



Remarks on the Contractual and Delictual Issues of Slaves in the *Lex Baiuvariorum*

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Abstract. This paper intends to analyse those provisions of the *Lex Baiuvariorum* that regulate the position of persons in non-free status, i.e. slaves (*servi*, *mancipia*, and *ancillae*). In the course of our endeavour, we make efforts to find an answer to the question as to what extent the significant ecclesiastical impact, far exceeding the effect of the rest of German folk laws, becomes evident in *Lex Baiuvariorum*: to what extent acknowledgement of the human quality of slaves appears in the code. Not incidentally, at the end of the paper, we try to answer the question whether the meaning of the phrases *mancipium*, *servus*, and *ancilla* – which are usually translated by the words *servant* and *maidservant* – can be conveyed in theory by translating them by the word *slave*, or they require any other, more differentiated term to reveal the legal content of these phrases.

Keywords: slave, servant, *servus*, *mancipium*, *Lex Baiuvariorum*

1. Issues of Terminology

In terms of the view of society depicted in *Lex Baiuvariorum*, it is a highly interesting issue, widely disputed in literature, how the position of slaves is reflected in the text of the code. It is a generally asserted view in literature that in the strict sense of the word slavery (*servitus*) as an institution can be hardly found among the Germans tribes. This standpoint goes back primarily to the interpretation, or misinterpretation, as the case may be, of the 25th *caput* of Tacitus's *Germania*. The phrases *servus* and *mancipium* are translated in literature – also in the analysis of *Lex Baiuvariorum* to be investigated in this study – consistently by the words *Knecht*, *Höriger*, or *Leibeigener*, and not by *Sklave*,¹ that is, by terms that suggest some kind of – and compared to the

1 Nehlsen 2001. 505–521.

content of the Antique meaning quite significant – improvement in the position, *status* of persons in this social standing, a tendency pointing towards the acknowledgement of their personality.² This somewhat commonplace approach was opposed by Hermann Nehlsen, who examined the position of slaves in depth in eastern and western Gothic, Frankish, and Langobardic laws and drew the conclusion that compared to the declining Western Roman Empire in the German states of early Middle Ages the number and economic significance of slaves definitely increased instead of decreasing.³ Furthermore, in his view, this tendency was the reason for legislation moving from the *ex asse* German *conpositio* system towards norms of more public law / criminal law nature⁴ and from full-scope owner's liability towards the system⁵ of noxal liability.⁶

In what follows, we briefly look into whether *mancipium* and *servus* – and the female equivalent of the latter, *ancilla* – as terms cover any legal difference in *Lex Baiuvariorum* and when each of these phrases is used as a general rule. *Mancipium* as slave is referred to as the maker of a thing constituting the subject of sale as well (*quod mancipii mei ex proprio meo materia laboraverunt et fecerunt*),⁷ which indicates their scope of occupation.⁸ It arises as a reasonable question whether the term *mancipium* can be considered a synonym of *servus* and *ancilla* or some kind of marked difference in meaning can be demonstrated between these terms. Most probably, it is possible to accept Nehlsen's opinion claiming that *mancipium* is a collective noun and as such denotes both *servus* and *ancilla*. In the 5–7th-c. sources, the phrases *servus* and *ancilla* are undoubtedly more frequent since these texts are closer to the antique sources owing to their age, and, accordingly, the phrase *servus* – as it is a peculiar feature of classical Latin – denoted both male and female slaves; later, however, when the content of the meaning of *servus* served to name male slaves only, the term *mancipium* as a collective noun came to the front since it would have been complicated to list both *servus* and *ancilla* on each occasion.⁹

On the other hand, it should be underlined that in *Lex Baiuvariorum* the term *mancipium* almost exclusively appears as the subject of the transaction (sale, donation, etc.); on the contrary, *servus* and *ancilla* occur as acting – proceeding or committing – subjects as well as the subject of transaction. The latter is exemplified by the provision on sale of alien or stolen things stating that a person who sells

2 Chabert 1852. 110; Brunner 1906[3]. 368 et seq.; Goetz 1999. 1845–1848. On the contrary, see Nehlsen 1998. 464–470; Nehlsen 1984. 219–230.

3 Nehlsen 1972. 58 et seq.

4 Nehlsen 1972. 140 et seq.; 220 et seq.; 319 et seq.; 378 et seq.

5 On the Roman law aspects, see Nótári 2011a. 336 et seq.

6 Nehlsen 1972. 133 et seq.; 191 et seq.; 274 et seq.; 376 et seq.

7 *Lex Baiuvariorum* 16, 14.

8 Nehlsen 2001. 509.; Nehlsen 1981. 267–283.

9 Nehlsen 2001. 509 et seq.

another person's thing in spite of the owner's will (either his servant or maidservant or any other thing) shall return it on the strength of the law and shall give a thing of similar value.¹⁰ Yet, from the fact that *mancipium* is not used to name an acting slave who enters into a transaction or commits a crime, it is not possible to draw the conclusion that his/her legal or social standing would have been different from that of a *servus* or *ancilla*.¹¹ It is worth adding that it was among the Franks where, in addition to *mancipium* and *servus*, the phrase *sclavus* appeared for the first time: since the Franks pursued several campaigns against the Slavs, and they made the prisoners of war taken their slaves, that is how the meaning slave (*slave*, *Sklave*, *esclave*) developed from the Slavonic word (*Sclavus*).¹²

The code gives the reason for creation of servitude,¹³ specifically in relation to warranty of title. Regarding sale, it sets two alternatives: (i) the case of a slave acquired as a prisoner of war in a campaign led by the duke beyond the borders (*istud mancipium ego prehendi extra terminum, ubi dux exercitum duxit*), and (ii) the case of a slave given in slavery by the duke to another person as punishment (*dux illum per debita et iusta culpa tulit et mihi licenter tradidit*).¹⁴ Furthermore, the code reckons with (iii) the case of a slave received as paternal inheritance (*pater meus mihi reliquit in hereditatem*) and (iv) a slave brought up as successor of a slave living in one's own house (*ego in propria domo enutrivit eum a proprio meo mancipio natum*).¹⁵ After that, the code notes that the latter two alternatives as form of acquisition can be referred to with respect to draught animals as well;¹⁶ so, we need to notice reference to slaves as being equal to animals.¹⁷

2. Slaves as Subjects of Legal Transactions

Among donations made to the church, servants (*mancipia*) are listed in addition to country houses, land, and money.¹⁸ And in case of killing a priest, if the perpetrator cannot pay the three hundred *solidi* calculated in gold, then s/he shall give other money, servants, land, or other things owned by him/her as redemption.¹⁹

In the regulation of sale, in addition to animals, *mancipium* is explicitly referred to among the subjects of the transaction mentioned as examples – as

10 *Lex Baiuvariorum* 16, 1.

11 Nehlsen 2001. 510.

12 Babják 2011. 33 et seq.

13 Nehlsen 2001. 508 et seq.

14 *Lex Baiuvariorum* 16, 11.

15 *Lex Baiuvariorum* 16, 14.

16 *Lex Baiuvariorum* 16, 14.

17 Nehlsen 2001. 509.

18 *Lex Baiuvariorum* 1, 1.

19 *Lex Baiuvariorum* 1, 9.

Babják calls attention to this fact –,²⁰ for the code pronounces that compliance with required formalities of sale is of key importance in sale of any given thing, slave or animal, to ensure that nobody could attack the validity of purchase claiming that s/he assigned his/her property at a very low price.²¹ It is worth underlining that this rule shows close relation to the relevant provision of *Lex Visigothorum*.²² Regarding implied warranty provisions, servants are referred to together with horses and other domestic animals; more specifically, in the case of defects, blindness, fracture (of bone), epilepsy, or leprosy concealed by the seller, the buyer can return the goods within three days.²³ It should be added that the *redhibitio* rule of Bavarians, which allows a three-day period to the buyer, cannot be found in any other German folk law; yet, the Bavarian law follows the provision of Roman law that – just as the *edict* of the *aedilis curulis* –²⁴ obliges sellers of slaves, horses, and draught animals to supply information.

3. Transactions Entered into by Slaves and the Issue of *Peculium*

The code regulates in detail the validity of transactions, especially sale, entered into by slaves.²⁵ In case a person bought something from a *servus* without the owner's knowledge, who had not approved of the transaction subsequently, the purchase price was returned to the buyer, and the transaction was considered invalid; however, if the subject of the sale no longer existed, the buyer had to return a similar thing to the master of the slave who entered into sale without any authorization or commission.²⁶ Therefore, the starting point regarding this provision is the validity of the transaction, and invalidity shall be reckoned with only when it is aimed against the will of the owner of the slave. It should be noted that in this respect *Lex Baiuvariorum* sharply contradicts Frankish rules because *Lex Salica* ordered to punish transactions entered into without the knowledge of the owner of the *servus*,²⁷ and *Lex Ribuaria* excluded the owner's liability.²⁸ Babják points out that in this issue it can be demonstrated that the Visigothic pattern prevailed in the Bavarian *lex*.²⁹ Consequently, it was presumed that the owner of the slave must have known of the conclusion of the transaction, and as

20 Babják 2011. 187 et seq.

21 *Lex Baiuvariorum* 16, 9.

22 *Lex Visigothorum* 5, 4, 7. Cf. Nótári 2011b. 94[314].

23 *Lex Baiuvariorum* 16, 9.

24 Cf. Nótári 2011a. 318 et seq.

25 Nehlsen 2001. 514.

26 *Lex Baiuvariorum* 16, 3.

27 *Lex Salica* 27, 33.

28 *Lex Ribuaria* 77.

29 Babják 2011. 183.

a general rule the code took a stand for keeping the sale in force, and somehow – e.g. by implied approval – the owner of the *servus* had to take part in the transaction: in such cases, Bavarians kept the interests of both parties in view and made the risk of sales entered into with an alien *servus* predictable.³⁰

If the owner sold his/her slave but was unaware of the separate property, *peculium*, that s/he had – although it should be noted that this passage of the text of the code does not contain the phrase *peculium*, which is, however, referred to by the *Traditiones* of Passau and Freising as well³¹ –, the former owner had the right to demand subsequently that the separate property should be surrendered.³² Similarly, the rule is in harmony with Visigothic regulation,³³ which states that if a *servus* redeemed his/her freedom from his/her *peculium* and the owner did not know about this *peculium*, the transaction was invalid; in other words, the slave's *status* and the identity of his/her owner did not change.³⁴ Regarding this provision, the code obviously sets out from the fact that the *servus* was given the separate property by somebody else than his/her owner – which increased the owner's assets –, and so there was increment in the slave's value.³⁵

As Nelsen establishes, this provision clearly shows that the 8th-c. Bavarian law defined slaves' free right of disposal over their *peculium*, and whenever the *servus* entered into a transaction with his/her master or a third party, the owner's consent (or at least subsequent *ratihabitio*) was an indispensable condition.³⁶

4. Damage Caused to a Slave as Injury to Property

Killing or causing bodily injury to an alien *servus* is regulated in a separate *title* in the code.³⁷ In what follows, it is worth surveying these provisions in order to establish to what extent *Lex Baiuvariorum* considers the killing or mutilation of alien slaves purely injury to things, a kind of *damnum iniuria datum* – just as the regulation known from Roman law³⁸ –, or whether it is possible to discover any acknowledgement of the human quality of the slave in them. In the case of killing an alien slave, the perpetrator was obliged to pay the holder of the slave twenty *solidi*.³⁹ It arises as a question what the proportion of this twenty *solidi* to the market value of the *servus* was. The *titulus* on theft (*De furto*) of the code speaks about a higher

30 Babják 2011. 184.

31 See *Traditio Pataviensis* Nr. 16; *Traditio Tegernseensis* Nr. 68. 85; *Traditio Frisingensis* Nr. 1168.

32 *Lex Baiuvariorum* 16, 3.

33 Cf. *Lex Visigothorum* 5, 4, 16.

34 *Lex Baiuvariorum* 16, 3.

35 Nehlsen 2001. 514.

36 Nehlsen 1972. 168 et seq.; Nehlsen 2001. 515.

37 *Lex Baiuvariorum* tit. 6.

38 Nótári 2011a. 334 et seq.

39 *Lex Baiuvariorum* 6, 12.

value in the case of objects attaining or exceeding twelve *solidi*, and it stresses the example of a horse and *mancipium* of such value.⁴⁰ This makes it unambiguously clear that the *conpositio* to be paid to the owner in case of killing the slave did not amount to even half of the market value of the *servus* and was far below the one hundred and sixty *solidi* redemption⁴¹ payable in case of killing a freeman.⁴² If the *servus* was not owned by a private person but belonged to ecclesiastical slaves, *servi ecclesiae*, who were *de facto* in a somewhat better position, then his/her killer had to give the church two servants in value identical with the killed slave.⁴³ The question arises – which can be hardly answered here absolutely clearly – whether the lawmaker associated this with the *duplum* stipulated in *lex Aquilia*.⁴⁴ (The fact that the legal relationship did not completely terminate between the freedman and the former owner – just as in Roman law⁴⁵ – is well exemplified by the fact that in case of killing a *frilaz* the former owner was entitled to forty *solidi*.)⁴⁶

The state of facts of bodily injury is regulated in detail in the code and contains several elements of facts and forms of commission that are defined in the case of freemen and freedmen (*frilaz*) as well. For this reason, it is worth analysing the former by comparing it to the latter. A person who hits another person's servant out of anger – that is, out of sudden passion – shall pay one *tremisse*.⁴⁷ *Tremisse* (*tremissis*) as a monetary unit introduced in the late antiquity was worth one-third of a *solidus*, and it retained its function as this unit in the early Middle Ages.⁴⁸ The same case of commission – supplemented by the phrase *pulislac* as the term for hitting – brought about one *solidus* in the case of a freeman⁴⁹ and half a *solidus conpositio* in the case of a liberated party.⁵⁰ (*Pulislac*, i.e. *Beulenschlag*, is hitting that leaves a visible trace, literally, a hump on the head.)⁵¹ A person who assaults another person's slave, and blood is shed, shall pay the owner half a *solidus*.⁵² The *conpositio* of the same act, i.e. *plotruns* – hitting that results in shedding of blood (*Blutrünse*)⁵³ or, in accordance with *Lex Alamannorum Chlothariana*, blood flowing to the ground⁵⁴ – is one and a half *solidi*⁵⁵ if the injured party is a

40 *Lex Baiuvariorum* 9, 3.

41 *Lex Baiuvariorum* 4, 28.

42 Cf. Nehlsen 2001. 513.

43 *Lex Baiuvariorum* 1, 5.

44 Cf. *Institutiones Iustiniani* 4, 6. 22.

45 Nótári 2011a. 194 et seq.

46 *Lex Baiuvariorum* 5, 9.

47 *Lex Baiuvariorum* 6, 1.

48 Cf. Nótári 2011b. 31[23].

49 *Lex Baiuvariorum* 4, 1.

50 *Lex Baiuvariorum* 5, 1.

51 Cf. Nótári 2011b. 51[106].

52 *Lex Baiuvariorum* 6, 2.

53 Cf. Nótári 2011b. 51[108].

54 Cf. *Lex Alamannorum* 59, 2. *ut sanguis terram tangat...*

55 *Lex Baiuvariorum* 4, 2.

freeman and eight and a half *saica* if s/he is a freedman.⁵⁶ (*Saiga*, or *saica*, is a monetary unit worth half *tremisse*, that is, one-sixth of a *solidus*.)⁵⁷

The next provision covers several forms of conduct defined in states of facts detailed separately in the case of freemen. A person who raises his/her hands against another person's slave, wounds him/her in the head so that the skull bone becomes visible, hits his/her artery, and the wound swells shall redeem his/her act by one *solidus* to the owner.⁵⁸ The name of the first form of commission is *infanc* – i.e. attacking with hostile intention, 'taking' (*Einfang*)⁵⁹ –, and its *conpositio* is three *solidi* if the injured party is a freeman⁶⁰ and one and a half *solidi* if s/he is a freedman.⁶¹ (The phrase *infanc* always means some kind of attack, act of violence; as a technical term, it can be taken as the equivalent of the state of facts of *manus inicere in aliquem*, i.e. *raising one's hands against somebody, attack somebody*.)⁶² In the case of the other three forms of wounding, the code stipulates six *solidi conpositio* when the injured party is a freeman⁶³ and one and a half *solidi* if s/he is a freedman.⁶⁴ Injury to the artery where bleeding cannot be stopped without burning is called *adarcrati*, while a wound making the skull bone visible is called *kepolsceni* in the code. *Adarcrati* literally means *opening the vein*; etymologically it is connected with the words *adar* (*Ader, vein*) and *crat* (*Grat, splinter*).⁶⁵ The first morpheme of the phrase *kepolsceni* can be related to the Old High German word *gebal/kebul* having the meaning *skull* and the second morpheme with the Old High German words *scīnan*, *scein* with the meaning *to appear, to become visible*;⁶⁶ accordingly, the term can be translated by the phrase *apparitio testae* (*Schädelschein*).⁶⁷

The redemption of hitting a slave resulting in fracture of bone is one and a half *solidi*.⁶⁸ The code does not specify the type of the fracture of bone and the part of the body affected; however, from the description of the fracture of the bone of a freeman to be redeemed by six⁶⁹ and of a freedman by three *solidi*⁷⁰ it can be deduced that this case of assault covers the bone sticking out of the wound caused to the head or the arm above the elbow. The next provision again embraces several forms of

56 *Lex Baiuvariorum* 5, 2.

57 Cf. Nótári 2011b. 31[22].

58 *Lex Baiuvariorum* 6, 3.

59 Cf. Nótári 2011b. 51[110].

60 *Lex Baiuvariorum* 4, 3.

61 *Lex Baiuvariorum* 5, 3.

62 von Kralik 1913. 90.

63 *Lex Baiuvariorum* 4, 4.

64 *Lex Baiuvariorum* 5, 3.

65 Cf. Lexer 1872–1878. I. 1073; Kralik 1913. 48; Nótári 2011b. 51[112].

66 Graff 1834–1842. IV. 127; VI. 499 et seq.

67 Kralik 1913. 91.

68 *Lex Baiuvariorum* 6, 4.

69 *Lex Baiuvariorum* 4, 5.

70 *Lex Baiuvariorum* 5, 4.

commission. In accordance with it, a person who wounds another person's slave and the brain becomes visible or injures his internal parts – which is called *hrevavunt* – or beats and pushes him/her around until s/he remains there half dead shall redeem this act by four *solidi*.⁷¹ Regarding freemen and freedmen, *Lex Baiuvariorum* refers to fracture of the skull that makes the cerebrum visible and injury caused to internal parts, called *hrevavunt*, and it stipulates twelve⁷² and six *solidi conpositio* in the case of the former and the latter respectively.⁷³ The first morpheme of the phrase *hrevavunt* (*Leibwunde*)⁷⁴ is connected with the Old High German words *href*, *ref* and the Anglo-Saxon word *hrif* having the meaning *body, lower parts of the body*,⁷⁵ which are etymologically related to the Latin word *corpus*.⁷⁶ The second morpheme of the word, *wunt* (*uunt*) should be interpreted as *participium*, i.e. in the sense of *wounded in its internal parts*.⁷⁷ (The word *hrevawunti*,⁷⁸ which means injury to internal parts,⁷⁹ is closely related to this phrase.)

The next passages regulate the *conpositio* of various mutilations. A person who knocks out the eyes, cuts off the hands or feet of another person's servant shall pay the owner six *solidi*.⁸⁰ The *conpositio* of the same act is forty⁸¹ and ten *solidi*⁸² in the case of a freeman and a freedman respectively. In the case of cutting off the thumb, the index finger or the little finger, the middle or the ring finger, the perpetrator shall pay the owner of the slave four, two, and two and a half *solidi* respectively.⁸³ When the injured party is a freeman, the above amounts will be as follows: the *conpositio* shall be twelve *solidi* for cutting off a thumb, eight for the index and little finger, and five for the middle and ring finger. It should be noted, however, that the amount increases by one-third if the finger is preserved but paralysed, because the lack of a finger was a smaller impediment in handling arms than a paralysed finger.⁸⁴ Regarding freedmen, the fee of *conpositio* amounted to six, one and a half, and two *solidi* in the above order.⁸⁵ In their case – just as in the case of slaves, of course –, the code does not refer to bodily injury causing a paralysed finger, because the issue of handling arms was not taken into account with respect to such persons. On the other hand, it should be noted that

71 *Lex Baiuvariorum* 6, 5.

72 *Lex Baiuvariorum* 4, 6.

73 *Lex Baiuvariorum* 5, 5.

74 Cf. Nótári 2011b. 51[117].

75 Du Cange 1883–1887. IV. 256; Graff 1834–1842. IV. 1153.

76 Walde–Hofmann 1954[2]. I. 194.

77 Kralik 1913. 88.

78 *Lex Baiuvariorum* 1, 6; 10, 1. 4.

79 Kralik 1913. 89.

80 *Lex Baiuvariorum* 6, 6.

81 *Lex Baiuvariorum* 4, 9.

82 *Lex Baiuvariorum* 5, 6.

83 *Lex Baiuvariorum* 6, 7.

84 *Lex Baiuvariorum* 4, 11.

85 *Lex Baiuvariorum* 5, 7.

there is almost no difference between the amounts of *conpositio* to be paid for the loss of fingers of a freedman and a slave, or sometimes the fee to be paid to the owner of the slave is higher: there are good chances that this is related to decrease in capacity to work and thereby the volume of the damage caused to the owner.

Piercing the nose of the *servus* resulted in the payment of two,⁸⁶ injury to the lower lip, the ears, and the lower eyelid one and a half, injury to the upper lip and upper eyelid one,⁸⁷ knocking out the molar, called *marchzand*, three, other teeth one and a half,⁸⁸ cutting off the ears one and a half, piercing the ears one, and deafening them four⁸⁹ *solidi conpositio*.⁹⁰ The *conpositio* of piercing the nose of a freeman was nine,⁹¹ piercing the ears – although the code refers to other injuries to the ears as well – was three, deafening them was forty *solidi*,⁹² the *conpositio* of the lips and eyelids were again three *solidi*, but this sum amounted to six *solidi* in the case of lower lips and lower eyelids when the wound resulted in the person concerned being unable to retain saliva or tears⁹³ – there are good chances that this increment was to sanction aesthetic shortcomings. Knocking out the *marchzand* was punished by twelve, other teeth by six *solidi conpositio*.⁹⁴ (The word *marchzand* literally meant a corner tooth – *Markzahn* –, so, presumably, it must have been used for teeth other than molars, such as eye-teeth and incisors as well.⁹⁵ The phrase *marchzand* occurs also in *Lex Alamannorum*⁹⁶ and corresponds to the Middle High German phrase *marczan*.)⁹⁷ It is worth adding that the code does not contain any regulations on injuries to the face with respect to freedmen. In case of beating up the *servus* causing lameness – i.e. a *taudregil* state –, thrusting him from the riverbank or a bridge into the water, the owner was entitled to four *solidi*.⁹⁸ In case of thrusting a freeman into water, called *inunwan* by the code, the redemption was twelve *solidi*.⁹⁹ Causing injury to the extent that the person remains a cripple, i.e. his feet – as the code puts it – touches dew (*taudregil*), brought about twelve¹⁰⁰ and six *solidi conpositio* in the case of a freeman and a freedman respectively.¹⁰¹

86 *Lex Baiuvariorum* 6, 8.

87 *Lex Baiuvariorum* 6, 9.

88 *Lex Baiuvariorum* 6, 10.

89 *Lex Baiuvariorum* 6, 10.

90 *Lex Baiuvariorum* 6, 8–11.

91 *Lex Baiuvariorum* 4, 13.

92 *Lex Baiuvariorum* 4, 14.

93 *Lex Baiuvariorum* 4, 15.

94 *Lex Baiuvariorum* 4, 16.

95 Cf. Nótári 2011b. 53[130].

96 *Lex Alamannorum* 67, 22. Si autem dentem absciderit, quod marczan dicunt Alamanni...

97 Lexer 1872–1878. I. 2044.

98 *Lex Baiuvariorum* 6, 8–11.

99 *Lex Baiuvariorum* 4, 17.

100 *Lex Baiuvariorum* 4, 27.

101 *Lex Baiuvariorum* 5, 8.

Taudregil is nothing else than a person who drags his feet, in other words, whose feet *touch dew* (*Taustreifer*, *Taustreicher*).¹⁰² This phrase can be found in the same sense and with the same explanation in *Lex Alamannorum* as well.¹⁰³ The etymology of the first morpheme of the word is absolutely clear: it is related to the Old High German word *tau*, i.e. *dew*.¹⁰⁴ The morpheme *dregil/dragil* can be related to the Gothic verb *þragian* having the meaning *to run*, as Grimm has already pointed out.¹⁰⁵ The phrase *in unwan* (*inunwan*) occurs in the text of the code in the state of facts of thrusting a freeman from the riverbank or a bridge into the water,¹⁰⁶ thrusting a freeman from a ladder,¹⁰⁷ wounding a freeman by a poisonous arrow,¹⁰⁸ and arson as well as deaths occurring in relation to it.¹⁰⁹ Linguistically, the phrase can be related to the Old High German word *wân* (*uuânî*) having the meaning *opinion, view, hope*¹¹⁰ consequently, the explanation of the locus quoted as the fourth item, which states that the word *unwan* can be conveyed by the phrase *desperatio vitae*, that is, *despair over life*, or in free translation: *danger of life*,¹¹¹ seems to be sound. It is worth adding that in case of thrusting a slave into the water, the lawmaker defined *conpositio* probably due to causing danger of life; however, the lawmaker could not think of breach of honour occurring in relation to freemen in such cases because this was out of the question concerning slaves. For the same reason, the code does not mention the case of throwing a slave off a horse as an act to be sanctioned either.¹¹²

In view of the fact that *Lex Baiuvariorum* contains an independent *titulus* dealing with acts related to women as well,¹¹³ it is justified to analyse the passages that can be found under this title in terms of persons in servant *status*. There is a sharp difference between women in free standing and maidservants in case of assault causing abortion. In the case of free women, if as a result of assault ‘the not yet viable’ foetus – by which the text of the code, most probably, means foetus in an early stage, not viable even in case of naturally occurring premature birth – died, the amount of *conpositio* was twenty *solidi*, and if the foetus already ‘lived’ (i.e. was considered viable), the usual redemption for homicide, i.e. one hundred

102 Cf. Nótári 2011a. 55[143].

103 *Lex Alamannorum* 57, 62. Si quis autem alium in genuculo placaverit, ita ut claudus permaneat, ut pes eius ros tangat, quod Alamanni taudragil dicunt...

104 Graff 1834–1842. V. 346.

105 Grimm 1922[4]. II. 187.

106 *Lex Baiuvariorum* 4, 17.

107 *Lex Baiuvariorum* 4, 19.

108 *Lex Baiuvariorum* 4, 21.

109 *Lex Baiuvariorum* 10, 4.

110 Graff 1834–1842. I. 857.

111 Grimm 1922. II. 187; Kralik 1913. 120 et seq.; Baesecke 1935. 18.

112 Nehlsen 2001. 513.

113 *Lex Baiuvariorum* tit. 8.

and sixty *solidi*,¹¹⁴ had to be paid.¹¹⁵ Concerning maidservants, in the case of the same acts, the amount of *conpositio* was as follows. If the foetus did not 'live' yet, four,¹¹⁶ and if the foetus already lived, ten *solidi* had to be paid to the owner¹¹⁷ by the perpetrator causing premature birth by assaulting the *ancilla*.¹¹⁸ It is worth noting that in the case of death of a free woman's foetus deemed viable, the perpetrator had to pay the complete *Wergeld* of a free person, i.e. one hundred and sixty *solidi*, whereas for a maidservant's viable foetus it was not the usual twenty *solidi conpositio* of live slaves¹¹⁹ but only half of it, ten *solidi*, that had to be paid to the owner.¹²⁰

Just as in the case of abusing or killing a *servus* and *ancilla*, in case of sexual relation with maidservants, the *conpositio* was payable to the owner. The code provides that a person who sleeps with another person's married maidservant shall pay twenty *solidi* to the owner – so, not to the husband of the maidservant.¹²¹ In the case of unmarried maidservants, this sum amounts to four *solidi*.¹²² (In the case of liberated and married women, the amount of *conpositio* will be forty¹²³ while in the case of unmarried *frilaza* eight *solidi*.¹²⁴)

A person who brings a false charge against a freeman shall suffer the same punishment that would have threatened the accused person if s/he had been condemned.¹²⁵ This provision is in harmony with the sanction of *calumnia* known from Roman law: if somebody was condemned due to *calumnia*, that is, slanderous charge, in the period of the Roman Empire, the false accuser (*calumniator*) was usually punished by the same penalty that would have been imposed on the accused if s/he had been condemned; in other words, the *talio* principle was applied over and above *infamia*.¹²⁶ On the contrary, a person who brought false accusation against another person's slave who was for this reason tortured had to give the owner a slave of a similar value; and if the slave died during interrogation, s/he had to give two slaves, but if s/he could not fulfil this provision s/he became a slave because s/he caused an innocent person's death.¹²⁷

Quite interestingly, the code discusses the state of facts of inducing another person's slave to run away under the *titulus* (*De pignoribus*) on right of pledge.

114 *Lex Baiuvariorum* 4, 28.

115 *Lex Baiuvariorum* 8, 19.

116 *Lex Baiuvariorum* 8, 22.

117 *Lex Baiuvariorum* 8, 22–23.

118 *Lex Baiuvariorum* 8, 23.

119 *Lex Baiuvariorum* 6, 12.

120 Cf. Nehlsen 2001. 513 et seq.

121 *Lex Baiuvariorum* 8, 12.

122 *Lex Baiuvariorum* 8, 13.

123 *Lex Baiuvariorum* 8, 10.

124 *Lex Baiuvariorum* 8, 11.

125 *Lex Baiuvariorum* 9, 19.

126 Nótári 2011a. 423.

127 *Lex Baiuvariorum* 9, 20.

A person who induces another person's slave to run away and leads him/her across the border shall pay twelve *solidi* redemption and shall bring the runaway back.¹²⁸ In the case of maidservants induced to run away, the *conpositio* – without any explanation provided by the code – is twenty-four *solidi*.¹²⁹ The sanction of the same act is somewhat different when the slave or maidservant belongs to the church; this issue is regulated in the *titulus* on the affairs of the church.

A person who induces a servant or maidservant of the church to run away and leads them across the border shall pay fifteen *solidi* and shall call the runaways back; until the persons induced to run away are recovered, they shall be replaced by servants as pledge; and if s/he cannot recover them, in addition to the amount of the *conpositio*, s/he shall give the church similar servants or maidservants to replace them.¹³⁰

There is a sharp dividing line between persons in servant and free *status* with respect to their death and corpse as well. The state of facts of desecration of a grave protects the grave of a freeman only.¹³¹ Also, there is a significant difference with respect to homicide committed in secret or by stealth. A person who kills a freeman in secret and throws him/her in the river or throws him/her to a place from where s/he cannot retrieve the corpse – which is called *murdrida* by the code – shall pay forty *solidi* due to making a decent burial impossible and shall repay the *Wergeld* in accordance with the victim's *status*.¹³² A person who kills a servant in such fashion and hides his/her corpse in a similar form shall pay ninefold of the redemption payable for stealing a slave, that is, one hundred and eighty *solidi*.¹³³ So, while in the case of a freeman deprivation of the last honours is also sanctioned, in the case of slaves only the value of the property taken stealthily from the owner was taken into account by ninefold redemption.¹³⁴

Below, two loci will be analysed because these are the only two provisions in *Lex Baiuvariorum* which show some kind of tendency that the lawmaker acknowledged the human quality of slaves by judging their fate and act identically to that of freemen.

With respect to death, the corpse of a freeman and a *servus* will be judged identically only in the burial of the found corpse. In harmony with the provisions of *Poenitentiale Gregorii* and *Ponitentiale Cummeani*,¹³⁵ to ensure¹³⁶ that the dead person should not lie unburied and should not end up in the bowels of pigs and

128 *Lex Baiuvariorum* 13, 9.

129 *Lex Baiuvariorum* 13, 9.

130 *Lex Baiuvariorum* 1, 4.

131 *Lex Baiuvariorum* 19, 1.

132 *Lex Baiuvariorum* 19, 2.

133 *Lex Baiuvariorum* 19, 3.

134 Nehlsen 2001a. 511.

135 Cf. *Poenitentiale Gregorii* 137. 138; *Poenitentiale Cummeani* 1, 26. 27.

136 Cf. Nótári 2011b. 105[338].

dogs or other beasts, the code orders that the burier must be given one *solidus* as reward by the relatives of the dead person or the master of the slave.¹³⁷ It should be added that it is not possible to clearly identify the Biblical correspondence of the quotation or reminiscence from the Holy Scripture referred to above (*mortuum sepelire*); the quotation is the closest to the relevant locus¹³⁸ of the *Genesis*.¹³⁹

On the other hand, the code provides right of asylum in church (*asylum*) for slaves as well.¹⁴⁰ Pursuant to this provision, anybody who takes refuge in a church shall not be removed from there by violence but shall be chastised there in accordance with the priest's advice – at this point, *Lex Baiuvariorum* refers (by some kind of reminiscence rather than literal quotation)¹⁴¹ to the locus from the *Gospel according to St Matthew*,¹⁴² which states that s/he who forgives will be forgiven, and s/he who does not forgive will not be forgiven.¹⁴³ A person who drags his/her runaway servant or anybody else by violence out of a church shall pay the church forty *solidi* and the treasury also forty *solidi*.¹⁴⁴

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¹³⁷ *Lex Baiuvariorum* 19, 7.

¹³⁸ *Genesis* 23, 6. 15.

¹³⁹ Cf. Nótári 2011b. 105[340].

¹⁴⁰ Nehlsen 2001. 512.

¹⁴¹ Cf. Nótári 2011b. 35[29].

¹⁴² Cf. *Evangelium secundum Matthaeum* 6, 14. f.

¹⁴³ *Lex Baiuvariorum* 1, 7. *Si quis culpabilis aliquis configium ad ecclesiam fecerit, nullus eum per vim abstrahere ausus sit, postquam ianuam ecclesiae intraverit, donec interbellat presbiterum ecclesiae vel episcopum, so presbiter representare non ausus fuerit. Et si talis culpa est, ut dignus sit disciplina, cum consilio sacerdotis hoc faciat, quare ad ecclesiam confugium fecit. Nulla sit culpa tam gravis, ut vita non concedatur propter timorem Dei et reverentia sanctorum, quia Dominus dixit: 'Qui dimiserit, dimittetur ei; qui non dimiserit, nec ei dimittitur'.*

¹⁴⁴ *Lex Baiuvariorum* 1, 7.

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