



‘Because their patron never dies’: ecclesiastical freedmen, socio-religious interaction, and group formation under the aegis of ‘church property’ in the early medieval west (sixth to eleventh centuries)

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In the early medieval west, patronate, as adapted from Roman law, was a fundamental category in determining the legal status of freedmen. In many cases it entailed a basic set of obligations. In an increasing number of situations, however, the patron became an ecclesiastical institution, since slaves and freed persons were often given to churches and monasteries. As ecclesiastical institutions regarded their patronal rights over freed persons as part of inalienable church property, the patronal relationship became permanent and inheritable. In Eastern Francia (the Rhineland and beyond) this transformed ecclesiastical freedmen into religiously defined social groups with potentially distinct aims, religious tasks, and organizational structures, and a shared notion of freedom. From the Carolingian period onward, it even became attractive to enter voluntarily into this status. It is argued here that with its underlying network of socio-religious relations, patronate over ecclesiastical freedmen and censuales can be better understood when considered as an element of a ‘temple society’.

‘Church property’ is a rather abstract category suitable for framing ecclesiastical history in possessory terms, from late antiquity to the early modern period. During this time, churches and monasteries not only owned basilicas, baptisteries, hospitals, orphanages, libraries, and

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schools, but from the fourth century onwards also acquired huge quantities of land and had innumerable dependants with different obligations towards their ecclesiastical lords.¹ There is no denying that the French revolution took an axe to a centuries-old system of manifold dependencies rooted in ecclesiastical landownership. Yet, when framing ecclesiastical property within a wider perspective that includes both the logic of its acquisition and its function as part of wider social interaction and exchange, one feels increasingly uncomfortable with approaches that neglect the religious implications. Consequently, one can ask to what extent the ‘temple society’ is a helpful paradigm that allows for a better understanding of religiously motivated social practices involving ecclesiastical property.

By drawing on definitions of the essential characteristics of ‘temple societies’,² four observations can be made at the outset. If (1) rituals of ‘temple societies’ express an idea of the reigning deity as a sovereign, this reminds us that the inalienability of church property encapsulated a typically medieval notion of ‘sovereignty’ by defining an ultimate principle beyond human reach,³ with saints and their cults representing this idea on earth. If (2) in ‘temple societies’ the sovereign deity stands at the centre of moral and economic transactions that constitute redistributive processes, this might lead us to think of the great variety of transactions so evident in ecclesiastical cartularies and in liturgy.⁴ If (3) temple endowments provide the organizational framework for individuals and groups to participate in these redistributive processes and share in its benefits, the early Middle Ages come into mind as an epoch in which numerous collectives were created anew – families organizing their *memoria*, guilds, and communities of clerics, who organized and performed the rituals and networks that connected them.⁵ Finally, if (4) conflicts generated by this process are resolved by an outside agency whose mandate is to ‘protect’ the temple, one can

¹ E. Lesne, *Histoire de la propriété ecclésiastique en France*, 6 vols (Lille, 1910–43).

² For the following four points, see A. Appadurai and C. Appadurai Breckenridge, ‘The South Indian Temple: Authority, Honour and Redistribution’, *Contributions to Indian Sociology* 10 (1976), pp. 187–211, at p. 190. See also I.N. Wood, ‘The Early Medieval West as a Temple Society’, *Rivista storica dell’antichità* 49 (2019), pp. 117–44, expanding on an earlier seminal article, see *idem*, ‘Entrusting Western Europe to the Church, 400–750’, *Transactions of the Royal Historical Society* 23 (2013), pp. 37–73.

³ E.H. Kantorowicz, *The King’s Two Bodies: A Study in Medieval Political Theology* (Princeton, 1957); P.N. Riesenbergh, *Inalienability of Sovereignty in Medieval Political Thought* (New York, 1956).

⁴ A. Angenendt, ‘*Donationes pro anima*. Gift and Countergift in the Early Medieval Liturgy’, in J. R. Davis and M. McCormick (eds), *The Long Morning of Medieval Europe. New Directions in Early Medieval Studies* (Aldershot, 2008), pp. 131–54; W. Davies and P.J. Fouracre (eds), *The Languages of Gift in the Early Middle Ages* (Cambridge, 2010).

⁵ O.G. Oexle, ‘Die Gegenwart der Lebenden und der Toten. Gedanken über Memoria’, in K. Schmid (ed.), *Gedächtnis, das Gemeinschaft stiftet* (Munich, 1985), pp. 74–107.

identify constant efforts by divinely legitimized rulers to make such a 'system' work – by issuing general laws, granting immunities, and initiating judicial and executive action.⁶

Being earthly centres of a macrocosm of shared fundamental religious beliefs, Christian churches and monasteries shaped the wider discourse on socio-religious interaction,⁷ but also nucleated microcosms on different regional and local levels.⁸ Tracing the religious embeddedness of interaction involving ecclesiastical institutions, Ian Wood and Paul Fouracre have delineated early medieval 'spiritual' and 'moral' economies.⁹ Moving beyond the traditional view on commemorative practice,¹⁰ Michael Borgolte has demonstrated that religiously motivated endowments and foundations, varying in size, dimension, and function, constituted a dynamic 'phénomène social total' in a Maussian sense.¹¹ In addition to donors, monks, and clerics, they involved numerous men and women who were given to religious institutions and thus became 'ecclesiastical property'.

These 'human endowments' differed significantly in their legal and social status, such as slaves, *coloni*, holders of a prebend, freedmen, and so on. Moreover, their functions varied enormously, ranging from agricultural and artisanal production, over diversified payments, to active participation in religious tasks such as commemoration. Motivated by religious considerations, donors often gave slaves to religious institutions – the ransom of their soul – of whom they wished

⁶ See, e.g., N. Staubach, 'Cultus divinus und karolingische Reform', *Frühmittelalterliche Studien* 18 (1984), pp. 546–81; S. Patzold, *Presbyter. Moral, Mobilität und die Kirchenorganisation im Karolingerreich* (Stuttgart, 2020).

⁷ P. Brown, *Through the Eye of a Needle: Wealth, the Fall of Rome, and the Making of Christianity in the West, 350–550 AD* (Princeton, 2012); *idem*, *The Ransom of the Soul. Afterlife and Wealth in Early Western Christianity* (Cambridge, MA, 2015).

⁸ P. Brown, *The Rise of Western Christendom: Triumph and Diversity, A.D. 200–1000*, rev. edn (Oxford, 2013), pp. 355–79.

⁹ I.N. Wood, 'Review Article: Landscapes Compared', *EME* 15 (2007), pp. 223–37; P.J. Fouracre, 'Lights, Power and the Moral Economy of Early Medieval Europe', *EME* 26 (2020), pp. 367–87. See also F.S. Paxton, 'The Early Growth of the Medieval Economy of Salvation in Latin Christianity', in S.C. Reif et al. (eds), *Death in Jewish Life: Burial and Mourning Customs among Jews of Europe and Nearby Communities* (Berlin, 2014), pp. 17–42. This article was finished before the publication of P. Fouracre, *Eternal Light and Earthly Concerns. Belief and the Shaping of Medieval Society* (Manchester, 2021). I should like to thank *EME*'s anonymous reviewer for drawing my attention to this, and to the author for kindly allowing me to see a pre-print of his book.

¹⁰ K. Schmid and J. Wollasch (eds), *Memoria. Der geschichtliche Zeugniswert des liturgischen Gedenkens im Mittelalter* (Munich, 1984); O.G. Oexle (ed.), *Memoria als Kultur* (Göttingen, 1995).

¹¹ M. Mauss, 'Essai sur le don. Forme et raison de l'échange dans les sociétés archaïques', *L'année sociologique* 1 (1925), pp. 30–186, at p. 32. See M. Borgolte, 'Totale' Geschichte des Mittelalters? Das Beispiel der Stiftungen. Inaugural lecture, Humboldt University Berlin, 1992: <https://core.ac.uk/download/pdf/301532704.pdf> [accessed 8 February 2021]; *idem* (ed.), *Enzyklopädie des Stiftungswesens in mittelalterlichen Gesellschaften*, 3 vols (Berlin, 2014–17); *idem*, *Weltgeschichte als Stiftungsgeschichte. Von 3000 v. u. Z. bis 1500 u. Z.* (Darmstadt, 2017).

some to be manumitted and to play a particular role as freedmen in the 'temple'.

In what follows, freedmen belonging to churches and monasteries will be addressed to reveal forms of social and religious interaction with early medieval churches. Proceeding from a study I published a decade ago,¹² my current aim is to show how ecclesiastical dependency, as enacted through manumission and defined by patronage, created a social space of its own that embraced manifold types of interaction. Between the sixth and early eleventh centuries, manumission and the status of ecclesiastical freedmen underwent changes that were not merely the result of an evolutionary process that transformed late Roman models on a local level, but were also framed by ecclesiastical and royal legislation.

I Manumission as a religiously motivated act in the post-Roman west

Inscriptions offer the first attestations to religiously motivated manumissions in ancient Rome. Slave-owners, among them many former slaves, built mausoleums for themselves and their families and granted access to these spaces to freedmen whom they expected to perform sacrifices and keep their memory alive with lights and incense.¹³ If they had no children of their own or deemed their slaves to be more reliable in this respect, these slaves required manumission beforehand so that the manumitter's memory could be eternally preserved.¹⁴ Furthermore, a deceased slave-owner's *colliberti* as a collective made sacrifices in his memory.¹⁵

Although from early on Christian writers encouraged their co-believers to manumit slaves as a pious deed,¹⁶ there was no immediate fundamental change once Christianity was legal within the Roman

¹² S. Esders, *Die Formierung der Zensualität. Zur kirchlichen Transformation des spätrömischen Patronatswesens im früheren Mittelalter* (Ostfildern, 2010).

¹³ For an example from imperial Rome, see *Corpus inscriptionum latinarum* VI.4.1, ed. C. Huelsen (Berlin, 1894), no. 10248 (= *Inscriptiones latinae selectae*, ed. H. Dessau, vol. 2.2 (Berlin, 1906), no. 8366): 'monimenti reliquiarumque suarum culturam dedit libertis libertabusque suis . . . ita ut ex reditu . . . quodannis die natalis sui et rosationis et violae et parentalibus memoriam sui sacrificis quater in annum factis celebrent et praeterea omnibus kalendis, nonis, idibus suis quibusque mensibus lucerna lucens sibi ponatur incenso inposito'.

¹⁴ See F. de Visscher, *Le droit des tombeaux romains* (Milan, 1963), pp. 295–309, and D. Liebs, 'Ewiges Gedenken durch freigelassene Sklaven: Römisches Recht und römische Sitten', in A. Gulczynski (ed.), *Leben nach dem Tod: Rechtliche Probleme im Dualismus: Mensch – Rechtssubjekt* (Graz, 2010), pp. 49–65.

¹⁵ See L.R. Taylor, 'Freedmen and Freeborn in the Epitaphs of Imperial Rome', *American Journal of Philology* 82 (1961), pp. 113–32, at pp. 117, 119 and 123. *Colliberti* denotes a collective of freed persons, who formerly had the same master before they were manumitted by him.

¹⁶ J.A. Harrill, *The Manumission of Slaves in Early Christianity* (Tübingen, 1995).

empire. That the first Christian emperor, Constantine, allowed manumission for religious purposes to be conducted in churches, the *manumissio in ecclesia*,¹⁷ makes clear that this was a practice shared in both pagan and Christian conceptions of *memoria*. Some historians have interpreted Constantine’s laws as aiming at an ‘outsourcing’ of administrative functions to the church,¹⁸ but distinct Christian conceptions of sin and its forgiveness through pious acts, and specific ideas of the afterlife, will have had a significant long-term impact on religiously motivated manumissions – not least in quantitative terms.¹⁹

Thus, a canon of a Gallic synod held shortly after 561 refers to slaves ‘who in accordance with the quality of their service have been attributed to the graves of the dead’ and who should, according to the will of the deceased, be defended either by the heirs of the manumitter or by a church. In the latter case the freedmen and their descendants should be granted legal protection (*defensio*) in every respect and pay renders (*occursus*) to the church.²⁰ This church not only arranged the *defensio* of the freedmen, but also took care that they and their descendants performed their commemorative function, which, it was believed, could not be aptly administered by an unfree person. Compiled in the later seventh century, Marculf’s formulary collection, contains several templates for manumission, among them one for drawing up a will according to Roman law.²¹ This refers to a variety of written dispositions (*iuxta quod ipsas epistolas continent*) according to which slaves could be manumitted for the ransom of the soul. Henceforth, as free persons, and followed by their offspring, they not only had to fulfil the obligation to render ‘payments and lighting-fee’

¹⁷ On Constantine’s laws, only partially preserved, see F. Fabbrini, *La manumissio in ecclesia* (Milan, 1965). The two extant pieces are Cod. Theod. IV.7 (a. 321) (*Theodosiani libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum pertinentes*, ed. T. Mommsen and P.M. Meyer (Berlin, 1905), vol. 1, p. 179), which alone by inclusion into the Theodosian Code and Alaric’s Breviary, was known in the early medieval west, and Cod. Iust. I.13 (a. 316) (*Codex Iustinianus*, ed. P. Krüger, 9th edn (Berlin, 1915), p. 67). See S. Esders, ‘Early Medieval Use of Late Antique Legal Texts: The Case of the *manumissio in ecclesia*’, in O. Kano (ed.), *Configuration du texte en histoire* (Nagoya, 2012), pp. 55–66.

¹⁸ K. Harper, *Slavery in the Late Roman World, AD 275–425* (Cambridge, 2011), p. 485. For a more balanced assessment, see K.M. Girardet, ‘Vom Sonnen-Tag zum Sonntag. Der *dies solis* in Gesetzgebung und Politik Konstantins des Großen’, *Zeitschrift für antikes Christentum* 11 (2007), pp. 279–310.

¹⁹ P. Brown, ‘Vers la naissance du purgatoire, amnistie et pénitence dans le christianisme occidental de l’antiquité tardive au haut moyen âge’, *Annales HSS* 52 (1997), pp. 1247–61.

²⁰ Synod of Paris (a. 555–73), c. 9: *Concilia Galliae A. 511 – A. 695*, ed. C. de Clercq (Turnhout, 1963), p. 209. See M. Borgolte, ‘Freigelassene im Dienst der Memoria. Kulturtradition und Kultwandel im Übergang von der Antike zum Mittelalter’, *Frühmittelalterliche Studien* 17 (1983), pp. 234–50.

²¹ U. Nonn, ‘Merowingische Testamente. Studien zum Fortleben einer römischen Urkundenform im Frankenreich’, *Archiv für Diplomatik* 18 (1972), pp. 1–129; see also J. Barbier, *Archives oubliées du haut Moyen Âge. Les gesta municipalia en Gaule franque (VIe–IXe siècle)* (Paris, 2014).

(*oblata vel luminaria*) at the grave of the manumitter (*ad sepulchra nostra*), but also had to be obedient to his heirs.²²

In his will of 616,²³ Bishop Bertram of Le Mans gave his property to several ecclesiastical institutions including the episcopal church of Le Mans, but in particular to his own foundation, the monastic church of Sts Peter and Paul, where he wished to be buried and have his *memoria* kept alive. He combined this bequest with an alms foundation for the poor.²⁴ Bertram manumitted eleven slaves with their wives and children, and likewise wanted a higher number of servants of Roman and barbarian birth (*tam natione romana quam et barbara*), along with their *peculium* and *conlaboratus*, to be subject to the patronal protection (*sub tuitione et defensione*) of the church. They were all to convene there on the anniversary of Bertram's burial to offer their payments (*oblata*) in his name in front of the altar,²⁵ and each was to perform his respective service (*ministerium*) in the name of God. In addition, they were to offer support (*solacium*) for an annual meal to be held by the abbot in memory of the manumitter. The abbot, on the threat of eternal damnation, was responsible for commemorating Bertram, celebrating his deposition and lighting his grave (*depositionem et lumen sepulturolae*). Moreover, Bertram ordered that a group of slaves from his *familia* who performed administrative functions and held a *condoma* equally be liberated by epistles and, along with the other freedmen, become part of the community destined to annually celebrate his memory (*tam de luminario quam de cineribus*) for the rest of their lives. Furthermore, their offspring were to be subject to the abbot's defence (*defensio*).²⁶

²² Marculf, Formula II.17: *Formulae Merovingici et Karolini aevi*, ed. K. Zeumer (Hanover, 1886), p. 87. See also Fouracre, 'Lights, Power and the Moral Economy', p. 382. Another formulary, Marculf II.34, is quite similar, allowing to choose a protector: *ibid.*, pp. 95–6; see also II.32 (*ibid.*, p. 95).

²³ M. Weidemann, *Das Testament des Bischofs Berthramm von Le Mans vom 27. März 616. Untersuchungen zu Besitz und Geschichte einer fränkischen Familie im 6. und 7. Jahrhundert* (Mainz, 1986); M. Borgolte, 'Felix est homo ille, qui amicos bonos relinquit. Zur sozialen Gestaltungskraft letztwilliger Verfügungen am Beispiel Bischof Bertrams von Le Mans (616)', in H. Maurer and H. Patze (eds), *Festschrift für Berent Schuineköper zu seinem siebzigsten Geburtstag* (Sigmaringen, 1982), pp. 5–18.

²⁴ Weidemann, *Das Testament*, nos. 25 and 33. See also Borgolte, 'Felix est homo ille', p. 12.

²⁵ On *oblata* as a sacrificial offering connected to sepulchral practice, see I. Heidrich, 'Freilassungen als Sicherung des Totengedächtnisses im frühen Frankenreich', in U. Ludwig and T. Schilp (eds), *Nomen et fraternitas. Festschrift für Dieter Geuenich zum 65. Geburtstag* (Berlin, 2008), pp. 221–33, at pp. 222–6.

²⁶ Weidemann, *Das Testament*, nos. 67 and 69.

In his testament of 739,²⁷ *patricius* Abbo of Provence ‘donated’ a large number of freedmen, many of whom he referenced by name,²⁸ to the monastery of St Peter in Noalesa he had founded some years before.²⁹ Some *liberti* are mentioned along with *servi*, *mancipia*, *coloni*, and others as attached to individual pieces of property (*colonicae*) which some of them held as benefice (*in beneficio*) *sub nomen libertinitatis*.³⁰ Given the number of freedmen and the prominence of *patrocinium* over them, it is no surprise to find some sort of general statute on the status of the freed persons at Noalesa. This statute emphasized the obligation of all *liberti* to show obedience to his heir, their new patron St Peter, and henceforth to pay to the monastery the dues (*impensio*) they had formerly lawfully (*iuxta legis ordine*) paid to Abbo’s parents and him. In case *liberti* should contumaciously and ungratefully rebel against his heir, the monastery’s agents should coerce them *cum pietatis ordine*, and if they ungratefully and rebelliously declined to pay the *impensio* or tried to rid themselves of their patron, the judge was to force them ‘according to what is contained in the “law about ungrateful and contumacious freedmen” (*quod lex de ingratis et contumacis libertis continet*).³¹ This *lex* was almost certainly a law of Constantine allowing a patron to return an ungrateful freedman to servitude.³²

While freedmen were often expected to care for *luminaria* and wax in the context of liturgical memory, for Paul Fouracre royal immunity charters that granted ecclesiastical beneficiaries fiscal income to provide oil and wax for lighting their churches were situated in a wider context of a ‘transition from a fiscal to a moral economy’.³³ In many places, groups of ecclesiastical dependants called *luminarii* shared in this by providing their ‘poll tax’ in oil or wax so that the ecclesiastical institution could keep an eternal light and special lighting for memorial

²⁷ P.J. Geary, *Aristocracy in Provence. The Rhône Basin at the Dawn of the Carolingian Age* (Stuttgart, 1985), pp. 38–79 (quoted hereafter).

²⁸ Geary, *Aristocracy in Provence*, p. 93. Some freedmen were given to the monastery along with their children, see e.g., Testamentum Abbonis cc. 26 (pp. 54 and 56).

²⁹ Testamentum Abbonis, e.g., cc. 13, 15, 16, 17, 18, 21, 27, 37, 39, 46, 47, 49, 50, 52, 57 (pp. 48, 50, 52, 56, 62, 64, 66, 68, 70, 72, 76).

³⁰ Testamentum Abbonis, cc. 20, 24, 32 (pp. 52, 54, 58); donated along with a *colonica*, c. 29 (p. 56); with a *curtis*, c. 31 (p. 58).

³¹ Testamentum Abbonis, cc. 45 and 48: ‘Et si ipse de monasterio sicut libertus se abstrahere uoluerit, in pristino seruitio reuertatur’ (pp. 66 and 68). Geary, *ibid.*, p. 96 n. 87 takes this as evidence that ‘the tradition of public authority over *liberti* was not entirely lost’.

³² Cod. Theod. IV.10 (*De libertis et eorum liberis*), 1, issued in either 313 or 332: *Theodosiani libri*, vol. 1, p. 187. See also Cod. Theod. IV.2 of 423 (extending this right to the patron’s heirs) and 3 of 426 (*ibid.* pp. 187–8).

³³ Fouracre, ‘Eternal Light and Earthly Needs’, pp. 75–8; *idem*, “Framing” and Lighting. Another Angle on ‘Transition’, in R. Balzaretto *et al.* (eds), *Italy and Early Medieval Europe: Papers for Chris Wickham* (Oxford, 2018), pp. 305–14, at p. 305.

purposes. Churches' practical need for lighting materials often caused them to arrange payments to be made by freedmen in wax or oil, but also following precarial grants and other transactions. Those who were obliged to deliver dues in wax could be appreciated symbolically as it placed emphasis on the religious nature of their dependency, preventing their payments from becoming confused with ordinary taxes, rents, etc. As 'placing a light on the altar put the offering physically as close as possible to God', this practice also encapsulated a more general idea: 'Keeping the flame burning was a metaphor for the maintenance of the church and the protection of its property.'³⁴ The development of such a 'light-based' logic with its characteristic blending of religious, economic, social, and legal implications can thus be seen as a typically 'medieval' phenomenon, even more so as it entailed processes of group and identity formation.³⁵

In the post-Roman kingdoms, the duty of venerating the dead, traditionally fulfilled by relatives, freedmen and friends, was transferred on a large scale to churches and monasteries as institutions specialized in performing such tasks.³⁶ For instance, Abbo's freedmen were not explicitly expected to actively contribute to his *memoria*, a function that he had most likely transferred to the 'temple' he had founded.³⁷ In such cases, freedmen were expected to make an annual payment in memory of their manumitter, while the actual memorializing function came to be performed by monastic specialists. In other cases, freedmen's payments as required in cash could be used, for instance, for charity endowments. It could differ accordingly if a payment were given on the manumitter's commemorative day or on the saint's feast day.³⁸

2 *Ius patronatus* as a legal concept defining a status of 'limited freedom'

These arrangements followed underlying legal patterns that can be described as adaptations of Roman law. According to legal and social

³⁴ Fouracre, 'Lights, Power and the Moral Economy', pp. 379–80.

³⁵ Oexle, 'Die Gegenwart der Lebenden und der Toten'.

³⁶ On remembrance of the dead being transferred from the family to ecclesiastical institutions, see B. Jussen, 'Erbe und Verwandtschaft. Kulturen der Übertragung im Mittelalter', in S. Willer *et al.* (eds), *Erbe. Übertragungskonzepte zwischen Natur und Kultur* (Frankfurt am Main, 2013), pp. 37–64, at pp. 54–6.

³⁷ As suggested by Geary, *Aristocracy in Provence*, p. 95.

³⁸ Heidrich, 'Freilassungen als Sicherung', p. 229 sees in the transformation of a memorial payment into a 'poll tax' the origins of *Zensualität*.

practice of the Roman empire,³⁹ a slave became free through manumission, but his freedom was usually limited by his former owner who legally became his patron.⁴⁰ Under the ‘law of patronate’ (*ius patronatus*), often commented upon by Roman jurists, the manumitter continued to have certain legal claims over his former slave. For instance, his freedman was obliged to provide specified work-service (*operae libertorum*),⁴¹ to apportion to his manumitter a share of his inheritance (under the title of *bonorum possessio*),⁴² and to make certain payments, for instance, if he wanted to obtain a licence to marry.⁴³ Their relationship being defined in legal terms, the patron also had certain obligations, in particular to legally protect his former slave. That Roman jurists did all they could to define a former slave’s continuing dependence on his patron is not only illustrated by an oath the slave had to swear before his manumission,⁴⁴ but also by the punishment of the *revocatio in servitatem* first attested in the third century.⁴⁵ Things worsened for freedmen in late antiquity, when the bond between freedman and patron became hereditary on both sides, the former slave-owners and their descendants on the one hand, and the freedmen and their offspring on the other.⁴⁶ Patronate over freedmen, once a legal device allowing transition from unfree status to almost unlimited freedom within two generations, had now come to define an intermediate and hereditary class of freedmen who in only a limited number of cases would eventually enjoy full freedom. In most cases, however, *ius patronatus* defined a legal space in which further negotiations concerning functions, obligations, and status could take place.

³⁹ See H. Mouritsen, *The Freedman in the Roman World* (Cambridge, 2011), pp. 120–204; for late antiquity, see Harper, *Slavery in the Late Roman World*, pp. 463–93; J. Barschdorf, *Freigelassene in der Spätantike* (Munich, 2012).

⁴⁰ M. Kaser, ‘Die Geschichte der Patronatsgewalt über Freigelassene’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 58 (1938), pp. 88–135; W. Waldstein, ‘Patrone und Freigelassene’, in H. Altmeyen et al. (eds), *Festschrift für Rolf Knütel zum 70. Geburtstag* (Heidelberg, 2009), pp. 1361–84.

⁴¹ W. Waldstein, *Operae libertorum. Untersuchungen zur Dienstpflicht freigelassener Sklaven* (Stuttgart, 1986).

⁴² Esders, *Die Formierung*, pp. 24–5 with references.

⁴³ R. Friedl, *Der Konkubinat im kaiserzeitlichen Rom. Von Augustus bis Septimius Severus* (Stuttgart, 1996), pp. 202–4; Esders, *Die Formierung*, pp. 25–7 with references.

⁴⁴ Gaius, *Institutiones* III.95a–96: *Gaius, Institutionen*, ed. and trans. U. Manthe (Darmstadt, 2004), pp. 256 and 268.

⁴⁵ M. Kaser, *Das römische Privatrecht*, vol. 2: *Die nachklassischen Entwicklungen*, 2nd edn (Munich, 1975), p. 139; D. Roth, *Revocatio in servitatem. Die rechtliche Beständigkeit der Freilassung vor dem Hintergrund der ‘actio ingrati’* (Berlin, 2018); D. Annunziata, *Sedula servitus. Sulla ‘revocatio in servitatem’ in Costantino* (Naples, 2020).

⁴⁶ See Kaser, *Das römische Privatrecht*, vol. 2, pp. 138–41.

In late- and post-Roman Gaul, manumissions that conferred full freedom without patronal right were possible,⁴⁷ whilst in accordance with Justinianic legislation.⁴⁸ Some formularies invoke the authority of Constantine's law to confer upon a slave full Roman citizenship (*civitas Romana*) and *ingenuitas* through ecclesiastical manumission, so that *patronatus obsequium* was excluded and the new Roman was allowed to make a will.⁴⁹ Still, it has been rightly pointed out that *patrocinium* over freedmen played a status-defining role in late Roman societies,⁵⁰ and continued to do so in their post-Roman successors.⁵¹ In fact, if we look at early medieval charters referring to manumission, nouns such as *defensio*, *tuitio*, *mundeburdium*, and *patrocinium* occur quite regularly, often routinely in paired expressions such as *defensio et tuitio*. While *defensio* points to legal protection, it is hard to define what these terms meant precisely at a given time; still, their ubiquity justifies speaking of a legally defined patronate. As the *iura patronatus* continued to be grounded in Roman legal practice, searching in vernacular terms – such as the Latinized *mundeburdium* – for a supposed influence of 'Germanic law', appears to be futile.⁵² Naturally, the long-term and indeed post-Roman success of a legal concept such as patronate over freedmen can only be explained by assuming its adaptability and openness to external influence.⁵³ For patronate, be it called *mundeburdium* or *defensio* in our sources, constituted, in Jean-Pierre Devroey's memorable words, 'un rapport de réciprocité brutalement hiérarchique'.⁵⁴

⁴⁷ See D. Liebs, 'Vier Arten von Römern unter den Franken im 6. bis 8. Jh.', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 133 (2016), pp. 459–68, at pp. 464–5, with references.

⁴⁸ Cod. Iust. VI.4 (*De bonis libertorum et de iure patronatus*), 3 (a. 529): *Codex Iustinianus*, p. 241. Liebs, 'Vier Arten von Römern', p. 465 points out that in Merovingian Gaul, following Alaric's Breviary, renouncement of patronal rights appears as the exception rather than the rule.

⁴⁹ Appendix to the *Cartae Senonicae: Formulae Merovingici et Karolini aevi*, p. 210; Formula Biturigensis, no. 9: *ibid.* p. 172, both referring to Constantine's law on *manumissio in ecclesia*. See Liebs, 'Vier Arten von Römern', pp. 465–6.

⁵⁰ On late Roman types of *patrocinium*, see J.-U. Krause, *Spätantike Patronatsformen im Westen des Römischen Reiches* (Munich, 1987); and A. Busch et al., 'Patronage', *Reallexikon für Antike und Christentum* 26 (2015), pp. 1109–38.

⁵¹ See in particular T.B. Andersen, 'Patrocinium. The Concept of Personal Protection and Dependence in the Later Roman Empire and the Early Middle Ages', Ph.D. thesis, Fordham University, New York (1974), pp. 150–85; A. Rio, *Slavery after Rome, 500–1100* (Oxford, 2017), pp. 75–131 on social and legal differentiation among early medieval freed persons.

⁵² For a cautious definition, see H. Löflein, 'Mundeburdium', in *Formulae-Litterae-Chartae. Neuedition der frühmittelalterlichen Formulae*, <https://werkstatt.formulae.uni-hamburg.de/texts/urn:cts:formulae:ellexicon.mundeburdium.deu001/passagel/all> [accessed 8 February 2021].

⁵³ See also B.H. Rosenwein, *Negotiating Space: Power, Restraint, and Privileges of Immunity in Early Medieval Europe* (Manchester, 1999), pp. 109–12.

⁵⁴ J.-P. Devroey, *Puissants et misérables. Système social et monde paysan dans l'Europe des Francs (VIe–IXe siècles)* (Brussels, 2006), p. 269.

3 Inalienable property and immortal patrons

Synodal decrees show the efforts of early medieval bishops to define both the nature and boundaries of the ‘temple’ and their control over its dependants. The most explicit post-Roman statement on the status of ecclesiastical freedmen comes from Visigothic Spain, where in 633 the Fourth Synod of Toledo unanimously issued a sequence of no fewer than eight canons on this topic,⁵⁵ taking as a point of departure the idea that all ecclesiastical property was inalienable and had a special destination. Bishops who manumitted slaves from among the dependants of a church (*ex familiae ecclesiae*) should thus be condemned, as it was deemed impious (*impium*) since their action alienated that which belonged to the right of the church (*ius ecclesiae alienare*); accordingly, the manumitted person was to be revoked to the *ius ecclesiae* by the succeeding bishop.⁵⁶ Bishops intending to manumit an ecclesiastical slave without reserving for the church patronate (*patrocinium*) over the future freedman thus had to offer in exchange two slaves of equal merit and worth whom they had privately acquired (*iuri proprio adquisivit*).⁵⁷ *Patrocinium* over a former slave was considered to be of equal value to the slave himself.

Consequently, freedmen and their offspring were to remain under the patronate of the church (*sub patrocinio ecclesiae*) and meet their obligations according to their ability; they should lie under the bishop’s legal protection (*sacerdotali defensione*) and be protected in their free status (*in statu libertatis*) and their possessions. Neither these freedmen nor their posterity could ever rid themselves of the patronate (*patrocinium*) of this church, ‘because their patron never dies’ (*quia nunquam moritur eorum patrona*). Instead, they had to make a solemn assertion (*professio*) to their bishop declaring that they became free (*liberi*) from among the ecclesiastical dependants (*ex familia ecclesiae*), would not abandon the church’s *patrocinium*, and would show obedience and submission (*obsequium vel oboedientiam*). If not, their manumission should be regarded as invalid, and for their disobedience they were subject to ‘legal action against ungrateful freedmen’ (*ingrati*

⁵⁵ Fourth Council of Toledo (633), cc. 67–74: *La colección canónica Hispana*, vol. 5.2, ed. G. Martínez Díez and F. Rodríguez Barbero (Madrid, 1992), pp. 242–8. See in general D. Claude, ‘Freedmen in the Visigothic Kingdom’, in E. James (ed.), *Visigothic Spain. New Approaches* (Oxford, 1980), pp. 159–88.

⁵⁶ Fourth Council of Toledo (633), c. 67: *La colección canónica Hispana*, p. 242.

⁵⁷ This seems to suggest that as in Gaul (above nn. 48, 49 and 51), slaves given for manumission to a church came under its patronate, if the manumitters had wished so.

actione tenentur)⁵⁸ – once more a clear reference to Roman law,⁵⁹ which also denoted a freedman's patronal church as his *vera origo* and his status as *conditio originis*.⁶⁰

The claim of the Visigothic bishops that church property was inalienable points to a more recent layer of Roman law.⁶¹ To prevent it from being alienated (*alienatio*), particularly by clerics, in 470 the emperor Leo I decreed that church property should be regarded as sacrosanct. Ecclesiastical property (*ecclesiae patrimonium*), it was stated, needed protection, because the church was 'the eternal mother of religion and faith' (*religionis et fidei mater perpetua*)⁶² – a striking parallel to the idea of an immortal patron. In a later lengthy novel of 535, Justinian elaborated on the idea that churches were trustees for what belonged to God and specified that an exchange with church property was only legitimate if confirmed by the emperor, since most ecclesiastical property derived from imperial munificence.⁶³ The bishops at Toledo may thus have been inspired by the implementation of Justinianic law in Byzantine Spain. Enforcing the principle of inalienability benefitted lawful transactions concerning ecclesiastical property for centuries to come, as predominantly only rights of a limited nature could be conferred.⁶⁴ Naturally, as with every legal principle, strategies to circumvent it were soon developed.⁶⁵ Still, the predominance of usufruct donations, *precaria* and beneficial grants in ecclesiastical charter collections speaks for itself, as they left the issue of

⁵⁸ Fourth Council of Toledo (633), cc. 69–72: *La colección canónica Hispana*, pp. 244–6. Confirmed by Sixth Council of Toledo (638), c. 9: *ibid.*, pp. 315–16.

⁵⁹ See above nn. 31 and 45. On the *actio ingrati* and its connection to patronate see Roth, *Revocatio in servitute*. A freedman accusing or testifying against his church should have his freedom revoked and be returned into servitude, see Fourth Council of Toledo (633), c. 68: *La colección canónica Hispana*, p. 243.

⁶⁰ See Sixth Council of Toledo (638), c. 9 (*La colección canónica Hispana*, pp. 314–16), on *origo*. See Andersen, *Patrocinium*, pp. 150–2, and on the Roman background C. Grey, 'Conceptualizing *Colonatus*: The *Origo* of the Late Roman Empire', *Journal of Roman Studies* 97 (2007), pp. 155–75.

⁶¹ For earlier legislation see D. Annunziata, *Opulentia ecclesiae. Alle origini della proprietà ecclesiastica* (Naples, 2017).

⁶² Cod. Iust. I.2 (*De sacrosanctis ecclesiis*), 14.1–3, issued in 470: *Codex Iustinianus*, p. 13.

⁶³ Justinian, Novella 7: (Iustiniani) *Novellae*, ed. R. Schoell and W. Kroll (Berlin, 1895), p. 52. See S. Esders and S. Patzold, 'From Justinian to Louis the Pious: Inalienability of Church Property and the Sovereignty of a Ruler in the Ninth Century', in R. Meens *et al.* (eds), *Religious Franks. Religion and Power in the Frankish Kingdoms. Studies in Honour of Mayke de Jong* (Manchester, 2016), pp. 371–92.

⁶⁴ S. Esders, 'Die frühmittelalterliche "Blüte" des Tauschgeschäfts: Folge ökonomischer Entwicklung oder Resultat rechtspolitischer Setzung?', in I. Fees and P. Depreux (eds), *Tauschgeschäft und Tauschurkunde vom 8. bis zum 12. Jahrhundert / L'acte d'échange, du VIIIe au XIIe siècle* (Cologne, 2013), pp. 19–44, at p. 42.

⁶⁵ On contracts involving church property, see B.H. Rosenwein, 'Property Transfers and the Church, Eighth to Eleventh Centuries: An Overview', *Mélanges de l'École française de Rome, Moyen Âge*, III (1999), pp. 563–75.

ownership untouched. Exchange was considered the only legitimate way of alienating ecclesiastical property.⁶⁶

Most of these provisions and arguments were not an exclusively Visigothic or Spanish feature. In Merovingian Gaul, the inalienability of church property was likewise applied to ecclesiastical slaves and freedmen,⁶⁷ with bishops using the same rhetoric. At the Second Synod of Mâcon held in 585, they sought to protect ecclesiastical freedmen against bullying, for they had acquired ‘the patronate of the immortal church’ (*immortalis ecclesiae patrocinium*).⁶⁸ Considering a patronal relationship as ‘immortal’ clearly echoed both the inalienability of church property and the fact that a freedman’s offspring inherited the parental status. Moreover, the idea that a church as an ecclesiastical freedman’s patron never dies, found its complement in the belief that property should be given to the altars of saints.⁶⁹ In the post-Roman west, the more general late antique notion of the saint as a patron thus transformed into the idea that the saint relentlessly protected church property by inflicting gruesome punishments upon any offender, either on the spot or later.⁷⁰ The saint, who could not die, acted as an equivalent to the idea of a juristic person,⁷¹ with the further advantage that in protecting ecclesiastical property, a saint was imagined to be capable of being simultaneously present at a number of locations. This was an assumption that could be neatly linked to the fact that ecclesiastical holdings were often widely scattered. Since the saint protected the *familia* of dependants of his church, which the freedmen conceived of as their eternal mother, it is telling that the saint was not classified as *pater familias*, but as their *patronus*. The metaphor echoed the saint’s power to intercede with the supreme power of God.⁷²

The Visigothic canons proved to be hugely influential beyond Spain, in particular in the Carolingian empire, where they became widely known through collections of canon law such as the huge *Collectio*

⁶⁶ See the studies in Fees and Depreux (eds), *Tauschgeschäft und Tauschurkunde*.

⁶⁷ Fourth Council of Orléans (541), c. 9: *Concilia Galliae*, p. 134.

⁶⁸ Second Synod of Mâcon (585), c. 7: *Concilia Galliae*, p. 242.

⁶⁹ Nov. Iust. 131 (545), 9: (Iustiniani) *Novellae*, p. 658. A. Angenendt, ‘*Cartam offerre super altare*. Zur Liturgisierung von Rechtsvorgängen’, *Frühmittelalterliche Studien* 36 (2002), pp. 133–58.

⁷⁰ For Merovingian Gaul, see J.H. Corbett, ‘The Saint as Patron in the Work of Gregory of Tours’, *Journal of Medieval History* 7 (1981), pp. 1–13, at p. 10 on slaves and freedmen.

⁷¹ On the legal problem, see M. Wojtczak, “‘Legal Representation’ of Monastic Communities in Late Antique Papyri”, *Journal of Juristic Papyrology* 49 (2019), pp. 347–99; on the role of saints, see S. Esders, ‘Heilige als juristische Personen? “Transpersonale” Institutionalisierung im früheren Mittelalter’, in A. Bihrer et al. (eds), *Der Wert des Heiligen. Spirituelle, materielle und ökonomische Verflechtungen* (Stuttgart, 2020), pp. 91–104.

⁷² See J. Martin, ‘Die Macht der Heiligen’, in *idem* and B. Quint (eds), *Christentum und antike Gesellschaft* (Darmstadt, 1990), pp. 440–74, at pp. 448–50.

Hispana sistematica,⁷³ preserved in three Lyonese manuscripts alone and used by the future archbishop Agobard to compile his influential *Collectio canonum Dacheriana*.⁷⁴ Thus in later collections, such as Regino of Prüm's *Libri duo de synodalibus causis*⁷⁵ and the *Decretum* of Bishop Burchard of Worms,⁷⁶ they were considered the standard of canon law. As with their Gallic counterparts, they bore the bishops' stamp on the formation of discourse and rhetoric about their 'temples' possessions: ecclesiastical property was administered on behalf of God, who was the actual owner. It was accumulated through pious endowments, constituting an irrevocable sacrifice (*oblatio*),⁷⁷ and being inalienable, was destined for special purposes such as feeding the poor and sustaining the clergy. Anyone infringing upon church property was thus defamed as a *neccator pauperum*.⁷⁸ Following this change in discourse, a church was considered the immortal patron (*patrona*) of freedmen and their offspring, with this patronal relationship understood to be perpetual on both sides and sanctioned by the saint.

4 *Luminarii, cerarii* and *cercensuales*: long-term regional and cultural perspectives

The need to light churches, as demonstrated by Paul Fouracre,⁷⁹ called into being religiously connotated economic circles. In the seventh and eighth centuries, documents attest to groups termed *luminarii* and *cerarii*. These terms appear to have resulted from the memorial wax payments made by freedmen manumitted with religious intent, from special *mansi* devoted to lighting, and from a more general obligation of freedmen to pay a 'poll tax'. Charlemagne, in a general capitulary issued in 779 at his royal palace at Herstal, proclaimed that ancient custom should be observed (*sicut a longe tempore fuit*) with regard to persons manumitted into the status of 'wax-payers' (*cerarii*), 'by tables'

⁷³ 'Sumario de la hispana sistematica. Libros, titulus y rubricas de los 1.630 titulos', in *La colección canónica hispana*, vol. 2.1: *Colecciones derivadas*, ed. G. Martínez Díez (Madrid, 1976), pp. 277–426.

⁷⁴ L. d'Achery and L.-F.-J. de La Barre (eds), *Spicilegium sive collectio veterum aliquot scriptorum, qui in Galliae Bibliothecis delituerant* (Paris, 1723), vol. 1, pp. 509–64.

⁷⁵ *Reginonis abbatis Prumiensis Libri duo de synodalibus causis et disciplinis ecclesiasticis*, ed. F.W.A. Wasserschleben (Leipzig, 1840), p. 520.

⁷⁶ See H. Hoffmann and R. Pokorny, *Das Dekret des Bischofs Burchard von Worms. Textstufen – Frühe Verbreitung – Vorlagen* (Munich, 1991), p. 266.

⁷⁷ F.S. Paxton, 'Oblations defunctorum. The Poor and the Dead in Late Antiquity and the Early Medieval West', in *Proceedings of the Tenth International Congress of Medieval Canon Law* (Vatican City, 2011), pp. 245–68.

⁷⁸ G. Calvé-Marcade, *Assassin des pauvres: L'église et l'inaliénabilité des terres à l'époque carolingienne* (Turnhout, 2019).

⁷⁹ Fouracre, 'Eternal Light and Earthly Needs', p. 75.

(*tabularii*), and 'by charter' (*cartularii*).⁸⁰ These groups would have a long future, too. In a fundamental study of the rich charter evidence from Rhineland, Manfred van Rey traced a connection from the first wax tributes fixed for freed persons in the late eighth century, to the high medieval *cerocensuales*, a considerable number of wax-payers associated with ecclesiastical institutions and living across the Rhineland and beyond.⁸¹ Indeed, for several regions that once belonged to the eastern part of the Frankish kingdom, a continuous development with its regional variations can be traced over a millennium, from the early medieval *cerarii* and *cerocensuales*, to the German *Wachszinser* who may have numbered in the thousands⁸² and eventually disappeared in the early modern period, in some regions only following Napoleon's decree of 1808.⁸³

Although traceable only from the twelfth and thirteenth centuries onward, addressing the fully developed culture of *cerocensualitas* can illuminate how these men and women formed an important collective within a medieval 'temple society', wherein 'corporate groups retain their separate identities while being accommodated in the larger ritual and economic process represented by the temple'.⁸⁴ Dozens of written *iura cerocensualium* document their obligations towards their ecclesiastical patron, notably the triad of wax-tribute, a marriage fee, and a post-mortem payment, while their freedom from corporal work and their right to inherit is emphasized. Juristically belonging to the altar of a saint, they had their own judicial court. Sometimes a single obligation, such as paying for the 'dead hand' (*mortua manus*), could be remitted with a revocation into servitude on negligence of payment being explicitly excluded. Leaving the 'temple' was also possible, regulated by fixed redemption payments. Though their dependency was defined in strictly personal terms, the 'wax-payers' were sometimes given special types of land, the *Wachszinsgüter* or *Lichtergüter*, reminiscent of the *luminarii's mansi*.

⁸⁰ Capitulary of Herstal, a. 779, c. 15: *De cerariis et tabulariis atque cartulariis, sicut a longe tempore fuit, observetur. Capitularia regum Francorum 1*, ed. A. Boretius (Hanover, 1883), no. 20, p. 50. On late eighth-century wax tributaries at Lorsch see H. Werle, 'Denariata cerae. Die Wachszinspflichtigen zu Undenheim', in *1200 Jahre Undenheim 767–1967. Beiträge zur Geschichte eines Dorfes* (Oppenheim, 1967), pp. 6–9; on *tabularii* see the next chapter.

⁸¹ M. Van Rey, 'Von *mancipia* zu *cerocensuales*. Zur früh- und hochmittelalterlichen Wachszinsigkeit im rheinischen Raum', *Rheinische Vierteljahrsblätter* 83 (2019), pp. 32–79.

⁸² The collegiate church of Xanten on the lower Rhine listed more than 4,000 *cerocensuales* in the fifteenth century: K. van Eickels, 'Die Verzeichnisse der Wachszinsigen des Stiftes Xanten im 15. Jahrhundert', *Annalen des Historischen Vereins für den Niederrhein* 197 (1994), pp. 93–108.

⁸³ H. Weigel, 'Das Wachszinsrecht im Stift Essen', *Beiträge zur Geschichte von Stadt und Stift Essen* 67 (1952), pp. 23–136, at p. 127.

⁸⁴ Appadurai and Appadurai Breckenridge, 'The South Indian Temple', p. 202.

The specific group-based religious culture of the *cerocensuales* is particularly visible. Belonging to a saint, to whom they felt a spiritual closeness, they entertained a direct legal relationship to God. Rendering their tribute in pure beeswax was considered a 'sacrifice of candles', ritually rendered during mass at the altar to display their group identity. As religiously and legally defined communities, the *cerocensuales*, like guilds, had their own rituals and meals. Their distinct festival culture included, for instance, a candle procession on the feast day of Candlemas (in German, *Mariae Lichtmess*), while their appreciation of bees became associated with the virgin birth and cult of St Mary, and with St Ambrose who was understood to be a protector of bees. An Easter candle, sometimes weighing more than forty kilogrammes, was made in Passion Week by members of the community.⁸⁵

With all these legal rules, customs, and folklore, it is difficult to say when they were precisely conceived. Although a continuous development cannot be denied for the Rhineland, it is clear that in the early medieval period we are only observing modest beginnings. Still, it makes sense to ask why there was such an early and strong development of these features in this region in particular.

5 The *Lex Ribuaria* and royal legislation on *manumissio in ecclesia* in Eastern Francia

Cerocensuales belonged exclusively to ecclesiastical institutions, and thus should not be confused with *liti*, for instance, a much wider group whose limited freedom was regulated by secular law and who also often figured among ecclesiastical dependants.⁸⁶ Although there were several groups of non-slave people whose freedom, when compared with that of free people, appears in various ways to have been 'limited',⁸⁷ one

⁸⁵ To quote 'pauca e multis': H. Brebaum, 'Das Wachsinsrecht im südlichen Westfalen bis zum 14. Jahrhundert', *Zeitschrift für vaterländische Geschichte und Altertumskunde* 71 (1913), pp. 1–59; A. Meister (ed.), *Studien zur Geschichte der Wachsinsigkeit* (Münster, 1914); Weigel, 'Das Wachsinsrecht im Stift Essen'; *idem*, 'Wachsinsrecht und Brauchtum in Gelsenkirchen, Buer and Horst', *Beiträge zur Stadtgeschichte von Gelsenkirchen-Buer* (1971), pp. 43–62; L. Tewes, 'Ad ius cerocensualitatis. Wachsins, Volksbrauch und Tradition um die St. Lambertikirche in Gladbeck', *Vestischer Kalender* 58 (1987), pp. 208–12; I. Davin, 'Der Wachsins', *Leiw Heukesboven* 45 (2006), pp. 93–102.

⁸⁶ G. Beyreuther, 'Die frühmittelalterlichen Liten. Untersuchungen zu ihrem sozialökonomischen und ständisch-rechtlichen Status', D.Phil. dissertation, Humboldt University of Berlin (1982).

⁸⁷ I endorse Rio's view that 'half-free', a vacuous term used by many German historians, is not in any way helpful (*Slavery after Rome*, p. 101, see already Esders, *Die Formierung*, pp. 15–16 and 84–5). There were several groups of people whose free status was in various ways legally 'reduced' or 'limited'.

should resist the temptation to equate the *censuales* with these or other groups of ecclesiastical dependants. The *censuales*’ freedom was evidently limited by the patronal power of churches alone.

To understand why this group became so prominent in the Rhineland and beyond, one needs to look at the Ribuarian law code, compiled under King Dagobert I, most likely in 633/4.⁸⁸ Originally drafted for Cologne, the Rhineland, and its adjacent regions,⁸⁹ its aim was, apart from revising norms of the older *Lex Salica*, to entrench the legal position of the king, royal charters, and the churches in this region.⁹⁰ Moreover, the code sought to make the inhabitants adopt a new Frankish identity as Ribuarians (*Ripuarii*), as its area of application saw a major influx of people coming from elsewhere (*advenae*).⁹¹ The *Lex Ribuarica* contains a most detailed law in which we may detect the first piece of legislation on *manumissio in ecclesia* issued by a ruler since the emperor Constantine. Drawing on regulations issued shortly before by King Chlothar II, who had previously responded to demands by bishops that freedmen be placed under episcopal supervision,⁹² a lengthy chapter is devoted to *manumissio (in ecclesia) per tabulas* and to freed persons who were named *tabularii* after this procedure.⁹³

Couched in royal legislative tone (*iubemus*), it regulated the case of Ribuarian Franks intending to manumit slaves ‘in religious motivation or for money’ (*pro animae suae remedium seu pro pretio*), which, despite being Frankish, they were allowed to perform according to Roman law (*secundum legem Romanam*). In these cases, the manumitter was to hand over his slave with tables (*cum tabulis*) to the bishop in a church in the presence of the clergy, whose archdeacon would inscribe these tables ‘following Roman law, according to which the church lives’ (*secundum legem Romanam, quam ecclesia vivit*). The new freedman (*tabularius*), along with his offspring, were to henceforth be free (*liberi*) and subject to the patronate (*tuitio*) of the church. Payments deriving from his status (*omnis reditus status eorum*) went to the church in which he had

⁸⁸ F. Beyerle, ‘Zum Kleinreich Sigiberts III. und zur Datierung der *Lex Ribuarica*’, *Rheinische Vierteljahrsblätter* 21 (1956), pp. 357–61.

⁸⁹ E. Ewig, ‘Die *Civitas Ubiorum*, die *Francia Rinensis* und das Land Ribuarien’ (1954), in *idem*, *Spätantikes und fränkisches Gallien. Gesammelte Schriften (1952–1973)*, vol. 1 (Zürich, 1976), pp. 472–503.

⁹⁰ S. Esders, ‘Loi des Francs ripuaires’, in S. Joye *et al.* (eds), *Les lois barbares. Justice et société dans les royaumes post-romains* (Rennes, in press).

⁹¹ M. Springer, ‘*Riparii* – Ribuarier – Rheinfranken nebst einigen Bemerkungen zum Geographen von Ravenna’, in D. Geunich (ed.), *Die Franken und die Alemannen bis zur ‘Schlacht bei Zülpich’ (496/97)* (Berlin, 1998), pp. 200–69.

⁹² Synod of Paris (614), c. 7: *Concilia Galliae*, p. 284; Edict of Paris, a. 614, c. 7: *Capitularia regum Francorum* 1, no. 9, p. 22.

⁹³ L. Rib. 60 (57), 61 (58), 64 (61) and 65 (62): *Lex Ribuarica*, ed. F. Beyerle and R. Buchner (Hanover, 1954), pp. 107–14 and 117.

been manumitted, which also became his heir if he had no offspring. Furthermore, judicial hearings (*mallum*) involving a *tabularius* had to be held there. Anyone who defended a *tabularius* against his bishop would have to pay the royal ban of 60 *solidi*, while the ruler explicitly forbade withdrawing a *tabularius* from the church to which he legally belonged, which ‘we have only recently granted to the churches’ (*quod dudum ecclesiis concessimus*).⁹⁴

Roman law is invoked here for the procedure of *manumissio in ecclesia* in general and more specifically for the use of tables (*tabulae*) within this ritual,⁹⁵ while the subscription of seven witnesses on these tables also points to Roman legal practice.⁹⁶ However, the provision sought to implement a practice borrowed from Roman law into a society on the lower Rhine no longer dominated by Roman law. A *Ripuarus* was a Frank born in *Ripuarria*, and it was this group that the code addressed specifically, which it did against the background of ethnically defined legal pluralism. It therefore made sense to emphasize as a general rule that the church should live according to Roman law (*ecclesia vivit lege Romana*). In most parts of Merovingian Gaul the practice of manumitting slaves in a church indeed followed Roman legal practice, allowing for a certain degree of variation and adaptation, whereas the Ribuarian law code imagined a vastly different situation for the Rhineland when exceptionally allowing a Frank to conduct according to Roman law a procedure involving the church. Consequently, any manumission conducted in a church for pious reasons would place the freed person under the patronate of the church where the manumission took place. This differed from other regions, where reserving one’s patronal rights remained possible in case of a *manumissio in ecclesia*. Installing some sort of ‘all or nothing’ rule for *Ripuarria* effectively meant that in cases of piously motivated manumissions, the churches in question also claimed the patronal rights over the freedpersons. For this reason, and since the above-mentioned manumission *pro pretio* suggests an ecclesiastical interest in buying slaves and manumitting them, it is clear that this would result in an increased number of freedmen placed permanently under ecclesiastical patronate.

Moreover, the regulation needs to be interpreted against the backdrop of different types of freedom a slave could achieve according to this code.

⁹⁴ L. Rib. 61 (58), cc. 1–22: *Lex Ribuarria*, pp. 108–14. Several provisions deal with impugning the status of *tabularii* and with marriage restrictions inflicted upon this group.

⁹⁵ On the use of *tabulae* in Roman manumission procedure, see E.A. Meyer, *Legitimacy and Law in the Roman World. Tabulae in Roman Belief and Practice* (Cambridge, 2004), pp. 175, 207–8, 213, 233–6, 277 and 287–8.

⁹⁶ C.G. Bruns, ‘Die sieben Zeugen des römischen Rechts’ (1877), in *idem, Kleinere Schriften*, vol. 2 (Weimar, 1882), pp. 119–38.

A person released into the status of a *civis Romanus*, who, like a *tabularius*, usually had a wergild of 100 *solidi*, could even achieve a wergild of 200 *solidi* if he was manumitted by ‘penny-throw’ (*denariatio*) in the presence of the king.⁹⁷ Whereas a wergild of 200 *solidi* equalled that of a freeborn Ribuarian Frank,⁹⁸ it was made explicitly clear that such an elevation in status was not possible in case of *tabularii*.⁹⁹ Their status was demonstrably conceived of as a dead-end street: once under the patronate of the church, a *tabularius*’s legal status could no longer be improved, for he belonged to the *res ecclesiae* and its immortal patron. Chlothar II’s royal statute and its incorporation into Dagobert’s Ribuarian law code thus laid the ground for the creation of a distinct group of ecclesiastical freedmen, who were clearly far better-off than many slaves and other groups who enjoyed a ‘limited’ freedom in Eastern Francia. The Merovingian rulers sought to transform episcopal churches into building blocks of power in an area that had lost part of its Romanness and was not fully Christianized. Fittingly, Archbishop Kunibert of Cologne, important adviser of Dagobert I and regent for the under-age King Sigibert III, has long been suspected as one of the driving forces behind the compilation of the *Lex Ribuaria*,¹⁰⁰ four copies of which were owned by the cathedral library of Cologne alone in the ninth century.¹⁰¹

Despite these features, Alice Rio has recently cast doubts on the importance of this statute for the emergence of *censuales*, as she called into question ‘whether this law in itself would have the capacity to create such a class’.¹⁰² The impact of the Ribuarian law code and of its royal statute on *tabularii* thus deserves revisiting. Transcending far beyond the Cologne region and the *pagus Ribuaris* for which it was

⁹⁷ L. Rib. 64 (61).3 and 65 (62).2: *Lex Ribuaria*, p. 117.

⁹⁸ L. Rib. 7, 40 (36).1–4 and 64 (61). 2: *Lex Ribuaria*, pp. 77, 92, 117.

⁹⁹ L. Rib. 61 (58).1 and 7: *Lex Ribuaria*, pp. 109 and 111.

¹⁰⁰ H. Müller, ‘Bischof Kunibert von Köln. Staatsmann im Übergang von der Merowinger- zur Karolingerzeit’, *Zeitschrift für Kirchengeschichte* 98 (1987), pp. 167–205, at pp. 188–9; T. Faulkner, *Law and Authority in the Early Middle Ages. The Frankish Leges in the Carolingian Period* (Cambridge, 2016), pp. 19–20.

¹⁰¹ As documented by the library catalogue of 833, see A. Decker, ‘Die Hildebold’sche Manuskriptensammlung des Kölner Domes’, in *Festschrift der 43. Versammlung deutscher Philologen und Schulmänner* (Bonn, 1895), pp. 217–53, at p. 227; one of the (otherwise lost) *Lex Ribuaris* manuscripts from Cologne may be identical with Vatican City, Biblioteca Apostolica Vaticana, Pal. Lat. 773 (I owe this reference to Karl Ubl).

¹⁰² Rio, *Slavery after Rome*, pp. 101–2. However, a significant omission in Rio’s book and source base concerns the two most important charter editions for this region: *Urkundenbuch für die Geschichte des Niederrheins*, vol. 1: *Bis zum Jahr 1200 einschließlich*, ed. T.J. Lacomblet (Düsseldorf, 1840); and *Rheinisches Urkundenbuch. Ältere Urkunden bis 1100*, ed. E. Wisplinghoff, vols 1–2 (Düsseldorf, 1972 and 1994). These charters, by contrast, form the core base of the fundamental study by Van Rey, ‘Von *mancipia* zu *cerocensuales*’.

originally designed in the seventh century,¹⁰³ the geographical area covered by the *Lex Ribuaria* later included large parts of modern southern Belgium with the Carolingian heartland and cities such as Namur, Mons, and Liège. Further east and beyond the Rhine, parts of the Ruhr area (*pagus Rurigowe*) including the Westphalian monasteries Essen and Werden, belonged to the enlarged Carolingian 'Ribuarian duchy' (*ducatu Ripuariu*) and were thus considered to be territories following Frankish law.¹⁰⁴ Southward, *Ripuaru* reached towards the Moselle region, while the influence of the law-book also extended to the Middle Rhine valley up to Speyer, Worms, and the Alsace.¹⁰⁵ Separate regulations on ecclesiastical freedmen were issued later for Swabia and Bavaria,¹⁰⁶ while most parts of Saxony and Frisia were unaffected by the measures ordained for *Ripuaru*. Widespread application of the Ribuarian code is suggested by its transmission in almost forty extant manuscripts, many among them from Eastern Francia.¹⁰⁷ Its provisions on 'freedmen by tables' (*tabularii*) were acknowledged by Charlemagne in Herstal (near Liège) as an ancient custom,¹⁰⁸ who later in his reign confirmed Ribuarian law and even added several novels to it.¹⁰⁹ Louis the Pious, in a memorandum of 819,¹¹⁰ intended to discuss with his advisers the issue of 'freedmen, who are paying wax or another *census* to a church and are being treated as slaves'.¹¹¹ Thus royal responsibility for ecclesiastical freedmen did not vanish in regions under Ribuarian law. Indeed, Lothar I and

¹⁰³ E. Ewig, 'Die Civitas Ubiorum, die Francia Rinensis und das Land Ribuarien', *Rheinische Vierteljahrsblätter* 19 (1954), pp. 1–29; Faulkner, *Law and Authority*, pp. 16–20.

¹⁰⁴ On the Carolingian *ducatu Ripuariorum* and the *Ribuarias comitatus quinque* see Faulkner, *Law and Authority*, p. 19.

¹⁰⁵ M. Innes, *State and Society in the Early Middle Ages: The Middle Rhine Valley, 400–1000* (Cambridge, 2000), p. 117 on familiarity of scribes with Ribuarian law.

¹⁰⁶ On the later attested *censuales* of Bavaria, not dealt with in this study, see most recently J. Müller, 'Zensualen', *Historisches Lexikon Bayerns* (2020): <https://www.historisches-lexikon-bayerns.de/Lexikon/Zensualen> [accessed 8 February 2021].

¹⁰⁷ An updated list can be found in the 'Bibliotheca legum': <http://www.leges.uni-koeln.de/lex/lex-ribuaru/> [accessed 8 February 2021]. See also above n. 101.

¹⁰⁸ See above n. 80.

¹⁰⁹ Einhard, *Life of Charlemagne*, c. 29: *Einhardi vita Karoli magni*, ed. O. Holder-Egger (Hanover, 1911), p. 33; *Capitulare legi Ribuarie additum a. 803: Capitularia regum Francorum I*, no. 41, pp. 117–18. See Faulkner, *Law and Authority*, pp. 121–7.

¹¹⁰ See H. Mordek, 'Unbekannte Texte zur karolingischen Gesetzgebung. Ludwig der Fromme, Einhard und die *Capitula adhuc conferenda*', *Deutsches Archiv für Erforschung des Mittelalters* 42 (1986), pp. 446–70. The memorandum is transmitted along with a fragment of a novel to the Ribuarian code.

¹¹¹ *Capitula adhuc conferenda*, c. 11: 'De libertis, qui ceram vel alium censum ad ecclesia solvunt et pro servis tenentur' (ed. Mordek, 'Unbekannte Texte', p. 470). On the text's connection to Ghent, see G. Declercq, 'De *Capitula adhuc conferenda* van Lodewijk de Vrome en de domeinen van de Gentse Sint-Baafsabdij in Noord-Frankrijk', in J.-M. Duvosquel and E. Thoen (eds), *Peasants and Townsmen in Medieval Europe. Studia in honorem Adriaan Verhulst* (Ghent, 1995), pp. 325–45.

Lothar II, who ruled the middle kingdom with the *ducatus Ribuarius* as its heartland, were in some sources, perhaps belittlingly, called *rex Ripuariorum* or *rex Ripuariae*.¹¹²

The Ribuarian code’s area of application extended even further. In 826, a nobleman called Germunt donated to the monastery of St Boniface at Fulda three female slaves (*ancillae*) in the *pagus* Grabfeld in Thuringia, along with further possessions and seventeen *mancipia*. Drafted by Fulda’s abbot Hrabanus Maurus, a charter detailed that the abbot had decided, upon consent of his community, that the three women should be free from any other servitude and on the feast day of St Boniface should pay two *denarii* in cash or wax to the church of St Michael in a Thuringian place called Rohr, a proprietary church of Fulda. Following their deaths, their *collaboratus* were to be used as an *elemosina*-endowment to celebrate Germunt’s memory at Fulda.¹¹³ This all should be done, as was explicitly stated, according to the *lex tabularia*. As the Fulda cartulary contains several charters documenting donations of slaves into the status of wax-payers, it becomes clear the Ribuarian statute came to be applied in Thuringia, or at least in its Franconian parts, where Fulda held many properties that had been granted immunity.¹¹⁴

The Ribuarian regulations on ecclesiastical freedmen even entered canon law through the collection of Regino of Prüm, compiled shortly after 900, which amplified their importance.¹¹⁵ Referring to those manumitted in a church for religious purposes ‘according to secular law’ (*secundum legem mundanam*) and thus commended to this church’s patronate (*patrocinium*), Regino inserted Constantine’s famous law on *manumissio in ecclesia* of 321,¹¹⁶ a provision of unknown provenance, and a large portion of the Ribuarian statute on *tabularii*, ‘since it was written in the Frankish pact’ (*scriptum quippe est in pacto Francorum*).¹¹⁷ The *Lex Ribuarica* thus exercised a profound impact on the position of freedmen manumitted in a church, and made this group-forming practice spread widely in larger parts of the East Frankish kingdom. While in other regions of the Frankish kingdom

¹¹² See Faulkner, *Law and Authority*, p. 19 with references from the *Annales Xantenses*.

¹¹³ *Codex diplomaticus Fuldensis*, ed. E.F.J. Dronke (Kassel, 1850), nos. 455 and 466, pp. 200–1 and 205.

¹¹⁴ On *lex Ribuarica* and Thuringia, see H. Mordek, ‘Die Hedenen als politische Kraft im austrasischen Frankenreich’, in J. Jarnut *et al.* (eds), *Karl Martell in seiner Zeit* (Sigmaringen, 1994), pp. 345–66. Grabfeld as a Franconian region: K. Bosl, *Franken um 800. Strukturanalyse einer fränkischen Königsprovinz*, 2nd edn (Munich, 1969).

¹¹⁵ On Regino’s reception of royal law, see G. Schmitz, ‘Ansegis and Regino. Die Rezeption der Kapitularien in den *Libri duo de synodalibus causis*’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 74 (1988), pp. 95–132.

¹¹⁶ See above n. 17.

¹¹⁷ Regino of Prüm, *Libri duo de synodalibus causis* I.416–18: *Libri duo de synodalibus causis*, pp. 189–90. See also Faulkner, *Law and Authority*, pp. 169–91.

Roman law persisted as customary and adaptable law, the Ribuarian law code, with its provisions on ecclesiastical freedmen, marked a new beginning for those regions in which Roman legal traditions had ceased to be dominant.

6 'Under a church's *tuitio et mundeburdium*': some Carolingian transformations

In the Carolingian period, the number of such freedmen participating in 'temple societies' grew significantly, as is documented by numerous charters, but also by lists that kept names for the purpose of collecting their 'poll tax'.¹¹⁸ Moreover, several interrelated changes contributed to this development.

Already before 800, in addition to slaves (*mancipia*) given to churches for manumission, an increasing number of freeborn individuals voluntarily entered this group. While our earliest example from Cologne is just a short notice,¹¹⁹ more detailed charters show that protection offered by churches often persuaded individuals to join. Among them were many widows, some of whom also entered religious life.¹²⁰ In 853, a widow and *deo sacrata* named Erkanfrida gave possessions of her deceased husband (*senior*) along with 95 *mancipia* to the monastery of St Maximin in Trier, and she released another seven *mancipia* from the bond of slavery and made them *censuales* of the church (*a iugo servitutis solutos ad ipsam ecclesiam censuales feci*). An annual celebratory meal on the feast day of St Martin was to be held for the *cultores* of this place, as they were to celebrate vigils and masses for her and her *senior*'s soul.¹²¹ The annual 'poll tax' paid to the saint indicated freedom but was often understood as a price to be paid for patronal protection. Voluntarily entering the patronate of a church can be seen as a real game-changer for the definition of the group as a whole, and as part of the 'temple'. These individuals were often in a far better position to negotiate the legal terms of their future life under the saint's *patrocinium*, while immunity grants put churches in a position to respond more flexibly to their needs and wishes when fixing the

¹¹⁸ See Esders, *Die Formierung*, pp. 181–3 with references. Regino of Prüm ordered that *luminarii* and *cerarii* be counted in his questionnaire (*inquisitio*), see his *Libri duo de synodalibus et ecclesiasticis causis* I.13: 'Requirendum de luminariibus ipsius ecclesiae et quot cerarios habeat' (*Libri duo de synodalibus causis*, p. 20).

¹¹⁹ *Rheinisches Urkundenbuch*, vol. 2, no. 311 (787–800).

¹²⁰ For a later period see G. Wittig, 'Frauen und Freiheit im Mittelalter. Fallstudie am Beispiel der "Wachszinsigkeit" in Stift Essen und Kirchspiel Gladbeck', in B. Lundt (ed.), *Vergessene Frauen an der Ruhr* (Cologne, 1992), pp. 77–97.

¹²¹ *Urkunden- und Quellenbuch zur Geschichte der altluxemburgischen Territorien*, ed. C. Wampach, vol. 1 (Luxembourg, 1935), no. 88, pp. 82–4 (transmitted as a copy).

conditions of patronate.¹²² The steady increase in the number of people entering voluntarily into this status, evident in charters, lists and the later *libri censualium*, created a self-conscious group that was by no means composed of freed persons alone.

Among those given as *mancipia* to ecclesiastical institutions, illegitimate children figure prominently. The three *ancillae* given by Germunt in 826 seem to have been his daughters,¹²³ while in 827, a man called Eiat gave to Fulda in his *elemosina* fourteen *mancipia* along with his three sons and a daughter, presumably born from an illegitimate relationship with a female slave, on the condition that for the lifetimes of these children they were not to be burdened by servitude (*vis servitutis*), except an annual payment of five *denarii* in either linen or wax, while the other *mancipia* should be in full *potestas* of the abbot.¹²⁴ Since children of free–slave marriages usually acquired the lesser status¹²⁵ and illegitimacy of children posed a major social problem,¹²⁶ placing them (often along with their parent) under ecclesiastical patronate was often deemed a fitting solution that would provide for them and give them a better social status than prescribed by more general legal rules.

In the Carolingian period, the Latin terminology for ecclesiastical freedmen and free people placed under the patronate of churches became vastly differentiated.¹²⁷ Some of these terms refer to the payment of the ‘poll tax’ or tribute paid for the *mundeburdium*, either in cash (such as *censarii*, *censuales*, *tributarii*, or *capite censi*), or in wax (such as *cerocensuales*), in addition to the older terms *cerarii* and *luminarii*. Other terms emphasize the patronate as their defining feature (*mundiliones*, *munborati*), while still others categorize them as

¹²² On immunities see Fouracre, ‘Eternal Light and Earthly Needs’; on immunity and *censuales* see Esders, *Die Formierung*, pp. 76–8.

¹²³ See above n. 113, and M. Gockel, *Die deutschen Königspfalzen*, vol. 2: *Thüringen* (Göttingen, 1991), no. V.9, p. 435. On negotiations as reflected in the Fulda charters, see also M. Innes, ‘Rituals, Rights and Relationships: Some Gifts and their Interpretation in the Fulda Cartulary, c. 827’, *Studia Historica* 31 (2013), pp. 25–50.

¹²⁴ *Codex diplomaticus Fuldensis* no. 475, p. 209.

¹²⁵ W.E. Voss, ‘Der Grundsatz der “ärgeren Hand” bei Sklaven, Kolonen und Hörigen’, in O. Behrends *et al.* (eds), *Römisches Recht in der europäischen Tradition* (Ebelsbach, 1985), pp. 117–84. On *ancillae* passing on their status to their children see J.-P. Devroey, ‘Men and Women in Early Medieval Serfdom. The Ninth-Century North-Frankish Evidence’, *Past and Present* 166 (2000), pp. 3–30, at pp. 17–19.

¹²⁶ L. Wertheimer, ‘Continuity and Change in Constructs of Illegitimacy between the Second and Eighth Centuries’, *Historical Reflections / Réflexions Historiques* 33 (2007), pp. 363–93, at pp. 388–91.

¹²⁷ The Ribuarian term *tabularii* apparently fell out of use in the later ninth century. *Servi tabularii* are attested in a royal charter of 873 for the episcopal church of Strasbourg: *Die Urkunden Ludwigs des Deutschen, Karlmanns und Ludwigs des Jüngeren*, ed. P.F. Kehr (Berlin, 1934), no. 149.

belonging to a saint's altar (*sanctuarii*). It is remarkable that the ancient term *colliberti*, which alone carried the implication of manumission¹²⁸ and came into use in western and northern France shortly before 1000,¹²⁹ is only exceptionally found in Eastern Francia.¹³⁰ This diversity seems to reflect regionally or locally diversified customs, with no institution imposing a unified terminology.

The law (*lex*) which regulated the status of these differently termed groups was now more explicitly referred to. A donation charter of 837 fixed for two *ancillae* given to the monastery of Wissembourg an annual 'poll tax' of two *solidi* in cash or wax by reference to other freed persons (*sicut et alii tributarii vel censarii seu epistolarii, qui per talem condicionem sunt relaxati ingenui*),¹³¹ and the Fulda charter of 826 ostentatiously refers to the *lex tabularia*.¹³² By contrast, charters written after the mid-ninth century first spell out the individual terms of freedom under ecclesiastical patronate. Thus, a free woman called Regnevig, on becoming a *tributaria* of the abbey St Peter in Ghent around 877, negotiated an annual payment of two *denarii* for her *mundeburdium*, six *denarii* for her marriage, and twelve *solidi* as an asset payment after her death.¹³³ Their direct insertion into the charter seems to indicate that the conditions of the patronate somehow became detached from supra-regionally accepted legal customs. These developments effectively contributed to the evolution of local customs (*leges*) for communities of *censuales* belonging to a particular saint, and to a finer assessment of their freedom. In addition to clauses stating that these persons should be free from further obligations,¹³⁴ several charters now described the rights they should henceforth enjoy in positive terms. A late ninth-century formulary from Cologne for

¹²⁸ Fouracre, 'Lights, Power and the Moral Economy', p. 382.

¹²⁹ The term is used in sources from northern and western France for roughly two hundred years between c.975 and 1170. See C. van de Kieft, 'Les *colliberti* et l'évolution du servage dans la France centrale et occidentale (Xe–XIIe siècle)', *Tijdschrift voor Rechtsgeschiedenis* 32 (1964) pp. 363–95 (I owe this reference to Mayke de Jong). On the eleventh-century treatise *Quid sit collibertus?*, see Esders, *Die Formierung*, pp. 95–6. On common features and differences between *colliberti* and *Zensualität*, see Fouracre, 'Lights, Power and the Moral Economy', pp. 382–7.

¹³⁰ H. Werle, 'Conliberti', *Archiv für Diplomatik* 14 (1968), pp. 193–201.

¹³¹ *Traditiones Wizenburgenses. Die Urkunden des Klosters Weißenburg 661–864*, ed. K. Glöckner and A. Doll (Darmstadt, 1979), no. 166, p. 367. While a revocation into servitude was explicitly ruled out, negligence for not paying the *census* should be compensated according to the laws (*legibus*).

¹³² See above, n. 113.

¹³³ M. Gysseling and A.C.F. Koch, 'Het "fragment" van het tiende-eeuwse *Liber traditionum* van he Sint-Pietersabdij te Gent', *Bulletin de la Commission royale d'histoire* 113 (1948), pp. 253–312, at p. 296.

¹³⁴ *Codex diplomaticus Fuldensis*, no. 474, p. 209 (a. 827): 'nulla vi servitutis constringent nisi quod'. *Die Urbare der Abtei Werden a. d. Ruhr*, vol. 1, ed. R. Kötzschke (Bonn, 1906), Urbar A, c. 10, p. 33 (a. 887): 'ut de cetero liberi permaneant'.

releasing individuals from the yoke of slavery into freeborn status specified an annual wax-payment *in luminaribus* to St Peter of Cologne as the sole obligation, under whose patronate (*sub defensione vel mundeburde*) the manumitted were placed, allowing them to have a *peculium* and to bequeath it as a possession. Any objector was threatened with a huge fine, the wrath of the just Judge, and by having St Peter as his *inquisitor*, whose light he had tried to douse (*cuius lucerna extinguere nititur*).¹³⁵ Shortly after 900, three brothers and sisters made use of this formulary and gave several *mancipia* with their offspring as *cerocensuales* to the monastery of Gerresheim (near Düsseldorf), stipulating two wax *denarii* for lighting (*ad luminaria*) to be paid on the feast of St Hippolyte, while the *mundeburdium* was retained under the archbishop of Cologne. Allowed to bequeath their *peculiare* lawfully (*iure hereditario*) as possessions, upon their death their most valuable piece had to be given to the church for the manumitters’ *elemosina*, but, interestingly, also for the *elemosina* of the manumitted men and women themselves (*pro nostra et etiam sua, quicumque est aut vir aut mulier, elemosina*).¹³⁶

7 Further changes before and after the year 1000

Charters written around 1000 reveal an increasing self-conscience among the *censuales*. Thus, in a document produced in favour of St Landelin in the abbey of St Crispin (Hainaut) in 1009, a free woman named Bertha emphasized that she ‘did not act in the manner of some lords who give their male or female servants’ (*non ut quilibet domini suos suasque tradunt famulos ac famulas*), but followed ‘those who as free men or women offer themselves voluntarily to the holy altar of the saints of God’ (*sed qualiter se sponte offerunt liberi vel libere sanctorum Dei sancto altari*). According to law (*lex*), she and her future offspring would be liable to an annual payment of two *denarii* on the feast and altar of the saint, six *denarii* for marriage (*pro maritali licentia*), and twelve ‘for the dead hand’ (*pro mortua manu*). Beyond that, they ‘would not be obliged to attend judicial assemblies, provide surety, perform labour work or be subject to any other advocacy’ (*neque placitum neque vademonium neque servitium nec advocatiam aliquam*), except that of

¹³⁵ *Formulae extravagantes* I.20: *Formulae Merovingici et Karolini aevi*, pp. 545–6. See E. Wisplinghoff, ‘Die Kanzlei der Erzbischöfe von Köln im 10. Jahrhundert’, *Jahrbuch des Kölnischen Geschichtsvereins* 28 (1953), pp. 41–63, at pp. 43–4.

¹³⁶ *Rheinisches Urkundenbuch*, vol. 2, no. 179 (905/6). One of the donors was the abbess of Gerresheim.

the count.¹³⁷ Around 980, a free woman called Alcina gave herself along with her future offspring to the altar of the abbey of St Ghislain (near Mons, Belgium), with an annual payment of two *denarii* by 'eternal law' (*lege perpetua*), a payment of twelve *denarii* from her assets, and six *denarii* for a marriage licence. However, emphasizing that they will be exercising the patronate over themselves (*mundeburdem de nobis ipsis habeamus*), she would accept no other obligations except those specified (*nec placitum nec ullum debitum, exceptis predictis, observabimus*). This caused her to insert some reflections on freedom. Since the Holy Trinity has produced and liberated her (*trinitatis, que nos fecit, nos liberavit*), and will save her, and 'although she was free and could freely use the licence of secular discretion' (*cum essem libera et secularis arbitrii liberaliter possem uti licentia*), she 'wanted to exhibit grateful service to the highest king' (*volens superno regi grata exhibere famulamina et placita munera*), as 'the highest freedom is to be in the service of God, serving whom means to rule as a king' (*summa libertas est Dei servitio subiacere et ei servire regnare est*).¹³⁸ These dependants did not only have something to lose, but could also compare various levels of freedom.

From this period, we have the first *iura censualium*. These were more general statutes that comprehensively fixed the status of these groups, often as part of a religious endowment. When Bishop Burchard of Worms founded a canonical church dedicated to St Paul in Worms in 1016, he detailed the obligations and rights of the numerous *mancipia* he gave to the altar: no advocate should compel them to perform any *servitium*, as only a *magister* in charge of collecting their 'poll tax' could announce two obligatory *placita* a year. The public fixation of their law was witnessed by eleven clerical functionaries, the *fratres* of five churches in Worms, forty-three laymen, and *pene omnes urbani*.¹³⁹ The year before, Archbishop Heribert of Cologne gave seventeen *mancipia* to the monastery of Deutz to absolve them 'from their yoke of servitude', as he specified in slightly less detail their obligations and rights.¹⁴⁰ We are grasping here the legal emancipation of self-conscious

¹³⁷ C. Duivier, *Recherches sur le Hainaut ancien (pagus Hainoensis) du VIIe au XIIe siècle* (Brussels, 1865), no. 33, pp. 363–5.

¹³⁸ Duivier, *Recherches sur le Hainaut ancien*, no. 30 (977–83), pp. 353–4.

¹³⁹ *Urkundenbuch der Stadt Worms 1: 627–1300*, ed. H. Boos (Berlin, 1886), no. 45, pp. 35–7. See K. Schulz, *Die Freiheit des Bürgers. Städtische Gesellschaft im Hoch- und Spätmittelalter* (Darmstadt, 2008), pp. 41–68, 106–30.

¹⁴⁰ *Rheinisches Urkundenbuch*, vol. 2, no. 129, pp. 188–9.

groups of *consuales*, as typical for several episcopal cities along the Rhine and in parts of modern Belgium.¹⁴¹

While these charters incorporate statutes,¹⁴² most charters refer to overarching norms only in passing, using phrases such as *defensio et tuitio*. Still, early medieval law was not merely case oriented. Numerous legal texts were circulating, and unwritten custom framed legal expectations. It thus does not seem helpful to play general norms and individual cases against one another, more so as the full repertoire of possibilities also included the exchange of legal ideas. Thus in 1002, Emperor Henry II (1002–24) was approached by Bishop Ansbert of Utrecht to obtain a special privilege. Ansbert asked that those making an annual payment of wax to the episcopal church of Utrecht (*homines quoque, qui ceram ad predictam ecclesiam solvuntur per annos singulos*), and who were thus under its patronate (*sub mundiburdo et tutione ipsius ecclesie*), should ‘enjoy the same law as has been granted to the church of Cologne and the remaining churches that are constituted in our realm’ (*tali lege sicut Coloniensi ecclesie concessum est ceterisque in regno nostro constitutis*).¹⁴³ One can hardly doubt that this is another reference to the statute contained in the Ribuarian law code. Ansbert wished the status of the Cologne ecclesiastical freedmen to be conferred upon the wax-payers of his church. Utrecht was situated in Frisia, which had a legal culture distinct from the regions informed by Frankish law.¹⁴⁴ This did not escape attention at the time, and it was the king alone who, by his privilege, could manage such a ‘legal transplantation’.¹⁴⁵

Three weeks after confirming his predecessor’s Utrecht charter,¹⁴⁶ on his inauguration circuit King Conrad II (1024–39) was approached by Bishop Walter of Speyer who presented to him private charters for confirmation. Walter had manumitted eleven servile church dependants to make them *consuales*, who would henceforth live safely forever ‘according to the law of consuality’ (*infra legem consualem*) along with their offspring, paying an annual *tributum* of two *denarii* or wax on the feast of the birth of St Mary. To compensate for the loss of church property caused by his manumission, Walter donated eleven unfree

¹⁴¹ See, e.g. K. Schulz, ‘Denn sie lieben die Freiheit so sehr . . .’: *Kommunale Aufstände und Entstehung des europäischen Bürgertums im Hochmittelalter*, 2nd edn (Darmstadt, 1995), pp. 75–99.

¹⁴² Davies and Fouracre (eds), *The Settlement of Disputes in Early Medieval Europe*.

¹⁴³ *Die Urkunden Heinrichs II. und Arduins*, ed. H. Bresslau and H. Bloch (Hanover, 1900–3), no. 15, p. 17.

¹⁴⁴ H. Siems, *Studien zur Lex Frisionum* (Ebelsbach, 1980).

¹⁴⁵ On this concept see J.W. Cairns, ‘Watson, Walton, and the History of Legal Transplants’, *Georgia Journal of International and Comparative Law* 41 (2014), pp. 637–96 (I owe this reference to Cosima Möller).

¹⁴⁶ *Die Urkunden Konrads II.*, ed. H. Bresslau (Berlin, 1909), no. 45, p. 50 (1025).

persons (*mancipia*) to the church, which he did ‘in accordance with both canon law and the authority of capitularies given by Charles, Louis, and Lothar’ (*canonica capitularisque antecessorum nostrorum Karoli, Luduuici, Lotharii auctoritate fultus*). To affirm the procedure’s legality, the charter literally quotes ‘chapter 65 of the 5th Council of Toledo’ stating that ‘a bishop is entitled to manumit ecclesiastical slaves and confer freedom upon them provided he gives unfree serfs in exchange’. In addition, it presents yet another quote, this time from a capitulary, that ‘without giving unfree in exchange no bishop is allowed to confer liberty to anyone’. Following canon and capitulary law (*canonica et capitulari lege*), Conrad II therefore gave his assent and ordered the eleven freedmen to enjoy the same legal status as other *censuales*, fixing for any infringement a fine of ten pounds of gold, one half to be paid to the royal chamber, the other interestingly to the *censuales*, which underlines their corporate identity as a social group.¹⁴⁷

While the quoted Carolingian capitulary provision is difficult to identify,¹⁴⁸ the Toledo quote provides a clue to the charter’s source, as it did not actually derive from the Fifth, but from the Fourth Council of Toledo – in fact, it is one of the Visigothic canons referred to above.¹⁴⁹ As this canon is also incorrectly authorized as given by the Fifth Council of Toledo in the famous canonical collection compiled by Bishop Burchard of Worms, the charter’s quote must have been borrowed directly from the *Decretum*,¹⁵⁰ which Burchard had produced, as we learn from his *Vita*, with the help of his fellow-bishop and friend Walter of Speyer.¹⁵¹ The charter thus reflects a personal network of two episcopal legal experts. However, in having the king confirm it, Bishop Walter not only obtained the ruler’s necessary *consensus* for a lawful exchange of ecclesiastical property,¹⁵² but also introduced a profoundly new aspect. Effectively dragging him into the business of protecting the legal group of the *censuales*, Walter held the ruler responsible for maintaining their liberty as a social group of free ‘subjects’ that would soon play an important part in the

¹⁴⁷ Die Urkunden Konrads II., no. 41, pp. 46–7. On this charter see Esders, *Die Formierung*, pp. 103–6.

¹⁴⁸ The vague reference to ‘Charles, Louis and Lothar’ might come from the preface of Ansegis’ capitulary collection: *Die Kapitulariensammlung des Ansegis*, ed. G. Schmitz (Hanover, 1996), p. 432.

¹⁴⁹ Fourth Council of Toledo (633), c. 65. See above n. 55.

¹⁵⁰ Burchard of Worms, *Decretum* III.176: ‘De episcopo qui mancipium ecclesiae manumitti desiderat. Ex concil. Toletan. 5, c. 68’: D. Burchardi Wormaciensis ecclesiae episcopi, *Decretorum libri XX*, ed. B. Quistenburgh (Cologne, 1564), p. 73.

¹⁵¹ Life of Burchard of Worms, c. 10: ‘*Vita Burchardi episcopi Wormatiensis*’, ed. G. Waitz, *MGH SS* 4 (Hanover, 1841), p. 837.

¹⁵² On the legal background, see Esders and Patzold, ‘From Justinian to Louis the Pious’.

communal movements in episcopal cities such as Speyer, Worms, and Mainz.¹⁵³

8 Conclusion

To look at religiously motivated manumissions as 'human endowments' of a 'temple' helps to understand how ecclesiastical freedmen, as individuals and as groups, participated in the religious, social and legal processes centred upon individual churches. Such 'temples' could differ, as often there were several altars and chapels within one church, while more wealthy donors decided to endow a 'temple' of their own. But a functional differentiation within a 'temple' seems obvious:

Each person or group involved in service of any kind, thus, possesses an inalienable and privileged relationship to the sovereign deity, concretised in some sort of share, dramatised and rendered authoritative by some sort of honour. What holds these various 'servants' together is not a simple hierarchy of functions, no single pyramid of authority, but rather their shared orientation to (and dependence on) the sovereignty of the deity they serve and the sheer logic of functional interdependence, without which the ritual process would break down.¹⁵⁴

Religious institutions, representing the Christian God on earth and run by the clergy, provided the most important foci around which manifold socio-religious relations came to be organized. As 'temples', they were linked in many respects to the agrarian hinterland or to urban contexts, while they also provided solutions for a great variety of social problems posed, for instance, by concubinage, illegitimacy, weakness or lack of protection.

Our sources allow us to look at this phenomenon from different angles. Christian conceptions of sin and the afterlife played a defining role in attributing to donations of freed men and women the quality of an offering, from which the donor and their family benefitted through memorializing practice and intercessory prayer. Bishops sought to legally define 'temples' and their 'staff' in spatial and perpetual terms, and to protect the special status of the freed. Except for the three obligations that made their religiously defined patronal status visible (payment of 'poll tax', the marriage licence fee, and payments from their possessions after death), there were no other requirements for the

¹⁵³ See Schulz, *Die Freiheit des Bürgers*.

¹⁵⁴ Appadurai and Appadurai Breckenridge, 'The South Indian Temple', p. 205, also for what follows.

freed, and they could generate heritable income. Moreover, they could not simply be pooled as ‘church property’, but as human endowments needed to fulfil the purpose for which they had been given, whilst being part of a particular transcendent relationship between the donor and the deity. As their freedom resulted from some kind of sacrifice, pushing them to perform labour service would have violated this offering. Along with their children, they were incorporated into the ‘temple’, as were their manumitters, albeit in different ways. As an endowment generates ritual contexts of redistribution, the *consuales*’ wax or cash payments during mass on their patron’s feast day, and also their meals and festivals, contributed to a group-based culture that reinforced their special status of freedom. Being able to live in the protected shadow of the ‘temple’, free from compulsory labour, acquiring wealth, and enjoying and bequeathing the fruits of one’s labour were also motivations enough for people to enter this group voluntarily and thereby transform it profoundly.

Such self-description of a ‘temple’ might look like an idealized picture, but as demonstrated, tensions and conflicts were omnipresent in these decentralized structures. The external authority of kings, originally fixed in the Ribuarian code, remained an ultimate recourse, from the eleventh century allowing in urban contexts many *consuales*, despite belonging to different altars or churches, to articulate their common interests as one social group. In Worms, the urban dwellers who accommodated King Henry IV on his flight from a Saxon upheaval in 1074 kicked out their bishop and obtained a royal privilege that for the first time constituted them as an urban community.¹⁵⁵ Their bishop returned, but a generation later, Emperor Henry V granted the inhabitants of Worms a privilege that forbade advocates to divorce their marriages, abolished payments from the assets of a deceased *consualis*, and allowed childless *consuales* to leave inheritance to other relatives.¹⁵⁶ For the *consuales* of neighbouring Speyer, he had abolished these payments three years earlier, defaming them as a *lex nequissima et nephanda*. Instead, he obliged them to henceforth assemble in Speyer cathedral on the anniversary of Henry IV’s funeral, for a candle procession to celebrate a vigil and mass for him, with each house distributing a loaf of bread to the poor in *elemosina*. Justifying his act, Henry V stated that the *consuales* should now have the chance to fully

¹⁵⁵ *Die Urkunden Heinrichs IV.*, ed. D. von Gladiss and A. Gawlik (Hanover, 1941/1978), vol. 1, no. 267, pp. 341–3 (a. 1074).

¹⁵⁶ *Urkundenbuch der Stadt Worms I*, no. 62, pp. 53–4 (a. 1114).

inherit and dispose of their property and also to give it for the remedy of their souls, apparently expecting them to one day endow an altar or a ‘temple’ of their own.¹⁵⁷

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¹⁵⁷ *Urkunden zur Geschichte der Stadt Speyer*, ed. A. Hilgard (Strasbourg, 1885), no. 14, pp. 17–19 (a. 1111). See M. Matheus, ‘Forms of Social Mobility: The Example of *Zensualität*’, in A. Haverkamp and H. Vollrath (eds), *England and Germany in the High Middle Ages* (London, 1996), pp. 357–69, at p. 367. For medieval churches built by citizens see e.g. H. Boockmann, ‘Bürgerkirchen im späteren Mittelalter’, in *idem*, *Wege ins Mittelalter. Historische Aufsätze* (Munich, 2000), pp. 186–204.