, he shall lose one-third of his property, and, finally, his freedom.⁴⁰ It can be deduced from the usage of the texts of the two codes and sameness of the sanctions (corporeal punishment on several occasions, confiscation of a part of property, making one a slave) that these provisions were adopted from the Alemannian to the Bavarian code or they have a common source.

The provision of *Lex Baiuvariorum* stipulating that a person who incites rebellion in the army of the king or the duke of the province that leads to the death of others shall pay six hundred *solidi conpositio* and should be grateful to the king or the duke for sparing his life⁴¹ seems to overlap with the Alemannian code. In accordance with *Lex Alamannorum*, a person who instigates uprising in his own army where others are killed shall be punished by confiscation of property and shall suffer death or shall go into exile.⁴² Yet, provisions overlap in content rather than language as the Bavarian code discusses the state of facts in more details, and provides that the perpetrator shall pay blood money on the killed persons as well, and shall pay six hundred *solidi* to the treasury—on the contrary, the Alemannian code punishes the perpetrator by confiscation of his total property. The Bavarian *lex* leaves it to the king's or duke's discretion to impose capital punishment, however, the Alemannian code stipulates that it is mandatory to impose death penalty (or exile). It is important to mention that both codes of laws discuss theft committed in the army but as part of that the Bavarian code (in addition to underlining stealing harness as an example) distinguishes perpetrators in free *status* from those in slave's *status* (punishing the latter by cutting off hands and the former by forty *solidi* penalty and obligation to return the stolen things),⁴³ whereas the Alemannian code differentiates the duke's army from the king's army as place of commission, and stipulates ninefold (*novigeldo*) redemption in the former and twenty-sevenfold (*tres novigeldo*) in the latter case.⁴⁴

Lex Baiuvariorum provides that an heir apparent to the throne who rebels against his father, that is, wants to throw him off the throne—although his father (and here the code provides a detailed list) is still able to rule, in other words, can administer justice, go to battle, pass judgment on the

praeceptum Domini, quia Dominus dixit: 'Nullum opus servile facias in die sancto, neque tu, neque servus tuus, neque ancilla tua, neque bos tuus, neque asinus tuus, neque ulla subiectorum tuorum', et qui hoc in itinere vel ubicumque observare neglexerit, cum XII solidis condemnetur. Et si frequens hoc fecerit, superiora sententia subiaceat.

⁴⁰ *Lex Alamannorum* 38. *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 corripitur 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 impendat et opera servile fecerit, tunc coactus et probatus coram comite, ubi tunc dux ordinauerit, in servitio tradatur et, qui noluit Deo vacare, in sempiternum servus permaneat.*

⁴¹ *Lex Baiuvariorum* 2, 4. *Si quis in exercitu, quem rex ordinavit vel dux de provincia illa, scandalum excitaverit infra propria hoste, et ibi homines mortui fuerint, componat in publico DC solidos. Et quis ibi, aut percussiones aut plagas aut homicidium fecerit, componat sicut in lege habet, unicuique secundum genealogiam. Et ille homo, qui haec commisit, benignum inputet regem vel ducem suum, si ei vitam concesserint. De minoribus autem hominibus, si in hoste scandalum commiserint, in ducis sit potestate, qualem poenam sustineant. Et ille usus eradicandus est, ut non fiat. Solet enim propter pabula equorum vel propter scurias, ubi foenum vel granum inveniunt. Hoc vetandum est, ne fiat, ut si quis invenerit pabulum vel ligna, tollat quantum vult, et neminem vetet tollendi, ut per hoc scandalum non nascatur. Si quis hoc ausus fuerit facere vel contradicere aliquid, quod facere lex vetat, ille tunc, si inventus fuerit, coram duce disciplina hostile subiaceat, vel ante comite suo, id est L percussiones accipiat.*

⁴² Cf. *Lex Alamannorum* 26, 1. *Si quis in exercitu litem commiserit, ut ut cum clamore populus concurrat cum armis, et ibi pugna orta fuerit inter proprium exercitum, et aliqui ibi occisi fuerint, ipse homo, qui hoc commisit, aut vitam perdat aut in exilium eat, et eius res infiscentur in publico.*

⁴³ *Lex Baiuvariorum* 2, 6. *Si quis in exercitu aliquid furaverit, pastoria, capistro, freno, feltro vel quecumque involaverit et probatus fuerit: si servus est, perdat manus suas; dominus vero eius ipsam rem, si habet, reddat. Si autem liber homo hoc fecerit, cum XL solidis redimat manus suas, et quod tulit reddat.*

⁴⁴ *Lex Alamannorum* 27, 1–2. *Si quis in exercitu, ubi rex ordinauerit exercitum, aliquod furtum fecerit, novem vicibus novigeldos solvat, quidquid involatus fuerit. Si autem dux exercitum ordinauerit, et in illo fisco aliquid furaverit, tres novigeldos solvat; et si iurare voluerit, secundum qualitatem pecuniae iuret.*

people, ride a horse as a man, throw his weapon powerfully, is not blind or deaf and can fulfil the king's orders in every respect—shall be deprived of his right of succession to the throne and it is left to his father's discretion to exile him or not or to let him get some kind of share of inheritance out of mercy. His brothers are not obliged to give him anything either, and if he survives his father as the only son, it is left to the king's discretion to give him his inheritance (i.e., the duke's dignity) or to somebody else.⁴⁵ *Lex Alamannorum* regulates this state of facts quite similarly, and underlines liability of ill advisors concerning the revolt of the heir apparent to the throne and the circumstance that the duke should be in possession of his ruler's competencies so that the revolt of the heir apparent to the throne could be considered a crime. On the other hand, in relation to exercising ruler's tasks the Alemannian code does not refer to the activities that can be read in the Bavarian code but contents itself with stressing leading the army and riding a horse. In accordance with the Alemannian provision, the duke is entitled to exclude his son from succession and can at its discretion exile him, and his brothers are not obliged to give him any share of their father's estate. Should the revolting heir apparent to the throne be the only successor who survives his father, it is subject to the king's decision whether he puts him or somebody else in power—if (this stipulation is not included in the Bavarian code) he throws himself to the ground at the king's feet to beg for his duke's dignity.⁴⁶ The provisions of the two codes on identical subject are undoubtedly related to each other since the regulation and the character of punishment is identical, however, direct philological correspondence (usage or sequence of sentences) does not show any closer correspondence.

It is somewhat different how the two codes regulate triggering off discord or fight in the duke's court—*scandalum* in the usage of *Lex Baiuvariorum* and *pugna* in *Lex Alamannorum*. The Bavarian code stipulates compensation for the damage caused and payment of forty *solidi* to the *fiscus* and provides that if the perpetrator is a slave he shall lose his right hand.⁴⁷ On the contrary, the Alemannian code sets forth threefold compensation for the loss caused and payment of sixty *solidi* to the treasury.⁴⁸

In case of theft committed in the duke's court *Lex Baiuvariorum* stipulates threefold of the usual *compositio* of theft (i.e., threefold of the compensation of the ninefold value), in other words,

⁴⁵ *Lex Baiuvariorum* 2, 9. *Si quis filius ducis tam superbus vel stultus fuerit, vel patrem suum dehonore voluerit per consilio malignorum vel per fortiam, et regnum eius offerre ab eo, dum pater eius adhuc potest iudicium contendere, in exercitu ambulare, populum iudicare, equum viriliter ascendere, arma sua vivaciter baiulare, non est surdus nec cecus, in omnibus iussionem regis potest implere: sciat se ille filius contra legem fecisse et de hereditate patris sui esse deiectum et nihil amplius ad eum pertinere de facultatibus patris sui. Et hoc in potestate patris sui erit, ut exiliet eum si vult. Nihil aliud habeat potestatem, nisi per misericordiam pater eius dare ei voluerit. Et si supervixerit patrem suum et alios fratres habuerit, non dent ei portionem, quare contra legem peccavit in patrem suum. Et si ille solus heredes eius supervixerit patrem suum, in regis exit potestate; cui vult donet, aut illi aut alteri.*

⁴⁶ *Lex Alamannorum* 35, 1–2. *Si quis dux habet filium contumacem et malum, qui rebellare conetur contra ipsum patrem suum per stultitiam suam vel per consilium malorum hominum, qui volunt dissipare provinciam, et hostiliter surrexit contra patrem suum, dum adhuc pater eius potes est et utilitatem regis potest facere, id est exercitum gubernare, equum ascendere, utilitatem regis implere, et filius eius eum vult dishonorare aut per raptum regnum eius possidere, non obtineat quod inchoavit. Et si pater eius eum vicerit et apprehendere potuerit in sua sit potestate, aut exiliet eum de provincia, aut ubicunque transmittat eum, aut regi domino suo; et de hereditate paterna amplius ad eum nihil pertineat, quia illicitam rem contra patrem suum fecit. Et si fratres habuerit, ipsi fratres inter se per voluntatem regis dividant hereditatem patris eorum; illi autem, qui rebellavit contra patrem suum, non dent portionem inter ipsos. Et si amplius non fuerit, nisi ille unus, qui rebellavit, tunc illa hereditas, quam ille dux habuit, post mortem eius in potestate regis sit, cui vult donet, aut illi filio ducis, qui rebellavit, si potuerit per servitium hoc ad pedes regis conquirere, aut si alii vult dare, in sua sit potestate.*

⁴⁷ *Lex Baiuvariorum* 2, 10. *Si quis in curte ducis scandalum commiserit, ut ibi pugna fiat per superbiam suam vel per ebrietatem, quicquid ibi factum fuerit, omnia secundum legem conponat, at propter stultitiam suam in publico conponat solidos XL. Si servus alicui est, qui haec commiserit, manus perdat. Nullus unquam praesumat in curte ducis scandalum committere.*

⁴⁸ *Lex Alamannorum* 33. *Si quis in curte ducis pugnam commiserit, et ibi clamor ortus 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 conponat. Ille autem, per cuius vocem vel opera haec contentio orta fuerit, LX solidos in publico conponat.*

twenty-sevenfold compensation. It should be added that the code does not set out *expressis verbis* that the act should be aimed against the duke's property but specifies the duke's court as place of commission.⁴⁹ The regulation of *Lex Alamannorum* is similar to it to the extent that it stipulates three times ninefold compensation, however, it provides for theft of things belonging to the duke, i.e., owned by the duke rather than theft committed in the duke's court.⁵⁰

In case of contempt of the duke's orders or the indication sent by him (for example, seal or ring) *Lex Baiuvariorum* stipulates payment of fifteen *solidi* to the treasury;⁵¹ on the contrary, *Lex Alamannorum* determines twelve *solidi* as penalty.⁵² It should be noted that in several cases when *Lex Alamannorum* orders payment of twelve *solidi conpositio*, this sum consistently amounts to fifteen *solidi* in the Bavarian code.⁵³

Lex Baiuvariorum—and the Council of Ascheim⁵⁴—provide that juridical assemblies, *placitums*, shall be held at the beginning of the given month or fifteen days later;⁵⁵ on the contrary, *Lex Alamannorum* stipulates that *placita* shall be held weekly or, in more peaceful times, biweekly.⁵⁶ Consequently, although both codes of laws regulate the same issue, no overlap in content or language can be demonstrated.

With respect to the use of sources by the compilers of the *Lex Baiuvariorum*, especially *Lex Alamannorum*, most probably what we need to presume is not an impact produced by the two codes on each other but a common antecedent (presumably from the Merovingian period) which was used by the editors of both codes.

⁴⁹ *Lex Baiuvariorum* 2, 12. *Si quis infra curte ducis aliquid involaverit, quia domus ducis domus publica est, 'triuningeld' conponat, hoc est ter nove conponat liber homo. Servus vero 'niungeldo' solvat aut manus perdat. Et si aliquid invenerit in curte ducis quasi per neglectum iacere, et eum tulerit et super noctem celaverit, furti reputetur: in publico XV solidos conponat.*

⁵⁰ *Lex Alamannorum* 32. *Si quis de rebus, quae ad ducem pertinent, aliquid furatus fuerit, ter novigeldos conponat et ibi fredum non reddat, quia res dominicae sunt et tripliciter conponuntur.*

⁵¹ *Lex Baiuvariorum* 2, 13. *Si quis iussionem ducis sui contempserit vel signum, quale usus fuerit dux, transmiserit, aut anulum aut sigillum, si neglexerit venire aut facere, quod iussus est, XV solidos per neglecto donet in publico, et sic impleat iussionem.*

⁵² *Lex Alamannorum* 28, 1. *Si quis sigillum ducis neglexerit aut mandatum vel signum, quaecumque mandavit, XII solidis sit culpabilis...*

⁵³ See e.g. *Lex Alamannorum* 36, 4.

⁵⁴ Cf. *Synodus Aschhaimensis* 15.

⁵⁵ *Lex Baiuvariorum* 2, 15. *Iudex vero partem suam accipiat de causa, quam iudicavit; de III solidis tremisse accipiat; de VI solidis II tremisses accipiat; de IX solidis unum solidum accipiat. De omni conpositione semper novenam partem accipiat, dum rectum iudicat.*

⁵⁶ *Lex Alamannorum* 36, 1. *Ipsum placitum fiat de sabbato in sabbatum, aut quali die comes aut centenarius voluerit a septem in septem noctes, quando pax parva est in provincia; quando autem melior, post XIV noctes fiat conventus in omni centena...*