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The *Wergeld*, following the manuscripts¹
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The *Wergeld* a Germanic obviousness or a late Roman legal practice? It may be useful to quote first a common definition of the *Wergeld*, or wergild. According to Niermeyer, the *Wergeld* represents “the value of the life of a person, expressed in money and to pay, in the case of homicide, to repurchase revenge... or to repair other misdeeds”². The wergild is thus usually regarded as an amount of money granted by a clan to repay the “right of revenge” to another clan, mainly in case of a murder, in application of a private justice. The aim of the present research has been to compare this definition to the primary occurrences of the word in the manuscripts.

But, before facing the matter itself, it is seems useful to consider what has lately changed in the representation of antic Europe. From the XVIth to the XVIIIth centuries, most European scholars have considered antic Europe as “Celts-Scythian”³. This way of depicting the European past, later on qualified of celtomania, underwent a powerful inflection between XVIIIth and XIXth centuries. A French school, with Boulainvilliers and Montesquieu, has started a certain racial reading of the history⁴. Boulainvilliers point of view pursued and theorized by Montesquieu drove to the theses of the “right of conquest”⁵, the “personality of laws”, and finally to the concept of the “race of lords”⁶. The Prussian school of history has followed this track, even if it had been launched on another political reason, on the instigation of the British Ministry of War⁷. Karl-Ferdinand Werner has shown since how the Prussian historical image has served the unification of Germany during the XIXth century, but at the

¹ This paper summarizes the main points of its author’s thesis: C. CAMBY, *uuere-gildus* or *Wergeld*. *The financial repayment of an offence between Roman continuities and Germanic innovation*, Droz, Geneva, 2013.

² I.-F. NIERMEYER, *Mediae latinis lexicon minus*, Leiden, Brill, 1954-1976, p. 1131. More recently: M. PARISSÉ, « Wergeld », *Dictionnaire du Moyen Age*, GAUVARD, de LIBERA et ZINK (dir.), Paris, Puf, 2002, p. 1477-1478, O. GUILLOT, A. RIGAUDIÈRE, Y. SASSIER, *Pouvoirs et institutions dans la France médiévale*, t. 1 *Des origines à l’époque féodale*, Paris, Armand Colin 1994, p. 68, are in accordance with the quoted citation as well as with that of the Grimm brothers for whom *Wergeld* represents “a pecuniary fine for the death or the wound of a man (thereafter also for the animals), for the prevention of a revenge on blood” (*Blutrache*), J. et W. GRIMM, *Deutsches Wörterbuch*, Leipzig, Hirzel, 1854-1960, vol. 29, col. 320-326.

³ From G. POSTEL (1510-1581), *Omnium linguarum quibus ad hanc usque diem mundus est usus origo.*, Basle, Oporinus, 1552, to G. W. von LEIBNIZ (1648-1716), *De Originibus Gentium, Miscellanae berolinensia ad incrementum scientiarum*, t. I, Berlin, 1710, or: FREDERIC II DE PRUSSE, « Mémoires pour servir à l’Histoire de la Maison de Brandebourg », *Oeuvres de Frédéric le Grand*, t. 1, Berlin, Decker, 1846, « De la religion sous le paganisme », p. 196-200, « Des druides dans l’Allemagne », p. 348. Today : M. OLENDER, *Les langues du paradis*, Paris, Le Seuil, 1989, p. 20-30.

⁴ Marquis de BOULAINVILLIERS (1658-1722), *Essai sur la noblesse de France*, Amsterdam, s.n., 1732. MONTESQUIEU shows his support to this thesis by bringing his own arguments: *De l’esprit des lois*, livre trentième, chap. XXIV-XXV. By such means, Montesquieu attempts to justify the fiscal inequality which was the rule at that time in France “Le corps des nobles doit être héréditaire”, *De l’esprit des lois*, livre trentième, chap. 6. Against : J.-B. DUBOS (1670-1742), *Histoire critique de l’établissement de la monarchie française dans les Gaules*, Paris, Nyon, 1742.

⁵ K.-F. WERNER, « La ‘conquête franque’ de la Gaule. Itinéraire historiographique d’une erreur », *BEC* 154 (1996), p. 7-45.

⁶ J. A. GOBINEAU, *Essai sur l’inégalité des races humaines*, Paris, Firmin-Didot, 1853-55.

⁷ As a cultural reaction to Napoleon’s wars: O. W. JOHNSTON, *The Myth of a Nation : Literature and Politics in Prussia under Napoleon*, Columbia, Camden House, 1989, or, *Der Deutsche Nationalmythos, Ursprung eines politischen Programms*, Stuttgart, Metzler, 1990.

same time furnished the substratum of National-Socialism⁸. Such facts bring to the necessity of a certain reconsideration of our usual representations of the “Barbarians”. During the last century, this task has been fulfilled, in the fields of archaeology, epigraphy, linguistics as well as history of law.

Archaeology has made the observation that Germanic and Celtic spaces share the same architecture for their cities. The *oppida* said “Manching” or “Kehlheim” are to be observed both in Gallia and in Germania⁹. The very weak differences recorded by archaeology between these spaces are far to meet the expectations of Gustav Kossina and his followers¹⁰. For antic Archaeology, the Rhine River does not represent a border any more. For Epigraphy, The Norwegian Carl Marstrander¹¹ has presented, against Wilhelm Grimm¹², the thesis, today received, that the runic scriptures came up from North Italia into the Germanic space¹³. In the same trend, as soon as 1938, the German epigraphist Joachim Scharf had the courage to underline that; “on epigraphic bases, it is generally impossible to make the difference between Celtic or Germanic inscriptions”¹⁴. Lately, in the field of linguistics, the observation has been made that, at the time of Tacitus, or even Ptolemy, not a single place’s name brings the evidence that the first Germanic consonantal shift had yet occurred¹⁵. This ascertainment contraries one of the major pretension of Jacob Grimm who wanted to establish the old Germanic in the status of an *Ursprache*, a ‘mother language’¹⁶. Nowadays, for linguistic as well, the Rhine does not make a limit. The antic inhabitants of the Rhine regions are no more regarded as Germanic speaking at the first centuries of our era¹⁷. The historians of law have

⁸ K.-F. WERNER, *Das national-socialist Geschichtsbild und die deutsche Geschichtswissenschaft*, Stuttgart, Kohlhammer, 1967. For example Eckhardt, the last editor of the Salic law, had his seat at Himmler’s councils, C. ROQUES, *Interprétation de la loi et perversion du droit*, Astérior, n° 4, avril 2006, F. RECTOR, *The Nazi Extermination of Homosexuals*. New York, 1981. F. L. SCHÄFER, *Juristische Germanistik. Eine Geschichte der Wissenschaft vom einheimischen Privatrecht*. Frankfurt / Main, Klostermann, 2008. Resume: L WAELKENS, « Droit germanique: la fin d’un mythe? A propos d’un ouvrage récent », *RHD* 87 (Jul-Sept. 2009), p. 425.

⁹ H. WENDLING, “Manching Reconsidered: New Perspectives on Settlement Dynamics and Urbanization in Iron Age Central Europe”, *European Journal of Archeology* 16-3 (2013), p. 459-490. O. BUCHSENSCHUTZ, « Les habitats groupés à La Tène moyenne et finale », *Les agglomérations secondaires. La Gaule Belgique, les Germanies et l’Occident romain. Actes du colloque de Bliesbrück-Reinheim/Bitche (Moselle), 21–24 octobre 1992*. J.-P., PETIT, M. MANGIN, (eds) Paris, Errance, 1994, p. 149–52. J. HAYWOOD, *Atlas historique des Celtes*, Paris, Autrement, 2002, p. 47.

¹⁰ G. KOSSINA (1858-1931), *Deutsche Vorgeschichte*, Würzburg, Kabitzsch, 1912, presented archaeology as a “national science” by definition. H. REINERTH, *Das Federseemoor als siedlungs des Vorzeitmenschen*, Augsburg, Schussenried, 1929, following this point of view, has tried to present the first inhabitants of Switzerland as „Germans“. On the political afterthoughts of this: M.-A. KAESER, *Les Lacustres. Archéologie et mythe national*. Lausanne, PPUR, 2004.

¹¹ C. MARSTRANDER, "Om runene og runenavnenes oprindelse", *Norsk Tidsskrift for sprogvidenskap*, 1 (1928), p. 85-188, M. LEJEUNE, *Inscriptions italiqes*, Bibliothèque nationale (Coll. Froehrer), Paris, 1953.

¹² W. GRIMM, *Über deutsche Runen*, Göttingen, Dieterichschen Buchhandlung, 1821.

¹³ D. STIFTER, *Einführung in das Kontinentalkeltische*, Wien, Institutteil des Institut für Sprachwissenschaft der Universität, 2002. W. MEID, „Zur Botorrita-Inschrift“, in: *Die größeren altkeltischen Sprachdenkmäler*. Akten des Kolloquiums Innsbruck, 29th April - 3rd May 1993, W. Meid et P. Anreiter (ed.), Innsbruck, 1996, p. 146-148.

¹⁴ J. SCHARF, „Studien zur Bevölkerungsgeschichte der Rheinlande auf epigraphische Grundlage“, *Neue deutsche Forschungen Abteilung alte Geschichte* 3 (1938), p. 148.

¹⁵ D. N. PARSONS & P. SIMS-WILLIAMS, *Ptolemy: towards a linguistic atlas of the earliest Celtic place-names of Europe*, Aberystwyth, University of Wales, 2000.

¹⁶ J. GRIMM, „Eine Ausnahme der ersten Lautverschiebung“, *Zeitschrift für vergleichende Sprachforschung auf dem Gebiete der indogermanischen Sprachen*, 23 (1822), p. 97-130.

¹⁷ W. MEID, « H. Kuhn’s „Nordwestblock“-Hypothese. Zur Problematik der Völker zwischen Germanen und Kelten », H. BECK (ed.), *Germanenprobleme in heutiger Sicht*, Berlin, New York, de Gruyter, 1999, p. 183-212, p. 211. P. DE BERNARDO STEMPEL « Language and the Historiography of Celtic-speaking people », S. RIECKHOFF (dir.), *Celtes et Gaulois, l’Archéologie face à l’Histoire*, acts of the round table of Leipzig, 16-17 June 2005,

still been further. Ernst Levy has presented the “Barbarian” laws as the reception of a Theodosian form of the Roman right by Germanic troops¹⁸. The Franks would then have been the vector of this late Roman power imposing Roman law to the people submitted to the Frankish reign, especially Alemans or Bavarians¹⁹. Today, Patrick Amory presents as a general principle that: “no sub-Roman legal compilation acknowledges the existence of any non-Roman law”²⁰. The term *Wergeld* seems to represent by itself the proof of the opposite.

When the question arises to set temporal limits for a study on the *Wergeld*, a surprising acknowledgement has to be made. Amazing enough for a supposed Frankish custom, the term of *Wergeld* does not give any evidence of its presence under Merovingian times. Neither in the very limited number of the legal manuscripts of this period²¹, nor especially in Gregory’s of Tours chronicles²², or in these of the so-called Fredegarius²³. The primitive form of the term shows its presence exclusively in Carolingian manuscripts. Therefore the choice was made to focus on the first occurrences of the *Wergeld* among “Barbarian” laws deemed to be dated of the Merovingian times. The geographical limits of the study brought also certain information. The use of the *Wergeld*, first to be observed in Merovingian laws inside Gauls, unifies the Gallic territory with the Alemanic spaces, as well as with Lombardi, Bavaria, and, maybe, the island of Britain²⁴. This acknowledgement brings to the question of the language which may have unified this space on such a word, under Carolingian times.

By the way, the recent research has changed the status of the Franks²⁵. Formally described as invaders together with other “Barbarians” they are now regarded as Roman troops whose obedience to the new Rome, Constantinople, became distant and uncertain²⁶. Yet, the Frankish power describes himself as the successor of Rome²⁷.

Bibracte, Glux en Glenne, p. 35-56, In particular the chronology of separation between languages in antic Europe, p. 46.

¹⁸ E. LEVY, “Reflexions on the first “reception” of Roman Law in Germanic States”, *American Historical Review* 48-1 (oct. 1942), p. 20-29. Also: F. WIEACKER, “Foundations of European Legal Culture”, E. BODENHEIMER (trad.), *Stanford Law Review*, 36-½, *Critical Legal Studies Symposium*, janv. 1984, p. 1-5.

¹⁹ The prologue of the Bavarian Laws does not express anything else: manuscript of Ingolstadt: Universität München, Cim. 7, p. 6-7.

²⁰ P. AMORY, “The meaning and purpose of ethnic terminology in Burgundian laws”, *Early Medieval Europe*, vol. 2/1 (March 1993), p. 1-28.

²¹ *Chartae latinae antiquiores*, A. BRUCKNER et R. MARICHAL, 1958-1985, R. MARICHAL, 1985-1993, then H. HATSMA & J. VEZIN, 1993-1997. *Die Urkunden der Merowinger*, C.-R. BRÜHL Th. KÖLZER, with M. HARTMANN & A. STELDORF, Hanover, MGH, *Diplomata regum Francorum e stirpe merovingica*, 2001.

²² GRÉGORIUS OF TOURS: B. KRUSCH: *Historiarum libri X*, Hanover, MGH, *SRM I*, 1937. French version H. BORDIER, *Histoire ecclésiastique des Francs*, Paris, Firmin-Didot, t. I, 1858, t. II, 1862.

²³ FREDEGARIUS, in a new version of the book IV: *Chroniques des temps mérovingiens*, traduction, introduction & notes by O. DEVILLERS et J. MEYERS, Turnhout, Brepols, 2001. Traditional version: F. GUIZOT, *Collection des mémoires relatifs à l'histoire de France*, Paris, Brière, 1823.

s, traduction, introduction & notes by O. DEVILLERS et J. MEYERS, Turnhout, Brepols, 2001. Traditional version: F. GUIZOT, *Collection des mémoires relatifs à l'histoire de France*, Paris, Brière, 1823.

²⁴ The *Textus Roffensis*, only source of the Ethelbert’s laws, sees its authority weakened, as well by the date of its writing, as by certain details of the text. Therefore, the Saxon wergild will not be taken into consideration in this paper: M. BRETT, « Forgery at Rochester », *Fälschungen im Mittelalter*, vol. 4, MGH, *Schriften* 33, 4, 1988, p. 397-412. N. YATES, P. A. WESBY, *Faith and Fabric. A History of Rochester Cathedral, (604-1994)*, Suffolk, Rochester, USA, 1996. P. WORMALD, *The Making of English Law*, vol. i, Oxford, Blackwell, 1999, for *Wergeld*, p. 573, this author quotes: compositio and do not consider the notion as part of the Saxon heritage.

²⁵ Etienne Renard « Le "Pactus legis Salicae", règlement militaire romain ou code de lois compilé sous Clovis »? *BEC*, 167-2 (2009), p. 321-352. K.-F. WERNER, *La 'conquête franque' de la Gaule. Itinéraire historiographique d'une erreur*, *BEC* 154 (1996), p. 7-45.

²⁶ Other people are nowadays also concerned by the status of Roman troops: M. HARDT, *The Bavarians, Regna and gentes, the relationship between late antique and early medieval peoples and kingdoms in the*

Then, was the *Wergeld* a “Barbarian” notion?

To answer this question, it is first necessary to observe the manuscripts as well as the late Roman judicial procedures. Then in the case that the *Wergeld* has never been a “Barbarian” notion, how did it happen that we have believed it?

In the manuscripts of the *Wergeld*, the investigation has to observe both the formal aspects of the source as well as its legal content. The oldest manuscript where a lesson of the *Wergeld* is to be found is a complete book, a Code of law, of the IXth century, ms. Paris BNF 4404²⁸. The first surprise, for someone looking for the oldest manuscript of the *Wergeld*, comes from its general aspect. Dated about 813, its late Roman aspect is remarkable. The first *folio* presents the emperor Theodose II in majesty, together with Marcianus and Marjorianus²⁹. The second *folio* reinforces this Roman impression by the image of four famous Roman *prudens*: Severius, Gaius, Paulus and Hermogenianus³⁰. The Roman atmosphere of this *Codex* is confirmed by its Prologue³¹. When presenting the contents of the *Codex*, its author starts by the “XVI books of Theodose”. The Theodosian *corpus* is followed by later novels. Among them the copyist quotes the *Pactus salicae*. In this late famous text it is to be stressed that no occurrence of the *Wergeld* is to be found. In this manuscript, only the *edictus* of the king Childebertus II, dated of 595-6, reveals the first occurrence of the *wergild*. But, its legal application does not correspond at all to our modern definitions. The first appearance of the *Wergeld* takes place under a late Latin form, the *uuere-gildus*. The object of the study was to observe the juridical meaning the *uuere-gildus* at the very moment of its first appearance.

For this first occurrence which deals with a homicide, it is remarkable that the *uuere-gildus* has nothing to do with the author of the homicide, but must repress another man who would attempt to interfere in the judgment: “one of his parents, or friends, would like to help and to amend the above mentioned solution, that the one who presumes to help him composes himself of his own *uueregildum*”³². The term represents in this case a fine to be paid to the king, supreme judge, to repay its public insult to the king’s authority. In case of default of

transformation of the Roman world, H.-W. GOETZ, J. JARNUT, W. POHL (ed), Brill, Leyden, 2003, p. 429-462. P. LANDAU, *Kanonensammlungen in Bayern in der Zeit Tassilos III. und Karls des Großen*, L. KOLMER et P. SEGL (ed.) *Bayern und Europa, Festschrift für Kurt Reindel zum 70. Geburtstag*, Regensburg, 1995, p. 137-160. I. FASTRICH-SUTTY, *Die Rezeption des westgotischen Rechts in der Lex Baiuvariorum: Eine Studie zur Bearbeitung von Rechtstexten im frühen Mittelalter*, *ZRG DA*, 120-1 (2001), p. 508 & f. G. GALLO, *Historia, Derecho e Historia del Derecho. Consideraciones en torno a la escuela de Hinojosa*, *AHED* 23, 1953, p. 5-36, on this bend in the history of Spanish right: F. de ARVIZU, « Histoire et droit, considération rétrospective d’une polémique espagnole », *Histoire de l’histoire du droit*, J. POUmarede (ed.), Toulouse, 2006, p. 351-358.

²⁷ A. CHAUVOT, « Une approche juridique de la notion de « barbare », *Le bréviaire d’Alaric, aux origines du Code civil*, M. ROUCHE et B. DUMEZIL (ed.), Paris, PUPS, 2008, p. 27-41. A. CHAUVOT, « Images positives images négatives des Barbares dans les sources latines à la fin du V^e siècle et au début du VI^e siècle après J.C. », *Clovis, histoire et mémoire*, actes du Colloque international d’histoire de Reims, 19-25 septembre 1996, M. ROUCHE (ed.), Paris, PUPS, 1997, p. 3-14. R. W. MATHISEN, « Les Barbares intellectuels dans l’Antiquité tardive », *Dialogues d’Histoire Ancienne* 23-2 (1997), p. 139-148.

²⁸ The *Codex Sangallensis* 731 has for a long time been regarded as earlier, dated of 794. Since, Simon Stein has identified that it contains the design of a denier of Charles the Bold. This statement drove to push back the dating of the *cx. Sangallensis* 731 to the twentieth year of the reign of this king, the year 863: S. STEIN, « Lex Salica », I & II, *Speculum*, 22-2 (Ap. 1947), II, p. 401.

²⁹ Ms BNF, Par. Lat. 4404, *folio* 1.

³⁰ Ms BNF, Par. Lat. 4404, *folio* 2.

³¹ Ms. Par. 4404, *folio* 3r, col. b-*folio* 3v, col. b.

³² *Ibid.* : *nullus deparentibus aut amicis ei quicquam adiuvet ; nisi qui praesumpserit ei aliquid adiuuare, suum uueregildum omnino componet.*

payment, the condemned man shall be put to death: *Aut se redimat aut de uita componet*: ‘that he either repays himself or composes of his life’³³. We are far from a private justice in the absence of public order. In the *Decretio Childeberti*, the *uuere-gildus* does not represent a private repayment of revenge, but plays the role of a judicial mechanism, a composition. The *uuere-gildus*, as a judicial penalty, is a fine to be paid to the judge in three cases: an attempt to offend the criminal proceedings, an offence to the court, a failure to appear in justice. This acknowledgement has to be enlarged to all the first occurrences studied of the *uuere-gildus*, a judge is present and embody the state’s authority, whether he be king, duke or judge.

Other observations contrary as well the usual vision of the *Wergeld*. In particular, the *uuere-gildus* occurs exclusively in application of Roman legal notions. For example *imputatio*, ‘intention’, that is to say the appreciation of the will of the author in a criminal deed (*mens rea*). Although the intention is commonly regarded as ignored by Germanic laws³⁴, *imputatio* is to be observed together with the application of the *uuere-gildus*, especially in the *lex Alemanorum*³⁵, or in the *leges Langobardorum*³⁶, who both make a precise distinction if the deadly act results or not of the will of its author³⁷. On the 28 primary occurrences of the *uuere-gildus* 27 treat of a criminal case that the Roman law had qualified of “capital”, the *quinque criminibus, quae capite vindicantur*³⁸. Among them: seven cases of *crimen maiestatis*³⁹ or *perduellio*⁴⁰, the same quantity of cases for homicide, qualified by the Roman justice of *crimen de capite ciuis*⁴¹, four cases for *raptum*, that is to say abduction⁴², three cases for offence to the criminal procedure⁴³, two cases for adultery⁴⁴ and *falsum* or forgery⁴⁵. The

³³ Ms BNF, Par. Lat. 4404, fol. 191v-192r, .PLS., ECKHARDT, A1, L, 51, 3, p. 196.

³⁴ W. SELLERT et H. RÜPING, *Studien- und Quellenbuch zur Geschichte der deutschen Strafrechtspflege*, Strafrecht Allgemeiner Teil, t. I, Aalen, Scientia, 1989 p. 55-65. A.-E. GIFFARD, *Droit romain et ancien droit*, Paris, Dalloz, 1958, p. 55-65.

³⁵ *cx Sangall.* 731, p. 317-318, ms Par. lat. 4404, folio 205r, *Lex Alaman.*, LEHMANN, XLV, 1, 2. p. 104-105 : *De rixis quae saepe fieri solent in populo*.

³⁶ Ms. Paris Lat. 4614, folio 5, col. b, l. 17-19, *Lex Langobard*, BLÜHME, MGH, Legum, t. IIII, *Edictus Rothari*, c. 9-11, p. 13-14.

³⁷ In the *Edictus Rothari*, the distinction is established between the act followed by an effect: *mortuus fuerit*, 'the death followed', and the ineffective act: *mortuus non fuerit*, although planned. The premeditation is incriminated (c. 10.), at the same level as the attempt not followed by an effect (c. 11.), because a fine of twenty *solidi* penalizes in the same way both cases. The appreciation of the will in a murder's project, or an attempt, seems of the same nature between Lombard right and Roman legal thought.

³⁸ CTh.9.38.2.

³⁹ Ms. Par. Lat. 4404, folio 232, col. a, ll. 1-25, PLS ECKHARDT, p. 268; ms. Par. Lat. 4627 folio 73v or ms. BPL 114 of Leyden, folio 120^v, *Marculfi Formulae*, ZEUMER, MGH, Hanover 1886, p. 55 : 1-18; *cx Sangall.* 731, page 311, *Lex Alaman.*, LEHMANN, XXIX, 1. p. 87 : XXIX – 1.

⁴⁰ Ms. Par. Lat. 4404, folio 232r, col. a, l. 26-31 et b, l. 1-3, PLS ECKHARDT, p. 268; ms. Par. Lat. 4404, folio 203r, *Lex Alaman.*, LEHMANN, XXXIV, 1. p. 91; ms. Par. Lat. 4614 folio 33v-34r, *Novellae Liutprandi*, 35. ms. Par. Lat. 4614, folio 59^f, *Novellae Liutprandi*, 83, *Lex Lang.*, BLÜHME, p. 46.

⁴¹ *Cx Sangallensis* 728, p. 196, l. 18-29, 197, l. 1-18. *Lex Ribuarica*, F. BEYERLE et R. BUCHNER, p. 94, *Lex Ribuarica*, SOHM, p. 67 ; ms. Par. Lat. 4404, folio 222v, col. a, l. 26-31 col. b, l. 1-12, *Lex Ribuarica*, F. BEYERLE et R. BUCHNER, 66 (63) p. 118, *Lex Ribuarica*, SOHM, 63 (65) p. 90 ; ms. Par. Lat. 4404, folio 222v, col. a, l. 26-31 col. b, l. 1-12, *Lex Ribuarica*, F. BEYERLE et R. BUCHNER, 67 (64) *De homine in domo propria occisso*, p. 118, *Lex Ribuarica*, SOHM, 64 (66) p. 90; *cx Sangall.* 731, folio 319, *Lex Alaman.*, LEHMANN, XLIX, 1, 2. p. 107-108, *cx Sangall.* 731, p. 330 or ms Par. lat. 4404, folio 209v, *Lex Alaman.*, LEHMANN, LXXXVI, p. 136-137; ms. Paris Lat. 4614, folio 5, col. b, 17-19, *Lex Langobard*, BLÜHME, MGH, Legum, t. IIII, *Edictus Rothari*, c. 9-11, p. 13-14; ms Par. Lat. 4614, folio 82^v, *Lex Baiw.*, de SCHWIND, tit. XVIII, 2. XVIII. II p. 455-456.

⁴² *cx Sangall.* 731, p. 318 or ms Par. lat. 4404, folio 205v, *Lex Alaman.*, LEHMANN, XLVI, 1, 2. p. 105-106; *cx Sangall.* 731, p. 319 or ms Par. lat. 4404, fol. 205v-206r, *Lex Alaman.*, LEHMANN, LI, 2., XLIX p. 109; ms. Par. Lat. 4614 fol. 5rb l. 17-19^f, *Lex Langobard*, BLÜHME, nov. Liutprandi 48, ms Par. Lat. 4614 folio 76^f, *Lex Baiw.*, de SCHWIND, tit. IX, 4, p. 370-371.

⁴³ In the *Decretio Childeberti*: ms. Par. Lat. 4404, folio 232, col. a, ll. 1-25, ms. Par. Lat. 4404, folio 232r, col. a, l. 26-31 et b, l. 1-3, ms. Par. Lat. 4404, folio 232v, col. a, l. 23-30, PLS ECKHARDT, p. 267-269.

other occurrences of the *uere-gildus* appear in application of the incriminations of: *malum carmen*⁴⁶, *calumnia*⁴⁷ and abortion⁴⁸.

The only application of the *Wergeld* which would not have been qualified as a “capital” case by the Roman justice is represented by a deadly act because of an animal⁴⁹:

‘If a quadruped < has > killed, for half, that he (the quadruped) be received as *uergilde*, and the other half, that the master of the quadruped takes care of repaying it, without fine for what has made a quadruped, a fine is not due’.

In such a case, the value of the *uergilde* cannot be called “the worth of the man”. It is the value of the beast which determines the *uere-gilde*. The total amount is due by the man responsible of it, his master. It is to be remarked that the Roman law has followed, for a very long time, the same process in the appreciation of a death on behalf of an animal: “The offence of *pauperie* is reprehensible, without that the will to harm can be retained, what indicates the common sense”⁵⁰. A beast is not *dolus capax*, cannot bear the intention of damage. In such a case, the Roman right had given an *actio de pauperie* to the victim. Again, the appreciation of the will of the author of a deadly case shows his presence in a “Barbarian” law, here the *Lex Ribuarica*⁵¹.

Then, it is very hard, in the incriminations bringing to the applications of a *uere-gildus*, to find any difference with these of the late Roman justice. Therefore, is it so obvious to consider the *Wergeld* as a “Barbarian” notion in opposition with the Roman right? The *uere-gildus* revealed by the manuscripts appears more as a successor of a late Roman judicial mechanism. An important difficulty to consider the *uere-gildus* as a possible following of the Roman right consists in a belief. All law students have been taught that *liberum corpus aestimationem non recipit*⁵², ‘that the body of a free man cannot receive compensation in money’. Is this principle, due to Gaius, confirmed in the late Roman laws? It is to be stated that in the same book, Gaius transmits that a fine must be paid in case of death of a free man, or adultery⁵³. According to Sextus Caecilius, consular person quoted by Aulus-Gellius, the composition is the repayment of the *talio*. According to this witness, the *talio* is not

⁴⁴ Ms Par. Lat. 4614, folio 75^r, *Lex Baiw.*, de SCHWIND, tit. VIII, 1. 1, p. 353; ms Par. Lat. 4614 folio 75^r, *Lex Baiw.*, de SCHWIND, tit. VIII, 1. 2, p. 354.

⁴⁵ In the *Novellae Liutpriedi* : ms. Par. Lat. 4614, folio 56^v, *Lex Langobard*, BLÜHME, nov. 63, ms. 4614 folio 70^r, *Lex Lang.*, BLÜHME, Nov. 91. p. 49.

⁴⁶ Ms. Par. Lat. 4404, folio 226v, col. b, l. 12-20, *Lex Ribuarica*, F. BEYERLE et R. BUCHNER, 86 (83) *De maleficio*, p. 131.

⁴⁷ Edictum Rothari, ms. Paris Lat. 4614, folio 5, col. b, 17-19, *Lex Langobard*, BLÜHME, *MGH*, Legum, t. III, *Edictus Rothari*, c. 9-11, p. 13-14.

⁴⁸ Ms Par. Lat. 4614 folia 75^v -76^r, *Lex Baiw.*, de SCHWIND, tit. VIII, 18. 19, p. 362.

⁴⁹ Ms. Par. Lat. 4404, folio 218r, col. b, l. 27-31, 218v, col. a, l. 1-3. *Lex Ribuarica*, F. BEYERLE et R. BUCHNER, 48 (46) *De quadrupedis, si hominem occiderint*, p. 99, *Lex Ribuarica*, SOHM, p. 72 : *Si quis quadrupes qui eam interfecerit in medietate uergilde suscipiatur et aliam medietatem dominus quadrupedes soluere studeat absque freto quia quod quadrupedes factum freto non exigitur*. ‘If a quadruped killed < him >, for half, that he (the quadruped) is received as *uergilde*, and the other half, that the master of the quadruped takes care of repaying it, without fine for what made the quadruped, a fine is not due’.

⁵⁰ Ulpianus: *pauperies est damnum sine iniuria facientis datum: nec enim potest animal iniuria fecisse, quod sensu caret*. Dig. 9.1.1.3, *Ulpianus 18 ad ed.*

⁵¹ Against the scholar’s common opinion: W. SELLETT et H. RÜPING, *Studien- und Quellenbuch zur Geschichte der deutschen Strafrechtspflege*, Strafrecht Allgemeiner Teil, t. I, Aalen, Scientia, 1989 p. 58-61.

⁵² *Liberum corpus nullam recipit aestimationem*, Dig. 9, 1, 3 ; Dig. 9, 3, 7.

⁵³ Gai institutionum commentarius, III. 194: *Adulter uel homicida sit; at illud sane lex facere potest, ut proinde aliquis poena teneatur*.

understood as a penalty to be applied, but to represent the threat of a torture equivalent to the offense. This threat is offered to a "judicial repurchase" to the author of the condemned criminal fact. In early times, the price has been freely suited between parties: *habens facultatem paciscendi*⁵⁴. Later on, the judge had to play his part in the solution: "In case of defect of the parties to reach an agreement, the judge intervenes, estimates the damage, and condemns the culprit to pay a fine that he defines arbitrarily"⁵⁵. Later on, the edict of the *praetor* has proceeded to the *aestimatio iniuriarum*, 'the pecuniary estimation of the insults'⁵⁶. Both solution, a price to be agreed, as well as a fixed one defined by the law, may very well describe the mechanism of judicial ransom later called *uere-gildus*.

Beside these judicial appreciations of the value of a man, at later times, it seems that it is the Christian influence has driven the emperors to adapt the right of *postliminium*. A Roman citizen, if captured by enemies, was formally deprived of his citizenship⁵⁷. At least from Theodose II and Honorius, in a spirit of redemption, the possibility of repurchase his former status by himself has been offered to the captive⁵⁸. This implicates the setting of a value for a free man. At the same period, the Roman authorities have also offered a defined tax reduction for the "supply" of recruits for the army, called *pretium tironi*⁵⁹. Finally, it is also certain that it was possible for a free man to sell himself and that process has become very frequent at later roman times⁶⁰. It also requires the setting of a price for a free man.

At the beginning of the Vth century, a comedy, the *Querolus*⁶¹, proves that the payment of penalties for injuries or death is common enough, at this period, to represent a comic subject in a comedy⁶²:

That defeated, the *parasitus* receives the value of his wounds. If in a feast, his garment was torn, that he receives from the king of the banquet the double of the value of the repair. For overalls, the punishment will be of a quarter of a *solidus*, for wounds swelled of a *triens*, that if there is bruises and wounds, he will obtain justly two thirds of a *solidus*. Specifically we grant one ounce as soon as some blood is to be seen pouring. Furthermore, in case of broken-out bone, it has pleased us and is agreed that is granted one *solidus* for the small bones and a pound of silver for the main bones...

⁵⁴ 'They have the faculty to form a pact', AULUS-GELLIUS, *Nuits attiques*, Liv. XX, 1. p. 470-471.

⁵⁵ *Nam si reus, qui depacisci noluerat, iudici talionem imperanti non parebat, aestimata lite iudex hominem pecuniae damnabat*, AULUS-GELLIUS, *ibid*.

⁵⁶ AULUS-GELLIUS, *Nuits attiques*, Liv. XX, 1. p. 470. A. MAGDELAIN, *De la royauté et du droit de Romulus à Sabinus*, Rome, 1995, quotation p. 48. The tendency to try to define the amount of the fines by a text is observable, according to TITE-LIVE, as soon as 450 A. C., When the tribunes wanted to fix by a law the pecuniary value of the fines until then payable in cattle: TITE-LIVE, IV, 30, 3. First postponed, this reform was adopted under the consulate of C. Julius and P. Papirius, CICERO, *de re publica*, II, 60, in 430 A. C.

⁵⁷ M. V. SANNA, « Capitis deminutio e captivitas » Università di Cagliari, *Diritto@storia* 6, 2007.

⁵⁸ *Constitutio* of the 11th. Dec. 408: CTh.5.7.2.1 [=brev.5.5.2.1], CTh.5.7.2.4 [=brev.5.5.2.4].

⁵⁹ CTh. 7.13.7.2, CTh. 7.13.13, CTh.7.13.20.

⁶⁰ J. RAMIN & P. VEYNE, « Droit romain et société : les hommes libres qui passent pour esclaves et l'esclavage volontaire », *Historia* 30 (1981), p. 472-492. A. RIO, « Becoming unfree: self-sale in early medieval Europe, c.400-1100 », Cambridge, 10 Feb. 2009.

⁶¹ *Querolus*, dated of 407 in the surroundings of Tolosa, C. JACQUEMARD-LE SAOS, Paris, Coll. des Universités de France, 1994, p. 74.

⁶² *Ibid.* scaena XV, 111 *Mercedem uulnerum uictus accipiat parasitus. In conuiuio si fuerit ueste discussus, a rege conuiuii duplam mercedem reparationis accipiat. De liuoribus in quadrantem solidis unius, de tumoribus in trientem poena transibit, quod si et tumor fuerit et liuor solidis unius bessem iure optimo consequetur. Unam uero unciam aporiae, hoc est excoctionis, contemplationi concedimus. Iam porro de ossibus fractis placuit conuenitque ut in minimalibus solidus, in principalibus uero ossibus argenti libra protenus traderetur.*

A few decades earlier, Ammianus Marcellinus illustrates the mechanism of judicial ransom which is offered to a wealthy man condemned to death⁶³. He has the possibility to abandon his fortune, or part of it, to the judge. Doing so, he escapes the capital punishment. This mechanism is called “*poena dominorum*” sometimes “*poena maxima*”⁶⁴, applied to the *honestiores*, the rich people. For those who have no fortune to abandon, the *humiliores*, the poor people, the capital punishment is applied. This judicial barter is confirmed by the *Liber Papiani*⁶⁵ which refers to the Theodosian code:

What to oppose, if a free man gets ready to accuse of crime another free man? He has to register as to be tried, if one decides to execute him, registered with the one that he has accused, he cannot oppose to the possibility of the physical torture, as well as he must oblige as well his head as his properties, as the Theodosian law indicates it, book nine, under the title I, which is given to Marianus, vicar of Italy.

In fact, the quoted title of this constitution in the Theodosian code⁶⁶ brings the expected proof of the common repayment of a criminal offence under late Roman justice: *aut poena capitis sui aut facultatum amissione compenset*, ‘shall he compensate either with his head or with the seizure of its properties’. This is the *poena dominorum*, the judicial choice offered to a wealthy man to have his properties seized, the *sacratio*, in exchange of the execution he is condemned to. This judicial ransom gives the path to understand what is the less known *poena militum*.

The *poena militum* seems to have represented the same kind of mechanism, of judicial ransom dedicated to the members of the *militia*. The personnel of the army represent a kind of free men who has no real estates to offer to the judge. The wealth they have can only consist in their savings kept in the *scholae* of the camps⁶⁷. Therefore, penalties at a fixed price have been defined for this special category of people. The Theodosian code gives examples of penalties at a fixed price to penalize the breaches of certain senior officials or professionals categories⁶⁸. The Salic law, nowadays regarded as a Roman military Code of law⁶⁹, expresses the same idea for redemption of a condemned man by himself: *aut se redimat aut de uita component*. It seems that the *poena militum* offers the same choice as the *poena dominorum* between wealth and life, but adapted to the justiciable.

But if the *uuere-gildus* may have been a Roman procedure of military justice, how have we believed that it was a specific Germanic notion? A first reason may come from the history of

⁶³ AMMIEN MARCELLIN, XIV, 7, 21.

⁶⁴ J. L. STRACHAN-DAVIDSON, *Problems of the Roman criminal law*, (2 vol.), t. I, Oxford University Press, 1912, t. II, 2^o ed Amsterdam, Rodopi, 1969, quotation: t. I, p. 170-187, in opposition about the *poena maxima* with P.-F. GIRARD, *Histoire de l'organisation judiciaire des Romains*, Paris, Rousseau, 1901, p. 154 et 234, as well as Th. MOMMSEN, *Droit pénal romain*, J. DUQUESNE (trad.), G. HUMBERT (dir.) (3vol.), Paris, Fontemoing, 1907.

⁶⁵ *Lex romana Burgundinum*, L.-R. von SALIS, *MGH, Leges*, t. I, 2. 1, Hanover, 1892, p. 127-175.

⁶⁶ *Liber Papiani*, 7.0. Titulus VII. *De obiectione criminum vel inscriptionibus ingenuorum sive servorum*. 7.1. *Si quis ingenuus ingenuo crimen intendens, quod obiecit, se scripserit probaturum, si probatio defuerit, inscribendi se cum eo, quem accusat, corporali supplicio licentia non negetur, ita ut aut caput aut facultatem suam obliget, sicut lex Theodosiani libro nono sub titulo primo designat, quae ad Marinianum vicarium Spanie data est.*

⁶⁷ Y. Le BOHEC, *L'Armée romaine*, Paris, Picard, 1998, p. 205.

⁶⁸ CTh.2.1.9 [=brev.2.1.9] *Imp. arcad. et honor. aa. archelao praefecto augustali. dat. viii. kal. dec. constantinopoli, caesario et attico coss.: Quisquis contempto provinciae iudice, ad illos, qui armatis praeesse noscuntur, causam suam crediderit transferendam, exilio se deputandum esse cognoscat, et eum, qui causam illius susceperit proponendam, decem libras auri esse damnandum.*

⁶⁹ E. RENARD « Le "Pactus legis Salicae", règlement militaire romain ou code de lois compilé sous Clovis »? *BEC* 167-2 (2009), p. 321-352.

the study of the Roman right in Europe. A second reason seems more political, the *Wergeld* may have represented, at different periods, a historical argument.

Due to the enthusiasm of its recovery, the Justinian compilations have, during several centuries, been considered as *The Roman right*, in the eyes of European scholars. But, the right of Justinian was unknown and of course not practised at all in Western Europe, during the late Roman times. This brings to wonder if one of the effects of the restrictive classification, inherited from the scholar studies of the Roman right, would not have driven to qualify "of irrelevant to Roman law", some of the pre-Theodosian, Theodosian, or "vulgar" practices of the late Empire?

It is also to take into consideration that the *uere-gildus* may have been from its very beginning a political argument. The Carolingian times show a certain tendency to use official forgeries at the highest level of power⁷⁰. The appearance of the term *uere-gildus* in manuscripts, at the same period, has probably to be put in relation with the promotion of the Frankish nation, under Carolingian times⁷¹. This tendency has been described for both prologues of the Salic law, written at this period⁷². These two prologues show their purpose to legitimise the Frankish power at the very moment when the Pope agrees to give the unction of *Patricius Romanorum* to Pippin the Short, in 751-754. This act has represented an important offence against the imperial power of Constantinople. The long prologue of the Salic law insists on the fact that the Franks "have torn away of their necks the very hard yoke that Romans had placed on it". What is omitted is the true date when the Franks became emancipated from the Roman power. By this omission, the Carolingian writer of this prologue let think that the date the independence of the Franks could go back up to Clovis's advent⁷³. It is possible that the *uere-gildus* together with other vernaculars words participate to the will of Carolingian times to demonstrate the old independence of the Franks from the imperial authority⁷⁴. The object of the addition of vulgar terms in texts of laws would then be identical to that of the long prologue of the Salic law. The utility of the word *uere-gildus*, for the Carolingian power, like the other vulgar terms, can reside in its vulgarity itself. The

⁷⁰ Like the donation *Constantini*, offered to the Pope: J.-L. , S. , F. EUVE, A. PASSOT « Histoires de faux », *Études*, 402-1 (2005), p. 85-96, or R.-J. LOENERTZ, « En marge du *Constitutum Constantini*, contribution à l'histoire du texte » *RSPT* 59 (1975), p. 289-294, lately: G. LUBICH, *Das Mittelalter: Orientierung Geschichte*, 2008, p. 64-66.

⁷¹ According to Eginhart, Charlemagne wishes to keep the memory of the old songs of the Franks, EINHARDI, *Vita Karoli Magni*, c. XXIX.

⁷² On the writing of the long and short prologues of the Salic law: O. GUILLOT, « La justice dans le royaume franc à l'époque mérovingienne », *La Giustizia nell'alto Medioevo (Secoli V-VIII) Spoleto*, 1995, II, p. 653-736, or *Arcana imperii (IV^e – XI^e siècle)*, Limoges, PULIM, 2003, p. 52-53, n. 75 et 76. This author since showed us his conviction that both prologues, were in fact united by their object: legitimize the Carolingian power.

⁷³ In reality, Clovis's power results from Roman appointments from the imperial seat of the East, in the dignities of governor of second Belgium, in 481, then consul, in 508, M. ROUCHE, *Clovis, op. cit.*, p. 202-204, 315-320. Avit of Vienne confirms the byzantine origin of Clovis's power, J.-P. BRUNTERC'H, *Archives de la France*, Paris, 1994, p. 108-114, K.-F. WERNER, « La 'conquête franque' de la Gaule. Itinéraire historiographique d'une erreur », p. 10. The correspondences preserved between some Merovingian kings and queens and the emperors does not demonstrate at all, by the employed diplomatic vocabulary, the independence claimed by the Frankish power with regard to the authority of Byzantium, in this period: *Epistolae austrasicae*, W. GUNDLACH, *MHG, epist.* n° 9-47, p. 122-152.

⁷⁴ This claim of authority of Byzantium on Franks is going to last for some centuries, this question is going to raise well known difficulties at the passage of crusades: R. GROUSSET, *Histoire des croisades et du royaume franc de Jérusalem* (3 vol.), Paris, 1934-1991, t. I, p. 14-27, and motivate the catch of Constantinople to muzzle the arrogance of "the Emperor of the Griens" who still considers the Franks as auxiliaries subject to his authority, in 1204, ROBERT DE CLARI, *Historiens et chroniqueurs de Moyen Age*, A. PAUPHILET, E. POGNON, (coll. De la Pléiade), Paris, Gallimard, 1952, p. 7-81.

Carolingian scribes, by the use of vulgar terms in texts of laws, have wanted to demonstrate that the Roman power had no part in their emission. This would explain the sudden fashion of such words, at the Carolingian period, in the manuscripts. The object pursued by the presence of the vulgar terms would be then to be deciphered according to a passage of the short prologue of the Salic law: *eos legali auctoritate precellerent*: “they disposed of the legislative authority”⁷⁵. This is the main aim of both actions: the late redaction of prologues and the addition of vernacular words that the Byzantine authority had never recognized in a law. By the way this would also explain why those vernacular terms are ignored by Merovingian chroniclers.

During the XVIth century another stake appeared, after Luther, when the independence from the papal seat, as well as from the emperor, became a political matter. Then, the universality of the Roman right, in the hands of these two authorities, appeared as a barrier against the emancipation of the reformed communities. In 1557, Basilius-Johannes Herold edited a sum of antique Germanic laws in order to mark a historical limit to the influence of Roman right⁷⁶. In its publication Herold has added the occurrence of one *uuere-guldum* inside the Salic law. This act shows the eminent role played by the *Wergeld* as a proof of Germanity⁷⁷. This trend has had followers.

Since the beginning of the XIXth century, the mission of establishing of a Germanic history, given to the *Gesellschaft für deutsche Altertumskunde*, as soon as 1809, and then pursued by the *MGH*, was not compatible with the late Roman presentation of the *Pactus Salicae* and other “Barbarian” laws in the prologue of the ms. BNF 4404. This contradiction between a historical ideology and a venerable manuscript has driven Pertz, when publishing this prologue, to neglect its first half⁷⁸, which presented the “Barbarian” laws in a position subsidiary to the Theodosian *corpus*. Then, a question has risen inside the *MGH*, whether Herold’s publication should to be considered as a source⁷⁹. This point has caused many debates inside this eminent school of edition⁸⁰. Only after the Second World War, Karl-August Eckhardt has achieved Pertz’s project of publication of the Salic law. The text of Herold figures – with the rank of a source – together with original manuscripts in its publication, in 1965. Among 92 manuscripts, the only source quoted for the *Wergeld* is Herold’s edition⁸¹. It seems that this word had kept, at contemporary times, all its weight in the affirmation of Germanity.

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To conclude, the study of the manuscripts of the *uuere-gildus* brings to certain observations on form and content. The primitive form of the term drives to consider the meaning of the *uuere-gildus* inside late Latin. The main difficulty to allocate the *Wergeld* to a Germanic language comes from this very form of *uuere-gildus*, which shows a rather Latin morphology. This word is composed with a second term *gildus* which has a very common use and meaning

⁷⁵ O. GUILLOT, « La justice ... », p. 55-56.

⁷⁶ B. J. HEROLD, *Originum ac germanicarum antiquitatum libri*, Basel, Petri, 1557, or : *Recensio Heroldina*.

⁷⁷ *Ibid.* title LIII, § 2, reedited in *fac-simile* by K.-A. ECKHART in his publication of the version in 80 titles of the *Pactus legis salicae*, Göttingen, Musterschmidt, 1954, p. 241-279, quotation p. 271.

⁷⁸ G.-H. PERTZ, *Legum, MGH*, t. III, Hanover, 1859, in front of p. XVIII, image n° 5.

⁷⁹ G.-H. PERTZ, *Archiv der Gesellschaft für ältere Geschichtskunde VII*, p. 751.

⁸⁰ *Congruit editio Heroldina non cum antiquiore textu, quod falso putavit Pertz*. ‘We cannot confuse Herold’s edition with an ancient manuscript, as Pertz wrongly thought’, *Lex Ribuarica*, R. SOHM, *MGH*, Hanover, 1883, p. 28. This question drove to numerous renouncements, on behalf of prestigious personalities such as Pertz himself, Holder, Sohm, Krammer, who gave up in the project of publication of the Salic law, S. STEIN, *Lex Salica*, I et II, minutes of the annual meetings of the *MGH*, *Lex Salica I*, p. 133-134.

⁸¹ P. L. S., ECKHARDT, Tit. LIII (*H10*), p. 197; on Herold’s version quoted *H10*, introduction, p. XL.

in late Latin. It is simply a tax⁸². This Latin etymology appears in coherence with the juridical meaning of the *uuere-gildus* as revealed by the study⁸³. For the first term, *uuere-*, it is of course possible to read it as an unusual writing form of the classic Latin *uir*, *uiri*, 'the man'⁸⁴. The meaning generally assigned to the *Wergeld*, 'the price, the tax for a man', would so be obtained without going out of the late Latinity. The prefix *uuere-*, in a way shared with many old European tongues⁸⁵, could also meet the meaning of the old Celtic *uuer(o)* : "high". The *uuere-gildus* in a Celto-Latin jargon, often met in late Roman times, would then be the "high tax", which corresponds to its juridical content as well as to the Latin locution: *poena maxima* of which the *uuere-gildus* would represent a vulgar synonym. For the legal point of view, after observing the juridical content of all the first cases of the *uuere-gildus*, it is remarkable that not a single one corresponds to its usual definition⁸⁶. For all cases, the incrimination corresponds to a Roman penal qualification. If the *uuere-gildus* may have been the equivalent of a late Roman legal notion it would still be adventured to claim at any exclusivity. The Arabian spaces use of the *diya*, which can be regarded as a certain equivalent of the *uuere-gildus*⁸⁷. Other areas, which have not known the Roman influence, such as Ireland⁸⁸ Slavic spaces⁸⁹ ancient Israel⁹⁰, antic India⁹¹, or African civilisations⁹² prove that, under many forms,

⁸² Du CANGE, *Glossarium mediae et infimae latinitatis*, Paris, Lib? Des sciences et des arts, 1938, t. IV, p. 68. I-F. NIERMEYER, p. 465, 468, 1130-1132.

⁸³ A second reason would come from the absence of any track of such a tongue at the time of the *Edictus Childeberti*. A contemporary of this period, GEGORY OF TOURS never testifies of the existence of any Germanic language, as he discusses nevertheless the attempts of alphabetical innovation of the king Chilpericus, and, at this occasion, quotes his knowledge in Gallic, Hebraic and Syriac tongues, Greg. Tur., *Hist. Eccl. Franc.*, I, 17, I, 32, VIII, 1. E. SEEBOLD, B. BULLITA, *Chronologisches Wörterbuch des deutschen Wortschatzes*, Berlin, New-York, de Gruyter, 2001, p. 27-38. The first track of the French language is well known, with the oaths of Strasbourg, in 842. In the same way, the western Germanic appears a century earlier, with its first text, dated between 740 and 790, the *Wessobrunnergebet* Munich, Bayerische Staatsbibliothek, clm 22053, III, folia 65^v-66^r, W. SCHERER K. MÜLLENHOFF (ed) *Denkmäler deutscher Poesie und Prosa aus dem VIII. - XII. Jahrhundert*, Berlin, Steinmeyer, 1892/1964, W. BRAUNE (ed.) *Althochdeutsches Lesebuch*, Tübingen, Ebinhaus, 1968, H. D. SCHLOSSER (ed.) *Althochdeutsche Literatur*, Frankfurt / Main, Fisher, 1970, K. A. WIPF (ed.), *Althochdeutsche poetische Texte*, Stuttgart, Reclam, 1992, U. HARSCH (ed.) for the electronic version, Universität Augsburg, 2003.

⁸⁴ In fact, in late Latin the double *u-* becomes frequent in initial position, at the same time, the phonetic equivalence between *ĩ-* et *ē-* represents also one of the characteristic of the language of this period, J. HERMANN, *Le latin vulgaire*, Paris, Puf, 1967, p. 40-42.

⁸⁵ The term *uer(o)* represents an equivalent of the Latin *super* or Grec *hyper* and must also been put in connection with the Gothic *ufar*, modern German *ober*, or English *over*: J. POKORNY, *Indogermanisches Etymologisches Wörterbuch*, Bern, München, Francke, 1959-1969, p. 1105, L. FLEURIOT, *Dictionnaire des gloses en Vieux-Breton*, Paris, Klincksieck 1964, p. 181. *Uer(o)* means 'high', as in the place's name of Verdun, *uer(o)-duneon*, the 'high fence', or even in the judicial term « verdict », **uer(o)-dictus*, le 'high saying', X. DELAMARRE, *Dictionnaire de la langue gauloise*, Paris, Errance, 2001, p. 264.

⁸⁶ J. et W. GRIMM, *Deutsches Wörterbuch*, Leipzig, Hirzel, 1854-1960, vol. 29, col. 320-326.

⁸⁷ Y. BEN HOUNET, *L'Algérie des tribus : le fait tribal dans le Haut Sud-Ouest contemporain*, Paris, L'harmattan, 2009, p. 312-319, but as other pre-Islamic notions this old mechanism might descend of Roman times. A. K. IRVINE, A. F. L. BEESTON, « Homicide in pre-Islamic south Arabia », *Bulletin of the School of Oriental and African Studies* 30-2 (1967), p. 290. D. M. HART, « Murder in the market. Penal aspects of Berber customary Law in the precolonial Moroccan Rif », *Islamic Law and Society*, 3-3 (1996), p. 343-371, quotation p. 345 & 360. Th. P. ION, « Roman Law and Mohammedan Jurisprudence », *Michigan Law Review*, 6-1 (nov. 1907), p. 44-52. C. BONTEMPS, « La découverte de l'anthropologie juridique, un témoignage », *Anthropologie et Droit*. H.S. (2004-4), p. 73-84.

⁸⁸ C. ARCHAN, *Les chemins du jugement, procédure et science du droit dans l'Irlande médiévale*, Paris, De Bocard, 2007.

⁸⁹ First identified by T. D. WIARDA (1746-1826), *Altfriesisches Wörterbuch*, Aurich, 1786, p. 364, today: K. MODJELWSKI, *L'Europe des Barbares*, Paris, Aubier, 2006, p. 15, 144, or: V. VODOFF, *Autour du moyen âge russe: trente années de recherche*, Paris, Institut d'études slaves, 2003.

⁹⁰ A. LEMAIRE, « Vengeance et justice dans l'ancien Israel », R. VERDIER et J.-P. POLY (ed.), *Vengeance, pouvoirs et idéologies dans quelques civilisations de l'Antiquité.*, Paris, Cujas, p. 13-29.

⁹¹ C. MALAMOUD, « Vengeance et sacrifice dans l'Inde brahmanique », *ibid.* p. 35-46.

the repayment of his life by a guilty man has represented a common practice for many antique people. The publishers of the Barbarian *corpus* of laws have realized certain manipulations of the sources, which reveal a will to use the *Wergeld* as a historical proof of the influence of the “Barbarians” in the European history. Maybe a peaceful future depends on a better use of the realities of our past.

Resume:

Was the *Wergeld* a « Germanic » notion? The European research has modified the description of antique Germany inherited from XIX^e and XX^e centuries. The Franks, as Roman soldiers, were they in the position to transmit a specific legal notion? The manuscripts reveal a primitive form in *uuere-gildus*. The study focuses on the “barbarian” laws of the Franks, Lombards, Alemans and Bavarians. When comparing the cases of application of the *uueregildus* with the legal contexts of the late Roman Empire many points appear in contradiction with the usual definition of the *Wergeld*. The actions are never private, but generally take place in front of a judge. The criminal procedures applied are similar to late Roman ones. The pecuniary estimation of a free man had become a common practice under late Roman Empire. The Theodosian code gives proofs of judicial ransom practices under imperial right. The *uuere-gildus* may have been a “popular” equivalent of a Roman penal denomination. The *uuere-gildus* is equivalent to the ‘high tax’, the maximal penalty. The default in its payment implies capital punishment of the condemned. In late Roman right, this procedure corresponds to the penal treatment of *causae capitales*, sometimes said: *poenae maximae*, of which the *uuere-gildus* seems to be a celto-latine transposition. The historiography of the *uuere-gildus* presents the abuse of its use as a pretended historical proof, under Carolingian times, and from the XVI^e to XX^e century, for the benefit of the thesis of a pretended Frankish “conquest”.

Key words:

Alemans, antic Europe, Barbarians, Bavarians, composition, Franks, Germanic laws, judicial ransom, late Roman empire, Lombards, private justice, public authority, revenge, Romans, Theodosian code, “vulgar” laws, *uuere-gildus*, *Wergeld*.

⁹² E. EVANS-PRITCHARD, *Les Nuer*, Paris, Gallimard, 1994. P. DESCOLA, *Les Lances du crépuscule, relation; Jivaros, Haute-Amazonie*, Paris, Pion, 1993. L. LEVY-BRÜHL, *Le Surnaturel et la nature dans la mentalité primitive*, Paris, Puf, 1931/1963.