EARLY MEDIEVAL EUROPE

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The history of marriage and
the myth of Friedelehe

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The idea that Friedelehe *and* Muntehe *constituted two distinct forms of Germanic marriage was based upon an attempt to reconstruct common Germanic culture with scraps of evidence from widely different times and places. A thorough re-examination of the sources for the institutions that were posited, based on this now outmoded methodology, reveals no evidence that transfer of* Munt*, or guardianship, distinguished between two different types of marriage, except perhaps in Lombard Italy, under the influence of Roman law. The idea that marriage with a* dos *is a different institution from marriage without one is not attested until the Carolingian period.*

Although it is possible to trace a trajectory of developments in the social, institutional, and intellectual histories of marriage from at least the eleventh century to the present, the project of writing a history of marriage much before this period is not so straightforward. Scholars 'know' what marriage 'is', so we look at the early Middle Ages and find it there, and we also find other relationships that we decide either are not marriage, or are distinct types of marriage. A less teleological approach might attempt a history of pair bonding rather than a history of marriage. For example, in ancient Rome *contubernium*, available to slaves and non-citizens, was in legal terms a union of lesser status than *iustae nuptiae* or *legitimum matrimonium*, even though the couples may have been just as fully married in social terms. Until 212 *conubium*, the right to enter into legal marriage, was available only to citizens.[1] Historians

[1] S. Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford, 1991), p. 43; C. Van de Wiel, 'Les différentes formes de cohabitation hors justes noces et les dénominations diverses des enfants qui en sont nés dans le droit romain, canonique, civil et byzantin jusqu'au treizième siècle', *Revue international des droits de l'antiquité*, 3rd ser. 39 (1992), pp. 327–58, at p. 328.

may find problematic, however, a definition of marriage that includes only those unions found among the free citizen population, when other people's unions may have had the same level of personal commitment if not the same legal implications. If we are interested in social and cultural relations rather than the antecedents of a particular legal institution, we would need to include *contubernium*.

In contemporary society marriage requires an act or performative utterance by someone authorized by the relevant jurisdiction to perform it. If that act has taken place (and if the parties have met certain qualifications, such as age or gender, again depending on the jurisdiction), the marriage is valid; if it has not, it is not. In the early Middle Ages the line between who was married and who was not is not quite so clear, to us or perhaps even to people at the time. If we attempt to draw that line and say 'this was a marriage and this was not', we risk applying modern categories where they do not fit, and accepting the church's definitions even when the culture to which the church attempted to apply them did not, or did so gradually and grudgingly.

This article will argue that the distinction between what early medieval people considered a marriage and a union that was not a marriage depended not upon the nature of the rituals and contracts that created the union, but on the position in society of the parties involved, particularly that of the woman. This could be, but was not always, a question of legal status. A woman who was important enough relative to her partner for her rights to be recognized might be considered a wife, and otherwise not. The status of a particular union was intertwined with the status of the woman in a very complicated way, because the nature of the union depended on who she was. At the same time, however, her reputation – and her well-being, which could be contingent on whether her children inherited from their father – might depend on how the union was perceived by others. A man's position in life generally depended a great deal less on who his partner was than did a woman's.

I

The received wisdom on early medieval marriage goes something like this: the early Germanic peoples had two distinct types of marriage, *Muntehe* and *Friedelehe*. The former involved the transfer of the guardianship over a woman (the *Munt*, Latinized as *mundium*) from the woman's kin group to her husband. This transfer originally took place in exchange for a bride-price, which gradually was replaced by a *dos* which went to the woman herself rather than to her relatives. *Friedelehe* did not involve the transfer of the *Munt*, which remained with the

woman's natal family. A woman married in a *Friedelehe* was recognized as a wife, and she received the *Morgengabe* or morning-gift, a payment directly from the groom after the consummation of the marriage (and sometimes interpreted as an acknowledgement of her virginity), also paid in *Muntehe*. *Friedelehe* did not, however, involve a bride-price and was more easily dissolved. The church did not approve, wanting to recognize only those marriages contracted with a formal ceremony and a *dos*, and by the Carolingian era the *Friedelfrau* had been relegated under church influence to the status of a concubine.

Neither term, *Muntehe* nor *Friedelehe*, is attested in any medieval source. The whole edifice of these two types of marriage rests on an extremely problematic evidentiary base. Modern scholars since the nineteenth century have attempted to escape the problem of ecclesiastical sources (who may have labelled as *concubinae* women who considered themselves, and were considered by their families, and their partners, to be wives) by concerning themselves with primitive Germanic marriage customs before church influence. For this they have turned to the so-called *Leges Barbarorum*, which were thought to codify pre-Christian and pre-Roman practice that could be traced back to an *urgermanisch* culture, and to Scandinavian sources (sagas and law codes) which, while chronologically later than the continental *leges*, were thought to encode an earlier stage of Germanic development. Neither of these assumptions holds any longer as both the continental and Scandinavian legal material have been shown to be heavily influenced by Roman and/or canon law, and law as royal issuance with particular purposes rather than a simple reflection of social practice.

The assumption of a common Germanic culture and set of institutions in the pre-Christian era, that can be reconstructed by tracing backwards – from a term in a seventh-century Lombard law, an incident in a thirteenth-century Icelandic saga, a story in a sixth-century Frankish ecclesiastic's chronicle, an ethnographic description by a first-century Roman who never visited Germania and wrote about it in order to critique his own Roman culture – has also come under serious question. Many, if not most, scholars today reject the idea that a common Germanic past can be reconstructed from its descendants in much the way that proto-Indo-European language can be reconstructed from those languages derived from it, or an original text is reconstructed from a stemma of extant manuscripts (although even these methodologies are now under fire). Yet, while they do not accept the method that gave rise to the theory of Germanic marriage forms, and while they question the Nazi-era scholarship that presented these marriage forms as evidence of German superiority, they do not question the existence of the forms. A re-examination of the evidence suggests that they should.

Scholars have been more ready to recognize the problems in *Friedelehe* than they have in *Muntehe*. The term appears in no medieval source, and the existence of an identifiable institution for which the modern term stands is debatable. The term *Friedel* means 'beloved' in Middle High German and variations also appear in Old High German glosses on *virago*, *amatores*, and *concubina*.[2] Its cognate, *friðla* or *frilla*, appears in Old Norse, meaning a woman in a non-marital union with a man. On the basis of these terms scholars posited a common Germanic institution or form of marriage which they called *Friedelehe*. Although *Friedel* and *Fried* may be etymologicaly related, *Friedelehe* was coined in the nineteenth century to refer to a marriage by choice, not to one that creates peace between two families.[3] The term originated with Julius Ficker, who coined *Friedelschaft* to designate a relationship which should not be confused with Roman concubinage and for which the German *Kebse* was not appropriate, but which also was not a marriage because 'the so essential husbandly power of the man is absent'.[4]

Other scholars, however, did consider it a marriage: *Friedelehe* rather than *Friedelschaft*. *Friedelehe*, in the view of Herbert Meyer, whose work on the topic was most influential, was characterized by free choice on the part of both partners (rather than their families or clans) and by the absence of any transfer of bridewealth. According to this view it involved 'equal entitlement for the woman', and arose from a hypothesized primitive *Mutterrecht* (matrilineal law).[5] This institution, Meyer suggested, might even have been the original form of Germanic marriage, going back to a prehistoric matrilineal system, although by historic times both *Friedelehe* and *Muntehe* were practised. *Friedelehe* was originally as respectable a marriage as one in which a bride-price was paid, and the woman enjoyed the full status of a wife. The history of *Friedelehe* in the

2   E. Steinmeyer and E. Sievers, *Die althochdeutschen Glossen*, 5 vols (Berlin, 1882), II, p. 125 (*friudilinna*, glossing *concubina* in a canon collection); p. 304 (*friudila* glossing *amatores* in Gregory's *Homilies*); *ibid*. (1895), III, p. 310 (*friedila* glossing *Virago. Mulier que virile implet officium*) in the *Liber Summarium Henrici*, a sort of Latin–German dictionary.

3   Pace J.-P. Poly, 'La cousine germaine et le rapt des Saliques: mariage et parenté dans la coutume d'Ing', in M. Rouche (ed.), *Mariage et sexualité au Moyen Age: Accord ou crise?* (Paris, 2000), pp. 17–35, at p. 33, who gives no source for his assertions nor for his derivation of the Norse *friðla* from *frið*, peace, and *elja*, co-wife. On the 'peace-weaver' see J. Chance, *Woman as Hero in Old English Literature* (Syracuse, 1986), pp. 1–10; L. Eshleman, 'Weavers of Peace, Weavers of War', in Diane Wolfthal (ed.), *Peace and Negotiation: Strategies for Coexistence in the Middle Ages and Renaissance*, Arizona Studies in the Middle Ages and the Renaissance 4 (Turnhout, 2000), pp. 15–37.

4   J. Ficker, *Untersuchungen zur Erbenfolge der ostgermanischen Rechte* (Innsbruck, 1898), III.1, pp. 409 ff.

5   H. Meyer, 'Friedelehe und Mutterrecht', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 47 (1927), pp. 198–286, at p. 224 and pp. 242–5. Meyer's account of prehistoric Germanic marriage relies a great deal in the existence of the *Sippe* or clan, another construct which has been called into question. See A.C. Murray, *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Early Middle Ages* (Toronto, 1983).

historical era, Meyer implied, was that of the church's attempt to denigrate it and equate it with concubinage.[6]

As Meyer acknowledges, none of his sources (law codes, early historians, and Scandinavian sagas) use distinct terms for the unions he called *Friedelehen*. 'The wedding is called "nubere", the relationship "conjugium", the man "maritus" and the woman "uxor".'[7] He notes this in order to make the point that *Friedelehe* is a form of true marriage; but the use of the same language makes it clear that the sources do not refer to it as a separate institution. (There is a bit of circular reasoning here: anything that refers to lower-status unions proves the existence of *Friedelehe*, while anything that does not refer to its existence proves that it was considered full marriage.) Nor does the text that supposedly epitomizes primitive Germanic culture, the *Germania* of Tacitus, mention it. Tacitus is not a highly reliable witness to early Germanic custom, as he lumps all the Germans together as one group and often attributes to them characteristics intended to contrast with Roman decadence.[8] Tacitus's ignorance of a particular marriage custom does not mean that the prehistoric Germans did not practise it. Nevertheless it is worth noting what Tacitus does say: 'alone among the barbarians they are content with one wife, except for a few who, not because of lust but because of their nobility enter into several marriages. The wife does not bring the dowry to the husband, but the husband to the wife.'[9] This would seem to indicate that a transfer of wealth from the husband to the wife or her family was an integral part of marriage, but it may be something that Tacitus particularly noticed among one group of Germans because it contrasted with Roman practice, rather than a universal custom. In any case he makes no reference to an alternative or lesser form of marriage. Nor should we necessarily expect that he should. Modern scholars, who live in a culture whose views on marriage derive in large part from those established by the medieval church since the twelfth century, have tended to accept that something is a marriage or it is not, and that the church is the appropriate judge. Other societies do not usually have one clear standard that makes everything else a lesser institution.

[6] H. Meyer, 'Ehe und Eheauffassung der Germanen', in *Festschrift Ernst Heymann mit Unterstützung der Rechts- und Staatswissenschaftlichen Fakultät der Friedrich-Wilhelms-Universität zu Berlin und der Kaiser-Wilhelm-Gesellschaft zur Förderung der Wissenschaften zum 70. Geburtstag am 6. April 1940* (Weimar, 1940), pp. 1–51 also argued that bridewealth did not originally represent a purchase price but was a symbolic payment.
[7] Meyer, 'Friedelehe', p. 225.
[8] On this point see for example S. Fanning, 'Tacitus, *Beowulf*, and the *Comitatus*', *Haskins Society Journal* 9 (1997), pp. 17–38, at pp. 33–5.
[9] Tacitus, *Germania*, c. 18, in *Opera Minora*, ed. M. Winterbottom and R.M. Ogilvie (Oxford, 1975), p. 46.

Most, but not all scholars, have accepted the existence of *Friedelehe*, though not necessarily with all the characteristics Meyer posited. One who did not was Meyer's student Karl-August Eckhardt, whose standard textbook on Germanic law does not discuss *Friedelehe* at all, noting only: 'Alongside marriage by capture and by contract there was also a relationship similar to marriage, in the form of a man and a woman living together publicly and long-term (called "concubinage" by moderns, *barragania* in Spanish law). Scandinavian laws treat such a concubinage after a certain time-period as marriage – a side-piece to Roman marriage by *usus*.'[10] Eckhardt here assumes that these relationships substitute for what he calls 'marriage' in a basically monogamous system.

Proponents of *Friedelehe* cite as an explanation for its absence in legal sources the fact that it was a private arrangement between families. Rolf Köstler argued that what differentiated a *Friedelehe* from concubinage was the intent – the man's intent, in particular – that it be a marriage. This intent might be expressed through public ceremonies, but it could also be private; it did not require a particular legal proceeding.[11] Since the only aspect the laws dealt with was the *Munt*, and there was no *Munt* in this type of marriage, the laws would not mention *Friedelehe*, even though it was, he argued, a recognized form of marriage. In fact *Muntehe* is as absent in the sources as *Friedelehe*; different *leges* give the husband different degrees of control over the wife, and provide for different kinds of payments, but some do not mention guardianship at all (see below). Margaret Clunies Ross suggests that for Anglo-Saxon England there was a secondary status, the children of which could inherit, but which she calls concubinage because nothing in the sources indicates it was considered a marriage.[12]

More recent scholarship has abandoned the idea of finding common Germanic marriage practices, and focuses on *Friedelehe* as a phenomenon of Merovingian and Carolingian society. Régine Le Jan accepts the reality of a *Friedelehe*, although after the church's declaration in the eighth century that a *dos* was required for marriage, '*Friedelehe* became progressively an illegitimate form of union, practised less and less.' Prior to this development, she suggests, the *Friedelfrau* had received a *Morgengabe* and been a true wife, although one of second rank.[13]

[10]   K.A. Eckhardt (ed.), *Germanisches Recht, von Karl von Amira*, Grundriss der germanischen Philologie 5, 2 vols, 4th edn (Berlin, 1967), II, p. 75.
[11]   R. Köstler, 'Raub-, Kauf- und Friedelehe bei den Germanen', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 63 (1943), pp. 92–136, at pp. 129–30.
[12]   M.C. Ross, 'Concubinage in Anglo-Saxon England', *Past and Present* 108 (August 1985), pp. 3–34, at pp. 13–18.
[13]   R. Le Jan, *Famille et pouvoir dans le monde franc (viie–xe siècle): essai d'anthropologie sociale*, Publications de la Sorbonne, Histoire ancienne et médiévale 33 (Paris, 1995), p. 271.

Other recent work, while accepting the existence of *Friedelehe*, has called into question the high status Meyer and others accorded it. The 1986 article 'Eherecht' in the *Realexikon der Germanichen Altertumskunde* may be taken to represent the late twentieth-century scholarly state of play. Already at that point Rainer Schulze recognized that the modern term *Friedelehe* was used to cover many different things and could not be considered a single institution of great antiquity: 'Very differently formed marital relations are attributed to *Friedelehe* (in the narrower sense). Usually it is a matter of cases in which account must be taken of social inequality between the parties. Whether the multiple legal forms that developed in this context go back to a common Germanic origin seems doubtful.'[14] Nevertheless, although he acknowledges the fuzziness of the concept, he is nevertheless able to catalogue several different circumstances under which *Friedelehe* takes place (or, otherwise put, several circumstances that he finds convenient to call *Friedelehe*): first, the bride's family is socially or economically superior to the groom, and he therefore does not receive the rights over her and her property that usually adhere to a husband with marriage; second, a woman marries down in terms of legal status, but is able to keep her legal status; third, a widow remarries but keeps control over the property and status she gained from her first marriage; fourth, the bride has no kin group or is unfree, and the husband therefore gains full marital rights over her without paying a bride-price; and fifth, a man of a ruling or aristocratic family wishes to marry more than one wife, but can only marry one with the bride-price, who becomes the official head of the household. For Schulze, then, *Friedelehe* is a term of convenience covering a wide variety of situations; but it still has a certain reality to it, since what ties all these cases together is that the marriage takes place without the exchanges of property that accompanied early medieval marriage, and without the transfer of rights over the wife to the husband, features that Schulze considers define 'standard' marriage. In his brief reference article Schulze does not give examples of the five different sets of circumstances, but it is doubtful that contemporaries would have seen them as the same type of liaison.

These common features posited by historians have allowed them for more than a century to romanticize *Friedelehe*, making it into an institution that allowed for matches based on love. Because no payment to the woman's family was required, neither was their consent, and the couple made the choice themselves to enter into the relationship.

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[14] R. Schulze, 'Eherecht', in J. Hoops (ed.), *Reallexikon der Germanischen Altertumskunde* (Berlin, 1986), p. 491. See W. Ogris, 'Friedelehe', in A. Erler and E. Kaufmann (eds), *Handwörterbuch zur deutschen Rechtsgeschichte*, 5 vols (Berlin, 1971), I, pp. 1293–6, for the more traditional view, treating *Friedelehe* as an existing institution rather than a term of convenience.

Because the tutelage over the wife did not pass to the husband (remaining with her father or brother, or whoever held it previously) she had a more independent status than a woman who underwent *Muntehe*. Because the husband did not have legal control over the wife, she could leave the marriage if she were mistreated, or wished to for any other reason.

This understanding of *Friedelehe* as empowering to the woman sat well with scholars who wished to present 'the Germans' as enlightened and morally superior to decadent Romans. Meyer was not a Nazi but his ideas about the ancient Germans were in line with National Socialist ideology and supported the view of a praiseworthy common German past.[15] Some feminists also find appealing the idea of a past age where things were more fluid and therefore better for women (before the iron hand of patriarchy, clad in the velvet glove of the church, took away their freedoms and status). Suzanne Wemple in her pathbreaking *Women in Frankish Society* called *Friedelehe* 'quasi-marriage' rather than considering it a different form of marriage, and pointed out that the evidence often adduced for its existence 'actually provides a corrective to the romantic picture German historians usually present of *Friedelehe*' because it shows that women who arranged their own unions without family involvement and bride-price had greatly reduced legal rights vis-à-vis their partners.[16] Wemple doubts the existence of *Friedelehe* as a separate form of marriage recognized at the time. Nevertheless Lisa Bitel can still write in 2002 that 'the early Franks, English, Irish, and Welsh had all practised what historians have called *Friedelehe*, a contractual relation based on mutual consent. In such an arrangement, women could choose their partners more freely . . . Although the liaison was legal it could also be terminated more easily by the partners since it included no elaborate exchange of property, although any children of the match could inherit their father's property, or at least contend for it.'[17] By stressing the element of mutual consent and suggesting that 'the partners' rather than one or the other would terminate the arrangement, Bitel accepts the reality of *Friedelehe* as an institution but glides over the issue of its implication in gendered relations of power.

Schulze suggests that *Friedelehe* was not an ancient, common Germanic concept, and Wemple suggests that it was not conducive to a high status for women, but both accept that something existed to which it makes sense to give this name. As a modern term of convenience, however,

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[15] Meyer died in 1941. On his politics see H. Hattenhauer, *Rechtswissenschaft im NS-Staat: Der Fall Eugen Wohlhaupter* (Heidelberg, 1987), p. 16; F. Ebel, *Rechtsgeschichte: Ein Lehrbuch*, 2 vols (Heidelberg, 1993), II, p. 222. Meyer signed letters 'Heil Hitler' and republished an earlier article in 1933 with a preface praising the *Führer*.
[16] S. Wemple, *Women in Frankish Society* (Philadelphia, 1981), p. 34.
[17] L. Bitel, *Women in Early Medieval Europe* (Cambridge, 2002), pp. 179–80.

Friedelehe is flawed; it brings with it too much baggage of *Urgermanentum*, erroneous ideas about the status of women, and the implication of the existence of a formal legal distinction where none existed. To use it as an omnibus term for unsanctioned, non-monogamous or otherwise 'different' long-term relationships risks losing sight of the variety of arrangements that medieval people made, and obscures distinctions that some drew between an honourable and a dishonourable or unfree union. Just as the fact that lords in the high Middle Ages occasionally or even frequently had sex with their serfs does not mean that a *droit de cuissage* existed, so too the fact that some unions in the early Middle Ages took place without financial exchange and the consent of the relatives does not mean that a distinct form of marriage existed.

But to say that *Friedelehe* was not a distinct form of marriage is to beg the question: not distinct from what? *Muntehe*, although less problematized by scholars (because more accepted as the normal form of marriage, also referred to as *Vollehe* or full marriage), is also problematic. The term is based largely on the Lombard laws (discussed below), which use the term *mundium* both for guardianship over a woman and the payment for that guardianship. On this basis many scholars have assumed that all Germanic peoples transferred such a guardianship at marriage, and that the transfer of a bride-price to the bride's family and eventually of a *dos* to the bride herself was a payment for this. As Régine Le Jan puts it, 'the constitutive element of the Germanic *Vollehe* was the transfer of the *mundium*, acquired initially by the payment of the *pretium nuptiale* to the holder of the *mundium*, without the production of a written act'.[18] Neither assumption, however, is tenable. Ruth Schmidt-Wiegand argues that although all the evidence for the *mundium* comes from the Lombard laws, 'it would nevertheless be wrong to conclude from this fact, as has actually been done, that the Franks, for example, lacked marital or gender-based guardianship'.[19] If we exclude the automatic assumption that everything in any 'Germanic' law code must derive from a primitive, common Germanic culture, however, it is not at all clear why the Lombard laws provide evidence for Frankish social arrangements. Although there were efforts within the Frankish church

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[18] Le Jan, *Famille et pouvoir*, p. 268. See E. Santinelli, 'Ni "Morgengabe" ni *tertia* mais *dos* et dispositions en faveur du dernier vivant: Les échanges patrimoniaux entre époux dans la Loire moyenne (VIIe–XIe siècle)', in F. Bougard, L. Feller and R. Le Jan (eds), *Dots et douaires dans le haut moyen âge* (Rome, 2002), pp. 245–75, at 246–53, and R. Le Jan, 'Aux origines du douaire médievale', in R. Le Jan (ed.), *Femmes, pouvoir et société dans le haut Moyen Age* (Paris, 2001), pp. 53–67, on the transition from bride-price to *dos*.

[19] R. Schmidt-Wiegand, 'Der Lebenskreis der Frau im Spiegel der volkssprachigen Bezeichungen der Leges barbarorum', in W. Affeldt (ed.), *Frauen in Spätantike und Frühmittelalter. Lebensbedingungen—Lebensnormen—Lebensformen* (Sigmaringen, 1990), pp. 195–209, at pp. 202–3. I am particularly grateful to Felice Lifshitz for calling to my attention this problem in Schmidt-Wiegand's argument.

to require a *dos* in marriage, that does not mean that any marriage with a *dos* also involved the transfer of the *Munt*.[20] And efforts to treat the *dos* given to the woman as a late mutation of a primitive bride-price that went to the male guardian in return for the *Munt* over the woman come up against the statement of Tacitus that the *dos* is paid to the woman (not her relatives).[21]

Although various of the *Leges Barbarorum* give the husband certain rights over the wife, for example the right to claim the compensation for injury to her, this is not consistent across different law codes, nor is it made contingent on the transfer of a particular authority (whether called a *mundium* or not).[22] There is no evidence that in cases where there was no *dos* – that is, in what might be called *Friedelehe* – the husband had less authority over the wife. In the Burgundian law, as cited below, his authority seems to have been automatic on marriage even if no wealth was transferred. But husbandly authority was not total in any of the law codes, a point made already by F.L. Ganshof in 1962 in opposition to the commonly held view that 'in all the Germanic laws in effect in the Frankish monarchy there had been in primitive times a general legal incapacity of woman'.[23]

The term *mundium* is said to have derived from a common Germanic root meaning 'hand', and to have acquired the meaning of 'protection'.[24]

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[20] Many scholars claim that it did: for example, Le Jan, 'Aux origines', p. 56. Not one, however, cites any evidence other than the Lombard laws for a bride-price that purchased guardianship over the bride, let alone a *dos* paid to the bride that did so. Indeed, it is a false decretal (although accepted as valid by many in the Frankish church, including Hincmar) that states that marriage without the proper elements (*petitio*, benediction, etc.) is not valid, and this does not mention *dos*. 'Decreta Evaristi Papae', *PL* 138, col. 81. Benedictus Levita, quoting Leo's letter to Rusticus, required the *dos* but did not say that its absence invalidated the marriage. See P.L. Reynolds, *Marriage in the Western Church: The Christianization of Marriage During the Patristic and Early Medieval Periods* (Leiden, 1994), pp. 406–9; P. Toubert, 'La Théorie du mariage chez les moralistes Carolingiens', in *Il matrimonio nella società altomedievale*, Settimane di studio del centro italiano di studi sull'alto medioevo 24 (1977), vol. 1, pp. 233–82, at pp. 268–80.

[21] Diane Owen Hughes's claim that 'Tacitus' failure to mention bride-price may indicate that even by the end of the first century it had fallen from prominence among those tribes that lived on the fringes of the Empire' and that 'by the time these West German tribes issued their codes, brideprice had generally disappeared', begs the question of what evidence there is for bride-price pre-dating the written sources. She finds vestiges of it in the eastern Germanic laws. D.O. Hughes, 'From Brideprice to Dowry in Mediterranean Europe', *Journal of Family History* 3 (1978), pp. 262–96, at pp. 266–7.

[22] S.C. Saar, *Ehe–Scheidung–Wiederheirat*, Ius Vivens, Abteilung B., Rechtsgeshichtliche Abhandlungen 6 (Münster, 2002), p. 104, argues that it does not matter whether the *Munt* was formally transferred to the bridegroom as part of a marriage ceremony, or was simply an automatic result of the bride joining his household. But it does make a difference if one wants to claim, as Saar does, that not all marriages involved the transfer of the *Munt*.

[23] F.L. Ganshof, 'Le statut de la femme dans la monarchie franque', in *La Femme*, Recueils de la société Jean Bodin pour l'histoire comparative des institutions 11–12, 2 vols (Brussels, 1962), II, pp. 5–58, at pp. 10–11; see also pp. 29–31.

[24] Schmidt-Wiegand, 'Lebenskreis der Frau', p. 202.

However, when cognates of this term appear in the context of marriage elsewhere than in the Lombard laws, they do not mean a set of rights over the woman. In Old Norse sources *mundr* is used only to denote the payment itself, not any rights acquired with that payment.[25] The Anglo-Saxon laws give everyone from the king on down his or her own value of *mundbyrd*; when a law says 'the king's *mundbyrd* 50 shillings' or 'a ceorl's *mundbyrd* 6 shillings' scholars have usually interpreted this as 'the value of the *mundbyrd* is . . .' but it could also indicate that *mundbyrd* was used to mean a sum of money rather than a right for which the money was paid.[26] In the Anglo-Saxon laws *mundbyrd* has nothing to do with marriage. The law of the Ripuarian Franks uses the term *mundeburdum* for protection, authority or guardianship, but it is not necessarily the guardianship of a husband or father over a woman, but of a king or lord over a dependant.[27] The use of terminology in the laws may or may not reflect common usage, but it is likely to have shaped subsequent understandings of these terms.

It is not, then, safe to assume that *Muntehe*, that is a particular form of marriage that transferred a particular bundle of rights from the father or kin to the husband, is a common Germanic concept, any more than *Friedelehe*; and especially unsafe to leap from there to the conclusion that a bride-price, or any other particular transfer of property, denoted this particular form – although such a leap is very common in the scholarship. For example, Hans-Werner Goetz, in making the point that *dos* and *Morgengabe* were required for legitimate marriage in the Germanic kingdoms generally, cites Benedictus Levita to buttress his statement that 'marriage with guardianship ("Muntehe") was a marriage with a *dos*'. But what Benedictus Levita actually says is 'let there be no

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[25] J. DeVries, *Altnordisches etymologisches Wörterbuch*, 2nd edn (Leiden, 1962), s.v. *mundr*, gives 'Brautgeschenk, Mitgift'. DeVries points out the term's relation to *mund* (a feminine noun meaning 'hand') and its use in a number of personal names where the masculine form *mundr* is used and the word likely means 'protection', as he notes that various Germanic cognates do. R. Cleasby and G. Vigfusson, *An Icelandic–English Dictionary*, 2nd edn, ed. W.A. Craigie (Oxford, 1957), s.v. *mundr*, defines it as 'a sum . . . which the bridegroom was to pay for his bride', and notes that 'the etymological connection between *mundium = tutelage* and the Norse word is not altogether clear'.

[26] Æthelberht, c. 8, 15, 76, in F. Liebermann (ed.), *Die Gesetze der Angelsachsen* (Halle, 1903), pp. 3, 4, 7; see also Hlothere and Eadric, c. 14, *ibid.*, p. 11: 'forgylde þem mæn his mundbyrd' ('pay the man his mundbyrd' or 'pay the man for his mundbyrd'). Similarly, Wihtred, c. 2, *ibid.* p. 12: 'circean myndbyrd sie L. scll' swa cinges' ('let the church's mundbyrd be 50 shillings as the king's'). Liebermann translates 'Der Kirche Sonderschutz sei [von seinem Verletzer ihr zu büssen mit] 50 Schll. wie der des Königs' ('the protection of the church is [to be compensated for by the violator with] 50 shillings, as that of the king').

[27] Lex Ribuaria, c. 35:3, in H.F.W.D. Fischer (ed.), *Leges barbarorum in usum studiosorum*, 2 vols (Leiden, 1951), II, p. 14. T.J. Rivers (trans.), *Laws of the Salian and Ripuarian Franks* (New York, 1986), p. 185, assumes that the *mundeburdum* the woman is under would be that of her parents, but this is not necessarily the case: see Lex Ribuaria, c. 58:12–13, pp. 22–3, using the same language to refer to men and women under the *mundeburdum* of the king and church.

marriage without a *dos*'.[28] This does not demonstrate that a *dos* was an indication of *Muntehe* unless we already accept that all valid marriage involved the transfer of a *Munt*.

I cannot prove by an argument from silence that there was no *mundium* transferred in marriage other than among the Lombards; but one certainly would not be warranted in arguing from silence that there was. The *mundium* of Lombard law resembles the *manus* transferred at marriage in Republican Rome; the latter was in disuse by the age of Augustus. Its most prominent articulation appears in Gaius's *Institutes*, a Roman legal textbook.[29] This section is omitted in the shortened version of the *Institutes* found in the Breviary of Alaric (a Roman law compilation, dating from 506, for the Roman subjects of the Visigothic kingdom), and in Justinian's *Institutes*, which are based on those of Gaius.[30] However, it is found in the only surviving full manuscript of the *Institutes*, which dates from the fifth or early sixth century and comes from Verona.[31] The text circulated in Ostrogothic Italy and could have been known to the Lombards.

Marriage in the early Middle Ages was fluid. Some marriages were stronger than others and some were more easily dissolved or conveyed fewer rights to the offspring, but this did not necessarily depend on the choice of a particular legal form or on whether a particular sort of payment was made. There was no *Friedelfrau* who occupied a status between that of fully recognized wife and that of concubine; there was no full wife whose status depended on the fact that her husband assumed guardianship over her. Rather, there was a whole range of statuses that could be held by a wife with no clear vocabulary to distinguish between them.

II

Although the focus of this article is on the early Middle Ages in continental Europe, especially Francia, a detour into a later period and quite different region is required. This is because Old Norse sources written

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[28] H.-W. Goetz, 'La *dos* en Alémanie (du milieu du VIIIe au début du Xe siècle)', in Bougard, Feller and Le Jan (eds), *Dots et douaires*, pp. 305–27, at p. 308; Benedictus Levita, Capitularia, Bk 2, c. 133, in G.H. Pertz (ed.), *MGH Leges* II.2 (Hanover, 1837), p. 80. Many other scholars take 'legitimate marriage required a *dos*' to mean 'only Muntehe was legitimate marriage'; in other words the existence of a *dos* is seen as indicating *Muntehe* even in the absence of any discussion of a *Munt*. For example, Saar, *Ehe–Scheidung*, p. 176.

[29] Gaius, *Institutiones*, Bk 1, c. 108–15, ed. J. Baviera, in S. Riccobono, J. Baviera, C. Ferrini, J. Furlani and V. Arangio-Ruiz (eds), *Fontes iuris Romani antejustiniani*, 3 vols (Florence, 1940), II, pp. 29–31.

[30] *Lex Romana Visigothorum*, ed. G. Haenel (Leipzig, 1849), pp. 314–37.

[31] *The Institutes of Gaius*, ed. F. de Zulueta, 2 vols (Oxford, 1946), II, pp. 3–5; T. Giaro, 'Gaius,' in H. Cancik and H. Schneider (eds), *Der neue Pauly Enzyklopädie der Antike*, 16 vols (Stuttgart, 1998), IV, p. 738.

in the thirteenth century have been so often used to explain the more exiguous sources for the early Middle Ages. The project of reconstructing prehistoric, common Germanic institutions from thirteenth-century Norse sources is dubious in and of itself. For those who do not accept it as *prima facie* invalid methodologically, it is necessary to examine the evidence to see that even if it were possible to use it to explain common Germanic custom, the Norse material would not support the *Friedelehe* model. Evidence relating to Scandinavia in the Viking Age (though not created in that period) has been used to prove the common Germanic roots of the supposed institution of *Friedelehe*, as well as the centrality of the bride-price to a valid marriage. Indeed, as we have already seen, the Old Norse cognate term *frilla* or *friðla* is the closest we find to the use of *Friedel* in any medieval text relating to marriage.

The *frilla*, however, is quite clearly not a wife, indeed she is often contrasted with one.[32] Jenny Jochens has argued that the Icelandic sagas which depict women in the Saga Age (tenth and eleventh centuries) being asked for their consent to their marriages do not reflect ancient custom but rather the church's attempt from the twelfth century on to enforce the principle of consent.[33] Thus it would be possible that the church, in trying to enforce monogamy, insisted on reducing the *frilla* to a distinctly subordinate status, and the law codes and sagas reflect this effort. However, a careful examination of the saga and legal evidence reveals no evidence that the *frilla* once had the status of a wife. Rather, it indicates that she was a woman of low status, or if she came from an elite family, becoming a *frilla* caused a loss of social (though not legal) status.

Else Ebel provides a list of forty-seven women who appear in the 'contemporary sagas' (the Sturlunga saga compilation or Bishops' sagas) as *frillur*.[34] These sagas, written in the thirteenth century like the family sagas and describing events roughly contemporary to the writing, were certainly subject to political influence from the church and from major magnate families – the longest section of *Sturlunga saga*, *Íslendinga saga*, was written by Sturla Þórðarson (1214–84), from the leading Sturlung family – but we can expect that the sociological details they include are not too far off from the actual arrangements of the time. The women

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[32] R.M. Karras, 'Concubinage and Slavery in the Viking Age', *Scandinavian Studies* 62 (1990), pp. 141–62, uses the term 'concubinage' to describe the status of the *frilla*. E. Ebel, *Der Konkubinat nach altwestnordischen Quellen*, Ergänzungsbände zum Reallexikon der Germanischen Altertumskunde 8 (Berlin, 1993), takes issue with this, suggesting that 'concubine' has a specific legal meaning that was not applicable in this situation, and chooses instead to use the term *Frillaverhältnis* for the relationship involved. J. Jochens, 'The Politics of Reproduction: Medieval Norwegian Kingship', *American Historical Review* 92 (1987), pp. 327–50, at p. 333, defines *friðla* as 'concubine' without further comment.

[33] J. Jochens, 'Consent in Marriage: Old Norse Law, Life and Literature', *Scandinavian Studies* 58 (1986), pp. 142–76, at pp. 150–1.

[34] Ebel, *Konkubinat*, p. 105.

who appear here as *frillur* are of lower social status than the men with whom they are in relationships, and the relationship is socially devalued compared to marriage. These relationships tended to be serially monogamous: a man would have a *frilla* before or instead of marriage.[35]

The low status of the *frillur* in the contemporary sagas could be a late development due to church influence. When we turn to the better-known family sagas, which purport to describe the events of the Viking Age, however, we must take into account that they were written at the same time as the contemporary sagas. We must ask if they present any clues as to the ways in which tenth- and eleventh-century customs may have been different. I have discussed elsewhere the relation between the status of *frilla* and slavery in medieval Iceland, so I will not repeat here the examples analysed from *Laxdæla saga* and *Egils saga Skallagrímssonar*.[36]

In terms of possible earlier meanings of *frilla*, however, I suggest that given the pride of the Icelanders of the thirteenth century in their ancestry, it is not likely that a saga describing the ancestors of a leading Icelandic family – even a saga written under church influence – would take an ancestress who was a wife and turn her into a slave (even if a princess too). It is far more likely that an unknown slave would be turned into the daughter of a king than that a co-wife would be turned into a concubine. The slave *frilla* here, in Laxdæla, and those equated with slaves in *Egils saga*, cannot be a reading of thirteenth-century conditions back to the Viking Age, since slavery did not exist by the thirteenth century.[37]

With regard to *Egils saga* it is noteworthy that the word *frilla* is used precisely to deny that a relationship is a marriage. The question here seems to be not what kind of marriage it was but whether it was one at all. Its validity seems to hinge not on the payment of a bride-price, nor on the consent of the woman (which the church, by the time of the saga's writing, insisted upon), but on the free consent of the male kin, which is not likely to have been a thirteenth-century interpolation based on church influence.[38] This case is a good example of the way relationships become defined not at the time of their formation but in

[35] A.S. Arnórsdóttir, 'Two Models of Marriage? Canon Law and Icelandic Marriage Practice in the Late Middle Ages', in M. Korpiola (ed.), *Nordic Perspectives on Medieval Canon Law* (Saarijärvi, 1999), pp. 79–92, at p. 82.

[36] Karras, 'Concubinage', pp. 152–4.

[37] The similar story of the *frilla* Nereiður in *Vatnsdæla saga*, whose son successfully claims kinship with the Earl of Orkney through his mother, is likely to be derived from the *Laxdæla saga* story. *Vatnsdæla saga*, c. 37, 42, in *Íslendinga sögur*, ed. B. Halldórsson, J. Torfason, S. Tómasson and Ö. Thorsson, 3 vols (Reykjavík, 1987), III, pp. 1888, 1896–7 (all references to Icelandic family sagas are to this edition); Ebel, *Konkubinat*, p. 52. For the *Laxdæla saga* incidents, see chs 12–13, 20–21, 23, *Íslendinga sögur* II, pp. 1545–9, 1559–65, 1567.

[38] *Egils saga Skallagrímssonar*, c. 7, 9, *Íslendinga sögur* I, pp. 373–4, 378. See Ebel *Konkubinat*, pp. 31–6, and A. Magnúsdóttir, *Frillor och fruar: Politik och samlevnad på Island 1120–1400* (Göteborg, 2001), pp. 101–9, on the validity of this marriage in light of Icelandic law. For the other case from *Egils saga* see c. 57, *Íslendinga sögur* I, p. 444.

the process of dealing with their aftermath, either when the union is dissolved or when one partner dies and the offspring's inheritance becomes an issue.[39]

In several other family sagas the *frilla* does not play such an important part in the story, but again it is clear that she does not have the status of a wife. In *Vatnsdæla saga* Hrolleifur asks Uni for his daughter Hróðný in marriage; when Uni refuses, he says that then he will have her as his *frilla*, 'and that is good enough for her'.[40] *Þórðar saga hreðu* also has a man boast that he will make a woman who has been denied to him in marriage his *frilla*.[41] The terms 'marry' (*eiga hana*) and 'take as a *frilla*' (*taka hana frillutaki*) are also contrasted in *Finnboga saga* and *Víglundar saga*.[42] The implication is that to be taken as a *frilla* relegates the woman to a lower status. These repeated derogations of *frilla* by comparison to the wife in the family sagas are not likely to be simply a reflection of thirteenth-century relations: all these stories seem to imply the *frilla* as a girlfriend or mistress rather than a domestic partner as we see in the contemporary sagas. They cannot be taken to reflect accurately Viking Age relations, but they certainly do not support the existence of a *Friedelehe* in the Viking Age.

In several sagas women appear who might in fact be considered quasi-wives but who are not called *frilla*. These include Hróðný Höskuldsdaughter, the mother of Njál's *laungetinn* (conceived outside of marriage) son Höskuldur, in *Brennu-Njáls saga*.[43] Hróðný lives in a separate household, but refers to Bergþóra, Njál's wife (possibly sarcastically) as *elja*, which means roughly 'co-wife'.[44] When invoking family ties she always speaks of her son's relation to Njál, not her own.

The mother of Egill Skallagrimsson's wife Ásgerður is the only woman called a *frilla* in the Icelandic family sagas who has entered into the relationship on her own, and her adversary alleges that the union reduced her to the status of a slave. All the other *frillur* in the family sagas are either slaves already, or come from relatively powerless families so that they can be coerced into the relationship. The man does not undergo formal marriage with a *frilla* not because it is a relationship

[39] I am grateful to Lisa Bitel (pers. comm., 4 January 2005) for this idea.
[40] *Vatnsdæla saga*, c. 18, *Íslendinga sögur* III, p. 1865.
[41] *Þórðar saga hreðu*, c. 5, *Íslendinga sögur* III, p. 2021.
[42] *Finnboga saga ramma*, c. 30, *Íslendinga sögur* I, p. 652; *Víglundar saga*, c. 13, *Íslendinga sögur* III, p. 1968.
[43] *Brennu-Njáls saga*, c. 25, *Íslendinga sögur* I, p. 154.
[44] Cleasby and Vigfusson, *An Icelandic–English Dictionary*, s.v. *elja* defines it as 'concubine' and says that it is 'wrongly' used in *Njál's saga* where it is used by Hróðný about Bergþóra; it seems more likely it was used sarcastically than erroneously. None of the examples cited in the definition clearly refer to concubines, however; the term was used to translate 'wife' in Biblical passages that refer to plural marriage, e.g. Leviticus XVIII.18, I Samuel I.6. See discussion of this situation in Karras, 'Concubinage', p. 152.

based on love rather than the consent of the kin, but rather because he does not have to.

The idea that the children of a *frilla* could not inherit, found in two incidents in *Egils saga*, disagrees with Meyer's notion of a common Germanic *Friedelehe* in which they could (although Meyer notes that the sagas sometimes show a 'deterioration' in the use of the term).[45] In *Laxdæla saga* and in the various Scandinavian laws (see below) a man can give the son of his *frilla* a share in his property, but not as large a share as a son born in wedlock, and in *Laxdæla saga* the sons born in wedlock have to agree.[46] Again, although this could be a result of the influence of Roman, canon, or continental legal systems, the family sagas provide no evidence for an earlier system which operated differently. Nor do the law codes.

The earliest extant Icelandic law code, the *Grágás*, does not mention the *frilla* at all, indicating that in the twelfth century when the laws were written down this was not a formal legal status. It specifically states that 'That man is not capable of inheriting whose mother was not bought with a *mundr* of a mark or more of property or not wedded in a ceremony or not betrothed.'[47] This could be an application of the church's principle that a *dos* is required for a valid marriage; we have no way of knowing what earlier custom might have been. Certainly the surviving Icelandic law provides no evidence for the status of a *frilla* as a wife that can be used to support the idea of common Germanic *Friedelehe*.

The Norwegian law of the Gulaþing, dating from the twelfth century, does give special names to the children of different types of union: the son of a free woman for whom no *mundr* has been paid but where the relationship is public, the son of a free woman in a secret relationship, and the son of a slave.[48] The three categories do not have great meaning here, since the inheritance rights of the three types of son are identical; they may once have been different, but it is not possible to say how.[49] But the law does not imply that the publicly known union was quasi-marital.[50]

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[45] Meyer, 'Ehe und Ehefassung', p. 27.

[46] *Laxdæla saga*, c. 26, *Íslendinga sögur* III, pp. 1571–2.

[47] *Grágás*, c. 118, p. 222. The portion of this text defining a lawful wedding is illegible but emended based on another fragment: her legal guardian must agree, there must be witnesses, and the couple must go to bed together.

[48] Gulaþing law [hereafter GuL], c. 104, in *Norges gamle love indtil 1387* [hereafter *NGL*], ed. R. Keyser and P.A. Munch, 5 vols (Christiania, 1846), I, p. 48. Cf. Frostaþing law, c. 10:47, *NGL* I, p. 228.

[49] On the textual history of the Gulaþing law, see K. Helle, *Gulatinget og Gulatingslova* (Oslo, 2001), pp. 10–47.

[50] The man goes 'i liose i hvilu hennar', 'in light to her bed'. I follow *The Earliest Norwegian Laws, being the Gulathing Law and the Frostathing Law*, trans. L.M. Larson (New York, 1935) here, in translating this as 'public'. It is possible that *i liose* could mean 'with torches' implying a ceremony. The Frostaþing law, however, refers to this situation as when the man 'lies with her at home in the house', as opposed to the type of relationship in which the intercourse takes place in the woods, implying that the publicity is the important factor.

The so-called 'King Sverrir's Christian law', probably from 1269–73, says that if a man has a *frilla* whom he treats as his *eigin kona*, eating and sleeping with her, he has the right to compensation for her if another abducts her.[51] This law envisions that at least some *frillur* would be in long-term domestic relationships, presumably like the *frillur* in the Icelandic 'contemporary sagas' (those written around the same time as the stories they depict) of about the same time. Some *frillur* in the twelfth century, too, were domestic partners. Another passage in the Gulaþing law provides that if a man lives with his *frilla* openly for twenty years, their children acquire inheritance rights and the law recognizes their community of property.[52] These legal rights were presumably not accorded to the *frilla* or her children otherwise.

These laws indicate that in West Norse culture it was not unknown for people to form long-term unions that were not (by the twelfth and thirteenth centuries) considered marriages, but that could carry with them some of the rights connected with marriage (such as inheritance for the offspring). The question is, do these relationships point to an earlier system in which these unions were a form of marriage, in which case the laws would be an attempt to retain some of the recognition and rights for them in the face of the church's clear distinction between marriage and illicit unions? It seems more likely, based on the church's activities elsewhere in Europe, that they represent an attempt by the church to regularize low-status unions, to treat them as quasi-marriage and require monogamy, rather than an attempt to take formerly high-status unions and accord them lower status. Particularly noteworthy in light of the use of Norse evidence to create the construct of *Friedelehe* is the Icelandic *Jónsbók*'s explicit exclusion of the *friðla* from the possibility of inheritance rights for the children.[53] This term in Old Norse did not mean beloved, it meant a woman of low status, in some ways similar to a slave, and cannot be used to extrapolate to an ancient, common Germanic *Friedelehe*.

The Swedish and Danish law codes are of later date and more directly influenced by canon law. Some of them do recognize the *frilla* as a special status, in that her child has more rights than other illegitimate children.[54] The Uppland law uses the term *frilla* in enunciating the

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[51] 'Kong Sverrers Christenret', c. 69, *NGL* I, p. 428. Arne Boe, 'Kristenretter', *Kulturhistorisk leksikon för nordisk medeltid* 9 (1964), p. 301.

[52] GuL, c. 125, *NGL* I, p. 54; cf. 'Ældre Borgarthings-Christenret', c. 2:10, *NGL* I, p. 357.

[53] A 1305 addition to this late thirteenth-century Icelandic lawbook states that if a couple has lived together for ten years and the woman was not publicly known as a *friðla* or *horkona* (adulteress/loose woman), their children could inherit. 'Kong Haakon Magnussöns förste Rettebod for Island', c. 4, *NGL* IV, pp. 347–8.

[54] Östgötalagen, Arfþaer balkær [hereafter AB], c. 4, 13, in *Corpus Iuris Sueo-Gotorum Antiqui. Samling af Sweriges Gamla Lagar* [hereafter *SGL*], ed. H.S. Collin and C.J. Schlyter (Stockholm, 1830), II, pp. 117 and 125; Äldre Västgötalagen, AB, c. 8:3 in *ibid.* I, p. 27. The Danish and Swedish laws are discussed in more detail, with full references, in Karras, 'Concubinage', pp. 148–50.

principle of legitimation by subsequent marriage: a child is legitimate
if a man marries a woman 'whom he has previously had as *frilla*'.[55]
Legitimation by subsequent matrimony, of course, implies that the *frilla*
was a partner of a single man, not a co-wife, as does the law of Jutland,
in providing that if a man lived with a *sløkfrith* (a related Danish term)
openly and they behaved as a married couple for three years, they were
deemed such.[56] The Scandinavian laws, then, indicate that unions
existed besides the formal marriage with the *mundr*, family consent, and
full inheritance rights; but they do not indicate that these unions ever
were considered honourable or respectable, or that women entered into
them by free choice.[57]

   One other Old Norse body of sources that has been used to demonstrate
the existence of *Friedelehe* is the 'kings' sagas', twelfth- and especially
thirteenth-century codifications of historical traditions. It is likely that
the early kings were polygamous, but the evidence does not indicate
whether all the unions involved were considered equivalent. Jenny Jochens
refers to the system as 'polycoity' rather than 'polygamy' but notes that
in anthropological terms it could well be considered polygamy, since
the children of any union could claim inheritance rights. She notes that
'Unless the sources specifically mentioned marriage, it is difficult to
distinguish between wives and other bedmates of pagan kings because
the vocabulary is imprecise.'[58] If contemporaries did not use language
that distinguished between wives and other partners, we may wonder
whether there was such a distinction and on what grounds scholars are
justified in making it. Of course the twelfth- and thirteenth-century
written versions of the kings' sagas are not contemporary to the events
described. The tone of the earlier ones is legendary but it is not clear
to what extent this means they are using older traditions.

   Some of the women in the kings' sagas were clearly considered
concubines rather than wives. A high-born woman who entered into a
low-status relationship with a king could be called a slave in a derogatory
way – at least, the Icelandic author Snorri Sturluson considered these
women less than married.[59] Again, it is not likely that this is a later
Christian interpretation, since slavery was gone by the time the saga was

[55] Upplandslagen, AB, c. 18, 23–4, *SGL* III, pp. 122–3, 125–7.
[56] *Jyske Lov*, c. 1:21–2, 1:25, 1:27, ed. P. Skautrup, *Danmarks gamle landskabslove*, II (Copenhagen, 1933), pp. 56–9, 65–6, 68–9.
[57] On the rituals of marriage in Sweden see L. Carlsson, *'Jag giver dig min dotter': Trolovning och äktenskap i den svenska kvinnans äldre historia*, Rättshitoriskt Bibliotek 18, 20, 2 vols (Stockholm, 1965–72), seriously called into question by E. Sjöholm, *Gesetze als Quellen mittelalterliche Geschichte des Nordens*, Acta Universitatis Stockholmiensis 21 (Stockholm, 1972), who argues that the Swedish law codes are heavily influenced by learned law and cannot be used to draw conclusions about pre-Christian conditions.
[58] Jochens, 'Politics', pp. 329, 333.
[59] Examples with references in Karras, 'Concubinage', pp. 154–5.

written. The clearest indication of a *Friedelehe* from the kings' sagas is the motivation that Snorri gives for Haraldur hárfagr's wish to become king of all Norway. He wanted to take a woman named Gyða, the daughter of Eirík, king of Hördaland, as his *frilla*. She, however, responded that she would not give up her virginity to a man who was king of only one region. She sent the message back to Haraldur that she would not become his *eiginkona* (wife) until he had conquered all of Norway. When he did, he 'had her brought to him and lay with her'.[60] This suggests that what he had mind with Gyða, and what she was willing to enter into if he was king of all Norway, was somewhat less than a formal marriage. No negotiation with her father is mentioned. But the whole idea of Haraldur wishing to conquer Norway for the sake of a woman is historically implausible, so not too much weight should be put on the story, whose purpose may be simply to enliven the account of Harald's military exploits. In another version of Harald's story, in *Fagrskinna*, *frilla* is clearly an abjected status and contrasted with that of wife, rather than being a form of marriage.[61] As Ebel concludes, the kings' *frillur*, as depicted in the sources, were concubines.[62] Jochens points out that the sources show pride in Haraldur's sexual prowess rather than disapproval, and thus the Christian tinge does not seem especially strong; it is not likely that church influence changed these unions from honourable *Friedelehen* to lower-status concubinage.[63]

I argued in previous work that concubinage in Viking Age Scandinavia had its roots in slavery, rather than in a pre-Christian polygamy that was relabelled by the church. I would not now insist on 'roots'. Certainly there were plural unions, at least among the royalty and highest aristocracy, in pre-Christian times. Some were with concubines, who were equated with slaves even when they were formally of free status; others were with women who were considered wives. There is no evidence for any status in between, or for two different kinds of wives, although the boundaries between wife and concubine could be blurred. It is not likely that the influence of the church in the twelfth and thirteenth centuries caused the erasure of a form of marriage from the sources and the demotion of *frillur* to concubines, because the equation with slaves is not likely to have been church-inspired.

Marriage custom in Normandy – marriage *more Danico* – does not indicate anything different. Herleve, the mother of William the

[60] Snorri Sturluson, *Haralds saga ins harfagra*, c. 3, pp. 96–7; c. 20, p. 118.
[61] 'Viðbætur', c. 3, ed. B. Aðalbjarnarson, in *Íslensk fornrit* 29 (Reykjavík, 1985), p. 366. On the dating of this text, which shares common sources with Snorri's *Heimskringla*, see B. Einarsson, 'Fagrskinna', in Phillip Pulsiano (ed.), *Medieval Scandinavia: An Encyclopedia* (New York, 1993), p. 177.
[62] Ebel, *Konkubinat*, pp. 70–1, with further examples.
[63] Jochens, 'Politics', p. 339.

Conqueror, while she may not have been the daughter of a tanner, was
not a *Friedelfrau* either.[64] The daughter of a court official, she is not
likely to have entered the union without her father's knowledge and
permission, and she does not seem to have been treated as a wife,
making the union both more and less than the traditional picture of
Friedelehe. The most often cited case of marriage *more Danico* is Gunnor,
wife of Richard I. William of Jumièges reports that Richard married her
Christiano more and she gave him five sons and three daughters. Robert
of Torigny, however, reports that she bore him three sons and three
daughters, but was only married to him *more Christiano* later when the
Duke wanted to make one of his sons archbishop.[65] This text does not
imply anything different about the two types of marriage except the
ceremony. He did not make a new payment to her family nor acquire new
rights over her when he married her *more Christiano*. The distinction is
likely to be that the second, Christian marriage was done under the
auspices of the church and the church would uphold its indissolubility;
the church's participation made it a valid marriage in the church's eyes.[66]

III

The Norse evidence, then, does not provide a basis for projecting a
common Germanic form of consensual marriage that could be called
Friedelehe (even leaving aside the question of whether it is under any
circumstances legitimate to read back from twelfth- and thirteenth-
century sources to a reconstructed pre-Christian common Germanic
culture).[67] Having disposed of the Scandinavian basis for a *Friedelehe*
model into which the continental evidence can be squeezed, we can
look at the latter to see what it reveals about what constituted marriage.
The so-called *Leges Barbarorum* were textualized under the influence of

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[64] See E. Searle, *Predatory Kinship and the Creation of Norman Power, 840–1066* (Berkeley, 1988),
     p. 95; p. 141 on marriage *more Danico*. Searle relies on E. Eames, 'Mariage et concubinage
     légal en Norvège à l'époque des Vikings', *Annales de Normandie* 2 (1952), pp. 195–207 for a
     statement of what marriage customs were like in Norway, on which she bases her account of
     marriage *more Danico*; Eames relies a bit too much on the extant laws as direct evidence for
     the situation in pre-Christian times. See also J.-M. Maillefer, 'Le mariage en Scandinavie
     médiévale', in M. Rouche (ed.), *Mariage et sexualité au Moyen Age: Accord ou crise?* (Paris,
     2000), pp. 91–106, at p. 105, who equates marriage *more danico* with Roman marriage *sine
     manu* or concubinage; however Roman marriage *sine manu* was definitely not concubinage
     (see below). *The* Gesta Normannorum Ducum *of William of Jumièges, Orderic Vitalis and
     Robert of Torigni*, c. 7(4), ed. and trans. E.C.M. van Houts, 2 vols (Oxford, 1995), 7(4), II,
     p. 96 (a section by Orderic), is the first to mention Herleve by name, and calls her 'concubina
     . . . Fulberti cubicularii ducis filia'.
[65] *Gesta*, c. 4:18, I, pp. 128–9; c. 8:36, II, pp. 266–8.
[66] Cf, Reynolds, *Marriage*, who suggests that the difference between *more Danico* and *more
     Christiano* was between secular and church marriage.
[67] See Sjöholm, *Gesetze als Quellen*, esp. pp. 23–85.

the church and placed within a framework of Roman law. The relation of the laws to the time when they were written is problematic enough; they cannot simply be taken as survivals of an ancient Germanic custom.[68]

A number of traits of Roman marriage resemble those found in the *leges*, and undoubtedly influenced them. One is the absence of a required, formal ceremony. Germanic marriage, as scholars commonly understand it, included the stages of betrothal, the handing over of the woman or *traditio puellae*, and the bedding of the couple. However none of these were specified in the *leges* as requirements. This is true of the Roman law of marriage as well. Roman law did discuss marriage – who could marry, the results of marriage in terms of inheritance and the guardianship of women – but no special form of ceremony was necessary, nor the recognition by a particular jurisdictional authority. Roman law treatments of marriage were essentially recognizing a private act. Divorce was private too, and the evidentiary muddles which could result often made inheritance cases quite complicated. Barbarian law for the most part followed Roman law in keeping marriage a private matter; when it did prescribe the payment of a *dos* it did not stipulate that the marriage was invalid without it. In any case the payment of the *dos* may have been influenced by a letter of Pope Leo I in 458–9 to Rusticus of Narbonne, saying that *dos* distinguished marriage from concubinage, rather than being a survival of pre-Christian custom. The context of this letter was a query from a concerned father whose daughter was marrying a man who had previously had an unfree concubine; Leo reassured the father that the previous relationship was not a marriage unless the concubine had been freed and given a *dos*.[69] The idea that a particular ceremony or set of ceremonies – particularly a payment in return for the transfer of guardianship – was what made a marriage a valid marriage cannot be read back to common Germanic custom.

The payment of the *dos* was one place where Roman and barbarian law and practice differed. Roman *dos* was dowry, paid by the bride's father into the hands of the bridegroom. The *dos* of the *Leges* is paid by the bridegroom to the bride's family or the bride herself. This difference has led scholars to assume that the Germanic *dos* was an old, pre-Roman feature that was given a Latin name that did not quite apply. As discussed above, Tacitus mentions it with some surprise. However, as Philip Lydon Reynolds points out, by the era of late antiquity payments at marriage

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[68] See I.N. Wood, 'The Code in Merovingian Gaul', in J. Harries and I.N. Wood (eds), *The Theodosian Code* (Ithaca, 1993), pp. 161–77; J. Gaudemet, 'Le legs du droit romain en matière matrimoniale', *Il Matrimonio*, pp. 139–79.

[69] See discussion in Saar, *Ehe–Scheidung*, pp. 7–25, 100, 165; also P. Mikat, *Dotiert Ehe–Rechte Ehe*, Rheinisch-Westfälische Akademie der Wissenschaften (Opladen, 1978), pp. 34–7; 'Ad Rusticum Narbonensum episcopum', *Sancti Leonis magni Romani pontificis epistolae*, 167:4, *PL* 54, col. 1204a–b.

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flowed both ways, even among Romans: Isidore of Seville considered that the man's *donatio nuptialis* preceded the *dos* paid by the bride's father, and that the *dos* existed to create mutuality so it would not seem the woman was being purchased like a slave.[70] In the *Lex Romana Burgundionum* the terms have been reversed: the husband's payment was now the *dos* and the wife's the *donatio*.[71] The individual *leges* may have seized on a Roman system in which payments flowed both ways and adapted the terminology in a less than systematic way.

By the Carolingian era, or well before, the payment from the bridegroom went to the bride (although she did not control it) rather than to her family.[72] However, in the period of the *leges* it seems to have gone in many cases to her father or nearest male relative. In Lombard law the term for the payment, *mundium*, was also the term for the control over the woman that was thereby achieved or purchased. The similarity of this procedure to the *manus* of early Roman marriage is striking. *Manus* could be acquired by the husband in several ways, one of which was *coemptio* or purchase. Already in the late Republic, most wives did not enter the *manus* of their husbands.[73] Nevertheless the procedure was described in Gaius's *Institutes*, which as discussed above could have been available in Lombard Italy.

Although some of the *leges* present various ways in which a husband held tutelage over his wife (responsibility for her actions, the right to collect compensation for her), others are silent on this, and even those that do mention such aspects of tutelage do not connect it to the form of marriage; nor do they indicate that the right to collect this compensation might in some cases not be held by the husband (i.e. there is no recognition that some marriages convey different rights than others). The eighth-century Lombard laws of Liutprand give various rights to the holder of a woman's *mundium* (to consent to her sale of property, to share with her the fine if she is abducted, to receive her property if she takes the veil), but draw no distinction between a husband and other *Mundwald* (guardian).[74] The Lombard laws do make it clear that most women's *mundium* was held by a man, namely the husband.[75] But this is the only one of the *leges* that specifies this. The Salic law has a fee called *achasium* paid to the relatives of a widow's dead husband but

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[70] Reynolds, *Marriage*, pp. 82–3; Isidore of Seville, *Isidori Hispalensis episcopi Etymologiarum sive originum*, Bk 5, c. 24:25–6, ed. W.M. Lindsay (Oxford, 1911), vol. 1, n.p.

[71] *Lex Romana Burgundionum*, c. 21.3, in *Leges Burgundionum*, ed. L.R. de Salis, *MGH Leges Nationum Germanicarum* 2.1 (Hanover, 1892), p. 144.

[72] Wemple, *Women in Frankish Society*, p. 44; Le Jan, *Famille et pouvoir*, p. 269.

[73] Treggiari, *Roman Marriage*, pp. 16–36.

[74] *Liutprandi leges*, c. 29, 32:3, 101:6, ed. G.H. Pertz , *MGH Leges* IV (Hanover, 1868), p. 121, 123, 149.

[75] *Edictus Rothari*, c. 65, ed. Pertz, *MGH Leges* IV, p. 38.

Katharine Fischer Drew's translation of this term as 'fee for release of her *mundium*' seems unwarranted.[76] The Visigothic law provides that if a free woman marries a free man without her parents' permission and he does not pay the appropriate *dos*, she is returned to their control (*in potestate*), but this could easily be physical control rather than *mundium*.[77] The term for the payment of bridewealth varies among the laws. The Salic law, often regarded as the most 'primitive' of the *Leges* in part because it preserves so many Germanic legal terms (the 'Malberg glosses'), uses the Latin term *dos* rather than a Germanic term for the payment to the bride or her family. A widow who wishes to remarry must make a payment called *achasium* to the relatives of her late husband; this is not a return of her *dos*, as the amount is much lower. It could be a payment for release of their authority over her, but the fact that it has to be paid to the royal fisc if there are no relatives makes this questionable. The payment of the bridegroom to the family of a remarrying widow is called the *reipus*. There is no reference to any marriage without a *dos*, although there is a high fine for not paying the *reipus*.[78] Nor, however, is there any statement that the *dos* is required to make a marriage valid.

Another provision of the Salic law with its German gloss, it has been suggested, points to the existence of a *Friedelehe*: the situation in which a man has sex with a free girl (*puella*) with her consent is called *firilasia*.[79] The term *firilasia* is not obviously related etymologically to *Friedel*, although it has been translated as *Friedelschaft*. Nor does this seem to be a type of marriage. It could be, once again, that a relationship called *firilasia* once existed and was a honourable form of marriage, and was downgraded under Christian influence to fornication. However, this is speculating well beyond the evidence. The only extant use of *firilasia* clearly refers to something that was not considered a type of marriage. As Silvia Konecny points out, 'To draw conclusions about a legal institution from a prohibition is very risky.' She suggests that *Friedelehe* may be a useful modern term for a type of unendowed marriage that is not clearly defined in the sources, but that the sources assume *Muntehe* as the norm.[80] If we accept that *Muntehe*, too, is a modern term and

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[76] *Capitula legi salicae addita*, c. 100.1, ed. K.A. Eckhardt, *MGH, Leges Nationum Germanicarum* IV.1 (Hanover, 1962), p. 256; *The Laws of the Salian Franks*, trans. K.F. Drew (Philadelphia, 1991), p. 145.

[77] *Leges Visigothorum*, c. 3:2:8, ed. K. Zeumer, *MGH, Leges nationum Germanicarum* I (Hanover, 1902), p. 138.

[78] *Pactus Legis Salicae*, c. 44, 100, ed. K.A. Eckhardt, *MGH Leges Nationum Germanicarum*, IV.1 (Hanover, 1962), pp. 168–73, 256–7.

[79] *Pactus Legis Salicae*, c. 15:3, ed. Eckhardt, pp. 70–1. See also *Lex Ribuaria*, c. 35:2, ed. H.F.W.D. Fischer, *Leges Barbarorum* (Leiden, 1951), p. 214; discussion in Saar, *Ehe–Scheidung*, pp. 207–8.

[80] S. Konecny, *Die Frauen des karolingischen Königshauses: die politische Bedeutung der Ehe und die Stellung der Frau in der fränk. Herrscherfamilie vom 7. bis zum 10. Jahrhundert* (Vienna, 1976), p. 17.

decide that it is convenient to use *Friedelehe* for marriage without property transfer and *Muntehe* for marriage with, she may be right; but this does not mean that the two were separate legal forms, nor that the payment made a difference as to what rights over the wife were transferred to the husband.

The Salic law assumes a *dos* in marriages, but it does not systematically set out requirements for a legal marriage, either in terms of property exchange or of consent. In the case of inheritance both it and the *Lex Ripuaria* speak of sons and daughters without raising the question of the legal status of their parents' relationship. The *Lex Ripuaria* also assumes there would be a *dos*, but also considers the situation in which there is not one: if nothing was given to a wife by means of charters (*per series scripturorum*), she should receive fifty *solidi* if she outlives her husband.[81] This does not suggest by any means that marriage without a *dos* was invalid, or even a lesser category of marriage; indeed, it suggests that the purpose of the *dos* is to support the wife in her widowhood and provides for a situation where this has been neglected. Merovingian church councils prohibited marriage without the permission of the woman's family, but punished it with excommunication rather than making it invalid.[82] In general, the Frankish law indicates a situation in the Merovingian period in which marriage with and without *dos* and parental consent were not different institutions, but merely different sets of possible circumstances, although one was clearly preferable to the other.

The ninth-century *Lex Saxonum*, which also did not distinguish among children in terms of inheritance according to the status of the parents' relationship, did require a *dos*. If a man did not pay a *dos* of three hundred *solidi* to the bride's parents, he was liable for a fine to them in the same amount.[83] Once again this leaves open the possibility of an earlier form of marriage without the now required *dos*, but does not provide any evidence for it. If we wish to speculate that one type of primitive Germanic marriage did not require a *dos*, why not speculate that none did? In other words, there is no evidence that *dos* was ever constitutive of marriage or made the difference between marriage or non-marriage or between types of marriage, until the Carolingian period when the letter of Leo to Rusticus was taken up. Neither this law nor the Salic or Ripuarian connect the payment to the family with the transfer of rights over the woman.

The Burgundian laws, among those most heavily influenced by Roman, assume but do not explicitly require a payment to the bride's

[81]   *Lex Ribuaria*, c. 37:2, ed. Fischer, p. 15.
[82]   Council of Arles (541), c. 22, in *Concilia Galliae*, ed. C. de Clerc, CCSL 148A (Turnhout, 1963), pp. 137–8; Council of Tours, c. 20 (21), *ibid.*, p. 187.
[83]   *Lex Saxonum*, c. 40, ed. Fischer, *Leges Barbarorum*, p. 39.

family, here called the *wittimon* rather than the Latin *dos*. In the case of a widow the *wittimon* was to be paid to her first husband's family, perhaps indicating that it was a payment for rights over her that had been transferred to her first husband at marriage, but perhaps merely compensating them for the *wittimon* that the first husband had paid out.[84] One provision states that if a father dies, 'If the father asks that a *wittemon* not be sought, his request shall not be valid.'[85] This suggests that a father during his lifetime might have had the option of letting a daughter marry without the payment, acknowledging the existence of marriage without a bride-price but not by the woman's free choice. The law does not say anything, however, about maintaining the family's control over her or her assets. Indeed, another law provides that 'Whatever Burgundian or Roman woman shall go of her own free will to a husband, we order that the husband have the goods of that woman, as he has power over her so let him have over all her property.'[86] This suggests that someone might have thought otherwise – that if a woman chose her husband herself rather than through a family contract, the control over her property and herself would remain with her family (or herself) rather than be transferred to her husband. It indicates a good deal of variation in marriage, with not everyone using the *wittimon* system. It does, however, cast doubt on the link between a bride-price (presumably not paid in this case) and guardianship over the woman, suggesting that all husbands have guardianship over their wives regardless of what property arrangements are made. Discussions of the inheritance status of children in the Burgundian law do not discuss the nature of the parents' marriage.

The Lombard laws use the term *mundium*, from which scholars derived the term *Muntehe*. *Mundium* is used both for that authority, and the payment for it – it can be used with *habere*, *facere* or *dare*.[87] Rothar's seventh-century edict also makes a distinction between the inheritance rights of legitimate (*legitimum*, *fulborn*) and natural children, although it does not discuss how the status of the parents' marriage relates to these two categories, except in its reference to a natural child

[84] *Leges Burgundionum*, c. 56, 59, ed. F. Bluhme, *MGH Legum* 3 (Hanover, 1863), pp. 561–2.
[85] *Leges Burgundionum*, c. 86, ed. Bluhme, pp. 568–9.
[86] *Leges Burgundionum*, c. 100, ed. Bluhme, p. 573.
[87] E.g. *Edictus Rothari*, c. 182, 183, 184, ed. Pertz, pp. 43–4. *Edictus Rothari*, c. 204, p. 50, provides that 'Nulli mulieri liberae sub regni nostri ditionem legis Langobardorum viventem liceat in sui potestatem arbitrium, id est selpmundia vivere, nisi semper subpotestatem virorum aut certe regis debeat permanere; nec aliquid de res mobiles aut inmobiles sine voluntate illius, in cuius mundium fuerit, habeat potestatem donandi aut alienandi.' As developed in later learned law, the *mundium* meant the power and not the payment for it. See T. Kuehn, ' "Cum consensu mundualdi": Legal Guardianship of Women in Quattrocento Florence', in Kuehn, *Law, Family, and Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago, 1991), pp. 212–37.

born to a slave woman owned by someone other than the father.[88] It
seems likely that both of these characteristics – the idea of certain rights
over the woman being transferred as a commodity, and the distinction
between legitimate and natural children – come from Roman law. The
edict, however, does not make the Roman distinction between *connubium*,
available to the free, and *contubernium* for slaves; a slave could take a
woman in *coniugium*,[89] indicating that different types were all lumped
under one sort of marriage. Liutprand's law from 731 provides that a
woman who betroths herself loses her inheritance rights, but does not
forbid her from doing it.[90]

   Where does this leave us with regard to the existence of distinct types
of union? Meyer suggested that the use of *nubere* and *uxor* in references
to unions with slave women and *aldiae* (an unfree status somewhat
higher than that of a slave) in the Lombard laws indicated that *Friedelehe*
was indeed a form of real marriage.[91] This, of course, assumes that slave
unions were automatically *Friedelehen*; it is not evidence for the existence
of such an institution, rather it would seem to be evidence that there
was one form of marriage for free and unfree. The status of children of
these unions depended not on the nature of the union but on the
unfree status: 'If someone wishes to marry his own or another's *aldia*,
let him free her [*faciat eam widerbora*], as the edict says about a female
slave. For if he takes her as a wife [*quasi uxorem*] without this provision,
the children who are born of her are not legitimate, but natural.'
Rothair's Edict had a similar provision for a man who married his own
slave.[92] Some scholars have seized on this phrase *quasi uxor* and equated
it with the *Friedelfrau*, but it is referring only to *aldiae* and is better
translated 'as a wife' rather than 'as a sort-of-wife'.

   The *Leges Barbarorum*, then, show that there were marriages without
a *dos*, but these were not necessarily ones in which the woman's family
was not involved, or in which the woman had free choice. None of the
laws create two separate categories of marriage. Marriage was commonly
assumed to require a *dos* but the existence (or not) of that payment did
not determine its status nor the rights of the husband over the wife.
This is not to say that all marriages were equivalent, equally binding
and equally conferring of rights; but the differences derived not from
legal form but from the relative social status of the parties, as early
medieval narrative sources tell us.

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[88]   *Edictus Rothari*, c. 154–62, ed. Pertz, pp. 35–7.
[89]   *Edictus Rothari*, c. 211, ed. Pertz, p. 51.
[90]   *Liutprandi leges*, c. 119, ed. Pertz, p. 157.
[91]   Meyer, 'Friedelehe', p. 225.
[92]   *Liutprandi leges*, c. 106, ed. Pertz, p. 151; *Edictus Rothari*, c. 222, ed. Pertz, p. 54.

Already in the Merovingian period Latin sources classify women into *uxores* and *concubinae*, but a man could have more than one *uxor*, and *concubinae* were women of lower status (including slaves). It is clear that the Merovingian rulers, if not the entire ruling class, practised polygamy of a sort, and that the Frankish church had not yet insisted on one wife only, at least for rulers.[93] The same language is used for unions in which the woman makes a choice for herself and ones in which her father gives her in marriage. What is particularly striking in the Frankish narrative sources is that there are no examples of situations in which a woman, no matter what her status, is not under the control of her husband; we cannot distinguish among forms of union based on the rights that the male partner held.

Gregory of Tours cannot be taken as typical of Merovingian culture, but much of what we know about the marriages of Merovingian kings comes from him. We cannot use him to draw conclusions about the way the Merovingian Franks generally thought about marriage, but it is noteworthy that this author at least did not distinguish between different categories of marriage. He may tell us only about the highest level of the aristocracy, and only about the Touraine; but with as little evidence as we have, we must look at it all.[94]

According to Gregory, Basina, the wife of the king of Thuringia, left her husband to follow Childeric (475–81) on his return from exile; he married her (*eam in coniugio copulavit*). When Clovis (481–511) married Clotild he asked her father for her *in matrimonio*, and *eam coniugio sociavit*.[95] Even though one marriage was formed by the woman herself and one by her father, *coniugium* is used for both. Radegund, too, although she was captured rather than given in marriage by her father with the payment of a *Munt*, is described in the same terms as Clotild (*in matrimonio sociavit*).[96] As Reynolds points out, the terms are used quite imprecisely both here and in the laws.[97]

Theudebert (533–48), as Gregory tells the story, was also involved in a marriage made by choice as opposed to a formal marriage arranged for diplomatic reasons. After a woman named Deuteria arranged for him to capture the city of Béziers peacefully, he married her (*eamque*

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[93] On polygyny in the royal family see Wemple, *Women in Frankish Society*, pp. 38–41.

[94] For recent scholarship on Gregory see K. Mitchell and I.N. Wood (eds), *The World of Gregory of Tours* (Leiden, 2002); M. Heinzelmann, *Gregory of Tours: History and Society in the Sixth Century*, trans. Christopher Carroll (Cambridge, 2001).

[95] Gregory of Tours, *Historiarum Libri Decem*, Bk 2, c. 12, Bk 2, c. 28, ed. R. Buchner, 2 vols (Berlin, 1967), I, pp. 94, 114; cf. Fredegar, *Die vier Bucher der Chroniken des sogennanten Fredegar*, Bk 3, c. 20, ed. H. Wolfram and A. Kusternig, Ausgewählte Quellen zur Deutschen Geschichte des Mittelalters (Darmstadt, 1982), p. 106.

[96] Gregory of Tours, *Historiarum*, Bk 3, c. 7, ed. Buchner, p. 154.

[97] Reynolds, *Marriage*, p. 109.

sibi in matrimonio sociavit). However, he was also betrothed to a king's daughter, Visigard, and the Frankish assembly insisted he leave his *sponsa* to marry the latter (*uxorem ducere*).[98] It is tempting to suggest that *uxorem ducere* means a formal wedding and *in matrimonio sociare* is more informal, but this does not seem to be true in other cases (e.g. Clovis and Clotild). Fredegar, who reports the same events, uses *uxorem ducere* for both Deuteria and Visigard.[99] Indeed, according to Gregory, Chilperic (560–84) asks to marry Galswinth because she is of social rank worthy of him, and offers to leave his other wives to do this, but the wives to be repudiated are *uxores* and Galswinth is *sociata coniugio*.[100] There is no indication that the status of the unions of the women to be repudiated is different from that of Galswinth, except that her family is more powerful (and Gregory does not tell us what sort of ceremony any of them went through, nor whether the church was involved). Nor does being called an *uxor* mean that a wife cannot be repudiated: this happens with Clothar's (511–61) wife, Vuldetrada, and Charibert's (561–7) wife, Ingoberg.[101] *Uxorem accipere* and *in matrimonio sociare* are juxtaposed in the case of Sigibert (561–75), who was upset that his brothers 'took unworthy wives and even, by their own vileness, married slaves' (*indignas sibimet uxores aciperent et per vilitatem suam etiam ancillas in matrimonio sociarent*).[102] It is not clear whether this is simply a matter of elegant variation and he means to say 'they took unworthy wives, even slaves' or he is making a distinction and saying 'they took unworthy wives and even entered into unions with slave women', but *matrimonium* in Gregory's usage probably does mean an official marriage and the same thing as *uxorem accipere.*

As far as Gregory's depiction of Merovingian marital relations is concerned, some marriages are more important politically than others, but there do not seem to be distinct types. All can be dissolved depending on the power of the families involved, and those by women's choice do not seem as a rule to be weaker than those arranged by fathers. When they are weaker, it is because those arranged by fathers tend to be unions with more powerful families and therefore more dangerous to attempt to dissolve. All aristocratic women are *uxores*. And even when (as many later Merovingian kings did) an aristocratic man married a woman of lower origin, she was still treated as a wife, even a queen, and

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[98] Gregory of Tours, *Historiarum*, Bk 3, c. 23, Bk 3, c. 27, ed. Buchner, p. 178.
[99] Fredegar, *Die vier Bucher der Chroniken des sogennanten Fredegar*, Bk 3, c. 39, ed. Wolfram and Kusternig, p. 118.
[100] Gregory of Tours, *Historiarum*, Bk 4, c. 28, ed. Buchner, p. 232.
[101] Gregory of Tours, *Historiarum*, Bk 4, c. 9, Bk 4, c. 26, ed. Buchner, pp. 128, 204; cf. Fredegar, *Die vier Bucher der Chroniken des sogennanten Fredegar*, Bk 3, c. 49, Bk 3, c. 57, ed. Wolfram and Kusternig, pp. 122, 128–30.
[102] Gregory of Tours, *Historiarum*, Bk 4, c. 27, ed. Buchner, p. 230.

the narrative sources do not give any indication that it was a different sort of marriage. Fredegar refers to Bilichild, the former slave wife of Theudebert, as *uxor* and *regina*.[103] Mikat suggests that it is not possible to tell, except in the case of foreign princesses, whether the marriages of Merovingian kings and their sons were *Muntehen* or *Friedelehen*.[104] I suggest that this is because there was in fact no line between the two; the distinction is a modern creation.[105]

While in the Merovingian period the Frankish church had other worries, the Carolingian church (and secular authorities) were very concerned with a number of issues relating to marriage, including abduction, nuptial ritual, consanguinity, publicity and divorce. Its position on these issues was not unanimous or uncontested, though there were areas of broad agreement (such as the unacceptability of polygamy; only one woman at a time could be a wife).[106] But monarchs still practised serial monogamy, and some scholars have suggested that a form of *Friedelehe* was involved.

Lothar II is the most famous example: he had a partner, Waldrada, but in 855 he married Theutberga, from a powerful Lotharingian family. Régine Le Jan notes that from the second half of the ninth century the age at marriage of the Carolingians rose dramatically, but that their fathers often assigned them what she calls an *épouse de jeunesse*, an aristocratic woman who could be dismissed when they came to make a legal (church-recognized) marriage. Waldrada, she suggests, was one of these *Friedelfrauen*.[107] Lothar, however, seems to have been genuinely attached to her and dismissed Theutberga in order to take her back. By this time the church was not willing to accept the dissolution of a formal, publicly and ecclesiastically recognized marriage, and the divorce case became a drawn-out battle.[108]

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[103] Fredegar, *Die vier Bucher der Chroniken des sogennanten Fredegar*, Bk 4, c. 35, ed. Wolfram and Kusternig, pp. 188–90. Wemple, *Women in Frankish Society*, pp. 56–7, calls these unions *Friedelehen* or quasi-marriages, but as she recognizes the sources treat them as marriages.

[104] Mikat, *Dotiert Ehe–Rechte Ehe*, p. 61. It is not clear why he thinks the determination can be made in the case of foreign princesses, except that wealth was clearly transferred; however, as discussed above, there is no indication that among the Franks the transfer of bridewealth brought the husband particular rights over the wife.

[105] Or at the earliest a Carolingian one; that is, in the Carolingian era the line between what was and was not a marriage was much more sharply drawn, although even then it is not absolute.

[106] On consanguinity, for example, see P. Corbet, *Autour de Burchard de Worms: L'église allemande et les interdits de parenté (IXème–XIIème siècle)*, Ius Commune sonderhefte 142 (Frankfort am Main, 2002), pp. 1–37.

[107] Le Jan, *Famille et pouvoir*, pp. 276–7; see also S. Airlie, 'Private Bodies and the Body Politic in the Divorce Case of Lothar II', *Past and Present* 161 (1998), pp. 3–38, at p. 14, n. 33; Konecny, *Die Frauen des karolingischen Königshauses*, p. 113.

[108] Hincmar of Reims, *De Divortio Lotharii regis et Theutbergae reginae*, ed. L. Böhringer, *MGH Concilia* IV, suppl. 1 (Hanover, 1992), is the key text here. The modern editor (p. 4) calls Waldrada a *Friedelfrau*, citing Meyer.

One of the points at issue in the debate was whether Waldrada was a legal wife in the church's eyes. But the discussion was binary: she was a wife or she was a concubine. Although the Frankish church considered her the latter – as attested not only by Hincmar of Reims but also by other ecclesiastical authors – she no doubt enjoyed a higher status among her peers (the Carolingian elite) than that of a concubine.[109] There was no formal category of *Friedelfrau* or secondary wife that the sources could discuss, even if the Carolingian ruling house thought of such women as temporary wives.

The union with Waldrada was dissoluble not because it was in a particular category based on primitive Germanic custom: it was dissoluble because it was not recognized by the church, and because Waldrada's relatives were not powerful enough to insist that she be retained Indeed, in Lothar's eyes, his marriage to Theutberga was dissoluble too, and he probably would have been able to make this stick if it were not for Charles the Bald's political ambitions.[110] The Frankish church was not unanimous in attempting to impose one definition of marriage, though it was ahead of other regions in moving toward this; but if we accept, as Stuart Airlie suggests, that 'the definition of marriage in this period was still fluid', that is far from accepting that there were two clearly defined forms.[111] Ecclesiastical leaders – whether those who rejected the union with Waldrada, or Bishop Adventius of Metz, who supported it – drew a distinction between marriage made with a *dos* and concubinage.[112] But there is little evidence for how the laity felt.

The union with Waldrada was a 'weak union', as Airlie puts it, and therefore easier to dissolve than that with Theutberga; but it was on the weak end of the same spectrum, not an intrinsically different kind of union, except in so far as the church had not recognized it. Airlie points out that Lothar's supporter, Bishop Adventius of Metz, did not raise until 863 the argument that the union with Waldrada was a valid marriage, publicly celebrated and involving property exchanges.[113] But it is not at all clear that those property exchanges were necessary for it to be a formal marriage in the view of secular elites; they were evidentiary, not constitutive. Nor, even if property exchange could be shown to be constitutive of marriage in the ninth and even in the sixth or seventh centuries, does that say anything about the transfer of guardianship.

[109] For the church's view see Regino, *Chronicon*, s.a. 864 (actually 857), ed. and trans. F. Kurze, *MGH SRG in Usum Scholarum* (Hanover, 1890), p. 80.
[110] Nelson, *Charles the Bald*, pp. 199–200, 215–17; Searle, *Predatory Kinship*, pp. 20–1.
[111] Reynolds, *Marriage*, p. 410; Airlie, 'Private Bodies', p. 15.
[112] Adventius of Metz, 'Epistolae ad Divortium Lotharii II Regis Pertinentes', c. 5, ed. Ernst Dümmler, *MGH Epistolae* VI, *Epistolae Karolini Aevi* (Hanover, 1902), pp. 215–17.
[113] Airlie, 'Private Bodies', pp. 14–17.

The requirement of a *dos* as enunciated by Leo the Great in 458–9 had been repeated in collections of church law. The council of Verneuil in 755 had ruled that all marriages must be publicly performed: 'Let all lay people, both noble and non-noble, make public marriages.'[114] The provision did not specify a *dos* but the transfer of the *dos* was an important public symbol of the marriage, along with others like witnesses and a nuptial blessing. The Council of Mainz in 852 had declared that a concubine with no contract of betrothal was not a wife: 'If anyone has a concubine who was not legitimately betrothed, and afterwards marries a girl betrothed according to the rite, having put aside the concubine, let him have her whom he legitimately betrothed'[115] – the *Annales Bertiniani*, for example, call Charles the Bald's second wife Richildis a concubine until he held a betrothal ceremony and paid a *dos*.[116] The councils – both the two cited here and others, as well as royal legislation which dealt with other marital questions besides *dos* – were not recognizing two forms of marriage and valorizing one as the only real form of marriage, as Meyer suggested;[117] they were seeking to formalize a process that otherwise had few formal requirements. Paul Mikat suggests that the church favoured *Muntehe*, over *Friedelehe* (despite the church's criterion of consent), because *Friedelehe* was too easily dissolved.[118] We should see the situation, however, not as the Carolingian church identifying a dissoluble form of union and rejecting it, but rather as the church insisting that marriage was indissoluble and therefore rejecting marriages that could be dissolved with fewer complications.

Wemple suggests that unions like that of Waldrada and Lothar were 'trial marriages', arranged by the women's families in the hopes that the relationship would last and turn into a real, recognized marriage.[119] She rejects the term *Friedelehe* for them and stresses that the women's choice had little to do with them. The church would consider such women concubines, given that there was no *dos*, and Silvia Konecny also labels them as such (while still distinguishing between such relationships

[114] *Concilium Vermense*, c. 15, ed. A. Boretius, *Capitularia Regum Francorum, MGH Legum* 2 (Hanover, 1883), I, p. 36; Le Jan, *Famille et pouvoir*, p. 270; Mikat, *Dotiert Ehe–Rechte Ehe*, p. 22 and passim.

[115] *Concilium Moguntium*, c. 12, ed. A. Boretius, and V. Krause, *Capitularia Regum Francorum*, II, *MGH Leges* (Hanover, 1890), p. 189. This does, however, say that any woman without such a betrothal is a concubine, though it goes on to quote Pope Leo requiring the *mysterium nuptiale* for a valid marriage.

[116] Mikat, *Dotiert Ehe–Rechte Ehe*, p. 46; *Annales Bertiniani*, s.a. 869, ed. G. Waitz, *MGH in Usum Scholarum Separatim Editi* (Hanover, 1883), p. 107: 'Richildem . . . in concubinam accepit'; s.a. 870, p. 108: 'predictam concubinam suam Richildem desponsatam atque dotam in coniugem sumpsit'.

[117] Meyer, 'Ehe und Eheauffassung', pp. 33–4. For church legislation on other parts of the nuptial process, see Reynolds, *Marriage*, pp. 401–3.

[118] Mikat, *Dotiert Ehe–Rechte Ehe*, p. 56.

[119] Wemple, *Women in Frankish Society*, pp. 90–4; see also Le Jan, *Famille et pouvoir*, p. 273.

and those with unfree concubines, which could never develop into a marriage),[120] but that does not mean that the aristocrats themselves drew a sharp line between these and more formally recognized marriages. Certainly they were weaker than others because the families tended to be lower in the social hierarchy and the women in danger of repudiation if the king needed a more powerful ally, and because they did not have the church on their side. But they were not love matches (however attached Lothar may have become to Waldrada), nor were they undertaken by the woman's initiative or without her family's consent. In addition, kings' patterns in forming unions were not typical, even of aristocrats. It is not possible to argue that a ninth-century monarch's wish to ally himself in a less than completely binding way with an aristocratic family goes back to primitive Germanic marriage custom.

The situation of Charlemagne's daughters has also been taken as an example of *Friedelehe*. They did not marry, nor did they become nuns. Charlemagne did not object to their having lovers; according to Einhard he pretended not to pay attention to rumours about them.[121] Wemple calls the relationships they had with men *Friedelehen* and their lovers *Friedelmänner*, and the relationships seem to have been of long duration. Scholars have claimed that Louis the Pious dissolved the unions, not considering them marriages since there was no *dos*, but the sources do not tell us this. Nithard reports only that he 'immediately ordered them to leave the palace for their monasteries', and the *Vita Hludowici Imperatoris* tells us that 'he conceded to each of his sisters the land which she had received from her father; those who had not received any were endowed by the emperor'.[122] The evidence does not indicate that that Charlemagne was perpetuating an ancient Germanic form of marriage which his son, under church influence, rejected. And quite clearly, whatever relationships the daughters were involved in, they had little choice; these were politically arranged unions.[123]

The examination of the early medieval sources reveals a fluidity in the way different unions were understood. Fluidity and differences of interpretations are not the same as a multiplicity of categories, and we should not attempt to create such a multiplicity to describe a culture that did not in fact have them. The status of a union seems to have depended more on the status of the participants than on the process used to enter it (although the former influenced the latter). None of the

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[120] Konecny, *Die Frauen des karolingischen Königshauses*, pp. 111–14.
[121] Einhard, *Vita Karoli*, c. 19, ed. G.H. Pertz, *MGH Scriptores* II (Hanover, 1889), p. 454.
[122] Nithard, *Historiarum libri IIII*, Bk 1, c. 2, ed. E. Müller, *MGH SRG* (Hanover, 1856), p. 2; Astronomus, *Vita Hludowici Imperatoris*, c. 23, ed. and trans. (into German) E. Tremp, *MGH SRG* 64 (Hanover, 1995), p. 352.
[123] Wemple, *Women in Frankish Society*, p. 79; Konecny, *Die Frauen des karolingischen Königshauses*, pp. 74–7.

leges point to the existence of unions in which the men did not have authority over the women.

We may expect that this fluidity in what made a marriage would have been all the more present in marriages among the classes of society that do not make their way into the narrative sources. Where the uniting of two families was not an issue for international diplomacy, the *Munt* may have had significantly less meaning. Indeed, one may wonder whether the marriages we may identify as weaker, and which some scholars have wished to call *Friedelehen*, were the rule in unions in which property and power were not as relevant. The intermarriage between social classes in the polyptyque of St Germain des Près is one (late) indication that marriage may have been less formal than the *leges* would indicate.[124] The *dos* and the ceremonies which made a marriage public were only important if there was money to be transferred and a public that took an interest in the marriage. Formal marriage, indeed, may have been a luxury. I am not suggesting that the lower orders all had *Friedelehen* and that women were thereby advantaged, but I am suggesting that the wish to abide by the church's dictates about what made a real marriage may have been more prevalent among the magnates than among those they ruled.

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[124] *Polyptyque de l'abbé Irminon*, ed. M.B. Guérard (Paris, 1836–44); E.R. Coleman, 'Medieval Marriage Characteristics: A Neglected Factor in the History of Medieval Serfdom', *Journal of Interdisciplinary History* 2 (1971), pp. 205–19. On unions between free persons and slaves see Carl I. Hammer, 'The Handmaid's Tale: Morganatic Relationships in Early-Medieval Bavaria', *Continuity and Change* 10 (1995), pp. 345–68.

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