Early medieval use of late antique legal texts:
the case of the *manumissio in ecclesia*

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Rather often, the middle ages are depicted by legal historians as a period in which custom and tradition played an extraordinarily important role.[1] While I do not want to doubt this in principle, I nevertheless believe that we have to define very clearly what we mean by qualifying legal norms as 'custom' or 'tradition'.[2] For in the last three or four decades, historians and legal historians alike have become increasingly aware of the fact that early medieval law cannot accurately be understood by simply referring to old custom or tradition, whether it is supposedly Germanic or of another provenance.[3] Rather, if we take the Frankish period, we should regard the legal and normative texts extant from this age as, to borrow a phrase used recently by the legal historian Harald Siems, the 'law of its time'.[4] When considered from this perspective, we may regard the Frankish period in legal history as one characterized by multifold legal traditions, tensions between written and orally transmitted law, newly created norms as we find them in capitularies and a certain emphasis placed on *consuetudo*, and also by competing legal orders based on different regional, ethnic, and social criteria (for example, ecclesiastical law), not forgetting certain tensions between general rules and legal procedure taken in individual cases. The picture that emerges from this perspective is a much more complicated and differentiated one, and it offers some interesting perspectives with regard to questions of intertextuality.

Among the vast number of early medieval legal texts, we find a good many in which explicit reference is made to different sorts of pretexts. These pretexts include actual legal texts, but also ideas of legitimation, which are used to justify certain legal transactions. What I focus on in this paper is the manner in which early medieval scribes, scholars, and jurists used Roman legal texts, either by citing them as authorities or by interpretating and accommodating them to new purposes.

1 Gewohnheitsrecht und Rechtsgewohnheiten im Mittelalter, edited by Gerhard Dilcher et al. (Schriften zur Europäischen Rechts- und Verfassungsgeschichte 6), Berlin (Duncker & Humblot) 1992; *Leges — gentes — regna*. Zur Rolle von germanischen Rechtsgewohnheiten und lateinischer Schrifttradition bei der Entstehung der frühmittelalterlichen Rechtskultur, edited by Gerhard Dilcher and Eva-Maria Distler, Berlin (Erich Schmidt Verlag) 2006: See also the debate in: Rechtsgeschichte 17 (2010), p. 15–90 (with contributions by Gerhard Dilcher, Martin Pilch, Andreas Thier, Bernd Kannowski, Michele Luminati, Dirk Heirbaut, Karl Kroeschell, Jürgen Weitzel, Joachim Rückert, Guido Pfeifer and Chung-Hun Kim).

2 For a systematic approach see e. g. René König, Das Recht im Zusammenhang der sozialen Normensysteme (1967), in: Seminar: Abweichendes Verhalten I. Die selektiven Normen der Gesellschaft, edited by Klaus Lüddersen and Fritz Sack, Frankfurt am Main (Suhrkamp) 1974, p. 186–207, at p. 190–197.

3 Karl Kroeschell, Germanisches Recht als Forschungsproblem, in: Festschrift für Hans Thieme zum 80. Geburtstag, edited by Karl Kroeschell, Sigmaringen (Thorbecke) 1986, p. 3–19.

4 Harald Siems, Die Entwicklung von Rechtsquellen zwischen Spätantike und Mittelalter, in: Von der Spätantike zum frühen Mittelalter. Kontinuitäten und Brüche, Konzeptionen und Befunde, edited by Theo Kölzer and Rudolf Schieffer (Vorträge und Forschungen 70), Sigmaringen (Thorbecke) 2009, p. 245–286, at p. 252.

For our aim of investigating inter-, cross-, and paratextual relations in early medieval legal texts, it is revealing to focus on a corpus of texts relating to an individual legal institute that was created in the late Roman period but became extraordinarily important in the middle ages: the manumission of slaves conducted in the church—the so-called *manumissio in ecclesia*. In what follows, I shall deal with a series of texts on ecclesiastical manumission, which were written between the fourth and the ninth centuries. By citing them in a roughly chronological order, we may observe a continuous process of reinterpreting this legal institute by making use of intertextual references. However, before going into more detail, it seems worthwhile to start with a few general remarks on the very nature of the legal institute in question.

1. General features of the late Roman *manumissio in ecclesia*

The *manumissio in ecclesia* may not be a typical case in point, but it is highly significant when it comes to investigating intertextuality, for it holds an intermediate position between two different legal orders—those of the state and of the church, to put it very broadly. When considered from the perspective of Roman legal tradition, the practice of manumission in a church appears as a special case of manumitting slaves within Roman society. During the earlier Roman period, it had been necessary to set slaves free in a lawful manner in public at the forum and in the presence of a magistrate, for the slave became a free man and potentially a citizen.[5] This is why Roman magistrates had become involved in the procedure of manumission. However, in the early fourth century, the Roman emperor Constantine issued a series of laws allowing manumission of slaves in a church, if the act of manumission was based on religious motivation and a bishop and clerics were present in the legal procedure which was conducted in the church. Due to Constantine's legislation, it was now possible to become a Roman citizen in the church. The clerics involved in the procedure thus acted as in the capacity of state officials who exercised control on the preservation of public order.

We can detect some potential for conflict in this authority attributed to clerical and lay officials. This potential may have been even larger, for manumitting slaves had already been regarded as a pious deed in early Christianity.[6] Many bishops encouraged their Christian communities to manumit their slaves, and this was, of course, one reason why Constantine acknowledged carrying out lawful manumissions in churches. However, piety provided an entirely new motivation for the practice of manumission, for it placed the entire procedure of manumission into a new framework of reference, which raised the following very important, fundamental questions:

1. Was manumission, when conducted in a church, simply a normal act of manumission? Or was it rather a pious deed, which could not have been carried out in the presence of secular officials?

2. What did manumission in a church mean to a slave? Would his new status as a free man also have religious implications? For example, was it necessary that a slave, who became manumitted within a church, would also have to become a Christian? And did manumission in church have an impact on the freedman's relationship with his former owner or towards the church, which had been responsible as an institution for him being manumitted?

3. Was manumission in the church, when it took place with bishops and clerics involved, a

5 Max Kaser, Das römische Privatrecht, Vol. 1: Das altrömische, das vorklassische und das klassische Recht (Handbuch der Altertumswissenschaft X, 3.3.1), 2nd ed. Munich (C. H. Beck) 1971, p. 298–301; Id., Das römische Privatrecht, Vol. 2: Die nachklassischen Entwicklungen (Handbuch der Altertumswissenschaft X, 3.3.2), 2nd ed. Munich (C. H. Beck) 1975, p. 134.

6 James Albert Harrill, The Manumission of Slaves in Early Christianity (Hermeneutische Untersuchungen zur Theologie 32), Tübingen (Siebeck) 1998.

holy rite or some kind of sacrament?

4. Finally, did Roman law, which had for centuries been characterised by a strict separation between *ius* and *fas*, between religious and secular law, become more transcendentally based by religiously motivated legal acts such as manumission in church?

2. Constantine's legislation on manumission in church: Intentions, regulations, and transmission

We have every reason to doubt that the emperor Constantine was already aware of all of the conflict, tension and consequence inherent in this new legal institute when he allowed manumission to be carried out in churches as a valid legal act, which would have to be acknowledged by the state and its officials. Rather, we should think of the situation as fairly 'open' in the fourth century, and that was some time before people became fully aware of the complicated nature of manumission in church.

These tensions provide a good starting point for investigating the manner in which late antique and early medieval 'jurists' dealt with it. In order to trace this, we first must clarify which texts on manumission in churches were available to these jurists. In what is thus far the only monograph devoted to *manumissio in ecclesia*, published in 1965, the Italian legal historian Fabrizio Fabbrini has shown that Constantine's legislation on manumission in churches originally comprised many more laws or decrees than are still extant today—approximately five.[7] It is important to note this because of these texts, Sozomen, writing in the earlier fifth century, still mentioned three as being extant in his own time,[8] but only one or two were transmitted to the early middle ages.[9] The ongoing process of contextualizing and canonizing Constantine's imperial laws had already begun in late antiquity, when some of these laws became part of the large legal codification projects inaugurated by emperors Theodosius II and Justinian in the fifth and sixth centuries. In the Thedodosian code, published in 438,[10] only one piece of Constantine's legislation on manumission in churches was included and placed under a special heading *De manumissionibus in ecclesia*.[11] In Justinian's code, which was published twice in 529 and 533/34 (the second edition still being extant today), manumission was included under the title *De his qui in ecclesiis manumittantur*; however, in this there is—in addition to the first text, which is also extant in the Theodosian code—another legal provision issued by Constantine on manumission in churches.[12]

Before becoming closer acquainted with the contents of both constitutions, it seems rather beneficial to first examine their position in each legal code separately. In the Theodosian code, the title regarding manumission in churches is positioned in book four, where laws and decrees on Roman citizenship are found, on making testaments, and on the manumission of slaves in general; that is, book four is centred around issues of civil law in a very general sense. By contrast,

7 Fabrizio Fabbrini, La *manumissio in ecclesia* (Università di Roma, Pubblicazioni dell'Istituto di diritto Romano e dei diritti dell'Oriente mediterraneo 40), Milan (A. Giuffrè) 1965, p. 48–52; see also Hans Langenfeld, Christianisierungspolitik und Sklavengesetzgebung der römischen Kaiser von Konstantin bis Theodosius II. (Antiquitas I, 26), Bonn (Habelt) 1977, p. 11–31; Timothy D. Barnes, Constantine and Eusebius, Cambridge/Mass. (Harvard University Press) 1981, p. 50–51.

8 Sozomenos, Historia ecclesiastica I, 9, 6, edited and translated (into German) by Günther Christian Hansen, Vol. I (Fontes Christiani 73/1), Turnhout (Brepols) 2004.

9 See also Simon Corcoran, The Empire of the Tetrarchs. Imperial Pronouncements and Government AD 284–324, Oxford (Oxford University Press) 2nd edition 2000, p. 12 and 167.

10 On the compilation of the Theodosian code see John F. Matthews, Laying down the Law. A Study of the Theodosian Code, New Haven, London (Yale University Press) 2000, p. 55–84, and A. J. Boudewijn Sirks, *The Theodosian Code. A Study* (Studia Amstelodamensia, Studies in Ancient Law and Society 39), Friedrichsdorf (Editions du Quatorze Septembre) 2007, p. 109–197.

11 Cod. Theod. IV, 7 (below, n. 23).

12 Cod. Iust. I, 13 (below, n. 20).

in Justinian's code, the title *De his qui in ecclesiis manumittantur* is found in book one, which is exclusively devoted to ecclesiastical matters. This is one of the most striking differences between the Thedosian and the Justinianic law codes: the ecclesiastical laws, which were collected in book sixteen, the last book of the Theodosian code, now formed book one in Justinian's code. Justinian believed the church to be so important that he placed ecclesiastical laws in a very programmatic fashion at the very beginning of his code,[13] which fits rather characteristically with the general features of his religious, ecclesiastical, and legal policies.[14] Thus, the title on manumission in the churches, which Theodosius II had located within civil law, now became relocated by Justinian's jurists within ecclesiastical law that ought to be warranted by the state. By having laws included in his code, Justinian wanted to give them the force of a general constitution.[15] Thus, the question of how a legal text was contextualized must be asked for the late Roman period, with regard to the publication of imperial decrees and their incorporation into legal compilations, thereby marking two different stages within this process. These compilations were to become particularly important, for what in the middle ages became conceived as 'Roman' law was basically a set of regulations transmitted within the legal codes and their abbreviated versions. Only very few legal texts were transmitted outside of these codes.[16]

Now, in the early medieval West, it was the Theodosian code that was eventually transmitted in different and epitomized versions, whereas the Justinianic code was largely unknown in the West before the twelfth century.[17] This implies that of the Constantinian laws on manumission in churches, the number of which had been reduced to one or two in the late Roman law codes, only a single one was known in the early medieval West.

Before analysing the use of this text, the contents of Constantine's laws on manumission in churches must be remarked upon.[18] In the older law, issued to bishop Protogenes in the year 316 and solely preserved in the Justinianic Code, it is emphasised that the emperor had already earlier granted the right to owners of slaves to manumit them in churches.[19] The given pretext in fact implies that a first law of Constantine's, which is no longer extant, had probably already been issued in 313. Now, in 316, the emperor stated that ecclesiastical manumission was to be conducted in the presence of the people, the *populus*, and the higher clerics, presumably the bishops. The clergy should act as witness 'for the purpose of having a memorial of the act', and for this reason a written document had to be subscribed by the bishops as a record of the manumission conducted.[20] However, the wording here sounds astonishingly 'un-juristic'. The bishops were encouraged to warrant the procedure in whatever manner they desired, provided that some kind of written evidence documenting their

13 Detlef Liebs, Roman law, in: Late Antiquity: Empire and Successors A.D. 425–600 (The Cambridge Ancient History XIV), edited by Averil Cameron, Bryan Ward-Perkins and Michael Whitby, Cambridge (Cambridge University Press) 2000, p. 238–259, at p. 247–249.

14 On this, see most recently Hartmut Leppin, Justinian. Das christliche Experiment, Stuttgart (Klett) 2011, p. 92–125.

15 See Caroline Humfress, Law and Legal Practice in the Age of Justinian, in: The Cambridge Companion to the Age of Justinian, edited by Michael Maas, Cambridge (Cambridge University Press) 2005, p. 161–185, at p. 163.

16 For Gaul, see the valuable survey by Detlef Liebs, Römische Jurisprudenz in Gallien (2. bis 8. Jahrhundert) (Freiburger rechtsgeschichtliche Abhandlungen N. F. 38) Berlin (Duncker & Humblot) 2002, p. 182–268.

17 Detlef Liebs, Die im spätantiken Gallien verfügbaren römischen Rechtstexte. Literaturschicksale in der Provinz zwischen dem 3. und 9. Jahrhundert, in: Recht im frühmittelalterlichen Gallien. Spätantike Traditionen und germanische Wertvorstellungen, edited by Harald Siems, Karin Nehlsen-v. Stryk and Dieter Strauch (Rechtsgeschichtliche Schriften 7), Cologne (Böhlau), p. 1–28.

18 See Elisabeth Hermann-Otto, *Ecclesia in re publica*. Die Entwicklung der Kirche von pseudostaatlicher zu staatlich inkorporierter Existenz, Stuttgart (Franz Steiner Verlag) 1980, p. 207–260; Langenfeld, Christianisierungspolitik und Sklavengesetzgebung (above, n. 7), p. 11–31.

19 For the law's date, see Corcoran, The Empire of the Tetrarchs (above, n. 9), p. 307.

20 Cod. Iust. I, 13 (*De his qui in ecclesiis manumittantur*) 1: *Imperator Constantinus A. ad Protogenem episcopum. Iam dudum placuit, ut in ecclesia catholica libertatem domini suis famulis praestare possint, si sub adspectu plebis adsistentibus Christianorum antistitibus id faciant, ut propter facti memoriam vice actorum interponatur qualiscumque scriptura, in qua ipsi vice testium signent. Unde a vobis quoque ipsis non immerito dandae et relinquendae sunt libertates, quo quis vestrum pacto voluerit, dummodo vestrae voluntatis evidens appareat testimonium. D. VI Id. Iun. Sabino et Rufino conss*. [a. 316] (Codex Iustinianus, edited by Paul Krüger [Corpus iuris civilis Vol. II] 9th edition Berlin [Weidmann] 1915, p. 67).

will would be produced. This is interesting, because it attests to a deliberate attempt to eliminate formal rules of procedure. Moreover, a special feature of pretextuality in the case of ecclesiastical manumission is the constant reference being made to religious ideas and intentions that contrasts with the *ius strictum*, an aspect to which I shall return later in this article.

However, Constantine's law from 321 became much more important for the development of ecclesiastical manumission from 321 onwards. It was directed to bishop Ossius of Cordoba, one of the emperor's most important ecclesiastical advisers,[21] who also had influence on Constantine's legislation.[22] In this law, it is pointed out that manumissions in churches had to be initiated *religiosa mente*, that is, by religious motivation, and that such manumissions should have the same legal impact as other procedures of manumission, which were used to bestow Roman citizenship on a former slave. Here, it is also emphasized that manumissions in churches had to take place in the presence of the bishops. In addition, the emperor granted Christian clerics the right to manumit their slaves, and to do so not only in a church, but also by a written or even oral declaration of will, which should be valid even if there were no additional witnesses or other legal formalities.[23] Again, a deliberate dismissal of legal formularities is evident here, for religious intention was regarded as being more relevant.

The first part of this law fits quite well into Constantine's legislation on the veneration of Sunday, which was issued in the same year 321.[24] Presumably, manumissions in churches as pious deeds should be carried out on Sundays, whereas other legal proceedings were prohibited from taking place since they came to be regarded as 'worldly affairs'.[25] However, Constantine's other decrees on the 'holiness' of Sunday came to be located in different parts of the Theodosian (and Justinianic) code; therefore, the consciousness that his laws on church manumission and on Sunday veneration from 321 had once belonged together was absent in later generations. Thus, their incorporation into legal codes in a way destroyed the possibility of understanding these laws as results of a specific historical situation, or even a special imperial policy. However, at the same time, it provided ground for their new contextualisation.

In fact, the second part of the law of 321 had very little to do with the *manumissio in ecclesia* in the proper sense. Its primary purpose was to entitle clerics to testify, thereby emphasizing that this was a cleric's particular intention, his *voluntas*, which was to be regarded as legally valid, while other legal formalities would matter much less. Although wealthy clerics probably often included the manumission of slaves in their wills, this had little to do with the first part of the law in juristic terms. However, the fact that both things were combined in one law would become relevant for

21 On Ossius as a church politician, see Victor Cyril de Clercq, Ossius of Cordova. A contribution to the history of the Constantinian period, Washington (Catholic University of America Press) 1954.

22 Corcoran, The Empire of the Tetrarchs (above, n. 9), p. 167 and 262 supposes that Constantine's law may have been issued in response to Ossius' *suggestion*.

23 Codex Theodosianus IV, 7 (*De manumissionibus in ecclesia*) 1: *Imp. Constant(inus) A. Hosio ep(iscop)o. Qui religiosa mente in ecclesiae gremio servulis suis meritam concesserint libertatem, eandem eodem iure donasse videantur, quo civitas Romana sollemnitatibus decursis dari consuevit; sed hoc dumtaxat his, qui sub aspectu antistitum dederint, placuit relaxari. Clericis autem amplius concedimus, ut, cum suis famulis tribuunt libertatem, non solum in conspectu ecclesiae ac religiosi populi plenum fructum libertatis concessisse dicantur, verum etiam, cum postremo iudicio libertates dederint seu quibuscumque verbis dari praeceperint, ita ut ex die publicatae voluntatis sine aliquo iuris teste vel interprete competat directa libertas. Dat. XIIII Kal. Mai. Crispo II et Constantino II Conss*. (Theodosiani libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum pertinentes, edited by Theodor Mommsen and Paul M. Meyer, Berlin [Weidmann] 1905, p. 179).

24 For examples, see as part of this Cod. Theod. II, 8 (*De feriis*), 1: *Sicut indignissimum videbatur diem solis veneratione sui celebrem altercantibus iurgiis et noxiis partium contentionibus occupari, ita gratum ac iucundum est eo die quae sunt maxime votiva conpleri. Atque ideo emancipandi et manumittendi die festo cuncti licentiam habeant et super his rebus acta non prohibeantur*. (Theodosiani libri [above, n. 23], p. 87).

25 For example, see Franz Joseph Dölger, Die Planetenwoche der griechisch-römischen Antike und der christliche Sonntag, in: Id., Antike und Christentum. Kultur- und religionsgeschichtliche Studien, Vol. 6, Münster (Aschendorff) 1950, p. 202–238; Klaus Martin Girardet, Vom Sonnen-Tag zum Sonntag. Der *dies solis* in Gesetzgebung und Politik Konstantins des Großen, in: Zeitschrift für antikes Christentum 11 (2007), p. 279–310.

the law's reception in the early medieval period, as shall be evident subsequently. The argument that one's will was more important than legal formalities could be aligned to the argument that manumission in churches should have a religious motivation (*religiosa mente*).

3. Ecclesiastical manumission in early medieval legal texts

Now, if the 'afterlife' of Roman law in the early medieval period is examined,[26] it seems that for the development of slave manumission in post-Roman times two things were particularly important. Firstly, it was generally known that it had been Constantine, the first Christian emperor, who introduced slave manumission in churches as a legally valid act. Secondly, for the enactment of the manumission of slaves in churches, certain procedures were shaped by custom, since such manumissions took place time and again. However, there were obviously no additional texts available, since the Theodosian code only contained one single law on this issue, the one given by Constantine to bishop Ossius. Thus, in fact, we can observe some kind of discrepancy between the textual basis of church manumission and its actual practice and importance.

As a first expression of this discrepancy, we may regard a title of the *Lex Romana Burgundionum*, a legal compilation of Roman law produced around 500 for the Roman inhabitants in the Burgundian kingdom,[27] who had come under the rule of the Burgundian kings by 470.[28] The chapter on manumission in churches is part of a section on manumission in general (*De libertatibus*)—civil law—and for this reason it is combined with another law dealing with manumission granted by the king. The first text, which is the only one relevant here, stipulated that the civic freedom of manumitted slaves ought to be legally valid. This should apply regardless of whether manumission had been affected by a lawful will or by tablets. Such tablets (Latin *tabulae*) were usually read out in a church according to a manumitter's will, and consequently subscribed by the *sacerdotes*, that is, the bishop together with the priests of an episcopal church or by the priests together with the deacons.[29] The Burgundian law's provision refers to a law of Constantine, which, as is stated, had been directed to a bishop called Ossius and eventually become incorporated in the Theodosian code.[30] We have already become acquainted with this text. However, as mentioned earlier, there were no details in it concerning the practice of witnessing and subscription, nor was there any involvement of tablets mentioned. Instead, it referred to wills made by clerics. However, in the Burgundian law, using Constantine's law and the Theodosian code as a pretext, it was fixed that even priests and deacons could subscribe such tablets—who, in fact, were not mentioned in Constantine's law as appropriate witnesses. Obviously, this extension of witnessing to clerics had

26 In general, see Ian N. Wood, The Code in Merovingian Gaul, in: The Theodosian Code. Studies in the Imperial Law of Late Antiquity, edited by Jill Harries and Ian N. Wood, London (Duckworth) 1993, p. 161–177; Harald Siems, Zum Weiterwirken römischen Rechts in der kulturellen Vielfalt des Frühmittelalters, in: *Leges — gentes — regna* (above, n. 1), p. 231–256. For the church, see also Carl Gerold Fürst, *Ecclesia vivit lege Romana*?, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung 61 (1975), p. 17–36.

27 On the *Lex Romana Burgundionum*, its sources and its composition see Wilfried Roels, Onderzoek naar het gebruik van de aangehaalde bronnen van Romeins Redit in de *Lex romana Burgundionum*, Antwerpen (Vitgeverij de Sikkel N. V.) 1958; see also Friederike Bauer-Gerland, Das Erbrecht der *Lex Romana Burgundionum* (Freiburger rechtsgeschichtliche Abhandlungen NF 23), Berlin (Duncker & Humblot) 1995, p. 23–34; Liebs, Römische Jurisprudenz in Gallien (above, n. 16), p. 176–179.

28 On the society of the Burgundian kingdom see Reinhold Kaiser, Die Burgunder, Stuttgart (W. Kohlhammer) 2004, p. 75–147.

29 On the use of tablets in Roman manumission procedure see Elizabeth A. Meyer, Legitimacy and Law in the Roman World. *Tabulae* in Roman Belief and Practice, Cambridge (Cambridge University Press) 2004, p. 207–208 and 233–236.

30 Lex Romana Burgundionum 3 (*De libertatibus*), [1.] *Libertates servorum propriorum, qui cives efficiuntur, eas esse servandas, quae aut testamento legitimo aut tabulis in ecclesia recitatis secundum mandatum manumissoris subscriptis a sacerdotibus, id est aut episcopo cum presbyteris, aut presbyteris cum diaconibus subscribentibus, firmitatis robor accipiat secundum legem Theodosiani a Constantino principe latam, quae est sub titulo: De manumissionibus in ecclesia, ad Osium episcopum datum*. [2.] *De libertis principis. Liberti Romani natione, a principe manumissi, hac ratione de bonis suis testentur, ut fisco debita medietas reservetur; in cuius hereditate nepotes ex filia succedere non iubentur, secundum Gregoriani leges a Gordiano principe ad Trophimum libertum et Calpurnium militem latas*. (Leges Burgundionum, edited by Ludwig Rudolf von Salis [MGH LL nat. Germ. II, 1] Hanover [Hahnsche Buchhandlung] 1892, p. 127).

become necessary in the meantime due to the growing importance of ecclesiastical manumission, so that the Burgundian king and his jurists began to believe that they should refer to Constantine's law. They certainly knew Constantine and the Theodosian code, perhaps even Ossius of Cordoba. By making reference to the code and to Constantine, they sought to protect Burgundian procedural regulations with the authority of Constantine and of Roman imperial law in general. Burgundian procedure had obviously developed by custom to a certain extent, but custom did not provide sufficient legitimation and this is why the Burgundians were referring to imperial law. As a second important feature relevant to our question, it must be noted that legal texts became authorized by reference to important persons, traditions and older legal texts. In doing so, jurists and lawgivers sought to give more authority to legal norms by making them appear more traditionalistic. This may indicate that legal norms did not have sufficient authority as such, but rather had to be supported by reference to tradition and antiquity. When considered from this perspective, it did not matter very much for the Burgundian jurists that these regulations were not fixed in the Theodosian code.

Moving onward two centuries later, but remaining in Burgundy, we again find reference being made to Constantine with regard to ecclesiastical manumission. According to a formulary preserved in a collection compiled in Northern Burgundy early in the 8th century (with additions dating from the later eighth and early ninth century),[31] a pious man manumitted some of his slaves in order to achieve something for the salvation of his soul. 'By observing the provisions given in the laws of Constantine', he bestowed freedom on his slaves in the church of St. Stephen in Bourges in the presence of clerics and notables. It is interesting to note that the manumitter explicitly mentioned different ways of manumitting a slave according to Roman legal practice in order to contrast favourably with this. He had decided to give to his slaves an even better freedom, so that they would be entirely free and *sui iuris*, enjoy full mobility and not be obliged to render any service or payment—neither to him nor to any of his heirs. Instead, they should be Roman citizens, a clause that in this period obviously meant that they would be allowed to make a testimony and themselves be appointed by others as their heirs. The manumitter did not even want to request obedience from this person, in the way a freedman was usually indebted to his patron (the *libertinitatis aut patrocinatus obsequium*).[32]

While this formulary was referring to Constantine in order to confirm the legal procedure undertaken, the charter's prologue (the *arenga*) employed a very different discourse with other

31 See Liebs, Römische Jurisprudenz in Gallien (above, n. 16), p. 235–240 and Alice Rio, Legal Practice and the Written Word in the Early Middle Ages: Frankish Formulae, c. 500–1000, Cambridge (Cambridge University Press) 2009, p. 111–112.

32 Formula Bituricensis 9: *Ingenuitas. In nomine Dei. Quod fecit mensis ille dies tantos, in anno illo, sub illo principe. Ego in dei nomen ille, pertractans casu humani hominum futuri fragilitatis seculi, ut, quando de hac luce migravero, anima mea ante tribunal Christi veniam merear accipere, introiens in ecclesia sancti Sthefani Bitoricas in civitate, ante cornum altaris, in presencia sacerdotum ac venerabilibus adque magnificis vires, quorum numero subter tenentur adnexa,* [lacuna] *vindictaque liberare servos meos his nominibus, illos et illos, de die presente de iugum servitutis mei sub constitucione bone memoriae Constantine legum imperatoris, qua sanxum est, ut omnes, qui sub oculis episcoporum, presbiterorum seo et diaconibus manumittuntur, se in ecclesia sancta catholica* [lacuna]. *Ita ego illi predictus servus meus, animae eorum pro animae meae de meis peccatis liberandum, ipsos eos precipio ab hac die esse bene ingenuos et absolutos, ut, sive vivant, sive agant, in eorum iure et mente consistant, maneant, ubi elegerint, ambulent ubi voluerint, et nulle nulleve heredum hac proheredum meorum post hanc die nullum quicquam debeant servitium nec litimunium, nec libertinitatis aut patrocinatus obsequium eorum nec ad posteritate ipsorum non requiratur. Dum lex Romana declarat, ut, quicumque de servis suis in eis libertatem conferrae voluerit, hoc per tribus modis facire potest, ego ille in ipsos servos meos superius nominatos meliorem libertatem in ipsos pro anime peccatis meis minuandis adfirmare vellio, quia civis Romanus ipsos eos esse precipio, et secundum legum auctoritatis testamentum condere, ex testamentum sub quibuscumque personis succidere valeant, et ut civis Romani porte aperte vivant ingenui. Et quicquid de ipsos procreatum aut natum fuerit, sicut et ipsi ita et illi vivant ingenui et bene obsoluti. Si quis vero, si ullus de heredis aut quoheredibus meis vel quislibet ulla opposita persona ullumque tempore, qui contra hanc ingenuitate, quem ego plenissima volontate mea sana mente pro peccatis meis minuandis scribere vel manu mea adfirmavi et adfirmare rogavi, ulla causacione vel calumnia aut per qualibet modo lite aut tergiversacione generare presumpserit, inprimitus ira Dei, caelestis Trinitatis, incurrat et a liminibus ecclesiarum, a consorcio christianorum extranius et excommunus appareat et cum Dathan et Abiron in profundum inferni dimergatur, et quod petit non vindecit, sed insuper inferat parti cui adtemptabat una cum fisco auri soledos tantos conponat, et presens ingenuitas omni tempore firma permaneat cum stipulatione firmitatis connexa*. (Formulae Merovingici et Karolini aevi, edited by Karl Zeumer [MGH LL Sect. V] Hanover [Hahnsche Buchhandlung] 1886, p. 172).

intertextual references. Here, reference is made to 'the fragile fate of mankind', to 'the fragility of the coming age' and to 'the last judgment'. In sum, this was referring to a notion of Christian justice that linked one's behaviour on earth with eternal salvation after death. Thus, the manumitter stated that he wanted to set his slaves' souls free in order to deliver his own soul from sins, or at least to diminish the burden imposed on him by his own sins. In the charter's malediction clause, this idea is developed even further: if anyone dared to contradict this charter and to deny his former slaves' freedom in any way, he would not only be obliged to pay a fine to the fisc, but would also incur God's wrath, be excommunicated and be drowned in the depths of hell along with Dathan and Abiron, the old-testament opponents of Moses.[33] Thus, while calling down God's wrath on any contemptor, the charter shows a different hermeneutical approach in order to safeguard a maximum assurance of salvation. Thus, this formulary is much more radical than other formularies for the manumission of slaves that have survived in early medieval collections, and which grant a much more limited liberty to freedmen in accordance with Roman law.[34] This shows another interesting feature when dealing with these texts: a Christian discourse, based on the will of a person who wants to achieve religious salvation, could push aside Roman legal tradition while referring to it at the same time: the charter was referring to Roman law with regard to procedure, while the charter's contents in fact marked a deliberate departure from Roman legal tradition.

References are also made to Roman law combined with a deliberate alteration of Roman legal practice in the Ripuarian law, a legal compilation made for the people living in the Rhineland sometime in the seventh century.[35] This compilation pays special attention to the Frankish king and the church. In one passage, the practice of ecclesiastical manumission was defined by the use of written tablets (*tabulae*), which at first sight reminds us of the text quoted from the lex Romana Burgundionum. Those freedmen who had been manumitted by the use of *tabulae* in a church now came to be called *tabularii*, and the provision refers repeatedly to Roman law, according to which the church is said to live quite generally (*ecclesia vivit lege Romana*). However, despite this reference, again there are legal provisions that appear to have been quite contrary to Roman law. For a slave who was manumitted in a church was destined to be subjected to the legal patronage of that church in which his manumission had taken place. The freedman and all his offspring should remain under ecclesiastical patronage for their entire lives,[36] meaning that they would be subjected to ecclesiastical jurisdiction and have to render all amounts they were obliged to pay (to their

33 On early medieval malediction clauses, see Hans Voltelini, Die Fluch- und Strafklauseln mittelalterlicher Urkunden und ihre antiken Vorläufer, in: Mitteilungen des Instituts für Österreichischen Geschichtsforschung, Ergäzungsband 11 (1929) p. 64–75 and Joachim Studtmann, Die Pönformel der mittelalterlichen Urkunden, in: Archiv für Urkundenforschung 12 (1932), p. 251–374.

34 On the formula's sources see Liebs, Römische Jurisprudenz in Gallien (above, n. 16), p. 238.

35 On the date and purpose of the Ripuarian law code, see Franz Beyerle, Zum Kleinreich Sigiberts III. und zur Datierung der *Lex Ribuaria*, in: Rheinische Vierteljahrsblätter 21 (1956), p. 357–361; Eugen Ewig, Die Stellung Ribuariens in der Verfassungsgeschichte des Merowingerreiches (1969), in: Id., Spätantikes und fränkisches Gallien. Gesammelte Schriften (1952–1973) (Beihefte der Francia 3), Vol. 1, Zurich (Artemis) 1976, p. 450–503; Hubert Mordek, Die Hedenen als politische Kraft im austrasischen Frankenreich, in: Karl Martell in seiner Zeit, edited by Jörg Jarnut, Ulrich Nonn and Michael Richter (Beihefte der Francia 37) Sigmaringen 1994, p. 345–366; Matthias Springer, *Riparii* — Ribuarier — Rheinfranken nebst einigen Bemerkungen zum Geographen von Ravenna, in: Die Franken und die Alemannen bis zur ‚Schlacht bei Zülpich' [496/97], edited by Dieter Geuenich (Reallexikon der germanischen Altertumskunde, Ergänzungsband 19), Berlin, New York (de Gruyter) 1998, p. 200–269, at p. 224–228.

36 Lex Ribuaria 61 (58) (*De tabulariis*), 1: *Hoc etiam iubemus, ut, qualiscumque francus Ribvarius servum suum pro animae suae remedium seu pro pretium secundum legem romanam liberare voluerit, ut eum in ecclesia coram presbyteris et diaconibus seu cuncto clero et plebe in manu episcopi servo cum tabulas tradat, et episcopus archidiacono iubeat, ut ei tabulas secundum legem Romanam, quam ecclesia vivit, conscribere faciat; et tam ipse quam et omnis procreatio eius liberi permaneant, et sub tuitione ecclesiae consistant vel omnem reditum status eorum ecclesiae reddant. Et nullus tabularium denariare ante regem praesumat. Quod si fecerit, ducentos solidos culpabilis iudicetur et nihilominus ipse tabularius et procreatio eius tabularii persistant, et omnis reditus status eorum ad ecclesiam reddant; et non aliubi quam ad ecclesiam, ubi relaxati sunt, mallum teneant. Quod si quis tabularium seu ecclesiasticum homine contra episcopum defensare voluerit, 60 solid. culpabilis iudicetur, et insuper hominem cum omnibus rebus suis ecclesiae restituat. Quia inlicitum esse dicimus, quod dudum ecclesiis concessimus, iterum ab ecclesiis revocare. Nemo servum ecclesiasticum absque vicarium libertum facere presumat. Tabularius autem, qui absque liberis discesserit, nullum alium quam ecclesiam relinquat heredem* (Lex Ribuaria, edited by Franz Beyerle and Rudolf Buchner [MGH LL nat. Germ. III, 2] Hanover [Hahnsche Buchandlung] 1954, p. 108–112).

manumitter as patron) to the saint of the church in which manumission had taken place. Moreover, it was fixed that no-one could bestow on such *tabularii* a higher degree of freedom in the presence of the king and that Roman citizenship could not be granted to them. This implied that manumission in the church and Roman citizenship had been entirely separated and would have nothing to do with each other in the future—in fact this was the exact opposite of what Constantine had decreed in his law addressed to bishop Ossius. In Roman law, a manumitted slave and his offspring remained under the patronate of his manumitter. However, in Ripuarian law it is stated that carrying out manumission in a church should have a profound impact on the patronage of the freedman. In the long term, this led to the formation of a special group of church dependents, the *censuales*.[37]

We can find an explanation for this shift by taking into account what contemporary churchmen argued, namely that if manumission was carried out with a religious motivation, the church had to guarantee that this religious motivation could be put into effect. The process was strongly influenced by the fact that slaves were quite often manumitted in churches in order to pray and care for their manumitter's soul and *memoria*. It was an old Roman tradition that freedmen became obliged to do this,[38] but in the early middle ages memorial practice was bestowed on the institution of the church.[39] It is for this reason that the very church where manumission was put into effect with the help of clerics claimed patronage over the former slaves. Seen from this perspective, churchmen could argue that manumission in a church involving bishops and clerics was a holy rite, almost a sacrament, quite comparable to baptism.[40] At the second council of Mâcon in 585, two bishops called for ecclesiastical support to protect all freedmen who had been manumitted in a church. This was directed against the power of malevolent judges, who obviously sought to challenge their freedom. It is dishonourable, they argued, that a person who had been lawfully manumitted from slavery would be treated so unjustly. The bishops who were present at the council responded that it was just to protect those who had sought the protection of the immortal church, the *patrocinium immortalis ecclesiae*. Therefore, for this reason, the bishop should be responsible as judge for all freedmen who had been manumitted in a church.[41] The Ripuarian law obviously echoed this intention to place all freedmen, who had been given their freedom in a church as a consequence of a religious act, under the patronate of the church and its saint, while the bishop should act as the saint's representative on earth. This had not been conceivable under Constantine, as in the fourth century there was not yet a wide-ranging cult of saints. However, all things changed profoundly by

37 Stefan Esders, Die Formierung der Zensualität. Zur kirchlichen Transformation des spätrömischen Patronatswesens im früheren Mittelalter (Vorträge und Forschungen, Sonderband 54), Ostfildern (Thorbecke) 2010, p. 50–60.

38 See Detlef Liebs, Ewiges Gedenken durch freigelassene Sklaven. Römisches Recht und römische Sitten, in: Leben nach dem Tod. Rechtliche Probleme im Dualismus: Mensch — Rechtssubjekt, edited by Andrzej Gulczynski, Graz (Leykam) 2010, p. 49–65.

39 Michael Borgolte, *Felix est homo ille, qui amicos bonos relinquit*. Zur sozialen Gestaltungskraft letztwilliger Verfügungen am Beispiel Bischof Bertrams von Le Mans (616), in: Festschrift für Berent Schwineköper zu seinem siebzigsten Geburtstag, edited by Helmut Maurer and Hans Patze, Sigmaringen (Thorbecke) 1982, p. 5–18; Id., Freigelassene im Dienst der Memoria. Kulttradition und Kultwandel im Übergang von der Antike zum Mittelalter, in: Frühmittelalterliche Studien 17 (1983), p. 234–250.

40 On this parallel, see the interesting remarks by Verena Stadler-Labhart, Freilassung und Taufe in ihren Berührungspunkten, in: Festschrift Karl Siegfried Bader, edited by Ferdinand Elsener and Wilhelm Heinrich Ruoff, Zurich (Schulthess) 1965, p. 455–468 (although it largely focuses on a later period).

41 Council of Mâcon II (585), c. 7: *Dum postea universo coetui secundum consuetudinem recitata innotescerent, Praetextatus et Pappolus viri beatissimi dixerunt: Decernat itaque et de miseris libertis vestrae auctoritatis vigor insignis, qui ideo plus a iudicibus affliguntur, quia sacris sunt commendati ecclesiis, ut, quas se quispiam dixerit contra eos actionis habere, non audeat eas magistratui contradere, sed in episcopi tantum iudicio, in cuius presentia litem contestans quae sunt iusticie ac veritatis, audiat. Indignum est enim, ut hii, qui in sacrosancta ecclesia iure noscuntur legitimo manumissi, aut per epistolam aut per testamentum aut per longinquitatem temporis libertatis iure fruuntur, a quolibet iniustissime inquietentur. Universa sacerdotalis congregatio dixit: Iustum est, ut contra calumniatorum omnium versutias defendantur, qui patrocinium immortalis ecclesiae concupiscunt et, quicumque a nobis de libertis latum decretum superbiae nisu praevaricare temtaverit, inreparabile damnationis suae sententiam feriatur. Sed si placuerit episcopo, ut secum ordinarium iudicem aut quemlibet alium saecularem in audientiam arcessiret, cum libuerit, fiat, ut nullus alius audeat per causas transire libertorum nisi episcopus, cuius interest, aut his, cui idem audiendum tradiderit*. (Concilia aevi Merovingici, edited by Friedrich Maassen [MGH LL Sect. III, Conc. I] Hanover [Hahnsche Buchhandlung] 1892, p. 167–168).

the sixth century.[42]

Before coming to a conclusion, I would like to add one further example dating from the Carolingian period. Regino, abbot of the monastery of Prüm, composed a canon law collection for practical purposes around the year 900, the *libri duo de synodalibus causis*.[43] Regino had a broad command of source material at hand when compiling his work.[44] When dealing with ecclesiastical manumission, Regino quoted different sources, some of which we have already considered. In chapter 416, which was based on a text no longer known to us, it is emphasized that all manumissions that were enacted for the salvation of one's soul had to take place in a church, and that the patronate over these freedmen had to be conferred upon this very church. As is explained at the end of the chapter, this had to happen, for it was written in the law of the Franks; however, this was not simply a pretext. In order to back up his claim, Regino quoted in the following chapter 417 word for word, but slightly abbreviated, the regulations of the Ripuarian law on the *tabularii* mentioned earlier. By doing so, he postulated that all slaves who had been manumitted in a church should come under the patronate of this church and its saint, and also made reference to the general principle *ecclesia vivit lege Romana*. However, this was not all. In addition to this, Regino quoted in chapter 418 the well-known law of Constantine from 321, again word for word, but slightly abbreviated.[45] By quoting these texts more or less verbatim, Regino produced a historical series, which went back from his own time via Frankish law back to Constantine, the first Christian Roman emperor. While he ignored all developments and changes that had taken place between the fourth and the ninth century, Regino suggested a link between church manumission in his own time and Constantine, drawing a line of continuity for this practice back in time as far as it could go. Thus, it is suggested that what the Franks practised was church practice from the very beginning. However, this was, of course, not true.

4. Conclusion

In the early middle ages, it was well-known and would never be forgotten that it was the Roman emperor Constantine who introduced manumission in church as a new sort of religiously motivated manumission, which was to be acknowledged by the state. However, the textual basis

42 See Esders, Die Formierung der Zensualität (above, n. 37), p. 61–72.

43 On the purpose of Regino's work, see Walter Hellinger, Die Pfarrvisitation nach Regino von Prüm. Der Rechtsgehalt des I. Buches seiner *Libri duo de synodalibus causis et disciplinis ecclesiasticis*, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung 48 (1962), p. 1–116 and 49 (1963), p. 76–137.

44 On Regino's working method, see Gerhard Schmitz, Ansegis and Regino. Die Rezeption der Kapitularien in den *Libri duo de synodalibus causis*, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung 74 (1988) p. 95–132, and most recently Harald Siems, *In ordine posuimus*. Begrifflichkeit und Rechtsanwendung in Reginos Sendhandbuch, in: Recht und Gericht in Kirche und Welt um 900, edited by Wilfried Hartmann (Schriften des Historischen Kollegs 69), Munich 2007 (Oldenbourg) p. 67–90 and Karl Ubl, Doppelmoral im karolingischen Kirchenrecht? Ehe und Inzest bei Regino von Prüm, ibid. p. 91–124.

45 Regino of Prüm, Libri duo de synodalibus causis I, CCCCXVI. *De eadem re* (*Quod manumissio in ecclesia debet fieri*). *Unde supra* [unknown]: *Non solum autem qui ad clerictaus ordinem provendi sunt, in ecclesia manumittendi sunt, verum etam hi, quos quisque pro remedio animae suae emancipari vult, secundum legem mundanam in ecclesia absolvi debent et eiusdem ecclesiae patrocinio commendari. Scriptum quippe est in Pacto Francorum:* CCCCXVII. *De eadem re. Ex Pacto* [= Lex Ribuaria 61, see above, n. 36]: *Hoc etiam volumus, ut qualiscunque Francus Ripuarius servus suum pro remedio animae suae secundum legem Romanam liberam facere voluerit, ut in ecclesia coram presbyteris, diaconibus seu cuncto clero et plebe in manu episcopi servum cum tabulis tradat, et episcopus archidiacono iubeat, ut ei tabulas secundum legem Romanam, qua ecclesiae vivunt, scribere faciat, et tam ipse, quam et omnis procreatio eius liberi permaneant et sub tuitione ecclesiae consistant et omnem reditum status sui ad ecclesiam persolvant, et non alicubi nisi ad ecclesiam, ubi relaxati sunt, mallum teneant. Et si absque liberis discesserint, nullum alium nisi ecclesiam relinquant heredem*. CCCCXVIII. *De eadem re. Ex lege Romana* [= Cod. Theod. IV, 7, 1, see above, n. 23]: *Imperator Constantinus Augustus Osio episcopo Cordubensi. Qui manumittendi in sacrosancta ecclesia habuerit voluntatem, tantum est, ut sub praesentia sacerdotum servos suos velit absolvere, noverit, eos, suscepta libertate, cives esse Romanos. Nam si clerici mancipiis suis dare voluerint libertatem, etiamsi extra conspectum fecerint sacerdotum, vel sine scriptura verbis tantum fuerint absoluti, manebit, sicut civibus Romanis, integra et plena libertas*. (Das Sendhandbuch des Regino von Prüm, edited and translated (into German) by Wilfried Hartmann [Ausgewählte Quellen zur deutschen Geschichte des Mittelalters. Freiherr-vom-Stein-Gedächtnisausgabe 42, 2004, p. 188–191 and p. 210–215).

for this was very thin from the beginning, since of Constantine's five or more laws on this, only one or two pieces survived due to their incorporation into the late antique law-codes. This is why subsequently Constantine's law from 321 was used for all kinds of purposes and little attention was paid to whether this was actually written in Constantine's law.

Thus, the scrappiness of textually based knowledge on the *manumissio in ecclesia*, and the heterogeneity of the law of 321, made it not only possible, but rather necessary to reinterpret and adapt it time and again for different purposes. The actors of this process were very different too. The original laws, beginning from the tetrarchic period,[46] seem to have been drafted by the imperial quaestor;[47] also their incorporation into the Theodosian and Justinianic Codes appears to have been the work of late Roman imperial jurists acting as *quaestor sacri palatii*.[48] By contrast, the *Lex Romana Burgundionum* was obviously a compilation produced by provincial jurists living in Southern Gaul.[49] The person who was responsible for the formulation and compilation of the formularies from Bourges was apparently a local notary or a cleric working in that city,[50] whereas the Ripuarian law was quite likely drafted by an early medieval count or duke with the assistance and consent of local clerics and laymen.[51] Finally Regino, the abbot of Prüm, was an expert in canon law and historiography, working in a monastery of the Eifel region with close connections to the Carolingian court.[52]

Thus, it must be assumed that the authors dealing with our texts had a strikingly different intellectual and cultural background and very different purposes. As I hope I have shown, the example of the *manumissio in ecclesia* illustrates the ways in which early medieval minds could use authoritative texts as pretexts. The incorporation of Constantine's law into legal codes marked two early stages of placing them in the context of civil law and ecclesiastical law. Thus, their position in the codes of Theodosius II and Justinian provided different textual frameworks for their reception. What we can observe in the following centuries is the use of different intellectual techniques to adapt Constantine's text to changing purposes. Analogies were drawn, the law was used as a historical precedent, while the authority of Constantine as the first Christian emperor was emphasized. However, references to religious motivation and practice served to alter tradition, justify a departure from Roman tradition in certain respects, question legal formalities, and emphasize the importance of religious intention for the enactment of legal action.[53] Charter clauses such as *pro remedio animae*, *pro remissione peccatorum* illustrate the normative power of Christian discourse.[54] Any individual acting for the remission of his sins could do one thing that came to be regarded as the most honourable and important thing to do within a Christian society. Thus, if necessary, Christian discourse on the manumission of slaves in churches could be used to alter manumission procedure but also other traditions. However, as we have seen in case of ecclesiastical manumission, there were many co-existing traditions in early medieval society—traditions of law, traditions of family custom, of religion, etc. Thus, one primary function of the intertextual relations

46 See Corcoran, The Empire of the Tetrarchs (above, n. 9), p. 12.

47 Jill Harries, The Roman Imperial Quaestor from Constantine to Theodosius II, in: Journal of Roman Studies 78 (1988), p. 148–172.

48 See Humfress, Law and Legal Practice in the Age of Justinian (above, n. 15), p. 163–165; on the jurists later commissioned by Justinian see also Tony Honoré, Tribonian, London (Duckworth) 1978, p. 139–186.

49 See above, n. 27.

50 See Liebs, Römische Jurisprudenz in Gallien (above, n. 16), p. 235–240.

51 See above, n. 35.

52 See above, n. 44.

53 Compare Okko Behrends, Treu und Glauben. Zu den christlichen Grundlagen der Willenstheorie im heutigen Vertragsrecht, in: Christentum und modernes Recht. Beiträge zum Problem der Säkularisierung, edited by Gerhard Dilcher and Ilse Staff, Frankfurt am Main (Suhrkamp) 1984, p. 255–303.

54 See Arnold Angenendt, *Donationes pro anima*. Gift and Countergift in the Early Medieval Liturgy, in: The Long Morning of Medieval Europe. New Directions in Early Medieval Studies, edited by Jennifer R. Davis and Michael McCormick, Aldershot (Ashgate) 2008, p. 131–154.

observed in the texts was to mediate between these different traditions and to emphasize certain traditions in order to justify legal action. If there is one thing on which there can be no self-evident consensus in a so-called 'traditional society', it is, and indeed has to be, tradition itself.