

## OUTLINE — LECTURE 3

### NON-ROMAN LAW IN THE ROMAN EMPIRE

1. Citizen and non-citizen, mixtures of Roman and non-Roman law.
2. The example of Greco-Roman Egypt
3. The mercantile law of the Eastern Mediterranean, e.g., the giving of *arrha* or earnest money.
4. Celtic elements in the West? The Ligurian inheritance law?
5. Bottom line: the most important non-Roman and non-canonic elements in Western European law that are not the product of medieval and modern developments are probably, at least in some sense, Germanic in origin.

### The Germanic Peoples and Their Laws

#### The Germanic Invasions



([Click](#) to view in browser.) The map might be entitled all-hell-breaks-loose, and there are even more inelegant ways to describe it. As we will see, the map probably exaggerates the amount of disruption, but it does show that between the years 150 and 1000, a great many tribes, mostly, but not exclusively, Germanic, made their way into what was, or had formerly been, the Roman empire in the West, and this development had far-reaching consequences for Western European history and particularly for its law.



### Germanic Language Groups:

West	North	East
OHG	ONorse	Gothic
OSax		
ONeth		
OFris		
OEng		

### Germanic Kingdoms in 600:



([Click](#) to view in browser.)

West	Center	East
Anglo-Saxon	Saxons	Saxons
Franks	Franks	Thuringians
Visigoths	Lombards	Bavarians



## Germanic Kingdoms in 486:



([Click to view in browser.](#))

West	Center	East
Anglo-Saxon	Saxons	Saxons
Franks	Franks	Thuringians
Visigoths	Alemanni	???
	Burgundians	Ostrogoths
	Odoacer	

## Position of the "Germanic tribes" c. 200 A.D.

North Sea	Rhine-Weser	Elbe	Oder-Vistula	Scand.
Angles	Franks	Alemanni	Goths	Norse
Saxons		Bavarians	Burgundians	
'Jutes'		Lombards	Vandals	
Frisians				



## What Were These People Like?



Designed to inspire awe, this bronze helmet unearthed at Viksoe in Denmark boasts curved horns and two staring eyes [the Vikings of history did not wear horned helmets]. The four-inch-high kneeling figure in Danish costume (right) wears a similar helmet, suggesting that such a headpiece was an important adjunct to the allure of a Bronze age warrior. [Neither has been dated precisely, but both come from the period before our era and may be as early as 500 BC.] [National Museum, Copenhagen]. Thomas Froncek, *The Northmen, The Emergence of Man* (New York: Time-Life Books, 1974) 111 (Brookline Library 930 F92n). This is clearly from the time before the Germanic peoples had any contact with the Romans.





Belt buckle from a ship burial at Sutton Hoo, Suffolk. Seventh century. British Museum, London. Magnus Backes & Regine Dölling, *Art of the Dark Ages*, Francisca Garvie trans. (New York: Harry N. Abrams, 1969c) 45 (Brookline Library 709.4 B12a). The artwork here is Germanic, but we can't be sure that there is not some Roman influence. Even if the Germanic peoples came into an area which the Romans had left, there was plenty of stuff around that showed what they had done.





[Armed and mounted horseman; note the serpent decoration at the bottom.] Funerary stele of horseman. Seventh century. Sandstone, height 30 3/4". From Hornhausen (west of Magdeburg, probably Saxon at this time or Thuringian). Landesmuseum für Vorgeschichte. Halle. Backes, p. 34 (suggests Roman influence). There seems to be considerable disagreement about date and function. It is now being argued that it comes from a church screen. *Origins of Medieval Architecture 600-900*. What is clear is that comes from an area that the Romans never reached.





Detail of Helmut Plaque of Agilulf, King of the Lombards [first real king, unites the dukes in opposition to the Franks, 591-616], gilt copper, late 6th c. Museo Nazionale del Bargello, Florence. [A king guarded by warriors, Agilulf, ruler of the Lombards, is shown holding court in this hammered relief of gilded copper.] Gerald Simons, *Barbarian*



*Europe*, Great Ages of Man: A history of the world's cultures (New York: Time-Life Books, 1968) 10 (Brookline Library 940.1 S58b). (Also in H&C p. 77, with winged victories on the sides and cities bringing tribute.)



Cesena Bird Brooch, Ostrogothic, gold and precious stones, cloisonné technique with almandines, early 6th c., Germanisches National Museum, Nuremberg, Germany. [The pin combines the stylized bird motif popular among Germanic peoples with a Christian cross; the filigreed metal work, set with garnets, was undoubtedly borrowed from Byzantine art work.] Simons, p. 54.





Mausoleum of Theodoric the Great. Before 526. Ravenna. Backes, p. 13. Roman elements put together to make something that is not Roman. The inside much more Roman.





Votive crown of King Recceswinth [653 X 672], Visigothic, gold filigree with pearls and sapphires, 7th c., National Archaeological Museum, Madrid. [The opulent Visigothic crown reveals a barbarian admiration of massive precious stones as well as some refinements of Eastern design; the gold filigree, encrusted with sapphires and pearls, and the dangling pendants of rock crystal are of Byzantine origin. The hanging letters spell



the name of King Recceswinth, a ruler in Spain during the Seventh Century. He is believed to have given the crown to the Church that converted him.] Simons, p. 55.

### **The ‘Germanic’ Laws**

#### **The Chief Monuments of Roman Law in the Period of the ‘Germanic Kingdoms’:**

- a. The *lex romana visigothorum (breviarium Alarici)* (Alaric II, 506)

Bibliog: *Lex romana visigothorum*, G. Haenel ed. (1845); *Breviarium Alarici*, M. Conrat (Cohn) ed. & trans. (1890)

- b. The *lex romana burgundionum* (Gundobad before 506)

Bibliog: *Leges Burgundionum*, ed. F. Bluhme (MGH Leges 3, 1863, repr. 1925); *Leges Burgundionum*, ed. L.R. von Salis (MGH Legum sec. 1, Leges nationum Germanicarum 2.1, 1892); *Gesetze der Burgunden*, F. Beyerle ed. (Germanenrechte Texte und Übersetzungen 10, 1936)

- c. The so-called *edictum Theodorici* (?Theodoric the Ostrogoth, 493–507 [probable date of the laws])

Bibliog: *Edictum Theodorici regis*, F. Bluhme ed. (MGH Leges 5, 1875)

#### **Germanic Codifications in Areas of Strong Roman-Law influence:**

- a. The Visigoths (*lex Visigotorum, liber judiciorum, fuero juzgo* (first rec. Euric (466 X 484), others: Leowigild (568 X 586), Rekeswind (653 X 672), Erwig (680 X 687).

Bibliog: *Formulae Visigothicae*, in *Formulae Merowingici et Karolini aevi*, K. Zeumer ed. (MGH Legum sec. 5, 1886); *Gesetze der Westgothen*, E. Wohlhaupter ed. & trans. (Germanenrechte, Texte u. Übersetzungen 11, 1936); *Leges Visigothorum antiquiores*, K. Zeumer ed. (MGH Fontes juris Germanici antiqui, 1894); *Leges Visigothorum*, K. Zeumer ed. (MGH Legum sec. 1, Leges nationum Germanicarum 1, 1902); *ElCodigo de Eurico*, ed. A. d’Ors (Estudios Visigoticos 2, 1960)

- b. The Burgundians (*lex Burgundionum* (1st rec. [first recension] before 516))

Bibliog: As above for the *lex romana Burgundionum* plus *The Burgundian Laws*, K. Drew trans. (1949) (*lex Burgundionum* only)

- c. The Lombards (Rothair (643), Liutprand (713 X 735), with various additions)

Bibliog: *Leges Langobardorum*, F. Bluhme, A. Boretius edd. (MGH Leges 4, 1868, repr. 1925); *Edictus ceteraque Langobardorum Leges cum constitutionibus et pactis principum Beneventorum*, F. Bluhme ed. (MGH Fontes iuris Germanici antiqui, 1869); *Die Gesetze der Langobarden*, F. Beyerle ed. & trans. (1947); *The Lombard Laws*, K. Drew trans. (1973)

#### **Germanic Codifications in Areas of Weak Roman-Law Influence:**

- a. The Salic Law (*pactus legis salicae* (1st rec. c. 500)

*Pactus legis Salicae I*, K. Eckhardt ed., 2 vols. (1=Einführung u. 80 Titel-Text; 2=Systematischer Text) (Germanenrechte n.f., Westgermanisches Recht 1.1, 1.2, 1954–1957); *Pactus legis Salicae II*, K. Eckhardt ed., 2 vols. (1=65 Titel-Text; 2=Kapitularien u. 70 Titel-Text) (*id.* 2.1, 2.2, 1955–1956); *Lex Salica 100 Titel-Text*, K. Eckhardt ed. (*id.*



3, 1953); *Gesetze des Merowingerreiches 481–714*, K. Eckhardt ed. & trans., vol. 1 (=Pactus legis Salicae, recensiones Merovingicae) (Germanenrechte Texte u. Übersetzungen, 2d ed. 1955); *Gesetze des Karolingerreiches 714–911*, *id.* (2d ed. 1953); *Laws of the Salian and Ripuarian Franks* T.J. Rivers trans. (AMS studies in the Middle Ages 8, 1986)

b. The Anglo-Saxon Laws (Aethelberht (c. 600), Hlothre & Eadric (c. 680), Wihtred (c. 695), Ine (688 X 694), Alfred (c. 900), etc.)

Bibliog: *Die Gesetze der Angelsachsen*, F. Liebermann ed., 3 vols. (1903–1916); *The Laws of the Earliest English Kings*, F. Attenborough ed. & trans. (1922); *The Laws of the Kings of England from Edmund to Henry I*, A. Robertson ed. & trans. (1925); *Gesetze der Angelsachsen 601–925*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 13, 1958); *Leges Anglo-Saxonum 601–925*, K. Eckhardt ed. (Germanenrechte n.f. Westgermanisches Recht 4, 1958)

c. The Alamanian Law (*Pactus* (7th c.); *Leges* (712 X 725))

Bibliog: *Leges Alamannorum*, K. Eckhardt ed., 2 vols. (1=Einführung u. Recensio Chlothariana (*Pactus*); 2=Recensio Chlothariana) (Germanenrechte n.f. Westgermanisches Recht 5–6, 1958–1962); *Gesetze des Merowingerreiches 481–714*, K. Eckhardt ed. & trans., vol. 2 (=Pactus legis Alamannorum: Recensio Chlothariana) (Germanenrechte Texte u. Übersetzungen, 2d ed. 1957); *Gesetze des Karolingerreiches 714–911*, *id.*, vol. 3 (=Recht der Alemannen) (*id.* 2d ed. 1953)

d. The Bavarian Law (first recension [1st rec.] ? 743 X 744)

Bibliog: *Lex Baiuvariorum*, J. Merkel ed. (MGH Leges 3, 1863); *Lex Baiuvariorum*, E. Frhr. von Schwind (MGH Leges nationum Germanicarum 5.2, 1926); *Recht der Bayern*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.4, 1934)

### **Carolingian Codifications:**

a. The Ripuarian Law (1st rec. 9th c., contents date back to 7th)

Bibliog: *Lex Ribuaria*, F. Beyerle, R. Buchner edd. (MGH Leges nationum Germanicarum 3.2, 1954); *Lex Ribuaria*, K. Eckhardt ed. (Germanenrechte n.f., Westgermanisches Recht 7–8, 1959–1966); *Recht der Ribuarischen Franken*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.2, 1934); *Laws of the Salian and Ripuarian Franks* T.J. Rivers trans. (AMS studies in the Middle Ages 8, 1986)

b. The Chamavian Franks (early 9th c.)

Bibliog: *Lex Francorum Chamavorum*, R. Sohm ed. (MGH Leges 5, 1875–1889); *Lex Ribuaria et lex Francorum Chamavorum*, R. Sohm ed. (MGH Fontes juris Germanici antiqui [6], 1883); *Das Recht der chamavischen Franken*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.7, 1934)

c. The Frisian Law (rec. prob. early 9th c. of very diverse material, some obviously pagan)

Bibliog: *Lex Frisonum*, K. Frhr. von Richthofen ed. (MGH Leges 3, 1863); *Recht der Friesen*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.8, 1934)

d. The Saxon Law (1st rec. early 9th c.)

Bibliog: *Leges Saxonum*, K. Frhr. von Richthofen, K. F. von Richthofen edd. (MGH Leges 5, 1875–1889); *Leges Saxonum u. Lex Thuringorum*, Cl. Frhr. von Schwerin ed. (MGH Fontes iuris Germanici antiqui [4], 1918); *Recht der Sachsen*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.5, 1934)

e. The Thuringian Law (1st rec. early 9th c.)

Bibliog: *Lex Thuringorum*, K. F. von Richthofen ed. (MGH Leges 5, 1875–1889); *Leges Saxonum u. Lex Thuringorum*, Cl. Frhr. von Schwerin ed. (MGH Fontes iuris Germanici antiqui [4], 1918); *Recht der Thuringer*, K. Eckhardt ed. & trans. (Germanenrechte Texte u. Übersetzungen 2.6, 1934)

### Later Vernacular Laws

At various times in the Middle Ages various rulers or groups in what is now Norway, Sweden, Denmark and Iceland issued material (always in the vernacular) that is in the style and form of the early Germanic laws. Perhaps the most interesting is the one called the *Grágás* (Grey Goose), which comes from Iceland in the 12th century. Some scholars believe that some of the material in these laws is very old indeed.

### ÆTHELBERT'S LAWS

Æthelberht was king of Kent, today a small county in the very southeast of England. The boundaries of his kingdom were probably roughly those of the [modern county](#).



#### 1. The circumstances



From Bede, *Ecclesiastical History of the English Nation* (completed around 732) [From Dorothy Whitelock trans. in *English Historical Documents*, 2d ed., vol. 1, pp. 663–64]:

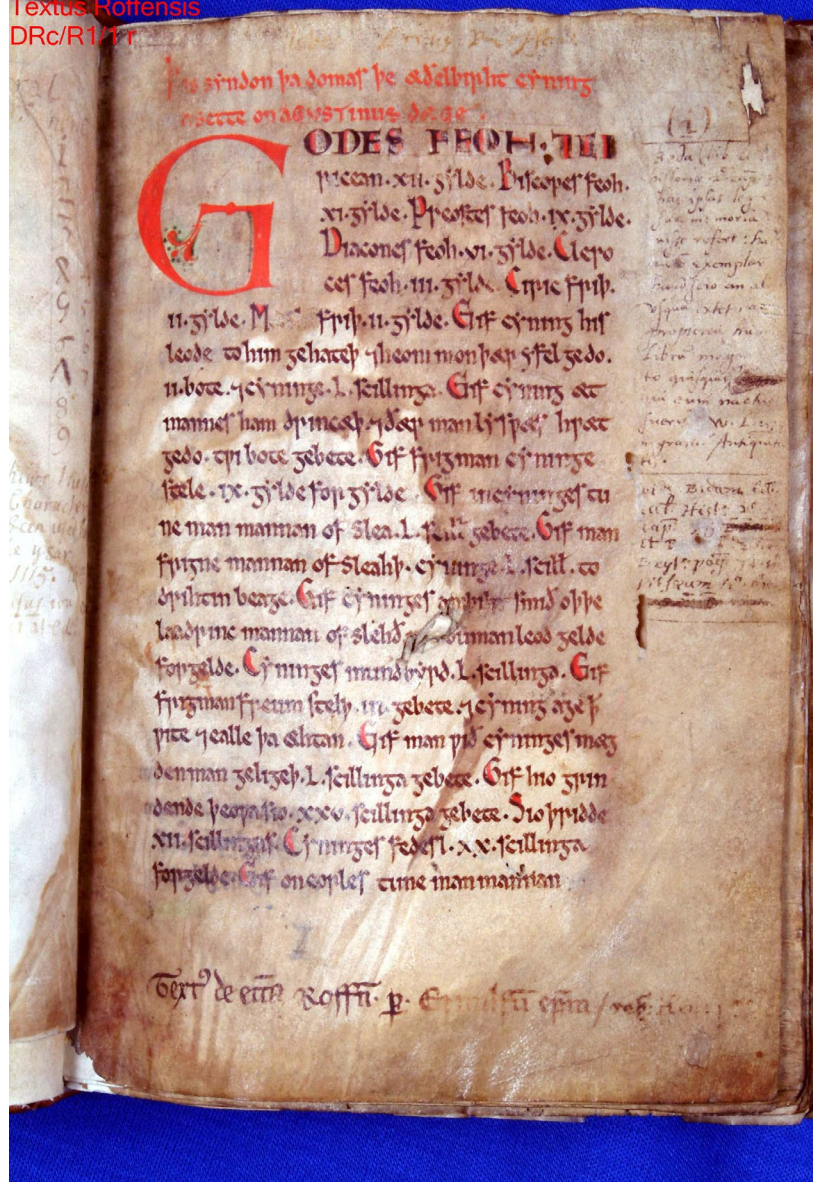
‘In the year of our Lord's incarnation 616, which is the 21st year after Augustine with his companions was sent [by Pope Gregory the Great] to preach to the nation of the English, Ethelbert, king of the people of Kent, after his temporal kingdom which he held most gloriously for 56 years, entered into the eternal joys of the heavenly kingdom. He was indeed the third of the kings in the nation of the English to hold dominion over all their southern provinces, which are divided from the northern by the river Humber and boundaries adjoining it; but the first of them all to ascend to the heavenly kingdom.

‘King Ethelbert died on 24 February . . . and was buried in the chapel of St Martin within the church of the blessed Apostles Peter and Paul, where also Queen Berhta lies buried. Among the other benefits which in his care for his people he conferred on them, he also established for them with the advice of his councillors [*cum consilio sapientium*] judicial decrees [*decreta iudicialia*] after the example of the Romans [*iuxta exempla Romanorum*], which, written in the English language, are preserved to this day and observed by them; in which he first laid down how he who would steal any of the property of the Church, of the bishop, or of other orders, ought to make amends for it, desiring to give protection to those whom, along with their teaching, he had received.’

Is Bede's account to be believed?

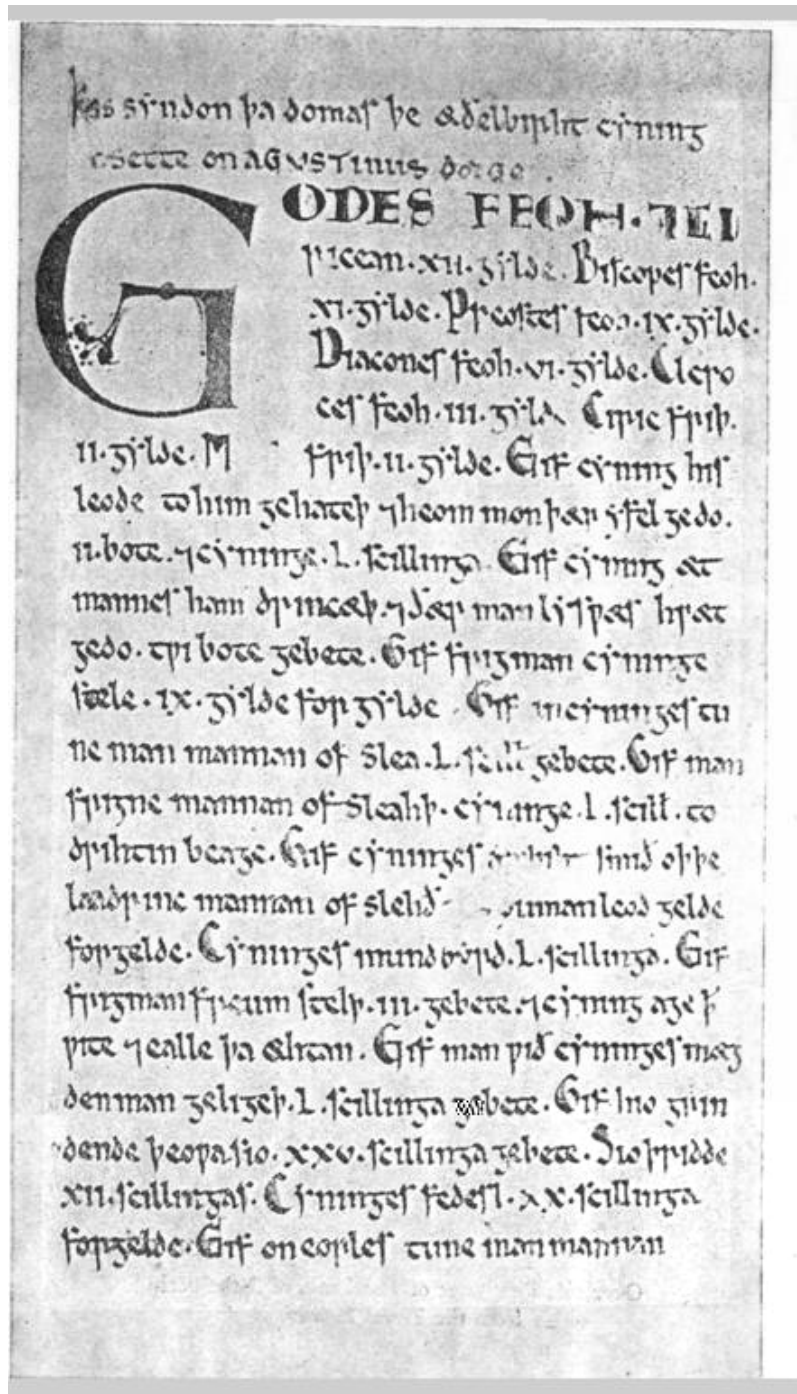
1. Did Æthelberht become a Christian?
2. Does the text that Bede had correspond to ours? (We may be missing a prologue. The other two Kentish laws that survive from later in the 7th century both have prologues: Hlothere and Eadric (673 X 686): “Hlothere and Eadric, kings of Kent, extended the laws which their predecessors had made by the decrees which are stated below.” Wihtred (probably 695): “During the sovereignty of Wihtred, the most gracious king of Kent, in the fifth year of his reign, the ninth Indiction, the sixth day of Rugern, in a place called Barham, there was assembled a deliberative council of the notables. There were present there Berhtwald, the chief bishop of Britain, and the above-mentioned king; the bishop of Rochester was called Gefmund; and every order of the Church of the province expressed itself in unanimity with the loyal laity.”
3. Did Augustine of Canterbury bring literacy to Kent?
4. The possible role of Liudhard, Berhta's bishop.

## 2. The Manuscript



The laws of Æthelberht of Kent, the first page of the only manuscript copy, the *Textus Roffensis*, from the collection of the Dean and Chapter of Rochester Cathedral, now housed again in Rochester Cathedral. The photograph was downloaded from the website of the Medway Archives and Local Studies Centre in Strood (near Rochester), Kent, when the manuscript was stored there.





From the frontispiece of H. G. Richardson and G. O. Sayles, *Law and Legislation from Æthelberht to Magna Carta* (Edinburgh, 1966).

### 3. Notes on the Words in Bede

1. *decreta iudicialia*. The phrase does not have a technical legal meaning, but *decretum* (the singular of *decreta*) does: a decision of the emperor in a specific legal case. *Iudicialia* is derived from *iudex*, which means 'judge'.

The Old English for *decreta iudicialia* is *domas*, which means ‘judgments’. Cf. the Spanish for the Visigothic Laws: *fuero juzgo*, literally ‘the forum of the judge’.

2. Bede does not use either of the Latin words for ‘law’: *ius*, law in the general sense or ‘right’, *lex*, law in the specific sense or statute. The Anglo-Saxons made a similar distinction. The O-E word *ae* or *aew* also means law in a more general sense and is cognate with modGer *Ehe*, ‘marriage’. ‘Fundamental agreement’ might be a good translation. The earliest version of the Salic law of the Franks is called in Latin *pactum legis Salicae*, the agreement of the Salic law
3. *iuxta exempla Romanorum*. Literally, “according to the examples of the Romans.” There is no Roman law in Æthelberht’s laws, not even a hint. Does this simply mean a written law? or a secular law? or like what the Germanic kings were doing in areas that were thought of as still being parts of the Roman empire?

#### 4. Æthelberht’s Laws cc. 1–7, 10 with a Literal Translation

1. Godes feoh 7 ciricean XII gylde. God’s property and church’s 12 by payment.
2. Biscopes feoh XI gylde. Bishop’s property 11 by payment.
3. Preostes feoh IX gylde. Priest’s property 9 by payment.
4. Diacones feoh VI gylde. Deacon’s property 6 by payment.
5. Cleroces feoh III gylde. Cleric’s property 3 by payment.
6. Ciricfriþ II gylde. Church peace 2 by payment.
7. M[æthl]friþ II gylde. Assembly peace 2 by payment.
10. Gif frigman cyninge stele, IX gylde forgyld. If a freeman steals from the king, let him pay forth 9 by payment.

#### 5. Method

1. Elaboration, most notably in cc. 32–71
2. Analogy, implied in many of the provisions to the extent that we doubt that they are all real cases. It seems to be reasonably explicit in cc. 6–7.

#### 6. Outline of Æthelberht’s Laws

1. The Church cc. 1–7
2. The king cc. 8–17
3. Eorls cc. 18–19
4. Ceorls cc. 20–71
5. c. 20–31 *mundbyrd*, wergeld, property offenses
6. c. 32–71 personal injury, arranged from head to toe
7. Women cc. 72–77
8. Servants, slaves cc. 78–83



## 7. Basic Concepts

1. *wergeld*. *Wer* is cognate with Latin *vir*, a male person; *geld* is our word ‘gold’ but it’s broader: literally ‘man-payment’ or ‘man-price’.
2. *mundbyrd*. The *mund* part means ‘protection’; it is cognate with Latin *manus*, ‘hand’. The *byrd* part is harder, but it is probably related to our word ‘border’, hence *mundbyrd* is ‘area of protection’.
3. *frip* pronounced ‘frith’, cognate with Modern German *Friede*, ‘peace’.
4. *bot* (‘compensation’) occurs very frequently particularly in the verbal form *gebete* (‘let him make compensation’);
5. *wite* (‘fine’, ‘penalty’) occurs only once in c.15, but there are a number of offenses to the king’s *mundbyrd*
6. This is clearly not criminal law, but it’s not quite civil either.
7. One may doubt if these are absolute liability offenses.

## 8. The sorts and conditions of men: A comparison of Æthelberht’s laws and Ine’s (West Saxon, roughly 695)

A TABLE OF WERGELDS

	Aethelberht		Ine
	mundbyrd	wergeld	wergeld
king	50	?	?
eorl	12	300 <sup>a</sup> =6000 <sup>b</sup>	1200=6000 <sup>c</sup>
			600=3000
ceorl	6	100=2000	200=1000
læt		80/60/40	
esne=læt			
theow			

a. In Hlothere & Eadric 1. b. @ 20 pence to the shilling. c. @ 5 pence to the shilling.

Price lists from London in the first half of the 10th century value an ox at 30 pennies, a cow at 20, a pig at 10, a sheep at 5. Probably no ordinary *ceorl* in Athelberht’s Kent could command 400 sheep, and precious few kingroups of *ceorlas* could.

## 9. What was the purpose of Æthelberht’s laws?

1. Writing down the laws so that people could remember them?
2. To fit the Christian church into the society?
3. To make it clear, as the Christian missionaries were telling them, that it’s o.k. to accept money compensation to settle a feud?
4. To do something like a penitential?

*From an Irish Penitential of c.800 (McNeil and Gamer p. 165):*

Ch.5 *Of anger*. 2. Anyone who kills his son or daughter does penance twenty-one years. Anyone who kills his mother or father does penance fourteen years. Anyone who kills his brother or sister or the sister of his mother or father, or the brother of his father or mother, does penance ten years: and this rule is to be followed to seven degrees both of the mother's and father's kin—to the grandson and great-grandson and great-great-grandson, and the sons of the great-great-grandson, as far as the finger-nails. . . . Seven years of penance are assigned for all other homicides; excepting persons in orders, such as a bishop or a priest, for the power to fix penance rests with the king who is over the laity, and with the bishop, whether it be exile for life, or penance for life. If the offender can pay fines, his penance is less in proportion.

Ch. 4 *Of envy*. 5. . . . There are four cases in which it is right to find fault with the evil that is in a man who will not accept cure by means of entreaty and kindness: either to prevent someone else from abetting him to this evil; or to correct the evil itself; or to confirm the good; or out of compassion for him who does the evil. But anyone who does not do it for one of these four reasons, is a fault-finder, and does penance four days, or recites the hundred and fifty psalms naked.