The Human Body in Barbarian Laws, c. 500 – c. 800

Corpus Hominis as a Cultural Category
Introduction

The Problem Area of the Work

The subject of the undertaken research is the body and corporality in the early medieval legal codes of Germanic peoples (*leges barbarorum*). Such an area of interest requires an explanation and an exact definition. The matter concerns, first and foremost, the very category of the human body. This is connected with extremely important questions for our area of interest: in what meaning are we able to treat the regulations that appear in *leges barbarorum* as an account of the human body? What possibilities within this are offered to the historian researching the human body and this type of source? What limitations and restrictions result from the specifics of these accounts for the problem area in question?

The first factor characterising the concepts dealt with in the research is the fact that the subject of the considerations is not a ‘real’, physical human body but its textual representation as appearing in *leges barbarorum*. This ascertain-ment although appearing to be rather obvious in nature has, however, far reach-ing consequences. For it means that in our case the body is not the object undergoing direct investigation (e.g., observation, reconstruction on the basis of bone remains etc.) as is possible in archaeological research. In the regulations comprising barbarian laws we are dealing with a specific way of presenting selected fragments of man’s bodily exterior.

The most important source of knowledge about the human body in the *leges* of Germanic peoples are the regulations on varied crimes against the integrality and inviolability of the human body. The object of the said acts of violence were specified parts or elements of the body. In particular barbarian codes we can find greater or lesser collections of these types of bodily objects. These regulations in which they appear concerned almost exclusively the body of a live man. In *leges* we do also have references to regulations on corpses and the dead.

The fundamental research problem is linked with the said regulations. The above presentation of the content of the *leges* regulations is a certain interpreta-tion of them resulting from reading the said regulations, in accordance with the contemporary understanding of the concept of ‘the body’. In the majority of the codifications researched the said fragments of the human body were not linked to the concept of the body. Today’s reader understands an account talking, for example, about the cutting off of a hand as a mention of one of the parts of the body. He will assume therefore that legal regulations concerning this type of crime will contain information about the body. Such a comprehended concept of
the body is abstract and autonomic in relation to the concept of man. The contemporary researcher adopted more or less consciously that the body is an objective and transhistorical category (and even ahistorical) which may be applied in research into source accounts coming from any epoch whatsoever without taking into consideration its cultural changeability over the course of history.

A man’s body is, however, also a historically variable cultural category. One may assume as highly likely that in early medieval Germanic culture, whose manifestation are the *leges*, the understanding of the concept of the body was somewhat different than today’s. An important aim of the research into barbarian codifications is therefore to determine in what way their creators understood this concept.

Interesting considerations, from the point of view of the problems herein addressed, on the way the concept of the body was understood in ancient culture, on the basis of research into the language of the works of Homer, have been made by Bruno Snell. Homer used the word *σωμά* in the meaning of corpse, and not in the sense of the living body that Ancient Greek was to later formulate. Snell also analyses the use of other words appearing in the language of Homer. These are the words *γυια* and *μελεα*, representing the members that he used in the meaning of ‘body’. The cited scholar draws attention here to the use of the plural of these words and not the singular as is the accepted practice in the contemporary language. This author analyses also the use of the word ‘chros’, which in his opinion meant ‘skin’. He notes, however, that certain researchers have sided with the word meaning ‘body’. This is not, however, skin in the anatomical meaning (*derma*), but the surface, the external boundary of the human form. The word ‘chros’ was used, however, by Homer in the meaning of ‘body’. Snell establishes that it would be difficult for a contemporary man to comprehend a mentality that did not recognise the concept of body as such.\(^1\) Snell’s findings show, on the basis of a concrete example, that the way of comprehend-

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1 Cf. B. Snell, *The Discovery of the Mind in Greek Philosophy and Literature*, transl. T. G. Rosenmeyer, New York 1982; Chapter I: *Homer’s view of the man*, pp. 1–7; the first German edition: *Die Entdeckung des Geistes: Studien zur des europäischen Denkens bei den Griechen*, Hamburg 1946. Snell reconstructs the evolution of the perception of the body in the epoch researched by him in the following way: in the first stage a speaker standing opposite another person needed in a straightforward way to call him by name: this is Achilles, or the claim: this is a man. Next are described the most distinguishing elements of his appearance, namely his limbs as existing one next to another while their mutual functionality started to be perceived in its full sense only somewhat later. Such an objectively comprehended body was not to exist until the man was not determined by a word, and therefore only when he became the subject of reflection.
ing the concept of the body is connected with the stage of cultural development of the society using it.

Key for our research into the regulations of the leges is the question therefore of the relation between the category of person (man) appearing within them and the collections of parts and also fragments of a body. In the barbarian legal codes the said collections were often created somehow on the model of the human figure viewed from head to foot. There arises therefore the question as to whether the creators of the leges of the particular Germanic peoples combined the said parts with the concept of the body or with the concept of man. That which a modern researcher identifies as a part of the body, the creators of the leges might have understood as objects belonging to a man or also combining to form his figure. It follows to note, however, that man within the researched regulations is perceived in an extremely specific and narrow manner – namely as a bodily being. For he appears in the role of the victim of physical violence. In effect, man appears within the light of the leges regulations as the collection of body parts and the motor and perception functions connected with them. It seems therein that the element which connected the said collection of body parts with the concept of a man was his figure.

Within the research herein conducted it is not possible to avoid the use of the concept of ‘a man’s body’ in its modern understanding. An attempt to identify the researcher with the way of thinking inherent for the creators of the sources (in this case barbarian leges) would be not only practically unrealisable but would also form a limitation in interpretative possibilities. Therefore it appears that the best solution is the application in this research of the modern concept of the body, with the awareness of the limitations of this approach, as equally a search for the historical meaning of this category.

The second matter requiring specification is the contexts within which the body appears (in the modern understanding) in the leges regulations. The human body, or rather its concrete fragments, is – in the light of our source material – first and foremost the object of varied crimes (woundings, damage, violations). It is presented in an extremely literal way – in the form of skin, bones, tendons, innards, blood, hair etc. The body has, therefore, first and foremost a physical or physiological character. The said body ‘ingredients’ are in the leges examined and presented as the subject of an autopsy and therefore in comprehending the matter within modern categories from the viewpoint of forensic medicine.

The body so understood is simultaneously the subject of legal regulations. It becomes the subject of law and as such it is perceived. For the creators of the said regulations were interested in the type and scope of the bodily damages brought about by crime. They were concerned with defining the degree to which a concrete form of damage negatively affected a man’s health situation, motor
and perceptual ability. Crimes with the use of violence did not always result in damage to the bodily substance, in certain cases the matter concerned violation of bodily inviolability. Violation of goods was consequently not merely the body in the physical sense but the victim’s dignity and honour invested in the body. Therefore a man’s body was perceived as constituting moral value. This concerned also crimes violating the substance of the body, particularly those whose outcome was a ridiculing change in appearance of the victim. In the light of the regulations of Germanic laws the body constituted a collective of an individual’s rights which were subject to protection.

In research into the *leges* it appears justified to use beside the category of ‘body’ the concept of ‘corporality’. In the case of certain types of crime the permanent effects that are their consequence concerned not only the substance of the body but certain functions such as: sight, hearing, speech, the ability to procreate. These were inseparably linked to the existence and functioning of certain organs (the eyes, tongue, genitals), but they themselves were something more. The concept of corporality covers therefore categories connected with the body but extending beyond its strictly material or physical nature (e.g., in as far as an eye is a typical body component, then sight belongs to the sphere of corporality). This category also included nakedness and body appearance.

The sets of body parts appearing in the *leges* were presented as objects defined in social terms. Each fragment of a crime victim’s body to appear in the regulations of the said legal codes was viewed from the standpoint of its legal and social status. Victims were characterised in relation to their membership of: groups (‘estates’) of a specified status (freeman, dependants, slaves), sex and age. Inclusion in one of the social categories decided on the way the sums were estimated that were to be paid by the perpetrator of the crime. In this way a human’s body was connected with legal-social differentiation and at the same time was included within the social hierarchical order.

In the light of the *leges* regulations, a human’s body covered several aspects: it had a physical or physiological character, it constituted the subject of legal regulations, whose aim was the protection of the individual’s property, it was defined in social categories in relation to the status of the victim of the crime. This specific way of viewing the human body meant that in the *leges* regulations there did not appear aspects of it such as: symbolic meanings, beauty, hygienic beautifying procedures, pleasure and suffering etc. The scope and means in

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2 On the subject of a man’s honour and the connection of this category with the body in Germanic and Celtic societies of the early Middle Ages recently there has appeared: J. H. M. Smith, *Europe after Rome. A New Cultural History 500-1000*, Oxford 2005, pp. 100 ff.; cf. also the literature in the bibliography for Chapter 3.
which it is present in the leges was strictly connected with the way of understanding reality in the normative texts.

The sets of parts or body elements that we come across in the individual leges are in principle presented to some extent ‘from outside’, for they always create the bodily shell of another person. The body is at the same time devoid of all individual features. It does not belong to any actual person. It is defined socially, ascribed to the legal status of an individual, but it has the character of a ‘species’, it is a general human trait.

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The source material for our considerations is first and foremost the preserved legal codes of the relevant Germanic peoples and strictly speaking those of the regulations which concern crimes against the body. 3 This is an extensive collection of sources. Our research will concern first and foremost the oldest editions of the leges of the particular barbarian peoples. This will involve consequently only a slight recourse or even omitting of some of the later codifications. 4 Such a selection results primarily from the intention to research the process of transition from a traditional culture based on oral transfer and one remaining under the influence of pagan beliefs to a culture of the written word characterised by clear Roman-Christian influences. 5 For we shall treat the barbarian leges not on-

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3 These are: Leges Visigothorum (Leovigil’s Antiqua and Reccesvinth’s Liber Iudiciorum), the Burgundian Liber Constitutionum, Pactus legis Salicae and Lex Salica, Lex Riburia, the Anglo-Saxon (Kentish) the Laws of Æthelberht; the Lombard Edictum Rothari; Pactus legis Alamannorum and Lex Alamannorum, Lex Baiwariorum; Lex Saxonom and Capitulatio de partibus Saxoniae, Lex Thuringorum and Lex Frisionum (including Additio sapientum); detailed information about the editions of the various codes is given in the Bibliography and footnotes. The presently available source editions (published in the series MGH Leges) were, starting from the beginning of the 20th century, to be the subject of critical evaluation by reviewers; recently W. Hartmann (Brauchen wir neue Editionen der Leges? [in:] Mittelalterliche Texte. Überlieferung – Befunde – Deutungen, ed. R. Scheiffer (MGH Schriften, vol. 42), pp. 233-245) has correlated these opinions, added his own critical comments and pointed to the need for analysis of the new editions of Alamann, Bavarian, Burgundian and Lombard laws as a result of the errors and absences occurring in hitherto editions, he has also critically evaluated the edition of the Salian Franks by K. A. Eckhardt. As a result of the lack of other possibilities (particularly the ability to make use of manuscripts) I have based myself within the present work on the existing, imperfect editions of the Germanic codes.

4 In the case of the Salian Franks we will not involve ourselves with the capitularies of the Caroline period, while those from the Merovingian era only in passing; in relation to Lombard laws the Liutprand Laws we will use only selectively; in the case of Anglo-Saxon legislation we will not make use of research into the later codifications, in particular the Laws of Alfred.

5 For each of the early medieval Germanic peoples this phenomenon occurred at a different historical time, for example in the history of the Visigoths at the turn of the 6th cen-
ly as material for research into the history of law but first and foremost as a certain type of textual utterance containing a cultural account of, among other things, the perception of the human body.

Beside the texts of the *leges* themselves we have used in certain cases, as comparative material, other sources. These are codifications of Roman law (*Codex Theodosianus, Digesta Justiniani, Breviarium Alaricianum, Lex Romana Burgundionum*); early medieval accounts of a historiographic and hagiographic nature (*The Histories* of Gregory of Tours), biographical works (*The Life of Charlemagne* by Einhard, *Epistulae* by Sidonius Apollinaris), mythological accounts (*The Song of Rig*).

The chronological-territorial framework for the work covers the time in which the legal codes came about, while the land area that inhabited by Germanic peoples, for whom the texts were written. This is therefore a period which may be only demarcated by poorly defined starting and finishing points – from the turn of the 6th to the beginning of the 9th century. Equally vaguely may the spatial scope of the work be defined – for here the matter concerned almost the whole of western Europe, and more precisely those areas under the control of the Visigoths, the Franks (Salian and Ripuarian), the Burgundians, Lombards, Bavarians, Alamanns, Thuringii, Saxons, Frisians, and Anglo-Saxons.

The State of Research into the Question of the Human Body in Germanic Laws

Shortly after the publication of the Polish version of my work there was published Lisi Oliver’s book *The Body Legal in Barbarian Law*, which covered almost the self same problem area. This monograph is a holistic account of the topic therein undertaken. The author claims that the main topic for her study is ‘the personal injury tariffs included in the legal codes established for the various continental kingdoms and dukedoms (...) and incorporating the Anglo-Saxon island regions of Britain’. The thematic scope of her research covers four main problem groups: ‘the causes and results of injuries inflicted in private altercation; the evidence for methods and successes (or lack thereof) of healing techniques; the process of individual redress or public litigation; and indication of how the early medieval laws either drew upon native tradition, borrowed regula-
The author makes use in her research of not only the regulations of barbarian laws but also archaeological, narrative and literary sources. The aim of her study is ‘to depict a picture of how early medieval society understood the anatomical consequences of wounds to the human body, the varieties of practices available to heal such injuries, and the legal process of obtaining compensation for temporary or permanent incapacitation’. This book, with regard to its subject matter and comprehensive character, is a contribution to research into the perception of the human body in the early Middle Ages which can simply not be overlooked.

Earlier research into barbarian laws concentrated on questions connected with the history of criminal law. Their main subject was the various types of crime against the body as well as the forms of punishment meted out in the case of them being committed. The human body as a separate problem was one that did not interest the authors of these works. In addition these studies were cross-sectional in nature – they covered equally historical periods of the later rather than earlier Middle Ages. In those works that have come into being during the course of the last thirty years researchers’ attention has been concentrated to a lesser degree on crimes against bodily integrity as a historical-legal issue, with greater attention being paid to the various forms of damage inflicted on the human body, and through this on the very body as the object of interest of legal texts. Of special interest for us are the studies conducted by Anette Niederhellmann,
mann, who, in utilising earlier works (of L. Günther, R. His, K. von Amira, S. von Schwanenflügel), presented a detailed analysis and classification of the particular types of bodily damage described in the individual barbarian leges from the viewpoint of their medical character.\textsuperscript{10} Other research into the said legal codes have covered also the question of the level of compensation for various types of damage and bodily violation.\textsuperscript{11} The subject of interest for historians researching the laws of barbarian peoples is equally the structure of those parts of the codes that contain regulations on crimes against the body.\textsuperscript{12}

A different research direction was adopted by Michel Rouche in a text devoted to early medieval Gaul, included in the first volume of \textit{History of a Private Life}.\textsuperscript{13} The author treats the human body as an element of the problem of

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\item The author compared and analysed the regulations of the \textit{leges} with regard to the following phenomena: pregnancy, abortion, contraception, castration; the Germanic (i.e. Burgundian, Frankish, Lombard, Alamann, Bavarian, Saxon) designations for: parts of the body, parts of the head and torso, the limbs, bodily secretions, designations for damage to the body in general, the skin, swellings, bloody damage, bone damage, damage to the skull, torso and internal organs, terms for bodily deformation and inertia, manifestations of the consequences of bodily damage.


privacy and family life within Germanic and Roman societies. The *leges* of the Salian, Ripuarian Franks, Burgundians, Visigoths and other peoples served him as one of the sources to research the problem of violence, sexuality, procreation and attitudes towards the dead. A different and one should say innovative approach characterises the study by Katherine O’Brien O’Keeffe on the body in Anglo-Saxon laws of the 9th to the 11th century. The material for this research are the regulations of the later Anglo-Saxon codes on bodily punishments (mutilations) and ordeals. The body is understood in this depiction as the object of the action of secular (convicts) or ecclesiastical (penitents) authority as well as of Divine intervention (miraculous release from suffering).

Even though these works are valuable for our investigations we are still entering into an area that is relatively poorly explored by contemporary medieval studies. The studies where the question of the body has been undertaken concern, with only a few exceptions, either the early Christian periods, the furthest being the 5th century, or the later Middle Ages, starting from the 13th century; while in those devoted to the early Middle Ages, this problem area is usually simply an aside. Besides, it follows to emphasise that both the subject under consideration as well as the source material used make for a complex undertaking.

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The codes of barbarian law as historical documents are specific in character – for they are normative sources. This type of historical account in itself constitutes a complicated, multi-aspectual problem area requiring the application of appropriate interpretative methods. This results from, among other things, the fact that the relations between the text and the historical reality it relates to is formulated within legal texts in a most specific way, differently than in the case of narrative accounts (historiographical or hagiographic) and diplomatic ones. For the legal regulations expressed the convictions of their creators as to the proper and improper behaviour of those subjected to them. Besides, the texts of the *leges* serve in our case to investigate the human body, which equally constitutes a separate and complex problem in itself. The combination of both of these questions examined within the scope of a single study increases the range of difficulty faced by the researcher.

The codifications of Germanic laws as a research subject has the mid nineteenth century as its beginnings. These are first and foremost studies in the histo-

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15 Cf. footnotes 34–37.