

## NOTES ON AN AMERICAN TRANSLATION OF *LEX SALICA*

In another paper to be published in my *Ausgewählte Aufsätze*, Stuttgart, 1999 I have criticized Katherine Fischer Drew's translations of the Burgundian and the Lombard laws. Here I shall examine her translation of *Lex Salica : The Laws of the Salian Franks* (Philadelphia 1991). She has translated two versions of this law : the *Pactus Legis Salicae* or the 65-title text (6th century ; published by K. A. Eckhardt in *Germanenrechte Neue Folge, Westgermanisches Recht II 1*, Göttingen 1955, with German translation, and by the same scholar in *Monumenta Germaniae Historica, Legum Nationum Germanicarum IV 1*, Hannover 1962) and the *Lex Salica Karolina* or the 70-title text (9th century ; edited by the same Eckhardt in *Westgermanisches Recht II 2*, Göttingen 1956, and in *MGH, Legum Nationum Germanicarum IV 2*, Hannover 1969). Although the different versions of *Lex Salica* presented earlier editors with enormous problems, which they could not handle, Eckhardt was the first editor to master the difficulties of the text and give us reliable critical editions<sup>1</sup>. Fischer Drew (henceforth : F.D.) was well advised to use Eckhardt's editions as the basis for her translations. Eckhardt's German translation of the *Pactus* has certainly helped her understand this vulgar and difficult Latin, although she does not mention it. However, she should also have used H. Geffcken, *Lex Salica, zum akademischen Gebrauch herausgegeben und erläutert* (Leipzig 1898), though not because of the edition, which has been superseded by Eckhardt, but rather for the excellent commentary.

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1. Cf. the very competent reviews by R. BUCHNER in *Historische Zeitschrift* 182 (1956), 366 ff. and 191 (1960), 612 ff. (P. Wormald's irrelevant slur [*Early medieval Europe* 2, 1993, 78] is an indictment of Wormald rather than of Eckhardt and his work.)

a. *Pactus Legis Salicae*

I 2 *Ille vero, qui alium manit et ipse non venerit, ... ei qui manivit similiter DC denarios ... culpabilis iudicetur*; p. 65 “If he who summoned another man does not come himself ... he who summoned shall likewise be liable to pay six hundred denarii”. The words *ei qui manivit* mean ‘to him whom he summoned’ (the Carolingian text has here as throughout better Latin: *ei quem manivit*).

II 8 *Si quis porcum bimum furaverit ... solidos XV culpabilis iudicetur excepto capitale et dilatata*. 9 *Qui numerus usque ad duos porcos convenit observare*. 10 *Si quis tres porcos aut amplius furaverit ... solidos XXXV culpabilis iudicetur*; 66 “... 9 The same penalty shall be imposed for each of two animals...” No, the same penalty shall be imposed for the theft of one or two animals, and a higher penalty for the theft of three or more animals; but the *capitale et dilatata* will of course double if two pigs are stolen.

XXI 4 *Si quis ascum deintro clavem repositum et in suspensum pro studium positum furaverit ...*; 85 “If anyone steals a skiff kept under lock and key and hung carefully suspended...” *Pro studium* does not mean “carefully”, but ‘in order to be examined’.

XXVII 23 *Si quis in silvam materium alienum concupulaverit aut incenderit... solidos XV culpabilis iudicetur*. 24 *Si vero materium alienum ex una parte dolatum in furtum praesumpserit ... solidos III culpabilis iudicetur*; 90 “23 He who steals or cuts down or burns wood or other material from another man’s forest ... shall be liable to pay ... fifteen solidi ... 24 But if he presumes to take by theft another man’s material hewn by an axe ... he shall be liable to pay ... three solidi.” F.D. translates also the words *aut ligna furaverit*; they occur only in the edition by J. Herold from 1557 and are rightly bracketed by Eckhardt. Since the fine is five times greater in 23 than in 24, the *materium* in 23 must be more valuable: presumably the wood was hewn on both sides or all around to be used for building, whereas it is stated in 24 that it was only *ex una parte dolatum* ‘hewn on one side’: not translated by F.D. See Geffcken’s commentary p. 139.

27 *Si quis retem ad anguillas de flumen furaverit*; 91 “He who steals a net for catching eels from a river...” No eel has ever been caught in a net; Geffcken and Eckhardt translate *rete* correctly here with “Reuse”; Engl. ‘eelpot’.

34 *Si quis mulierem brachilem furaverit...*; 91 “He who steals a woman’s girdle-belt...”. There are two homonymous words in Medieval Latin: *brachile* from *brachium* ‘armring’ and *bracile* from *braca* ‘pants’ ‘girdle’. Since only men had pants, *brachilem* here means ‘armring’.

35 *Si quis casam alienam sine consilium domini sui traxerit...*; 91 “He who passes through another man’s house...”. The verb *traxerit* has its literal meaning ‘drags away’, “fortschleppt” Eckhardt. Cf. Geffcken’s commentary p. 141: “Das Haus des salischen Franken, überwiegend oder ganz aus Holz errichtet, steht in allen Ecken ungedielt auf blosser Erde, kann leicht eingerissen und schnell wieder an anderer Stelle aufgebaut werden...”

XXXVII 3 *Si ille ... nec solem secundum legem culcaverit*; 99 “nor does he go to court according to law”. The expression *solem collocare* (*culcare* etc.) is a spe-

cial Frankish expression, which means : ‘to make sunset the deadline for the fulfilling of a legal duty’; see Geffcken p. 160, H. Brunner, *Deutsche Rechtsgeschichte* vol. 2 (Berlin 1958) p. 448 f.

XXXVIII 10 *Si quis iumentum alienum trabatterit ...*; 100 “He who drives off another man’s mare...” The verb *trabattere* is a compound of *trans* and *battere* and means ‘to whip (or strike) thoroughly’.

XXXIX 2 *Si quis servus alienus fuerit plagiatus...*; 101 “If someone entices away another man’s slave...” *Plagiare* means ‘to kidnap’.

XLV 1 *Si quis homo super alterum in villa migrare voluerit...*; 109 “The man who wishes to move into another village in place of someone else...” *Super alterum migrare* means ‘to move to (live with) somebody else’.

XLIX 1 *Si quis testes necesse habuerit, ut donet*; 113 “He who needs witnesses and has them to offer...” Rather : ‘He who must present witnesses...’.

L 2 *Et tunc ipse, cui fides facta est, debet testare, ut nulli alteri nec solvat nec pignus donet solutionis, nisi antequam illi adimpleat, quod ei fidem fecit*; 114 “Then that one to whom the promise was given should testify that the other had not paid nor given a pledge for payment nor fulfilled in any way that which he had promised.” Rather : ‘... should proclaim that the other should not pay nor give a pledge for payment, before he has paid to him what he has promised.’

*usque ad ... solidos novem debitus ascendat*; 114 “the debt shall be increased ... nine solidi. Rather : ‘... to nine solidi’.

LVI 3 *iudicaverunt, ut aut per inium aut per compositionem se educeret*; 119 “gave their judgment that he should go to the ordeal or pay composition”. *Se educere* means ‘free himself’, s. ThLL 5:2,119,50 ff. (where this example is missing); thus : ‘... he should free himself either by the ordeal or by payment of a composition’.

LVIII 4 *in camisa, discinctus et discalciatus*; 121 “without a shirt and barefoot”. No : ‘in only a shirt, without girdle and barefoot’.

6a ... *omnis caussa superius comprehensa ad caput suum pertinet observare*; 122 “... it is fitting that everything be done from the beginning as set out above”. Rather : ‘it is fitting that everything which is said above concerning his head (i.e. his life) be observed’.

LXIV 3 *Si stria hominem comederit et ei fuerit adprobatum ... solidos CC culpabilis iudicetur*; 125 “If a witch eats a man and it is proved against him, he shall be liable to pay ... two hundred solidi”. Latin *stria* (< *strix*) is feminine, like English ‘witch’.

LXVII *Si quis pater aut parentilla, quando filia sua ad marito donat, quantum ei in nocte illa quamlibet rem donavit, totam extra partem incontra fratres suos vindicet. Similiter quando filius suus ad capillaturias facit, quicquid ei donatum fuerit, extra parte hoc teneat, et reliquas res equale ordine inter se dividant*; 129 “If a father or kin group gives a girl in marriage, whatever was given to her on that day, a like portion should be reserved for her brothers [and sisters]. Likewise when a son reaches manhood (cuts his beard), whatever is given to him, a similar portion should be kept [for the other sons and daughters], when the remaining property is divided among themselves’. No, the meaning is just the opposite : the

daughter should keep that *extra partem*, i.e. this belongs to her alone, and the rest of the property should be divided equally; the same is true *mutatis mutandis* for what a son received when his hair (not beard) for the first time is cut.

LXXII *si plures aut minore numero fuerit (instead of fuerint) tres, et ipsi quadragenus quinos solidos culpabilis iudicetur (for -entur)*; 131 “... they shall be liable to pay fortyfive solidi”. The word ‘each’ has to be added.

LXXIX prol. (Eckhardt p. 388) *Et quia multorum insania convaluerit, malis etiam pro inmanitate scelerum necesse est ut digna reddantur*; 137 “Because the madness of many increases and the frightfulness of evil grows, it is necessary [to issue this edict], so good order can be reestablished”. This has little to do with the Latin text. Translate instead: ‘Because the madness of many increases, it is necessary that punishment, commensurate to the enormousness of the crimes, is rendered to the evildoers.’

LXXXII 1 *Et si dominus servum non praesentaverit, legem, unde inculpatur, conponat et de servo cessionem faciat*; 138 “And if the slave’s lord does not present his slave, he [the lord] shall make composition according to law for the crime of which he [the slave] was accused and thus make an end to this case concerning his slave”. The last words mean: ‘... and give up the slave’. The same phrase *de servo cessionem facere* occurs also in LXXXVIII, and there F.D. translates it correctly.

LXXXIV *quinos*; 139 “fifteen” instead of ‘five’.

LXXXVII *ipse pretius domino reformetur*; 140 “let their value be pledged by their lords”. Rather ‘to’ than “by”.

LXL 2 *Quod si repetenti domino datus non fuerint (instead of fuerit; scil. servus fugitivus), sed fugerint (instead of fugerit), illi (instead of ille), qui eum reddere noluerit, eius pretium reddat; postmodum si invenitur et placuerit, receptum pretium domino reformetur*; 141 “But if he [the lord] has not been given the price demanded for his slave and he [the slave] flees [to someone else], let him who will not return him pay his price; afterwards if he is found and it is agreeable, let him make restitution for the price received by his lord”. I translate: ‘But if the slave is not given back to his lord, when he requires him, but flees, the one who refused to give him back shall pay his price to his owner. Afterwards, if the slave is found and it is agreed upon, the owner shall give back the price and the slave shall be turned over to the owner’.

LXLIII *Si quis ad vestigium minandum vel ad latronem persequendum admonitus penitus venire noluerit...*; 142 “He who following tracks or pursuing a thief does not wish to come in [before the court] ...”. Rather: ‘He who has been called to follow tracks or pursue a thief and who has absolutely refused to come ...’.

CXV *ipsum mitemus foras nostro sermone, ut, quicumque eum invenerit, quomodo sic ante pavidio interficiat*; 152 “... so that whoever finds him can kill him in any way without fear”. The words *quomodo sic ante pavidio* mean ‘like one who is dead in advance’; for *pavidus* as a Latinization of Germanic *feig* ‘marked by death’ cf. Brunner vol. 2 p. 607 n. 12.

CXXII *Si quis ... matriamen de silva involaverit aut lignarium, quem alter capulaverit vel in carro carcaverit ...*; 154 “If anyone ... steals wood from the

woods or from the woodpile that another man has cut up, or carries it off in his wagon ...". *Matriamen* means 'timber for construction', *lignarium* just 'wood'; *vel in carro carcaverit* belongs to the relative clause; thus: '... or wood that another man has cut up and carried off in his wagon'. This wood and timber for construction are joined together in this paragraph, because somebody has spent time and labor on both.

Capitulare VI 2,3 (p. 444 Eckhardt) *iustum est, ut qui novit occidere, discat morire*; 158 "it is just that he who is known to kill deserves to die". F.D. has destroyed the elegance of this lapidary sentence, ignoring the irony. Translate: 'It is just that he who knows how to kill, learns to die'.

Capitulare VII 7 (p. 454 Eckhardt) *Quia nullum de ecclesiastico aut beneficio vel alterius personae servo discretionem lex facit, si ita ecclesiastici aut beneficiarii servi sicut liberorum tradi aut dimitti possunt, ad interrogationem domni imperatoris reservare voluerunt*; 165 "Indeed the law makes no distinction between ecclesiastical slaves or slaves held by benefice holders and the slaves of other persons, so thus ecclesiastical or beneficial slaves just like freedmen can be handed over or set free or held for the interrogation of the lord emperor." The *si*-clause is governed by *interrogationem*: 'Since the law ... persons, they wanted the decision reserved for the lord emperor, whether ecclesiastical or beneficial slaves like the slaves of free men can be handed over or set free'.

8 (p. 454 Eckhardt) *iudicaverunt omnes, ut non ita, sicut in lege Salica scriptum est, eam (scil. viduam) accipiat, sed cum parentorum consensu et voluntate ... in coniugium sibi eam sumat*; 166 "It has been adjudged by all that, just as it was written in the Salic law, a man can only accept her [the widow] in marriage if he has the consent and agreement of her relatives." F.D. has overlooked the negation: this was not written in *Lex Salica*.

#### b. *Lex Salica Karolina*

LIX The words *et ille decretum iudicium contempsisset* have not been translated by F.D. p. 175.

XXI 3 *Si quis alteri aliquod maleficium superiacatus fuerit sive cum ligaturis in quolibet loco miserit ...*; 197 "If anyone has administered a magic potion to another or has put him tied up in some place...". This chapter deals with magic, and *ligatura* here means 'magic amulet', see ThLL 7:2, 1381, 32 ff., *Novum glossarium mediae Latinitatis* L p. 134.

XXIV 2 *Si quis ferramentum de molino alieno furaverit ... solidos XLV culpabilis iudicetur*; 214 "If anyone steals an iron tool from [another's] mill... " 45 solidi is too heavy a fine for a simple tool. *Ferramentum* here means 'mill-iron', i.e. '(part of) the iron machinery of the mill'.

3 *Si quis sclusam de farinario alieno ruperit ...*; 215 "If anyone breaks into the enclosure of another's mill...". *Sclusam rumpere* means 'break the sluice'; concerning the terminology see the paper 'Latin terms for damming and diverting water' by my student C. Booker in ALMA 54 (1996) p. 93 ff.

X 1 *Si quis animal aut caballum vel quodlibet pecus in messe sua invenerit, penitus eum ledere non debet* ; 219 “ If anyone finds a cow or a horse or any other sort of beast in his field, he ought not to injure it seriously ”. *Penitus* means ‘at all’, not ‘seriously’.

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