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## LAND, FREEDOM AND THE MAKING OF THE MEDIEVAL WEST\*

By Matthew Innes

READ 26 APRIL 2005 AT THE UNIVERSITY OF SOUTHAMPTON

**ABSTRACT.** In the course of the fifth and sixth centuries, barbarian warbands acquired property rights in the former provinces of the Roman west, in a process that established the broad structural characteristics of early medieval society in western Europe: that is the central contention of this essay. Focusing on the western Mediterranean heartlands of the Imperial government and senatorial aristocracy, it argues that these property transfers were fundamental to the emergence of ethnic identity as the crucial political marker in the post-Roman west. Latent conflict over the respective rights and obligations of barbarian ‘guests’ and their provincial ‘hosts’ structured the first attempts at post-Roman state-formation in the west, for the nature of the ‘hospitality’ offered to barbarian warbands accommodated within the Empire became a matter of contention as second and third generation ‘guests’ continued to enjoy the fruits of the property of their ‘hosts’. Interpreting these new social relationships in the light of established legal forms, barbarian kings identified agreed mechanisms for the legitimate transfer of Roman property to their followers: this process allowed Roman landowners to seek remedies for illegitimate or violent seizure, but at the price of acknowledging a significant redistribution of land to a new class of barbarian soldiers whose liberty was rooted in their military service. The result was the emergence, by the seventh century, of regionalised and militarised elites who appropriated the language of ethnicity to legitimate their position.

### I

Around the year 510, a funerary inscription was raised in the church of St Just in the city of Lyon. It commemorated a man named Sarwa Gastimodus, who had died at the age of forty. Sarwa Gastimodus’s name, it told its readers, truly summed up the merits of his life. That this epitaph apparently required no further explanation to its contemporary audience is striking, for it turned on the literal meaning of Sarwa and Gastimodus, both words with Germanic roots. Sarwa denoted weaponry and here signified martial valour, whilst Gastimodus Latinised the Germanic noun

\* I should thank John Arnold, Marios Costambeys, Caroline Humfress and Chris Wickham for their comments, my Birkbeck friends and colleagues for knocking a very early draft into a more promising shape and of course my audience at Southampton for their questions.

for 'guest'. So here we have an inhabitant of Lyon, named in Germanic with a hint of bastardised Latin 'Hard Man our Guest', commemorated in a resolutely Roman form in a Catholic church, but to an audience who were familiar enough with Germanic names to understand.<sup>1</sup>

Sarwa's epitaph is far from isolated: this aspect of Roman elite culture flourished in a Rhone valley now under Burgundian management. This material is but one of the many bodies of evidence now used to paint a picture of barbarian-Roman acculturation, with shifting social, cultural and political frontiers being negotiated through the framing of new identities.<sup>2</sup> Sarwa's epitaph belongs to a provincial society in flux, and his identity cannot be read as a biological given. The history of barbarian settlement behind Sarwa's presence in Lyon at the turn of the fifth century can hardly be understood in terms of arrows tracing the itineraries of homogeneous 'tribes' from German 'homelands' into Roman provinces.

The groups that were described by Roman observers as 'Burgundians' were highly discontinuous.<sup>3</sup> 'Burgundians' – the definite article that allows us to talk of 'the' Burgundians reflects our attempts to weld contemporary witnesses into a continuous narrative – are attested in a variety of locations beyond the Rhine frontier in the third and fourth centuries. In 407 'Burgundians' made an alliance with the provincials and generals supporting Jovinus's bid for the purple, settling along the frontier in the process. A generation later, after a calamitous defeat, the 'relics' of these Rhineland Burgundians were evacuated by the Roman general Aetius to Sapaudia, the frontier zone around Lake Geneva. Subsequent expansion into the Rhone basin took place in the decades after 450, in a series of uneasy alliances with provincial aristocrats.

The members of the Burgundian 'people' of the years around 500 were not a fixed group defined by descent from a core group of original settlers. The diverse warbands who settled in a number of distinct though obscure movements in the second half of the fifth century brought with them households, dependants and slaves. Traditions uniting these groups

<sup>1</sup> *Recueil des inscriptions chrétiennes de Gaul* 15, ed. F. Descombes (Paris, 1985), no. 263; my thanks to Wolfgang Haubrichs for explication.

<sup>2</sup> On the social meaning of inscriptions, Mark Handley, *Death, Society and Culture. Inscriptions and Epitaphs in Gaul and Spain, 350–700* (Oxford, 2003); on names and identity, Patrick Amory, 'Names, Ethnic Identity and Community in Fifth- and Sixth-Century Burgundy', *Viator*, 25 (1994), 1–30.

<sup>3</sup> The itinerary that follows has been rehearsed on many occasions; recent accounts are Justin Favrod, *Histoire politique du royaume burgonde 443–534* (Lausanne, 1997), and Reinhold Kaiser, *Die Burgunder* (Stuttgart, 2003). On Burgundian ethnogenesis and state-formation, see Ian Wood, 'Gentes, Kings and Kingdoms – the Formation of States. The Kingdom of the Gibichungs', in *Regna and Gens*, ed. Hans-Werner Goetz, Jörg Jarnut and Walter Pohl (Leiden, 2003), 243–69, and his 'Ethnicity and the Ethnogenesis of the Burgundians', in *Typen der Ethnogenese unter besonderer Berücksichtigung der Bayern*, ed. Herwig Wolfram and Walter Pohl (2 vols., Vienna, 1990), I, 53–69.

were shallow: when the Burgundian kings attempted to cultivate dynastic memory, they could not traverse the middle decades of the fifth century.<sup>4</sup> And the crystallisation of a territorial kingdom in the Rhone valley did not involve a corresponding stabilisation of populations: in laws and letters we again and again encounter endemic slave-taking fuelling the coming and going of captives whose allegiances and identities were undergoing renewed transformation.<sup>5</sup> By the first decades of the sixth century the various subjects of the Burgundian king could be referred to as ‘our people’, whatever their origin, and the label ‘barbarian’ reserved for those outside the kingdom.<sup>6</sup> Even if we focus on its political and ethnic dimensions, ignoring issues of status, gender, locality and religion which should loom large, Sarwa’s identity must, then, be seen as a construct, not an index of descent or cultural affiliation, which in this context can hardly but have been mixed. His parents and peers, through his name, defined his membership of provincial society in terms of very specific gendered functions within that society, as a ‘hard man’ and a ‘guest’.

So far, so familiar. Our mental world of the late antique west is now populated with scores of Sarwas. We are slowly being weaned off older models of clashes of civilisations, with the calamitous decline of Rome a tabula rasa on to which new groups could inscribe their ancestral cultures, and learning to read identities as processes, not givens.<sup>7</sup> But these great strides should not lead us to see an endless and continuous renegotiation, where barbarian ethnicities are only the logical outgrowths of ancient regional identities, and transformation is seamless and friction-free. After all, the notion of barbarians as ‘guests’, here used approvingly – is not the epitaph saying, Sarwa was not only a hard man, but he also behaved as a true guest? – could be more ambivalent. Several fifth-century Gallic authors counterpointed the official line on barbarians as ‘guests’ with the troubled experiences of provincial landowners. On a fairly light level, Sidonius Apollinaris’s famous but playful comments on a band of Burgundian guests on his villa should remind us that not all guests are welcome, nor do they necessarily behave as their hosts would wish. In elegant Latin verse, Sidonius complained to a friend that the Burgundians had driven away his muse, with the noise of their

<sup>4</sup> *Liber Constitutionum* [hereafter LC], ed. L. von Salis, *Monumenta Germaniae Historica* [hereafter MGH] *Leges Nationum Germanicarum* 2.1 (Hannover, 1892); English trans. K. F. Drew, *The Burgundian Code* (Philadelphia, 1972), 3.

<sup>5</sup> See n. 34 below; the role of experiences of captivity in the reshaping of identities in this period serves proper study; its trauma may have played a part in encouraging dramatic change here. See also *Recueil des inscriptions chrétiennes de la Gaule* 15, ed. Descombes, no. 290.

<sup>6</sup> See Patrick Amory, ‘The Meaning and Purpose of Ethnic Terminology in the Burgundian Laws’, *Early Medieval Europe*, 2 (1993), 1–28.

<sup>7</sup> For why it matters, see Patrick Geary, *The Myth of Nations: The Ethnic Origins of Europe* (Princeton, 2001).

singing, eating and drinking, and their disgusting smell. For other authors, though, the joke was blacker: Paulinus of Pella, for example, lamenting the seizure of family property saw the rhetoric of 'hospitality' a sham that hid a reality of 'hostility' and expropriation.<sup>8</sup> That the ideology of barbarians as 'guests' enjoying 'hospitality' attracted grim humour points to something we really ought to know: that dramatic changes in social identity most likely relate to far-reaching social transformations fraught with tension.

It is such tensions, and their working out in the former heartlands of the western Empire in Italy, southern Gaul, Spain and Africa, that are the subject of this essay. In particular, in what follows I draw upon the strong and unambiguous evidence for friction over the distribution of land between barbarians and Romans from the 410s – when Paulinus's woes began – through Sidonius's public career in the second half of the fifth century, into the period of Justinian's 'reconquests' in the middle decades of the sixth century. By listening closely to the testimonies of those who took part in these events we will explore how a latent conflict over title to land shaped processes of acculturation and ethnogenesis. In the initial stages of settlement, particularly in the militarily denuded provinces of Gaul, violence and the threat of violence were central in allowing the systematic transfer of the fruits of landowning to barbarian incomers. In the second and third generations after the initial settlements, however, the legal and tenurial implications of these *de facto* transfers of rents and produce gave rise to litigation, as Roman landowners attempted to reclaim property, to assert their continuing title to lands which now housed barbarian settlers, even to claim rights over waste or woodland brought under the plough by newcomers. Practical problems over the definition of overlapping interests in the countryside gave rise to claim and counter-claim, which in turn generated legal rulings, preserved in the administrative instruments and law-codes issued by barbarian kings. Through their indispensable expertise in overseeing the machinery of late Roman government, Roman advisors at barbarian courts were thus able to order and reassert control over the devolution of property in the countryside, and the Gallic experience was used as a template for land transfer by administrative fiat in post-Roman Italy. But the price for this ordering of barbarian settlement was the acknowledgement of a large-scale transfer of resources that was a crucial mechanism in the

<sup>8</sup> Walter Goffart, *Barbarians and Romans: The Techniques of Accommodation, AD 418–568* (Princeton, 1980), 95–6, first pointed out Gallic hagiographers playing on the contrast between their experience of 'hostility' and the official line on 'hospitality'. Sidonius Apollinaris, *Poems and Letters*, ed. and trans. W. B. Anderson (2 vols., Cambridge, MA, 1938–65), *carmina* 12; Paulinus of Pella, *Eucharisticon*, lines 422–5, ed. and trans. H. G. Evelyn White, *Ausonius: Works* (Cambridge, MA, 1921), 295–351. Sidonius, *Letters*, 7.7, engages in similar word-play on 'hospitality' and 'hostility'.

restructuring of western society. As a result, now fragmented landowning elites were unable to sustain formal status boundaries and legal privileges of the kind that had marked off the Roman senatorial aristocracy; instead, they adopted ethnic identities that legitimated their bearers as representatives of a wider community of free landowners. This was a distinctively western development, which marked out a fundamental divergence in the historical trajectory of Europe.

Discussion of conflict over material resources is strangely lacking from much of the modern historiography on the transformation of the Roman west. Sophisticated treatments of identity politics have coincided with a relative dearth of research on the actual mechanics of social transition. This is no accident. The historiographical revolution which has encouraged narrative sources to be read as active texts designed to create identities has opened up exciting new vistas, but has left the sparse, difficult and highly technical source material on social structure unappealing to few but the hardcore. Indeed, the personal trajectory of one of the dominant figures of the 1970s and 1980s in barbarian studies, Walter Goffart, neatly articulates this turn to textuality. In his 1980 discussion of 'the techniques of accommodation' between barbarians and Romans, Goffart provided the last extended investigation of the effects wrought by barbarian settlement on the social structures of the Roman provinces, whilst his hugely influential 1988 study of 'the narrators of barbarian history' was a pivotal moment in the textual turn.<sup>9</sup>

Goffart has been far from the only figure teaching us to see barbarian identity not as a timeless given born out of a changeless 'Germanic antiquity', but rather as a product of interaction and negotiation between the Roman Empire and its neighbours: it is the work of Patrick Geary, and the development of German-language 'ethnogenesis' scholarship by Herwig Wolfram and Walter Pohl, that has exploded the old historiography.<sup>10</sup> But because the cornerstone of Goffart's earlier work

<sup>9</sup> *Barbarians and Romans*, published in 1980, still shapes the parameters of debate on settlement; in contrast *The Narrators of Barbarian History, 550–800* (Princeton, 1988) stands at the beginning of a debate which has altered out of all recognition in the past two decades (see e.g. Walter Pohl, 'History in Fragments: Montecassino's Politics of Memory', *Early Medieval Europe*, 10 (2001), 343–74). I should add that although my view of the earliest stage of barbarian settlement obviously differs from Goffart's, the interpretation advanced below is fundamentally shaped by his seminal demonstrations of the complex interrelationship between property law and fiscal liability in the late Roman world; the shame is that the 'Goffart thesis' as fossilised in much of the historiography ignores this by opposing 'tax' to 'land' in a way wholly alien to Goffart's own work.

<sup>10</sup> For the Anglophone, Patrick Geary's early work marked the real breakthrough, even though Wolfram had been publishing in English since the 1970s. For subsequent advances, spurred on by international collaboration, see e.g. *Strategies of Distinction: The Construction of Ethnic Communities, 300–800*, ed. Walter Pohl and Helmut Reimitz (Leiden, 1998), esp. Pohl's contributions; for different emphases within the 'ethnogenesis' paradigm, see Patrick

was that barbarians were ‘accommodated’ through relatively ordered processes that could be analysed in terms of late Roman administrative and fiscal practice, it has allowed social and economic organisation to go relatively neglected. Drawing on his earlier work which argued that the distinction between property rights and fiscal liability in the late Roman Empire was increasingly fuzzy, he claimed that the barbarian armies of the fifth- and sixth-century west were granted shares of tax revenue by provincial elites eager for protection, and that these originally fiscal transfers were slowly transformed into landownership. The dense exegesis on legal terminology on which these arguments were based continues to fuel debate among specialists.<sup>11</sup> But even those sceptical of the details have been profoundly influenced by Goffart’s basic contention, that the apparent absence of any large-scale or concerted resistance to barbarian settlement by provincial landowners is incompatible with widespread expropriation. The administrative complexities of late Roman fiscal law are therefore consistently invoked as a mechanism for easing friction and tension out of the process even whilst qualifications to a wholesale fiscalist view of settlement are acknowledged. Barbarian settlement has become a self-contained issue in administrative history, and the evidence that the debate turns on – the richest material we have on relationships between barbarians and Romans on the ground – has thus been lost from the mainstream of the historiography.

The result has been a widespread perception of relatively ordered change, contested primarily by those wishing to reassert traditional views of barbarian violence.<sup>12</sup> Such a perception is the logical outcome of an

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Amory, *People and Identity in Ostrogothic Italy 489–554* (Cambridge, 1997), and Peter Heather, ‘The Making of the Visigoths’, in *The Visigoths from the Migration Period to the Seventh Century*, ed. Peter Heather (Woodbridge, 1999), 47–73; for a stimulating overview of the state of play, see Walter Pohl, ‘Ethnicity, Theory and Tradition: A Response’, in *On Barbarian Identity: Critical Responses to Ethnicity in the Early Middle Ages*, ed. Andrew Gillett (Turnhout, 2002), 221–40.

<sup>11</sup> Goffart’s major prominent supporter is Jean Durliat (e.g. ‘Le salaire de la paix sociale dans les royaumes barbares’, in *Anerkennung und Integration: zu den wirtschaftlichen Grundlagen der Völkerwanderungszeit 400–600*, ed. Herwig Wolfram and Andreas Schwarcz (Vienna, 1988), 17–70; ‘Cité, impôt et integration des barbares’, in *Strategies of Distinction*, ed. Pohl and Reimitz, 153–79; *Les finances publiques de Diocletien aux Carolingiens, 285–888* (Sigmaringen, 1989)), founder of a French school essaying hyper-continuity rooted in the survival of fiscal structures, and effectively demolished by Chris Wickham, ‘The Fall of Rome Will Not Take Place’, in *Debating the Middle Ages*, ed. Lester K. Born and Barbara Rosenwein (Oxford, 1998), 45–57. Sustained critiques, as opposed to passing criticism, are harder to find, but see Sam Barnish, ‘Taxation, Land and Barbarian Settlement in the Western Empire’, *Papers of the British School at Rome*, 54 (1986), 170–95, as well as Evangelos Chrysos, ‘De Foederatis Iterum’, and Wolfgang Liebeschuetz, ‘Cities, Taxation and Barbarian Settlement: The Theories of Durliat and Goffart’, in *Strategies of Distinction*, ed. Pohl and Reimitz, 185–206, 135–51.

<sup>12</sup> For example see B. Ward-Perkins, *The Fall of Rome and the End of Civilisation* (Oxford, 2004). Peter Heather’s *The Fall of Rome: A New History* (London, 2005) appeared as this paper was in the final stages of preparation.

approach that seeks to distil from disparate legal sources a system, and so bypasses those very cases of conflict where we see divergent interests in sharp relief. Yet it is precisely these cases that reveal the immediate pressures that reshaped identities. Whilst we must never forget the late Roman foundations of early medieval society, we should not be so focused on the hunt for precedents that we forget the scale of change, or reduce the experience of change to a cosy cultural politics which presupposes free choice or an agency unrestrained by social and economic imperatives on the part of those adopting new allegiances. The sharp social hierarchy that underwrote the domination of the senatorial aristocracy in the west, after all, had vanished by the seventh century, as stratification shallowed and elite dominance came to be exercised in far less formal terms than it had been in Roman times. In place of the complex nexus of Roman fiscality and property law, in which the categorisation of rights over land had intersected with the registration of fiscal liabilities, we move into a world of free proprietors whose status was defined by their bearing of arms in the service of their king, and whose rights over property were manifest, rooted in physical fact. Ancient ideologies of freedom had presented citizenship as enabling access to the law that defined civilisation but also necessitating obligations to the state; by the seventh century, free status was articulated through honourable public activity on the wartrail and in assemblies, and was seen as incompatible with the humiliation of onerous service or the payment of tax.

The accommodation of barbarians in the west was, of course, not the only factor in these changes. But investigating the dynamics of barbarian settlement opens new perspectives on how they came about, for by insisting that a vague wave of 'social stress' is not an adequate explanation for change we demand precise connection between the economic, political and social. More than that, looking in detail at the reception of barbarian incomers can help restore an element of surprise to the historiography. After all, historians, professional explainers of why things turned out as they did, all too easily lose the sense of options urgently debated and a future at stake which animated their subjects. Given the energy that has been expended reconnecting Rome to the early middle ages, it is easy for us to forget that western Europe's post-Roman trajectory was unparalleled in the other ancient agrarian Empires of Eurasia.<sup>13</sup> Would an observer *c.* 400 have predicted that the absorption of barbarian warbands into western society would lead to the collapse of the structures of senatorial dominance? Historians of the late Roman world have traced the increasing importance of personal retinues and

<sup>13</sup> For discussion, with comparative and theoretical bibliography, from the perspective of the Carolingian endpoint of post-Roman transformation, see Matthew Innes, *State and Society in the Early Middle Ages: The Middle Rhine Valley, 400–1000* (Cambridge, 2000), 251–63; the current study is an attempt to trace the origins of the characteristics suggested there.

barbarian warbands in the late fourth- and fifth-century west, evoking a world where landlords were becoming warlords and warlords landlords.<sup>14</sup> Was not the logical outcome the fashioning of a hybrid elite combining extensive landownership and military leadership in the service of the Roman state? In the east, an Imperial edict issued from Constantinople in 409 insisted that Hunnic barbarians who wished to settle were to have the status of tied tenants (*coloni*) under the control of their landlords.<sup>15</sup> Yet barbarian settlement in the west was not to refashion, but to wrench loose and ultimately break the circuits of landlord power and Imperial authority that had powered late Roman society in the west. If we are to understand the making of the early medieval west, we must explain why this was the case.<sup>16</sup>

## II

Students of the late antique experience of living with barbarians, and the transformations which cohabitation could render to the cultural and social norms of both hosts and guests, are lucky to enjoy a relative abundance of legal evidence. Pride of place must be given to the *Book of Constitutions*, a collection of royal edicts published at Easter 517 by the Burgundian king Sigismund, which contains over a dozen rulings relating to relationships between Burgundians and Romans and the mechanisms of barbarian settlement.<sup>17</sup> Sigismund's collection contains little predating the turn of the century; the rulings on settlement thus do not directly illuminate the initial settlements, but their consequences two or three generations later. This horizon is typical. From the Visigothic kingdom in southern Gaul and Spain, we have a handful of rulings preserved in the palimpsested fragments of the earliest surviving barbarian law-code,

<sup>14</sup> C. R. Whittaker, 'Landlords and Warlords in the Later Roman Empire', in *Warfare and Society in the Roman World*, ed. J. Rich and G. Shipley (London, 1993), 277–302.

<sup>15</sup> *Theodosian Code*, ed. T. Mommsen (Berlin, 1905), 5.6.3; my thanks to Caroline Humfress for drawing this edict to my attention.

<sup>16</sup> Chris Wickham, 'The Other Transition: From the Ancient World to Feudalism', *Past and Present*, 103 (1984), 3–36, to be read alongside his 'The Uniqueness of the East', *Journal of Peasant Studies*, 12 (1985), 166–96, is the classic theoretical discussion, subsequently nuanced by its author, but its basic modality accepted for the west even by those who have identified a 'tributary mode of production' in Imperial successor states elsewhere, e.g. John Haldon, *The State and the Tributary Mode of Production* (London, 1993).

<sup>17</sup> For a full discussion of this material, see Matthew Innes, 'On the Social Dynamics of Barbarian Settlement: Land, Law and Conflict in the Burgundian Kingdom', forthcoming in *The Burgundians from the Migration Period to the Seventh Century*, the proceedings of a symposium hosted by the Centre for International Research on Social Stress at San Marino in 2003; this paper draws on material developed and discussed there, and I would like to thank Giorgio Ausenda for his hospitality and Peter Heather and Ian Wood for sharing their insights. I accept Ian Wood's arguments on the date and context of LC, first advanced in his 'Disputes in Late Fifth- and Sixth-Century Gaul: Some Problems', in *The Settlement of Disputes in the Early Middle Ages*, ed. Wendy Davies and Paul Fouracre (Cambridge, 1986), 7–22 at 10.

that of Euric (466–84), half a century after the initial settlement.<sup>18</sup> Even from Italy, where we might expect the richest evidence, the mechanisms whereby the armies of Odoacer and Theodoric were settled between 476 and 493 remain elusive. Our insights come from a source of a different genre: the series of specific instructions issued by Theodoric and his successors, and preserved by their author, the Roman aristocrat and civil servant Cassiodorus, in the collection of official documentation he put together after leaving public life, as the Ostrogothic kingdom was coming to an end before Justinian's armies.<sup>19</sup>

The chronological horizon of the legal evidence is only a problem if we seek to read it in an outdatedly positivistic way, as an unproblematic window on to institutional arrangements. It is of value precisely because it allows us to investigate settlement not as a single event or the articulation of administrative principle, but rather in terms of the evolving relationships between barbarians and provincials as new generations of barbarians who were born and bred within provincial society came of age. It was precisely such questions and queries that inspired the royal rulings with which we must work.

If the chronological distribution of our evidence is no accident, neither is its geographical focus or its legal form. In the fourth century, the provincial elites of Italy, southern Gaul and Spain had been closely tied into the Imperial system, and these regions, along with the north African coastline, formed a distinct western Mediterranean economic, social and political system, moulded by senatorial wealth and Imperial patronage. The unpleasant necessity of settlement here rested on both unofficial and official negotiation between provincial elites and barbarian leaders that observed established administrative and legal forms, and was regulated through administrative and legislative instruments. Further north, where

<sup>18</sup> *Code of Euric* [hereafter CE], ed. K. Zeumer, MGH Leges Nationum Germanicarum 1 (Hannover, 1902), which includes internal references to laws issued by earlier kings; Visigothic kings continued to issue codifications of legislation through the seventh century, so the material assembled under Recceswinth (642–53) (*Liber Iudicum* [hereafter IJ]), ed. K. Zeumer, trans. S. P. Scott, *The Visigothic Code* (Boston, 1911), is valuable in showing how later generations received the early material, not least as it marks some chapters as 'ancient', dating from the reign of Leovigild (569–85).

<sup>19</sup> Cassiodorus, *Variae*, ed. Theodor Mommsen, MGH Auctores Antiquissimi [hereafter AA], 12 (Berlin, 1894), a selection is available in English translation by Sam Barnish (Liverpool, 1990). The whole issue of Odoacer's army and the system for its reward needs urgent re-examination, but suffers from lack of sources. Procopius's account, which has Odoacer's troops demanding a third of the lands in Italy, is to be treated with extreme care serving as it does to underwrite Procopius's depiction of the settlement of Theodoric's Goths: see Goffart, *Barbarians and Romans*, 62–70. Whilst strictly contemporary sources are less than forthcoming, the mutiny that precipitated Odoacer's deposition of Romulus Augustulus must suggest that this was not a case of business as usual. *Variae* 1:18, discussed below pp. 55, 60–1 is crucial evidence here.

an increasingly distinct regional system focused on the Rhine frontier had been emerging since the third century, even a general lack of fifth-century evidence cannot hide huge differences: when we pick up the Salic law, we move into a society more or less unrecognisable from Sigismund's, Euric's or Theodoric's.

The coherence of the ties which had bound together the western Mediterranean coast and its hinterlands for the fourth and much of the fifth centuries explains the close similarities between the evidence from the Burgundian and Visigothic kingdoms, and the evident influence of these earlier settlements on arrangements in Theodoric's Italy. It is no accident that the one area of the western Mediterranean core that produced a different class of evidence, Africa, was settled in a radically different process. Here, military conquest and distinct economic and social structures allowed the Vandal kings to target the lands of the senatorial aristocracy and the Catholic church, manipulating Roman law to do so, and using administrative instruments of a familiar kind. No African counterpart to the Roman advisors responsible for Sigismund's and Euric's law-codes compiled a comparable artefact for the Vandal kingdom, and so our perspective is dependent on the pained voices of exiled senators and churchmen.<sup>20</sup>

Legal codifications of the kind on which we are reliant need careful handling. It was the late Patrick Wormald's brilliant achievement to demonstrate the ideological functions of barbarian law-codes: in law-giving, barbarian kings were legitimating their rule.<sup>21</sup> Wormald's insight holds good for our material. Sigismund's code was promulgated at a time of profound crisis within his kingdom, and presented his regime as resting on law and so guaranteeing the continuation of civilised social order; Cassiodorus's *Variae*, published in the middle of Justinian's 'reconquest', were clearly making a political statement about the nature of the Gothic regime and the aspirations of those who had served it; and Visigothic law-giving occasioned comment from Roman landowners.<sup>22</sup>

<sup>20</sup> These differences in the nature of the source material mean that the Vandal settlement of Africa is best treated separately from the Italian, Gallic and Spanish evidence used here. I hope to discuss the African situation in detail elsewhere.

<sup>21</sup> Above all is the still seminal 'Lex Scripta and Verbum Regis. Legislation and Germanic Kingship from Euric to Cnut', in *Early Medieval Kingship*, ed. Peter Sawyer and Ian Wood (Leeds, 1977), 105–38.

<sup>22</sup> Sigismund in 517: Ian Wood, 'Incest, Law and the Bible in Sixth-Century Gaul', *Early Medieval Europe*, 7 (1998), 291–303. Cassiodorus: most recently Andrew Gillett, 'The Purposes of Cassiodorus' *Variae*', in *After Rome's Fall: Narrators and Sources of Barbarian History*, ed. A. C. Murray (Toronto, 1998), 37–50. The context of Euric's legislation remains unknown, but for Visigothic state-formation in the fifth century see Ralph Mathisen and Hagith Sivan, 'Forging a New Identity: The Visigothic Kingdom of Toulouse', in *The Visigoths: Culture and Society*, ed. A. Ferreiro (Leiden, 1999), 1–62; note also, for the ideological meaning of law-giving, Sidonius's memorable character-assassination of the Roman official Seronatus

Attempts to interpret these codifications as compilations of barbarian custom, statements of the 'personal law' of Burgundians and Visigoths distinct from the Roman law of the provincial population, have failed because Sigismund's and Euric's codes deal with all sections of the population, Roman as well as barbarian.<sup>23</sup> They were demonstrations of the continued application of Roman legal practice in newly emerging barbarian kingdoms, and hence were soon supplemented by handbooks of the Roman law whose basic principles they adapted to a new situation.<sup>24</sup>

Legitimizing statements they may have been, but these collections were not confections shaped solely by ideological concerns. The edicts codified under Euric and Sigismund and the administrative instruments collected by Cassiodorus arose in a context in which a lively intercourse of legal argument and appeal continued in full late Roman tradition. In dealing with the flood of business thus generated, barbarian kings relied on Roman advisors and their legal education: Sidonius Apollinaris even complemented one friend on becoming 'a new Solon among the Burgundians'.<sup>25</sup> We should not, then, dismiss this legal evidence as merely normative or of questionable practical application, nor should we treat it uncritically as merely descriptive, seeing tariffs of fines or labels for different groups as straightforward reflections of social structure. This material needs handling every bit as carefully as a literary source or an archaeological site. Like the Imperial rulings collected in the Theodosian Code, we should see it as arising from legal conflict and social change on the ground, requiring authoritative rulings from above. Like the Theodosian Code, our evidence should not be read as a static description of a monolithic system, but disaggregated and contextualised, ruling by ruling. In applying principles and expectations rooted in Roman administrative and legal practice to a series of new and concrete problems, this legislation thus attempted to order and regulate tensions.

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who 'trampled the code of Theodosius beneath the laws of Theodoric [II, the Gothic king]': *Letters*, 2.1.

<sup>23</sup> See Wood, 'Ethnicity and Ethnogenesis', built upon by Amory, 'The Meaning and Purpose of Ethnic Terminology'.

<sup>24</sup> For the Visigoths, this took the form of the Breviary of Alaric, a condensation of the Theodosian Code issued around half a century after Euric's code, as Alaric II was attempting to rally support among the southern Gallic aristocracy and episcopate in the face of Frankish threats; for the Burgundians, an enigmatic tract known as the *Lex Romana Burgundionum*, which collects Roman legal precedents for issues dealt with in Sigismund's code, and is best therefore seen as a companion or commentary on the latter whose official status remains unclear. More work is urgently needed on this material.

<sup>25</sup> Sidonius, *Letters*, 5.5.

## III

These tensions turned on the implications of the allocation of barbarian 'guests' to their Roman 'hosts'. The relatively late horizon of our legal evidence means that the precise workings of the process must remain obscure, although it clearly differed in both scale and implication from established mechanisms for the billeting of Roman armies.<sup>26</sup> The contemporary comments we do have on barbarian settlement – primarily asides in hagiography and poetry – are frustratingly sparse, but they are unanimous in pointing to allocations, whereby barbarian incomers were dispatched to specific estates in a process which was negotiated, yes, but in which the possibility of coercion and the experience of sporadic violence were never far away. Sidonius could thus criticise the Roman official Seronatus for having 'filled the woods with fugitives, and villas with "guests"'.<sup>27</sup> The language of hosts, guests and hospitality was rooted in social norms, not administrative procedures or legal rules.<sup>28</sup> Looking back from c. 460, Paulinus of Pella lamented his disastrous decision not to billet barbarian guests at his ancestral home near Bordeaux: as a result, it was pillaged, whereas Gothic 'guests' elsewhere 'strove most generously to serve their hosts by protecting them'.<sup>29</sup> To debate whether this primary stage of barbarian settlement rested on the transfers of tax liabilities or property rights is thus unhelpful, for contemporaries did not conceive of it in these terms. What mattered was the assignation of a place where barbarian soldiers and their dependants could reside whilst they were not generating plunder and tribute on the wartrail. As late as the 460s the Gallician chronicler Hydatius could describe Gothic settlement as the acquisition of 'seats' (*sedes*), whilst a decade later Sidonius could describe the Goths returning to their 'seats' after a campaign against his native Auvergne.<sup>30</sup>

The social relationships between 'hosts' and 'guests' that grew up in the aftermath of such arrangements remain elusive. Some 'hosts' at least were absent, among them senatorial landowners like Paulinus of Pella whose political careers ended in failure, exile and expropriation. The high personal costs of falling from political grace in the late Roman world must

<sup>26</sup> Following Goffart, *Barbarians and Romans*, ch. 2.

<sup>27</sup> Sidonius, *Letters*, 2.1.

<sup>28</sup> This terminology was adopted as early as 418: H. Sivan, 'An Unedited Letter of the Emperor Honorius to the Spanish Soldiers', *Zeitschrift für Papyrologie und Epigraphik*, 61 (1985), 273–87; H. Sivan, 'On Foederata, Hospitalitas and the Settlement of Gaul in AD 418', *American Journal of Philology*, 108 (1987), 759–72.

<sup>29</sup> Paulinus, *Eucharisticon*, lines 271–90: his *domus* was allowed to be pillaged because it was protected by no 'special right (*ius*)'.

<sup>30</sup> R. W. Burgess, *The Chronicle of Hydatius and the Consularia Constantinopolitana* (Oxford, 1993), s.a. 418, p. 82; Sidonius, *Letters*, 6.6.

have provided barbarian rulers with a ready-made and recurrent source of land for distribution, and because such expropriation did not target the senatorial class as a whole, but played on time-honoured rivalries within it as different factions sought to win royal favour, it did not arouse wholesale opposition: Paulinus could contrast the distribution of his family property to Goths according to the 'law of hostility' to the infamy of his Roman rivals who acted 'in defiance of all laws'.<sup>31</sup> But as time passed and guests became long-term residents, the need to regularise the stake enjoyed by barbarian guests in their hosts' estates became pressing. It is precisely such pressure that gives rise to the earliest layers of our legislation. They deal with the transformation of hospitality into property: Roman landowners were evidently under pressure from second and third generation guests aiming to turn their long-standing ties with the estates on which they lived into property rights.

Our fullest account of any barbarian settlement comes *c.* 500, in a complex decree issued by the Burgundian king Gundobad. Gundobad identifies successive stages of settlement: each of his 'people' had been assigned hospitality at a specified place (*locus*); some had subsequently been enriched by gifts of 'fields together with slaves' by Gundobad and his predecessors; earlier in his reign, Gundobad had issued a written instrument ordering that all those who had not benefited from royal gifts should receive 'a third of the slaves and two thirds of the land . . . from that place at which hospitality had been assigned to them'; now, Gundobad was legislating against those who had abused his earlier order.<sup>32</sup> Gundobad's reign had begun in 474, so this edict takes us back to the initial Burgundian settlement in the Rhone valley in the 450s and 460s: the allocation of a 'place of hospitality' and gifts of royal land to favoured followers had taken place under Gundobad's predecessors. Gundobad's granting to his people of a part of the 'land and slaves' of their Roman hosts can scarcely be construed as anything other than the transfer of real

<sup>31</sup> Paulinus, *Eucharisticon*, lines 422–5. Cf Sidonius, *Letters*, 5.7: Romans who make accusations against their countrymen are worse than barbarians.

<sup>32</sup> LC 54. The date of *c.* 500 has been suggested (by Goffart, *Barbarians and Romans*, 155–9) on the basis that the land-distributions discussed may well have taken place in the aftermath of the bloody civil war of 500, which according to Marius of Avenches resulted in the death, disgrace and expropriation of many major landowners; this is highly plausible, and would be strengthened if Gundobad's legislation on Burgundian settlement were to be equated with the 'milder laws' he was said to have issued after the civil war, as suggested in n. 44 below. LC 79, issued in 515 and decreeing a highly unusual fifteen-year term of possession for barbarians to establish permanent rights over land granted to them (the norm would be thirty) surely echoes a land distribution made in 500. In any case, the surviving output of Sidonius Apollinaris and Avitus of Vienne do not mention the grant of *sortes*: whilst argument from the absence of evidence is always shaky, it here might give us further encouragement to think of a land-distribution towards the very end of the fifth century.

property: the Latin terminology of *terra* and *mancipia* is unambiguous. We should not think of Gundobad rewarding individual settlers, but extended household units: another edict confirms the continued dependence of freedmen who had not received transfers of 'land and slaves'.<sup>33</sup> The imbalance implicit in the grant of two-thirds of the land, but only one third of the slaves, remains puzzling. On one level, it is of course a legal fiction, meaningless when abstracted from the reality of fields and soil. But the imbalance it makes explicit is most easily explained by the expectation that Burgundians had acquired not only plunder and tribute, but also human captives, on the wartrail: slave-taking is endemic in both the legislation and the written sources.<sup>34</sup> Gundobad's transfer of 'land and slaves' marked a fundamental shift, transforming his people from a warband economy of tribute and plunder to one rooted directly in the agrarian landscape.

The transfer of 'land and slaves' from Roman host to barbarian guest, as effected by Gundobad, in fact had very close precedents elsewhere in Gaul. In the Visigothic kingdom, there is good evidence for barbarian guests acquiring property from their Roman hosts in the first half of the fifth century, as rights of hospitality rooted in cohabitation were transformed into the possession of a carefully defined part of a Roman estate. Euric's code preserves a fragment concerning Goths entering their 'place of hospitality' to delimit a boundary; sixth-century legislators explained that 'a division of arable lands or forest between Goth and Roman' should not be disturbed, provided that it had been publicly made and each side had taken no more than the stated proportion, two-thirds for the Goths and one third for the Roman. The practice of *divisio* had plentiful precedents in Roman law, as a carefully controlled process for effecting an impartial separation of shared interests.<sup>35</sup> Although difficult, our legal evidence suggests a gradual process, with specific pieces of property transferred from Roman hosts to barbarian guests from the time of the very earliest settlements on, rather than a single and universal transfer by administrative fiat.<sup>36</sup> Euric's code, for example, also includes injunctions against Roman hosts who granted to their Gothic guests

<sup>33</sup> LC 57.

<sup>34</sup> LC Constitutiones Extravagantes 21 is vivid here. Redemption of captives was also a concern of bishops like Avitus of Vienne, Caesarius of Arles and Ennodius of Pavia.

<sup>35</sup> CE 276; IJ 10.1.7. Ernst Levy, *West Roman Vulgar Law: The Law of Property* (Philadelphia, 1951), 76–80 with – astoundingly – no historiographical follow up. On the Visigothic settlement see Mathisen and Sivan, 'Forging a New Identity', 13–18, 23–7, 34–7.

<sup>36</sup> The early date of these land-divisions is suggested by the fifty-year limitation on attempts to contest them, stated in CE 277 and transmitted to IJ 10.1.14, 10.2.1; the author of CE 277, whose absolute terminus *ante quem* is 484, must therefore have envisaged land-divisions which took place more than fifty years before his time. Paulinus's testimony confirms this chronological horizon.

estates to which they had no rightful title: the implication is that transfers from host to guest were commonplace, but that some hosts attempted to turn the process to their advantage by encouraging their Gothic guests to seize estates from other Romans.<sup>37</sup> Similar processes had in all probability been at work in the Burgundian kingdom before Gundobad's wholesale transfer of 'land and slaves': an edict of 515 confirmed and encouraged the 'long-standing' and 'well-known' practice whereby 'people belonging to a barbarian nation' might be 'voluntarily' granted land on which to live by the subjects of the Burgundian king.<sup>38</sup>

When discussing the recurrent agreements made between barbarian warlords and fifth-century elites, contemporary chroniclers regularly referred to them as resting on *divisiones*, drawing clear contrasts between such negotiated settlements and forced expropriation.<sup>39</sup> It would probably be mistaken to read the terminology too literally, and see recurrent divisions of individual estates. Division, the granting out 'allotments' or 'shares' (*sortes*), turned on the agreement of barbarian and provincial leaders on the principle of settlement, presumably followed by the assignment of hospitality to the barbarian rank-and-file in the specified areas. The term 'allotments' (*sortes*) is intriguingly ambivalent. Through the fifth century it had a territorial sense, denoting an area subject to agreed barbarian settlement, and by the time of the Visigothic and Burgundian legislation it was also the standard term for the specific stakes acquired by barbarian settlers in the Gallic countryside, that is for individual 'allotments'. The vocabulary evoked Roman legal usage, where *consortes* might share interests in a piece of property and indeed undertake agreed processes of division, but it also drew on extra-legal

<sup>37</sup> CE 312: these transfers could take the form either of outright donations from host to guest, or the grant of rights of 'occupation' without the transfer of legal title.

<sup>38</sup> LC 79: barbarians are invited to live amongst 'our people', which by this date had a territorial rather than a narrowly ethnic sense (see n. 6 above), and acquire permanent rights if they inhabit the land for fifteen years on certain conditions (the gift is not to be coerced, and the fifteen years' tenure must have taken place *sine testis/tertius* – the MSS have variant readings which reflect Carolingian scribes trying to make sense of an obscure clause, which could mean either 'without disturbance', 'without rent' or 'without subsequently receiving thirds', i.e. the fruits of formal land-divisions).

<sup>39</sup> As late as 467, the Roman official Arvandus was found guilty of treason for allegedly suggesting that the Burgundians and Visigoths effect a *divisio* 'according to the law (*ius*) of *gentes*' of what remained of Roman Gaul: Sidonius, *Letters*, 1.7. For earlier settlements see e.g. the Gallic 'Chronicle of 452', ed. T. Mommsen, MGH AA 13, 660–6. Note the clear contrast between the smooth *divisio* undertaken by the Burgundians and the inhabitants of Sapaudia (s.a. 442) and local resistance to Aetius giving (the verb is *tradere*, transfer in property law) of rebellious 'further Gaul' to the Alans to 'divide' with the inhabitants, resistance which lead to expropriation as the Alans took possession of the land (s.a. 443); this surely counterpoints direct expropriation with negotiated *divisio*.

practices of drawing lots (*sortes*), and perhaps the sharing out of spoils on the wartrail.<sup>40</sup>

The ambivalence of the terminology of ‘allotments’ reminds us that we should not confuse continuity of legal form with continuity in social practice. For all their Roman precedents, the use of techniques of land-division to effect transfers to newcomers was unprecedented. The context and scale of the land-divisions in the fifth-century Visigothic kingdom must remain murky, but by the end of the century they fuelled the expectations of the barbarian rank-and-file elsewhere in the west, providing a template not only for Gundobad’s wholesale transfer of ‘land and slaves’ to those Burgundians who had not been otherwise rewarded, but also for the accommodation of Theodoric’s army in Italy.<sup>41</sup> The crucial witness for the latter is a letter of Theodoric’s to the Senate in 509, nominating the young Roman nobleman Venantius for an honorary office. Written and preserved by Cassiodorus, it gives a lengthy panegyric on Venantius’s father Liberius, who had served as Theodoric’s Praetorian Prefect *c.* 493–500. Aside from his loyalty, and his care for the public purse, Liberius is particularly praiseworthy for ensuring the peaceful settlement of Goths in Italy:

It is my delight to mention how, in the assignment of thirds, he united both the possessions and hearts of Goths and Romans. For though men usually quarrel when they are neighbours, here the sharing of rights in estates seems to have produced concord. For the result has been that both peoples (*nationes*), while living together, have achieved accord. Behold an unprecedented and wholly praiseworthy accomplishment: division of the soil has joined its title-holders in goodwill; the friendship of the people has grown through loss, for at the cost of a part of the land a defender has been purchased, and property preserved secure and intact. A single and just law embraces all. For sweet affection must develop among those who always preserve fixed boundaries. The Roman commonwealth owes its peace, then, not least to the aforementioned Liberius, he who has transmitted to such glorious peoples (*nationes* i.e. the Goths and Romans) the zeal for love.<sup>42</sup>

<sup>40</sup> For the territorial sense, often missed, see Hydatius, ed. and trans. Burgess, s.a. 411, p. 82, a crucial passage; Sidonius, *Letters*, 7.6, on the ‘frontier (*limes*) of the Gothic *sortes*’; Victor of Vita, *History of the Vandal Persecution*, ed. K. Halm, MGH AA 3.1 (Berlin, 1879), trans. John Moorhead (Liverpool, 1992), II:39, III:4, quoting Vandal royal edicts. In Paulinus of Pella, the language of *sortes* is pervasive. The links between this usage of *sortes* to refer to barbarian ‘shares’ of Roman provinces and Roman estates, the practices of taking *sortes Virgiliae* or *sortes Biblicae* by randomly selecting a passage, and the generic notion of drawing lots deserves sustained study.

<sup>41</sup> The example of the Vandals may also, of course, have played a role, but close and direct links between Visigothic, Burgundian and Ostrogothic practice are clear, and close contacts between the kingdoms must mean that they served as direct models; note in particular the chronological and geographical proximity of the transfers in Burgundy under Gundobad (who had spent his early career until 474 in Italy as master of the soldiers) and Italy under Theodoric (and probably already under Odoacer).

<sup>42</sup> *Variae* 2.16, trans. Barnish, 28–30.

Panegyric is a slippery source, but the vocabulary here is that of farms and soil, boundaries and land. Liberius is being praised for effecting an ordered land-division, here presented as a worthwhile price to pay for Gothic military protection; sharing out estates is thus a means for preserving the security of property.<sup>43</sup>

#### IV

The growing expectations of the barbarian warbands, which in the course of the fifth century had replaced the regular army as the military arm of Roman government in the west, culminated in systematic transfers of landed property. Unless we are prepared to swallow the huge pinch of salt necessary to make Cassiodorus's picture of two peoples united in loving neighbourliness palatable, we must ask how such transfers were received by provincial landowners. The wealth of evidence for forced and illegal expropriation by barbarians, too easily overlooked in our search for administrative structures underpinning settlement, should remind us that most had little room for manoeuvre here. In fact, barbarian rulers and their Roman advisors, in attempting to lay down rules governing land transfers, were in part attempting to control and structure processes which were already taking place on the ground; by doing so, they could label transfers taking place by approved mechanisms with their blessing legitimate, and so attempt to force the return of land taken by unapproved and so illegitimate means. Hence Gundobad, initiator of the systematic transfer of 'land and slaves' by administrative instrument, was remembered among the sixth-century descendants of those Roman landowners who would have lost out not as a despoiler but as the author of 'milder laws'.<sup>44</sup> Hence Theodoric, responding to the queries of two judges hearing cases that had arisen between Goths and Romans, ruled

<sup>43</sup> Cf. Goffart, *Barbarians and Romans*, 70–3 – why would Theodoric address the Senate in terms redolent of the division of land in the countryside to hide a reality of ordered transition through tax allocation? As Goffart notes, Ennodius of Pavia independently uses nearly identical language in his panegyric on Liberius (ed. Vogel, MGA AA 7 (Berlin, 1885), 9:23); this must encourage us to take the vocabulary of estate boundaries and farms seriously.

<sup>44</sup> Gregory of Tours, *Historiae*, ed. Bruno Krusch and Wilhelm Levison, MGH *Scriptores Rerum Merovingicarum* 1.1 (Hannover, 1951), 2:33: *leges mitiores* were issued in the aftermath of bloody civil war. This passage has traditionally used to date the issue of the LC, long believed to be Gundobad's work, but this view has convincingly been challenged by Ian Wood, who has suggested that Gregory may be referring to a change in religious policy; others have attempted to identify specific laws within the LC e.g. the limitations of the 'ancient law of blame' which attempted to reduce the legitimate legal use of violence. I would suggest that in the aftermath of the disorder and expropriations, a firm ordering of the basis of Burgundian settlement is precisely what Gregory's family might have remembered as mitigatory laws.

that any estates which had been seized in his reign by barbarians without a warrant issued by the appropriate official were to be returned to their original Roman masters.<sup>45</sup>

Mention of official warrants effecting and limiting transfer reminds us that not every landowner in every province was subject to expropriation. Our understanding of the social impact of land transfer is hampered by a lack of documentary evidence, although the vulnerability of senators to expropriation for treason and 'political' crime is a recurrent feature, and both Lombards and Vandals systematically targeted senatorial wealth in the earliest stages of settlement. A single papyrus from Ravenna in 540 hints at agreements made between Roman landowners and provincial officials, through which the impact of land-division was mediated and negotiated: it transfers a portion of an estate to the church of Ravenna, guaranteeing that the property was immune from any public or private charge, and from transfer to barbarians as an 'allotment'.<sup>46</sup> We might well suppose that, for an individual landowner with sufficient influence, it would have been possible to volunteer a particular estate whilst safeguarding others, but we simply lack dense enough evidence to go further.

What is clear, nonetheless, is that barbarian settlement had important implications for tax liabilities. In a society where title to land was dependent on ability to meet fiscal demands, it could scarcely be otherwise. Here, thanks to Cassiodorus, our evidence is fullest for Italy; the intimate link between property and fiscality that it demonstrates persuaded some scholars to argue that barbarian settlement was

<sup>45</sup> *Variae* 1.18; special judges are here used to hear cases between soldiers and civilians, with the Goths having inherited the special status previously enjoyed by the Roman military. Goffart, *Barbarians and Romans*, 89–90, demonstrates that the vocabulary of *delegatio* by *pittachium* is generic, not specific to barbarian allotment; but the argument that *Variae* 1.18 cannot be relevant to the Gothic settlement as it concerns 'private law property' puts the cart before the horse, and cannot explain the implication of this letter that there had been systematic land transfer effected by such warrants.

<sup>46</sup> J.-O. Tjäder, *Die nichtliterarischen lateinischen Papyri Italiens aus der Zeit 445–700* (3 vols., Lund and Stockholm, 1954–82), no. 31. The fact that this is a portion of a larger estate encourages speculation that the immunity rests in the fact that this is a relic of a property previously subjected to division; whilst the guarantee of immunity from public or private charges, presumably implying that the donor had made arrangement for all personal and fiscal obligations from the remainder of his property, is a standard formula in sixth-century Ravennese donations (it presumably was a declaration by the former owner that he had met all liabilities so that the land, now owned by the church, was exempt from all charges); but the *sors* clause is unique; that this guarantee was given under a Roman regime after Justinian's 'reconquest' must strengthen the case that it rested on the estate's prior history i.e. it related to land that had already been subjected to the process of allocation and division so should not be so treated again.

essentially a reallocation of tax revenues.<sup>47</sup> In fact, Cassiodorus does show Gothic soldiers receiving donatives and payments funded out of tax, but also makes it clear that this form of reward complemented the grants of allotments (*sortes*). Theodoric's grandson and successor Athalaric could rally his army by reminding them that 'allotments of your own nourish you, and our gifts enrich you'. Enriching gifts of moveable wealth created personal bonds between ruler and warrior. But these were not the basis for settlement: allotments (*sortes*) nourished Gothic households.<sup>48</sup> Thanks to their official position as the military arm of the Roman state, Theodoric's Gothic army enjoyed the immunity from taxation that traditionally applied to Roman soldiers, and so estates granted out as *sortes* were likewise tax exempt.<sup>49</sup> Cassiodorus preserves an administrative instrument cancelling the tax due from an estate which Theodoric has just granted out as an allotment (*sors*) to the Gothic (i.e. Arian) priest Butila.<sup>50</sup> Given this direct evidence that the transfer of land as Gothic allotments led to an adjustment of tax liabilities, we might suspect that the loss of Roman property might have been made more palatable by a lightening of the tax burden. After all, fiscal exemptions of any kind were liable to imperceptible creep, particularly in the hands of the powerful or legally articulate. Another of Cassiodorus's letters, for example, deals with the case of 'ancient barbarians' settled on the Danube frontier, who had married provincial women and who were now claiming tax exemption for their wives' inheritances; although their claims were turned down, the potential elasticity of any concession is clear.<sup>51</sup> Beyond Theodoric's kingdom, the evidence is more sparse, but there are indications that land held by Burgundians or Visigoths was exempt from taxation, and we may assume similar processes to be at work.<sup>52</sup>

<sup>47</sup> Central to Goffart's argument is the evidence for the *illatio tertiarum* (*Barbarians and Romans*, 73–9); traditionally seen as an additional tax imposed on those landowners whose land was not divided and assigned as allotments, Goffart convincingly shows it is actually an earmarking of a portion of existing tax revenues (*Variae* 1.14 is crucial). *Variae* 2:17 clearly demonstrates that land granted as Gothic allotments no longer paid the *illatio*; it is difficult to read this as solely a matter of accountancy conventions with no effect on the ground.

<sup>48</sup> *Variae* 8:26. On grants of tax revenue to Goths, Goffart, *Barbarians and Romans*, 80–8.

<sup>49</sup> Goffart, *Barbarians and Romans*, 91–3, is conclusive.

<sup>50</sup> *Variae* 2.17. Goffart argued that this letter actually concerned the diversion of tax revenues from the local tax bureau to Butila, whose *sors* thus comprises the tax revenues from the stated estate; this seems forced, and there is no good reason to abandon the less complex reading that Theodoric was simply cancelling the liability on land granted out as a Gothic allotment.

<sup>51</sup> *Variae* 5.14.

<sup>52</sup> There is actually no direct evidence for the land tax under the Burgundians or the Visigothic kings of Toulouse, but in the later sixth century both the Merovingian and Visigothic kings taxed. That barbarian lands were exempt from tax is the implication of IJ 10.1.14 (Romans to reclaim lands of which they are unjustly deprived 'in order that the royal fisc may sustain no loss') and 10.1.16 for the Visigoths; for the Burgundians from a

If tax breaks may have helped Roman landowners accept the granting out of allotments, barbarian rulers were also keen to present this limited and ordered land-division as an acceptable price for the security of property, as in the panegyric on Liberius. For one thing, for all the established legal forms used to effect land-divisions, the precise legal status of estates transferred as *sortes* was debatable. Roman property law, rooted in the fundamental distinction between title (*dominium*) and possession, was able to separate distinct levels of right in a single piece of property; it also allowed various arguments for the reclamation of land wrongfully held. In provincial societies whose fabric was still shaped by litigatory complexities, ambiguity about the precise extent of the rights acquired by barbarians in their allotments inevitably gave rise to attempts by Roman landowners to use the law to re-establish control over estates now held by barbarians. Not that litigatory argument was not the sole preserve of Romans. Quite the opposite. Burgundian kings forbade their barbarian subjects from acting as advocates for Romans, and from representing their hosts in boundary disputes, precisely because such actions were possible stratagems of expropriation, whilst Boethius could look back on his career in Theodoric's service and lament 'how often have I protected such poor wretches as the unpublished covetousness of barbarians harassed with unending accusations?'<sup>53</sup> Legal complexities should not blind us to the raw fact of barbarian control of what had been Roman land in the countryside, but law here did not simply legitimate control rooted in coercion.

In fact, litigation over barbarian land reshaped notions of title. This is clearest in Sigismund's *Book of Constitutions*. Here, the rights of Burgundians over their allotments are consistently limited: they are to be subject to special inheritance rules to keep them in a restricted male line; they are only to be sold under certain strict conditions, and then only to the Roman host from which they had been received; litigation over the boundaries of 'fields which are possessed by barbarians through the law of hospitality' is to be conducted between Roman hosts, not barbarian guests. Allotments are thus a special kind of property, and the restrictions of Burgundian rights, and continuing interests of Roman hosts, in them are explicitly contrasted with the full ownership enjoyed by Burgundians over estates

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comparison of LC 84 with *Lex Romana Burgundionum* [hereafter LRB], ed. L. von Salis, MGH Leges Nationum Germanicarum 2.1, 40 (the former limits the ability of Burgundians to sell land and dissipate allotments, whilst the latter, the equivalent clause in a compilation of Roman legal maxims, requires that (Roman) vendors meet the tax liability as a condition of sale). Tax exemption for barbarians is also witnessed for Vandal Africa and Merovingian Gaul.

<sup>53</sup> LC 22, 55; Boethius, *On the Consolations of Philosophy*, ed. and trans. E. K. Rand and H. Stewart (Cambridge, MA, 1918), I.4.35.

they have received as 'public gifts', direct from the king. The substantive restrictions on rights over allotments are matched by a very careful use of legal terminology: whereas the standard terms for possession (*possidere* and its derivatives) are used in discussing the rights of Roman landowners and Burgundians in receipt of royal gifts, the vocabulary of unrestricted possession is never used of allotments.<sup>54</sup> The limitation of property rights enjoyed by Burgundians over their allotments is consistent and striking. It did not, however, rest on the wholesale application of any single distinction or tenurial template inherited from Roman property law; rather, in the material collected in the *Book of Constitutions*, it emerges piecemeal through a case by case application of established legal arguments and maxims to a new situation, as complaints over particular cases reach the king's ears, resulting in the issue of edicts clarifying the precise legal implications of Gundobad's transfer and of rulings delineating on the respective rights of 'host' and 'guest' over the land converted into Burgundian 'allotments'. We must suspect that the agency of the legally learned Roman advisors whose expertise shaped so much of this legislation played a crucial role here; the remarkable insistence on the limited nature of Burgundian rights in their allotments rests on their firm conviction that the granting of 'land and slaves' as allotments was not an absolute and outright transfer of rights in the relevant property from host to guest.

Learned distinctions over interlocking rights in property and closely drawn limitations on their disposition may seem technical in the extreme, but in at least one area we can see the legal arguments advanced by Roman landowners having a very real and tangible effect. In the recurrent legislation dealing with the legal status of land newly brought into cultivation, Burgundians undertaking clearances are repeatedly required to make real and sizeable concessions to their Roman hosts. The roots of this requirement lay in Roman legal rules dealing with common land, which was held to be shared in proportion to an individual's possessions. From this principle came the requirement that those making a clearance and bringing it into cultivation owed proportionate compensation to all those who had previously shared rights in the uncleared waste or wood. A series of case by case rulings preserved in the Burgundian *Book of Constitutions* show this logic being applied to common rights in woodland, and extrapolated to establish a new principle, that half of all clearances made by Burgundians are to be given to Roman landowners, further extrapolated to a series of rulings requiring that Burgundian guests compensate their Roman hosts for clearances and new build by offering

<sup>54</sup> See Innes, 'On the Social Dynamics of Barbarian Settlement', and note already Wood, 'Ethnicity and the Ethnogenesis', 68–9.

them half of all clearances, vineyards, orchards and farmhouses.<sup>55</sup> This logic is paralleled, in telescoped form, in the seventh-century Visigothic code. The compiler of this lawbook understood Euric's legislation on Gothic 'guests' delimiting boundaries within their hosts' estate as a description of a 'division of arable lands or forest': this involved a transfer of land to cultivate, or indeed to clear before bringing under the plough, and set up the barbarian guest with a small-holding carved out within the boundaries of a Roman estate. Another chapter concerns the respective rights of Goths and Romans over clearances made in 'undivided forests', and directly parallels the Burgundian laws.<sup>56</sup> These were meaningful acknowledgements of the priority of the Roman proprietorial grid, which involved barbarian settlers investing their Roman neighbours with a part of the fruits of their labour in order to establish outright possession unencumbered by the interlocking and overlapping rights rooted in Roman land registration and long-established estate boundaries.

Elsewhere, we lack the dense cluster of legislation that allows us to view the development of the 'law of allotments' in Burgundy. But we do have evidence for a similar dialectic of claim and counter-claim, appeal and ruling, as Roman landowners sought to preserve some form of title to land granted out to their barbarian guests. Crucial here were the various legal remedies for the reclamation of unjustly held property, and the defence of prescription allowed in Roman law, in which attempts to contest title were disallowed if the current possessor could demonstrate long and uninterrupted enjoyment of property (thirty years was the norm). The sparse and fragmentary survivals of Visigothic legislation on barbarian allotments recognisably respond to Roman efforts at reclamation: it allowed claims to be advanced for the extraordinarily long period of fifty years, thus significantly extending the period in which Roman landowners could seek to recover property.<sup>57</sup> The calamitous effects of the loss of family property, and the failure of his attempts to recover it, dominated Paulinus of Pella's meditation on his life. Writing close on half a century after these disasters, he accepted that he could not

<sup>55</sup> LC 12, 31, 54.2, 67. Note on the links between land registration and boundaries, see *Variae* 3:52.

<sup>56</sup> LJ 10.1.9; LC 12, 31, 67.

<sup>57</sup> CE 277.1. Note that there is no limitation to land unjustly seized or taken by force, as in comparable legislation elsewhere: the decree simply limits attempts to recover 'Roman third or Gothic allotments' to fifty years. There is no hint as to the potential contexts for such reclamations: but what would have occurred on the death of the initial Gothic guest? The remainder of this decree restates the general rule of prescription after thirty years, except in the case of fugitives. For the subsequent reception of the special fifty-year prescription in cases turning on land transfers between Goths and Roman see LJ 10.2.1 (restating Euric) and 10.1.14 (extending the initial ruling specifically about *sortes* to Roman property in general).

longer entertain hopes of recovery, and he gave thanks to God for the actions of the Goth who, wishing to acquire ownership of a small farm 'once wholly mine', sent 'a price of his own wishing, not indeed just, but accepted like a godsend'.<sup>58</sup> The experience of Paulinus's generation, which had borne the brunt of the first phase of barbarian settlements, was exceptional, and Paulinus himself was particularly vulnerable thanks to his involvement in the failed regime of Romulus Attalus and his family history. Paulinus's sons were able to seek favour at the Gothic court in Bordeaux, reclaiming property that was farmed by Gothic 'guests', and Sidonius could petition his friends at the Visigothic court for the return of his mother-in-law's property.<sup>59</sup> In Italy, Theodoric was clear that unjust seizures made by his followers should be returned, but found it convenient to uphold established time limits on litigation: responding to queries raised by two judges who had been dispatched to hear cases between Goths and Romans, he ruled that Roman land that had been improperly seized by Goths in his reign was to be returned, but cases predating his conquest of Italy were to fall on account of the thirty years' rule.<sup>60</sup> In the unique context of Vandal Africa, the constant lobbying of exiled African landowners inspired Imperial legislation that enshrined and extended rights of reclamation, discounting the period of Vandal rule from the normal thirty years' limitation.<sup>61</sup> Continuing Imperial hostility to the Vandal kingdom in Africa explains such legislation, but the case of the family of Bishop Fulgentius of Ruspe, arch-critic of the Vandal regime, shows that Roman landowners within Africa were able to advance claims and meet with success.<sup>62</sup> That Fulgentius's ancestors were able to recover at least some property under a barbarian regime systematically targeting

<sup>58</sup> Paulinus, *Eucharisticon*, lines 570–81. Is the interval between Paulinus's fall in 414/15 and the time of writing (c. 460) significant, corresponding as it does to the fifty-year limitation of Euric's code? The 'sale' of the farm is particularly intriguing: given that the farm was a former rather than a current possession of Paulinus's, it is difficult not to see a Gothic 'guest' here buying out the residual rights of a former Roman owner.

<sup>59</sup> Paulinus, *Eucharisticon*, lines 498–515 (note that when the *amicitia* of the king turned to *ira*, property was lost once again). Sidonius, *Letters*, 8.9, and note Sidonius's lament that he has 'yet to acquire the usufruct of a third at the price of a half', perhaps suggesting that what he sought was acknowledgement of his title over an estate granted out as *sortes*.

<sup>60</sup> *Variae* 1.18. For a specific case of restitution see *Variae* 8.28.

<sup>61</sup> Procopius, *Wars*, ed. and trans. H. Dewing (5 vols., Cambridge, MA, 1914–28), 3.3, says that this takes place in Spain under Honorius, but the closest surviving legislation comes in Valentinian III's attempts to compensate dispossessed African landowners (ed. Mommsen as an appendix to the Theodosian Code, as n. 15 above), as shown by Goffart, *Barbarians and Romans*, 66–7 n. 18, citing specifically novel 35 of 452, but also novels 13, 34 for context; Procopius wrote in the aftermath of reconquest when reclamation, specifically allowed by Justinian (n. 63 below) was a live issue. This legislation concerns expropriated property in general, not land granted out as *sortes* in particular; Vandal kings systematically expropriated senatorial landowners.

<sup>62</sup> Ferrandus, *Life of Fulgentius*, 1.4, trans. R. Eno (Washington, DC, 1992).

the wealth of the senatorial aristocracy and the Catholic church confirms that we should take the rulings that make up the bulk of our evidence for reclamation seriously.

The recurrence of attempted reclamations right across the barbarian west is striking, and should remind us that barbarian settlement was nowhere a once and for all transfer, but the subject of an argument and appeal over several generations. Ultimately, however, the passage of time hardened the loss of property into fact. This was the case even in Africa, where traditional time-limits were effectively suspended. Here, for all Justinian's encouragement of reclamation by the children or grandchildren of the dispossessed, a century or more of Vandal rule was a huge obstacle to successful claims, and other groups in provincial society felt that they had stronger claims; it is no surprise that there is little sign of extensive landholding on the scale of late Roman times in Byzantine Africa, and those sixth- and seventh-century figures whose interests extended across the Mediterranean into other Imperial provinces owed their position to their membership of a new court elite rooted in Constantinople.<sup>63</sup> Elsewhere, the residual claims of former Roman owners slowly fade as we move into the middle decades of the sixth century. Justinian's Pragmatic Sanction, in marked contrast to his African legislation, ignored the whole issue of prior Roman ownership and looked back to Theodoric's time in limiting claims to property in Italy; its object was to ease the disruption caused by the Gothic wars, not to undo barbarian settlement.<sup>64</sup>

Quite how the complex interplay between the title of Roman host and the control of barbarian guest that had typified the early stages of barbarian settlement unravelled remains obscure. But in a classic example of the elasticity of Roman legal forms and their ability to metamorphose to fit changing social contexts, prescription, which began as a potential defence against actions of reclamation, became a basis for claiming ownership. The establishment of title by long and uninterrupted enjoyment is often seen as indicative of 'vulgarisation', as the hierarchies of rights envisaged by Roman law were abandoned in the face of unlearned provincial practice that tended to equate title with the physical fact of occupation.<sup>65</sup> Here, as in the processes of division, clearance and compensation whereby barbarian guests were able to separate their interests from those of their Roman hosts and slowly establish outright and

<sup>63</sup> Justinian, Novel 36, ed. R. Schöll and G. Kroll, *Corpus Iuris Civilis*, III (Berlin, 1928); Procopius, *Wars*, 4.14. One thinks of the family of the Emperor Heraclius, the son of the governor of Africa who was able to mount a successful coup in 608–10: their interests depended on grants of office, not inherited land.

<sup>64</sup> Pragmatic Sanction, ed. R. Schöll and G. Kroll, *Corpus Iuris Civilis*, III (Berlin, 1928).

<sup>65</sup> Levy, *West Roman Vulgar Law*, 176–93.

unattenuated rights of possession, we can clearly witness a simplification of rights over property, but to see it as a vulgar deviation from a static classical norm is mistaken. Roman law was always a series of arguments and techniques used to order disputes, never a passive description of a given social structure. The unencumbered and absolute rights over property that we see emerging in the course of the sixth century were not the result of 'vulgar' provincials and barbarians deviating from established practice; they crystallised through the adaptation and extrapolation of traditional forms to interpret new social structures.

## V

The wealth of legal material generated by such disputes over tenurial rights and wrongs in fact constitute the crucial proof that barbarian settlement was not a seamless administrative innovation that elicited little complaint from provincial landowners. In the rulings of barbarian kings like Gundobad and Theodoric, we hear the echoes of a chorus of complaint voiced in the practical language of the law-suit, and we see its effects. The output of the Burgundian, Ostrogothic and Visigothic courts is an impressive witness to the vibrant legal culture of the new kingdoms of the west, a continuity rooted in the education and expectations of the landowning classes. To be seen as legitimate by the provincial populace, authority had to be articulated and exercised in the appropriate terms, hence the reliance of barbarian kings on the expertise of Roman advisors, hence their responsiveness to the continued petitions of provincial landowners, hence their use of characteristically late Roman genres of legislative exhortation to make their will known and instruct their officials. But we should not be misled by these continuities in the idiom of authority: they were useful precisely as they helped cope with substantive change. Barbarian rulers and their Roman advisors had no alternative but to concede, and attempt to control and order, the transfer of land to the barbarian rank-and-file. To acknowledge this is not to return to older, and rightly discredited, views that see the fifth and sixth centuries in terms of migrations motivated by primal land hunger: the movements of barbarian armies were determined above all by the internal Roman politics in which barbarian rulers were now such key movers. But once, in the course of the fifth century, barbarian kingdoms began to emerge in the west, nothing was more inevitable than that those whose arms underpinned the new position of their kings should seek their reward. Here, established military customs governing the sharing of the spoils of victory may have played a role: after all, the Byzantine army which had reconquered Africa in the 530s was so outraged at Imperial orders which allowed 'the slaves and all other things of value' to be divided as booty,

but insisted on the registration of the lands of the defeated Vandals as Imperial property, that it mutinied.<sup>66</sup>

The barbarian kings who built the first wave of successor states in the former Imperial heartlands of the west relied on the active collaboration of a critical mass of the landowning classes; hence they preferred wherever possible to use Roman honorifics, not claim ethnic kingship.<sup>67</sup> But they could not rule through Roman advisors alone; they were also dependent on both the continued support of their military followings. Compelled to recognise the social and political fact that their armies would acquire provincial land by hook or by crook, they had little alternative but to attempt to control that process in a manner that enabled them to present it as a bitter pill necessary for landowners to swallow if they were to continue to enjoy the rule of law and security of title. Roman fears focused on the very real possibility that settlement might end in the domination of a class of barbarian landlords, guests turned masters who might claim ownership over the lands of their former hosts and sit atop provincial society enjoying the income and produce of Roman estates. Where landowning elites were weak and barbarian rulers able and willing to impose their will through violence, this could happen: Victor of Vita shows Vandals taking over Roman villas in this manner in Africa, and Paul the Deacon imagined Lombard settlement as resting on Roman senators handing over a third of their income to their new masters, being thus reduced to the status of tributaries.<sup>68</sup> Land-division and the creation of barbarian allotments, as practised in the Burgundian, Ostrogothic

<sup>66</sup> Procopius, *Wars*, ed. Dewing, 4.14. Of course, Procopius's testimony is slippery as a representation of what actually happened in the mutiny: his tale here ascribes agency to the wives and daughters of former Vandal owners, who marry Roman soldiers and then shame them into claiming the land, in a tale run through with gender stereotypes. But it does draw on an expectation that the land of defeated foes could be treated as booty comparable to moveables and slaves; even if this expectation was influenced by the example of the barbarian settlements of the fifth and sixth centuries, it does show that land-division could be rooted in that notion that soldiers were entitled to a share in the spoils of war.

<sup>67</sup> Most recently, Andrew Gillett, 'Was Ethnicity Politicised in the Earliest Barbarian Kingdoms?', in *On Barbarian Identity*, ed. Gillett, 85–123; our terminology thus misleadingly normalises ethnic kingship.

<sup>68</sup> Vandal Africa: the stories of persecuted Catholics recorded by Victor of Vita concern a class of Catholics overseeing Vandal households or holding office at court, whose social context and religious response invites comparison with the ninth-century Cordoban martyrs movement in Islamic al-Andalus. Lombards: Paul the Deacon, *Historia Langobardorum*, 2.32, 3.16, ed. L. Bethmann and G. Waitz, MGH *Scriptores Rerum Langobardorum* (Berlin, 1878), seems to be thinking of a particular tenurial structure, that of the *casa tributaria*, witnessed on royal land in laws of Liutprand 59. This would underline the care with which we need to take this very late source, whose accounts of Lombard settlement constitute a mythical foundation charter for the eighth-century kingdom. But on Paul see now Walter Pohl, 'Per hospites divisi. Wirtschaftliche Grundlagen der langobardischen Ansiedlung in Italien', *Römische Historische Mitteilungen*, 43 (2001), 179–226.

and Visigothic kingdoms, responded to these very real fears by giving guests a separate and separable stake in the countryside; barbarians who attempted to establish a stranglehold over Roman landowners rather than accepting an allotment were thus identified as the objects of royal ire.

The urgent and conflicting demands placed on barbarian kings were crucial determinants of the architecture of these primary successor states in the west. Barbarian elites quickly merged with the major landowners of the senatorial aristocracy, themselves eager to serve at barbarian courts in military as well as civil capacities. This process is well known, and rightly given a central role in the historiography, but it needs contextualising. For in the course of the fifth and sixth centuries, the hegemony of this nascent elite of militarised landlords was checked, and as a result state-formation in the early medieval west was to follow a unique path. Ancient agrarian Empires elsewhere in Eurasia were able to integrate military conquerors from their fringes within reconstituted elites; the structures of provincial administration and landownership were thus if not preserved at least adapted in the service of new masters. The necessity of conceding land to the rank-and-file of their armies made it impossible for barbarian rulers in the post-Roman west to preside over a comparable process. And those concessions of land prevented the emergence of a countryside structured by unmediated militarised landlord power. When we see Sidonius Apollinaris and his peers joking about the barbarity of the troops billeted on their estates, we might expect that fifth-century practices of hospitality might lead directly to the strengthening of the power of the top tier of the landholding elite, able to absorb bands of barbarian warriors as private armies and so secure their position through militarisation, whilst building careful alliances with barbarian leaders. But the forms of land transfer that emerged in the course of the fifth century nipped such possibilities in the bud. In their legislation, barbarian kings were insistent on the direct relationship between barbarian settlers and their king, a relationship implicated in and expressed through the special status of barbarian allotments. Insistence on the personal link between king and soldier, articulated by the munificence of gifts received from the king's hand, is a recurrent theme in the material collected in Cassiodorus's *Variarum* and Sigismund's *Book of Constitutions*; in the latter, land allotments as special royal gifts are subject to very special rules of inheritance, and are not to be dissipated through sale, gift or bequest, so that they can continue to function as the focal point of a direct relationship between adult male warriors and their king.<sup>69</sup>

<sup>69</sup> These concerns, most fully expressed in the Burgundian laws, are echoed elsewhere e.g. in Salic law's famous discussion of inheritance of *terra salica*. I will discuss the implications of the process of settlement for gender relations in a forthcoming paper.

Barbarian settlement created a class of tax-exempt landowners, whose freedom and title was rooted in military service for the king of their people. Before we search for distant precedents in the forests of Germany as described by Tacitus or in an alleged Germanic warrior culture sustained by oral traditions first surfacing in high medieval vernacular literature, we should pause and consider that settlement in the former Roman provinces of the west transformed the internal structures of barbarian peoples. For in adapting from the economy of the wartrail to residence in the provincial countryside, the links within barbarian warbands and the structures of personal dependence that had bound them together were altered. Burgundian freedmen, thanks to the receipt of allotments, were able to become effectively independent of the masters in whose households they had previously dwelt. In Theodoric's Italy, we can even hear the voices of individual Goths, insistent that their military service gave them claim to a special freedom and guaranteed their continued independence of their richer neighbours. Anduit, an elderly veteran whose infirmity had allowed Gudila and Oppa to reduce him into slavery, successfully claimed that his military service meant that he should continue to enjoy 'the freedom of our army'; Costula and Daila were likewise confirmed as enjoying 'the freedom of the Goths' and so exempt from the 'onerous services' demanded from them by Gudila.<sup>70</sup> The tensions between Goths so evident here broke into the open following Theodoric's death, in a drawn-out political conflict between a Romanising Gothic elite crystallising around the extended royal dynasty and the military leadership.<sup>71</sup> Anduit, Costula and Daila claimed a specifically Gothic freedom rooted in military service for a king. This was a new kind of freedom, no longer enmeshed with concepts of citizenship and obligations towards the state, but rooted in military service and tax exemption and guaranteed by a personal relationship with a barbarian king.

This new social template was to animate the early medieval west. But its emergence was only possible because the mechanisms used to accommodate barbarian armies in the fifth- and sixth-century west had significant effects on existing structures of landownership. Of course, the impact of the barbarian settlements on Roman landowning is difficult to quantify, and the differential impact of settlement on different sizes of Roman landowners impossible to trace.<sup>72</sup> However, there is no

<sup>70</sup> LC 57; *Variae* 5,29–30.

<sup>71</sup> These conflicts have yet to receive a satisfactory examination; our understanding is dependent on the compelling but clearly disingenuous stories told by Procopius, *Wars*, 5,2–4.

<sup>72</sup> Our best estimate is that barbarian armies numbered tens of thousands but settlement took place over several generations, and barbarian armies included professional soldiers, the defeated followings of rival generals and displaced provincials, and not all barbarians received allotments.

real room for doubting that barbarian settlement marked a substantial transfer of resources away from the Roman landowning classes; its effects were particularly marked because settlements were in all probability geographically uneven, clustered in particular areas. We should not see the transfer of land to barbarians in isolation from the range of other factors tending to render large-scale and extensive landholding difficult to retain, not least the disruptive effects of disorder and warfare. Exile and expropriation for 'political crime' deserve particular attention. By the last third of the fifth century the crystallisation of political division severely limited the ability of the remnants of the senatorial aristocracy, Sidonius and his peers, to maintain the networks of friendship and obligation that had criss-crossed the provinces of the western Mediterranean; the Vandal conquest of Africa and the associated campaigns of expropriation here destroyed one crucial integrative mechanism. This context of fragmentation must have made barbarian settlement particularly difficult to negotiate for senatorial landowners; in a politically divided west, pressure could only be brought to bear on one barbarian court at a time, and entry into the service of one barbarian king encouraged the expropriation of properties on the other side of the new political boundaries which divided the former western Empire. The primary attempts at barbarian state-formation in the former Roman provinces, resting on coalitions of senatorial wealth and barbarian might, were to prove short-lived, and lasting political settlements came through the creation of looser, more open and flatter elites around the courts of the Merovingians in northern Gaul, the Lombards in northern Italy and the Visigoths in Spain. Geopolitics – the strategic advantages enjoyed by Justinian's Byzantium and the Merovingians when it came to mobilising barbarian military manpower from the long-standing Roman recruiting grounds along the Danube and Rhine frontiers – were central here, but the crucial result was the definitive, if inevitably temporary, end of large-scale landowning in the west.<sup>73</sup>

The systematic transfer of Roman property to barbarian settlers undermined the economic and social muscle of the senatorial aristocracy, and encouraged its disaggregation into a series of regional elites. The areas that had witnessed the densest barbarian settlement were precisely those whose detachment from the old networks that had bound the western Mediterranean heartlands of the Empire together was most apparent by the second half of the sixth century. The northern Italian plain, for example, proved unable to sustain an extensive political system of any kind in the second half of the sixth century. Lombard state-formation in the seventh and eighth centuries rested on the fact that the Lombard king was the only extensive landowner in the north, with royal gift-giving

<sup>73</sup> See now Chris Wickham, *Framing the Early Middle Ages: Europe and the Mediterranean 400–800* (Oxford, 2005), which appeared after this paper was completed.

to bind together small-scale elites whose horizons were limited to at most two or three cities and whose property interests were tiny by late Roman standards. The comparison with southern and central Italy, where aristocratic scale although diminished still sustained regional systems, is instructive. Here, middling landowners who in late Roman times had hung on to the coattails of their senatorial neighbours, and cemented their local position through civic patronage, were able to maintain their position relatively well: after 700, their networks of regional dominance, revolving around Rome, Naples and Benevento, begin to become visible. Historical differences between north and south and contrasting political experiences of course play a role in explaining differential rates of disruption, but it can scarcely be doubted that a century and more's worth of land transfers to successive barbarian armies in the north was a crucial cause of the extreme fragmentation so evident there.<sup>74</sup>

In southern Gaul, we see a similar dynamic, with collapse followed by a slow recovery allowing free-standing regional networks to emerge independent of distant courts by the decades around 700. Collapse is most dramatic in the former senatorial heartlands that were also – and hardly accidentally – where the Burgundian and Visigothic elites made their homes in the fifth century. Here, indeed, there was no equivalent to the Lombard court at Pavia, which by maintaining at least one system of extensive landowning was able to effect social and political reintegration in the seventh century. By the middle of the sixth century southern Gaul, socially and politically so closely bound to the Imperial court in the fourth century and able to sustain a series of regional political forums – barbarian courts at Toulouse and Lyon, a regional council at Arles – through the fifth, found itself distant from the seats of political power, on the periphery of a series of political systems whose heartlands were distant and essentially parasitic on the region.<sup>75</sup> Southern Gallic elites were unable to sustain a political system of their own: the failure of the would-be Merovingian king Gundovald is striking here. The well-known redefinition of the southern Gallic aristocracy in terms of a holy charisma rooted in episcopal office which mediated access to the court of heaven needs to be placed in this specific regional context of political marginalisation, rather than seen as a normative strategy of post-Roman survival or a manifestation of underlying continuity. Focused on saint's cults that legitimated family

<sup>74</sup> Fundamental on aristocratic scale in the north is Chris Wickham, 'Aristocratic Power in Eighth-Century Lombard Italy', in *After Rome's Fall*, ed. Murray, 153–70; for landowning in Byzantine Italy see Tom Brown, *Gentlemen and Officers: Imperial Administration and Aristocratic Power in Byzantine Italy 554–800* (Rome, 1984), whose emphasis is inevitably on Ravenna and Rome.

<sup>75</sup> Think of the Merovingians' relationship with Marseille, and also the importance of income from the land tax, only documented south of the Loire, for sixth-century Merovingian state-formation.

traditions of episcopal office in a handful of cities, the social topography of Gregory of Tours was wholly alien to that of his distant ancestor Sidonius Apollinaris, with its far-reaching networks of friendship. Those sixth-century Merovingians like Guntram who drew on Burgundian tradition were not based in the Rhone valley, but further north at centres such as Chalons-sur-Saone. It may well be that the very different elites of the Merovingian heartlands of northern Gaul, and of southern Spain where sixth-century Visigothic kings resided, surpassed those of southern Gaul in the course of the sixth century. In southern Spain, around Cordoba and Seville we can detect the survival of regional landowning networks with which sixth-century Visigothic kings attempted to align themselves: Theudis, for example, was able to gain the throne thanks to an armed retinue of 2000, largely recruited from the estates of the senatorial heiress he married.<sup>76</sup> In northern Gaul we can see impressive and extended systems of aristocratic landholding emerging around Merovingian courts by the time we begin to get a documentary record in the seventh century.<sup>77</sup> In the south, regional networks of landownership enabled their leaders to access court politics, and in the seventh century even to bid for power there, as the attempted usurpation of the Visigothic throne by Duke Paul of Narbonne, or the influence of Bishop Leodegar of Autun at the Merovingian court demonstrate.<sup>78</sup> Royal patronage here allowed the consolidation of landowning networks, and after 700 the failure of court politics in both Gaul and Spain as a result of internal conflict occasioned by the Carolingian and Islamic takeovers respectively enables us to see a series of local systems whose leaders enjoyed sizeable holdings: the will of Abbo *rector* of Provence details one such constellation.<sup>79</sup> These were formidable figures, but they stood at the apex of regional hierarchies, rather than defining an extensive system in the manner of their late Roman forebears.

## VI

We began with Sarwa Gastimodus's epitaph, using a resolutely Roman medium to advertise his identity as a warrior and guest in early sixth-century Lyon. Let us end by returning there, and attempting to trace how changing identities were enmeshed with the structural transformations we

<sup>76</sup> Procopius, *Wars*, 5.7.

<sup>77</sup> See e.g. *Chartae Latinae Antiquiores*, XIII, ed. H. Atsma and R. Marichal (Zurich, 1983), nos. 569, 571, XIV, ed. Atsma and Marichal (Zurich, 1984), no. 592.

<sup>78</sup> See *The Story of Wamba*, ed. and trans. J. M. Pizarro (Washington, DC, 2005); Paul Fouracre and Richard Gerberding, *Late Merovingian France: Hagiography and History* (Manchester, 1996).

<sup>79</sup> Abbo's will is edited, translated and discussed by Patrick Geary, *Aristocracy in Provence. The Rhone Basin at the Dawn of the Carolingian Era* (Philadelphia, 1985).

have been watching unfold. The identities that animated Sarwa's world were relational. To be a guest one needed a host, whilst the identification of barbarians as warriors presupposed a civilian population from which they were differentiated. Locked in a defining embrace, Burgundian and Roman identities thus played off and so transformed each other. The process of 'ethnogenesis', which took place as military followings of diverse origin acquired a common identity that defined a specific role in provincial society, thus effected more than those who learned to see themselves as 'Burgundians'. Roman identities were transformed, too. The constant appellation of provincial landowners, literally possessors (*possessores*), as Romans in the legal evidence, for example, served to define them in ethnic terms in contradistinction to their Burgundian guests; Roman identity, no longer tied up with notions of citizenship within a *res publica* which guaranteed the rule of law, became both far more 'ethnic' and far more immediate to the landowning classes, particularly the lower tiers whose horizons and identities remained resolutely local. And other modes of identification jostled with the binary ethnic division of provincial society. Kings increasingly referred to the totality of their subjects as 'our people', whilst the label 'barbarian', originally a Roman term for those who lacked the civilising benefits of law and self-restraint, was appropriated and transformed in Burgundian legislation.<sup>80</sup>

Ethnic distinctions also interacted with class identities. The horizons of the barbarian elite, enriched with gifts of royal land that were therefore unencumbered with any ongoing relationship with any host, differed from those of the humble holder of an allotment carved out from the estate of a Roman landowner who was therefore now a neighbour: Sarwa's identity as a warrior and a guest differed from that of his peers who entered into the highly cultured circles of senatorial patronage. One of Sarwa's contemporaries, Count Ansemund of Vienne, received a series of elegant Latin epistles from Bishop Avitus of Vienne, reflecting his integration into the cycle of banquets and politesse which animated the high society of the Rhone valley; he was to bequeath his property, in all probability acquired by royal gift, through a written instrument addressed to 'my brothers, the senators of Vienne'.<sup>81</sup> Royal legislation which it was Ansemund's job to enact, however, limited the ability of the majority of his fellow Burgundians to act likewise; allotments could not be disposed of as their owner pleased, and their very nature institutionalised a latent conflict of

<sup>80</sup> For discussion, Amory, 'The Meaning and Purpose of Ethnic Terminology'; the transformation of the label 'barbarian', paralleled in Ostrogothic Italy, is particularly striking.

<sup>81</sup> Avitus of Vienne, *Epistolae*, ed. R. Peiper, MGH AA 6.2 (Berlin, 1883), indispensable trans. and discussion by Danuta Shanzer and Ian Wood, *Avitus of Vienne: Letters and Selected Poems* (Liverpool, 1998), nos. 55, 80, 81; Patrick Amory, 'The Textual Transmission of the Donatio Ansemundi', *Francia*, 20 (1993), 163–83; the terminology of Ansemund's instrument corresponds to the language used of royal gifts rather than allotments in LC, as does Ansemund's freedom to bequeath it as he wishes.

interest over property at the heart of relations between Burgundian and Roman in the countryside.

If we are to understand the continued transformation of identities in its proper connection with the dynamics of social change, we need to trace the processing of these latent conflicts. When King Gundobad reiterated the basis of Burgundian settlement in his famous edict on allotments, he did so in response to the pleas of Roman possessors of land concerning the ‘anxiety and disquiet’ caused by a ‘new and unjust strife and trickery’. Their complaint was in fact an old one: that Burgundians, by making enclosures and clearances to create land for themselves to cultivate, were impinging on established property rights in a landscape structured by long-established estate boundaries. Gundobad, in response, restated the remedies laid down in previous legislation, rooted in Roman law: in recognition of the rights of hosts over land cleared by their guests, and of shared rights by all landowners in common land, Roman landowners were entitled to a half of all clearances. Their right to claim half, moreover, pertained not only to forest used as pasture or cleared for cultivation, but also to buildings erected on newly cleared land.<sup>82</sup> In other words, the possessors’ complaints centred on the creation of new farms – units of cultivation and residence – which destroyed valuable resources of pasture and wood, giving rise to strife and litigation. That those undertaking clearance deserved to enjoy the fruits of their labour as their property, and theirs alone, was undisputed, but they owed compensation to those whose interests had been effected.

Gundobad’s legislation here evokes a landscape in transition, and a grid of property rights being adjusted to reflect new topographies rooted in new agrarian realities. Archaeology is now beginning to help us understand settlement change, with new building techniques used on often new sites with distinctive morphologies, and agrarian strategies adjusted in a new economic context of diminishing exchange that discouraged specialisation for the market.<sup>83</sup> The complex picture of a series of interlocking layers of

<sup>82</sup> LC 54.2, referring explicitly to earlier legislation; the trail of precedent runs from Roman law rules restated in LC 67, 31, 28, 12, to LRB 17.

<sup>83</sup> Archaeological work on southern Gaul has tended, as elsewhere, to focus on urban continuity, and on attempts to trace barbarian ‘migration’ in the material culture. For our region we lack the recent syntheses achieved for much of the Mediterranean, and northern Gaul (e.g. *Landscapes of Change. Rural Evolutions in the Early Middle Ages*, ed. Neil Christie (Aldershot, 2004), Helena Hamerow, *Early Medieval Settlements* (Oxford, 2002)). But for a methodologically innovative project on long-term changes in settlement and land-use, see *Regional Dynamics: Burgundian Landscapes in Historical Perspective*, ed. C. Crumley and W. Marquandt (San Diego, 1987); C. Crumley, ‘A Diachronic Model for Settlement and Land-Use in Southern Burgundy’, and W. Berry, ‘An Experimental Model for Early Medieval Settlement in Southwestern Burgundy’, in *Archaeological Approaches to Medieval Europe*, ed. K. Biddick (Toronto, 1984); recent work has focused on the Arroux valley around Autun, distant from areas most likely to be directly reflected in the legislation.

exploitation, and of interrelated zones of settlement relating to different kinds of property right suggested by the legal evidence, clearly needs properly relating to the material remains. In helping us see the human agency driving landscape and settlement change, and correlating social change with the redefinition of topographies and property, these laws illuminate a crucial passage of social change. Crucial to these changes was conflict over shared rights, where interlocking interests defined the relationship of Burgundian and Roman.

Those undertaking clearances that aroused such complaint enjoyed a collective identity as *faramanni*. Germanic words are very rarely used in the surviving Burgundian legislation, and the meaning of the term – literally ‘those men who travelled together’, it is used elsewhere to refer to the constituent parts of barbarian warbands as they broke apart to settle and is also witnessed as a personal name<sup>84</sup> – suggests that it is not a learned confection of those who drafted the laws, but the term used by Burgundian settlers cultivating the countryside to refer to themselves. In Gundobad’s legislation, the *faramanni* are counterpointed to the possessors, Roman landowners amongst whom they nestled, but against whom they were defined. By the seventh century, however, the same Germanic vocabulary was used to articulate the self-consciousness of the weapon-carrying, landowning, elite whose interests defined a new social order: the chronicler known as Fredegar, whose interest in Burgundy probably reflects his origin in the region, could report the collective political or military action of this group as the activities of the ‘Burgundae-farones’.<sup>85</sup> This identity, whilst it legitimated the power of the top tiers of the regional landowning elite, did so in terms of

<sup>84</sup> The most recent extended discussion of the term is that by A. C. Murray, *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Early Middle Ages* (Toronto, 1983), 89–97, which is a resolute search for an administrative and institutional definition which is ultimately impossible; other than the Burgundian evidence, the prime witnesses are Marius of Avenches’s and Paul the Deacon’s accounts of the Lombards’ division into *farvae* as they settled in northern Italy: *La chronique de Marius d’Avenches* (Lausanne, 1991), ed. Justin Favrod, s.a. 569; Paul, *Historia Langobardorum*, 2.9. See now Marios Costambeys, ‘Kinship, Marriage and Gender in Lombard Italy’, in *The Langobards from the Fifth to the Eighth Centuries*, ed. Paolo Delogu and Chris Wickham (San Marino, forthcoming).

<sup>85</sup> *The Fourth Book of the Chronicle of Fredegar with its Continuations*, ed. and trans. J. M. Wallace-Hadrill (Oxford, 1960), 4.44, 55, elsewhere he can refer to the same grouping as made up of the ‘*proceres* and *leudes*’ or the army of the Burgundians, or simply talk of ‘the Burgundians’. The significance of the terminology must be underlined by its use in personal names in at least one high-status landowning family of the seventh century, the founders of Faremountiers; although active in the ‘Frankish’ kingdom of Neustria, around Meaux, their naming tradition must be seen in terms of a political and social alignment, and possibly family origins, with a Burgundian elite which was, in any case, closely enmeshed with that of Neustria by the seventh century.

their representation of a wider community of weapon-carrying free proprietors. Legal distinctions articulating aristocratic separateness, so typical of agrarian Empires, did not develop, precisely because even the richest landowners lacked the formal structures of domination enjoyed by their late Roman predecessors – who, after all, had negotiated direct with Emperors and warlords without reference to their poorer neighbours – and the coercive force to enforce their will on the countryside. Instead, in a distinctively western development, ethnic identities accessible to a relatively broad and open elite of landowners emerged. No longer possessors defined in terms of their legal title to their land, this class acquired a new identity which crystallised around the name favoured by a specific grouping who were far from being in a numerical majority: the *faramanni*. In a transformed countryside in which status was no longer defined in terms of the Roman property law, a new label rooted in collective endeavour and claiming free tenure through clean settlement articulated the community of the cultivating class as a whole. To Roman landowners seizing vacant land or clearing waste as they adjusted to the new economic and social realities, such an identity had much to offer.<sup>86</sup> In Fredegar's quite ahistorical account of Burgundian origins, this new social order found a foundation charter. Repeating the now traditional etymological derivation of 'Burgundian' from *Burg*, fortress, and the closely related account of Burgundian migration to fortresses beyond the Rhine, Fredegar went on to explain how, in the time of Valentinian I, they had been invited into Gaul by senators who wished to throw off the yoke of taxation.<sup>87</sup> Fredegar's story, written as Merovingian attempts to continue to levy the land tax were in their dying throes precisely because weapon-carrying free men claimed tax exemption, legitimated a social order of landowners whose freedom was exemplified by the absence of tax and expressed through public military action. This new identity was not the product of royal propaganda or clever historical narrative of the kind so well studied of late: the Burgundian kingdom had ended, conquered by the Merovingians, in the 530s. Rooted in the struggles of cultivators to lay claim to a new kind of freedom and new forms of control over land, it articulated a new social order. If we are to understand the peculiar importance of ethnic identity as a claim to political power in the early medieval west, we need to appreciate that ethnicity was

<sup>86</sup> For Roman landowners adopting such strategies see e.g. Sidonius, *Letters*, 6.10, Paulinus, *Eucharisticon*, lines 515–38. Note for Romans adopting barbarian names and lifestyles see also Sidonius, *Letters*, 6.4, on *Vargi*.

<sup>87</sup> Fredegar, *Chronicle*, ed. Bruno Krusch, MGH *Scriptores Rerum Merovingicarum* 2 (Hannover, 1888), 2.46; on changing views of Burgundian origins see Ian Wood, 'Misremembering the Burgundians', in *Die Suche nach den Ursprungen*, ed. Walter Pohl (Vienna, 2003), 139–48.

appropriated by fragmented and impoverished landed elites unable to maintain formal class privileges rooted in the law and implicated in the structures of the state. By allowing elites to claim to represent a wider community of landowners, ethnic identity legitimated loose structures of regional dominance rooted in the possession of land. Conflicts and compromises over land and freedom thus determined western Europe's distinctive post-classical historical trajectory.