

deux jours après la Trinité. En 906 Alain mourut, le 4 des Ides de novembre (?). Il avait régné 25 ans. L'an 918 (?), Guormaelon (Wrmaelion) mourut. En 907, ... En 919, halion-vurm (= Wrmaelion) mourut, quand les Normands furent chassés de Bretagne.

3. BN Lat. 6400 B.

Ce manuscrit est un recueil composite provenant de Fleury<sup>41</sup>. La partie qui nous intéresse, fo 249 bis-fo 284, est constituée de tableaux chronologiques et de fragments de comput, certains de Bède, d'autres anonymes. L'écriture (peu soignée) et le format rappellent ceux du ms. BN n.a.l. 1616. — Des deux gloses relevées par M. Fleuriot, l'une porte sur un texte de Bède, l'autre sur un pseudépigraphe de Bède :

271 b 9 *ditthont* gl. alterment, quamuis enim singulas lunas quidam xxviii et senis diebus compolantes intentionis earum medio diei et medio noctis semper alterment... De Temporibus, éd. Ch. W. Jones XII: 2-5 (le ms. comporte tout le chap. XII, « De saltu lunae »). Voir F. 139 b.

272 a 27 i. *loirel* gl. luperci i. lupus et corpus<sup>42</sup>, la glose porte sur le nom des Luperques, considérés comme des loups-garous ; il s'agit en fin de compte d'expliquer le nom du mois de février.

*Loirel* serait pour F. un dérivé de *loit(h)* « tribu, race » ; il serait à traduire par « génération, engeance ». Je propose plutôt d'y voir le pl. en -el de *loin* = gall. *lloen* « jeune animal », bret. moy. *loezn* « bête », mod. *loen* « animal » (pl. *loened*). Le i de *loin* représente un début de diphthongaison, associé certainement à l'affaiblissement de la dentale suivante.

41. Cf. L. Delisle, *Cabinet des Manuscrits II* (Paris 1874), p. 364.

42. Glose complète : i. lupus et corpus i. loirel uel a febribus acris lupercorum quod lupi in hoc tempore acri percussoris pecorum sunt et percussi febribus frigosius multas pedas catulis rapiunt uel lupercus nomen holericus uel arboris unde folia in hoc tempore cadunt.

Texte glosé : Februarius, quibus modis dicitur ? duobus. Sub idolo et sub re. Sub idolo : erat generatio que appellabatur aluperst homines, transeuntes in potestatem earum (i. luronas, canes deuoratores) et deus eorum generum lupercal erat. Ac adorantes eum offerebant hostias, sortemque mittebant ut scirent quis eorum iret in formis luporum et ipsi super quos cadebat per quodam stagnum natabant et mutabantur in formis luporum et nisi gustassent carnem hominum in hoc mense Februario usque ad finem vi annorum in formam lupi fiebant et iterum natantes per stagnum hominum remeabant (= formam remeabant) et tanta febratio algoris hoc mense natando per stagnum tremebant. De tali febre Februarius dicitur. Appellabantur luperci uel luronas quia omnia inmundicia quam per totum annum faciebant non lauabant...

Cf. Pseudo-Bède PL XC 660 (qui se retrouve en partie dans Ang. 476, 28 b).

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A dozen years ago, in a now classic article,<sup>1</sup> Professor Léon Fleuriot presented a remarkable case that the texts long known as *Canones Wallici*<sup>2</sup> were neither ecclesiastical nor Welsh but rather two collections of secular Breton laws<sup>3</sup> whose origin he dated to the approximate period A.D. 520 × 560. Since 1971 his major thesis has gone unchallenged and no attempt will be made here to controvert his classification of the work or his arguments in favour of a Breton origin. Fleuriot's arguments on these points are, however, of uneven quality, while nonetheless impressive in sum, and it may be advantageous to review part of the case before scholarly literature comes to embody excessive certainties or new errors.<sup>4</sup>

The arguments presented for a Breton, rather than a Welsh, origin for these laws are five in number.<sup>5</sup>

1. L. Fleuriot, 'Un fragment en Latin de très anciennes lois bretonnes armoricaines du vie siècle', *Annales de Bretagne* 78 (1971) 601-60. Most of the points in the following discussion relate to pp. 604-18 of Fleuriot's paper. I should like to record my thanks to Professor Fleuriot for generously reading and commenting on a draft of this paper. Likewise, I am obliged to Dr P. Sams-Williams and Professor E. A. Thompson for their comments, and to Professor M. P. Sheehy for his unstinting gift of considerable assistance with the texts of the *Collectio Canonum Hibernensis*.

2. Critically edited by F. W. H. Wasserschleben, *Die Bussordnungen der abendländischen Kirche* (Halle u. S., 1851), pp. 124-36, and, with English translation, by Ludwig Bieder, *The Irish Penitentials* (Dublin, 1963), pp. 136-59 (text and translation) and 247-59 (notes). There are two different recensions of the work, labelled 'A' and 'P' by Bieder and which he prints separately.

3. To some extent, as Fleuriot noted, his thesis was anticipated by Wasserschleben, *Die Bussordnungen*, p. 8, who described the work as 'eine alte Volkrechtssammlung', and by Frederic Seebohm, *Tribal Custom in Anglo-Saxon Law* (2nd edn, London, 1911), pp. 105-14, who considered this to be a product of the Breton Church. But it has been left to Fleuriot to work out the case more comprehensively.

4. W. Davies, 'Land and power in early medieval Wales', *Past and Present* 81 (1978) 3-23, at p. 17(-18), n. 45, notes that while 'the date remains difficult to determine', it is highly unlikely to be later than the sixth century, a date preferred by all modern commentators'. Cf. also her paper, 'The Latin charter-tradition in western Britain, Brittany and Ireland in the early medieval period', in *Ireland in Early Medieval Europe. Studies in Memory of Kathleen Hughes*, edd. Dorothy Whitelock et al. (Cambridge, 1982), pp. 258-80 at 276). As will appear, I should prefer to stress the difficulties rather than the agreement of the (few) modern commentators.

5. Fleuriot, 'Un fragment', pp. 607-18.

1. The manuscript-tradition (of six witnesses<sup>6</sup>) is almost exclusively Breton, and one copy (the earliest) carries Old Breton glosses.<sup>7</sup>
2. The only non-Breton manuscript in the tradition is Cambridge, Corpus Christi College, MS. 265,<sup>8</sup> an English book written probably at Worcester in the middle years of the eleventh century.<sup>9</sup> It contains excerpts from our text, amid a great miscellany of other legal literature. The evidence of this copy also allows an explanation of how excerpts from this Breton lawcode came to be embodied in Latin Redaction B of the Welsh laws, from which appearance the title *Canones Wallie* derived.<sup>10</sup> CCC 265 displays the text most closely related to the excerpts in Latin Redaction B:<sup>11</sup> the links between Worcester and Llandaf as suggested by the study of the diplomatic of both houses in the early Norman period<sup>12</sup> are an indication of the kinds of influence which would have allowed such textual transmission.
3. The title of our text, in all but two of the surviving copies,<sup>13</sup> is *Excerpta de Libris Romanorum et Francorum*: this could be most easily explained in a Breton context, the *Romani* being the once romanised Bretons<sup>14</sup> and the *Franci* their Frankish neighbours.
6. In Bieler's edition these are MSS. ABHOPX: *The Irish Penitentials*, pp. 12-16, for skeletal details.
7. MS. A has Old Breton glosses on our text. MSS. BHOP all display Old Breton glosses on texts elsewhere in the manuscript.
8. This book, Bieler's N (Bieler's dating, p. 15, is too early by a half-century), was described in some detail by M. Bateson, 'A Worcester Cathedral book of ecclesiastical collections, made c. 1000 A.D.', *English Historical Review* 10 (1895) 712-31. For its script, see T. A. M. Bishop, *English Caroline Minuscule* (Oxford, 1971), p. 20, n. 1, and N. R. Ker, *Catalogue of Manuscripts containing Anglo-Saxon* (Oxford, 1957), pp. 92-4 (no. 53).
9. Its source was no doubt a Breton book imported into England within the preceding century and a half. For the cultural context of such imports, see my forthcoming book, *England and the Celtic World in the Ninth and Tenth Centuries*.
10. *The Latin Texts of the Welsh Laws*, ed. Hywel D. Emanuel (Cardiff, 1967), pp. 13-45, and 249; they are discussed on pp. 20-1 and calendared on pp. 188-90 (under 312-352 and 371).
11. This was noted by L. Bieler, 'Towards an interpretation of the so-called "Canones Wallie"', in *Medieval Studies presented to Aubrey Gwynn, S.J.*, ed. J. A. Watt *et al.* (Dublin, 1961), pp. 387-92, at 391-2. However, as Bieler remarks, MS. X cannot have been the source of Latin Redaction B, for that text draws on some sections not found among the excerpts in X.
12. W. Davies, 'Saint Mary's Worcester and the *Liber Landauensis*', *Journal of the Society of Archivists* 4 (1970-3) 459-85.
13. MSS. O and P have other titles. P, the sole witness to the P-recension, is headed 'Incipit iudicium culparum'. O, the sole dissenting witness to the A-recension, is headed 'Sinodus romana. Incipiant pauca Colomella'.
14. This was Bieler's conjecture: 'Towards an interpretation', p. 391. But Henry Bradshaw (see n. 46 below), p. LXXI, seems to have thought that the text acquired this title in Ireland.

4. The neighbouring peoples<sup>15</sup> mentioned in the *Excerpta* (A20; cf. p29) are the *Sarones* and either *Galli* (MSS. ABX) or the mysterious \**Calfai* (MS. P) or *Calpei* (MS. H) in whom Fleuriot would see the *Taifati* of northern Poitou, on the Breton border.<sup>16</sup>

5. One might add the differences visible in (nonetheless basically Celtic) institutions and customs between those recorded in the *Excerpta* and those in the Welsh laws.<sup>17</sup>

As a whole, the above points remove any rational grounds for thinking these laws to be Welsh. They constitute a good circumstantial case that the *Excerpta* are Breton, but it must be recognised that the case is not absolutely conclusive; new criteria must still be sought. The Breton manuscript-tradition is not a guarantee of Breton origin: there are other Insular texts with a similar textual history.<sup>18</sup> The title of the text might be otherwise explained, or its originality may be denied.<sup>19</sup> The differences

15. Neighbours, that is, in that one might buy a horse from them.

16. Bieler, 'Towards an interpretation', p. 388, rejects *Galli* — as a *lectio facilior*, substituted serbably to deal with an obscure word in the exemplar. For the Saxons as neighbours of the Bretons, see Donald A. White, *Litus Saranentum. The British Saxon Shore in Scholarship and History* (Madison, Wis., 1961), chapter 6; Louis Guinet, *Contribution à l'étude des établissements saxons en Normandie* (Caen, 1967); Walter Piroth, *Ortsnamenstudien zur angelsächsischen Wanderung* (Wiesbaden, 1979); and the extensive literature cited by these writers. One should not imagine that the Saxons of this area disappeared after the fifth century: they are still known in the mid-ninth; see L. Guinet, 'Ostinga Saxonia', *Annales de Normandie* 28 (1978) 3-8. One might have expected initial relationships between Breton and Saxon to have been as bad in Armorica as they had presumably been in Britain. Yet because of the complexities of Merovingian politics, the Bayeux Saxons and the Bretons of Bro Waroch are found fighting together against a Frankish army in 590: Gregory of Tours, *Historia Francorum*, N.9 and H. On the other hand, ten years earlier they are found fighting one another: *ibid.*, V.26. See further Fleuriot, 'Un fragment', pp. 615-17, for his discussion of the *Taifai*.

17. Fleuriot, *ibid.*, pp. 618-66, for an extended study, of the social structure displayed by the *Excerpta*, in the light of other Celtic legal systems.

18. Among the texts edited by Bieler, this applies to *Sinodus Episcoporum*; *Canones Hibernenses* I-II, VI; *Tres Canones Hibernici* (from the English MS. X, but hypothetically from a Breton exemplar). To these should be added the *Liber ex Lege Moyse*, an Insular text surviving in MSS. ABOW: on this see Leslie Hardinge, *The Celtic Church in Britain* (London, 1972), pp. 209-16, and P. Fournier, 'Le Liber ex Lege Moyse et les tendances bibliques du droit canonique irlandais', *Revue celtique* 30 (1909) 221-34; Professor Raymond Kottje is preparing an edition. Among other kinds of texts we might think first of the *Hisperica Fama*.

19. *Romani* could well refer to the native population: Nora K. Chadwick, *Early Brittany* (Cardiff, 1969), p. 217. For elements of West Roman Vulgar Law in the *Excerpta*, see Davies, 'Land and power', p. 17 and n. 45. On the continuation of 'Roman' speech in Brittany, see J.-L. Fleuriot, 'Recherches sur les enclaves romaines anciennes en territoire bretonnant', *Études celtiques* 8 (1958/9) 164-78; see also Léon Fleuriot, *Les origines de la Bretagne. L'émigration* (Paris, 1969), pp. 79-97. The '*Excerpta*' title of our text is not found in MS. P. Depending on the view which one takes of the P-recension, one might allot more or less significance to the variation. Dr Thomas Charles-Edwards

from recorded later mediaeval Welsh legal custom are unlikely to be compelling as evidence without minute investigation of comparative Celtic legal material; for the earliest manuscript of the *Excerpta*, written in the first half of the ninth century, is at least four centuries older than the earliest surviving witness to the Welsh lawbooks. The best evidence, it might be thought, would be the naming of neighbouring peoples; but even here there is doubt, for the P-recession of these laws speaks not of buying horses from those neighbours but of 'cafaucum aut saxonicum caballum ... aut quamlibet speciem', in other words of different breeds of horses. It was Ludwig Bieler's view, though for reasons which he did not specify, that this version is closer to the original wording.<sup>20</sup> Until a detailed study is undertaken of the relationship between the two codes, within which context a judgment may be made on this point, we cannot proceed further.

We may fairly conclude, therefore, that there are no grounds for considering a Welsh origin for these lawbooks and that a very useful circumstantial case exists for regarding them as Breton. That case is here accepted as a basis for further discussion.

Much less acceptable, however, is Professor Fleuriot's dating of the *Excerpta*. Two principal arguments lead to the proposed date of A.D. 520-560: one concerns politics, the other the use of source-texts.

If, with Fleuriot, we take the title *Excerpta de Libris Romanorum et Francorum* to be original, we must ask about the circumstances under which *libri Francorum* would be excerpted by Bretons for incorporation within their own laws. Fleuriot's answer is simple: only in an era of peaceful co-existence between the Bretons and Franks.<sup>21</sup> If we can identify such a period, then we shall have an approximate date for the original *Excerpta*. Before turning to specific periods, we may reasonably enter a caveat as to the first proposition. It is hardly acceptable to suppose, *a priori*, that political hostility will negate the possibility of a borrowing—which would not necessarily, in any case, have been effected by the persons conducting the hostilities, even though it would perhaps be done in their name<sup>22</sup>—from a text originating in opposition-territory.

attached some importance to it in an important lecture ('Canones Wallieci: Early Breton Laws') delivered to the Conference on 'Brittany and Britain: Archaeological and Historical Connections', Oxford, January 1981; it is to be hoped that his paper will soon be published.

20. 'Towards an interpretation', p. 388; *The Irish Penitentials*, p. 248, n. 12.

21. 'Un fragment', pp. 617-18.

22. As regards the nature of the *Excerpta*-texts, Charles-Edwards (cf. n. 19 above) drew attention to the occurrence in a number of clauses, in either recession, of the word *praecipimus* which might reasonably be taken to indicate that these are decree-texts. The context is perhaps therefore that of the other sub-Roman, but Germanic, legal codes, on which see the recent paper of C. P. Wormald, 'Lex Scripta and Verbum Regis: legislation and Germanic kingship from Euric to Cnut', in *Early Medieval Kingship*, ed. P. H. Sawyer & I. N. Wood (Leeds, 1977), pp. 105-38. This context is stressed even more heavily by Davies, 'Land and power', p. 17 and n. 45, who regards the *Excerpta* as emerging from a comparable (but in this case sub-Romano-British) milieu.

Leaving aside such considerations, and proceeding with Fleuriot's line of argument, we find that he identifies a single, if quite long, period—namely 560-560—as the sole known time of peaceful co-existence between Franks and Bretons.<sup>23</sup> It seems doubtful that one may take the course of Franco-Breton relations in the early middle ages to be so well documented that those six decades alone may be seen as free from hostilities. Little enough is known, for example, of the state of Brittany in Charlemagne's time;<sup>24</sup> we should not rule it out of consideration for these purposes. But there are indeed wide areas of the seventh and eighth centuries for which nothing is known of Franco-Breton relations.<sup>25</sup> We have no reason to assume that hostilities continued unremittingly through these centuries. Equally we should not assume that, at times when hostilities are recorded, they affected all Breton kingdoms. Since we do not know which part of Brittany the *Excerpta* refer to, this is a crucial difficulty. In short, the criterion of 'peaceful co-existence' is altogether too simplistic to enable any dating to be built upon it.

Yet even when we approach the period 500-560 there are reasons for doubt about its tranquillity. It is assumed that, in as much as the Bretons and Franks had anything to do with one another in the fifth century, their period later than 650. A. W. Haddan & W. Stubbs, *Canons and Ecclesiastical Documents relating to Great Britain and Ireland* (3 vols, Oxford, 1869-78), I, 127, n. 5, tentatively date the *Excerpta* to ca 550-650. In *The Irish Penitentials*, p. 7, Bieler has interpreted this as meaning that a Welsh source-text of that date was carried to Brittany, from which the extant texts later emerged; this might imply a seventh- or eighth-century dating. P. Collinet, 'Les éléments d'importation étrangère dans les lois du pays de Galles', in *Mélanges H. d'Arbois de Jubainville. Recueil de mémoires concernant la littérature et l'histoire celtiques*, ed. Joseph Loth (Paris, 1905), pp. 1-13, assigned the *Excerpta* to the seventh century.

24. The *Annales Regni Francorum* tell us s.a. 786 of a partial conquest of Brittany, and s.a. 799 of a total conquest. But the circumstances prior to 799 are extremely obscure.

25. Dagobert I enforced the submission of the Breton King Iudicael (the extent of whose kingdom is not known) in 635; Fredegar, *Chronicon*, IV, 78, ed. & transl. J. M. Wallace-Hadrill, *The Fourth Book of the Chronicle of Fredegar with its Continuations* (Edinburgh, 1960), pp. 65-6. King Iudicael is reported as giving the assurance that *semper se et regnum quem regibat Britanniae subiectum ditione Dagoberti et Francorum regibus esse*; but we cannot take this as unfailingly predictive for the future and, whatever successive Frankish kings may have thought about the matter, it cannot be credited that subsequent rulers of Iudicael's own kingdom, much less other Breton rulers, would have considered such a promise binding after the demise of Iudicael himself. After 635, we lose sight of Breton history for a century and a half; a Breton defeat of 691, and Frankish invasions of 753 and 778 are the next, if very imperfectly recorded, events of the Franco-Breton politico-military relationship, but we have no chance of comprehending the nature of events until after the conquest of 799.

relationships are likely to have been hostile.<sup>26</sup> The only sixth-century source clearly relevant to the period 500-560 is the disciplinary letter of the bishop of Tours (with two fellow bishops) addressed to two Breton priests, Louocat and Calihern, perhaps ca 510 × ca 520.<sup>27</sup> The bishop was asserting his position, but it is quite uncertain that he would gain compliance. When our first source for Franco-Breton relations, Gregory of Tours, becomes available—for the period beginning ca 560—the contacts are already hostile.<sup>28</sup> We have no reason to allow that a new situation is being represented by Gregory. It may be seen that the case for peaceful coexistence during 500 × 560 is effectively an argument from silence.

But Professor Fleuriot has argued that there is positive evidence for such a situation. In the Latin hagiography written in Brittany, in the ninth century and later, is embedded the idea that the Merovingian Kings Lothar (511-561) and Childbert I (511-558), sons of Clovis, were on good terms with contemporary Breton rulers.<sup>29</sup> Texts of that genre and date are, however, quite inadmissible as evidence for the sixth century. In any case, Merovingian kings (particularly Childbert) have become stock characters in Breton hagiography: there is no rational basis for an assertion that this literary usage must ultimately reflect the circumstances of that remote period.<sup>30</sup>

26. For this, Fleuriot refers to two sources, the late mediaeval chronicles of Anjou (for which see Fleuriot, *Les origines*, pp. 226-9 and the references given there) and Procopius's *History of the Wars*, V.12. Few will care to use the Angevin chronicles, whatever old material they may contain, until they have been subjected to a rigorous modern analysis. For Procopius, see Fleuriot, *Les origines*, pp. 253-5; but Procopius needs exegesis before he can be taken to be speaking of the relations of Franks and Bretons (see Procopius, ed. & transl. H. B. Dewing [7 vols, Cambridge, Mass., 1914-40], III.116-33, for the relevant section). Cf. also, for another passage, E. A. Thompson, 'Procopius on Britulia and Britannia', *Classical Quarterly*, S.N., 30 (1936) 498-507. According to Gregory of Tours, *Historia Francorum*, IV.4, the Bretons had been subject to the Franks from the death of King Clovis. For the period 560 (*Historia Francorum*, IV.20) to 590 (*Ibid.*, N.9) Gregory is a witness to continuing warfare between Bretons and Franks.

27. Edited (with a French translation) by Pierre de Labriolle, *Les sources de l'histoire du montanisme* (Paris, 1913), pp. 226-30 (no. 187).

28. *Historia Francorum*, IV.20. On the evidence of this text for Franco-Breton relations, see Fleuriot, *Les origines*, pp. 238-43.

29. Fleuriot, 'Un fragment', p. 617; cf. Chadwick, *Early Brittany*, pp. 207-12, 219-22. 30. On Childbert, see F. Duine, 'Mémento des sources hagiographiques de l'histoire de Bretagne', *Bulletin et mémoires de la Société archéologique du Département d'Ille-et-Vilaine* 46 (1918) 243-457 (at pp. 417-18, no. 224); P. Riche, 'Traductions de reliques à l'époque carolingienne. Histoire des reliques de saint Malo', *Le Moyen-Âge*, 82 (4th S., 31 (1976) 201-18 (at p. 208)); J.-C. Poulin, 'Hagiographie et politique. La première Vie de saint Samson de Dol', *Francia: Forschungen zur westeuropäischen Geschichte* 5 (1977) 1-26 (at pp. 11-12). Any of the events recorded in Breton hagiography about dealings with Frankish kings may of course be true; but, given the number of generations separating the alleged events from the date of even the earliest *uita*, this must be demonstrated, not assumed, and it is difficult to see how that can be done.

The sole secure *terminus ante quem* would therefore seem to be the date of the earliest surviving manuscript—Orléans, Bibliothèque municipale, MS. 221 (193), written in the first half of the ninth century.<sup>31</sup> A *terminus post quem* may be found by reference to the use in the Breton lawbooks of a datable text, *Lex Salica*. Ludwig Bieler, who identified the borrowings, stated that all were present in the 65-Title text of *Lex Salica*.<sup>32</sup> That recension is the oldest text, now generally dated to 507 × 511<sup>33</sup> although Professor Wallace-Hadrill's doubt should be noted 'that *Lex Salica* was actually committed to writing so early'.<sup>34</sup> *Lex Salica* exists, however, in several versions of which at least three are of Carolingian date (751 × 768, perhaps 798, and probably 802).<sup>35</sup> No closer textual work has yet been undertaken to establish whether there is a definable relationship between the borrowings in the Breton texts and any particular recension of *Lex Salica*. Successful prosecution of any such enquiry could narrow considerably the now very broad dating for the Breton lawbooks, ca 510 × ca 800.

However, there are considerable difficulties in the practical application of this principle. Bieler identified in the Breton texts eight clauses which might be compared with *Lex Salica*; while the general relationship seems indubitable (even if some of the individual examples are more convincing than others), the lack of sustained verbal parallelism makes close textual comparison very difficult indeed. I give one clause as an example of the problem.<sup>36</sup>

*Excerpta, A-text, § 33.*

Si quis seruus seruum occiderit, unus communis dominorum existat(n)l.  
*Excerpta, P-text, § 33.*

Si quis seruus alterius occiderit, unus communis dominorum existat.

31. Bieler's MS. A, dated by him to saec. viii/ix. But it does not appear in E. A. Lowe, *Codices Latini Antiquiores* (12 vols, Oxford, 1934-71), VI or Supplement, and was therefore presumably assigned by him to the first half of the ninth century. It has indeed been placed in the early ninth century by Bernard Bischoff, *Mittelalterliche Studien. Ausgewählte Aufsätze zur Schriftkunde und Literaturgeschichte* (3 vols, Stuttgart, 1966-81), III.15. On the Old Breton glosses, see Léon Fleuriot, *Dictionnaire des glosses en vieux-Breton* (Paris, 1964), p. 4.

32. 'Towards an interpretation', pp. 389-90 (especially 389, n. 12).

33. Cf. Wormald, *Lex Scripta*, p. 108; J. M. Wallace-Hadrill, *The Long-haired Kings* (London, 1962), p. 181, n. 1.

34. *Ibid.*, p. 108.

35. Wormald, *Lex Scripta*, p. 108. It is clear that *Lex Salica* had an extensive circulation in the Carolingian period: see, for example, Wallace-Hadrill, *The Long-haired Kings*, pp. 95-120.

36. Bieler, *The Irish Penitentials*, pp. 142 and 154; *Pactus Legis Salicae*, ed. Karl August Eckhardt (2 vols in 4, Göttingen, 1954-7), II.1; pp. 232-3.

*Lex Salica, 65-Title text, XXXV.L.*

Si quis servus serum occiderit sibi similem, homicida illum domini inter se dividant.

In this case, there is little difference between the two Breton texts, but it is the sense rather than the wording of the second clause which is found in *Lex Salica*. In another example, we may find more noticeable differences between the A and P texts.<sup>37</sup>

*Excerpta, A-text, § 11.*

Si quis caput alterius percusserit usque ad cerebri pampas, libras argenti .iii. reddat.

*Excerpta, P-text, § 9.*

Si quis alterius caput percusserit sic ut cerebri cutem inspiciat, argenti libras sex cogatur exsoluere.

*Lex Salica, 65-Title text, XVII.4 (A).*

Si quis alterum in caput plagauerit ut cerebrum apreat, denarios DC qui faciunt solidos XV culpabilis iudicetur.

But here the wording of *Lex Salica*, in all its versions, is sufficiently different from both recensions of the Breton laws that neither the relative merits of the Breton texts nor their likely source among the versions of *Lex Salica* can be determined.

We have a little direct evidence for the circulation of *Lex Salica* in Brittany, provided by Paris, Bibliothèque nationale, MS. latin 3182, written in Brittany in the tenth century.<sup>38</sup> In this section (pp. 184ff.), the Paris manuscript is a copy of a Frankish collection of ecclesiastical and secular legal texts (which embodies also a strong Insular element) otherwise represented to us today by the late ninth-century book, Cambrai, Bibliothèque municipale, MS. 625 (576).<sup>39</sup> It seems on the whole unlikely that this collection could have circulated in Brittany sufficiently early to influence the Breton *Excerpta*: it contains the *Collectio Dionysio-Hadriana*, and its copy of *Lex Salica* is of the K[arolina] recension (70-Title text)—which probably dates from 802—and with the longer prologue.<sup>40</sup> But, given the extensive transmission of *Lex Salica* in its various versions, we should not disallow

37. Bieler, *The Irish Penitentials*, pp. 138 and 150; Eckhardt, *Pactus Legis Salicae*, II.1, p. 174.

38. Bieler, *The Irish Penitentials*, pp. 12-13, 21-2 (MS. B); Bieler assigned this book to the first half of the tenth century, Bernhard Bischoff (quoted *ibid.*, p. 12, n. 2) to the second half.

39. Bieler, *ibid.*, pp. 13, 21-2 (MS. C).

40. They are MSS. K40 (Paris) and K49 (Cambrai) in Eckhardt's classification *Pactus Legis Salicae*, I.1, pp. 32 and 33.

the likelihood of the text's circulating in Brittany in the Merovingian or early Carolingian period.

Professor Fleuriot has drawn attention to two further alleged sources of the *Excerpta*. First, he notes that the source of § 63 of the P-text (cf. A54) is to be found in *Lex Baiuvariorum*, II.6.<sup>41</sup> But this seems to be a misunderstanding of Ludwig Bieler's discussion of these passages, in the course of which he used *Lex Baiuvariorum* to explain a difficulty in the *Excerpta*.<sup>42</sup> There is no reason to suppose any direct relationship. What is more, *Lex Baiuvariorum* is an eighth-century text.<sup>43</sup> Secondly, Fleuriot notes that § 61 of the A-text of the *Excerpta* can be paralleled in the Hiberno-Latin *Sinodus Episcoporum*, § 6.<sup>44</sup>

*Excerpta, A-text, § 61.*

Si quis catholicus capillos promisserit more barbarorum, ab ecclesia Dei alienus habeatur et ab omni christianorum mensa donec delictum emendat.

*Sinodus Episcoporum, § 6 (cf. Collectio Canonum Hibernensis, B-text, LI.5).*

Quicumque clericus ab hostiario usque ad sacerdotem sine tunica usus fuerit atque turpitudinem ventris et nuditatem non tegat, et si non more romano capilli eius tonsi sint, et uxor eius si non uelato capite ambulauerit, pariter a laicis contempnentur et ab ecclesia separentur.

To these we may add the evidence of *Collectio Canonum Hibernensis*, A-text, LI.7.<sup>45</sup>

*Patricius.* Si quis clericus, cuius capilli non sunt tonsi romano more, debet excommunicari.

The reader will naturally doubt that there is a direct relationship between the first two texts. They (and the *Collectio Hibernensis* which had wide and

41. Fleuriot, 'Un fragment', p. 610.

42. Bieler, 'Towards an interpretation', pp. 390-1. Another misunderstanding is implicit in Fleuriot's passing reference ('Un fragment', p. 604) to Bieler's comparable use (*The Irish Penitentials*, p. 248, n. 13) of the Visigothic laws.

43. Wormald, 'Lex Scripta', p. 109, and the references given there.

44. 'Un fragment', pp. 613, 618 (cf. 610, n. 5); Bieler, *The Irish Penitentials*, pp. 148 and 54. Note also the citation in MS. X, p. 104, of an abbreviated form of *Sinodus Episcoporum*, § 6 (printed by Bieler, *ibid.*, p. 54, apparatus); that it immediately follows X's abbreviated text of the *Excerpta (ibid.*, p. xv) would suggest its dependence on *Excerpta* A61; but that is already present in X's text and the following abbreviation of *Sinodus*, § 6, includes matter not found in *Excerpta* A61; the possibility must therefore be kept in mind that it may be derivative of a manuscript of the *Collectio* (see next note).

45. *Die irische Kanonensammlung*, ed. Herrmann Wasserschleben (2nd edn, Leipzig, 1885), p. 213. This is found only in the A-text (Wasserschleben's codices 1-5); the B-text (Wasserschleben's codices 6 and 8) has *Sinodus Episcoporum*, § 6, in full at this point; and two of the Breton manuscripts (Orléans 221 and Paris, B.N., lat. 3182) follow LI.7 with *Sinodus Episcoporum*, § 6, derived and corrupted from the B-text of the *Collectio*. The A-text is here arguably an abbreviated redaction of B.

almost certainly eighth-century circulation in Brittany<sup>46</sup> and is presumably here ultimately derivative of *Sinodus Episcoporum*) seem to attest to what could perfectly well have been a widespread attitude in the Late Antique Western Church; the possibility, therefore, of a common source should not be excluded at this stage of our knowledge. But if there is a direct borrowing into the *Excerpta*, it could as well have derived from the *Collectio Hibernensis* as from *Sinodus Episcoporum*.<sup>47</sup> We might note further that in the Irish texts the ruling applies to clerics, but in the *Excerpta* to any Catholic.

Professor Fleuriot cited the borrowing from *Sinodus Episcoporum* to demonstrate the early elements of which the *Excerpta* were, in his opinion, formed.<sup>48</sup> I doubt, however, that any historian would now follow Ludwig Bieler, as he has done, in dating the *Sinodus* to the mid-fifth century.<sup>49</sup> In fact, it is perfectly possible that that text should be dated as late as the seventh century.<sup>50</sup> But, in any case, it is uncertain whether this is an issue relevant to the *Excerpta*. §§ 59-61 of the A-text of the *Excerpta* have been seen as ecclesiastical regulations quite different in kind from the provisions found in the body of the work. These items have no parallel in the P-text, and on this ground especially have been suspected to be later additions to the A-recension of the *Excerpta*. This indeed was the view of Ludwig Bieler.<sup>51</sup> Those clauses are, under these circumstances, unlikely to be helpful for the dating of the *Excerpta* as a secular lawbook.

46. For the manuscripts of the *Collectio Hibernensis* and the extensive Breton circulation of the text, see Wasserschleben, *ibid.*, pp. xxx-xxxv, and H. Bradshaw, 'Nachtrag', *ibid.*, pp. lxxii-lxxvi. The earliest Breton manuscript of the text is again Orleans 221 (193). See also James F. Kenney, *The Sources for the Early History of Ireland: Ecclesiastical. An Introduction and Guide* (New York, 1929; rev. imp. by L. Bieler, 1946), pp. 247-50 (n. 82). To these manuscripts must now be added the fragments in London, Lambeth Palace, MS. 1231, described by N. R. Ker *apud* E. G. W. Bill, *A Catalogue of Manuscripts in Lambeth Palace Library: MSS. 1222-1860* (Oxford, 1972), p. 61. And for a superb study of the early derivatives of the *Collectio*, see R. E. Reynolds, 'Unity and diversity in Carolingian law collections: the case of the *Collectio Hibernensis* and its derivatives', in *Carolingian Essays*, ed. Uta-Renate Blumenthal (Washington, D.C., 1983), pp. 99-135.

47. *Sinodus Episcoporum* may have had a ninth-century or earlier Breton circulation for the unique manuscript (Bieler's W), though written probably at Tours, seems to have had a Breton exemplar (cf. Fleuriot, *Dictionnaire*, pp. 6, 68, 324) for at least one part of its contents.

48. 'Un fragment', p. 618.

49. For Bieler's dating, see *The Irish Penitentials*, pp. 1-2. For subsequent controversy, see Kathleen Hughes, *The Church in Early Irish Society* (London, 1966), pp. 41-3; D. A. Binchy, 'St Patrick's "First Synod"', *Studia Hibernica* 8 (1968): 49-59; Kathleen Hughes, *Early Christian Ireland: Introduction to the Sources* (London, 1973), pp. 68-71.

50. In 1962 this was the view of D. A. Binchy, 'St Patrick and his biographers, ancient and modern', *Studia Hibernica* 2 (1962): 7-173 (at pp. 45-9). I take up this question again in a forthcoming paper, 'The dating of the Irish *Sinodus Episcoporum*'.

51. *The Irish Penitentials*, p. 7; he describes them as 'three penitential canons appended to one of its two versions' ('Towards an interpretation', p. 387). For ecclesiastical matters in the *Excerpta*, see Fleuriot, 'Un fragment', pp. 65-4-6.

A related difficulty presents the final complication in our search for a date for the *Excerpta*. Herrmann Wasserschleben explained two canons in the *Collectio Hibernensis* as borrowings from the *Excerpta*.<sup>52</sup> If this conclusion were correct, it would usefully place the creation of the *Excerpta* before about 700. Unfortunately, matters are not so straightforward. The problem may most conveniently be demonstrated by citation of the parallel texts.<sup>53</sup>

*Collectio Canonum Hibernensis, A-text, LV.7.*

*Sinodus gallica.* Paruulus usque ad annos .xv. pro delicto nihil nisi disciplinam recipiet.

*Collectio Canonum Hibernensis, B-text, LIII.5.*

*Sinodus romana.* Paruulus usque ad annum .xii. pro delicto nihil reddat nisi disciplinam accipiat; post hanc vero etalem quicquid delinquat uel furatur (re)tribuat.

*Excerpta, A-text, § 26.*

Paruulus usque annum .xii. pro delicto nihil reddat nisi disciplinam accipiat; post hanc vero etatem quicquid delinquat uel furatur retribuat.

*Excerpta, P-text, § 18.*

Si quis paruulus usque annos .xv. quodlibet dilectum commiserit, nihil sub iudice reputatur nisi disciplinam accipiat; < post > hoc autem secundum etatem et quod furabitur restituat.

It is plain that the B-text of the *Collectio* is closely tied to the A-text of the *Excerpta*. It is difficult, however, to be clear about the implications of this fact. The *Collectio* may have received this canon from the *Excerpta*; in that case, the B-text would be shown to be primary, with the A-text subsequently shortening the ruling. On the other hand, the B-text of the *Collectio* (which was certainly circulating in Brittany by the ninth century<sup>54</sup>) may have supplied the canon to the author of the *Excerpta* (and this hypothesis would of course have no implications for the priority of either version of the *Collectio*). There seems to be no obvious textual means of determin-

52. *Die irische Kanonensammlung*, p. lxxi, n. 7. Scholars usually date the *Collectio* to the first quarter of the eighth century.

53. *Ibid.*, p. 221 (the B-text manuscripts give the A-version immediately following the B-version as the next chapter; the text-historical implications are not immediately clear to me); Bieler, *The Irish Penitentials*, pp. 140 and 152.

54. As witness Oxford, Bodleian Library, MS. Halton 42 (S.C. 4117); Bieler, *ibid.*, p. 13; Fleuriot, *Dictionnaire*, pp. 5, 252; T. A. M. Bishop, 'Notes on Cambridge manuscripts', *Transactions of the Cambridge Bibliographical Society* 3 (1953-63): 413-23; N. R. Ker, 'The handwriting of Archbishop Wulfstan', in *England before the Conquest. Studies in Primary Sources presented to Dorothy Whitlock*, ed. Peter Glanville & K. Hughes (Cambridge, 1971), pp. 315-31 (especially 316, 328-30); P. J. Lucas, 'MS. Halton 42: another manuscript containing Old English', *Notes and Queries* 224 (N.S., 26) (1979): 8.

ing the direction of the borrowing.<sup>55</sup> A third possibility is perhaps suggested by the other canon noted by Wasserschleben to be held in common by the two works. I begin by giving the texts,<sup>56</sup> in this case the relevant canon is not found in the P-text of the *Excerpta*.

*Collectio Canonum Hibernensis, A-text*,<sup>57</sup> LIII.6.

Si canis quidlibet manducet, prima culpa nihil reddatur pro illo, nisi forte semel <ipse>; quod si iterum peccauerit, dominus canis quod comedit reddat.

*Excerpta, A-text*, § 62.

Si canis quidlibet manducet, prima culpa nihil reddatur pro illo, nisi semel ipse; quod si iterum peccauerit, dominus canis quod comederit ille reddat.

The item from the *Excerpta* is in an anomalous situation. It is the concluding regulation of the A-text, following the allegedly secondary §§ 59-61.<sup>58</sup> It is missing from MSS. A (the oldest) and X (the latest) excerpts only, and of course from P. The text presented by the remaining manuscripts (BHO) is exceedingly close to that of the *Collectio*.

The position is complicated considerably, but perhaps fruitfully, by another Hiberno-Latin canonical text. In Bieler's MS. B is preserved a short text of four canons headed 'De canibus sinodus sapientium',<sup>59</sup> the second of these reads as follows.

Item: canis quodlibet manducet, prima culpa nihil reddatur nisi ille solus. Si uero secundo uel tertio iterauit, reddetur quod fecerit uel comedit.

Plainly this is much less close to either text than they are to each other. But, as part of a specialist text *De canibus*, it offers a possibility of allowing us to understand the interrelationships of these works. Unless someone excerpted the canons concerning dogs from the *Collectio* (and this seems unlikely because §§ 3-4 have not been found there), we must suppose that specialist texts of this sort formed one of the types of source of the *Collectio*

55. Equally, no clear implication can be drawn from this canon's heading in the *Collectio*: 'Sinodus romana'. Whether this was a borrowing from the *Excerpta de Libris Romanorum et Francorum* or instead one reason why that text was so called can hardly be determined *a priori*.

56. Wasserschleben, *Die irische Kanonensammlung*, p. 214; Bieler, *The Irish Penitentials*, p. 148.

57. This chapter is not found in the B-text.

58. On these clauses, see above, p. 216 and n. 51.

59. Bieler, *The Irish Penitentials*, p. 174. On this passage and its relatives, see B. S. Jackson 'On the origins of *Scienter*', *Law Quarterly Review* 94 (1978) 85-102 (especially pp. 86ff.); for some unspecified reason, he thought (p. 86) that the *Excerpta* were compiled probably in Ireland in the eighth century.

*Hibernensis*. This hypothesis is perhaps confirmed by the preceding canon in the *Collectio* (A-text,<sup>60</sup> LIII.5, introduced *Hibernenses dicunt*) which is the same as *De canibus* § 1 (albeit with variant wording and fuller detail): the implication is therefore indeed that this text was drawn upon in the compilation of the *Collectio*.

Our three hypotheses therefore seem reducible to two: since *De canibus* § 1 is shared with the *Collectio* (A-text) but not with the *Excerpta*, the latter cannot be the source of *Collectio* (A) LIII.6. Therefore, either *De canibus* was drawn upon for the *Collectio* which was in its turn drawn upon for the *Excerpta*, or the *Collectio* and the *Excerpta* drew independently upon *De canibus* (but, if so, in a version which has since been abridged and reworded to form the extant text). The latter requires a hypothetical multiplication of entities and should be rejected unless further supporting evidence can be found. We must accordingly conclude that at this point the A-recension of the *Excerpta* (MSS. BHO only) is derivative of the A-text of the *Collectio* and cannot in this form antedate the eighth century.<sup>61</sup>

However, these clauses of the *Excerpta* are in an anomalous situation: §§ A59-62 are all without parallel in the P-recension and remain under some suspicion as possible late additions to the *Excerpta*, whether in the process of creation of the A-recension (if that is not their original text) or as supplementary accretions in the process of transmission. No such doubts attend A26/P18 which we have compared with the B-text of the *Collectio* (the proximity to the other two alleged borrowings into the *Excerpta* is perhaps noteworthy).<sup>62</sup> The B-text's heading *Sinodus romana* might be what a compiler (drawing on *Excerpta de Libris Romanorum et Francorum* would write; but against that could be set, quite easily, the common-source theory which would indeed derive this ruling in both cases from a particular set of ecclesiastical canons. Such imponderable theories must nonetheless be weighed against a final consideration. If the author(s) of the *Collectio* had a text of the *Excerpta*, is it reasonable for us to suppose that only a single clause (A26/P18) would have been borrowed thence into a work

60. This, like LIII.6 (see n. 57 above), is missing from the B-text.

61. This conclusion might even embolden us to see § A59 (which, like §§ 60-61, is in all manuscripts of the A-recension of the *Excerpta*) as derivative of *Collectio* LII.7 (see above, pp. 215-16 and nn. 44-51); it is perhaps worth noting the relative proximity of these two canons in the *Collectio*. But, if we were to do so for this reason, we should have either to make § A59 derivative of the A-text of the *Collectio* (which would perhaps suit the evidence less well), or to assume two separate phrases of borrowing in order to make § A59 derivative of the B-text of the *Collectio* while § A62 is derivative of the A-text. The only solution to this dilemma would be a manuscript of the A-text of the *Collectio* which included the B-text's L15. Happily, perhaps, two Breton manuscripts do just that: Orléans 221 and Paris, B.N., lat. 3182.

62. See above, pp. 217-18 and nn. 53-55.

extending to sixty or seventy books encompassing multifarious topics?<sup>63</sup> Or should we rather suppose that the author of a secular law-text of 62 clauses might have found some use in three canons (with others perhaps yet to be identified) situated within a folio or two of one another in a copy of the *Collectio*?<sup>64</sup> It is impossible, on the available evidence, to be certain: but the latter certainly seems to me to be the more plausible deduction.<sup>65</sup>

We may sum up this discussion fairly briefly. In his fundamental paper, Professor Fleuriot has urged a date of A.D. 520×560 for the composition of the *Excerpta de Libris Romanorum et Francorum*. Such precision and such an attribution of antiquity seem to go far beyond what the present state of our knowledge can allow. It seems likely that the texts of the *Excerpta* bear witness to social customs, and perhaps to legal regulations, of varying degrees of antiquity.<sup>66</sup> However, as yet at least, we have no evidence for an earlier textual state of the *Excerpta* than the extant witnesses (unless we allow a hypothetical ancestor of the A and P recensions to occupy that role), and the dating of the surviving texts must be our first concern. If the conclusions arising from my discussion of the relationship between the *Excerpta* and the *Collectio* be allowed any merit,<sup>67</sup> we shall assign the *Excerpta* to the eighth century. But the sceptical reader who wishes to suspend judgment for the moment will place the *Excerpta* merely between about A.D. 510, the approximate date of the first known form of *Lex Salica*,<sup>68</sup> and about A.D. 800, the earliest likely date for the earliest extant manuscript;

63. Wasserschleben (*Die irische Kanonensammlung*, p. LXXI, n. \*; cf. p. LXX, n. \*\*; and p. xxi) thought that the *Collectio* was put together partly from an Insular compilation of canons which itself drew on the *Excerpta*; but he gives me the impression also that he thought that the compiler(s) of the *Collectio* drew directly on the *Excerpta* anyway. If the borrowing had been in that direction (which seems most unlikely to me), this would have provided an explanation for a hypothetical filtering out of citations from the *Excerpta*.

64. As above (cf. n. 61) there are text-historical problems in supposing all this to have been achieved in one go. On this occasion, however, there is a greater difficulty (in the present state of knowledge) in accepting that the suggested borrowings took place together, for I know of no manuscript which combines B LIII.5 with A LIII.6 and B LI.5.

65. Here we might choose to remember the remark, about the *Excerpta* of Kenney, *The Sources*, p. 240, n. 249: 'a collection of secular laws, of Welsh origin but showing Goideic influences'.

66. I owe the point to the perceptiveness of Professor Fleuriot.

67. Above, pp. 215-20.

68. Fleuriot ('Un fragment', pp. 617, 618) suggests ca 515 or 520, but I see no point in making minor arbitrary advances on the established date, ca 510.

what is clear is that the proposed early and narrow dating of the *Excerpta* must be disallowed.<sup>69</sup>

69. If it is ever to be reestablished, not merely must the possibility of borrowing from the *Collectio* be demolished, but our knowledge of the *Excerpta*-texts themselves and of early mediaeval Breton history must be considerably deepened. We need to know more about Breton social structure and about Franco-Breton relations. We need to know more about the sources of the *Excerpta* and the area in which these laws had force. If the dependence on the *Collectio* were to be disallowed, then one could not rule out a sixth-century date for the *Excerpta*, whether in a hypothesised original form or in either or both extant recensions; but it would still remain to demonstrate such an early dating.

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RÉSUMÉ. — *Examen des critères permettant de déterminer l'origine et la date des Excerpta de Libris Romanorum et Francorum, texte de loi séculier breton. L'origine semble bien être armoricaine, comme le propose L. Fleuriot. Mais la date est difficile à préciser: les emprunts à la Lex Salica, définis par Ludwig Bieler, ne permettent pas une datation précise. Quant aux passages parallèles avec la Collectio Canonum Hibernensis, il est difficile de préciser le sens de l'emprunt (l'emprunt semble avoir été plutôt le fait de l'auteur des Excerpta). Il serait donc prudent de renoncer à la date 520×560 proposée par L. Fleuriot et de ranger provisoirement les Excerpta dans le VIII<sup>e</sup> siècle.*