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Hospitalitas

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Hospitalitas[†]

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Abstract: Good government requires a constitution that demarcates what political agents can and cannot do, and such a constitution must be self-enforcing. The medieval West was characterized by the estates system, where the political power of monarchs was roughly balanced by that of a landed and militarized nobility. This rough balance of power contributed to a Western tradition of limited government and constitutional bargaining. I argue that this balance has important roots in the fifth and sixth century barbarian settlements that occurred within the frontiers of the declining Western Roman Empire. These settlements provided barbarians with allotments consisting of lands or claims to taxes due from those lands. These allotments aligned the incentives of barbarian warriors and Roman landowners; they also realigned (or newly aligned) the incentives of barbarian warriors and leadership elite as their roving confederacies became stationary kingdoms. Barbarian military forces became decentralized and the warriors became political powerful shareholders of the realm.

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“We especially like to remember how in the assignment of the Thirds [Liberius] joined both the possessions and the hearts of Goths and Romans alike. For whereas men are wont to come into collision on account of being neighbors, with these men the common holding of farms proved in practice a reason for concord.

Cassiodorus, “Panegyric on Liberius” (book 2, ch. 16, loc. 3632)

1. Introduction

How does one establish good government? In this context by *good* I have in mind the absence of systematic abuse of authority by political agents for their own benefit; in other words, the absence of *predatory political governance* (Leeson and Williamson 2009). How does one establish a government that respects the basic rights of its citizens? This question is problematic because the fundamental purpose of a government is to provide law and order. Yet any government that is strong enough to enforce the law is also strong enough to violate it when doing so serves its interests (North and Weingast 1989). The difficulties inherent in establishing good government are painfully evident in the experiences of post-colonial African governments in the 1960s and 1970s that quickly devolved to predatory autocracies (e.g., the Democratic Republic of the Congo/Zaire, Ghana, Kenya, Nigeria, and Uganda); also in the failures of recent nation building efforts by the US and the international community.¹

¹ For example, Coyne (2008, ch. 1, table 1) demonstrates that subsequent to US occupations less than 30% of the previously occupied countries scored 4 or higher on the Polity IV democracy index. (The Polity Project considers a 7 or above to be an “internally coherent democracy”.) This is not to imply that an “internally coherent democracy” is necessarily the ideal. However, undoubtedly that is what the US state-building exercises were ostensibly aiming for. Relatedly, Eisenstadt et al. (2015) note that out of 138 countries that adopted new constitutions between 1974 and 2001, the Polity score remained the same or decreased in 35% of those cases; the Unified Democracy Score decreases in over 50% of those cases. Most of these countries began from relatively low levels of democracy, so even these percentages likely err on the side of painting a rosy picture of how the constitutions fared in promoting political freedoms.

As conceived of above, the essence of good government is its refraining from particular activities. A useful starting point, then, is to assume that the establishment of any government creates a Leviathan (Brennan and Buchanan 1980). The Leviathan will act to maximize its revenues, and it will do so at the expense of social welfare if not unchecked by its constitution.² But who or what will enforce said constitution? There is no third party enforcer. Good governments, then, are characterized by constitutions that are in one way or another *self-enforcing*. They provide a framework within which there exists a correspondence between expectations of non-predatory behavior and their realization (Grief and Laitin 2004). Within such a framework political agents have incentives to honor the government's constitution (Mittal and Weingast 2011).

How effective constitutions achieve a correspondence between expected and actual behavior is a matter of lively debate. Weingast (1997, 2005) argues that constitutions function as “a focal solution [...] so that citizens gain the ability to act in concert and police their government” (2005, p. 105). Citizens expect one another to act in ways consistent with policing, and this encourages them each to act individually in such ways. Grief (2006, 2008) and González De Lara et al. (2008) argue that good government can arise as an equilibrium between rulers and the sufficiently powerful administrators whom they rely upon; where the latter wield the credible threat of noncooperation. Alternatively, Salter (2015a) argues that when divisions of political authority (or *political property rights*) are bundled with particular economic property rights, this results in a generality norm (Buchanan and Congleton 2003 [1998]). Significant changes to governance can only occur when they are consistent with supermajority consensus. Incentives are aligned across political agents. Broadly shared gains are associated with consensus

² Even if restraint on predatory behavior is consistent with revenue maximization, in a dynamic setting unconstrained rulers may be unable to commit self-imposed restraint (Acemoglu 2003; Acemoglu and Johnson 2000, 2001).

governance changes, and political infighting going against the consensus is expected to entail losses.

Empirically, each of the above self-enforcement mechanisms may be relevant for particular constitutions. Furthermore, these mechanisms can be complementary; they may operate in conjunction with one another, and in greater or lesser relative importance to one another. However, in this paper I highlight the Western European foundations for the mechanism described by Salter (2015a). I argue that barbarian settlements within the declining Western Roman Empire laid the groundwork for what is now referred to as the *second estate*. The second estate was the landed and militarized nobility and a fundamental basis for medieval *shareholder states* (Herb 2009; Salter and Hall 2015; Salter 2015a). Decentralized military systems based on the resources of the second estate checked the political powers of monarchs. Furthermore, the property rights of commoners were first and foremost associated with reciprocal ties to their particular lords and only secondarily to a monarch (Downing 1989, p. 214; also see Downing 1988; 1992). This rough balance of power between crown and nobility contributed importantly to the polycentric governance that characterized Western Europe in the Middle Ages (e.g., Weber 1978 [1922]; Hintz 1975 [1931]; Baechler 1975; Berman 1983; Anderson 1991; Raico 1994; Stark 2011, chs. 14-16; Young 2015a).

In the fifth and sixth centuries, as the Western Roman Empire was in decline, various Germanic barbarian groups were settled within imperial territories. Some of these barbarian groups founded successor kingdoms. In particular, the Visigothic (fifth to eighth centuries), Frankish (sixth to ninth centuries), and Lombard (sixth to eighth centuries) kingdoms proved to be exceptionally durable. Along with the remnants of the Western Empire, these successor kingdoms provided the institutional and cultural roots of what we now call simply *the West*.

Characteristic of the barbarian settlements was a remarkable “absence[s] of complaints or resistance” from the Roman inhabitants of settled areas (Goffart 1980, p. 70) and also high levels of Roman aristocrat involvement in the Germanic administrations. Consistent with the former, this paper begins by quoting the Roman aristocrat Cassiodorus’ panegyric to Liberius. Liberius was the praetorian prefect in charge of settling the Ostrogoths in Italy (490s).³ Cassiodorus applauds Liberius for having *joined the hearts of Goths and Roman alike*. Regarding the Roman aristocrat involvement in barbarian administrations, Heather (1998, p. 191) comments on the importance to the Visigothic Kingdom in Gaul of “securing the allegiance of Roman elites, the group most able to fashion and run a working governmental machine.”⁴ The absence of complaints from and the administrative involvement of Roman aristocrats suggest a considerable degree of incentive alignment between Romans and their new barbarian lords.

Along with the alignment of barbarian and Roman incentives, the barbarian settlements led to the sort of bundling of political and economic property rights that Salter (2015a) emphasizes and that characterized the medieval shareholder states. The available evidence – in particular for the Visigoths (418 AD) and the Burgundians (443 AD) in Gaul; and the Ostrogoths (490s AD) in Italy – suggests that the settlements “were all regulated operations, presupposing the cooperation of barbarian leaders with the Roman authorities, conducted according to law” (Goffart 1980, p. 36). Historians refer to the legal framework within which the settlements occurred as *hospitalitas*, based on references to “hospitality”, “hosts” and “guests” in barbarian

³ The Ostrogothic Kingdom was not as enduring as the Visigothic, Frankish, or Lombard ones. Historians generally agree that the fall of the Ostrogothic Kingdom in the sixth century was the result of, in largest parts, the facts that the first monarch, Theoderic the Great, did not produce any sons and that in the turbulent succession period following his death the ambitious eastern Roman emperor, Justinian, took it upon himself to reclaim Italy for the empire.

⁴ Similarly, Geary (1988, p. 226) comments on the Merovingian (Frankish) Kingdom: “The economic basis for [the king’s] power was on the one hand the vast Roman fisc and on the other the continuing mechanism of Roman taxation. The broader organization of society continued [...] with their local power structural virtually intact. Wherever possible ... the Merovingians and their agents integrated themselves into these existing Roman structure and derived their power and legitimacy from them.

legal codes other literary sources.⁵ *Hospitalitas* involved providing barbarians with broad and equitable allotments of lands or claims to taxes due from those lands. These allotments transformed barbarian warriors from members of roving armed retinues (Young 2015b, 2015c) to landed elites who collectively had an encompassing interest in the realm. Given that they collectively represented the military might of their barbarian kings, these warriors-cum-elites had considerable de facto political power. Furthermore each warrior's political power was exercised in reference to his particular allotment. His political property rights were effectively bundled with his economic property rights.

Here is how the story and analysis will proceed. In section 2 I will discuss the legal framework of *hospitalitas*. I will provide an overview of different interpretations of that framework that historians have offered. I will ultimately argue that Goffart's (1980) interpretation of the barbarian allotments as tax assessment shares is compelling. Then in section 3 I will elaborate on the constitutional political economy of *hospitalitas*. In particular, I will argue that the barbarian settlements laid the foundations for a medieval second estate comprised of an armed and landed nobility with de facto political property rights that were bundled with corresponding economic property rights. This second estate would, along with the Catholic Church (the first estate), provide a check on and balance to medieval monarchs. Concluding discussion will then be provided in section 4.

2. How did *Hospitalitas* Work?

In this section I overview three interpretations of the *hospitalitas* framework. In doing so I emphasize salient points of similarity and discrepancy between the interpretations, and then I

⁵ This is in reference to the fifth century (Visigothic) Code of Euric and the sixth century Burgundian Code.

consider which one is most consistent with the available evidence. My judgement is ultimately in favor of Goffart's (1980) tax assessment share interpretation.

The conventional view is that fifth and sixth century barbarian settlement occurred within a legal framework for quartering soldiers (Gaupp 1844; Lot 1928). Barbarian "guests" were granted allotments (*sortes*) consisting of some fixed share of their Roman "hosts'" property. Goffart (1980) forcefully contests this view, arguing that barbarian *sortes* consisted not of actual property but rather units of the tax assessments associated with said property. Lastly, Sivan (1987) proposes laws dealing with the settlement of retired Roman soldiers as constituting the *hospitalitas* framework. Under these laws, she hypothesizes that the Visigoths, in particular, were provided grants of land in Aquitaine Gaul.

2.1 *The Conventional View: Quartering Soldiers*

The historians Theodor Gaupp (1844) and Ferdinand Lot (1928) are credited with popularizing the idea that Roman laws for quartering soldiers provided the framework for settling Germanic barbarians.⁶ Evidence put forth in support of this view comes from fifth and sixth century law codes of the Visigothic and Burgundian kingdoms; also from extant literary sources that include royal correspondence from the Ostrogothic kingdom in Italy.

Two important pieces of evidence supporting the conventional view are found in titles 54 and 55 of the early sixth century Burgundian Code:

[W]hoever had received land together with slaves either by gift of our predecessors or of ourselves, should not require a third of the slaves nor two parts of the land from that place in which hospitality had been assigned him; ... (Drew, 1976, p. 62);

⁶ I note here that I am not able to read either German or French and do not have access to translations of Gaupp's and Lot's writings; thus my characterization of their ideas is unfortunately based exclusively on those of English-writing authors.

As often the cases arise between two Romans concerning the boundaries of fields which [sic] are possessed by barbarians through the law of hospitality, let the contestants not be involved in the quarrel (Drew, 1976, pp. 63-64).

Similar references can be found in title 10 of the Visigothic Law (“about the division of lands made between a Goth and a Roman[:] two parts of the Goth [from the] third of the Roman”) and title 277 of the (Visigothic) Code of Euric (“Gothic allotments (*sortes*) and the third (*tertia*) of the Romans”); quoted in Goffart (1980, pp. 118-119).

We also have the testimony of Cassiodorus Senator, a Roman aristocrat who served as *quaestor palatii*, consul, and then *magister officiorum* under Theoderic the Great, Ostrogothic Italy’s first king (ruled 493-426). A large number of Ostrogothic state papers composed by Cassiodorus – his *Variae Epistolae* – have come down to us. This paper opens with an excerpt of Cassiodorus’ panegyric to Liberius:

We especially like to remember how in the assignment of the thirds [*in Tertiarum deputatione*] he joined both the possessions and the hearts of the Goths and Romans alike (Cassiodorus, book 1, ch. 16, loc. 3632).⁷

Liberius was a patrician tasked with administering the Gothic *sortes*. Here we see an ostensible reference to each Goth receiving an allotment of one-third of a particular Roman landowner’s land.

In the eyes of historians such as Gaupp and Lott, references to *hospitalitas* and *tertia* correspond to a law issued by the Eastern emperor Arcadius in 398 and found in the Theodosian Code (book 7, 8, 5):

⁷ I use the 1886 Hodkins translation for the quotes that follow. For references back to the original Latin I use the 1894 Mommsen edition, available in the public domain at <http://freespace.virgin.net/angus.graham/Cassiodorus.htm>.

In every town where we ourselves may be or where those sojourn who fight for us, to remove all unfairness both on the part of the quarter-masters as well as the guests [*hospitum*], the owner shall without fear or anxiety, keep possession of two parts of his own house, the third part being assigned to his ‘guest’ [*hospiti*].⁸

If Arcadius’ law indeed provided the framework for settlement, then barbarian *sortes* were constituted by a fixed (and substantial) fraction of the land of their Roman “hosts”.

2.2 Goffart’s Alternative: Late Roman Tax Law

There are a number of problems with the conventional view of *hospitalitas*. As Sivan (1987) emphasizes, the quartering of soldiers was a temporary expedient during a campaign; its correspondence to a perpetual occupation of land is tenuous. Furthermore, Arcadius’ law specifies how a host’s *house* is to be divided; there is no mention of land. This limitation of *hospitalitas* to a host’s house is consistent with a different title (38) of the Burgundian Code, “Of the Refusal of Hospitality Toward Legates of Foreign Tribes and Travellers”: “Whoever refuses his roof or hearth to a guest on arrival, let him be fined three solidi for the neglect” (Drew, 1976, p. 47).

Walter Goffart (1980) emphasizes the irrelevance of Arcadius’ law for lands rather than houses (pp. 42-45) and also the fact that the actual *one*-third of Arcadius’ law is only consistent with the evidence regarding the Ostrogothic experience; not with that of the Visigoths or the Burgundians.⁹ Goffart instead argues that barbarians were allotted units of tax assessment on

⁸ Translation from Palgrave (1832, p. 425); Latin is from Mommsen and Meyer edition of the Theodosian Code: <http://droitromain.upmf-grenoble.fr/Constitutions/codtheod.html>.

⁹ Goffart (1980, p. 103): “The ‘one-third’ of Roman *hospitalitas* bears little relation to the ‘two-thirds’ of the land and ‘one-half’ of the woods, house, and gardens stipulated in some texts from Gaul.” Goffart (1980, p. 163) also pointedly criticizes those who claim that the two-thirds associated with the Burgundian and Visigothic allotments “bear a characteristic resemblance to the one-third of Arcadius’ law”: “The trouble with all these observations is that

Roman land; not the actual land. He bases his argument primarily on evidence regarding the Ostrogothic settlement in Italy. For example, a certain Faustius complained on behalf of his district about the irregular timing of tax collections. Theoderic (through Cassiodorus) responded:

We have no objection to grant the petition of the inhabitants of Cathalia, that their [*tertia*] shall be collected at the same time as the ordinary tribute. What does it matter under what name the [*possessor*] pays his contribution, so long as he pays it without deduction? (Cassiodorus, book 2, ch. 14, loc. 3252).¹⁰

The above implies that a barbarian's *tertia* had to be collected from the land's *possessor*. Faustius was complaining that the barbarians' *tertia* and "ordinary tribute" (i.e., taxes) were being inconveniently collected at different times.

Goffart also emphasizes terminology that Theoderic (again through Cassiodorus) uses in book 5, ch. 27 of the *Variae*. The conventional translation of the relevant text is: "Order all the captains of *thousands* of Picenum and Samnium to come to our court, that we may bestow the wonted largesse on our Goths" (book 5, 27, loc. 4983; emphasis added). The "thousands" is a translation of the Latin *millenarios*. Goffart (1980, pp. 80-87) argues that *millenarios* in this context is more accurately translated as "holders of *millenae*":

The most direct proof that the Italian allotments were composed of tax assessment, requiring no dispossession of Roman owners is [when] Theoderic calls the Goths *millenari*, "holders of *millenae*" – the *millenae* begin specifically a unit of tax assessment" (p. 80).

Millena was a unit of Roman tax assessment dating back to Diocletian's reforms in response to a debased currency:

thirds and halves are common fractions; they no more bear the signature of military billeting than of, for example, the law of inheritance or any other law that they enter into."

¹⁰ Aside from presumably being in Italy there location of Cathalia has been lost to history.

Schedules were drawn up of the various types of assets [...] in such a way that they indicated what quantity of each type of asset “paid in kind (*anona*)” of one abstract unit of assessment. [...] The *millena* was a unit of this kind. It was peculiar to Italy, notably to the center and the south, and is first documented in 440 (p. 81).

According to Goffart, Theoderic’s Goths were holders of these tax assessment units:

[The] government did when wishing to bestow a benefit of this kind was to consult the official registers of tax declarations (*professiones*), identify within them private agricultural property up to the value of the one or several “units” that were to be given[. ...] [T]he state-designated recipient of the *millena* – either a person or an institution – could hereafter collect at source the tax payments of his “unit.” (p. 82).

A Goth receiving a *sorte* became essentially a tax farmer for his own account. He “bought” the privilege through his military service in Theoderic’s confederacy.

In addition to the direct evidence from Ostrogothic Italy, Goffart marshals indirect evidence concerning the barbarian settlements in Gaul. For example, historians generally agree that Visigoths were not taxed within their own kingdom (e.g., Thompson 1969, pp. 72-77; King 1972, pp. 130-131; Sivan 1987, p. 759; Heather 1998, p. 195). If this is true, then Gothic recipients of actual land allotments “would seem to have been decidedly overadvantaged [sic]: they would have pocketed both the private and public revenues of [two-thirds] whereas the barbarian king was limited to collecting only the tax revenues of [one-third]” (Goffart, 1980, p. 117).

Furthermore, Goffart (pp. 112-113) points to a report from the *Chronica Gallica of 452* that deals with the settlement of a different group of barbarians, the Iranian Alans. The Alans were allotted the deserted countryside of the city of Valence (*deserta Valentinae urbis rura*). In

this context and similar ones (e.g., the term *agri deserti* in late Roman law) what is “deserted” is interpreted to be the tax debt associated with the land. By this interpretation, the Alans were allotted claims to the tax debt as an “alternative to giving the property to whatever entrepreneur would assume the tax burden; either way the occupants would fall to more exacting masters” (p. 113). Again, these barbarians were essentially made into tax farmers for their own account.

One of the most appealing features of Goffart’s theory is its compatibility with the absence of evidence indicating outrage and resistance on the part of Roman landowners. Along with the absence of such evidence (which is hard to produce!) Goffart produces some positive evidence that Romans were, if not pleased, relatively unperturbed by the Ostrogothic allotments. He (1980, pp. 70-71) points to Cassiodorus’ panegyric to Liberius as well as a letter written by the senator Ennodius to Liberius:

You have enriched the countless hordes of Goths with generous grants of land, and yet the Romans have hardly felt it. The victors desire nothing more, and the conquered have felt no loss (*Epistolae*, 9, 23).¹¹

While Ennodius clearly aims to flatter, Goffart agrees with Jones (1986, p. 251) that he “would have hardly introduced the topic at all if it had been a painful one.”

Goffart (1980, pp. 77-79) also points to Theoderic’s instructions to the city of Tridentum regarding a particular *sors* (pp. 77-79):

We do not wish to be generous at the expense of others, and we therefore declare that the [*sors*] which in our generosity we have bestowed on Butilianus the Presbyter, is not to be reckoned in to the tax calculations; but as many solidi as are comprehended in that gift, so many are you to be relieved from, in the contribution of [*tertia*]

(Cassiodorus, book 2, 17, loc. 3635).

¹¹ Translation is from Jones (1986, p. 251).

First, the above characterization of a *sors* is more consistent with a tax assessment share than a land grant. Roman landowners payment of the *tertia* is offset by the deduction of the *sortes* from their (regular) tax calculations. Second, if Butilianus and other Goths had actually dispossessed Romans of one-third of their land, then it is difficult to see how Theoderic's "generosity" could have come at no "expense to others".

2.3 *Veterans Rights*

Hagith Sivan (1987) does not find the conventional view of *hospitalitas* convincing, but she also does not embrace Goffart's alternative. She argues:

Of all the laws dealing with the military, there is one group of laws that outlines specific privileges which [sic] precisely echo those conferred on the Visigoths and later barbarians. These are the laws dealing with veterans and the privileges which [sic] the emperors granted to them (p. 769).

Sivan accepts that there were allotments of actual land, though she does not confront Goffart's evidence to the contrary. She is more concerned with evaluating what sort of "legal fiction" the empire employed "to conceal a radical departure from past practices" in dealing barbarian groups. However, her theory does have implications for what types of lands were actually allotted.

According to Sivan, using a framework related to soldier quartering would have been politically unpalatable to the Roman population. Indeed, her only direct quarrel with Goffart is his claim, in her words, that "*hospitalitas* was merely an idealistic concept which the government found convenient to apply to barbarian settlements" (p. 767). Sivan (pp. 767) notes that the Theodosian Code includes laws devoted to curbing abuses associated with quartering; "[t]he

number of abuses that the various laws tried to curtail does not exactly point to the popularity of military billeting” (p. 768). Furthermore, Romans would associate *hospitalitas* with temporary (not permanent) settlement.

Alternatively, the Theodosian code provides for veterans “exemption from compulsory municipal services, public works and market tax” (book 7, 20, 2) and “assured grant of vacant lands” (book 7, 20, 3); “enabled veterans to choose their legal residence [...] and conferred on them perpetual exemption from taxes and public burdens” (book 7, 20, 8)” and “encouraged veterans to cultivate properties of absent owners and lands which had not been tilled for a while” (book 7, 20, 11) (Sivan, 1987, pp. 769-770). These laws would have accounted for “the permanent division and occupation of Roman territory and a tax exemption status” (Sivan, 1987, p. 759).

The settled barbarian groups (or at least large elements of them) had all been federates (*foederati*) of the empire at one point or another. *Foederati* were granted annual subsidies in exchange for maintaining peace with Rome and providing military services against both other barbarian groups from without and imperial usurpers from within.¹² A framework of laws pertaining to veterans would have seemed to Romans plausibly applicable to the federate barbarians. It also would not have been associated with the abuse of Roman hosts.

Even if a framework of laws dealing with veterans was a “legal fiction,” for it to have been plausible it likely had implications and imposed constraints what types of land allotments occurred. In particular, rather than the land of Roman *possessors* generally, Sivan’s theory suggests that barbarian *sortes* consisted of vacant lands or lands that were owned but not being currently used in production.

¹² See Young (2015b) for an account of Gothic, and particularly Visigothic, exploits as *foederati*.

2.4 *How did Hospitalitas Actually Work?*

Goffart's (1980) interpretation seems generally to be the most consistent with the evidence. He points to multiple cases where statements from extant sources more consistent with tax assessments than actual allotments of land. Furthermore, Goffart's interpretation makes sense of the lack of documented Roman outrage and resistance. While Roman aristocrats were by no means warriors, they commanded considerable wealth and therefore de facto political power. Straightforwardly, Roman aristocrats could afford to buy resistance services, quite possibly from competing barbarian groups.

Furthermore, Roman aristocrats held a monopoly on the types of human capital that barbarian leaderships required to effectively transition from roving bandits to stationary sovereigns (Young 2015c). Effective administration and jurisprudence required literacy and bureaucratic experience. Roman aristocrats traditionally associated their elite status with imperial office holding. Along with church offices, barbarian administrations offered these aristocrats an important avenue for advancement in the post-imperial world within which they found themselves (Mathisen 2011, locs. 2018-2029). And Roman aristocrats were embraced by the fledgling barbarian administrations. For example, we have seen the important role that Cassiodorus played in Theoderic's Ostrogothic administration. Furthermore, Heather (1998, p. 193) remarks upon a portrayal of the mid-fifth century Visigothic court provided by the Gallo-Roman senator, Sidonius Apollinaris:

It portrays a king educated in Roman law and literature, who presided over an ordered court, where unruly behavior, especially drunkenness, was not tolerated. Set against traditional Roman prejudices about 'barbarians', there is no doubt that

Sidonius was signaling to his fellow Roman landowners that the Gothic king was a worthy political ally, who had entered the world of Roman civilization.

Implied is the contribution of aristocratic Gallo-Romans to the nascent Visigothic legal tradition.¹³ Undoubtedly, literate Romans of aristocratic stocks were critical contributors to the proliferation of barbarian law codes in the fifth and sixth centuries.

Generally accepting Goffart's (1980) interpretation of *hospitalitas* as generally applicable does not necessarily mean that actual land allotments to barbarian settlers never occurred. Most of the evidence marshalled by Goffart is associated with the relatively populous regions of southern Gaul and northern Italy. The Franks, alternatively, were settled in the northern parts of Gaul where Roman landowners were relatively few and far between. In northern Gaul allotments of vacant land would have been possible without upsetting established landowners; furthermore, without many Roman landowners the associated tax assessments to provide shares of would also have been scarce. Sivan's (1987) interpretation of *hospitalitas* as a framework for settling retired *foederati* may make more sense in such sparsely populated areas.

3. The Constitutional Political Economy of *Hospitalitas*

In this section I argue that settlement within the *hospitalitas* framework aligned incentives between, on the one hand, the Roman landowners and barbarian settlers and, on the other hand, barbarian settlers and their leadership elite. This contributed to the durability of the barbarian successor kingdoms. Furthermore, characteristic of these kingdoms were landed aristocracies whose de facto political property rights corresponded to their economic property rights (Salter 2015a). This nascent second estate was to become an integral component of the polycentric sovereignty that characterized the medieval West (Young 2015d; Salter and Young 2015).

¹³ See also Diaz (1999) and Hen (2011).

For the moment I will assume the general applicability of Goffart's (1980) tax assessment share interpretation of *hospitalitas*. For the most part my arguments are unaffected by instead assuming allotments of actual land. The extent to which they are affected will be discussed below.

I begin with a discussion of incentives and how the *hospitalitas* framework served to align them. To motivate this discussion, I posit two straightforward alternatives to *hospitalitas* that could have characterized barbarian settlements and would have resulted in fundamental incentive misalignments. These alternatives will serve usefully as benchmarks for comparison.

- *Stationary Bandit Alternative*: no expropriation of land; centralization of taxation by a government ruled by barbarian elites and administered by barbarian warriors.
- *Subjugation Alternative*: complete expropriation of land; redistribution of it to barbarians.

The first of these alternatives is based on Olson's (1993) well-known description of state formation. A roving group of bandits decides to "settle down" in a particular area and become a stationary government ruling over its population. Alternatively, the roving bandits can simply subjugate the population, depriving them wholly of their lands. The erstwhile landowners are displaced; enslaved or otherwise relegated to subservient status.

In the context of a barbarian settlement I will consider three sets of actors: the *Roman elite* (landowners), the *barbarian elite* (including the military commanders/kings), and the rank and file *barbarian warriors*. The dynamics of a barbarian settlement were problematic. Obvious conflicts of interest could arise between the Roman elite and the (large number of) barbarian warriors who were to be settled on or nearby their lands. However, during settlement such conflicts were also likely to develop between barbarian elites and their warriors. This was the case because interactions between a military commander and his soldiers are fundamentally

different from those between a governor and his administrative agents; or between a ruler and his ruled (Young 2015c).

Pre-settlement interactions between barbarian elites and their warriors took place within the context of an armed retinue or a confederacy of such retinues. The armed retinue was a fundamental component of early Germanic society. Retinues provided defense services and/or sought out plunder through their raiding activities. Their military commanders were both *formeteurs* (Congleton 2011a) who organized warriors into profit-seeking entities and entrepreneurs who identified profit opportunities and provided leadership in pursuing them.¹⁴ These military commanders constituted the barbarian elite, including individuals who were eventually recognized as kings.¹⁵ The barbarian groups that settled in Gaul and Italy in the fifth century were confederacies of these retinues led by over-commanders.

Individual retinues functioned as clubs with self-enforcing constitutions (Leeson 2011; Young 2015a).¹⁶ The commander organized and led a group of warriors who were residual claimants for the enterprise's revenues (distributed under the guise of the commander's largesse). The size of those revenues was a function of the commander's directives and the extent to which warriors followed those directives and refrained from shirking. Enforcement was based on a combination of internal threats of violence and external threats of ostracism (Young 2015a, pp. 19-20).¹⁷

¹⁴ Fukuyama (2011, p. 74) refers to such armed retinues as "the most basic and enduring unit of political organization"; "such organizations became virtually universal in subsequent human history and continue to exist today in the form of warlords and their followers, militias, drug cartels, and street gangs."

¹⁵ See Young (2015a) and the references therein. The increasing prevalence of these retinues in Germanic society from the first century on is not only consistent with literary sources but also with archaeological record of weapon burials (Heather, 1998, pp. 66-68).

¹⁶The economy theory of clubs is based on the initial work by Buchanan (1965); a survey of the subsequent and associated literature is provided by Sandler and Tschirhart (1997).

¹⁷ Regarding the latter, for instance, Tacitus remarks that for a Germanic warrior "to throw away [his] shield in battle is the supreme disgrace [and he] is debarred from attendance at sacrifice or assembly" (Tacitus 1970 [circa 98 AD], ch. 6, pp. 106-107). Religious clubs often rely on stigmas and requirements of sacrifice to make potential defectors reveal themselves (e.g., Berman and Laitin (2008) and Iannaccone (1992)).

An individual armed retinue was essentially a roving bandit (Olson 1993). A retinue's constitution effectively solved its internal collective action problems. However, that constitution did not necessarily deal as effectively with the different set of collective action problems faced by a confederacy of retinues. Furthermore, the collective action problems faced by a settled confederacy can be quite different than those faced by a roving one (Young 2015c). A roving bandit is an effective theft-oriented organization that provides an exclusive collective good (plunder) to be enjoyed rivalrously by its members. Alternatively, a stationary bandit changes its means of providing the exclusive good (i.e., by taxing rather than plundering) and also may provide inclusive collective goods to out-group members that are both nonrival and nonexcludable (e.g., law and order).¹⁸

With the internal dynamics of armed retinues and confederacies in mind, consider the incentive misalignments would have existed under, respectively, the stationary bandit and subjugation alternatives.

3.1 *The Stationary Bandit Alternative*

Under the *stationary bandit* alternative the incentives of the barbarian rank and file warriors and their elite leadership would have been misaligned. As members of a roving armed retinue, barbarian warriors operated on a relatively small scale (around 200 men; see Heather (1998 pp. 66-68)) and had a direct role in the extraction of the plunder to be distributed to them as residual claimants. The connection of efforts to rewards aligned warriors' incentives with those of their commander. Furthermore, unlike kin-based Germanic tribal associations a warrior's relationship to his retinue was based on shared material interests with the other

¹⁸ See Olson (1971, pp. 36-43) for the distinction between exclusive and inclusive groups (defined by whether they provide exclusive or inclusive goods). See Young (2015b) for a case study of how Gothic roving bandits of the fourth century confederated and evolved into the stationary Visigothic Kingdom in the fifth century.

warriors and their commander (Young 2015a). If a warrior did not perceive his interest as being served as part of a particular retinue then he would find another commander to follow.

Considering settlement under the stationary bandit alternative, two factors would have weakened the perceived link between the interests of the barbarian warriors and their elite. First, individual retinues would have been consolidated permanently in a confederacy. Confederacies generally operated towards specific ends under extraordinary circumstances (e.g., war) and they disbanded following the achievement of those ends or the passing of those circumstances.¹⁹ While the confederacy existed, warriors had to follow an unfamiliar commander while their efforts became an additional step removed from the ultimate rewards.

Second, if the confederacy settled down to become a government, the warriors would be expected to refrain from plundering and instead become tax collectors. They would also likely be called upon to maintain an environment of secure property rights to encourage a larger tax base. The warriors would then no longer have been residual claimants but administrative agents instead. The connection between their efforts and their rewards would have been further weakened. The collection of taxes and provision of security would also have been activities at which warriors had relatively little experience. Furthermore, the latter activity would have implied warriors refraining from independent plundering. The discouragement of “moonlighting” out side of the collective endeavors of the retinue would have been a new and undoubtedly unpleasant development from the perspective of barbarian warriors.

Alternatively, the barbarian elite would have become rulers of the realm. They would have gained encompassing interests in the realm (Olson 1982) that were connected to those of

¹⁹ See Young (2015c) for the case of the Visigothic confederacy. These Germanic retinues were, using Émile Durkheim (1933) term, *segmentary*. Each retinue was self-contained and self-sufficient; yet retinues could, at times, combine towards common ends. “While segments can aggregate at a high level, they are prone to immediate fissioning [sic] once the cause of their union (such as an external threat) disappears” (Fukuyama 2011, p. 58). See Fukuyama (2011, pp. 56-59) for a useful discussion of segmentary societies generally; (pp. 72-75) for the role of segmentary units in military organization, including that of the Germanic barbarians recorded by Caesar and Tacitus.

Roman landowners. Within the context of the stationary bandit alternative, incentive alignment between barbarian and Roman elites would have further antagonized the barbarian warriors. Even under the *hospitalitas* framework settlement created the perception among barbarian warriors that their elites were acting in ways more consistent with Roman interests than their own. For example, Thompson (1982 [1930] p. 48) argues that: “The dominating feature of Visigothic history between the [fourth and fifth centuries] is the growing conflict between the interests of [...] the optimates [the elite] and those of the rank and file.” The early years of the Visigothic settlement saw a number of leaders murdered or deposed because they were perceived as too closely aligned with Roman interests (Thompson 1982 [1930]; 2008 [1966], p. 49). Under the stationary bandit alternative, there would have been nothing to offset this antagonizing effect on the barbarian rank and file.

3.2 *The Subjugation Alternative*

Alternatively, the barbarians could have thoroughly subjugated the Roman inhabitants and taken over the imperial administration, including the provision of law and order and the collection of taxes. As long as the provision of law and order allowed for an increase in wealth greater than the amount being taxed, this arrangement could have been perceived as mutually beneficial by both Romans and barbarians (Olson 1993). But the subjugation alternative would have left the incentives of Roman and barbarian elites misaligned.

In particular, the collection of taxes and the provision of inclusive public goods require sophisticated political and legal structures, at least relative to anything present in fifth century barbarian societies. In reality, the barbarian elite turned to the Roman aristocrats. Members of the senatorial class possessed the human capital necessary to provide effective government

administration and bureaucracy. I have already noted Ostrogothic reliance on senators such as Cassiodorus and Liberius, the latter having orchestrated the actual *sortes*. The Gallo-Roman aristocracy also factored prominently in Visigothic government, especially after 450 (Hen 2011; Heather, 1998, 191-194). Heather has already been quoted above regarding the importance of Visigoths “securing the allegiance of Roman elites [...] to fashion and run a working governmental machine (p. 191). He also remarks upon one senator’s (Sidonius Apollinarus’) description of King Theoderic II’s (Visigothic; ruled 453-466) court:

It portrays a king educated in Roman law and literature, who presided over an ordered court, where unruly behavior, especially drunkenness, was not tolerated. Set against traditional Roman prejudices about ‘barbarians’, there is no doubt that Sidonius was signaling to his fellow Roman landowners that the Gothic king was a worthy political ally, who had entered the world of Roman civilization.

The contribution of Gallo-Roman aristocrats to the nascent Visigothic legal system is also evidenced by the very existence of fifth and early sixth century barbarian law codes. The Roman elite was the only source of literacy for the barbarians to draw upon in codifying their laws.

The above suggests a level of cooperation between barbarian and Roman elites that would have been difficult to reconcile with the subjugation of the latter. Romans whose lands had been wholly expropriated would not have skin in the game being played by the new barbarian rulers. Furthermore, relegating proud Roman aristocrats to subservient status (especially to barbarians!) would have, in a straightforward way, discouraged cooperation with the new leadership. Even with many parts of the Western Empire coming under barbarian control, these Roman aristocrats still had exit options that they could exercise (Hirschman, 1970, 1990). Even under *hospitalitas* some Romans did exactly that, departing for parts of the empire

where barbarians were not currently being settled. A thorough subjugation of the Roman elite would have opened the floodgates on those movements.

3.3 *Hospitalitas*

The settlement of barbarian groups in Gaul and Italy involved allotments of claims to returns on productive assets. The barbarian *sortes* were formulaic: they were spread broadly and also equitably in the sense that they were based on predetermined, uniform share of each individual Roman *possessor*'s lands. Cassiodorus remarked that *hospitalitas* "joined both the possessions and the hearts of Goths and Romans alike". Of course, the *joining of hearts* suggests the alignment of incentives.

Not only did the Roman elite and the barbarian recipients of *sortes* share interests in productive assets, but the allotments also worked to *realign* the incentives of barbarian warriors and barbarian elites at a time when their relations were strained by the transformation of a confederacy from roving bandit to stationary state. As members of a barbarian administration the warriors' perception of a link between elite directives and their own interests was weakened. The *sortes* established a direct link between the barbarian elites' interests in a growing tax base and warriors' interests in the productive yields of the land. Actual allotments of land would have been effective in establishing this link. However, to the extent that *sortes* were tax assessment shares they were even better suited to align warrior and elite incentives. Barbarian warriors were not farmers. (Farming was not their comparative advantage at least.) They may not have been able to realize returns on land holdings that were comparable to those of their Roman

neighbors.²⁰ Alternatively, tax assessment shares “yielded immediate and reliable returns” to the barbarian warriors (Goffart 1980, p. 54).

Tax assessment shares also promoted the incentive alignment described above while minimizing antagonism of the Roman elite. Romans maintained ownership of their lands. As suggested by Theoderic’s (Cassidorus’) letter to Faustius, the annoyances faced by Roman landowners were confined to inconveniences associated with new, unfamiliar, and less streamlined collection of taxes. Notably, if the allotments were tax assessment shares then the actual *level* of taxes did not change for Roman landowners; just the number of tax collectors. Keeping the antagonism of Roman elites to a minimum avoided degrading a group whose human capital was required by the barbarian elite to govern effectively. Relegating the Roman aristocrats to subservient status would have been inconsistent with relying on them to be critical players in political and legal structures. These aristocrats were the only source of bureaucratic experience (not to mention literacy!) available to the barbarian leadership.

To the extent that *sortes* were not tax assessment shares but, rather, actual land allotments, most of the above analysis is unaffected. One notes that barbarian warriors would have had to deal with the actual management of their allotted lands. This task may have been allocated to family members.²¹ Alternatively, a barbarian warrior with a *sors* may have reached an arrangement with his Roman “host” where the latter continued to manage the entire landholding. One also notes that in the case of actual land allotments Romans would indeed have suffered expropriation, but they also would have held onto a meaningful portion of their landholdings. The lack of evidence of outrage or revolt is consistent with *hospitalitas* keeping the antagonism of Roman elites tolerably low.

²⁰ This would likely be true even to the extent that the *sortes* included the landowners’ bondsmen. Barbarian warriors had little to no experience managing and monitoring such agents.

²¹ Characteristic of the large migrating confederacies were caravans that transported warriors’ entire families.

3.4 *The Second Estate*

In the barbarian *hospitalitas* settlements one finds foundations of the medieval second estate. The estates system is recognized widely to have been an important component of Western exceptionalism. The first estate (the Church) and the second estate (the nobility) represented well defined groups with considerable de facto political powers that were bundled with economic rights to revenues from their properties (Salter 2015a). (This included the properties of their vassals in the case of the nobility.) “Historically, the separation of powers in Europe developed out of the old system of estates” (Weber 1978 [1922], p. 283); it “today gives the political life of the whole civilized world its distinctive character [and] traces its historical origins to the system of Estates of the Middle Ages” (Hintz 1975 [1931], p. 305).

According to Downing (1989, p. 214) the Western “predisposition toward liberal democracy was afforded by four principle characteristics: *a rough balance between crown and nobility, decentralized military systems, the preservation in some regions of Germanic tribal customs, and peasant property rights with reciprocal ties to the landlord.*”²² Barbarian settlements within the *hospitalitas* framework transformed a militarized barbarian freemen class into a nascent landed nobility. These warriors constituted the military forces of the barbarian confederacies. The new barbarian kings began their stationary reigns with the decentralization of those military forces.

In addition to the geographic decentralization of the barbarian warriors, settlement with the *hospitalitas* framework contributed to an important change in how European armies were organized and funded relative to the imperial era. “Beginning in the fifth century, there was a

²² Among the preserved Germanic tribal customs, that of the public assembly likely provided the template for early councils and parliaments. See Young (2015a) for a discussion of Germanic public assemblies during the first centuries BC and AD.

steady trend away from supporting armies by public taxation and towards supporting them by rents derived from private landowning” (Wickham 2009, p. 102). There is no evidence of centralized army pay in the early medieval West, save for Muslim Spain starting in the eighth century (Wickham 2009, p. 103). During the Middle Ages the major activity of states and their largest expense was war making. During the feudal era states did not tax centrally to pay for professional armies; they instead called upon the propertied nobility of the realm for levies of soldiers. Indeed, medieval monarchs were constantly travelling throughout their realms to plead and bargain for taxes and soldiers to support their campaigns.

Following the *hospitalitas* settlements, barbarian kings had to rely on military services from warriors who had been settled broadly throughout the realm. Furthermore, they had ceded substantial shares of the realm’s revenues to these warriors. In many ways, the allotment of tax assessment shares worked to align the incentives of the warriors and the new barbarian rulers. (See above.) However, it also divided de facto political power between the kings and warriors. The warriors held decentralized claims to the revenues of the realm that were substantial relative to those held by their kings. Furthermore, the warriors collectively constituted the military might of the realm. Their political property rights were rooted not only in their control over the military services that barbarian kings required but also the fact that this resource was the means for preventing its own expropriation.

This nascent second estate – militarized and founded in claims to the realm – became effectively shareholders in the realm with a seat at the constitutional bargaining table. Their political property rights flowed from their economic property rights (Salter 2015a). With a monarch at its head, this constitutional bargaining table fit within the “king and council” template of divided government described by Congleton (2007; 2011b). To the extent that their

military resources were both desired by and a threat to the barbarian kings, the resulting constitutional bargains were likely to be self-enforcing; contributing to a second estate with sovereignty that ran alongside and overlapped with that of the kings (Salter 2015b). The individual barbarian allotments (*sors*) of the fifth century were the basis for a hierarchy of political power where the power of kings was located above bundles of political and economic property rights associated with the nobility. This is an arrangement that Salter and Young (2015) refer to as *polycentric sovereignty*.

Along with a politically powerful Church, the polycentric sovereignty described above and based on a landed and militarized nobility implied that the powers of medieval monarchs were constrained in important ways (Young 2015d). To gain consent from the estates for new taxes or military levies, medieval monarchs had to typically offer various rights, immunities, and freedoms in exchange. Medieval political bargaining between monarchs and the estates led to “the rise of parliamentary bodies in which monarch, aristocracy, burghers, and clerics determined basic matters, including fundamental ones of taxation and war [...]” (Downing 1992, pp. 21-22). Congleton (2011b, p. 2) downplays the importance of medieval parliaments, noting that they were not self-calling: “Kings and queens called ‘their’ parliaments into session whenever convenient and apart from veto power over new taxes, medieval parliaments had very limited authority.” However, taxing and war making were the largest part of what monarchs did throughout the early and high Middle Ages. Veto power over new taxes was nontrivial and medieval parliaments also frequently vetoed the military plans of monarchs.²³

²³ Regarding veto power over military levies, Downing (1988, p. 12) observes that it was not until the seventeenth century that larger mercenary forces and standing armies became important substitutes for feudal levies. This development weakened the political power of the second estate. That being said, the nobility retained political power enough to be a fundamental player in Congleton’s (2011b) theory of gradual progress towards representative government in the West via constitutional exchange.

4. Concluding Discussion

In the fifth and sixth centuries the Roman Empire was increasingly unable to prevent the emigration of various barbarian groups from across its Rhinean and Danubian frontiers. Imperial policy turned towards the orderly settlement of these groups on Roman soil as federated allies of the empire. I have argued that the legal framework within which these settlements were carried out set the stage for a medieval Western Europe characterized by a militarized aristocracy with political powers that effectively checked those of monarchs. Nobles' political property rights were bundled with the economic property rights associated with their lands. As a result, the rough balance of political powers between monarchies and nobles, as well as a political powerful Church, constituted a polycentric sovereignty where governance changes were likely to occur only when broad consensus regarding their desirability existed.

I began this paper by asking: *How does one establish good government, one that respects the basic rights of its citizens?* A constitution that demarcates what political agents can do is necessary, but since there is no third party enforcer such a constitution also needs to be self-enforcing. The postcolonial African experiences and the nation-building exercises of recent decades make it painfully clear that, as a matter of policy, establishing self-enforcing constitutions that prevent governments from trampling on citizens' rights is no easy task.

The establishment of medieval shareholder states is an exception that proves the rule above. A remarkable balance of political power emerged between monarchs and the first and second estates is remarkable. That balance was fortuitous in promoting Western traditions of limited government, constitutional exchange, and ultimately political liberalism. However, it did not promote those ends by design. Settlements carried out within the *hospitalitas* framework aligned incentives across Roman elites, barbarian elites, and barbarian warriors. Furthermore, the

allotments of tax assessment shares or lands to barbarian warriors augmented their de facto political power and bundled it with well-defined economic property rights. Yet the imperial authorities did not have the demise of the Western Roman Empire in their plans, never mind the foundations of durable successor states and self-enforcing medieval constitutions. *Hospitalitas*' contribution to the constitutional political economy of the West is an unintended consequence of first-order importance.

There is only one straightforward policy implication to glean from the case study and analysis found in this paper. The establishment of self-enforcing constitutions by design is an exceedingly tricky task the undertaking of which is best avoided when possible. That being said, the fifth and sixth century barbarian settlements entailed a fortuitous set of circumstances that “worked”. *Hospitalitas*, then, provides us with benchmarks against which to contrast the circumstances of modern state-building episodes. For example, compare the system of barbarian allotments to the thorough expropriation of white-owned lands in Zimbabwe for redistribution to landless blacks during the 2000 “land reforms”. The latter is more akin to the subjugation alternative described above in section 3. Whereas *hospitalitas* “joined the hearts of Goths and Romans alike”, the Zimbabwean land reforms did quite the opposite between Zimbabwean blacks and whites, and the economic failures that followed are too well known to belabor.

Not only were the fortuitous circumstances of the barbarian settlements not designed to promote durable successor states and self-enforcing constitutions. Recreating similar circumstances in a modern context may also be politically untenable. The self-enforcing nature of medieval constitutions was based largely on checks and balances between monarchs and political powerful nobles, the latter holding economic rights to a shares of the realm and incentivized by residual claimancy to governance returns. However, modern insistence on

universal (or broad) suffrage and representative government is inconsistent with emphasizing the bundling of political and economic property rights. Furthermore, the broad reorganization of claims to productive assets that characterized *hospitalitas* was fundamentally coercive. Nation-builders with the will to undertake such broad and coercive reorganization are likely not to have limited government and the integrity of individual rights as their fundamental goals.

Alternatively, nation-builders with those goals in mind are (understandably) loath to undertake such broad and coercive reorganization.

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